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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM 10-K**

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended **December 31, 2009**

**OR**

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from

to

Commission file number **001-14956**

**BIOVAIL CORPORATION**

(Exact Name of Registrant as Specified in its Charter)

**CANADA**

State or other jurisdiction of  
incorporation or organization

(I.R.S. Employer Identification No.)

**7150 Mississauga Road**

**Mississauga, Ontario**

**CANADA, L5N 8M5**

(Address of principal executive offices)

Registrant's telephone number, including area code **(905) 286-3000**

Securities registered pursuant to Section 12(b) of the Act:

Title of each class

Name of each exchange on which registered

**Common Shares, No Par Value**

**New York Stock Exchange, Toronto Stock Exchange**

Securities registered pursuant to section 12(g) of the Act:

**None**

(Title of class)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

**Note** — Checking the box above will not relieve any registrant required to file reports pursuant to Section 13 or 15(d) of the Exchange Act from their obligations under those Sections.

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or Section 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted to Rule 405 of Regulations S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☐ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☒

Accelerated filer ☐

Non-accelerated filer ☐ (Do not check a smaller reporting company)

Smaller reporting company ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

The aggregate market value of the common shares held by non-affiliates of the registrant as of the last business day of the registrant's most recently completed second fiscal quarter was \$2,128,166,465 based on the last reported sale price on the New York Stock Exchange on June 30, 2009.

Number of shares outstanding of each of the registrant's classes of common stock, as of the latest practicable date:

158,372,110 common shares of Biovail Corporation issued and outstanding on February 24, 2010.

**DOCUMENTS INCORPORATED BY REFERENCE**

Part III incorporates certain information by reference from the registrant's proxy statement for the 2010 Annual Meeting of Shareholders expected to be held on May 18, 2010. Such proxy statement will be filed no later than 120 days after the close of the registrant's fiscal year ended December 31, 2009.

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## Basis of Presentation

### General

Except where the context otherwise requires, all references in this Form 10-K to the “Company”, “Biovail”, “we”, “us”, “our” or similar words or phrases are to Biovail Corporation and its subsidiaries, taken together. In this Form 10-K, references to “\$” and “US\$” are to United States dollars and references to “C\$” are to Canadian dollars. Unless otherwise indicated, the statistical and financial data contained in this Form 10-K are presented as at December 31, 2009.

Unless otherwise noted, prescription and market data are derived from information provided by IMS Health Inc. (“IMS”) and are as of its December 31, 2009 report. IMS is a provider of information solutions to the pharmaceutical and healthcare industries, including market intelligence and performance statistics.

### Trademarks

The following words are trademarks of our Company and are the subject of either registration, or application for registration, in one or more of Canada, the United States of America (the “U.S.”) or certain other jurisdictions: ATTENADE™, A Tablet Design (Apex Down)®, A Tablet Design (Apex Up)®, APLENZIN®, ATIVAN®, ASOLZA™, BIOVAIL®, BIOVAIL CORPORATION INTERNATIONAL®, BIOVAIL & SWOOSH DESIGN®, BPI®, BVF®, CARDISENSE™, CARDIZEM®, CEFORM®, CRYSTAAL CORPORATION & DESIGN®, DITECH™, FLASHDOSE®, GLUMETZA®, INSTATAB™, ISORDIL®, JOVOLA™, JUBLIA™, MIVURA™, NITOMAN®, ONELZA™, ONEXTEN™, ORAMELT™, PALVATA™, RALIVIA®, SHEARFORM™, SMARTCOAT®, SOLBRI™, TESIVÉE™, TIAZAC®, TITRADOSE®, TOVALT™, UPZIMIA™, VASERETIC®, VASOTEC®, VEMRETA™, VOLZELO™, XENAZINE®, XENAZINA®, and ZILERAN™.

WELLBUTRIN®, WELLBUTRIN® SR, WELLBUTRIN® XL, WELLBUTRIN® XR, ZOVIRAX® and ZYBAN® are trademarks of The GlaxoSmithKline Group of Companies and are used by us under license. ULTRAM® is a trademark of Ortho-McNeil, Inc. (now known as PriCara, a division of Ortho-McNeil-Janssen Pharmaceuticals, Inc.) and is used by us under license. STACCATO® is a trademark of Alexza Pharmaceuticals, Inc. and is used by us under license.

In addition, we have filed trademark applications for many of our other trademarks in Barbados, the U.S., Canada, and in other jurisdictions and have implemented, on an ongoing basis, a trademark protection program for new trademarks.

### **Forward-Looking Statements**

Caution regarding forward-looking information and statements and “Safe Harbor” statement under the U.S. Private Securities Litigation Reform Act of 1995:

*To the extent any statements made in this Form 10-K contain information that is not historical, these statements are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, and may be forward-looking information within the meaning defined under applicable Canadian securities legislation (collectively, “forward-looking statements”).*

*These forward-looking statements relate to, among other things, our objectives, goals, strategies, beliefs, intentions, plans, estimates and outlook, including, without limitation:*

- our intent and ability to implement and effectively execute plans and initiatives associated with our strategic focus on products targeting specialty central nervous system (“CNS”) disorders and the anticipated impact of such strategy including, but not limited to, the amount and timing of expected contribution(s), from our product development pipeline;*
- our intent to complete in-license agreements and acquisitions and to successfully integrate such in-license agreements and acquisitions into our business and operations and to achieve the anticipated benefits of such in-license agreements and acquisitions;*

- *our intent to deploy a specialty U.S. sales force to support our specialty CNS strategy, including our intent to develop a sales force to commercialize AZ-004 (Staccato® loxapine) in the U.S.;*
- *the competitive landscape in the markets in which we compete, including, but not limited to, the prescription trends, pricing and the formulary or Medicare/Medicaid utilization and positioning for our products, the opportunities present in the market for therapies for specialty CNS disorders, the anticipated level of demand for our products and the availability or introduction of generic formulations of our products;*
- *our intent, timing and ability to complete the planned disposals of certain non-core assets, including, but not limited to, our Carolina, Puerto Rico manufacturing facility and operations and the anticipated costs, impacts and proceeds of such disposition;*
- *our intent and related success or failure regarding the defence of our intellectual property against infringement;*
- *our views, beliefs and positions related to, results of, and costs associated with, certain litigation and regulatory proceedings and the timing, costs and expected impact of the resolution of certain litigation and regulatory proceedings;*
- *the timing, results, and progress of research and development and regulatory approval efforts, including, but not limited to, the estimated costs and expected timing to complete the development of BVF-018 (tetrabenazine), efforts related to the development of BVF-036, BVF-040 and BVF-048 (pimavanserin), BVF-025 (fipamezole), BVF-324 (tramadol) and BVF-014 (GDNF), and efforts related to the development and regulatory approval of AZ-004 (Staccato® loxapine), including the expected potential milestone payments in connection with Staccato® loxapine, pimavanserin, fipamezole, GDNF and other research and development arrangements;*
- *our ability to secure other development partners for, and to share development costs associated with, certain product development programs;*
- *our intent and ability to make future dividend payments or to repurchase our common shares under our share repurchase program;*
- *the sufficiency of cash resources, including those under the accordion feature of our credit facility, to support future spending and business development requirements;*
- *the expected future taxable income in determining any required deferred tax asset valuation allowance;*
- *the impact of market conditions on our ability to access additional funding at reasonable rates, and our ability to manage exposure to foreign currency exchange rate changes and interest rate changes;*
- *our intent and ability to use a net share settlement approach upon conversion of our 5.375% Senior Convertible Notes due 2014;*
- *additional expected charges and anticipated annual savings related to ongoing or planned efficiency initiatives;*
- *investment recovery, liquidity, valuation, impairment and other conclusions associated with our investment in auction rate securities;*
- *expected timing and amount of principal and interest payments related to long-term obligations;*
- *the impact of short-term fluctuations in our share price on the fair value of our Company's reporting unit for purposes of testing goodwill for impairment;*
- *the availability of benefits under tax treaties and the continued availability of low effective tax rates for our operations;*
- *our expected capital expenditures; and*
- *expected impact of the adoption of new accounting guidance.*

*Forward-looking statements can generally be identified by the use of words such as “believe”, “anticipate”, “expect”, “intend”, “plan”, “will”, “may”, “target”, “potential” and other similar expressions. In addition, any statements that refer to expectations, projections or other characterizations of future events or circumstances are forward-looking*

statements. Although we have indicated above certain of these statements set out herein, all of the statements in this Form 10-K that contain forward-looking statements are qualified by these cautionary statements. Although we believe that the expectations reflected in such forward-looking statements are reasonable, such statements involve risks and uncertainties, and undue reliance should not be placed on such statements. Certain material factors or assumptions are applied in making forward-looking statements, including, but not limited to, factors and assumptions regarding the items outlined above. Actual results may differ materially from those expressed or implied in such statements. Important factors that could cause actual results to differ materially from these expectations include, among other things:

- the successful execution of our specialty CNS strategy, including our ability to successfully identify, evaluate, acquire, obtain regulatory approval for, develop, manufacture and commercialize pipeline products;
- the success of preclinical and clinical trials for our drug development pipeline or delays in clinical trials which adversely impact the timely commercialization of our pipeline products;
- the results of continuing safety and efficacy studies by industry and government agencies;
- the uncertainties associated with the development, acquisition and launch of new products, including, but not limited to, the acceptance and demand for new pharmaceutical products, and the impact of competitive products and pricing;
- our reliance on key strategic alliances, our ability to secure and maintain third-party research, development, manufacturing, marketing or distribution arrangements and securing other development partners for, and to share development costs associated with, certain product development programs;
- the availability of capital and our ability to generate operating cash flows to support our growth strategy;
- the continuation of the recent market turmoil, which could result in fluctuations in currency exchange rates and interest rates;
- our eligibility for benefits under tax treaties and the continued availability of low effective tax rates for the business profits of our principal operating subsidiary;
- the difficulty of predicting the expense, timing and outcome within our legal and regulatory environment, including, but not limited to, U.S. Food and Drug Administration, Canadian Therapeutic Products Directorate and European regulatory approvals, legal and regulatory proceedings and settlements thereof, the protection afforded by our patents and other intellectual and proprietary property, successful challenges to our generic products, and infringement or alleged infringement of the intellectual property rights of others;
- our ability to establish or acquire a specialty U.S. sales force to support our specialty CNS strategy;
- our ability to attract and retain key personnel;
- the reduction in the level of reimbursement for, or acceptance of, pharmaceutical products by governmental authorities, health maintenance organizations or other third-party payors;
- our ability to satisfy the financial and non-financial covenants of our credit facility and note indenture;
- our ability to repay or refinance the principal amount under our note indenture at maturity;
- the disruption of delivery of our products and the routine flow of manufactured goods across the U.S. border; and
- other risks detailed from time to time in our filings with the U.S. Securities and Exchange Commission and the Canadian Securities Administrators, as well as our ability to anticipate and manage the risks associated with the foregoing.

Additional information about these factors and about the material factors or assumptions underlying such forward-looking statements may be found in the body of this Form 10-K, and in particular under Item 1A. “Risk Factors”. We caution that the foregoing list of important factors that may affect future results is not exhaustive. When relying on our forward-looking statements to make decisions with respect to our Company, investors and others should carefully consider the foregoing factors and other uncertainties and potential events. We undertake no obligation to update or revise any forward-looking statement, except as may be required by law.

## PART I

### Item 1. Business.

#### A. History and Development of the Company

Biovail Corporation was formed under the *Business Corporations Act* (Ontario) on February 18, 2000, as a result of the amalgamation of TXM Corporation and Biovail Corporation International. Biovail Corporation was continued under the *Canada Business Corporations Act* (the “CBCA”) effective June 29, 2005. For additional information with respect to material developments in our Company’s business, including recent acquisitions and dispositions, see Item 1.B. “— Business Overview — Our Specialty CNS Strategy” and Item 2. “Properties”.

Our principal executive office is located at 7150 Mississauga Road, Mississauga, Ontario, Canada, L5N 8M5, telephone (905) 286-3000. Our agent for service in the United States (“U.S.”) is CT Corporation System, located at 111 Eighth Avenue, New York, New York, 10011, telephone number (212) 590-9331.

Descriptions of our principal capital expenditures and divestitures and descriptions of acquisitions of material assets are found in our Management’s Discussion and Analysis of Financial Condition and Results of Operation (“MD&A”) and in the notes to our consolidated financial statements included elsewhere in this annual report.

#### B. Business Overview

##### General Overview

We are a specialty pharmaceutical company with a strategic focus on developing and commercializing products that address unmet medical needs in specialty central nervous system (“CNS”) disorders.

The growth and development of our specialty CNS business is financially supported by our former base business model which focused on the development and large-scale manufacture of pharmaceutical products incorporating our oral drug-delivery technologies. While our strategy has transitioned to specialty CNS, this base business model continues to provide revenues and significant operating cash flow that can be used to support and fund licensing and acquisition opportunities in specialty CNS. Our drug delivery expertise also provides support for life cycle management of our specialty CNS products.

We also continue to identify and evaluate complementary acquisitions or business opportunities that support our specialty CNS strategy (such as our May 2009 acquisition of the full U.S. commercialization rights to Wellbutrin XL®).

Since adopting our specialty CNS strategy in May 2008, we have made significant progress in its implementation with the completion of two acquisitions and four in-licensing transactions for specialty CNS products. We believe that our continued ability to successfully implement our specialty CNS strategy will be driven by a number of factors, including (i) our strong balance sheet; (ii) ongoing cash flows generated by our former base business model; (iii) the in-licensing and acquisition opportunities currently available in the specialty CNS market; and (iv) our proven expertise in formulation, clinical development, regulatory affairs, manufacturing and marketing of prescription pharmaceutical products.

#### Transitioning Pharmaceutical Industry

##### Industry Overview

IMS Health Inc. (“IMS”), a provider of information solutions to the pharmaceutical and healthcare industries, including market intelligence and performance statistics, reported that the total U.S. prescription drug market was approximately \$291.5 billion in 2008 and is projecting 4% to 5% growth in the U.S. market for 2009. The Canadian pharmaceutical market was valued by IMS at C\$21.5 billion in 2009.

The pharmaceutical industry, and the companies that comprise it, have experienced significant changes over the past several years. For example, based on IMS data, during the 2009 to 2012 period, branded products with annual sales in excess of \$68.9 billion are expected to lose patent protection. To replace these revenues and



reduce their dependence on internal development programs, large pharmaceutical companies often enter into strategic licensing arrangements with specialty pharmaceutical companies or augment their product pipelines by acquiring smaller pharmaceutical companies with development-stage pipeline products and technologies. Large pharmaceutical companies also employ strategies to extend brand life cycles and exclusivity periods and to establish product differentiation. We believe that this need to augment product pipelines was a key driver of merger and acquisition activity among certain large pharmaceutical companies in 2009.

In addition, factors such as increased enrollment in health maintenance organizations (“HMOs”) in the U.S., growth in managed care, an aging and more health-aware population, introduction of several major new drugs that bring significant therapeutic benefits, and increased use of new marketing approaches such as direct-to-patient advertising, have forced many pharmaceutical companies to adjust their strategies. There has also been an industry-wide slowdown in the approval of new drugs in the U.S., particularly those providing only advances in convenience and patient compliance. Furthermore, the pharmaceutical industry is subject to ongoing political pressure to contain the growth in spending on drugs and to expedite and facilitate bioequivalent (generic) competition to branded products. In the U.S., health care reform remains a focal issue, and there are increasing financial pressures on the reimbursement policies of third-party payors, including incentives to pharmacies to substitute generics for branded products when available. A number of legislative and regulatory proposals aimed at changing the U.S. healthcare system, and changes in the levels at which pharmaceutical companies are reimbursed for sales of their products or pricing of drugs, have been proposed. In addition, as a result of the focus on healthcare reform in connection with the current presidential administration in the U.S., Congress may implement changes in laws and regulations governing healthcare service providers, including measures to control costs or reductions in reimbursement levels or price controls.

### ***Transitioning of the Company’s Business***

The changing environment in the pharmaceutical industry required us to reassess our base business model, which culminated in a comprehensive review in early 2008 of all aspects of our business in an effort to identify and evaluate alternatives to enhance shareholder value. The result of that review was the development of our specialty CNS strategy — one that targets the development and commercialization of products that address unmet medical needs in specialty CNS disorders.

According to the latest available IMS data, CNS disorders represent an approximately \$70 billion market globally (approximately \$45 billion in the U.S.), with growth expected to be in the low- to mid-double digits in many niche specialty CNS markets, such as those within the markets of Parkinson’s disease and multiple sclerosis.

By focusing our development and commercialization efforts on products that address unmet medical needs in specialty CNS disorders, we believe our products are likely to receive favourable formulary coverage, which will facilitate higher prescription volumes, favourable pricing and reimbursement acceptance and, consequently, higher revenues. By targeting unmet medical needs in niche markets, we believe we may also enhance the intellectual property protection or market exclusivity for our products; our strategy is to obtain market exclusivity of at least five years.

Our specialty CNS strategy also provides us with an opportunity to leverage our existing technologies and capabilities associated with our former base business model, including formulation, clinical development, regulatory affairs, manufacturing and marketing of prescription pharmaceutical products, both to assist with regulatory approvals and to effect life-cycle management.

### **Our Specialty CNS Strategy**

2009 was a year of decisive action for Biovail as we transformed our Company with the aggressive, rapid and successful execution of our specialty CNS strategy. During the year, we substantially advanced our specialty CNS strategy with the acquisition of the worldwide development and commercialization rights to tetrabenazine and we completed three strategic in-licensing agreements in specialty CNS. Further, we enhanced our CNS expertise with the appointment of an External Advisory Board to provide medical, scientific and commercial input into our specialty CNS product development pipeline efforts and plans.

Our long-term goal is to become the premier pharmaceutical company in specialty CNS disorders and the partner of choice for biotechnology and emerging pharmaceutical companies with active development programs in the specialty CNS therapeutic area.

### ***Product Development***

Specialty CNS spans several sub areas. Our primary focus has been on specialty neurology, which includes epilepsy, Parkinson's disease, Huntington's disease, amyotrophic lateral sclerosis (ALS, or Lou Gehrig's disease), Alzheimer's disease and multiple sclerosis. We are also pursuing opportunities for unmet medical needs in specialty psychiatry disorders, as an example, pimavanserin as adjunctive therapy for schizophrenia. Both of these areas are serviced by small and generally overlapping prescribing communities of specialists, either neurologists or psychiatrists, thereby providing efficiency in commercialisation efforts. Since unmet medical needs are high in these areas we believe financial pressures on pricing, reimbursement and reliance on third-party payers is less intense; in addition, greater periods of protection for intellectual property (generally in excess of 5 years) are available.

We also review opportunities in therapeutic areas adjacent to specialty CNS, particularly as supportive care indications (e.g. fatigue associated with multiple sclerosis). We will also continue to review and consider opportunities supportive of our specialty CNS strategy such as the acquisition in May 2009 of the full US rights to Wellbutrin® XL.

Our product development strategy targets the in-licensing or acquisition of specialty CNS products with peak annual sales of \$75 million to \$300 million. We believe this range will result in less competition from large pharmaceutical companies. We are also targeting products with at least five years of market exclusivity. While focused on the U.S. and Canadian markets, our business development efforts cover broad geographies and include public, private and academic sources.

To mitigate the risk of product development, our business development efforts are focused on: (a) late-stage (post-Phase 2) drugs; (b) drugs approved for indications in countries other than the U.S. or Canada; (c) medical compounds already approved by the U.S. Food and Drug Administration (the "FDA") that can be repurposed for a different indication; and (d) in-market drugs. We may selectively pursue earlier-stage opportunities. Our goal is to build a robust and sustainable pipeline of products at varying stages of development that will create sustainable revenue growth.

Whenever an opportunity is identified, we apply rigorous financial, commercial and scientific analysis prior to making an investment decision. The majority of the capital we have deployed to date under our specialty CNS strategy has been targeted at near-term revenue opportunities. Where clinical or regulatory risk exists, as is the case with all development-stage compounds, our preference will be to in-license those products — minimizing the upfront payment and structuring the agreement such that additional acquisition-related funds are only paid upon the attainment of development, regulatory or commercial milestones.

### ***Execution of our Strategy***

Since the adoption of our specialty CNS strategy in May 2008, we have completed six specialty CNS transactions, consisting of two acquisitions relating to tetrabenazine and four in-licensing agreements. Collectively, these transactions have significantly strengthened our product development pipeline, enhanced our reputation in the specialty CNS market and substantially accelerated the timeline for implementation of our five-year financial plan. Each of these transactions is described below:

#### **Acquisition of Prestwick Pharmaceuticals, Inc.**

On September 16, 2008, we acquired Prestwick Pharmaceuticals, Inc. ("Prestwick"), a privately held U.S.-based pharmaceutical company, for a total net cash purchase price of approximately \$101.9 million. Prestwick held the U.S. and Canadian licensing rights to tetrabenazine tablets (known as Xenazine® in the U.S. and Nitoman® in Canada). Prestwick had acquired those licensing rights from Cambridge Laboratories (Ireland) Ltd. ("Cambridge"), which, at the time, held the worldwide license for tetrabenazine (as described



below, we acquired the worldwide development and commercialization rights to the entire portfolio of tetrabenazine products from Cambridge in June 2009).

On August 15, 2008, a U.S. new drug application (“NDA”) for Xenazine® received FDA approval for the treatment of chorea associated with Huntington’s disease. Xenazine® has been granted orphan drug designation by the FDA, which provides this product with seven years of market exclusivity in the U.S. from the date of approval. Xenazine® is the first and only FDA-approved treatment for any Huntington’s disease-related symptom. Upon approval of Xenazine®, the FDA determined that a Risk Evaluation and Mitigation Strategy (“REMS”) was necessary to ensure that the benefits of the drug outweigh its associated risks, to promote the informed prescribing and proper titration and dosing of Xenazine®, and to minimize the risk of drug-drug interactions. As part of the program associated with the REMS, our marketing partner Ovation Pharmaceuticals, Inc. (“Ovation”) (now Lundbeck Inc. (“Lundbeck”)) has begun the process of educating physicians, pharmacists, patients and their caregivers about the safe and effective use of Xenazine®.

In November 2008, Xenazine® tablets became commercially available in 12.5 mg and 25 mg strengths throughout the U.S. under an exclusive marketing, distribution and supply agreement entered into between Prestwick and Ovation prior to our acquisition of Prestwick. Through the end of 2009, 2,738 patients had enrolled, or were in the process of enrolling, with the Xenazine® distribution center. Nitoman® had previously been approved for sale in Canada by the Canadian Therapeutic Products Directorate (“TPD”) in 1995. Nitoman® is marketed to Canadian physicians through the Biovail Pharmaceuticals Canada (“BPC”) sales force.

#### **Acquisition of Worldwide Development and Commercialization Rights to Tetrabenazine**

In June 2009, we acquired the worldwide development and commercialization rights to the entire portfolio of tetrabenazine products, including Xenazine® and Nitoman®, held by Cambridge. By means of this acquisition, we obtained Cambridge’s economic interest in the supply of tetrabenazine for the U.S. and Canadian markets, as well as for a number of other countries in Europe and around the world through existing distribution agreements. We also assumed Cambridge’s royalty obligations to third parties on the worldwide sales of tetrabenazine. The total purchase price comprised cash consideration of \$200.0 million paid on closing and additional payments of \$12.5 million and \$17.5 million due to Cambridge on the first and second anniversaries of the closing date, respectively. Pursuant to the acquisition, we also acquired the rights to a modified-release formulation of tetrabenazine under development initially for the treatment of Tourette’s Syndrome (BVF-018) and to the development of an isomer of tetrabenazine (RUS-350).

#### **License of Pimavanserin**

In May 2009, we entered into a collaboration and license agreement with ACADIA Pharmaceuticals Inc. (“ACADIA”) to acquire the U.S. and Canadian rights to develop, manufacture and commercialize pimavanserin in a number of neurological and psychiatric conditions, including Parkinson’s disease psychosis (“PDP”), and Alzheimer’s disease psychosis (“ADP”). Pursuant to the terms of the collaboration and license agreement, we paid an upfront fee of \$30.0 million to ACADIA, with contingent obligations to pay developmental milestone payments associated with the successful completion of clinical trials, regulatory submissions and approvals for pimavanserin in the PDP, ADP and schizophrenia indications. Subject to certain limited exceptions, the agreement provides that we will be responsible for funding all development expenses for pimavanserin for PDP, ADP and schizophrenia.

A Phase 3 PDP study conducted by ACADIA in 2009 did not meet its primary endpoint of antipsychotic efficacy, but did meet the secondary endpoint of motoric tolerability. As a result, ACADIA and Biovail agreed to conclude a second Phase 3 PDP study at its current enrollment level to allow for the analysis of the study data as soon as practicable, and to use the data from these two Phase 3 studies to arrive at an enhanced study design that may be used in new Phase 3 studies for PDP. In October 2009, Biovail and ACADIA amended the collaboration and license agreement to provide that we will fund this third Phase 3 clinical trial for PDP; provided, however, that if the trial does not meet the primary endpoint, then ACADIA will reimburse the Company for 50% of the cost of the trial. Similarly, if the trial is successful, the related milestone payment will be reduced by 50% of the cost of the trial.

The amendment also provides that ACADIA may elect to pursue an initial clinical trial in ADP at its own expense. If the ADP trial meets its clinical endpoint, we would reimburse ACADIA 100% of the cost of the trial.

#### **License of Fipamezole**

In August 2009, we entered into a collaboration and license agreement with Santhera Pharmaceuticals (Switzerland) Ltd. (“Santhera”), a subsidiary of Santhera Pharmaceuticals Holding AG, to acquire the U.S. and Canadian rights to develop, manufacture and commercialize fipamezole for the treatment of a number of neurological and psychiatric conditions, including levodopa-induced dyskinesia, also known as Parkinson’s disease dyskinesia (“PDD”).

Pursuant to the terms of the collaboration and license agreement, we made an upfront payment of \$8.0 million to Santhera upon execution of the agreement, and made a further payment of \$4.0 million to Santhera on October 5, 2009, upon the closing of Santhera’s acquisition of Oy Juvantia Pharma Ltd. We will have milestone payment obligations to Santhera for the initiation of a Phase 3 study, regulatory submissions and approvals of fipamezole in PDD and in the event we pursue a second indication for the compound.

We will be responsible for the development programs and associated costs in the U.S. and Canada for fipamezole for both PDD and a second indication should we pursue one.

#### **License of GDNF**

In December 2009, we entered into a license agreement with Amgen Inc. (“Amgen”) and MedGenesis Therapeutix Inc. (“MedGenesis”), pursuant to which we were granted a license to exploit glial cell line derived neurotrophic factor (“GDNF”) in certain CNS indications in certain countries (including in North America, Japan and a number of European countries). MedGenesis was also granted a license from Amgen to exploit GDNF in certain CNS indications in certain countries and for non-CNS indications. At the same time, we entered into a collaboration agreement with MedGenesis to develop and commercialize GDNF, initially for the treatment of Parkinson’s disease in the United States, Japan and certain European countries and, potentially, in other countries and other CNS indications. Pursuant to the collaboration agreement, we were granted a license to MedGenesis’ Convection Enhanced Delivery (“CED”) platform for use with GDNF in CNS indications.

In connection with the collaboration agreement, we made upfront payments to MedGenesis totalling \$6.0 million. We have certain funding obligations towards the development of GDNF in Parkinson’s disease in the U.S. and we could make development milestones payments related to regulatory approvals and sales to each of MedGenesis and Amgen. MedGenesis and Biovail intend to share development costs associated with Phase 3 clinical trials in the United States and with the development programs in other countries.

We will pay MedGenesis a royalty in respect of the sale of GDNF products in those countries in which we have license rights. We will be responsible for the supply of GDNF to MedGenesis in the countries in which it has license rights and MedGenesis will pay us a supply price. We and MedGenesis will pay royalties to Amgen based on net sales of GDNF products and could make milestone payments to Amgen related to sales of GDNF products.

#### **License of Staccato® loxapine**

On February 9, 2010, we entered into a collaboration and license agreement with Alexza Pharmaceuticals, Inc. (“Alexza”) to acquire the U.S. and Canadian development and commercialization rights to Staccato® loxapine (AZ-004) for the treatment of psychiatric and/or neurological indications and the symptoms associated with these indications, including the initial indication of treating agitation in schizophrenia and bipolar patients. Staccato® loxapine combines Alexza’s proprietary Staccato® single dose inhaler drug delivery system with the antipsychotic drug loxapine. In December 2009, Alexza submitted an NDA to the FDA for Staccato® loxapine. The FDA has accepted the NDA for filing and has indicated a Prescription Drug User Fee Act (“PDUFA”) goal date of October 11, 2010.

Under the terms of the agreement, we paid an upfront fee of \$40.0 million, and could pay up to \$90.0 million in potential milestones in connection with the initial indication contingent on the successful

approval of the first AZ-004 NDA, successful commercial manufacturing scale-up, and the first commercial sale on an inpatient and on an outpatient basis which may require the successful completion of additional clinical trials, regulatory submissions and/or the approval of a supplemental NDA. We will also make tiered royalty payments of 10% to 25% on net commercial sales of Staccato® loxapine. Alexza will supply the product to us for commercialization and will receive a per-unit transfer price based upon annual product volume. We intend to deploy a sales force to commercialize Staccato® loxapine in the U.S.

#### ***Acquisition of Full U.S. Commercialization Rights to Wellbutrin XL®***

In May 2009, we acquired the full U.S. commercialization rights to Wellbutrin XL® from The GlaxoSmithKline Group of Companies (“GSK”). We had supplied Wellbutrin XL® to GSK for marketing or distribution in the U.S. since September 2003. The Wellbutrin XL® product formulation was developed, and is manufactured, by us under our own patents and proprietary technology.

Pursuant to the terms of the asset purchase agreement, we paid \$510.0 million to GSK to acquire the NDA for Wellbutrin XL®. Pursuant to the terms of a trademark license agreement with GSK, we also obtained an exclusive, royalty-free license to the Wellbutrin XL® trademark for use in the U.S.

The acquisition of Wellbutrin XL® complements our specialty CNS strategy as we expect Wellbutrin XL® to generate significant cash flows in the near, mid and long-term that can be used to finance our specialty CNS product development pipeline.

#### ***Other Acquisition Opportunities***

We regularly review other in-market products as potential acquisition candidates. These products would provide immediate revenues and cash flows that we would leverage in pursuit of building long-term growth within specialty CNS markets. Our acquisition of the full U.S. commercialization rights to Wellbutrin XL® in May 2009 is an example of this type of transaction.

We believe that we are well-positioned to successfully capitalize on the unmet medical needs in specialty CNS. As we identify in-licensing or acquisition opportunities in the specialty CNS market, we believe we can successfully execute our growth strategy because of:

- our strong balance sheet and significant financial resources (including operating cash flows);
- our demonstrated track record with six specialty CNS transactions completed since September 2008; and
- our in-house specialty CNS expertise, with proven capabilities in drug regulatory approval, medical affairs and clinical research.

In the long term, we believe we must create growth and long-term value by building and developing our specialty CNS pipeline, and establishing efficient commercialization pathways through which to bring products to market, including through the development or acquisition of our own specialty U.S. sales force.

## Product Development Pipeline

The chart below lists the various products within our development pipeline.

|                                                                                                | Formulation /<br>Pre-Clinical | Phase I/Phase II | Phase III | NDA /ANDA |
|------------------------------------------------------------------------------------------------|-------------------------------|------------------|-----------|-----------|
| <b>Specialty CNS</b>                                                                           |                               |                  |           |           |
| <b>AZ-004</b><br>Staccato® loxapine<br>(Agitation in<br>Schizophrenic & Bi-<br>polar patients) |                               |                  |           |           |
| <b>BVF-036</b><br>Pimavanserin<br>(PDP)                                                        |                               |                  |           |           |
| <b>BVF-048</b><br>Pimavanserin<br>(Schizophrenia co-therapy)                                   |                               |                  |           |           |
| <b>BVF-025</b><br>Fipamezole<br>(PDD)                                                          |                               |                  |           |           |
| <b>BVF-040</b><br>Pimavanserin<br>(ADP)                                                        |                               |                  |           |           |
| <b>BVF-018</b><br>Tetrabenazine MR<br>(Tourette Syndrome)                                      |                               |                  |           |           |
| <b>BVF-014</b><br>GDNF<br>(CNS indications)                                                    |                               |                  |           |           |
| <b>Legacy Pipeline</b>                                                                         |                               |                  |           |           |
| <b>BVF-324</b><br>tramadol hydrochloride<br>(Sexual dysfunction)                               |                               |                  |           |           |
| <b>BVF-065</b><br>generic venlafaxine XR<br>(Depression)                                       |                               |                  |           |           |
| <b>BVF-203</b><br>generic fenofibrate<br>(High cholesterol)                                    |                               |                  |           |           |
| <b>BVF-058</b><br>generic quetiapine XL<br>(Schizophrenia & Bipolar)                           |                               |                  |           |           |

Since adopting our specialty CNS strategy in May 2008, we have made significant progress in building a specialty CNS product development pipeline. Today, as described in more detail below, we have five compounds in development: Staccato® loxapine, pimavanserin; BVF-018 (modified-release formulation of tetrabenazine); fipamezole; and GDNF. In addition to our specialty CNS development programs, we also continue to develop certain legacy products, as further described below.

**Staccato® loxapine.** In December 2009, Alexza submitted an NDA to the FDA for Staccato® loxapine. The FDA has accepted the NDA for filing and has indicated a PDUFA goal date of October 11, 2010. The NDA contains efficacy and safety data from more than 1,600 patients and subjects who have been studied in thirteen different clinical trials. Alexza has initiated and completed two pivotal Phase 3 clinical trials in connection with Staccato® loxapine and has indicated that both doses of Staccato® loxapine (5mg and 10mg) met the primary and key secondary endpoints of the studies with statistically significant reductions in agitation, as compared to placebo. In these studies, the administration of Staccato® loxapine was generally safe and well tolerated.

**Pimavanserin.** Pimavanserin is currently in Phase 3 development for PDP. Data from the first of two Phase 3 studies initiated by our partner, ACADIA, announced in September 2009, did not meet the study's primary endpoint. However, a signal of antipsychotic efficacy, most prominent in the U.S. centres involved in the study, was seen at the 40mg dose. We intend to use the findings from this study, in addition to those of a recent trial, to develop an enhanced study design for a new Phase 3 program.

We are also pursuing the development of pimavanserin as adjunctive therapy in schizophrenia. In 2007, ACADIA released data from a Phase 2 study that showed that a 20mg dose of pimavanserin in conjunction with a low dose (2mg) of risperidone was as efficacious as 6mg of risperidone, but with a better side effect profile, including a statistically significant reduction in weight gain. We intend to initiate a Phase 3 program for pimavanserin as adjunctive therapy in schizophrenia in the middle of 2010. Schizophrenia is estimated by the U.S. National Institute of Mental Health to occur in 1% of the population in North America. In 2009, according to IMS over 12 million prescriptions were written for risperidone in the U.S.

**BVF-018.** BVF-018 is a modified-release formulation of tetrabenazine in development for Tourette's Syndrome in 5-16 year old children. BVF-018 has been designated an orphan drug by the FDA, which provides seven years of U.S. market exclusivity following approval. Contingent on successful safety assessments, which are ongoing, we expect to initiate a Phase 2 study on pediatric patients with Tourette's Syndrome in the third quarter of 2010.

Following review and preclinical assessments, a formal decision was made to discontinue development efforts in connection with RUS-350, a tetrabenazine-derived new chemical entity ("NCE") (an isomer) the rights to which we had acquired in June 2009 in our transaction with Cambridge.

**Fipamezole.** Fipamezole is a first-in-class compound that, in a Phase 2b study, displayed the potential to reduce levodopa-induced dyskinesia (also known as PDD). Levodopa is among the most effective drugs for treating Parkinson's disease. However, long-term use of levodopa is often complicated by significantly disabling dyskinesia, which largely negates the drug's beneficial effects. There are no FDA-approved drugs currently available for the treatment of PDD. We currently anticipate the initiation of the Phase 3 program in the U.S. for fipamezole in 2011.

**GDNF.** The GDNF protein is a naturally-occurring growth factor capable of protecting and promoting the survival of dopamine producing nerve cells, to which we licensed the rights from Amgen in certain CNS indications in certain territories in December 2009. We have also entered into an agreement with MedGenesis to collaborate on the development of GDNF, initially in Parkinson's disease and potentially other CNS indications. We are currently undertaking non-clinical studies in support of our application for an investigational new drug ("IND") for GDNF from the FDA and anticipate scheduling an IND meeting with the FDA in the second quarter of 2010.

**Legacy Development Products.** We also have a number of legacy development programs based on our former base business model. These include BVF-324 — tramadol hydrochloride for the treatment of premature ejaculation, a sexual dysfunction believed to affect up to 30% of men of all ages. The Phase 3 program for BVF-324 in Europe, which is evaluating non-commercially available doses of tramadol, was initiated in the third quarter of 2009 and is expected to conclude in 2011. In due course, we intend to engage a development and commercialization partner for the European market.

With respect to generic pharmaceuticals, our historic research and development ("R&D") efforts have focused on difficult-to-manufacture products, where competition is more limited (relative to immediate-release products) and, consequently, commercial pricing and gross margins are potentially higher. In 2008 we submitted three abbreviated new drug applications (each, an "ANDA") to the FDA for approval. These include a generic formulation of 145 mg and 48 mg tablets of fenofibrate (marketed in the U.S. under the Tricor® brand name). We believe we are the first-to-file on the 48 mg strength, which generated revenues of approximately \$76.0 million in the twelve months ended December 31, 2009, according to IMS; and second on the 145 mg strength, which generated revenues of approximately \$1.5 billion over the same period. In addition, in December 2008 we announced the FDA's acceptance of our ANDA filing for 200 mg, 300 mg and 400 mg strengths of quetiapine fumarate extended-release tablets (sold under the brand name Seroquel® XR by AstraZeneca Pharmaceuticals LP). Seroquel® XR is an atypical antipsychotic agent indicated for the treatment of schizophrenia and bipolar disorder. The product is available in 150 mg, 200 mg, 300 mg and 400 mg strengths. According to IMS, Seroquel® XR generated U.S. revenues of approximately \$458.0 million in the twelve-month period ended December 31, 2009. In addition, in 2008 we filed an ANDA with the FDA seeking approval to market venlafaxine hydrochloride extended-release capsules equivalent to the 37.5 mg, 75 mg and 150 mg doses



of Effexor® XR. According to IMS, Effexor® XR generated U.S. revenues of approximately \$2.8 billion in the twelve-month period ended December 31, 2009.

We do not currently have any other ANDA programs in our product development pipeline.

Our product development efforts are subject to the process and regulatory requirements of the FDA in the U.S., the TPD in Canada and applicable European regulatory agencies.

### ***Research and Development***

We devote significant resources to research and development for our specialty CNS strategy. Our objective is to identify, develop and bring to market products that address unmet medical needs, and to develop new or repurposed uses for existing compounds and medicines. We primarily conduct research through contracts with external service providers, contract research organizations (“CROs”), and in collaboration with other pharmaceutical companies. The research and development process from the time that we in-license or acquire a product to the time that a product is brought to market takes many years and is costly and unpredictable. See Item 1A. “Risk Factors — Company Specific Risks — Ability to In-License, Acquire and Develop Products” and “— Preclinical and Clinical Trials”.

In 2009, our R&D expenses were \$106.9 million, a 53% increase as compared to 2008. This increase reflects upfront payments, including costs of acquisition, of \$30.4 million, \$12.1 million and \$8.8 million in respect of the pimavanserin, fipamezole and GDNF, in-licensing transactions, respectively. Also included in R&D expenses in 2009 is \$8.0 million representing the write-off of the purchase price allocated to RUS-350 in the Cambridge transaction. Given the anticipated and significant increase in clinical-trial activity within our drug development pipeline, we expect R&D expenses in respect of our internal research and development programs to increase significantly in 2010 and 2011, compared with 2009. In 2008, our R&D expenses were \$69.8 million, a 31% decrease as compared to 2007. In 2007, during which time we pursued a number of reformulation-type opportunities related to our former base business model, our internal research and development programs expenses were \$100.6 million.

### **Primary Markets**

Our primary markets, for both our specialty CNS products and those products related to our former base business model, are the U.S. and Canada. Our products which relate to our former base business model address CNS disorders, cardiovascular disease, pain management and antiviral conditions. In the U.S., such products are sold through marketing arrangements with third parties.

For our in-market specialty CNS products, in the U.S., until we develop a specialty sales force, we will continue to distribute our specialty CNS products through third party commercialization relationships. We intend to deploy a sales force to commercialize Staccato® loxapine in the U.S.

BPC markets our products in Canada.

While our business focus is primarily to develop products for the U.S. and Canadian markets, we have pursued opportunities to more fully exploit the commercial potential of our products by having them launched in new geographic markets through strategic marketing partners with expertise in their local markets. Our acquisition of the worldwide rights to tetrabenazine and our license to pursue GDNF indications in Japan and a number of European countries are evidence of this more global strategy.

## Current Product Portfolio and Product Revenues

The following table summarizes our product revenues by category for the fiscal years of 2009, 2008 and 2007:

| Product/Product Line                | Revenues (\$000)       |         |         | Change % for 2008/2009 | % of Product Revenues |                    |                    |
|-------------------------------------|------------------------|---------|---------|------------------------|-----------------------|--------------------|--------------------|
|                                     | 2009                   | 2008    | 2007    |                        | 2009                  | 2008               | 2007               |
| United States                       |                        |         |         |                        |                       |                    |                    |
| Wellbutrin XL <sup>(1)</sup>        | 173,288 <sup>(2)</sup> | 120,745 | 212,325 | 44                     | 22                    | 17                 | 27                 |
| Xenazine <sup>(3)</sup>             | 48,433                 | 3,736   | —       | NM                     | 6                     | 1                  | —                  |
| Aplenzin <sup>®</sup>               | 11,150                 | —       | —       | NM                     | 1                     | —                  | —                  |
| Zovirax <sup>®</sup>                | 146,267                | 150,613 | 147,120 | (3)                    | 19                    | 21                 | 18                 |
| Ultram <sup>®</sup> ER              | 53,986                 | 81,875  | 86,714  | (34)                   | 7                     | 11                 | 11                 |
| Cardizem <sup>®</sup> LA            | 42,002                 | 48,002  | 69,300  | (12)                   | 5                     | 7                  | 9                  |
| Legacy Products                     | 165,679                | 154,206 | 136,855 | 7                      | 21                    | 22                 | 17                 |
| Generic Products                    | 67,035                 | 83,246  | 86,843  | (19)                   | 8                     | 12                 | 11                 |
| Glumetza <sup>®</sup> (U.S. market) | 1,250                  | 1,545   | —       | (19)                   | —                     | —                  | —                  |
| Canada                              |                        |         |         |                        |                       |                    |                    |
| BPC <sup>(4)</sup>                  | 79,936                 | 70,580  | 61,889  | 13                     | 10                    | 10                 | 8                  |
| Total Product Revenues              | 789,026                | 714,548 | 801,046 | 10                     | 100 <sup>(5)</sup>    | 100 <sup>(5)</sup> | 100 <sup>(5)</sup> |

NM: not meaningful.

- (1) Includes Wellbutrin XL<sup>®</sup> sales to GSK for marketing and distribution in Europe and elsewhere.
- (2) Includes sales following the acquisition of full U.S. commercialization rights in May 2009.
- (3) Includes Xenazine<sup>®</sup> sales in Europe and elsewhere from June 2009 and Nitoman<sup>®</sup> sales made in Canada prior to December 1, 2008.
- (4) Effective December 1, 2008, BPC assumed the marketing and distribution of Nitoman<sup>®</sup>.
- (5) Percentages may not add up to 100% due to rounding.

Each of these categories, and the products or product lines they include, is described in more detail below:

### *Wellbutrin<sup>®</sup> XL (bupropion hydrochloride extended release tablets)*

Wellbutrin XL<sup>®</sup>, an extended-release formulation of bupropion indicated for the treatment of depression in adults, was launched in the U.S. in September 2003 by an affiliate of GSK. Pursuant to a manufacturing-and-supply agreement then in effect with GSK, we received a tiered supply price based on GSK's net sales of Wellbutrin XL<sup>®</sup>. In May 2009, we acquired the full U.S. commercialization rights to Wellbutrin XL<sup>®</sup> from GSK. With the 150 mg dosage strength genericized in late-2006 and the 300 mg dosage strength genericized in mid-2008, Wellbutrin XL<sup>®</sup> continues to hold a higher-than-anticipated share of the bupropion prescription market, despite no active sales force promotion since 2006. We believe this performance suggests the potential for continuation of the product's strong earnings and cash-flow contribution. In the fourth quarter of 2009, we announced two initiatives intended to support the brand: the supply of sample quantities to interested physicians and the introduction of coupons to reduce the out-of-pocket costs for patients. Shipment of coupons and samples will take place in the first quarter of 2010.

### *Xenazine<sup>®</sup> (tetraabenazine)*

Approved by the FDA in August 2008, Xenazine<sup>®</sup> is indicated for the treatment of chorea associated with Huntington's disease. Huntington's disease is a rare, inherited neurological disorder that is passed from parent to child through a gene mutation. The disease causes a degeneration of specific brain cells that most frequently

leads to problems associated with loss of motor control, psychiatric and behavioral symptoms, and cognitive impairment.

Tetrabenazine has also been approved for use in a number of countries in Europe and around the world. Through our acquisition of the worldwide development and commercialization rights to tetrabenazine in June 2009, we have distribution arrangements for tetrabenazine in a number of countries outside North America, including Australia, Denmark, France, Germany, Ireland, Israel, Italy, New Zealand, Portugal, Spain, Switzerland and the United Kingdom.

#### ***Aplenzin® (bupropion hydrobromide)***

Launched in the U.S. in April 2009 by sanofi-aventis U.S. LLC (“sanofi-aventis U.S.”), Aplenzin® is an extended-release formulation of bupropion hydrobromide for the treatment of major depressive disorder. Aplenzin® was approved by the FDA in April 2008 at dosage strengths of 174mg, 348mg and 522mg. The 522mg dosage strength of Aplenzin® represents the only FDA-approved single-tablet, once-daily treatment option equivalent to 450mg of bupropion hydrochloride (the active ingredient in Wellbutrin XL®) therapy.

In December 2008, we entered into a supply-and-distribution agreement with sanofi-aventis U.S., which is now marketing the product in the U.S. Under the terms of the agreement, we manufacture, supply and sell Aplenzin® to sanofi-aventis U.S. at contractually determined prices, which will be based on sanofi-aventis U.S.’ net selling price. Our supply price will range from 25% to 35% of net sales, depending on the level of net sales of Aplenzin®.

#### ***Zovirax® Ointment/Zovirax® Cream (acyclovir)***

Zovirax® Ointment is a topical formulation of a synthetic nucleoside analogue which is active against herpes viruses. Each gram of Zovirax® Ointment contains 50 mg of acyclovir in a polyethylene glycol base. This product is indicated for the management of initial genital herpes and in limited non-life threatening mucocutaneous herpes simplex infections in immuno-compromised patients. Zovirax® Ointment was originally launched in 1982 by Burroughs Wellcome and although it has not been promoted by Glaxo Wellcome, and subsequently GSK, since 1997, Zovirax® Ointment remains the market leader with approximately a 47% share of total prescriptions in the U.S. for topical anti-herpes products in 2009.

Zovirax® Cream was approved by the FDA in December 2002 and launched by us in July 2003. Zovirax® Cream is a topical antiviral medication used for the treatment of herpes labialis (cold sores). According to IMS, Zovirax® Cream held a 27% share of the total prescriptions in the U.S. for topical anti-herpes products at the end of 2009.

Pursuant to a distribution rights agreement, GSK provides us with Zovirax® products for the U.S. Since October 2002, we have been entitled to purchase a pre-determined quantity of Zovirax® inventory from GSK at reduced prices under a price allowance. The remaining inventory acquired at the reduced supply prices is expected to be sold in the first quarter of 2010, after which time the significantly higher supply price will have a material impact on the earnings contribution from Zovirax® product sales in 2010 and beyond.

#### ***Ultram® ER (tramadol hydrochloride extended-release tablets)***

Ultram® ER is an extended-release formulation of tramadol hydrochloride indicated for the management of moderate to moderately severe chronic pain in adults who require around-the-clock treatment of their pain for an extended period of time. Ultram® ER is available in 100mg, 200mg and 300mg tablet strengths. According to IMS, over 25 million prescriptions were dispensed for tramadol-based medicines in the U.S. in 2009. In November 2009, a generic formulation of the 100mg and 200mg strengths of Ultram® ER was launched in the U.S.

In November 2005, we entered into a 10-year supply agreement with Ortho-McNeil, Inc. (“OMI”) (now known as PriCara, a division of Ortho-McNeil-Janssen Pharmaceuticals, Inc. (“PriCara”)) for the distribution of our extended release formulation of tramadol in the U.S. and Puerto Rico. Pursuant to the agreement, we are entitled to a supply price based on OMI’s net selling price for Ultram® ER. In 2007 and 2008,

our supply price was 37.5% of OMI's net selling price for Ultram® ER. In 2009, prior to the introduction of generic competition in December, our supply price was 35% of Ultram® ER's net selling price. The introduction of generic competition resulted in a 50% reduction in our contractual supply price for branded Ultram® ER tablets in the 100mg and 200mg strengths. In April 2009, we entered into a five-year supply agreement with Patriot Pharmaceuticals LLC ("Patriot") (a wholly owned subsidiary of Ortho-McNeil-Janssen Pharmaceuticals, Inc.) for the distribution of our authorized generic formulation of Ultram® ER and, concurrently with the November 2009 generic launch of the 100mg and 200mg strengths of Ultram® ER in the U.S., Patriot launched our authorized generic formulation of these two strengths of Ultram® ER. Pursuant to the agreement, we are entitled to a supply price based on Patriot's net selling price of the authorized generic formulations of Ultram® ER.

#### *Cardizem® LA (diltiazem)*

Cardizem® branded products have been the leading calcium channel blockers ("CCBs") for more than 20 years. In 2009, the U.S. CCBs market was valued by IMS at approximately \$2.0 billion, of which once-daily diltiazem products represented approximately \$576.0 million. These once-daily products generated 16 million prescriptions in the U.S. in 2009, of which 11 million were written for all Cardizem® products.

In April 2003, we launched Cardizem® LA. Cardizem® LA is a graded, extended-release formulation of diltiazem hydrochloride that provides 24-hour blood pressure control with a single daily dose and offers physicians a flexible dosing range from 120 mg to 540 mg. Cardizem® LA is the only diltiazem product labeled to allow administration in either the morning or evening. With evening administration, clinical trials have shown Cardizem® LA improves reduction in blood pressure in the early morning hours, which is when patients are at the greatest risk of significant cardiovascular events, such as heart attack, stroke and death. We have arranged to have Kos Pharmaceuticals ("Kos") (a subsidiary of Abbott Laboratories ("Abbott")) promote Cardizem® LA in the U.S. and, pursuant to our arrangement with Kos, we manufacture, supply and sell Cardizem® LA to Kos for prices based on Kos' net selling price.

#### *Legacy Products*

This category includes branded products that we distribute in the U.S., but do not actively promote. In general, these are products that have been genericized and generate revenue streams that are relatively stable as a result of small and predictable declines in prescription volumes, generally offset by increases in pricing. The products in this reporting category are Cardizem® CD, Ativan®, Tiazac®, Vasotec®, Vaseretic® and Isordil®. Despite the availability of generic competition, these products continue to generate significant cash flow.

#### *Cardizem® CD (diltiazem)*

Cardizem® branded products have been leading medications in the CCB category of cardiovascular drugs for more than 20 years. sanofi-aventis Inc. ("sanofi-aventis") supplies Cardizem® CD to us.

#### *Ativan® (lorazepam)*

Ativan® is benzodiazepine lorazepam, indicated for the management of anxiety disorders or for the short-term relief of anxiety or anxiety associated with symptoms of depression. We acquired U.S. marketing rights to Ativan® from Wyeth Pharmaceuticals Inc. ("Wyeth") (now part of Pfizer Inc.) in June 2003. Wyeth provided us with Ativan® until 2007. Since August 2007, Meda Manufacturing GmbH ("Meda") has supplied us with Ativan® tablets for the U.S. market. Ativan® and its generics generated 26.4 million prescriptions in the U.S. during 2009.

#### *Tiazac® (diltiazem)*

Tiazac® belongs to the CCB class of drugs, used in the treatment of hypertension and angina. In 1995, Forest Laboratories Inc. ("Forest") acquired the right to market Tiazac® in the U.S. The formal product launch took place in February 1996. We act as the exclusive manufacturer of the product and receive a contractually determined supply price and a royalty payment from Forest on net sales of Tiazac®. Upon the onset of generic

competition for Tiazac® in the U.S. in April 2003, we launched a competing authorized generic version through Forest under a variable supply price arrangement, following which Forest ceased promotional support for branded Tiazac®. Forest now distributes a Tiazac® authorized generic manufactured by us.

*Vasotec® (enalapril maleate)/Vaseretic® (enalapril maleate/hydrochlorothiazide)*

Vasotec® and Vaseretic® have been highly recognized in the treatment of hypertension, symptomatic congestive heart failure, and asymptomatic left ventricular dysfunction for nearly 20 years. Enalapril is a pro-drug; following oral administration, it is bio-activated by hydrolysis of the ethyl ester to enalaprilat, which is the active angiotensin converting enzyme (“ACE”) inhibitor. Vasotec® is the maleate salt of enalapril. Vaseretic® combines Vasotec® and a diuretic, hydrochlorothiazide. The product is also indicated for the treatment of hypertension. Vasotec® (branded and generic) is one of the most widely prescribed ACE inhibitors. Vasotec® lost its market exclusivity in August 2000 and its prescription volumes have since been eroded by generic competition. Nevertheless, in 2009, there were 12.4 million prescriptions written for enalapril maleate in the U.S.

*Isordil® (isosorbide dinitrate)*

Isordil®, a coronary vasodilator, is indicated for the prophylaxis of ischemic heart pain associated with coronary insufficiency (angina pectoris). Isordil® dilates the blood vessels by relaxing the muscles in their walls. Oxygen flow improves as the vessels relax, and chest pain subsides. Isordil® helps to increase the amount of exercise that may occur prior to the onset of chest pain, and can help relieve chest pain that has already started, or prevent pain expected from a strenuous activity, such as walking up a hill or climbing stairs. We acquired U.S. marketing rights to Isordil® from Wyeth in June 2003. We purchase Isordil® tablets from Meda pursuant to a supply agreement.

In 2009, there were 1.7 million prescriptions written for isosorbide dinitrate in the U.S., according to IMS.

***Generic Products***

Our generic product portfolio currently consists of products that are distributed in the U.S. for us by Teva Pharmaceuticals Industries Ltd. (“Teva”) and an authorized generic formulation of Tiazac® which is distributed in the U.S. by Forest. In 2009, the products distributed by Teva included bioequivalent formulations of Cardizem® CD, Adalat® CC, Procardia® XL, Tiazac®, Voltaren® XR and Trental®. Generic Tiazac® and generic Cardizem® CD are distributed by Teva Canada Limited (formerly Novopharm Limited) (“Teva Canada”), a subsidiary of Teva, in Canada.

Our portfolio of generic formulations of branded controlled release products, such as Cardizem® CD, Adalat® CC and Procardia® XL, represents technically challenging products to formulate. These technological barriers may limit the number of generic versions of the products. This competitive landscape allows for some pricing flexibility, and may mitigate, to some extent, the price discounting that can often reach 90% in the generic pharmaceuticals industry. However, beginning in 2007, a number of new competitor products became available, which resulted in a significant decline in our revenues relating to these products. In 2009, as a result of the withdrawal of two competing diltiazem-based products, prescription volume for our portfolio of generic products increased 13% compared with 2008.

***Glumetza® (U.S. Market)***

Glumetza® is a once-daily formulation of metformin indicated as an adjunct to diet and exercise to improve glycemic control in adults with type 2 diabetes mellitus. Glumetza® 500 mg and 1,000 mg were approved by the FDA in June 2005. Pursuant to an agreement with Depomed Inc. (“Depomed”) we manufacture and supply the 1,000 mg tablet to Depomed. In the U.S., Santarus, Inc. promotes Glumetza® to U.S. physicians for Depomed. Glumetza® competes against several other metformin products, including a number of generic formulations, in the oral diabetes market.



For additional information with respect to these products, see Item 7. “Management’s Discussion and Analysis of Financial Condition and Results of Operation — Product Sales”.

### ***Biovail Pharmaceuticals Canada***

BPC is our Canadian marketing and sales division. The following products are promoted and/or distributed by BPC:

#### ***Tiazac®/Tiazac® XC (diltiazem)***

Tiazac® is a CCB used in the treatment of hypertension and angina. Tiazac® is a once-daily formulation of diltiazem that delivers smooth blood pressure control over a 24-hour period. As a non-dihydropyridine CCB, Tiazac® provides specific renal protective benefits as well as blood pressure reduction, which is particularly important for diabetic hypertensive patients. At December 2009, according to IMS Tiazac® and Tiazac® XC held a 31.0% share of the once-daily diltiazem market (measured as a percentage of total prescriptions for once-daily diltiazem products). In August 2004, we received TPD approval for Tiazac® XC for the treatment of hypertension and, in July 2007, we received TPD approval for Tiazac® XC for the treatment of angina. Tiazac® XC is a novel formulation of diltiazem taken at bedtime and specifically formulated to provide peak drug-plasma levels during the early morning hours when cardiac events are most likely to occur. In January 2005, the BPC sales force launched Tiazac® XC to Canadian physicians. Tiazac® XC is listed on all provincial formularies.

Our generic version of Tiazac® is distributed in Canada by Teva Canada.

#### ***Wellbutrin® XL (extended-release bupropion hydrochloride)***

In February 2005, we submitted a supplemental new drug submission (“sNDS”) to the TPD for Wellbutrin® XL, a once-daily formulation of bupropion developed by us. The submission received TPD approval in January 2006. Wellbutrin® XL was formally launched in April 2006 by the BPC sales force. In February 2008, Wellbutrin® XL received TPD approval for a new indication for the prevention of seasonal major depressive illness. By December 2009, according to IMS Wellbutrin® XL had captured 58.5% share of the Canadian bupropion market (measured as a percentage of total prescriptions for bupropion products).

#### ***Wellbutrin® SR (bupropion)/Zyban® (sustained-release bupropion hydrochloride)***

We acquired the Canadian rights to Wellbutrin® SR and Zyban® from GSK in December 2002. Wellbutrin® SR is indicated as a first-line therapy for the treatment of depression. Wellbutrin® SR’s anti-depressant activity appears to be mediated by noradrenergic and dopaminergic mechanisms that differentiate it from SSRIs and other known anti-depressant agents. In addition to anti-depressant efficacy, Wellbutrin® SR has a low propensity to cause sexual dysfunction, a common side effect of some other anti-depressant therapies. Zyban®, the same chemical entity as Wellbutrin® SR, is indicated as an aid to smoking cessation treatment. Generic competition for Wellbutrin® SR in Canada commenced in 2005. Zyban® is marketed through non-sales force mediated, direct marketing activities.

#### ***Glumetza® (extended-release metformin hydrochloride)***

Glumetza® is a once-daily formulation of metformin, indicated for the control of hyperglycemia in adult patients with type 2 (non-insulin dependent, mature onset) diabetes, as an adjunct to dietary management, exercise, and weight reduction, or when insulin therapy is not appropriate. Glumetza® (500 mg and 1,000 mg) received TPD approval in May 2005, and the 500 mg tablet was formally launched by the BPC sales force in Canada in November 2005. Glumetza® is the first and only once-daily metformin formulation available in Canada. A second application for a once-daily formulation of Glumetza® 1,000 mg tablets was filed with the TPD in February 2007 and received a Notice of Compliance (“NOC”) in October 2007. The BPC sales force formally launched Glumetza® 1,000 mg tablets to Canadian physicians in January 2008. See Item 3. “Legal Proceedings — Intellectual Property”.

*Ralivia® (extended-release tramadol hydrochloride)*

Ralivia®, which competes with two other once-daily tramadol formulations in Canada, is indicated for the management of pain of moderate severity in patients who require continuous treatment for several days or more. In July 2008 we received approval for the broader indication of treatment of moderate to moderately severe pain. Ralivia® is produced using our proprietary Smartcoat® technology, which provides 24-hour delivery for more constant plasma concentration and clinical effects with less peak-to-trough fluctuation. Ralivia® is identical to Ultram® ER.

*Nitoman® (tetrabenazine)*

Nitoman® was approved by the TPD in 1995. It is indicated for the treatment of hyperkinetic movement disorders such as Huntington's chorea, Hemiballismus, Senile Chorea, Tic and Gilles de la Tourette Syndrome and Tardive Dyskinesia. Through the September 2008 acquisition of Prestwick, we acquired commercial responsibility for Nitoman® in Canada. Nitoman® is marketed to Canadian physicians through the BPC sales force.

*Cardizem® CD (diltiazem)*

Cardizem® branded products have been leading medications in the CCB category of cardiovascular drugs for more than 20 years. sanofi-aventis supplies Cardizem® CD to us.

**Former Base Business Model**

Our former base business model comprised numerous proprietary drug-delivery technologies that we used to develop controlled-release, enhanced/modified absorption and rapid-dissolve products. These technologies enabled us to develop both branded and generic pharmaceutical products. With our focus now on specialty CNS disorders, the products and technologies associated with our former base business model remain assets of the Company and a source of revenue and cash flow that has and will be used to support the growth and development of our specialty CNS business.

Oral controlled release technologies permit the development of specialized oral delivery systems that improve the absorption and utilization of drugs by the human body. These systems offer a number of advantages, in particular allowing the patient to take only one or two doses of the drug per day. This makes controlled release drug products ideally suited for the treatment of chronic conditions.

The following describes some of our proprietary drug-delivery technologies associated with our former base business model:

| <u>Technology</u> | <u>Description</u>                                                                                                                                                     |
|-------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Dimatrix</b>   | Diffusion-controlled matrix technology for water soluble drugs.                                                                                                        |
| <b>Macrocap</b>   | Immediate release beads for first order or zero order release.                                                                                                         |
| <b>Consurf</b>    | Zero order drug-delivery system for hydrophilic and hydrophobic drugs.                                                                                                 |
| <b>Multipart</b>  | Tablet carrier for the delivery of controlled release beads that preserves the integrity and release properties of the beads.                                          |
| <b>FlashDose™</b> | Oral disintegrating tablet (“ODT”) technology for sustained release ODTs, rapid-onset ODTs, enhanced absorption ODTs, combination ODT s and taste-masking ODTs.        |
| <b>Shearform™</b> | Used to produce carrier materials used to produce rapid dissolve formulations.                                                                                         |
| <b>Smartcoat®</b> | Allows for the manufacturing of very high potency controlled release tablets, allowing for smaller- sized tablets while controlling the release over a 24-hour period. |

| <u>Technology</u>                           | <u>Description</u>                                                                                                                                                                                                                                                                                                  |
|---------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Smartcoat® AQ</b>                        | Aqueous-based, proprietary version of Smartcoat®.                                                                                                                                                                                                                                                                   |
| <b>Chronotabs</b>                           | Made of Multipart or Smartcoat® tablets particularly adapted to the science of treating diseases that follow the body's circadian rhythms.                                                                                                                                                                          |
| <b>Zero Order Release Systems ("ZORS™")</b> | Technology used to develop zero order kinetic systems, based on a proprietary controlled release matrix coating.                                                                                                                                                                                                    |
| <b>CEFORM™</b>                              | Technology used to produce uniformly sized and shaped microspheres of a wide range of pharmaceutical compounds. CEFORM™ can be used to formulate drugs that are generally thermally unstable and can be formulated for controlled release, enhanced absorption, delayed release, rapid absorption or taste masking. |

## **Manufacturing**

Our plant in Steinbach, Manitoba is our principal manufacturing facility. Certain of our Puerto Rico manufacturing activities were transferred to our Steinbach, Manitoba facility in 2009, with much of the remainder anticipated to be transferred in 2010. Our Carolina, Puerto Rico facility will now remain open indefinitely in order to meet higher than anticipated demand for generic Tiazac® and Cardizem® CD products. See Item 2. "Properties — Manufacturing Facilities".

Through our manufacturing facilities in Manitoba and Puerto Rico, we manufacture branded products (including Wellbutrin® XL, Ultram® ER and Cardizem® LA) that are commercialized by third parties, and several other branded products that are distributed by BTA Pharmaceuticals, Inc. ("BTA") and BPC. We also manufacture generic products that are distributed by Teva and Forest in the U.S. and by Teva Canada in Canada.

Our manufacturing facilities are audited periodically by various regulatory agencies and are compliant with current Good Manufacturing Practices ("cGMP"). All technical operations are executed in accordance with the requirements as mandated by the FDA, Health Canada Health Products & Food Branch Inspectorate and other regulatory agencies around the world.

Certain of our products may be manufactured by third parties.

## **Raw Materials**

We source raw materials for our manufacturing operations from various FDA-approved and TPD-approved companies worldwide. Whenever reasonably practicable, we have a minimum of two suppliers for all major active pharmaceutical ingredients ("APIs") for our manufactured products. This facilitates both the continuity of supply of raw materials and best pricing from suppliers based on volume and time period. However, the pricing of the raw materials needed for the development or manufacture of our products has fluctuated, from time to time, as a result of a number of factors, including the acts of governments outside the U.S. and Canada.

## **Marketing and Commercialization**

Given the vast differences between the two markets, we employ different marketing and commercialization strategies in Canada and the U.S. In Canada, we commercialize our products directly through BPC. In the U.S. and other global markets, since the elimination of our U.S. sales force in December 2006, our products are marketed through strategic alliances with commercial counterparties that have established sales and marketing infrastructures in those regions. As we progress with our specialty CNS strategy, we expect to build or acquire a specialty U.S. sales force, which will allow us to promote our products directly. In addition to maintaining a greater share of the economics of our product portfolio, an in-house sales force will provide strategic flexibility with respect to commercialization.

## ***United States***

Throughout our history, we have entered into a number of supply-and-distribution arrangements for the U.S. market with several respected pharmaceutical companies, including GSK, Johnson & Johnson, Forest, Teva, Abbott and, most recently, sanofi-aventis and Lundbeck (formerly Ovation). As described above under “Business Overview — Our Specialty CNS Strategy — Execution of Our Strategy”, on September 16, 2008 we acquired Prestwick, which held the Canadian and U.S. licensing rights to tetrabenazine tablets (known as Xenazine® in the U.S. and Nitoman® in Canada) and, in June 2009, we acquired the worldwide development and commercialization rights to the entire portfolio of tetrabenazine products from Cambridge. In November 2008, Xenazine® tablets became commercially available throughout the U.S. under an exclusive marketing, distribution and supply agreement entered into between Prestwick and Ovation (now known as Lundbeck) prior to our acquisition of Prestwick. In the U.S., Lundbeck also provides marketing and promotion for tetrabenazine.

In the first quarter of 2009, Publicis Selling Solutions, Inc. (“PSS”), a contract sales organization (“CSO”), assumed responsibility for detailing of Zovirax® to U.S. physicians under Biovail’s management of the brand. By switching to a CSO, we retain a greater share of Zovirax®’s revenue, as we have a fixed fee arrangement in our agreement with PSS. PSS has formed a dedicated contractual sales force for detailing of Zovirax® to U.S. physicians.

BTA distributes a number of branded products for which there is no longer market exclusivity. These Legacy Products include the well-known brands Cardizem® CD, Ativan®, Vaseretic®, Vasotec® and Isordil®. These products represent non-core assets that are not actively promoted by us, but remain well respected by the medical community. Due to the availability of several competing generic formulations, their prescription volumes are declining at fairly predictable rates.

## ***Canada***

In Canada, where the market dynamics are much different than in the U.S., we have maintained a direct-selling commercial presence through BPC that targets both specialist and high-prescribing primary-care physicians. BPC has established itself as a leading, independent pharmaceutical marketing and sales operation in the Canadian market. BPC’s therapeutic focus lies in the cardiovascular disease, pain management and depression markets valued at C\$2.4 billion, C\$948.0 million, and C\$868.0 million, respectively by IMS.

BPC currently promotes a portfolio of products to approximately 12,000 physicians across Canada. Products include Tiazac® XC, Wellbutrin® XL, Ralivia®, Glumetza® and, since December 2008, Nitoman®. During 2009, the Tiazac® and Wellbutrin® franchises were BPC’s leading product lines, representing approximately 38% and 36%, respectively, of our total Canadian product revenues. We believe BPC is an important asset and we intend to continue to leverage our Canadian commercialization infrastructure to support our physician-targeted focus. We are also pursuing a number of product-marketing opportunities and acquisitions that have a strategic fit to further grow BPC’s business.

## ***Other Countries***

While our business focus is primarily to develop products for the U.S. and Canadian markets, we have pursued opportunities to more fully exploit the commercial potential of our products by having them launched in new geographic markets by strategic marketing partners with expertise in their local markets. For example, in 2007 and 2008, GSK launched Wellbutrin® XR in several European countries for the treatment of adult patients with major depressive episodes. In addition, we have distribution arrangements for tetrabenazine in a number of countries outside North America, including Australia, Denmark, France, Germany, Ireland, Israel, Italy, New Zealand, Portugal, Spain, Switzerland and the United Kingdom.

## **Patents and Proprietary Rights**

We protect the proprietary nature of our technology through a combination of patents, trade secrets, know-how and other methods. We have not routinely sought patents on our controlled-release technologies themselves because the filing of certain patents may provide competitors and potential competitors with

information relating to proprietary technology, which may enable such competitors to exploit information related to such technology that is not within the confines of the protection of the patent. However, we usually do seek patent protection for novel products arising from our development efforts, in order to obtain intellectual property rights and associated market protection.

Historically, we have relied on trade secrets, know-how and other proprietary information. Our ability to compete effectively with other companies will depend, in part, upon our ability to maintain the proprietary nature of our technology. To protect our rights in these areas, we require our licensors, licensees and significant employees to enter into confidentiality agreements. These agreements may not, however, provide meaningful protection for our trade secrets, know-how or other proprietary information in the event of any unauthorized use or disclosure of such trade secrets, know-how or other proprietary information.

The exclusivity afforded by patent protection is very important to the sustainability of our specialty CNS focus. Accordingly, we will aggressively seek patent protection for these patents either by filing our own patents, acquiring patents or licensing-in patents from potential partners in the U.S., Canada and internationally. When reasonably possible, we will also file for additional patent protection to cover any improvements to the compounds or products we market or intend to market as well as, when applicable, to the underlying technology used for developing the compounds and products. We may at times also rely on trade-secrets, know-how, and agreements with third parties to develop, maintain and protect currently marketed and pipeline products.

We currently own or otherwise have rights (e.g. by license agreements) to a number of patents and patent applications in the U.S., Canada and internationally relating to our marketed and pipeline products. These patents and pending applications cover new chemical compounds and their methods of use, pharmaceutical compositions, process(es) for the manufacture of the new chemical compounds or intermediates used in the manufacture of the new chemical compounds.

The following table shows our products that have patent protection and the dates for the latest expiring patents listed on the FDA's Orange Book or the Canadian Patent Register, as applicable, for certain of our products marketed or distributed by us or on our behalf:

| Products             | U.S. Patent Expiration     | Canadian Patent Expiration |
|----------------------|----------------------------|----------------------------|
| Wellbutrin® XL       | 2018                       | 2023                       |
| Wellbutrin® SR       |                            | 2014                       |
| Cardizem® LA         | 2021                       |                            |
| Cardizem® CD (360mg) | 2012                       |                            |
| Tiazac® XC           |                            | 2020                       |
| Tiazac®              |                            | 2016                       |
| Ultram® ER           | 2014                       |                            |
| Ralivia®             |                            | 2023                       |
| Glumetza®            | 2021 (500mg)/2020 (1000mg) | 2021 (500mg)/2023 (1000mg) |
| Zyban®               |                            | 2014                       |
| Aplenzin®            | 2026                       |                            |

Development pipeline products are not listed on this chart.

Although the patents for the above listed products remain in-force, several of the products have now been genericized. For example, in the U.S., Wellbutrin® XL (150mg and 300mg), Ativan®, Isordil®, Vasotec®, Vaseretic®, and Glumetza® 500 mg have been genericized, and in Canada, Wellbutrin® SR, Cardizem®, Tiazac® and Zyban® have been genericized. While there are no patents listed for Xenazine® in the U.S., it has received an orphan drug designation by the FDA, which expires in 2015. Additional patents may be listed with expiry dates that extend beyond the dates provided above as relevant patents become available and are deemed



suitable for listing on the FDA's Orange Book within the bounds of the Hatch-Waxman Act provisions or the Canadian Patented Medicines Notice of Compliance Regulations ("PMNOC Regulations").

The patents covering Ultram® ER have recently been found to be invalid following a trial in the U.S. The invalidity decision has been appealed, with a further decision not expected until later in 2010. Nevertheless, Par Pharmaceuticals ("Par") has launched a 100 mg and 200 mg generic version of Ultram® ER. Concurrently, Patriot (a wholly owned subsidiary of Ortho-McNeil-Janssen Pharmaceuticals, Inc.) launched our authorized generic formulation of these two strengths of Ultram® ER.

On January 18, 2010, a Canadian Federal Court judge presiding over Biovail Corporation and Depomed, Inc. v. Apotex Inc. et al. issued a decision in a proceeding pursuant to the PMNOC Regulations in Canada to determine whether Apotex's allegations that a Depomed patent was invalid and/or not infringed was justified. This proceeding related to a Canadian application filed by Apotex Inc. ("Apotex") to market a generic version of the 500 mg formulation of Glumetza® (extended release metformin hydrochloride tablets) licensed in Canada by Depomed to BLS. Pursuant to the decision issued by the Court, Health Canada authorized Apotex to market in Canada its generic version of the 500 mg formulation of Glumetza® on February 4, 2010.

The decision, which was amended on January 20, 2010, found under Canadian law that Apotex's allegation was justified that the Depomed Canadian patent at issue in the matter (No. 2,290,624) (the "'624 Patent") is obvious. The judge found that the evidence presented by the parties was "evenly balanced" as to obviousness. The judge found in favour of Biovail and Depomed as to all other issues related to validity, enforceability and infringement of the '624 Patent under Canadian law. Apotex was authorized to market in Canada its generic version of 500 mg Glumetza® by Health Canada on February 4, 2010. This decision, however, did not find the patent invalid and does not preclude the filing of a subsequent patent infringement suit against Apotex. The Company and Depomed filed a Claim for infringement against Apotex in Canadian Federal Court on February 8, 2010.

Our legacy products include Cardizem® CD, Ativan®, Tiazac®, Vasotec®, Vaseretic® and Isordil®. With the exception of Cardizem® CD and Tiazac®, the other legacy products have no unexpired patent-related exclusivity for the purposes of the Hatch-Waxman Act provisions.

Since adopting our specialty CNS strategy in May 2008, we have made significant progress in building a specialty CNS product-development pipeline. To support this strategy, we have created, acquired or licensed-in intellectual property related to the various products currently under development. For example, we have obtained exclusive U.S. and Canadian intellectual property rights for pimavanserin from ACADIA for the prevention or treatment of any psychiatric and neurological indication, including but not limited to PDP and ADP. Patents to pimavanserin have been granted in the U.S. The expiry dates of the last patent or patent applications, if it issues to patent, is in 2028.

As a result of the acquisition of the worldwide development and commercialization rights to the entire portfolio of tetrabenazine products from Cambridge in June 2009, we acquired the U.S. and worldwide intellectual property rights to a controlled-release formulation of tetrabenazine (currently marketed in immediate-release form as Xenazine® in the U.S. and Nitoman® in Canada) in development for Tourette's Syndrome (BVF-018). A patent application relating to BVF-018 was filed as both an International PCT and U.S. utility application in August, 2009. The U.S. patent application, if issued, will expire in 2029.

We have also obtained from Santhera, in August 2009, exclusive U.S. and Canadian intellectual property rights to develop and commercialize fipamezole hydrochloride for the treatment and prevention of any psychiatric and neurological disease, including but not limited to PDD. In the U.S. and Canada, the last patent or patent application, if it issues to patent, will expire in 2024.

In December 2009, we entered into a license agreement with Amgen, pursuant to which we were granted rights to use GDNF protein in CNS indications in the U.S. and in certain other countries. The GDNF protein is a naturally-occurring growth factor capable of protecting and promoting the survival of dopamine producing nerve cells. We have obtained a co-exclusive license from Amgen to patents related to GDNF in the U.S. and in certain other countries. The expiry date of the last U.S. patent licensed from Amgen is in 2017. The expiry date of the last pending U.S. patent application licensed from Amgen, if issued, is in 2024. In addition, we entered into an agreement with MedGenesis to collaborate on the development of GDNF, initially in Parkinson's

disease, and potentially in other CNS indications. We have obtained an exclusive license from MedGenesis to patent applications related to their CED platform for use with GDNF for CNS indications in the US and in certain other countries. The expiry date of the last pending U.S. patent application licensed from MedGenesis, if it issues to patent, is in 2029.

We have also obtained from Alexza, in February 2010, exclusive U.S. and Canadian intellectual property rights to develop and commercialize Staccato® loxapine for the treatment and prevention of any psychiatric and/or neurological indication and the symptoms associated with these indications, including but not limited to the rapid treatment of agitation associated with schizophrenia or bipolar disorder. Alexza has several issued patents and pending patent applications relating to its Staccato® platform technology as well as to the Staccato® loxapine product. In the US, the last patent will expire in 2024 and the last patent application, if it issues to patent, will expire in 2023. In Canada, the last patent and patent application, if it issues to patent, will expire in 2023.

We also have a number of legacy development programs in place based on our former business focus, which include BVF-324. BVF-324 comprises tramadol hydrochloride as the active ingredient for the treatment of premature ejaculation, a sexual dysfunction. The Phase 3 program for BVF-324 in Europe, which is evaluating non-commercially available doses of tramadol, was initiated in the third quarter of 2009 and is expected to conclude in 2011. We have obtained worldwide exclusive rights to the intellectual property relating to BVF-324. At least one patent for BVF-324 has been granted in the U.S. and will expire in 2022.

Not all of the patents relating to our pipeline products may be listable in the FDA's Orange Book. Also, the expiry dates for any one or more patents may be extended due to delays during prosecution of the patent applications under 35 U.S.C. §154(b) or due to delays in the FDA approval process under 35 U.S.C. §156. On the other hand, the patent term for any one or more of the patents currently listed or to be listed in the FDA's Orange Book for our pipeline products may be limited due to an earlier decision of invalidity or unenforceability by a U.S. court from which no appeal can be taken.

### Significant Customers

The following table identifies external customers that accounted for 10% or more of our total revenue during the year ended December 31, 2009:

|                                         | Percentage of<br>Total Revenue |
|-----------------------------------------|--------------------------------|
|                                         | 2009<br>%                      |
| McKesson Corporation . . . . .          | 25                             |
| Cardinal Health, Inc. . . . .           | 21                             |
| AmerisourceBergen Corporation . . . . . | 10                             |

### Contract Research Division

Our Contract Research Division ("CRD") provides pharmaceutical companies with a broad range of early stage clinical-research services. This involves conducting first-in-man and pharmacokinetic first-in-human and early phase clinical studies, along with bioanalytical laboratory testing to establish a drug's safety and tolerance or a drug's bioavailability or its bioequivalence to another drug moiety. Clinical studies are reviewed by an independent ethics review board that assures that all studies are conducted in an ethical and safe manner, without compromising the safety or well-being of the human subjects participating in these studies. As well, all clinical studies are designed and conducted in accordance with strict guidelines regulated under the FDA in the U.S., the TPD in Canada and the European Medicines Agency ("EMA") in Europe, and executed under Good Laboratory Practices and Good Clinical Practices.

In prior years, we were CRD's primary customer. However, beginning in 2008, as we shifted our focus away from reformulation programs associated with our former base business model, our activity level dropped significantly at CRD. Although we contemplate continuing to use CRD's services for internal activities, the division continues to aggressively pursue new external customers.

## **Regulation**

The R&D, manufacture and marketing of pharmaceuticals are subject to regulation by U.S., Canadian and foreign health authorities. Such national agencies and other federal, state, provincial and local entities regulate the testing, manufacturing, safety, pricing and promotion of our products.

### ***U.S. Regulation***

#### ***New Drug Application***

We are required by the FDA to comply with regulations governing our products prior to commencement of marketing by us or by our commercial partners. New chemical entities and new formulations for existing drug compounds which cannot be filed as ANDAs are subject to NDA requirements. These requirements include: (a) preclinical laboratory and animal toxicology tests; (b) submission in certain cases of an IND, and its required acceptance by the FDA before human clinical trials can commence; (c) adequate and well-controlled replicate human clinical trials to establish the safety and efficacy of a drug for its intended indication; (d) the submission of an NDA to the FDA; and (e) FDA approval of an NDA prior to any commercial sale or shipment of the product, including pre-approval and post-approval inspections of its manufacturing and testing facilities.

Preclinical laboratory and animal toxicology tests must be performed to assess the safety and potential efficacy of a product. The results of these preclinical tests, together with information regarding the methods of manufacture of the products and quality control testing, are then submitted to the FDA as part of an IND requesting authorization to initiate human clinical trials. Additionally, an independent Institutional Review Board (“IRB”) at each medical site proposing to conduct the clinical trials must review and approve each study protocol and oversee conduct of the trial. An IND becomes effective 30 days after receipt by the FDA, unless the FDA, within the 30-day period, raises concerns or questions about the conduct of the trials as outlined in the IND and imposes a clinical hold. If the FDA imposes a clinical hold, the IND sponsor must resolve the FDA’s concerns before clinical trials can begin. Preclinical tests and studies can take several years to complete, and there is no guarantee that an IND we submit based on such tests and studies will become effective within any specific time period, or if at all.

Clinical trials involve the administration of a pharmaceutical product to individuals under the supervision of qualified medical investigators that are experienced in conducting studies under “Good Clinical Practice” guidelines. Clinical studies are conducted in accordance with protocols that detail the objectives of a study, the parameters to be used to monitor safety and the efficacy criteria to be evaluated. Each protocol is submitted to the FDA and to an IRB prior to the commencement of each clinical trial. Clinical studies are typically conducted in three sequential phases, which may overlap. In Phase 1, first-in-man, the initial introduction of the product into healthy human subjects, the compound is tested for absorption, safety, tolerability, metabolic interaction, distribution and excretion. Phase 2 involves studies in a limited patient population with the disease to be treated to (a) determine the preliminary or potential effectiveness of the product for specific targeted indications; (b) determine optimal dosage; and (c) identify possible adverse effects and safety risks. If Phase 2 evaluations demonstrate that a pharmaceutical product is potentially effective, has acceptable data to show an appropriate clinical dose and has an acceptable safety profile, Phase 3 clinical trials are undertaken to further evaluate clinical efficacy of the product and to further test its safety within an expanded patient population at geographically dispersed clinical study sites. Periodic reports to the FDA and IRBs on the clinical investigations are required. We, as a sponsor of the study, the IRB or the FDA may suspend clinical trials at any time if any such party believes the clinical subjects are being exposed to unacceptable health risks. The results of the product development, analytical laboratory studies, toxicology studies and clinical studies are submitted to the FDA as part of an NDA for approval of the marketing of a pharmaceutical product.

The above-described NDA requirements are predicated on the applicant being the owner of, or having obtained a right of reference to, all of the data required to prove safety and efficacy. However, for those NDAs containing some data which the applicant neither owns nor has a right-of-reference, the FDA’s ability to grant approval is limited when there are exclusivity periods or infringed patent rights that are accorded to others. These NDAs are governed by 21 U.S.C. § 355(b)(1), also known as Section 505(b)(2) of the U.S. *Food, Drug and Cosmetic Act* (the “FD&C Act”) (referred to as “505(b)(2) NDAs”).

### *Abbreviated New Drug Application*

In certain cases, where the objective is to develop a generic (bioequivalent formulation) of an approved product already on the market, an ANDA is required. Under the ANDA procedure, the FDA waives the requirement to submit complete reports of preclinical and clinical studies of safety and efficacy, and instead, requires the submission of bioequivalence data, which is a demonstration that the generic drug produces the statistically equivalent blood levels of active ingredient in the body as its brand-name counterpart. It is mandatory that the generic products have a comparable rate and extent of absorption as measured by plasma drug levels as a function of time. In certain cases, an ANDA applicant may submit a suitability petition to the FDA requesting permission to submit an ANDA for a drug product that differs from a previously approved reference drug product (the “Listed Drug”) when the change is one authorized by statute. Permitted variations from the Listed Drug may include changes in: (a) route of administration; (b) dosage form; (c) strength; and (d) one of the active ingredients of the Listed Drug when the Listed Drug is a combination product. The FDA must approve the petition before the ANDA may be submitted. An applicant is not permitted to petition for any changes from Listed Drugs which are not authorized by statute. The information in a suitability petition must demonstrate that the change may be adequately evaluated for approval without data from investigations to show the product’s safety or effectiveness. The advantages of an ANDA over an NDA include reduced R&D costs associated with bringing a product to market, potentially shorter review and approval periods and potentially quicker time to market. The disadvantages include the lack of market exclusivity unless the ANDA is the first substantially complete file to challenge innovator patents (see “— Patent Certification and Exclusivity Issues”).

### *505(b)(2) Application Process*

In certain cases, pharmaceutical companies may submit an application for marketing approval of a drug product under Section 505(b)(2) of the FD&C Act (referred to as “505(b)(2) NDAs”). This mechanism essentially relies upon the same FDA conclusions that would support the approval of an ANDA available to an applicant who develops a modification of a Listed Drug that is not supported by a suitability petition. Relative to more extensive regulatory requirements for full 505(b)(1) NDAs, the Section 505(b)(2) regulations permit applicants to forego costly and time-consuming drug development studies by relying on the FDA’s finding of safety and efficacy for a previously approved drug product. Under some circumstances, the extent of the reliance on the approved drug product approaches that which is permitted under the generic drug approval provisions. This approach is intended to encourage innovation in drug development without requiring duplicative studies to demonstrate what is already known about a drug while protecting the patent and exclusivity rights for the approved drug. If clinical efficacy trials are required for approval, the 505(b)(2) NDAs product is generally entitled to three years of market exclusivity following approval.

### *Patent Certification and Exclusivity Issues*

When submitting ANDAs and 505(b)(2) NDAs, a company must include certifications with respect to any patents that claim the Listed Drug or that claim a use for the Listed Drug for which the applicant is seeking approval. If applicable patents are in effect and the patent information has been submitted to the FDA and listed in the FDA’s Orange Book, the FDA may be required to delay approval of the ANDAs or 505(b)(2) NDAs until the patents expire. If the applicant believes it will not infringe the patents or that the patents are invalid, it can make a patent certification to the owners of the patents and the holder of the original NDA approval for the drug product for which a generic drug approval is being sought. This may result in patent infringement litigation which could delay the FDA approval of the ANDA or 505(b)(2) NDA for up to 30 months. If the drug product covered by an ANDA or 505(b)(2) NDA were to be found by a court to infringe another company’s patents, approval of the ANDA or 505(b)(2) NDAs could be delayed until the infringed patents expire.

Under the FD&C Act, the first filer of an ANDA with a certification of patent non-infringement or invalidity is generally entitled to receive 180 days of market exclusivity. Subsequent filers of generic products would be entitled to market their approved product after the 180-day exclusivity period expires. However, the first filer may be deemed to have forfeited its 180-day exclusivity period if, for example, it has not started marketing its generic product within certain time frames.

Patent expiration refers to expiry of U.S. patents (inclusive of any extensions) on drug compounds, formulations and uses. Patents outside the U.S. may differ from those in the U.S. Under U.S. law, the expiration of a patent on a drug compound does not create a right to make, use or sell that compound. There may be additional patents relating to a person's proposed manufacture, use or sale of a product that could potentially prohibit such person's proposed commercialization of a drug formulation.

The FD&C Act contains non-patent market exclusivity provisions that offer additional protection to pioneer drug products and are independent of any patent coverage that might also apply. In the case of pioneer drugs, exclusivity refers to the fact that the effective date of approval of a potential competitor's ANDA or 505(b)(2) NDAs may be delayed or, in certain cases, an ANDA or 505(b)(2) NDA may not be submitted until the exclusivity period expires. Five-year exclusivity periods are granted to the first approval of a new chemical entity. Three-year exclusivity periods may apply to products which are not new chemical entities, but for which new clinical investigations are essential to the approval. For example, a new indication for use, or a new dosage strength of a previously approved product, may be entitled to an exclusivity period, but only with respect to that indication or dosage strength. In the case of pioneer drugs, exclusivity periods only offer protection against a competitor entering the market via the ANDA and 505(b)(2) NDA routes, and do not operate against a competitor that generates all of its own data and submits a full NDA under Section 505(b)(1) of the FD&C Act.

#### *Other Issues That May Arise Prior to Approval*

Satisfaction of FDA requirements typically takes several years. The actual time required varies substantially, based upon the type, complexity, and novelty of the pharmaceutical product, among other things. Government regulation imposes costly and time-consuming requirements and restrictions throughout the product life cycle and may delay product marketing for a considerable period of time, limit product marketing, or prevent marketing altogether. Success in preclinical or early stage clinical trials does not assure success in later stage clinical trials. Data obtained from preclinical and clinical activities are not always conclusive and may be susceptible to varying interpretations that could delay, limit, or prevent marketing approval. Even if a product receives marketing approval, the approval is limited to specific clinical indications. Further, even after marketing approval is obtained, the discovery of previously unknown problems with a product may result in restrictions on the product or even complete withdrawal of the product from the market.

If applicable regulatory criteria are not satisfied, the FDA may deny approval of an 505(b)(2) NDA, full NDA or an ANDA or may require additional testing. Product approvals may be withdrawn if compliance with regulatory standards is not maintained or if problems occur after the product reaches the market. The FDA may require further testing and surveillance programs to monitor the pharmaceutical product that has been commercialized. Non-compliance with applicable requirements can result in additional penalties, including product seizures, injunction actions and criminal prosecutions.

#### *Issues Pertaining to Post-marketing Compliance*

After product approval, there are continuing significant regulatory requirements imposed by the FDA, including record-keeping requirements, obligations to report adverse experiences, and restrictions on advertising and promotional activities. Quality control and manufacturing procedures must continue to conform to cGMPs, and the FDA periodically inspects facilities to assess cGMP compliance. Additionally, post-approval changes in manufacturing processes or facilities, product labeling, or other areas require FDA review and approval. Failure to comply with FDA regulatory requirements may result in enforcement action by the FDA, including product recalls, suspension or revocation of product approval, seizure of product to prevent distribution, impositions of injunctions prohibiting product manufacture or distribution, and civil and criminal penalties. Maintaining compliance is costly and time-consuming. Nonetheless, we cannot be certain that we, or our present or future suppliers or third-party manufacturers, will be able to comply with all FDA regulatory requirements, and potential consequences of noncompliance could have a material adverse impact on our business.

The FDA's policies may change, and additional government regulations may be enacted that could delay, limit, or prevent marketing approval of our products or affect our ability to manufacture, market, or distribute our products after approval. Moreover, increased attention to the containment of healthcare costs in the U.S. and in foreign markets could result in new government regulations that could have a material adverse effect on



our business. Our failure to obtain coverage, an adequate level of reimbursement, or acceptable prices for our future products could diminish any revenues we may be able to generate. Our ability to commercialize future products will depend in part on the extent to which coverage and reimbursement for the products will be available from government and health administration authorities, private health insurers, and other third-party payors. U.S. government and other third-party payors increasingly are attempting to contain healthcare costs by consideration of new laws and regulations limiting both coverage and the level of reimbursement for new drugs. We cannot predict the likelihood, nature or extent of adverse governmental regulation that might arise from future legislative or administrative action, either in the U.S. or abroad.

Our activities also may be subject to state laws and regulations that affect our ability to develop and sell our products. We are also subject to numerous federal, state, and local laws relating to such matters as safe working conditions, clinical, laboratory, and manufacturing practices, environmental protection, fire hazard control, and disposal of hazardous or potentially hazardous substances. We may incur significant costs to comply with such laws and regulations now or in the future, and the failure to comply may have a material adverse impact on our business.

The labeling, advertising and distribution of a drug or biologic product also must be in compliance with FDA requirements, which include, among others, standards and regulations for direct-to-consumer advertising, off-label promotion, industry sponsored scientific and educational activities, and promotional activities involving the internet. The FDA has very broad enforcement authority, and failure to abide by these regulations can result in penalties, including the issuance of a Warning Letter directing a company to correct deviations from regulatory standards and enforcement actions that can include seizures, injunctions and criminal prosecutions. Each NDA must be accompanied by a user fee, pursuant to the requirements of the PDUFA, and its amendments. According to the FDA's fee schedule, effective on October 1, 2009 for the fiscal year 2010, the user fee for an application requiring clinical data, such as a NDA, is \$1,405,500, and \$702,250 for an application not requiring clinical data or a supplement requiring clinical data. The FDA adjusts the PDUFA user fees on an annual basis. PDUFA also imposes an annual product fee for prescription drugs and biologics (\$77,720), and an annual establishment fee (\$457,200) on facilities used to manufacture prescription drugs and biologics. We are not at the stage of development with our products where we are subject to these fees, but they are significant expenditures that we expect to incur in the future and will need to be paid at the time of application submission to FDA.

The marketing, promotional, and pricing practices of pharmaceutical manufacturers, as well as the manner in which manufacturers interact with purchasers and prescribers, are subject to various other federal and state laws, including the federal anti-kickback statute and the False Claims Act and state laws governing kickbacks, false claims, unfair trade practices, and consumer protection. Over the past several years, the FDA, the Department of Justice, and various other agencies have increased their enforcement activities with respect to pharmaceutical companies. Over this period, claims brought by these agencies against Biovail and various other companies under these and other laws have resulted in corporate criminal sanctions and substantial civil settlements. See Item 3. "Legal Proceedings," for information about the recently resolved marketing and promotional practices investigation involving Biovail, including information regarding a Corporate Integrity Agreement ("CIA") entered into by Biovail in connection with the resolution of the U.S. federal marketing practices investigation involving Cardizem® LA.

### ***Canadian Regulation***

The requirements to sell pharmaceutical drugs in Canada are substantially similar to those in the U.S., which are described above, with the exception of the 505(b)(2) NDAs and 180-day marketing exclusivity period for a first filer of an ANDA under the FD&C Act in the U.S. and as otherwise noted below.

### ***Clinical Trial Application***

Before conducting clinical trials of a new drug in Canada, a Clinical Trial Application must be submitted to the TPD. Applications for Phase 1 trials include information about the proposed trial and the new drug as well as information on any previously executed clinical trials with the new drug. Phase 2 and 3 applications also include information on the methods of manufacture of the drug and controls, and preclinical laboratory and animal toxicology tests on the safety and potential efficacy of the drug. If, within 30 days of receiving the application, the TPD does not notify the applicant that its application is unsatisfactory, the applicant may proceed with clinical trials of the drug (although the TPD targets to review applications to conduct Phase 1 trials within 7 days). The phases of clinical trials are the same as those described above under "U.S. Regulation — New Drug Application".

### *New Drug Submission (“NDS”)*

Before selling or advertising a new drug in Canada, the applicant must submit an NDS or sNDS to the TPD and receive a NOC from the TPD to sell the drug. The submission includes information describing the new drug, including its proper name, the proposed name under which the new drug will be sold, a quantitative list of ingredients in the new drug and the specifications for each of those ingredients, the plant and equipment to be used in manufacturing, preparation and packaging the new drug, the methods of manufacturing, preparation and packaging the new drug, the controls applicable to these operations, the tests to be applied to control the potency, purity, stability and safety of the new drug, pharmacology data and the results of non-clinical, biopharmaceutics, clinical trials, as appropriate, the intended indications for which the new drug may be prescribed, all representations to be made for the promotion of the new drug including route of administration, proposed dosage, claims, contra-indications and side effects, the effectiveness and safety of the new drug when used as intended and draft labels to be used. The TPD reviews the NDS or sNDS. If the submission meets the requirements of Canada’s *Food and Drugs Act* (the “F&D Act”) and regulations, the TPD will issue an NOC for the new drug.

The TPD may deny approval or may require additional information or testing of a proposed new drug if applicable regulatory criteria are not met. Product approvals may be suspended if compliance with regulatory standards is not maintained or if problems occur after the product reaches the market. Contravention of the F&D Act and regulations can result in fines and other sanctions, including product seizures and criminal prosecutions.

Where the TPD has already approved a drug for sale, the applicant may seek approval from the TPD to sell an equivalent generic drug through an Abbreviated New Drug Submission (“ANDS”). The TPD does not require additional clinical trials to be conducted by the manufacturer of a proposed drug that is claimed to be equivalent to a drug that has already been approved for sale and marketed. Instead, the manufacturer must satisfy the TPD that the drug is bioequivalent to the drug that has already been approved and marketed.

The Canadian government has regulations which can prohibit the issuance of an NOC for a patented medicine to a generic competitor, provided that the patentee, exclusive licensee or a person who has obtained the consent of the owner of the patent (the “First Person”) has filed a list of its Canadian patents covering that medicine with the Minister of Health. Generic competitors that are interested in marketing generic versions of medicines against which certain patents have been listed must either state that they will await expiry of such patents or, alternatively, serve a notice of allegation pursuant to the regulations (“Notice of Allegation”) in which they outline the reasons that their products will not infringe the listed patents or that the listed patents are invalid. At that point, the First Person can commence a legal proceeding to obtain an order of prohibition directed to the Minister of Health prohibiting him or her from issuing an NOC to the generic competitor that has served a Notice of Allegation. The Minister of Health may be prohibited from issuing an NOC permitting the importation or sale of a patented medicine to a generic competitor until patents on the medicine expire or the allegation of non-infringement and/or invalidity of the patent(s) in question is resolved by litigation in the manner set out in such regulations. In contrast to the 30-month stay employed in U.S. proceedings, the Canadian regulations provide that the Minister of Health cannot issue a NOC to the generic competitor until the earlier of the expiry of 24 months from the start of the prohibition proceedings or the hearing of the proceedings on their merits. There may be additional patents relating to a company’s proposed manufacture, use or sale of a product that could potentially prohibit a generic competitor’s proposed commercialization of a drug compound. Unlike the situation in the U.S., prohibition proceedings commenced under the Canadian regulations are not technically patent infringement proceedings and so any ruling made by a judge in a prohibition proceeding would not be binding on another judge in the event that either party to the prohibition proceeding separately commences patent infringement or invalidity proceedings.

The regulations under the F&D Act also contain non-patent exclusivity provisions that offer additional protection to innovative drug products. The current regulations prohibit the Minister of Health from issuing an NOC to a manufacturer that makes a direct or indirect comparison to an “innovative drug” until at least eight years have passed from issuance of the innovator’s NOC for the innovative drug. This eight-year Canadian period is extended by a further six months in the case of drugs that have been the subject of clinical trials designed and conducted for the purpose of increasing the knowledge of the behaviour of the drug in pediatric

populations. “Innovative drug” is defined as “a drug that contains a medicinal ingredient not previously approved in a drug by the Minister of Health and that is not a variation of a previously approved medicinal ingredient such as a salt, ester, enantiomer, solvate or polymorph”. Additionally, the regulations have introduced, with a limited exception for the export of certain drugs to least-developed countries, a six-year “no filing” period with respect to an NDS, sNDS, ANDS or sANDS within the eight-year term of data protection. The six-year and eight-year prohibitions do not apply where the innovator consents to the earlier filing by the second manufacturer of an application for an NOC or to the issuance of an NOC to the second manufacturer, as the case may be. This data protection will only apply where the innovative drug has received an NOC and is marketed in Canada. A register of innovative drugs has been created, listing for each such drug the dates on which the six-year, eight-year and, where applicable, the pediatric extension periods will expire.

Certain provincial regulatory authorities in Canada have the ability to determine whether and which consumers of a drug sold within such province will be reimbursed by a provincial government health plan. A determination that a drug is reimbursable in a particular province results in the listing of that drug on the relevant provincial formulary. The listing or non-listing of a drug on a provincial formulary may affect the price of the drug within that province and the volume of the drug sold within that province.

#### *Additional Regulatory Considerations*

Sales of our products by our commercial partners outside the U.S. and Canada are subject to local regulatory requirements governing the testing, registration, pricing and marketing of pharmaceutical products, which vary widely from country to country.

Our manufacturing facilities located in Steinbach, Manitoba and Carolina, Puerto Rico, operate according to FDA-mandated and TPD-mandated Good Manufacturing Practices (“GMP”). These manufacturing facilities are inspected on a regular basis by the FDA, the TPD and other regulatory authorities. Our internal quality auditing team monitors compliance on an ongoing basis with FDA-mandated and TPD-mandated GMP. From time to time, the FDA, the TPD or other regulatory agencies may adopt regulations that may significantly affect the manufacture and marketing of our products.

In addition to the regulatory approval process, pharmaceutical companies are subject to regulations under provincial, state and federal laws, including requirements regarding occupational safety, controlled substances, laboratory practices, environmental protection and hazardous substance control, and may be subject to other present and future local, provincial, state, federal and foreign regulations, including possible future regulations governing the pharmaceutical industry. We believe that we are in compliance in all material respects with such regulations as are currently in effect.

#### **Taxation**

We have operations in various countries that have differing tax laws and rates. A significant portion of our revenue and income is earned in Barbados, a country with low domestic tax rates. Dividends from such after-tax business income are received tax-free in Canada. Our tax structure is supported by current domestic tax laws in the countries in which we operate and the application of tax treaties between the various countries in which we operate. Our effective tax rate may change from year to year based on changes in the mix of activities and income allocated or earned among the different jurisdictions in which we operate; changes in tax laws in these jurisdictions; changes in the tax treaties between various countries in which we operate; changes in our eligibility for benefits under those tax treaties; and changes in the estimated values of deferred tax assets and liabilities. Such changes could result in an increase in the effective tax rate on all or a portion of our income to a rate possibly exceeding the statutory income tax rate of Canada or the U.S. We conduct transfer pricing studies to support the pricing of transactions between the various entities in our structure. Our income tax reporting is subject to audit by domestic and foreign tax authorities.

#### **Competition**

The pharmaceutical industry is highly competitive. We compete with large pharmaceutical and chemical companies, specialized CROs, research and development firms, universities and other research institutions.

In the specialty CNS market, we compete with specialty pharmaceutical companies, such as Lundbeck, UCB S.A., Teva and Valeant Pharmaceuticals International. Competing in the specialty CNS market requires us to (i) identify, evaluate and acquire high priority compounds, (ii) commercialize any CNS compounds that we develop, in-license or acquire and (iii) develop competitive in-house R&D expertise.

In the drug-delivery technology market associated with our former base business model, we compete with large pharmaceutical companies. This market is subject to rapid and significant technological change that could render certain of our products obsolete or uncompetitive. In addition, many of our competitors have (i) greater financial resources and sales and marketing capabilities, (ii) greater experience in clinical testing and human clinical trials of pharmaceutical products, and (iii) greater experience in obtaining FDA, TPD and other regulatory approvals.

BPC competes with sales and marketing organizations that commercialize pharmaceuticals in Canada, such as Paladin Labs Inc. Competing in this market requires us to identify innovative products and to leverage our sales and marketing capabilities.

### **Seasonality of Business**

Our results of operations have not been materially impacted by seasonality.

### **Employees**

As of December 31, 2009, we employed 1,291 employees and 20 temporary employees who are hired on a contract basis. None of these employees is represented by a collective bargaining agreement.

### **Geographic Areas**

See Note 26 to the Consolidated Financial Statements, “Segment Information”, in Item 15. “Exhibits, Financial Statement Schedules”.

A significant portion of our revenue and income is earned in Barbados, which has low domestic tax rates. See Item 1A. “Risk Factors — Income Tax — Our effective tax rates may increase”.

### **Availability of Information**

The Company’s Internet address is [www.biovail.com](http://www.biovail.com). Our annual report on Form 10-K is available, without charge, on our website, as soon as reasonably practicable after it is filed electronically with the U.S. Securities and Exchange Commission (“SEC”). We will make available, without charge, on our website, all of the quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports filed with or furnished to the SEC pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), as soon as reasonably practicable after they are electronically filed with the SEC. Copies are also available, without charge, and requests for such copies should be directed to us at the following address: Biovail Corporation, 7150 Mississauga Road, Mississauga, Ontario, Canada, L5N 8M5, Attention: Investor Relations; by telephone (905) 286-3000; by facsimile (905) 286-3050; or by email to [ir@biovail.com](mailto:ir@biovail.com). References to our website addressed in this report are provided as a convenience and do not constitute, nor should be viewed as, an incorporation by reference of the information contained on, or available through, the website. Therefore, such information should not be considered a part of this report.

## C. Organizational Structure

Set out below are the Company's principal operating subsidiaries as at December 31, 2009 (all of which are wholly-owned).

| <u>Company</u>                                              | <u>Jurisdiction of Incorporation</u> | <u>Nature of Business</u>                                                                                                        | <u>Address</u>          |
|-------------------------------------------------------------|--------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| Biovail Laboratories International SRL . . .                | Barbados                             | Strategic planning and management of intellectual property, manufacture, sale, development, licensing of pharmaceutical products | Christ Church, Barbados |
| Biovail Laboratories International (Barbados) SRL . . . . . | Barbados                             | Strategic planning and management of intellectual property, manufacture, sale, development, licensing of pharmaceutical products | Christ Church, Barbados |
| Biovail Distribution Corporation . . . . .                  | Delaware                             | Distribution of pharmaceutical products                                                                                          | Bridgewater, New Jersey |
| BTA Pharmaceuticals, Inc. . . . .                           | Delaware                             | Distribution of pharmaceutical products                                                                                          | Bridgewater, New Jersey |
| Biovail Technologies Ltd. . . . .                           | Delaware                             | Contract development of pharmaceutical products                                                                                  | Chantilly, Virginia     |
| Biovail Technologies (Ireland) Ltd. . . . .                 | Ireland                              | Distribution of pharmaceutical products and supply chain services                                                                | Dublin, Ireland         |

### Item 1A. Risk Factors.

Investment in our common shares involves a degree of risk. These risks should be carefully considered before any investment is made. The following are some of the key risk factors generally associated with our business. However, the risks described below are not the only ones that we face. Additional risks not currently known to us or that we currently deem immaterial may also impair our business operations.

#### I. COMPANY-SPECIFIC RISKS

##### 1. Ability to In-License, Acquire and Develop Products

**Our future revenue growth and profitability are dependent upon our ability to in-license or otherwise acquire new specialty CNS compounds or other commercially viable products and to further develop or enhance such products. Our failure to do so successfully could have a material adverse effect on our business, financial condition and results of operations and could cause the market value of our common shares to decline.**

Our future revenue growth, profitability and financial condition depend, to a significant extent, on our ability to successfully in-license or otherwise acquire new specialty CNS compounds or other commercially viable products and to further develop or enhance such products. Our success in implementing our specialty CNS strategy is subject to a number of risks, including our ability to identify, effectively evaluate, acquire and develop high priority compounds.

We rely on the acquisition, in-licensing or other access to products or technologies from third-party drug-development companies. Supplementing our product portfolio in this manner requires the commitment of substantial effort and expense in seeking out, evaluating and negotiating collaboration or acquisition agreements, which we may incur without achieving our desired results. In addition, product in-licensing involves inherent risks, including uncertainties due to matters that may affect the successful development or commercialization of the in-licensed product, as well as the possibility of contractual disagreements with regard to terms such as patent rights, license scope or termination rights. Competition for attractive product opportunities is intense and may require us to devote substantial resources, both human and financial, to an opportunity that may not result in a successfully developed, or commercialized, product.

In addition, our current structure, which is dependent in the U.S. on third-party marketing or distribution partners, may make us less attractive to third-party marketers, distributors and licensors of new products, and this may affect our ability to secure such partners.



Product development is subject to a great deal of uncertainty, risk and expense. Development of pharmaceutical candidates may fail or be terminated at various stages of the R&D process, often after substantial financial and other resources have been invested in their exploration and development.

## **2. Preclinical and Clinical Trials**

### **a. We will not be able to commercialize our pipeline products if preclinical studies do not produce successful results or if clinical trials do not demonstrate safety and efficacy in humans.**

The Company and its development partners, as applicable, conduct extensive preclinical studies and clinical trials to demonstrate the safety and efficacy in humans of our pipeline products in order to obtain regulatory approval for the sale of our pipeline products. Preclinical studies and clinical trials are expensive, can take many years and have uncertain outcomes.

In clinical trials for products for specialty CNS conditions, the number of patients that may have the relevant condition may be lower, making it more difficult to recruit the patients necessary to conduct a meaningful clinical trial. Although regulatory requirements may permit smaller-sized clinical trials for products for these types of conditions, demonstrating statistically significant efficacy with a smaller clinical trial population may be more difficult. Also, to the extent that the clinical endpoint for these types of conditions is more easily measured and well-defined, any negative clinical trial results are very apparent.

Our success will depend on the success of the preclinical and clinical trials conducted by us and our development partners. It can take several years to complete the preclinical and clinical trials of a product, and a failure of one or more of these preclinical or clinical trials can occur at any stage of testing. We believe that the development of each of our pipeline products involves significant risks at each stage of testing. If preclinical or clinical trial difficulties and failures arise, our pipeline products may never be approved for sale or become commercially viable.

The risk of preclinical or clinical trial failure is even greater where the pipeline product contains an NCE, or where the pipeline product uses a novel or not fully known mechanism of action. Likewise, the risk of discovering harmful side effects is greater where the pipeline product contains an NCE.

In addition, the possibility exists that:

- the results from early preclinical or clinical trials may not be statistically significant or predictive of results that will be obtained from expanded, advanced clinical trials;
- a pipeline product may not exhibit the expected therapeutic results in humans, may cause harmful side effects or have other unexpected characteristics that may delay or preclude regulatory approval or limit commercial use if approved;
- institutional review boards or regulators, including the FDA and TPD, may hold, suspend or terminate our preclinical or clinical research or the preclinical or clinical trials of our pipeline products for various reasons, including noncompliance with regulatory requirements or if, in their opinion, the participating subjects are being exposed to unacceptable health risks;
- subjects may drop out of our clinical trials;
- our preclinical or clinical trials may produce negative, inconsistent or inconclusive results, and we may decide, or regulators may require us, to conduct additional preclinical or clinical trials;
- the cost of our preclinical or clinical trials may be greater than we currently anticipate; and
- the difficulties and risks associated with preclinical and clinical trials may result in the failure to receive regulatory approval to continue to test or to sell our pipeline products or the inability to commercialize any of our pipeline products.

- b. If clinical trials for our pipeline products are delayed, we may be unable to commercialize our pipeline products on a timely basis, which could have a material adverse effect on our business, financial condition and results of operations and could cause the market value of our common shares to decline.**

Planned clinical trials may not begin on time, may take longer to complete than anticipated, or may need to be restructured after they have begun. Clinical trials can be delayed for a variety of reasons, including delays related to:

- obtaining an effective investigational new drug application, or IND application, or regulatory approval to commence a clinical trial;
- identifying and engaging a sufficient number of clinical trial sites;
- negotiating acceptable clinical trial agreement terms with prospective trial sites;
- obtaining institutional review board approval to conduct a clinical trial at a prospective site;
- recruiting qualified subjects to participate in clinical trials in a timely manner;
- competition in recruiting clinical investigators;
- shortage or lack of availability of supplies of drugs for clinical trials;
- the need to repeat clinical trials as a result of inconclusive results or poorly executed testing;
- the placement of a clinical hold on a study;
- the failure of third parties conducting and overseeing the operations of our clinical trials to perform their contractual or regulatory obligations in a timely fashion; and
- exposure of clinical trial subjects to unexpected and unacceptable health risks or noncompliance with regulatory requirements, which may result in suspension of the trial.

Our pipeline products have significant milestones to reach, including the successful completion of clinical trials, before commercialization. If we experience significant delays in or termination of clinical trials, our financial results and the commercial prospects for our pipeline products or any other products that we may develop will be adversely impacted. In addition, our product development costs would increase and our ability to generate revenue could be impaired.

- c. We rely on third parties to conduct, supervise and monitor our clinical trials, and those service providers may perform in an unsatisfactory manner, such as by failing to meet established deadlines for the completion of such trials.**

We rely on third parties such as CROs, medical institutions and clinical investigators to enroll qualified patients and conduct, supervise and monitor our clinical trials. Our reliance on these service providers for clinical development activities reduces our control over these activities. Our reliance on these service providers, however, does not relieve us of our regulatory responsibilities, including ensuring that our clinical trials are conducted in accordance with good clinical practice regulations, and the investigational plan and protocols contained in the relevant regulatory application, such as the IND application. In addition, they may not complete activities on schedule, or may not conduct our preclinical studies or clinical trials in accordance with regulatory requirements or our trial design. If these service providers do not successfully carry out their contractual duties or meet expected deadlines, our efforts to obtain regulatory approvals for, and to commercialize, our product candidates may be delayed or prevented.

### **3. Regulatory Approvals and Compliance**

- a. If we fail to obtain regulatory approval to sell our pipeline products we would not be able to generate related revenues in future periods, which could have a material adverse effect on our business and results of operations and could cause the market value of our common shares to decline.**

FDA and TPD approval is required before any prescription drug product, including generic drug products, can be sold in the U.S. and Canada, respectively. Other countries may also have similar regulatory approval

requirements before products can be sold in those countries. The process of obtaining FDA, TPD and other regulatory approvals to manufacture and market new and generic pharmaceutical products is rigorous, time consuming, costly and largely unpredictable. The timing and cost of obtaining FDA, TPD and other regulatory approvals, or the failure to obtain such approvals, could adversely affect our product introduction plans, business, financial condition and results of operations and could cause the market value of our common shares to decline.

If we do not receive regulatory approval to sell our pipeline products, we will not be able to generate revenues in future periods for such products, which could have a material adverse effect on our business and results of operations and could cause the market value of our common shares to decline.

**b. Our marketing, promotional and pricing practices, as well as the manner in which an in-house or third-party sales force interact with purchasers, prescribers and patients, are subject to extensive regulation and any material failure to comply could result in significant sanctions against the Company.**

The marketing, promotional, and pricing practices of pharmaceutical companies, as well as the manner in which companies, in-house or third-party sales forces interact with purchasers, prescribers, and patients, are subject to extensive regulation. Regulatory enforcement by the applicable agency may result in the imposition of civil and/or criminal penalties, injunctions, and/or limitations on marketing practice for our products. Many companies, including Biovail, have been the subject of claims related to these practices asserted by federal authorities. These claims have resulted in fines and other consequences to the Company. We are now operating under a CIA that requires us to maintain a comprehensive compliance program governing our sales, marketing and government pricing and contracting functions. Material failures to comply with the CIA could result in significant sanctions to the Company. For example, enforcement actions could result in expansion of the existing restrictions on our sales and marketing activities under the CIA. See Item 3. “Legal Proceedings”. Even in jurisdictions like Canada where certain types of marketing practices are regulated more through guidelines and codes of conduct than legislation, engaging in certain types of marketing practices can result in significant scrutiny, negative publicity and harm to business relationships even if the company is not breaching any legislation.

**c. We may incur significant liability if it is determined that we are promoting the “off-label” use of drugs.**

Companies may not promote drugs for “off-label” uses — that is, uses that are not described in the product’s labelling and that differ from those approved by the FDA, TPD or other applicable regulatory agencies. Physicians may prescribe drug products for off-label uses, and such off-label uses are common across medical specialties. Although the FDA, TPD and other regulatory agencies do not regulate a physician’s choice of treatments, the FDA, TPD and other regulatory agencies do restrict communications by pharmaceutical companies or their sales representatives on the subject of off-label use. The FDA, TPD and other regulatory agencies actively enforce regulations prohibiting promotion of off-label uses and the promotion of products for which marketing clearance has not been obtained. A company that is found to have improperly promoted off-label uses may be subject to significant liability, including civil and administrative remedies as well as criminal sanctions. Notwithstanding the regulatory restrictions on off-label promotion, the FDA, TPD and other regulatory authorities allow companies to engage in truthful, non-misleading, and non-promotional speech concerning their products. Although we believe that all of our communications regarding all of our products are in compliance with the relevant regulatory requirements, the FDA, TPD or another regulatory authority may disagree, and we may be subject to significant liability, including civil and administrative remedies, as well as criminal sanctions. In addition, management’s attention could be diverted from our business operations and our reputation could be damaged. Our distribution partners may also be the subject of regulatory investigations involving, or remedies or sanctions for, off-label uses of products we have licensed to them, which may have an adverse impact on sales of such licensed products, which may, in turn, have a material adverse effect on our business, financial condition and results of operations and could cause the market value of our common shares to decline.

- d. All products manufactured by us or for us by third-party manufacturers must be made in a manner consistent with FDA-mandated, TPD-mandated and ICH-mandated GMP which require substantial expenditures of time, money and effort.**

All products manufactured by us or for us by third-party manufacturers must be made in a manner consistent with FDA-mandated, TPD-mandated and ICH-mandated GMP. Compliance with GMP regulations requires substantial expenditures of time, money and effort in such areas as production, quality control and quality assurance to ensure full technical, facility and system compliance. The FDA, TPD and other regulatory authorities inspect on a regular basis our and our third-party manufacturers' manufacturing facilities for compliance. Failure to comply with GMP regulations could occur for various reasons, including failure of a product to meet or maintain specifications, stability issues or unexpected trends in patient adverse drug reactions ("ADRs"). If the regulatory agencies were to require one of our or our third-party manufacturers' manufacturing facilities to cease or limit production, our business could be adversely affected, in part because regulatory approval to manufacture a drug is generally site-specific. As a result of ceasing manufacturing and packaging at the Dorado, Puerto Rico facility our in-house manufacturing will largely be concentrated at our Steinbach, Manitoba facility with the Carolina, Puerto Rico facility remaining open indefinitely in order to meet higher demand for generic Tiazac® and generic Cardizem® CD products. Delay and cost in obtaining regulatory approval to manufacture at a different facility also could have a material adverse effect on our business, financial condition and results of operations and could cause the market value of our common shares to decline.

In addition, if we or our third-party manufacturers fail to comply with applicable continuing regulatory requirements, our business could be seriously harmed because a regulatory agency may:

- issue warning letters;
- suspend or withdraw our regulatory approval for approved or in-market products;
- seize or detain products or recommend a product recall;
- refuse to approve pending applications or supplements to approved applications filed by us;
- suspend any of our ongoing clinical trials;
- impose restrictions or obligations on our operations, including costly new manufacturing requirements;
- close our facilities or those of our contract manufacturers; or
- impose civil or criminal penalties.

Under certain circumstances, regulatory agencies also have the authority to revoke previously granted drug approvals. These policies may change and additional U.S. or Canadian federal, provincial, state or local governmental regulations or foreign governmental regulations may be enacted that could affect our ability to maintain compliance. We cannot predict the likelihood, nature or extent of adverse governmental regulation that may arise from future legislation or administrative action.

If we or our third-party manufacturers were deemed to be deficient regarding regulatory compliance in any significant way, it could have a material adverse effect on our business, financial condition and results of operations and it could cause the market value of our common shares to decline.

#### **4. Manufacturing, Supply and Delivery**

- a. Manufacturing difficulties or delays may adversely affect our business, financial condition and results of operations and could cause the market value of our common shares to decline.**

Our manufacturing and other processes use complicated and sophisticated equipment, which sometimes requires a significant amount of time to obtain and install. In addition, the closure of our Dorado, Puerto Rico facility, which we intend to close in 2010, will concentrate the majority of our in-house manufacturing at our Steinbach, Manitoba facility and, as a result, we will face risks inherent in manufacturing our products largely at a single facility. Manufacturing complexity, testing requirements and safety and security processes combine to

increase the overall difficulty of manufacturing these products and resolving manufacturing problems that we may encounter. Although we endeavour to properly maintain our equipment, including through on-site quality control and experienced manufacturing supervision, and have key spare parts on hand, our business could suffer if certain manufacturing or other equipment, or all or a portion of our remaining facility, were to become inoperable for a period of time. This could occur for various reasons, including catastrophic events, such as hurricanes, earthquakes or other natural disasters, explosions, environmental accidents, pandemics, quarantine, equipment failures or delays in obtaining components or replacements, construction delays or defects and other events, both within and outside of our control. We will not have a secondary or back-up manufacturing facility in place to assist with these manufacturing and other processes should any of these events occur. As a result, we could experience substantial production delays in the event of any such occurrence until we build or locate replacement equipment or a replacement facility, as applicable, and seek to obtain necessary regulatory approvals for such replacement. Any interruption in our manufacture of products could have a material adverse effect on our business, financial condition and results of operations and could cause the market value of our common shares to decline.

- b. If we are unable to optimize the use of or expand our manufacturing facilities or secure cost-effective third-party manufacturing arrangements in a timely manner, we may be unable to meet market demand for our products, which could affect our business, financial condition and results of operations and could cause the market value of our common shares to decline.**

We have, in past years, operated some of our manufacturing facilities on a 24-hour-a-day, seven-day-a-week production cycle to meet the market demand for current in-market products and anticipated product launches. Successfully operating on that basis and meeting the anticipated market demand requires minimal equipment failures and product rejections. In addition, we manufacture products that employ a variety of technology platforms. Some of our manufacturing facilities may, at times, be scheduled in excess of rated capacity, while others may be under-utilized. Unless our manufacturing processes are optimized or our manufacturing facilities are expanded where appropriate, or we secure cost-effective third-party manufacturing arrangements in a timely manner, we may have difficulty fulfilling all demand for new large volume products, which could adversely affect our results of operations, financial condition and cash flows. In addition, if we are required to expand any of our facilities, it may require significant capital investment. If we are unable to complete any expansion projects in a timely and cost-efficient manner or adequately equip the expanded facilities in a timely and cost-effective manner or we experience delays in receiving FDA and TPD approvals for these expanded facilities, it could have a material adverse effect on our business, financial condition and results of operations and could cause the market value of our common shares to decline.

- c. Disruptions of delivery of our products and the routine flow of manufactured goods across the U.S. border could adversely impact our business, financial condition and results of operations and could cause the market value of our common shares to decline.**

The supply of our products to our customers is subject to and dependent upon the use of transportation services. Disruption of transportation services could adversely impact our financial results. In addition, our manufacturing facilities are located outside the continental U.S. and most of our sales are within the U.S. A significant portion of our revenue is derived from products that are imported into the U.S. in finished dosage form from Canada or other countries and must undergo review by the Department of Homeland Security — U.S. Customs and Border Protection (“DHS-CBP”). We also purchase products from third parties outside the U.S. Disruption to the routine flow of manufactured goods across the border could have a significant impact on when revenues are recognized and the willingness of customers to continue to purchase products that we import from outside of the U.S. As such, any change in policy or policy implementation relating to U.S. border controls may have an adverse impact on our access to the U.S. marketplace that, in turn, could have a material adverse effect on our business, financial condition and results of operations and could cause the market value of our common shares to decline.

Over the past few years, pharmaceutical products manufactured outside of the U.S. have been associated with significant adverse health effects and/or as posing elevated risks even in the absence of adverse effects. As a result, there is increased interest in disclosure with regard to foreign sourcing of ingredients. Current practice



within the pharmaceutical industry with respect to country of origin marking (“COOM”) is in a period of transition toward more disclosure. Compliance determinations at U.S. border stations are complicated by the fact that the country of origin for tariff purposes may not be the same as for COOM purposes and may be different still from the FDA “manufactured by” statement. The result can be that DHS-CBP may issue a Notice to Mark and/or Notice to Redeliver — incurring relabeling costs and delay — that may or may not be well founded and/or penalties and fines for products deemed to be improperly presented for importation. Not all of our customers have adopted the same approach to COOM and instructions from border officials can vary. In addition, repeated presentation of goods with similar compliance deficiencies can result in fines. We may be exposed to such costs and disruption until we can establish and confirm agreement with our customers to accept a consistent set of labelling rules that are also acceptable to DHS-CBP.

- d. If we are unable to obtain components or raw materials, or products supplied by third parties, our ability to manufacture and deliver our products to the market may be impeded, which could have a material adverse effect on our business, financial condition and results of operations and could cause the market value of our common shares to decline.**

Some components and raw materials used in our manufactured products, and some products sold by us, are currently available only from one or a limited number of domestic or foreign suppliers. Such suppliers must be qualified in accordance with applicable regulatory requirements and the process of qualifying a supplier can be costly and time consuming. In the event an existing supplier becomes unavailable through business interruption or financial insolvency or loses its regulatory status as an approved source and we do not have a second supplier, we will attempt to locate a qualified alternative; however, we may be unable to obtain the required components, raw materials or products on a timely basis or at commercially reasonable prices. A prolonged interruption in the supply of a single-sourced raw material, including the API, or finished product or the occurrence of quality deficiencies in the products which our suppliers provide, could have a material adverse effect on our business, financial condition and results of operations, and the market value of our common shares could decline.

Our arrangements with foreign suppliers are subject to certain additional risks, including the availability of government clearances, export duties, transport issues, political instability, currency fluctuations and restrictions on the transfer of funds. Arrangements with international raw material suppliers are subject to, among other things, FDA and TPD regulation, various import duties and required government clearances. Acts of governments outside the U.S. and Canada may affect the price or availability of raw materials needed for the development or manufacture of our products. The degree of impact such a situation could have would, in part, depend on the product affected.

In addition, we rely on third-party manufacturers to supply certain products that we market or distribute, including Cardizem® CD, Vasotec®, Vaseretic®, Zovirax®, Ativan®, Wellbutrin® SR, Zyban®, Glumetza® 500 mg, Isordil®, Xenazine® and Nitoman®. Our manufacturers may suffer an interruption, including due to manufacturing or shipping problems, financial insolvency, regulatory inspections or difficulty in sourcing components or raw materials. We are also vulnerable to a supply interruption should we be unable to renew or replace, or successfully transfer, such supply arrangements when our current agreements with our third-party manufacturers expire, in which case we may experience an interruption in our supply. Any such supply interruption could have an adverse impact on our operations.

- e. Delays or transition issues arising from the closure of our Dorado, Puerto Rico manufacturing facility may adversely affect our business and results of operations and could cause the market value of our common shares to decline.**

In support of the implementation of our specialty CNS strategy, we are consolidating our manufacturing resources through the closure of our Dorado, Puerto Rico manufacturing facility and the transfer of certain manufacturing processes to our Steinbach, Manitoba facility. We anticipate that the site in Dorado will be fully transitioned to Steinbach early in 2010. If we experience a delay in transitioning such manufacturing processes to Steinbach, or if we experience other disruptions or issues (including a delay in obtaining necessary regulatory approvals) in transitioning these manufacturing processes to Steinbach, we could fail to deliver our products in a timely manner, which could adversely affect our relationships with our customers and business partners, which,

in turn, could adversely affect our business and results of operations and could cause the market value of our common shares to decline. The Carolina, Puerto Rico site is expected to remain open indefinitely due to increased demand for products manufactured in this plant.

## **5. Commercialization and Marketing**

### **a. Our approved products may not achieve or maintain expected levels of market acceptance, which could have a material adverse effect on our business, financial condition and results of operations and could cause the market value of our common shares to decline.**

Even if we are able to obtain regulatory approvals for our new pharmaceutical products, generic or branded, the success of those products is dependent upon achieving and maintaining market acceptance. New product candidates that appear promising in development may fail to reach the market or may have only limited or no commercial success. Levels of market acceptance for our new products could be impacted by several factors, many of which are not within our control, including but not limited to:

- safety, efficacy, convenience and cost-effectiveness of our products compared to products of our competitors;
- scope of approved uses and marketing approval;
- timing of market approvals and market entry;
- availability of alternative products from our competitors;
- acceptance of the price of our products; and
- ability to market our products effectively at the retail level or in the appropriate setting of care.

Further, the discovery of significant problems with a product similar to one of our products that implicate (or are perceived to implicate) an entire class of products could have an adverse effect on sales of the affected products. Accordingly, new data about our products, or products similar to our products, could negatively impact demand for our products due to real or perceived side effects or uncertainty regarding efficacy and, in some cases, could result in product withdrawal.

These situations, should they occur, could have a material adverse effect on our business, financial condition and results of operations and could cause the market value of our common shares to decline.

### **b. We may not be able to establish or acquire a U.S. sales force to effectively support our specialty CNS strategy.**

We currently do not have an in-house sales force to market our products in the U.S. In the U.S., our products are marketed through strategic alliances with commercial parties with established sales and marketing infrastructures. In order to support our specialty CNS strategy, we plan to create or acquire a specialized U.S. sales force to effectively support the CNS products in our pipeline or CNS products we acquire or develop in the future. To meet our objectives, we must attract and retain highly qualified personnel with specialized skill sets. Competition for qualified personnel can be intense, and we might not be successful in attracting and retaining them. Our ability to build and maintain a specialized U.S. sales force will depend on our ability to recruit, train and retain top quality people with advanced skills who understand sales to, and the specific needs of, our target customers. Developing a direct sales force is expensive and time consuming and could delay or limit the success of any product launch. The cost of establishing and maintaining a direct sales force may exceed its cost effectiveness. Additionally, we will compete with many companies that currently have extensive and well-funded sales operations. Our sales efforts may be unable to compete successfully against these companies, and we may not be able to develop an effective specialized U.S. sales force on a timely basis or at all. If we are unable to establish an appropriate U.S. sales force to execute our specialty CNS strategy or secure third-party marketing or distribution partners in the U.S., we may not be able to commercialize new products successfully which could have a material adverse effect on our business, financial condition and results of operations and could cause the market value of our common shares to decline.

**c. We may not be able to effectively establish third-party marketing or distribution arrangements.**

The success of any new product will depend on our ability to secure third-party marketing or distribution arrangements in the U.S. and elsewhere in the absence of a specialty in-house sales force appropriate to the relevant subscribing community. Seeking out, evaluating and negotiating marketing partnership agreements may involve the commitment of substantial time and effort and may not ultimately result in a viable marketing or distribution relationship. If we enter into a marketing agreement whereby we outsource marketing and promotional activities, including creation and implementation of a sales force, to a third-party, our control over specific materials and tactics used by that sales force may be diminished as compared with a specialty in-house sales force. If we are unable to establish an appropriate U.S. sales force to execute our specialty CNS strategy or secure third-party marketing or distribution arrangements in the U.S., we may not be able to commercialize new products successfully which could have a material adverse effect on our business, financial condition and results of operations and could cause the market value of our common shares to decline.

**d. We may experience reductions in the levels of reimbursement for or acceptance of pharmaceutical products by governmental authorities, HMOs or other third-party payors. Any such reductions could have a material adverse effect on our business, financial condition and results of operations and could cause the market value of our common shares to decline.**

A number of legislative and regulatory proposals aimed at changing the U.S. healthcare system, and changes in the levels at which pharmaceutical companies are reimbursed for sales of their products or pricing of drugs, have been proposed. In addition, as a result of the focus on healthcare reform in connection with the current presidential administration in the U.S., Congress may implement changes in laws and regulations governing healthcare service providers, including measures to control costs or reductions in reimbursement levels or price controls, which may have an adverse impact on our business. While we cannot predict when or whether any of these proposals will be adopted, or the effect these proposals may have on our business, the pending nature of these proposals, as well as the adoption of any proposal, may exacerbate industry-wide pricing pressures and could have a material adverse effect on our business, financial condition and results of operations.

Various governmental authorities and private health insurers and other organizations, such as HMOs, managed care organizations (“MCOs”) and provincial formularies provide reimbursement to consumers for the cost of certain pharmaceutical products. Our ability to successfully commercialize our products and product candidates — even if FDA or TPD approval is obtained — and the demand for our products depend, in part, on the extent to which reimbursement is available from such third-party payors.

Third-party payors are increasingly becoming less willing to reimburse for medications which offer primarily convenience to and greater compliance among patients (such as once-daily formulations) and are focusing more on products that offer clinically meaningful benefits. If we are not able to execute our specialty CNS strategy, which we believe is designed to address this shift, it could have a material adverse effect on our business, financial condition and results of operations. Even if we continue to successfully execute our specialty CNS strategy, the products that will be commercialized are likely to be costly. Insurers may be reluctant to list such drugs on their formulary, thus limiting reimbursement of those products and having a material adverse affect on volume of sales.

Third-party payors increasingly challenge the pricing of pharmaceutical products. In addition, the trend toward managed healthcare in the U.S., the growth of organizations such as HMOs and MCOs and legislative proposals and other initiatives in the U.S. and Canada to reform healthcare and government insurance programs, could significantly influence the purchase of pharmaceutical products (both brand and generic drugs), resulting in lower prices and/or a reduction in product demand. For example, some of the provinces in Canada have implemented or are considering implementing cost saving measures such as requiring brand name drug companies to enter into “risk-sharing or listing agreements” with the province whereby the drug company pays “rebates” or other incentives to the province to list the drug on the provincial formulary. In addition, although currently this practice has been limited, some provinces are instituting tenders to determine which interchangeable product will be listed on the provincial formulary. Further, some provinces reimburse generic drugs based on a formula equal to a percentage of the price of the corresponding brand name drug and one

recent trend has been to significantly lower the percentage at which generics will be reimbursed. Other provinces (the four western provinces and the territories) have announced that they will form a joint prescription drug buying plan to better leverage their buying power. These and other cost-containment measures and healthcare reforms could affect our ability to sell our products at viable prices, could have a material adverse effect on our business, financial condition and results of operations and could cause the market value of our common shares to decline. By way of further example, in the U.S., the Medicare Prescription Drug, Improvement and Modernization Act of 2003 established a voluntary outpatient prescription drug benefit under Part D of the Social Security Act. The program, which went into effect January 1, 2006, is administered by the Centers for Medicare & Medicaid Services within the Department of Health and Human Services and is implemented and operated by private sector Part D plan sponsors. Each participating drug plan is permitted by regulation to develop and establish its own unique drug formulary that may exclude certain drugs from coverage, impose prior authorization and other coverage restrictions, and negotiate payment levels for drugs which may be lower than reimbursement levels available through private health plans or other payors. Moreover, beneficiary co-insurance requirements could influence which products are recommended by physicians and selected by patients. To the extent that private insurers or managed care programs follow Medicare Part D coverage and payment developments, the adverse effects of lower Medicare payments may be magnified by private insurers adopting similar lower payments. New federal or state drug payment changes or healthcare reforms in the U.S. may be enacted or adopted in the future that could further lower payment for our products.

Uncertainty exists about the reimbursement status of newly approved pharmaceutical products. Reimbursement in the U.S., Canada or foreign countries may not be available for some of our products. Any reimbursement granted may not be maintained, or limits on reimbursement available from third parties may reduce the demand for, or negatively affect the price of, those products. We are also unable to predict if additional legislation or regulation or non-legislative initiatives impacting the healthcare industry or third-party coverage and reimbursement may be enacted in the future, or what effect such legislation or regulation or non-legislative initiatives would have on our business. Any reimbursement may be reduced in the future, perhaps to the point that market demand for our products declines. Such decline could have a material adverse effect on our business, financial condition and results of operations and could cause the market value of our common shares to decline.

Changes to Medicare, Medicaid or similar governmental programs — or the amounts paid by those programs for our services — may adversely affect our business, financial condition and results of operations. These programs are highly regulated and subject to frequent and substantial changes and cost-containment measures. In recent years, changes in these programs have limited and reduced reimbursement to providers.

The prices of drugs sold or reimbursed in a particular jurisdiction can impact the prices at which such drug is sold or reimbursed in other jurisdictions. For example, the province of Quebec has a “most favoured nation” clause regarding the price at which it will reimburse drugs. The maximum price at which patented drugs can be sold in Canada is regulated by the Patented Medicine Prices Review Board and is dependent on the price at which the drug is sold in certain countries in the world. Therefore, decreases in prices in one jurisdiction can have repercussions in other jurisdictions.

- e. A relatively small group of products represents a significant portion of our revenues, gross profit and earnings. If, due to genericization or otherwise, the volume or pricing of any of these products declines or the costs of related manufacturing, distribution or marketing increase, it could have a material adverse effect on our business, financial condition and results of operations and could cause the market value of our common shares to decline.**

Sales of a limited number of our products represent a significant portion of our revenues, gross profit and earnings. As the volume or pricing of our existing significant products declines in the future, our business, financial condition, and results of operations could be materially adversely affected and this could cause the market value of our common shares to decline.

The genericization of our existing products is one of the reasons for the current or continued decline in volume and pricing of our products. Following the initial pricing and volume impact of genericization, pricing

and volume may either decrease further or increase dependent upon market and competitive conditions. In addition, if this or any of our other key products were to become subject to any other issues, such as material adverse changes in prescription growth rates, unexpected side effects, regulatory proceedings, material product liability litigation, publicity affecting doctor or patient confidence or pressure from competitive products, the adverse impact on our business, financial condition and results of operations and market value of our common shares could be significant.

**f. The pharmaceutical industry is highly competitive and is subject to rapid and significant technological change, which could render our technologies and products obsolete or uncompetitive.**

The pharmaceutical industry is highly competitive and is subject to rapid and significant technological change that could render certain of our products obsolete or uncompetitive. Many of our competitors are conducting R&D activities in therapeutic areas targeted by our products and our product development candidates. The introduction of competitive therapies as alternatives to our existing products may negatively impact our revenues from those products, and the introduction of products that directly compete with products in development could dramatically reduce the value of those development projects or chances of successfully commercializing those products, which could have a material adverse effect on our long-term financial success. For example, our Legacy Products (as described in Item 1.B., “Business — Business Overview — Current Product Portfolio and Product Revenues”) face competition from conventional forms of drug delivery and from controlled release drug-delivery systems developed, or under development, by other companies.

We compete with companies in North America and internationally, including major pharmaceutical and chemical companies, specialized CROs, research-and-development firms, universities and other research institutions. Many of our competitors have greater financial resources and selling and marketing capabilities, greater experience in clinical testing and human clinical trials of pharmaceutical products and greater experience in obtaining FDA, TPD and other regulatory approvals than we do. In addition, some of our competitors may have lower development and manufacturing costs. Our competitors may succeed in developing technologies and products that are more effective or less expensive to produce or use than any that we may develop or license. These developments could render our technologies and products obsolete or uncompetitive, which could have a material adverse effect on our business, financial condition and results of operations and could cause the market value of our common shares to decline.

**g. We have entered into distribution agreements with other companies to distribute certain of our generic products at supply prices based on net sales. Declines in the pricing and/or volume, over which we have no control, of such generic products, and therefore the amounts paid to us, may have a material adverse effect on our business and results of operations and could cause the market value of our common shares to decline.**

Our portfolio of generic products is the subject of various agreements, pursuant to which we manufacture and sell generic products to other companies, which distribute such products in the U.S. and Canada at a supply price typically based on net sales. These companies make all distribution and pricing decisions independently of Biovail. If the pricing and/or volume of such generic products declines, our revenues could be adversely impacted which could have a material adverse effect on our business and results of operations and could cause the market value of our common shares to decline.

## **6. Post-Approval and Post-Marketing Regulatory Impacts**

**a. Our marketed drugs will be subject to ongoing regulatory review. If we fail to comply with U.S. and Canadian regulatory requirements and those in other territories where our products are sold, we could lose our marketing approvals or be subject to fines or other sanctions, which could have a material adverse effect on our business, financial condition and results of operations and could cause the market value of our common shares to decline.**

Following initial regulatory approval of any drugs we or our partners may develop, we will be subject to continuing regulatory review by the FDA, the TPD and other regulatory authorities in territories where our products are marketed or intended to be marketed, including the review of adverse drug events and clinical



results that are reported after product candidates become commercially available. This may include results from any post-marketing follow-up studies or other reporting required as a condition to approval. The manufacturing, labeling, packaging, storage, distribution, advertising, promotion, reporting and recordkeeping related to the product will also be subject to extensive ongoing regulatory requirements. In addition, incidents of ADRs, unintended side effects or misuse relating to our products could result in additional regulatory controls or restrictions, or even lead to withdrawal of a product from the market. Similarly, our CRD operations could suffer a loss of business or be subject to liability should a serious ADR occur during the course of their conduct of a study.

**b. Our approved products may be subject to additional clinical trials which could result in the loss of marketing approval, changes in product labeling or new or increased concerns about side effects or efficacy.**

As a condition to granting marketing approval of a product, the FDA and TPD may require a company to conduct additional clinical trials. The results generated in these trials could result in the subsequent loss of marketing approval, changes in product labeling or new or increased concerns about side effects or efficacy of a product. On September 27, 2007, the *Food and Drug Administration Amendments Act of 2007* (“FDAA”) was enacted, giving the FDA enhanced post-market authority, including the explicit authority to require post-market studies and clinical trials, labeling changes based on new safety information and compliance with FDA-approved risk evaluation and mitigation strategies. The FDA’s exercise of this authority could result in delays or increased costs during product development, clinical trials and regulatory review, increased costs to comply with post-approval regulatory requirements and potential restrictions on sales of approved products. Post-marketing studies, whether conducted by us or by others and whether mandated by regulatory agencies or undertaken voluntarily, and other emerging data about marketed products, such as adverse event reports, may also adversely affect sales of our products. Such studies, which increasingly employ sophisticated methods and techniques, may call into question the utilization, safety and efficacy of previously marketed products. In some cases, studies may result in the discontinuance of product marketing or the need for risk management programs. In addition, government agencies may determine that a product should be scheduled as a controlled substance under the *Controlled Drugs and Substances Act* (the “CDSA”), as has been proposed by Health Canada for our tramadol products. If one of our products is scheduled under the CDSA or a similar regulation, such regulation would reduce practitioner prescriptions for such product, which may lead to a reduction in revenues from such product. Such regulation may also increase the costs of manufacturing and distributing such product in order to meet the regulatory requirements applicable to controlled substances, such as process upgrades and renovations required at our facilities and changes to our manufacturing, storage and transportation practices.

## **7. Intellectual Property**

**a. We may be unable to effectively protect our intellectual and other proprietary property, which could have a material adverse effect on our business, financial condition and results of operations and could cause the market value of our common shares to decline.**

The pharmaceutical industry historically has generated substantial litigation concerning the manufacture, use and sale of products and we expect this litigation activity to continue. Generic drug manufacturers seek to sell and, in a number of cases have sold generic versions of many of our most important products prior to the expiration of our patents, and have exhibited a readiness to do so for other products in the future. As a result, we expect that patents related to our products will be routinely challenged, and our patents may not be upheld. If we are not successful in defending an attack on our patents and maintaining exclusive rights to market one or more of our major products still under patent protection, we could lose a significant portion of sales in a very short period, which could have a material adverse effect on our business, financial condition and results of operations and could cause the market value of our common shares to decline. See Item 1.B. “Business — Business Overview — Patents and Proprietary Rights”, for more information on our intellectual property rights and Item 3. “Legal Proceedings — Intellectual Property”, for a discussion of intellectual property-related proceedings in which we are involved.

In addition, we rely on trade secrets, know-how and other proprietary information to provide additional legal protection to various aspects of our business, including information about our formulations, manufacturing methods and analytical procedures, as well as information contained in our Company documents and regulatory filings. Although we require our employees and other vendors and suppliers to sign confidentiality agreements, we may not have adequate remedies in the event of a breach of these confidentiality agreements. Furthermore, the trade secrets and proprietary technology upon which we rely may otherwise become known or be independently developed by our competitors without infringing upon any proprietary technology. Our success will depend, in part, on our ability in the future to protect those trade secrets and other proprietary information.

The cost of responding to challenges to our patents and the inherent costs to defend the validity of our patents, including the prosecution of infringements and the related litigation, and to protect our other intellectual property could be substantial and could preclude or delay commercialization of products. Such litigation could also require a substantial commitment of our management's time.

**b. We may be subject to intellectual property litigation and infringement claims, which could have a material adverse effect on our business, financial condition and results of operations and could cause the market value of our common shares to decline.**

Our success will depend, in part, on our ability in the future to obtain patents and to operate without infringing on the proprietary rights of others. Our competitors may have filed patent applications, or hold issued patents, relating to products or processes competitive with those we are developing. The patents of our competitors may impair our ability to do business in a particular area.

In the event we discover that we may be infringing third-party patents or other intellectual property rights, we may not be able to obtain licenses from those third parties on commercially attractive terms or at all. We may have to defend against charges that we violated patents or the proprietary rights of third parties. Litigation is costly and time-consuming, and diverts the attention of our management and technical personnel. In addition, if we infringe the intellectual property rights of others, we could lose our right to develop, manufacture or sell products, including our generic products, or could be required to pay monetary damages or royalties to license proprietary rights from third parties. An adverse determination in a judicial or administrative proceeding or a failure to obtain necessary licenses could prevent us from manufacturing or selling our products, which could have a material adverse effect on our business, financial condition, and results of operations and could cause the market value of our common shares to decline. See Item 3. "Legal Proceedings — Intellectual Property", for a discussion of intellectual property-related proceedings in which we are involved.

## **8. Income Tax**

**a. Our effective tax rates may increase.**

We have operations in various countries that have differing tax laws and rates. A significant portion of our revenue and income is earned in Barbados, a country with a low domestic tax rate. Dividends from such after-tax business income are received tax-free in Canada. Our tax structure is supported by current domestic tax laws in the countries in which we operate and the application of tax treaties between the various countries in which we operate. Our income tax reporting is subject to audit by domestic and foreign authorities. Our effective tax rate may change from year to year based on changes in the mix of activities and income allocated or earned among the different jurisdictions in which we operate; changes in tax laws in these jurisdictions; changes in the tax treaties between various countries in which we operate; changes in our eligibility for benefits under those tax treaties; and changes in the estimated values of deferred tax assets and liabilities. Such changes could result in an increase in the effective tax rate on all or a portion of our income to a rate possibly exceeding the statutory income tax rate of Canada or the U.S. See Item 1.B. "Business — Business Overview — Taxation".

Our provision for income taxes is based on certain estimates and assumptions made by management. Our consolidated income tax rate is affected by the amount of net income earned in our various operating jurisdictions, the availability of benefits under tax treaties, and the rates of taxes payable in respect of that income. We enter into many transactions and arrangements in the ordinary course of business in respect of which the tax treatment is not entirely certain. We must therefore make estimates and judgments based on our knowledge and understanding of applicable tax laws and tax treaties, and the application of those tax laws and

tax treaties to our business, in determining our consolidated tax provision. For example, certain countries could seek to tax a greater share of income than has been provided for by us. The final outcome of any audits by taxation authorities may differ from the estimates and assumptions we have used in determining our consolidated tax provisions and accruals. This could result in a material adverse effect on our consolidated income tax provision, financial condition and the net income for the period in which such determinations are made.

We have recorded a valuation allowance on deferred tax assets relating to our Canadian operating losses, Scientific Research and Experimental Development pool, investment tax credit carryforward balances, provisions for legal settlements, and future tax depreciation. We have assumed that these deferred tax assets are more likely than not to remain unrealized.

Our deferred tax assets and related valuation allowances are affected by events and transactions arising in the ordinary course of business, acquisitions of assets and businesses, and non-recurring items. The assessment of the appropriate amount of the valuation allowance against the net deferred tax asset is dependent upon several factors, including estimates of the realization of deferred income tax assets, which realization is primarily based on forecasts of future taxable income. Significant judgment is applied to determine the appropriate amount of valuation allowance to record. Changes in the amount of the valuation allowance required could materially increase or decrease our provision for income taxes in a given period.

## **9. Litigation and Regulatory Investigations**

### **a. We are involved in various legal proceedings in the U.S. and Canada and may experience unfavourable outcomes of such proceedings, or of future proceedings, which could have a material adverse effect on our business, financial condition and results of operations and could cause the market value of our common shares to decline.**

We are a defendant in antitrust class actions in the U.S. related to our generic Adalat products as well as our Wellbutrin® XL product.

We are also a party to several other actions or may become a party to actions that could similarly impact our business. The above actions are more fully described at Item 3. “Legal Proceedings”.

In all cases, the resolution of these actions could have a material adverse effect on our business, financial condition and results of operations or could cause the market price of our common shares to decline. In addition, we may continue to incur expenses associated with our defense of these actions, and the pending actions may divert the efforts and attention of our management team from normal business operations.

### **b. As a public company, we face risks related to class action lawsuits, including threatened litigation.**

As with any other public company, we may become involved in legal proceedings, including class action securities litigation and derivative lawsuits, which may be brought against us. Court decisions and legislative activity may increase our exposure to any of these types of claims. In some cases, substantial non-economic or punitive damages may be sought against us. We currently maintain insurance coverage for some of these potential liabilities. Other potential liabilities may not be covered by insurance, insurers may dispute coverage or the amount of insurance may not be enough to cover damages awarded. In addition, certain types of damages may not be covered by insurance, and insurance coverage for all or certain forms of liability may become unavailable or prohibitively expensive in the future. Additionally, the outcome of litigation and other legal matters is always uncertain, and outcomes that are not justified by the evidence can occur. It is possible that an unfavourable resolution of one or more legal matters could result in a material adverse effect on our business, financial condition and results of operations and could cause the market value of our common shares to decline.

### **c. We are subject to exposure relating to product liability claims.**

We face an inherent business risk of exposure to significant product liability and other claims in the event that the use of our products results, or is alleged to have resulted, in adverse effects. Furthermore, our products may cause, or may appear to have caused, adverse side effects (including death) or potentially dangerous drug interactions that we may not learn about or understand fully until the drug has been administered to patients for

some time. As our products are used more widely and in patients with varying medical conditions, the likelihood of an adverse drug reaction, unintended side effect or incidence of misuse may increase. In addition, as part of our specialty CNS strategy, we have turned from a primarily reformulation focused business model to one where we are looking to in-license or acquire compounds, including NCEs. As a result, our product liability exposure is greater than when we focused primarily on reformulation of existing drugs. Product liability claims, regardless of their merits or their ultimate outcomes, are costly, divert management's attention and may adversely affect our reputation and demand for our products and may result in significant damages.

Our product liability insurance coverage may not be sufficient to cover our claims and we may not be able to obtain sufficient coverage at a reasonable cost in the future. An inability to obtain product liability insurance at an acceptable cost or to otherwise protect against potential product liability claims could prevent or inhibit the growth of our business or the number of products we can successfully market. The withdrawal of a product following complaints, or a product liability claim could have a material adverse effect on our business, financial condition and results of operations and could cause the market value of our common shares to decline.

#### **10. Senior Convertible Notes**

On June 10, 2009, the Company issued \$350.0 million principal amount of senior convertible notes in a private placement (the "Notes"). See Item 5.G, "Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities — Sale of Unregistered Securities" for a description of the Notes.

**a. We may not be able to refinance the Notes if required or if we so desire.**

The Notes mature in 2014. We may need or desire to refinance all or a portion of the Notes or any other future indebtedness that we incur on or before the maturity of the Notes or such other indebtedness. We may not be able to refinance any of our indebtedness on commercially reasonable terms, if at all.

**b. We may incur substantially more debt or take other actions which may affect our ability to satisfy our obligations under the Notes on a net-share settlement basis.**

We may incur significant additional indebtedness in the future. We will not be restricted under the terms of the Notes or the indenture governing the Notes from incurring any such additional indebtedness, including any secured debt. In addition, the limited covenants applicable to the Notes do not require us to achieve or maintain any minimum financial results relating to our financial position or results of operations. The terms of the Notes do not limit our ability to recapitalize, incur additional debt or take a number of other actions, including repurchasing our common shares. Taking certain of these actions could diminish our ability to execute our stated intention to settle the Notes at maturity on a net-share settlement basis.

**c. The issuance of a significant number of our common shares upon conversion of the Notes, or the perception of such issuance, could depress the market price of our common shares.**

We have stated our intention to settle the Notes on a net share basis at their maturity. If we are not able to repay or refinance the principal amount of the Notes at maturity we would be required to settle in shares. The issuance of a substantial number of our common shares in connection with the conversion or settlement of the Notes could depress the market price of our common shares and impair our ability to raise capital through the sale of additional equity securities. We cannot predict the effect that future issuances of our common shares would have on the market price of our common shares. Any transaction involving the issuance of common shares, or securities convertible into common shares, would result in dilution, which could be substantial, to holders of our common shares.

## 11. Other Company Risks

- a. **If the companies in which we invest, or with which we partner or co-develop products, are not successful, it could have a material adverse effect on our business, financial condition and results of operations and could cause the market value of our common shares to decline.**

Actions by third parties who control the promotion, pricing, trade rebate levels, product availability or other items for products we supply to them could have a material adverse impact on our financial results.

Economic, governmental, industry and other factors outside our control affect companies with which we may partner or co-develop products. Some of the material risks relating to such companies include:

- the ability of these companies to successfully develop, manufacture and obtain necessary governmental approvals for the products which serve as the basis for our investments in, or relationship with, such companies;
- the ability of competitors of these companies to develop similar or more effective products, making the products developed by these companies difficult or impossible to market;
- the ability of these companies to adequately secure patents for their products and protect their proprietary rights;
- the ability of these companies to enter the marketplace without infringing upon competitors' patents or other intellectual property;
- the ability of these companies to remain financially solvent;
- the ability of these companies to remain technologically competitive; and
- the dependence of these companies upon key scientific and managerial personnel.

We may have limited or no control over the resources that any such company may devote to develop the products for which we collaborate with them. Any such company may not perform as expected. These companies may breach or terminate their agreements with us or otherwise fail to conduct product discovery and development activities successfully, or in a timely manner. The occurrence of any of these events could have a material adverse effect on our business, financial condition and results of operations and could cause the market value of our common shares to decline.

- b. **Our continued success is dependent on our continued ability to attract and retain key personnel. Any failure to attract and retain key personnel could have a material adverse effect on our business, financial condition and results of operations and could cause the market value of our common shares to decline.**

Much of our success to date has resulted from the particular scientific and management skills of personnel available to us. If these individuals are not available, we might not be able to attract or retain employees with similar skills. The continued availability of such individuals is important to our ongoing success. In addition, our success in implementing our specialty CNS strategy is also subject to our ability to further develop and retain competitive in-house R&D expertise in specialty CNS. If we are unsuccessful in attracting and retaining key employees, it could have a material adverse effect on our business, financial condition and results of operations and could cause the market value of our common shares to decline.

- c. **We may not have sufficient cash and may be limited in our ability to access financing for future expenditures, which may prevent us from executing on our CNS strategy and expanding our business and our portfolio of products.**

We may in the future need to incur additional debt or issue equity to fund acquisitions and other investments as contemplated by our specialty CNS strategy, to continue to pay dividends under our dividend policy, to fund working capital needs or to support our limited capital expenditure requirements. To the extent we are unable to renew our credit facility at its maturity in June 2012 or, in the interim, access new sources of capital at affordable rates, we may be unable to expand our business. If we raise funds through the issuance of new debt or equity, any debt securities or preferred shares issued may have rights and preferences and privileges



senior to those of holders of our Notes and common shares. The terms of any new debt securities may impose restrictions on our operations that may have a material adverse effect on our financial condition. If we raise funds through the issuance of equity or convertible debt, the proportional ownership interests of our shareholders would be diluted.

In addition, we may choose to raise additional funds or, upon its maturity in June 2012, renew our credit facility in order to capitalize on perceived opportunities in the marketplace that may accelerate our growth objectives. Our ability to secure such financing in the future will depend in part on the prevailing capital market conditions as well as our business performance. We may not be successful in our efforts to secure financing, if needed, on terms satisfactory to us.

**d. The general business and economic conditions in Canada, the U.S. and other countries in which we conduct business could have a material adverse impact on our liquidity and capital resources.**

The market environment, the lack of liquidity in certain markets, the level of activity and volatility in capital markets and the stability of various financial markets may continue to have an impact on the availability of credit and capital in the near term. If uncertainties in these markets continue, or these markets deteriorate, it could have a material adverse impact on our liquidity, our ability to raise capital and interest costs.

**e. The current business and economic conditions, coupled with the current regulatory environment, could have a negative impact on the pharmaceutical industry, which in turn could have a material adverse effect on our business, financial condition and results of operations and could cause the market value of our common shares to decline.**

The current business and economic conditions in the national and global markets may negatively affect our operations in the future. Our revenues are contingent upon our ability to develop, license or otherwise acquire new commercially viable products and obtain associated regulatory approvals in multiple jurisdictions. Recently, companies globally have experienced volatility in the ability and cost to raise capital in the equity and debt markets or through traditional credit markets to fund business activities. In addition, the increased regulatory environment from the FDA has increased the costs of R&D for pharmaceutical companies. For example, on September 27, 2007, the FDAA was enacted, giving the FDA enhanced post-market authority, including the explicit authority to require post-market studies and clinical trials, labeling changes based on new safety information and compliance with FDA-approved risk evaluation and mitigation strategies. The FDA's exercise of this authority could result in delays or increased costs during product development, clinical trials and regulatory review, increased costs to comply with post-approval regulatory requirements and potential restrictions on sales of approved products. Accordingly, faced with the uncertainty of the availability and cost of raising capital and the potential for increased costs due to regulatory changes, many pharmaceutical companies have recently cut costs, including canceling current clinical trials and not pursuing additional clinical trials. These changes in both the economic and regulatory environments directly affect our business, and, in the event we are unable to conduct necessary R&D activities, our ability to generate revenues could be hindered, which could have a material adverse effect on our business, financial condition and results of operations and could cause the market value of our common shares to decline.

**f. We are exposed to risks relating to currency exchanges.**

We operate internationally, but a majority of our revenue and expense activities and capital expenditures are denominated in U.S. dollars. Our only other significant transactions are denominated in Canadian dollars and our Canadian dollar expenses may not be entirely offset by our Canadian dollar revenues. We also face minor foreign currency exposure on the translation of our non-U.S. dollar functional operations from their local currencies to the U.S. dollar.

As of December 31, 2009, we do not have any outstanding forward foreign exchange contracts.

**g. We are exposed to risks related to interest rates.**

The primary objective of our policy for the investment of temporary cash surpluses is the protection of principal and, accordingly, we invest in investment grade securities with varying maturities, but typically less than

90 days. Our credit facility bears interest based on U.S. Dollar London Interbank Offering Rates, U.S. dollar base rate, Canadian dollar prime rate or Canadian dollar bankers' acceptance rates. While we currently do not have any outstanding borrowings under this facility, to the extent we borrow material amounts under this facility in the future, a change in interest rates could have a material adverse effect on our results of operations, financial condition or cash flows.

As of December 31, 2009, we do not have any outstanding interest rate swap contracts.

**h. Our securities are subject to price volatility.**

Stock market trading prices for the securities of pharmaceutical and biotechnology companies, including our own, have historically been highly volatile, and such securities have from time to time experienced significant price and volume fluctuations that are unrelated to the operating performance of particular companies. For example, during the 12-month period ended December 31, 2009, the price of our common shares ranged from a low of \$9.26 to a high of \$15.50 on the New York Stock Exchange ("NYSE").

**i. Our failure to comply with applicable environmental laws and regulations worldwide could have a material adverse effect on our business, financial condition and results of operations and could cause the market value of our common shares to decline.**

We are subject to laws and regulations concerning the environment, safety matters, regulation of chemicals and product safety in the countries where we manufacture and sell our products or otherwise operate our business. These requirements include regulation of the handling, manufacture, transportation, use and disposal of materials, including the discharge of pollutants into the environment. In the normal course of our business, hazardous substances may be released into the environment, which could cause environmental or property damage or personal injuries, and which could subject us to remediation obligations regarding contaminated soil and groundwater or potential liability for damage claims. Under certain laws, we may be required to remediate contamination at certain of our properties regardless of whether the contamination was caused by us or by previous occupants of the property or by others.

In recent years, the operations of all companies have become subject to increasingly stringent legislation and regulation related to occupational safety and health, product registration and environmental protection. Such legislation and regulations are complex and constantly changing, and future changes in laws or regulations may require us to install additional controls for certain of our emission sources, to undertake changes in our manufacturing processes or to remediate soil or groundwater contamination at facilities where such cleanup is not currently required.

**j. Rising insurance costs or our inability to obtain insurance could have a material adverse effect on our business, financial condition and results of operations and could cause the market value of our common shares to decline.**

The cost of insurance, including insurance for directors and officers, workers' compensation, property, product liability and general liability insurance, may increase in future years. Such insurance may also become unavailable to us. For example, as a result of the recent settlements in a number of our legacy legal and regulatory proceedings, we will have exhausted our coverage under our Director and Officer liability insurance for claims reported in respect of our 2002-2004 policy period. Rising insurance costs or the inability to obtain insurance could have a material adverse effect on our business, financial condition and results of operations and could cause the market value of our common shares to decline. In response to increased costs, we may increase deductibles or decrease certain coverages to mitigate cost increases. These increases, and our increased risk due to increased deductibles and reduced coverages, could have a material adverse effect on our business, financial condition and results of operations.

- k. We are exposed to risks if we are unable to comply with laws and future changes to laws affecting public companies, including the *Sarbanes-Oxley Act of 2002* (“SOX”), and also to increased costs associated with complying with such laws.**

Any future changes to the laws and regulations affecting public companies, as well as compliance with existing provisions of SOX in the U.S. and Part XXIII.1 of the *Securities Act* (Ontario), R.S.O. 1990, c. S.5 (the “Ontario Securities Act”) and related rules and applicable stock exchange rules and regulations, may cause us to incur increased costs as we evaluate the implications of new rules and respond to new requirements. As we are no longer exempt from certain requirements under the U.S. securities laws and applicable U.S. stock exchange rules and regulations due to the cessation of our status as a foreign private issuer effective January 1, 2010, we are now subject to additional U.S. filing, disclosure and compliance requirements, which may also cause us to incur an increase in costs. Delays, or a failure to comply with any new laws, rules and regulations that apply to us, could result in enforcement actions, the assessment of other penalties and civil suits. New laws and regulations could make it more expensive for us under indemnities we provide to our officers and directors and could make it more difficult for us to obtain certain types of insurance, including liability insurance for directors and officers; as such, we may be forced to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. The impact of these events could also make it more difficult for us to attract and retain qualified persons to serve on the Board of Directors or as officers. We may be required to hire additional personnel and utilize additional outside legal, accounting and advisory services — all of which could cause our general and administrative costs to increase beyond what we currently have planned. We are continuing to evaluate and monitor developments with respect to these laws, rules and regulations, and we cannot predict or estimate the amount of the additional costs we may incur or the timing of such costs.

We are required annually to review and report on the effectiveness of our internal control over financial reporting in accordance with applicable securities laws. The results of this review are reported in this Annual Report on Form 10-K and in our MD&A. Our registered public accounting firm is also required to report on the effectiveness of our internal control over financial reporting.

If we fail to maintain effective internal controls over our financial reporting, there is the possibility of errors or omissions occurring or misrepresentations in our disclosures which could have a material adverse effect on our business and financial condition and the value of our common shares.

**Item 1B. Unresolved Staff Comments.**

Not applicable.

## Item 2. Properties.

We believe that we have sufficient facilities to conduct our operations during 2010. The following table lists the location, use, size and ownership interest of our principal properties:

| Location                               | Use                                                                                                                                                                                                 | Size            | Ownership             |
|----------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|-----------------------|
| Mississauga, Ontario, Canada . . . . . | Corporate office, sales, marketing and administration                                                                                                                                               | 79,400 Sq. Ft.  | Leased                |
| Christ Church, Barbados . . . . .      | Strategic planning; oversight and management of product sales, product development, supply chain and logistics, contract management, licensing, intellectual property management and administration | 23,275 Sq. Ft.  | Owned                 |
| Toronto, Ontario, Canada . . . . .     | Contract research and development and administration                                                                                                                                                | 33,000 Sq. Ft.  | Owned                 |
|                                        | Contract research and development                                                                                                                                                                   | 13,000 Sq. Ft.  | Leased                |
| Steinbach, Manitoba, Canada . . . . .  | Manufacturing and warehousing                                                                                                                                                                       | 250,000 Sq. Ft. | Owned                 |
| Chantilly, VA, USA . . . . .           | Research and development services                                                                                                                                                                   | 80,000 Sq. Ft.  | Leased                |
|                                        | Warehousing                                                                                                                                                                                         | 10,000 Sq. Ft.  | Leased                |
|                                        | Vacated and sublet                                                                                                                                                                                  | 50,000 Sq. Ft.  | Leased                |
| Bridgewater, NJ, USA . . . . .         | Administration                                                                                                                                                                                      | 110,000 Sq. Ft. | Leased                |
| Dorado, Puerto Rico . . . . .          | Warehousing                                                                                                                                                                                         | 145,000 Sq. Ft. | Leased <sup>(1)</sup> |
| Carolina, Puerto Rico . . . . .        | Manufacturing                                                                                                                                                                                       | 25,000 Sq. Ft.  | Owned                 |
|                                        | Warehousing                                                                                                                                                                                         | 10,000 Sq. Ft.  | Leased                |
| Dublin, Ireland . . . . .              | Distribution of pharmaceutical products and supply chain services                                                                                                                                   | 1,000 Sq. Ft.   | Leased                |

(1) To be closed in 2010, with certain manufacturing processes to be transferred to the Steinbach, Manitoba facility.

### Manufacturing Facilities

We own and lease space for manufacturing, warehousing, research, development, sales, marketing, and administrative purposes. We currently operate two modern, fully integrated pharmaceutical manufacturing facilities located in Steinbach, Manitoba and Carolina, Puerto Rico. These facilities meet FDA-mandated and TPD-mandated GMP. These facilities are inspected on a regular basis by regulatory authorities, and our own internal auditing team ensures compliance on an ongoing basis with such standards.

In May 2008, in connection with the introduction of our specialty CNS strategy, we announced our intention to close our Puerto Rico manufacturing facilities, and transfer certain manufacturing processes to our Steinbach, Manitoba facility, over a period of 18 to 24 months. The closure of the Puerto Rico facilities will reduce our cost infrastructure and improve the capacity utilization of our manufacturing operations. We completed the sale of the Dorado facility in January 2010, and have entered an agreement to lease back the premises until March 31, 2010. The Carolina site is expected to remain open indefinitely due to increased demand for products manufactured in this plant. We are continuing to actively market the Carolina facility. We do not anticipate any impact to our existing revenue base due to the consolidation of our manufacturing facilities.

We have owned our Steinbach, Manitoba facility since 1992. In 2006, we completed a \$31.0 million expansion at that facility which increased total size to 250,000 square feet, providing additional manufacturing capacity and capability. Among the products manufactured in Steinbach in 2008 were Wellbutrin® XL, Ultram® ER, Cardizem® LA, and Tiazac® XC.

The Carolina, Puerto Rico facility totals 35,000 square feet, including a 25,000 square-foot owned manufacturing facility and a 10,000 square-foot leased warehouse space. This plant is specially constructed for the high volume production of controlled release beads.

### **Other Facilities**

Our corporate headquarters is located in Mississauga, Ontario. In connection with our objective of monetizing our non-core assets, in November 2009, we completed a sale/leaseback transaction in respect of our corporate headquarters for net proceeds of \$17.8 million. Included in this transaction was a vacant parcel of land adjacent to this facility, which was sold but not leased back. We recognized a loss on disposal of \$11.0 million on the transaction date. We will continue to occupy the facility under a 20-year operating lease at market rental rates.

Our principal operating subsidiary, Biovail Laboratories International SRL (“BLS”) is based in Barbados, West Indies. In 2008, we relocated from our previous leased facility to a newly constructed facility in Christ Church. This facility is used for strategic planning, and the oversight and management of product sales and related operations, product development, supply chain and logistics, contract management, licensing, intellectual property management and administration.

The Bridgewater, New Jersey facility, which we began leasing in 2003, is used for our U.S. operations including certain clinical and R&D administration.

The Chantilly, Virginia facility continues to perform primarily R&D services and to be a technology transfer site.

In July 2009, we completed the sale of our Dublin, Ireland R&D facility for net cash proceeds of \$5.2 million.

The Dublin, Ireland office, which we began leasing in August 2009, is used as an office for the management of product sales and distribution and the provision of supply chain services.

We believe our facilities are in satisfactory condition and are suitable for their intended use, although some limited investments to improve our manufacturing and other related facilities are contemplated, based on the needs and requirements of our business.

### **Item 3. Legal Proceedings.**

From time to time, the Company becomes involved in various legal and administrative proceedings, which include product liability, intellectual property, antitrust, governmental and regulatory investigations, and related private litigation. There are also ordinary course employment-related issues and other types of claims in which the Company routinely becomes involved, but which individually and collectively are not material.

Unless otherwise indicated, the Company cannot reasonably predict the outcome of these legal proceedings, nor can it estimate the amount of loss, or range of loss, if any, that may result from these proceedings. An adverse outcome in certain of these proceedings could have a material adverse effect on the Company’s business, financial condition and results of operations, and could cause the market value of its common shares to decline.

From time to time, the Company also initiates actions or files counterclaims. The Company could be subject to counterclaims or other suits in response to actions it may initiate. The Company cannot reasonably predict the outcome of these proceedings, some of which may involve significant legal fees. The Company believes that the prosecution of these actions and counterclaims is important to preserve and protect the Company, its reputation and its assets.

### ***Governmental and Regulatory Inquiries***

In July 2003, the Company received a subpoena from the U.S. Attorney’s Office (“USAO”) for the District of Massachusetts requesting information related to the promotional and marketing activities surrounding the commercial launch of Cardizem® LA. In particular, the subpoena sought information relating to the



Cardizem® LA Clinical Experience Program, titled P.L.A.C.E. (Proving L.A. Through Clinical Experience). In October 2007, the Company received an additional related subpoena.

On May 16, 2008, Biovail Pharmaceuticals, Inc., the Company's former subsidiary, entered into a written plea agreement with the USAO whereby it agreed to plead guilty to violating the U.S. Anti-Kickback Statute and pay a fine of \$22.2 million.

In addition, on May 16, 2008, Biovail Corporation entered into a non-prosecution agreement with the USAO whereby the USAO agreed to decline prosecution of Biovail Corporation in exchange for Biovail Corporation's continuing cooperation and in exchange for its agreement to finalize a civil settlement agreement and pay a civil penalty of \$2.4 million. The civil settlement agreement has now been signed and the related fine has been paid. A hearing before the U.S. District Court in Boston took place on September 14, 2009 and the plea was approved.

In addition, as part of the overall settlement, the Company entered into a CIA with the Office of the Inspector General and the Department of Health and Human Services on September 11, 2009. The CIA requires us to have a compliance program in place and to undertake a set of defined corporate integrity obligations for a five-year term. The CIA also includes requirements for an independent review of these obligations. Failure to comply with the obligations under the CIA could result in financial penalties.

On November 20, 2003, the Company received notification from the SEC indicating that the SEC would be conducting an informal inquiry relating to the Company's accounting and disclosure practices for the fiscal year 2003. These issues included whether or not the Company had improperly recognized revenue and expenses for accounting purposes in relation to its financial statements in certain periods, disclosure related to those statements, and whether it provided misleading disclosure concerning the reasons for its forecast of a revenue shortfall in respect of the three-month period ended September 30, 2003, and certain transactions associated with a corporate entity that the Company acquired in 2002. On March 3, 2005, the Company received a subpoena from the SEC reflecting the fact that the SEC had entered a formal order of investigation. The subpoena sought information about the Company's financial reporting for the fiscal year 2003. Also, the scope of the investigation became broader than initially thought, and the period under review was extended to encompass the period January 1, 2001 to May 2004.

On March 24, 2008, the SEC filed a civil complaint against the Company, Eugene Melnyk, the Company's former Chairman and Chief Executive Officer ("CEO"), Brian Crombie, the Company's former Chief Financial Officer ("CFO"), and two former officers, Kenneth Howling and John Miszuk, related to the matters investigated by the SEC. The Company has entered into a Consent Decree with the SEC in which it has not admitted to the civil charges contained in the complaint but has paid \$10.0 million to the SEC to fully settle the matter. As part of the settlement, the Company has also agreed to an examination of its accounting and related functions by an independent consultant. The settlement does not include the four individuals although the Company understands Mr. Howling has also reached a settlement with the SEC. The matter is proceeding as against former officers Mr. Melnyk, Mr. Crombie and Mr. Miszuk in the ordinary course and no hearing date has been set. The Company is indemnifying these individuals for their legal costs.

In the Spring of 2007, the Company was contacted by the USAO for the Eastern District of New York ("EDNY"), which informed the Company that the office is conducting an investigation into the same matters that the SEC is investigating. The USAO for the EDNY conducted interviews of several of the Company's current or former employees and requested documents related to fiscal years 2002 and 2003. The Company cooperated with this request and has not been contacted further. The Company cannot predict the outcome or timing of when this matter may be resolved.

Over the last few years, the Company received a number of communications from the Ontario Securities Commission (the "OSC") relating to its disclosure, and/or seeking information pertaining to certain financial periods. Similar to the SEC, the OSC advised the Company that it had investigated whether the Company improperly recognized revenue for accounting purposes in relation to the interim financial statements filed by the Company for each of the four quarters in 2001, 2002 and 2003, and the first quarter of 2004, and related disclosure issues. The OSC also investigated whether the Company provided misleading disclosure concerning the reasons for its forecast of a revenue shortfall in respect of the three-month period ending September 30,

2003, and certain transactions associated with a corporate entity that the Company acquired in 2002, as well as issues relating to trading in its common shares. These issues included whether the Company's insiders complied with insider reporting requirements, whether persons in a special relationship with the Company may have traded in its common shares with knowledge of undisclosed material information, whether certain transactions may have resulted in, or contributed to, a misleading appearance of trading activity in the Company's securities during 2003 and 2004 and whether certain registrants (who are the Company's former directors) may have had conflicts of interest in relation to the trading of the Company's common shares.

Pursuant to a Notice of Hearing dated July 28, 2006, the staff of the OSC gave notice that an administrative hearing pursuant to sections 127 and 127.1 of the Ontario Securities Act would be held related to the issues surrounding the trading in the Company's common shares. The respondents in the hearing included former Chairman and CEO Eugene Melnyk and a former director of the Company, among others. The Company was not a party to this proceeding. The proceeding as against Eugene Melnyk has been settled. In a decision released June 20, 2008, a panel of the OSC found that the former director acted contrary to the public interest and breached section 107 of the Ontario Securities Act when he (a) failed to provide the Company with accurate information concerning common shares over which he shared control and direction, (b) failed to file insider reports in respect of certain trades in the Company's securities and (c) engaged in a high volume of discretionary trading in its securities during blackout periods imposed by the Company.

Pursuant to a Notice of Hearing dated March 24, 2008, the staff of the OSC gave notice that an administrative hearing would be held related to the other matters investigated. The notice named the Company, former Chairman and CEO Eugene Melnyk, former CFO Brian Crombie, and Kenneth Howling and John Miszuk, two former officers. On January 9, 2009, the OSC approved a settlement reached with the Company. Pursuant to the terms of this settlement, the Company paid approximately \$5.3 million in costs and sanctions and agreed to the appointment of an independent consultant to examine and report on the Company's training of its personnel concerning compliance with financial and other reporting requirements under applicable securities laws in Ontario. On January 27, 2009, the OSC approved a settlement with Messrs. Howling and Miszuk and on February 10, 2009, the OSC approved a settlement with Mr. Crombie. The Company understands that the matter is proceeding against Mr. Melnyk. The hearing has now concluded and a decision is under reserve.

### *Securities Class Action*

On October 8, 2008, a proposed securities class action lawsuit was filed in the U.S. District Court Southern District of New York against the Company, its current Chairman, one current officer and two former officers. The complaint was filed on behalf of all persons and entities that purchased the Company's securities from December 14, 2006 through July 19, 2007. The complaint related to public statements alleged to have been made in respect of Aplenzin® (bupropion hydrobromide tablets) during the product's U.S. regulatory approval process. The Company believed the claim was without merit and filed a motion to dismiss this action in its entirety. The motion was granted and the action was dismissed with prejudice on May 8, 2009. Sanctions were thereafter sought by the Company. The decision granting the motion to dismiss was appealed by the plaintiffs. Pursuant to an agreement reached between the parties, the plaintiffs agreed to dismiss the appeal in exchange for the Company withdrawing its request for sanctions. On June 26, 2009, the appeal was dismissed. This matter has concluded.

### *Antitrust*

Several class action and individual action complaints in multiple jurisdictions have been commenced jointly against the Company, Elan Corporation plc ("Elan") and Teva relating to two agreements: one between the Company and Elan for the licensing of Adalat CC products from Elan, and the other between the Company and Teva for the distribution of those products in the U.S. These actions were transferred to the U.S. District Court for the District of Columbia. The agreements in question have since been resolved as a result of a consent decree between Elan and Biovail and the U.S. Federal Trade Commission.

The Company believes these suits are without merit because, among other reasons, the Company believes that any delay in the marketing or out-licensing of the Company's Adalat CC product was due to manufacturing difficulties the Company encountered and not because of any improper activity on its part.

On March 21, 2006, the Company was advised that an additional claim in respect of this fact situation was filed by Maxi Drug Inc. d/b/a Brooks Pharmacy in the U.S. District Court for the District of Columbia. The Company has accepted service of this complaint, and the case is proceeding on the merits according to the schedule set by the Court in the related federal cases pending in the District of Columbia.

The Company and the other defendants filed motions to dismiss, and the Court denied the Company's motion to dismiss the damage claims brought on behalf of both a purported class of so-called "direct purchasers", generally consisting of distributors and large chain drug stores, and certain "direct purchasers" who have opted out of the class and sued the Company individually, but dismissed the claims of a class of consumers and so-called "indirect purchasers". The remainder of the federal action is proceeding on the merits through the normal legal process. The Court granted plaintiffs' motion for class certification on November 21, 2007 and certified a class of alleged "direct purchasers".

In December 2007, the Company and the other defendants moved for the Court to reconsider that decision and the Court denied that motion on November 3, 2008. On November 18, 2008, the Company and the other defendants filed a petition in the D.C. Circuit pursuant to Fed. R. Civ. P. 23(f), requesting leave to appeal from the District Court's grant of class certification. The D.C. Circuit denied the defendants leave to appeal on February 23, 2009. On March 25, 2009, the defendants filed a petition in the D.C. Circuit for rehearing of their petition requesting leave to appeal. This request was denied.

On December 23, 2008, the Company and the other defendants moved for summary judgment in the District Court to dismiss the entirety of the case. This motion was fully briefed in early June 2009 and a related hearing took place on October 7, 2009. A decision is pending. No trial date has been set.

The Company has now reached a settlement with the non-class or individual plaintiffs (the "Opt-outs"). Pursuant to the terms of the settlement the Company paid a settlement amount and made no admission of wrong doing. The Opt-out actions will be dismissed.

On April 4, 2008, a direct purchaser plaintiff filed a class action antitrust complaint in the U.S. District Court for the District of Massachusetts against the Company, GlaxoSmithKline plc, and SmithKline Beecham Inc. (the latter two of which are referred to here as "GSK") seeking damages and alleging that the Company and GSK took actions to improperly delay FDA approval for generic forms of Wellbutrin XL®. The direct purchaser plaintiff in the Massachusetts federal court lawsuit voluntarily dismissed its complaint on May 27, 2008, and shortly thereafter re-filed a virtually identical complaint in the U.S. District Court for the Eastern District of Pennsylvania. In late May and early June 2008, additional direct and indirect purchaser class actions were also filed against the Company and GSK in the Eastern District of Pennsylvania, all making similar allegations, and these complaints were subsequently consolidated into separate direct and indirect purchaser actions.

On September 10, 2008, the Company and GSK filed motions to dismiss both the direct and indirect purchaser actions. Those motions were heard on February 26, 2009. In the direct purchaser case, on March 13, 2009, the Court granted in part and denied in part the motions, dismissing the Sherman Act Section 2 monopolization claim that had been made by the direct purchasers against the Company. The Company and GSK answered the remaining claims in the direct purchaser case on April 16, 2009. On March 26, 2009, before an order issued on the motions to dismiss the indirect purchaser plaintiffs' claims, the indirect purchaser plaintiffs filed an amended complaint. The pending motions were therefore denied as moot, and new motions to dismiss the indirect purchaser plaintiffs' claims were filed on April 30, 2009. On July 30, 2009, the court dismissed all indirect purchaser claims except for the antitrust claims (limited as to Biovail's concerted actions) in California, Nevada, Tennessee and Wisconsin and the consumer protection claims of California and Florida.

Discovery has now commenced. Briefing on the issue of class certification is underway.

The Company believes that each of these complaints lacks merit and that the Company's challenged actions complied with all applicable laws and regulations, including federal and state antitrust laws, FDA regulations, U.S. patent law, and the Hatch-Waxman Act.

## *Intellectual Property*

On February 3, 2006, the Company and Laboratoires Des Produits Éthiques Ethypharm instituted an action against Sandoz Canada Inc. (“Sandoz”) and Andrx Group stating that certain patents applicable to Tiazac® have been infringed contrary to the Patent Act (Canada) by the defendants. In addition, the Company is seeking injunctive relief restraining the defendants from offering for sale and/or manufacturing in Canada any product covered by its patents and/or procuring the infringement of its patents.

The defendants served the Company with a Statement of Defence and Counterclaim on May 15, 2006. The Company delivered its reply on May 30, 2006, and pleadings closed in June 2006. Pursuant to an agreement by the parties, the claim and counterclaim have been dismissed.

In August 2006, Sandoz brought an action against the Company under section 8 of the PMNOC Regulations demanding damages for having been kept off the market with its generic version of Tiazac® due to prohibition proceedings taken against Sandoz’s predecessor RhoxalPharma Inc. by the Company under the PMNOC Regulations. The prohibition proceedings were subsequently dismissed in November of 2005. The Company defended against the action and discovery has been underway. The action was stayed pending a decision by the Supreme Court of Canada on whether to grant leave to appeal a decision on the measure of section 8 damages in another unrelated action. The Supreme Court of Canada has now denied leave. A trial will likely occur in the later half of 2010 or early 2011, depending on the court’s schedule.

On November 7, 2008, Novopharm Limited (now Teva Canada) brought an action against the Company under section 8 of the PMNOC Regulations demanding damages for having been kept off the market with its generic version of Wellbutrin® SR due to prohibition proceedings taken against them by the Company under the PMNOC Regulations. The prohibition proceedings were subsequently dismissed in January 2005. The parties reached an agreement to resolve this matter. The action has now been dismissed.

On January 18, 2010, a Canadian Federal Court judge presiding over Biovail Corporation and Depomed, Inc. v. Apotex Inc. et al. issued a decision in a proceeding pursuant to the PMNOC Regulations in Canada to determine whether Apotex’s allegations that a Depomed patent was invalid and/or not infringed was justified. This proceeding related to a Canadian application filed by Apotex to market a generic version of the 500mg formulation of Glumetza® (extended release metformin hydrochloride tablets) licensed in Canada by Depomed to BLS. Pursuant to the decision issued by the Court, Health Canada can authorize Apotex to market in Canada its generic version of the 500mg formulation of Glumetza®.

The decision, which was amended on January 20, 2010, found under Canadian law, that Apotex’s allegation was justified that the Depomed Canadian patent at issue in the matter (No. 2,290,624) (the “‘624 Patent”) is obvious. The judge found that the evidence presented by the parties was “evenly balanced” as to obviousness. The judge found in favour of Biovail and Depomed as to all other issues related to validity, enforceability and infringement of the ‘624 Patent under Canadian law. Apotex was authorized to market in Canada its generic version of 500 mg Glumetza® by Health Canada on February 4, 2010. This decision, however, did not find the patent invalid and does not preclude the filing of a subsequent patent infringement suit against Apotex. The Company and Depomed filed a Claim for infringement against Apotex in Canadian Federal Court on February 8, 2010.

Par filed an ANDA with the FDA seeking approval to market Tramadol Hydrochloride Extended Release Tablets, 200 mg. On May 9, 2007, BLS, along with Purdue Pharma Products L.P. (“Purdue”), Napp Pharmaceutical Group Ltd. (“Napp”) and OMI filed a complaint in the U.S. District Court for the District of Delaware alleging infringement of U.S. Patent No. 6,254,887 by the filing of that ANDA, thereby triggering a 30-month stay of FDA’s approval of that application. Par has answered the complaint and asserted counterclaims of non-infringement and patent invalidity. The plaintiffs have denied the counterclaims. On May 22, 2007, Par informed the Company that it had filed a supplemental ANDA seeking approval to market Tramadol Hydrochloride Extended Release Tablets, 100 mg. On June 28, 2007, the same plaintiffs filed another complaint in the U.S. District Court for the District of Delaware alleging infringement of U.S. Patent No. 6,254,887 by the filing of that ANDA, thereby triggering a 30-month stay of FDA’s approval of the 100 mg strength formulation.

On July 23, 2007, Par answered the second complaint and asserted counterclaims of non-infringement and patent invalidity. On September 24, 2007, Par informed the Company that it had filed another supplemental



ANDA seeking approval to market Tramadol Hydrochloride Extended Release Tablets, 300 mg. On October 24, 2007, the same plaintiffs filed another complaint in the U.S. District Court for the District of Delaware alleging infringement of U.S. Patent No. 6,254,887 by the filing of that ANDA, thereby triggering a 30-month stay of FDA's approval of the 300 mg strength formulation. A Markman hearing claims construction ruling was released on November 4, 2008.

BLS filed, and was granted, a motion for dismissal of BLS from the cases. Subsequently, OMI has also been dismissed from the case. The matter continues between the plaintiff and Par. BLS's and OMI's dismissals from the case are not expected to substantively impact the proceedings.

The hearing in this matter commenced and concluded in April 2009. Closing submissions were completed on June 15, 2009. On August 14, 2009, the District Court found in favour of Par, holding that, while Par infringed the patent claims, the patent claims at issue were invalid (there cannot be infringement of invalid claims). Purdue filed an appeal of the decision with the Court of Appeals for the Federal Circuit on September 3, 2009. OMI also appealed its dismissal at the same time, but the appeal has been withdrawn. On November 16, 2009 Par announced that it had received final approval for its 100 mg and 200 mg products and began marketing the drug. Concurrently, Patriot (a wholly owned subsidiary of Ortho-McNeil-Janssen Pharmaceuticals, Inc.), launched our authorized generic formulation of these two strengths of Ultram® ER.

On July 2, 2008, the Company received a Notice of Paragraph IV Certification for Tramadol Hydrochloride Extended release Tablets, 100 mg, a generic version of Ultram® ER, from Impax Laboratories, Inc ("Impax"). BLS filed suit along with Purdue, Napp and OMI in the U.S. District Court for the District of Delaware pursuant to the provisions of the Hatch-Waxman Act. As a result, FDA approval of Impax's generic product has been automatically stayed for 30 months until January 2, 2011. BLS filed, and was granted, a motion for dismissal from the case. OMI has also been dismissed from this case. This matter is continuing between Par and Purdue and is currently in discovery.

On September 23, 2008, the Company received a Notice of Paragraph IV Certification for Tramadol Hydrochloride Extended release Tablets, 200 mg and 300 mg, generic versions of Ultram® ER, from Impax. Purdue, Napp and OMI filed a complaint in the U.S. District Court for the District of Delaware alleging infringement of U.S. Patent No. 6,254,887 by the filing of that ANDA, thereby triggering a 30-month stay of the FDA's approval of that application. OMI has been dismissed from this case. The matter is proceeding in the ordinary course between Impax and Purdue.

On or about July 22, 2009 the Company received a Notice of Paragraph IV Certification from Paddock Laboratories Inc. ("Paddock") for tramadol hydrochloride extended release tablets in 100 mg, 200 mg and 300 mg dosage strengths, a generic version of Ultram® ER. Purdue filed substantially similar suits against Paddock on September 4, 2009 in the U.S. District Court for the District of Minnesota, and in the U.S. District Court for the District of Delaware thereby triggering a 30-month stay against the approval of Paddock's ANDA. Purdue has requested the Court to stay the litigation, pending resolution of its appeal in the Par case. The Company is not a party to this litigation.

The Company has also received a Notice of Paragraph IV Certification dated and mailed on September 15, 2009 from Cipher Pharmaceuticals, Inc. ("Cipher"), who have filed an NDA pursuant to Section 505(b)(2) of the Federal Food, Drug and Cosmetic Act for tramadol hydrochloride extended release tablets in 100, 200 and 300 mg dosage strengths, a generic version of Ultram® ER. Purdue filed suit against Cipher in the U.S. District Court for the Eastern District of Virginia on October 30, 2009, thereby triggering a 30-month stay. Purdue has indicated that it will seek a stay of its case against Cipher, pending resolution of its appeal in the Par case. The Company is not a party to this litigation.

Purdue has also requested a stay of the actions pending a decision from the Panel on Multidistrict Litigation ("MDL") to create an MDL for the various Ultram® ER cases that have been filed. Purdue is seeking to consolidate the cases.

The Company received a further Notice of Paragraph IV Certification dated and mailed on December 8, 2009 from Lupin Ltd. ("Lupin") for Tramadol Hydrochloride Extended Release tablets in 100, 200 and 300mg dosages. Purdue filed suit against Lupin in the U.S. District Court for the District of Delaware on January 21, 2010. The Company is not a party to this litigation.



BLS filed an ANDA with the FDA seeking approval to market venlafaxine hydrochloride extended release capsules equivalent to the 37.5, 75 and 150 mg doses of Effexor® XR. On June 26, 2008, Wyeth filed a complaint against the Company, Biovail Technologies Ltd. and BLS in the U.S. District Court for the District of Delaware alleging infringement of U.S. Patent Nos. 6,274,171 B1, 6,403,120 and 6,419,958 B2 by the filing of that ANDA, thereby triggering a 30-month stay of the FDA's approval of that application. On September 25, 2008 the Company filed its Answer and Affirmative Defenses along with counterclaims of non-infringement and invalidity. The Company and Wyeth executed a settlement agreement in November, 2009 and, subsequently, BLS and Wyeth have executed a license agreement as of January 28, 2010 whereby BLS can manufacture, import and sell venlafaxine hydrochloride extended release capsules with an effective date expected to be on or about June 1, 2011, subject to earlier launch in limited circumstances, but in no event earlier than January 1, 2011. BLS will pay Wyeth a royalty fee on the sale of its venlafaxine hydrochloride extended release capsules under the license, computed as a percentage of net sales, as defined in the license agreement. The license royalty fee term begins with the license effective date and ends on the expiration of the Wyeth patents covered by the license agreement. BLS is solely responsible for manufacturing and marketing its venlafaxine hydrochloride extended release capsules. Through December 31, 2009, BLS has not commenced sales of its venlafaxine hydrochloride extended release capsules.

On or about June 26, 2008, BLS received Notices of Paragraph IV Certification from Sun Pharmaceutical Industries, Ltd., India ("Sun India") for diltiazem hydrochloride extended release capsules, 120 mg, 180 mg, 240 mg, 300 mg, and 360 mg strengths, a generic version of Cardizem® CD. On August 8, 2008, BLS filed suit against Sun India in the U.S. District Court of New Jersey alleging patent infringement of U.S. Patent Nos. 5,470,584, 5,286,497 and 5,439,689 pursuant to the provisions of the Hatch-Waxman Act. BLS has also sought declaratory judgment of infringement for all three patents. These suits are expected to result in a 30-month stay of the FDA approval of the 120 mg, 180 mg, 240 mg and 300 mg strengths. The patents-in-suit were listed in the FDA's Orange Book against the 360 mg strength after the filing of the complaint in this action. On September 30, 2008, Sun India delivered its Answer and Counterclaim, which include declarations of non-infringement, invalidity and unenforceability as well as certain antitrust allegations. This case is currently stayed, pending settlement discussions.

BLS filed an ANDA with the FDA seeking approval to market Fenofibrate Tablets in 48 mg and 145 mg dosage sizes. On November 3, 2008, Abbott and Laboratoires Fournier S.A. filed a complaint against Biovail Corporation and BLS in the U.S. District Court for the Northern District of Illinois alleging infringement of U.S. Patent Nos. 6,277,405, 7,037,529, and 7,041,319 by the filing of the ANDA, thereby triggering a 30-month stay of FDA's approval of that application. This matter has now been transferred to the District of New Jersey. On November 3, 2008, Elan Pharma International Ltd. and Fournier Laboratories Ireland Ltd. also filed a complaint against Biovail Corporation and BLS in the U.S. District Court for the District of New Jersey alleging infringement of U.S. Patent Nos. 5,145,684, 7,276,249 and 7,320,802 by the filing of the ANDA. The Answers and Counterclaims of Biovail Corporation and BLS have been filed. These cases are proceeding in the ordinary course. No trial date has yet been set.

On or about December 1, 2008, the FDA accepted an ANDA filed by BLS seeking approval to market generic formulations of the 200 mg, 300 mg and 400 mg strengths of quetiapine fumarate extended release tablets (sold under the brand name Seroquel® XR by AstraZeneca Pharmaceuticals LP ("AstraZeneca")). On January 9, 2009, AstraZeneca and AstraZeneca UK Limited filed a complaint against Biovail Corporation, BLS, and BTA Pharmaceuticals, Inc. in the U.S. District Court for the District New Jersey alleging infringement of U.S. Patent Nos. 4,879,288 (the "'288 Patent") and 5,948,437 (the "'437 Patent") by the filing of that ANDA, thereby triggering a 30-month stay of the FDA's approval of that application. Answers and Counterclaims have been filed. Discovery relating to invalidity of the '288 Patent has been stayed pending a decision from the Court of Appeals for the Federal Circuit in a related case not involving the Company. That case has now been resolved and the Company is currently reviewing documents. The case, including discovery on the '437 Patent, is proceeding in the ordinary course. No Markman hearing to determine claim scope and meaning nor a trial date have yet been set.

On or about July 3, 2009, BLS received a Notice from Cary Pharmaceuticals Inc. ("Cary"), related to Cary's NDA pursuant to Section 505(B)(2) for bupropion hydrochloride 450 mg extended-release tablets. The Certification references U.S. Patent No. 6,096,341, which is listed in the FDA's Orange Book for the 150 mg and

300 mg dosage strength of Wellbutrin XL®, and No. 6,143,327, which is currently listed in the FDA's Orange Book for the 150 mg dosage strength of Wellbutrin XL®. On August 13, 2009, the Company filed suit in the U.S. District Court for the District of Delaware, thereby triggering a 30-month stay of the approval of Cary's NDA. The Complaint was served on Cary on August 24, 2009 and Cary served its Answer on September 24, 2009. Following a scheduling conference with the judge in mid-January 2010, a Markman hearing has been scheduled for late May 2010, with fact and expert discovery to follow. The case is proceeding in the ordinary course. No trial date has yet been set.

On or about January 5, 2010, BLS received a Notice of Paragraph IV Certification dated January 4, 2010 from Watson Laboratories, Inc. - Florida ("Watson"), related to Watson's ANDA filing for Bupropion Hydrobromide Extended-release Tablets, 174 mg and 348 mg, which correspond to the Company's Aplenzin® Extended-release Tablets 174 mg and 348 mg products. Watson asserted that U.S. Patent Nos. 7,241,805, 7,569,610, 7,572,935 and 7,585,897 which are listed in the FDA's Orange Book for Aplenzin® are invalid and/or not infringed. BLS subsequently received from Watson a second Notice of Paragraph IV Certification for U.S. Patent Nos. 7,645,802 and 7,649,019 which were listed in the FDA's Orange Book after Watson's initial certification. Watson has alleged these patents are not infringed and/or invalid. The Company filed suit pursuant to the Hatch-Waxman Act against Watson on February 18, 2010 in the U.S. District Court for the District of Delaware and on February 19, 2010 in the U.S. District Court for the Southern District of Florida thereby triggering a 30-month stay of the approval of Watson's ANDA.

On or about January 27, 2010, BLS received a Notice of Paragraph IV Certification from Paddock dated January 22, 2010, relating to Paddock's ANDA filing for Bupropion Hydrobromide Extended-release Tablets, 174 mg and 522 mg, which correspond to the Company's Aplenzin® Extended-release Tablets 174 mg and 522 mg products. Paddock has certified that the six patents currently listed in the FDA's Orange Book for Aplenzin® plus an additional unlisted BLS patent relating to bupropion hydrobromide are not infringed and/or invalid. The Company will be filing suit against Paddock no later than March 8, 2010.

#### ***Biovail Action Against S.A.C. and Others***

On February 22, 2006, the Company filed a lawsuit in Superior Court, Essex County, New Jersey, seeking \$4.6 billion in damages from 22 defendants (the "S.A.C. Complaint"). The S.A.C. Complaint alleges that the defendants participated in a stock market manipulation scheme that negatively affected the market price of the Company's common shares and alleges violations of various state laws, including the New Jersey Racketeer Influenced and Corrupt Organizations Act.

The original defendants included: S.A.C. Capital Management, LLC, S.A.C. Capital Advisors, LLC, S.A.C. Capital Associates, LLC, S.A.C. Healthco Funds, LLC, Sigma Capital Management, LLC, Steven A. Cohen, Arthur Cohen, Joseph Healey, Timothy McCarthy, David Maris, Gradient Analytics, Inc., Camelback Research Alliance, Inc., James Carr Bettis, Donn Vickrey, Pinnacle Investment Advisors, LLC, Helios Equity Fund, LLC, Hallmark Funds, Gerson Lehrman Group, Gerson Lehrman Group Brokerage Services, LLC, Thomas Lehrman, Patrick Duff, and James Lyle. The defendant Hallmark Funds was voluntarily dismissed from the action by the Company.

On January 26, 2007, the Company was found to have breached the terms of a protective order in a securities class action then proceeding against it and certain of its former officers in New York Federal Court (the "New York class action"). The New York class action was settled in December 2008. Specifically, the Company was found to have breached the terms of the protective order by using documents obtained from a non-party in the S.A.C. Complaint. The Court ordered that the Company and its counsel return copies of the documents and redact the S.A.C. Complaint accordingly. On February 22, 2007, the Company filed an Amended Complaint. On September 10, 2007, the Company resolved a motion for sanctions previously pending in the New York class action in connection with the breach of the protective order referred to above. As part of that resolution, the Company dismissed defendant Maris from this action and filed a First Amended Complaint on October 3, 2007.

The case was subsequently stayed by an order of the Trial Judge, dated March 16, 2007, pending disposition of certain issues in a factually similar shareholder class action that did not involve the Company (the "New Jersey shareholder class action").

The stay of this action imposed by the Court's March 16, 2007 Order was lifted on March 20, 2009. On April 17, 2009, the Company filed a motion for leave to file a Second Amended Complaint, amending the allegations to assert trade libel and conspiracy, and seeking damages in excess of \$100.0 million. The proposed Second Amended Complaint names as defendants only the S.A.C. related entities, Timothy McCarthy and Gradient Analytics, LLC (formerly Camelback Research Alliance Inc.). All other remaining defendants were dismissed from the lawsuit.

The named defendants opposed the filing of the Second Amended Complaint and moved to dismiss it. The motion was heard on July 10, 2009. A decision was subsequently rendered in the defendants' favour on August 20, 2009. As a result, the matter was dismissed.

On February 17, 2010 SAC Capital Advisors, LLC commenced an action against the Company in the United States District Court for the District of Connecticut. The complaint alleges malicious prosecution related to the Company's complaint against it. A factually similar complaint was filed the same day by Gradient Analytics, Inc., Donn Vickery and James Carleton Carr Bettis in the United States Court for the District of Arizona. The Company believes that these complaints are without merit and will defend once served.

### ***General Civil Actions***

Complaints have been filed by the City of New York, the State of Alabama, the State of Mississippi and a number of counties within the State of New York, claiming that the Company, and numerous other pharmaceutical companies, made fraudulent misstatements concerning the "average wholesale price" of their prescription drugs, resulting in alleged overpayments by the plaintiffs for pharmaceutical products sold by the companies.

The City of New York and plaintiffs for all the counties in New York (other than Erie, Oswego and Schenectady) have voluntarily dismissed the Company and certain others of the named defendants on a without prejudice basis. Similarly, the State of Mississippi has voluntarily dismissed its claim against the Company and a number of defendants on a without prejudice basis.

In the case brought by the State of Alabama, the Company has answered the State's Amended Complaint and discovery is ongoing. On October 16, 2009, the Supreme Court of Alabama issued an opinion reversing judgments in favour of the State in the first three cases that were tried against co-defendant companies. The Supreme Court also rendered judgment in favour of those defendants, finding that the State's fraud-based theories failed as a matter of law. The Company's case is presently scheduled to proceed to trial in January 2011.

The cases brought by the New York State counties of Oswego, Schenectady and Erie, each of which was originally brought in New York State court, were removed by defendants to Federal Court on October 11, 2006. The Company answered the complaint in each case after the removal to Federal Court. The cases were subsequently remanded and, following the remand, the New York State Litigation Coordinating Panel granted the defendants' application to coordinate the three actions for pretrial purposes in Erie County. Discovery is ongoing with trial presently scheduled to commence in February 2011.

On December 15, 2009, Biovail was served with a Seventh Amended Complaint under the False Claims Act in an action captioned United States of America, ex rel. Constance A. Conrad v. Actavis Mid-Atlantic, LLC, et al., United States District Court, District of Massachusetts. This case was originally filed in 2002 and maintained under seal until shortly before Biovail was served. Twenty other companies are named as defendants. In the Seventh Amended Complaint, Conrad alleges that various formulations of Rondec, a product formerly owned by Biovail, was not properly approved by the FDA and therefore not a "Covered Outpatient Drug" within the meaning of the Medicaid Rebate Statute. As such, Conrad alleges that Rondec was not eligible for reimbursement by federal healthcare programs, including Medicaid. Conrad seeks treble damages and civil penalties under the False Claims Act. According to the briefing schedule set by the court, motions to dismiss are due on or before April 19, 2010.

On May 6, 2008, BLS commenced an arbitration under Financial Industry Regulatory Authority rules against an investment institution at which it held a cash management account seeking \$26.8 million in compensatory damages and \$53.6 million in punitive damages. The Statement of Claim alleged that the investment institution, as non-discretionary manager of BLS's cash management account, fraudulently or

negligently, and in breach of the parties' customer agreement, invested BLS's assets in auction rate securities, which were not among BLS's approved investments. The investment institution subsequently delivered its Answer and Response. A hearing was scheduled to commence on July 8, 2009. The matter has now been settled as between the parties for payment to BLS in the amount of \$22.0 million. BLS continues to hold the auction rate securities.

#### **Item 4. Submission of Matters to a Vote of Security Holders.**

Not applicable.

#### **Executive Officers of the Registrant**

The name and age as of February 24, 2010 and position with us of each of the members of senior management are set forth below.

| <u>Name</u>                                   | <u>Age</u> | <u>Position</u>                                                  |
|-----------------------------------------------|------------|------------------------------------------------------------------|
| <b>Biovail Corporation</b>                    |            |                                                                  |
| William (Bill) Wells . . . . .                | 49         | Chief Executive Officer                                          |
| Margaret (Peggy) Mulligan . . . . .           | 51         | Senior Vice-President, Chief Financial Officer                   |
| Gilbert Godin . . . . .                       | 51         | Executive Vice-President and Chief Operating Officer             |
| Mark Durham . . . . .                         | 50         | Senior Vice-President, Human Resources and Shared Services       |
| Gregory Gubitz . . . . .                      | 52         | Senior Vice-President, Corporate Development and General Counsel |
| <b>Biovail Laboratories International SRL</b> |            |                                                                  |
| William (Bill) Wells . . . . .                | 49         | President                                                        |
| Michel Chouinard . . . . .                    | 53         | Chief Operating Officer                                          |
| Dr. H. Christian Fibiger . . . . .            | 66         | Senior Vice-President, Chief Scientific Officer                  |
| <b>BTA Pharmaceuticals, Inc.</b>              |            |                                                                  |
| Christine C. Mayer . . . . .                  | 51         | Senior Vice-President, Business Development Services             |

*Mr. Wells* was appointed the Chief Executive Officer of Biovail Corporation and the President of BLS effective May 1, 2008. Mr. Wells was originally elected to the Board of Directors in June 2005. Mr. Wells served as the Lead Director of the Board from June 30, 2007 to April 18, 2008. Mr. Wells is responsible for the operational and general management of our Company and has accountability for all aspects of our business, including marketing, sales, R&D, and manufacturing. As President of BLS, the Company's key operating subsidiary, Mr. Wells is responsible for all strategic and executive operating decisions relating to BLS' business, including its R&D strategies, budgets, priorities and programs. Mr. Wells' responsibilities as President of BLS also includes the review and the decision-making authority over all significant product and technology acquisitions and development and BLS' supply and distribution agreements. Mr. Wells is also responsible for developing and maintaining strategic alliances and important customer relationships. Prior to joining us on May 1, 2008, Mr. Wells was the Chief Financial Officer of Loblaw Companies Limited ("Loblaw"), Canada's largest food distributor and a leading provider of general merchandise products, drugstore products, and financial products and services, a position from which he resigned immediately prior to joining Biovail as our Chief Executive Officer and President of BLS. Mr. Wells also served as a director or officer of a number of subsidiaries of Loblaw. Prior to his position at Loblaw, Mr. Wells served as Chief Financial Officer of Bunge Limited ("Bunge"), a U.S.-headquartered company, whose shares are listed on the NYSE, in the global agribusiness, fertilizer and food product industries, and also served as a director or officer of a number of other subsidiaries and joint ventures of Bunge since January 2000. Mr. Wells is versed in corporate governance matters, having led Bunge's initial public offering on the NYSE, managed its SOX compliance process and overseen its investor relations program. Prior to joining Bunge, Mr. Wells spent 10 years in senior financial management at McDonald's Corporation in the U.S. and Brazil. Mr. Wells is currently a Trustee and a member of the audit committee of the Lakefield College School Foundation, a member of the investment committee of



the Uruguay International Venture Capital Fund and formerly a member of the Standard & Poor's Corporate Issuer Advisory Board. Mr. Wells holds a Masters degree in International Business from the University of South Carolina and a Bachelor's degree in Philosophy and English from the University of Western Ontario.

*Mrs. Mulligan* was appointed Senior Vice-President and Chief Financial Officer of Biovail Corporation effective September 3, 2008. Mrs. Mulligan has responsibility for finance, including consolidated financial planning and reporting, information technology, risk and financial operations. Her responsibilities also include the development of strategies and programs to proactively position our Company and business to disparate groups of external stakeholders, including the investment community, media, governments, the medical community and the general public. Mrs. Mulligan was most recently a Principal at Priiva Consulting Corporation, a leading game theory consulting practice. Prior to that, she served as Executive Vice-President, Chief Financial Officer and Treasurer of Linamar Corporation, a publicly traded auto components supplier, from 2005 to 2007. Prior to Linamar, Mrs. Mulligan spent more than 11 years with The Bank of Nova Scotia (Scotiabank), most recently as Executive Vice-President, Systems and Operations, where she was responsible for operational processes and technology across Canada and in more than 50 other countries. She directed a staff of over 3,000 and managed a broad range of critical information-technology functions. Earlier in her career at Scotiabank, Mrs. Mulligan served as Senior Vice-President, Audit & Chief Inspector. Before joining Scotiabank, Mrs. Mulligan was an Audit Partner with PricewaterhouseCoopers in Toronto. Mrs. Mulligan currently serves on the board of Ontario Power Generation Inc. and recently served on the board of Resolve Business Outsourcing Income Fund. Her extensive community involvement has included serving as a Trustee of the Ontario Science Centre, a Governor of Appleby College and a Governor of the University of Waterloo. Mrs. Mulligan holds a B. Math (Honours) from the University of Waterloo and was named a Fellow of the Institute of Chartered Accountants of Ontario in 2003.

*Mr. Godin* was appointed Executive Vice-President and Chief Operating Officer of Biovail Corporation in June 2007. Mr. Godin is responsible for our commercial, scientific and product-development capabilities, as well as our manufacturing, contract-development and business development services. Mr. Godin joined us in May 2006 from MDS Pharma Services, a contract research organization that provides drug-discovery and development services to pharmaceutical and biotechnology companies and a business unit of MDS Inc. ("MDS"). During his eight years' tenure at MDS, he held a series of progressively responsible executive positions in Canada and the U.S., including that of President of MDS Pharma Services, a business unit of MDS, from October 2004 to April 2006. Before joining MDS Pharma Services in 1999, Mr. Godin spent eight years with Schering-Plough Corporation, a publicly traded company listed on the NYSE, where he held the technical leadership position in Canada and a business-unit management role in France. He has also held several positions with business and operational accountabilities during his seven-year tenure at L'Oreal Canada Inc. Mr. Godin has an M.B.A. from the John Molson School of Business at Concordia University in Montreal. He also holds an engineering degree from Sherbrooke University in Quebec.

*Mr. Durham* is Senior Vice President, Human Resources and Shared Services of Biovail Corporation, and joined us as Vice-President, Corporate Human Resources in February 2003. Mr. Durham came to us from Pharmacia Corporation, where he served as Vice-President for Human Resources for Global Marketing and North American country operations from 2000 to 2003. Prior to that time he spent 15 years with Pharmacia & Upjohn Inc. and held senior human resource positions in the U.S., Asia and Canada. In addition to human resources, Mr. Durham has held positions in manufacturing and sales operations. Mr. Durham is a graduate of Carleton University in Ottawa, where he received his B.A. Hons. in political science and economics.

*Mr. Gubitz* was appointed Senior Vice-President, Corporate Development of Biovail Corporation, in June 2007, and General Counsel of Biovail Corporation effective September 1, 2009. As Senior Vice-President, Corporate Development, Mr. Gubitz is responsible for Biovail's corporate development programs, including mergers and acquisitions. He also assists our Company in our strategic planning process. As general counsel, Mr. Gubitz is responsible for our overall legal operations. Mr. Gubitz joined us in March 2006 from MDS Capital Corp. ("MDS Capital"), a North American venture-capital company focused exclusively on life sciences, where he was Chief Operating Officer. He spent 10 years with MDS Capital in various senior roles, with accountability for all operational matters, institutional fundraising, investor relations, finance and legal affairs. Mr. Gubitz also became Chairman of MDS Capital's Investment Committee in 2004. Before joining MDS Capital in 1996, Mr. Gubitz was a partner practicing corporate and securities law at a leading Canadian law firm.



He was called to the Bar in the Province of Ontario in 1984. Mr. Gubitz holds an LL.B. and a B.A. from McGill University in Montreal.

*Mr. Chouinard* is Chief Operating Officer of BLS in Barbados, and a member of its Board of Managers. He is responsible for the day to day management, of all aspects of BLS's business. Mr. Chouinard came to us in March 2000 from BioChem Pharma Inc., where he was Vice President of Global Commercialisation for vaccines for approximately three years. Prior to that he spent 18 years with American Cyanamid Company (Lederle), GlaxoSmithKline Inc. and Abbott, and held senior commercial and operations positions in the U.S. and Canada. Since joining our Company, Mr. Chouinard has held the positions of Vice President and General Manager of BPC and Vice President, Manufacturing Planning and Strategy of Biovail Corporation, before joining BLS in February 2006. Mr. Chouinard holds a B.A. (with a major in economics) from McGill University in Montreal.

*Dr. Fibiger* was appointed Senior Vice-President, Chief Scientific Officer of BLS effective November 24, 2008. Dr. Fibiger is actively involved in implementing BLS' drug development strategy, which includes the review of potential product developments and acquisitions and he is ultimately responsible for the strategic aspects of BLS' product development pipeline. Dr. Fibiger also serves as an advisor to BLS' President regarding the field of neuroscience from scientific, development and commercial perspectives. Dr. Fibiger, a Fellow of the American College of Neuropsychopharmacology, was most recently Chief Scientific Officer of MedGenesis Therapeutix Inc., a privately held biopharmaceutical company based in Victoria, British Columbia. From 2003 to 2007, Dr. Fibiger served as Vice-President and Global Therapeutic Area Head of Neuroscience for Amgen Inc. Prior to that, he served for five years at Eli Lilly & Co. as Vice-President of Neuroscience Discovery Research and Clinical Investigation. From 1972-1998, Dr. Fibiger was Professor and Head of the Division of Neurological Sciences and Chair of the University Graduate Program in Neuroscience at the University of British Columbia. Dr. Fibiger has received many honours for his research contributions. Dr. Fibiger received his Ph.D in Psychopharmacology from Princeton University.

*Ms. Mayer* is Senior Vice-President, Business Development Services at BTA. Ms. Mayer is responsible for leading the Business Development Services Team, which provides services in respect of identifying and analyzing new business and product licensing opportunities for us. Ms. Mayer joined us in May 2005 and was promoted to her current position effective January 1, 2007. Ms. Mayer has over 20 years of broad business experience in the pharmaceutical industry across many disciplines and therapeutic areas. Before joining us, she was Vice President of Global Business Development at sanofi-aventis (formerly Aventis), a publicly traded company listed on the NYSE, where she spent six years. Prior to that, she worked for 13 years at Johnson & Johnson, a publicly traded company listed on the NYSE, in the pharmaceutical sector, holding positions in various disciplines, including business development, marketing, sales and finance. Ms. Mayer also has four years of previous experience in large public accounting firms. Ms. Mayer holds an M.B.A. from Rutgers University in New Jersey and a B.A. from Glassboro College (now Rowan University) in New Jersey.

## PART II

### Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.

#### A. Market Information

Our common shares are traded on the NYSE and on the Toronto Stock Exchange ("TSX") under the symbol "BVF". The following table sets forth the high and low per share sales prices for our common shares on the NYSE and TSX for the periods indicated.

|                            | Common Shares |           |             |            |
|----------------------------|---------------|-----------|-------------|------------|
|                            | NYSE          |           | TSX         |            |
|                            | High<br>\$    | Low<br>\$ | High<br>C\$ | Low<br>C\$ |
| <b>2008</b>                |               |           |             |            |
| Quarter 1 . . . . .        | 14.90         | 10.00     | 14.53       | 10.30      |
| Quarter 2 . . . . .        | 12.96         | 9.53      | 12.91       | 9.64       |
| Quarter 3 . . . . .        | 11.27         | 9.27      | 11.71       | 9.70       |
| Quarter 4 . . . . .        | 9.88          | 6.65      | 11.69       | 7.84       |
| <b>2009</b>                |               |           |             |            |
| Quarter 1 . . . . .        | 12.15         | 9.41      | 14.53       | 10.30      |
| Quarter 2 . . . . .        | 13.75         | 9.26      | 15.90       | 10.90      |
| Quarter 3 . . . . .        | 15.50         | 12.14     | 16.59       | 13.45      |
| Quarter 4 . . . . .        | 15.49         | 12.91     | 16.55       | 13.78      |
| <b>2010</b>                |               |           |             |            |
| January . . . . .          | 16.14         | 14.02     | 16.57       | 14.60      |
| February 1 to 24 . . . . . | 15.10         | 13.64     | 15.95       | 14.62      |

Source: NYSEnet, TSX Historical Data Access

#### Market Price Volatility of Common Shares

Market prices for the securities of pharmaceutical and biotechnology companies, including our securities, have historically been highly volatile, and the market has from time to time experienced significant price and volume fluctuations that are unrelated to the operating performance of particular companies. Factors such as fluctuations in our operating results, the aftermath of public announcements by us, concern as to safety of drugs and general market conditions can have an adverse effect on the market price of our common shares and other securities.

#### B. Holders

The approximate number of holders of record of our common shares as of February 24, 2010 is 1,245.

#### C. Dividends

In May 2009, the Board of Directors approved a modification to our dividend policy, which now contemplates a quarterly dividend of \$0.09 per common share. Each dividend declaration is always subject to the discretion of the Board of Directors and is generally based on our business performance, operational results, future capital requirements, business development requirements and other requirements and applicable laws. The policy is reviewed by the Board of Directors from time to time with regard to our capital requirements, strategic and business development considerations, operations and results and any changes thereto.

We continue to believe that current operations and our existing pipeline products should generate sufficient cash flows to sustain our current quarterly dividend. However, business development activities designed to

accelerate our specialty CNS strategy will have first priority over our cash flows and resources. Accordingly, the Board of Directors and management will continue to review the dividend policy on an ongoing basis to determine if a revision to the dividend policy, including the potential cancellation of the dividend, may be necessary.

Except for the contemplation of a quarterly dividend in accordance with our dividend policy, we have no specific procedure for the setting of the date of dividend entitlement but, in accordance with applicable laws, regulations and rules, will set a record date for share ownership to determine entitlement to any dividends declared. We have no specific procedures for holders not resident in Canada to claim dividends and will mail dividends to non-residents of Canada in the same manner as to holders resident in Canada. We have appointed CIBC Mellon to be the paying agent for dividends in the U.S. and elsewhere.

During 2008 and 2009, we declared dividends per common share as follows:

| <u>Date Declared</u>    | <u>Dividend per Share</u> | <u>Payment Date</u> |
|-------------------------|---------------------------|---------------------|
| March 12, 2008 .....    | \$0.375                   | April 3, 2008       |
| May 7, 2008 .....       | \$0.375                   | May 30, 2008        |
| August 12, 2008 .....   | \$0.375                   | September 3, 2008   |
| November 5, 2008 .....  | \$0.375                   | January 5, 2009     |
| February 26, 2009 ..... | \$0.375                   | April 6, 2009       |
| May 6, 2009 .....       | \$ 0.09                   | July 6, 2009        |
| August 6, 2009 .....    | \$ 0.09                   | October 5, 2009     |
| November 5, 2009 .....  | \$ 0.09                   | January 4, 2010     |
| Total .....             | <u>\$2.145</u>            |                     |

On February 24, 2010, we declared a cash dividend of \$0.09 per common share, payable on April 5, 2010.

See Item 7. “Management’s Discussion and Analysis of Financial Condition and Results of Operation — Selected Annual Information — Cash Dividends”, for additional details about our dividend payments.

#### **D. Restrictions on Share Ownership by Non-Canadians**

There are no limitations under the laws of Canada or in our organizational documents on the right of foreigners to hold or vote securities of our Company, except that the *Investment Canada Act (Canada)* (the “Investment Canada Act”) may require review and approval by the Minister of Industry (Canada) of certain acquisitions of “control” of our Company by a “non-Canadian”.

##### **Investment Canada Act**

The Investment Canada Act applies to every acquisition of control of a Canadian business by a non-Canadian. The acquisition of a majority of the voting interests of an entity or of a majority of the undivided ownership interests in the voting shares of an entity that is a corporation is deemed to be an acquisition of control of that entity. In the case of a corporation, the acquisition of less than a majority but one-third or more of the voting shares of a corporation or of an equivalent undivided ownership interest in the voting shares of the corporation is presumed to be an acquisition of control of that corporation unless it can be established that, on the acquisition, the corporation is not controlled in fact by the acquirer through the ownership of voting shares. The acquisition of all or substantially all of the assets used in carrying on a Canadian business also constitutes an acquisition of control. An acquisition of control of a Canadian business by a non-Canadian is either reviewable (a “Reviewable Transaction”), in which case it is subject to both a reporting obligation and an approval process, or notifiable (a “Notifiable Transaction”), in which case it is subject to only a post-closing reporting obligation. A transaction is a Reviewable Transaction or a Notifiable Transaction based on whether a prescribed monetary threshold is exceeded.

A direct acquisition of control of a Canadian business by a non-Canadian through the acquisition of the voting interests of a Canadian entity or all or substantially all of the assets used in carrying on a Canadian business is a Reviewable Transaction if, in the case of an acquisition of voting interests, the aggregate value of the assets acquired (including assets situated outside of Canada), or, in the case of an acquisition of assets, the aggregate value of the assets in Canada acquired, is equal to or greater than C\$5 million. A substantially higher threshold applies, however, where the purchaser qualifies as a “WTO investor” or the Canadian business being acquired is controlled by a non-Canadian that qualifies as a WTO investor. For these transactions, the WTO threshold, for transactions completed in 2010, is expected to be C\$299 million (this threshold will become official once published in the *Canada Gazette*). The WTO threshold will change to C\$600 million upon the enactment of new regulations under the Investment Canada Act. The determination of the threshold will be based on a new test of “enterprise value” rather than asset value (although asset value may continue to be the relevant threshold for asset transactions). The manner for determining “enterprise value” will be set out by regulation. An indirect acquisition of a Canadian business by a non-Canadian is a Reviewable Transaction if either the value of the Canadian business’ assets exceed C\$50 million and more than 50% of the value of the assets acquired are located outside of Canada, or exceeds C\$5 million and more than 50% of the value of the assets acquired are located in Canada. However, where the purchaser qualifies as a WTO investor or the Canadian business being acquired is controlled by a non-Canadian that qualifies as a WTO investor, the transaction qualifies as a Notifiable Transaction and not a Reviewable Transaction.

In the case of a Reviewable Transaction, the non-Canadian acquirer must submit an application for review with the prescribed information. The responsible Minister is then required to determine whether the Reviewable Transaction is likely to be of net benefit to Canada, taking into account the assessment factors specified in the Investment Canada Act and any written undertakings that may have been given by the non-Canadian acquirer. The Investment Canada Act contemplates an initial review period of up to 45 days after filing; however, if the responsible Minister has not completed the review by that date, the Minister may unilaterally extend the review period by up to 30 days (or such longer period as may be agreed to by the applicant and the Minister) to permit completion of the review. Subject to a few limited exceptions, a direct acquisition of a Canadian business that constitutes a Reviewable Transaction cannot be completed until the Minister responsible for administering the Investment Canada Act is satisfied, or is deemed to be satisfied, that the transaction “is likely to be of net benefit to Canada”.

In the case of a Notifiable Transaction, a non-Canadian acquirer must submit a notice with the prescribed information at any time before or within 30 days following completion of the transaction.

In March 2009, the Investment Canada Act was amended to provide that any investment by a non-Canadian in a Canadian business, even where control has not been acquired, can be reviewed on grounds of whether it may be injurious to national security. Where an investment is determined to be injurious to national security, Cabinet can prohibit closing or, if closed, can order the investor to divest control. Short of a prohibition or divestment order, Cabinet can impose terms or conditions on the investment or can require the investor to provide binding undertakings to remove the national security concern.

### **Competition Act**

Part IX of the *Competition Act* (Canada) (the “Competition Act”) requires that a pre-merger notification filing be submitted to the Commissioner of Competition (the “Commissioner”) in respect of certain classes of merger transactions that exceed certain prescribed thresholds. The thresholds applicable to the acquisition of the shares of a public corporation, or the acquisition of the assets of a corporation, are as follows:

- *Size of Parties:* the parties to the transaction, together with their affiliates (as defined under the Act), must have assets in Canada that exceed C\$400 million in aggregate value, or have gross annual revenues from sales in, from or into Canada, that exceed C\$400 million in aggregate value;
- *Size of Transaction:* generally, the aggregate value of the assets in Canada that are acquired through the transaction, or the gross revenues generated from sales in or from Canada from those assets, exceed C\$70 million (this threshold may increase annually by the Minister of Industry in accordance with an index formula set out in the Competition Act); and

- *Size of Equity* (in the case of a share transaction): the acquisition of more than 20% of the voting shares of a public corporation or, where this threshold has been exceeded but the acquirer owns less than a majority of the voting shares of a public corporation, the acquisition of more than 50% of the voting shares of a public corporation.

Note that in the case of an amalgamation, the Size of Transaction threshold is met only if the threshold set out above is exceeded by both the continuing corporation and at least two of the amalgamating corporations (except that in the case of the amalgamating corporations, the relevant revenues are sales in, from or into Canada). The Competition Act and the Notifiable Transactions Regulations thereto set out the basis upon which asset values and gross revenues are to be determined. Generally speaking, the relevant period for determining whether the thresholds are met is the period covered by the last audited financial statements, although complex rules apply under the Notifiable Transactions Regulations.

If a proposed transaction exceeds the above-described thresholds, subject to certain exceptions, a notification filing must be submitted to the Commissioner and the statutory waiting period must expire or be terminated early or waived by the Commissioner before the transaction can be completed. The waiting period is 30 calendar days after the day on which the parties to the proposed transaction submit the prescribed information, provided that, before the expiry of this period, the Commissioner has not notified the parties that she requires additional information that is relevant to the Commissioner's assessment of the proposed transaction (a "Supplementary Information Request"). In the event that the Commissioner provides the parties with a Supplementary Information Request, the parties cannot complete their proposed transaction until 30 calendar days after the day in which the parties complied with the Supplementary Information Request. At the end of the statutory waiting period, the parties can legally complete their transaction, unless the Commissioner has applied to the Competition Tribunal (a special purpose tribunal) for an interim order prohibiting closing. The Commissioner can apply to the Competition Tribunal for two such orders, each with a maximum period of 30 days (60 days in the aggregate). A transaction may be completed before the end of the applicable waiting period if the Commissioner notifies the parties that she does not, at such time, intend to challenge the transaction by making an application under Section 92 of the Competition Act. The Commissioner retains the right to challenge a transaction before the Competition Tribunal on substantive grounds (as described below) under Section 92 of the Competition Act at any time before, or within one year after, closing.

The parties to a transaction that is subject to pre-merger notification have an obligation to submit a pre-merger notification filing, and the waiting period will not begin until the parties have submitted a complete notification filing. The Competition Act prescribes special rules for hostile bids involving corporations whereby the bidder may unilaterally initiate the statutory waiting period by submitting its pre-merger notification filing.

The Commissioner may, upon request, issue an advance ruling certificate ("ARC") in respect of a proposed transaction where she is satisfied that she would not have sufficient grounds on which to apply to the Competition Tribunal for an order under Section 92 of the Competition Act. If the Commissioner issues an ARC, the parties are exempted from having to file a notification and the Commissioner is prohibited from challenging the transaction solely on the basis of information that is the same or substantially the same as the information on the basis of which the ARC was issued.

If the Commissioner is not prepared to issue an ARC, she may nevertheless issue a "no action" letter confirming that she is of the view that grounds do not then exist to initiate proceedings before the Competition Tribunal under the merger provisions of the Competition Act with respect to the proposed transaction, while preserving, for one year following the completion of the proposed transaction, her authority to initiate proceedings should circumstances change.

All mergers, regardless of whether they are subject to Part IX of the Competition Act, are subject to the substantive mergers provisions under Section 92 of the Competition Act. In particular, the Commissioner may challenge a transaction before the Competition Tribunal where the transaction prevents or lessens, or is likely to prevent or lessen, competition substantially in a market. The Competition Tribunal may issue an order that the parties not proceed with the transaction or part of it or, in the event that the transaction has already been completed, order its dissolution or the disposition of some or all of the assets or shares involved. In addition, the Competition Tribunal may, with the consent of the person against whom the order is directed and the



Commissioner, order that person to take any other action as is deemed necessary to remedy any substantial lessening or prevention of competition that the Competition Tribunal determines would or would likely result from the transaction. The Commissioner may not make an application to the Competition Tribunal under Section 92 of the Competition Act more than one year after the merger has been substantially completed.

## **E. Exchange Controls**

Canada has no system of exchange controls. There are no Canadian restrictions on the repatriation of capital or earnings of a Canadian public company to non-resident investors. There are no laws in Canada or exchange restrictions affecting the remittance of dividends, profits, interest, royalties and other payments to non-resident holders of our securities, except as discussed in Item 5.F. “— Taxation”.

## **F. Taxation**

### **Canadian Federal Income Taxation**

The following discussion is a summary of the principal Canadian federal income tax considerations generally applicable to a holder of our common shares who, at all relevant times, for purposes of the *Income Tax Act* (Canada) and the *Income Tax Regulations* (collectively, the “Canadian Tax Act”) deals at arm’s-length with, and is not affiliated with, us, holds its common shares as capital property and does not use or hold and is not deemed to use or hold such common shares in carrying on a business in Canada and who, at all relevant times, for purposes of the application of the Canadian Tax Act and the Canada-U.S. Income Tax Convention (1980, as amended) (the “U.S. Treaty”), is resident in the U.S., is not, and is not deemed to be, resident in Canada and is eligible for benefits under the U.S. Treaty (a “U.S. Holder”). Special rules, which are not discussed in the summary, may apply to a non-resident holder that is an insurer that carries on an insurance business in Canada and elsewhere or that is an “authorized foreign bank” as defined in the Canadian Tax Act.

Limited liability companies (“LLCs”) that are not taxed as corporations pursuant to the provisions of the U.S. Internal Revenue Code of 1986, as amended (the “Code”) do not qualify as resident in the U.S. for purposes of the U.S. Treaty. Under the U.S. Treaty, a resident of the U.S. who is a member of such an LLC and is otherwise eligible for benefits under the U.S. Treaty may generally be entitled to claim benefits under the U.S. Treaty in respect of income, profits or gains derived through the LLC. Generally, such entitlement commenced on February 1, 2009 for withholding taxes, and is in effect for other (non-withholding) taxes for taxable years beginning on or after January 1, 2009.

The U.S. Treaty includes limitation on benefits rules that restrict the ability of certain persons who are resident in the U.S. to claim any or all benefits under the U.S. Treaty. Residents of the U.S. should consult their own tax advisors with respect to their eligibility for benefits under the U.S. Treaty, having regard to these rules.

This summary is based upon the current provisions of the U.S. Treaty and the Canadian Tax Act and our understanding of the current administrative policies and assessing practices of the Canada Revenue Agency published in writing prior to the date hereof. This summary takes into account all specific proposals to amend the U.S. Treaty and the Canadian Tax Act publicly announced by or on behalf of the Minister of Finance (Canada) prior to the date hereof. This summary does not otherwise take into account or anticipate changes in law or administrative policies and assessing practices, whether by judicial, regulatory, administrative or legislative decision or action, nor does it take into account provincial, territorial or foreign tax legislation or considerations, which may differ from those discussed herein.

This summary is of a general nature only and is not intended to be, nor should it be construed to be, legal or tax advice generally or to any particular holder. U.S. Holders should consult their own tax advisors with respect to their own particular circumstances.

### ***Gains on Disposition of Common Shares***

In general, a U.S. Holder will not be subject to tax under the Canadian Tax Act on capital gains arising on the disposition of such holder's common shares unless the common shares are "taxable Canadian property" to the U.S. Holder and are not "treaty-protected property".

Generally, a common share will not be taxable Canadian property to a U.S. Holder at a particular time; provided that, (a) such common share is listed on a designated stock exchange (which includes the NYSE and the TSX), (b) the U.S. Holder, persons with whom the U.S. holder does not deal at arm's-length, or the U.S. Holder together with all such persons, have not owned 25% or more of the issued shares of any class or series of the capital stock of our Company at any time during the 60-month period that ends at that time, and (c) common share is not otherwise deemed to be taxable Canadian property for purposes of the Canadian Tax Act.

Common shares will be treaty-protected property where the U.S. Holder is exempt from income tax under the Canadian Tax Act on the disposition of common shares because of the U.S. Treaty. Common shares owned by a U.S. Holder will generally be treaty-protected property where the value of the common shares is not derived principally from real property situated in Canada.

### ***Dividends on Common Shares***

Dividends paid or credited on the common shares or deemed to be paid or credited on the common shares to a U.S. Holder that is the beneficial owner of such dividends will generally be subject to non-resident withholding tax under the Canadian Tax Act and the U.S. Treaty at the rate of (a) 5% of the amounts paid or credited if the U.S. Holder is a company that owns (or is deemed to own) at least 10% of our voting stock, or (b) 15% of the amounts paid or credited in all other cases. The rate of withholding under the Canadian Tax Act in respect of dividends paid to non-residents of Canada is 25% where no tax treaty applies.

## **G. Sale of Unregistered Securities**

### **5.375% Senior Convertible Notes due 2014**

On June 10, 2009, the Company issued \$350.0 million aggregate principal amount of Notes in a private placement to qualified institutional buyers pursuant to Rule 144A under the Securities Act for net proceeds of approximately \$334.0 million, after deducting estimated fees and expenses of the offering. J.P. Morgan Securities Inc. acted as representative of the initial purchasers. The Notes were issued under an indenture dated June 10, 2009 entered into among us, as issuer, The Bank of New York Mellon, as trustee, and BNY Trust Company of Canada, as co-trustee. The Notes bear interest at a rate of 5.375% per year. Interest on the Notes accrues from June 10, 2009. Interest is payable semiannually in arrears on February 1 and August 1 of each year, beginning February 1, 2010. Holders may convert their Notes into common shares at the applicable conversion rate, prior to the close of business on the business day immediately preceding the maturity date, in multiples of \$1,000 principal amount, under the following circumstances:

- during any fiscal quarter (and only during that quarter) commencing after June 30, 2009, if the closing sale price of our common shares is greater than or equal to 130% of the applicable conversion price then in effect for at least 20 trading days in the period of 30 consecutive trading days ending on, and including, the last trading day of the preceding fiscal quarter; during the five business day period after any five consecutive trading day period, or the measurement period, in which the trading price per \$1,000 principal amount of notes for each day of such measurement period was less than 98% of the product of the closing price of our common shares and the applicable conversion rate for the Notes;
- if such Notes have been called for redemption;
- upon the occurrence of specified corporate transactions; or
- during the period beginning 25 trading days prior to maturity.

The initial conversion rate for the Notes is 67.0880 common shares per \$1,000 principal amount of Notes (equal to a conversion price of approximately \$14.91 per common share), subject to adjustment. Upon conversion of a Note, we will have the right to elect to deliver cash or a combination of cash and common shares for the notes surrendered instead of delivering only common shares (plus cash in lieu of fractional shares). In addition, following certain corporate transactions that occur prior to maturity, we will increase the conversion rate for a holder who elects to convert its Notes in connection with such corporate transactions by a number of additional common shares. Holders will not receive any additional cash payment or additional common shares representing accrued and unpaid interest upon conversion of a Note, except in limited circumstances. Instead, interest will be deemed paid by the common shares and cash, if any, issued to the holder upon conversion. Our current intent and policy is to settle the Notes using a net share settlement approach, such that the principal amount of any Notes tendered for conversion would be settled in cash, and any excess conversion value settled in common shares.

We may redeem for cash all or a portion of the Notes at any time on or after August 2, 2012, at a purchase price equal to 100% of the principal amount being redeemed, plus any accrued and unpaid interest if the closing price of our common shares reaches a specified threshold. We may not otherwise redeem any of the Notes at our option prior to maturity, except upon the occurrence of certain changes to the laws governing Canadian withholding taxes.

#### **H. Purchases of Equity Securities by the Company and Affiliated Purchases**

On August 6, 2009 we announced that the Board of Directors had renewed our share repurchase program providing for the purchase of up to 15,800,000 common shares, representing approximately 10% of our public float (as defined by applicable rules). The Company may initially make purchases under the share repurchase program of up to 7.9 million common shares through the facilities of the NYSE, in accordance with applicable rules and guidelines. This represents approximately 5% of the Company's public float as of August 6, 2009. Following additional filings and related approvals, we may also purchase common shares over the TSX. The program does not require Biovail to repurchase a minimum number of common shares, and the program may be modified, suspended or terminated at any time without prior notice. The share repurchase program will terminate on August 11, 2010 or at such earlier time as the Company completes its purchases. Under the terms of our credit facility, we are not permitted to repurchase common shares in excess of \$75.0 million in the aggregate in any given calendar year without obtaining the lenders' prior consent. Given that we do not intend to exceed this threshold, we have not requested nor obtained such consent. No repurchases of common shares were made during the Company's fourth quarter in 2009.

### **Item 6. Selected Financial Data.**

#### **A. Selected Financial Data**

The following table of selected consolidated financial data of our Company has been derived from financial statements prepared in accordance with U.S. generally accepted accounting principles ("U.S. GAAP"). The data is qualified by reference to, and should be read in conjunction with, the consolidated financial statements and

related notes thereto prepared in accordance with U.S. GAAP (see Item 15. “Exhibits, Financial Statement Schedules”). All dollar amounts are expressed in thousands of U.S. dollars, except per share data.

|                                             | Years Ended December 31 |                        |                        |                        |                         |
|---------------------------------------------|-------------------------|------------------------|------------------------|------------------------|-------------------------|
|                                             | 2009                    | 2008                   | 2007                   | 2006                   | 2005                    |
| <b>Consolidated operating data:</b>         |                         |                        |                        |                        |                         |
| Revenue . . . . .                           | 820,430                 | \$757,178              | \$842,818              | \$1,067,722            | \$938,343               |
| Operating income . . . . .                  | 181,154 <sup>(1)</sup>  | 124,109 <sup>(3)</sup> | 188,014 <sup>(5)</sup> | 238,867 <sup>(7)</sup> | 313,279 <sup>(10)</sup> |
| Income from continuing operations . . . . . | 176,455 <sup>(2)</sup>  | 199,904 <sup>(4)</sup> | 195,539 <sup>(6)</sup> | 215,474 <sup>(8)</sup> | 257,015 <sup>(11)</sup> |
| Net income . . . . .                        | 176,455 <sup>(2)</sup>  | 199,904 <sup>(4)</sup> | 195,539 <sup>(6)</sup> | 211,626 <sup>(9)</sup> | 246,440 <sup>(12)</sup> |
| Basic and diluted earnings per share:       |                         |                        |                        |                        |                         |
| Income from continuing operations . . . . . | \$ 1.11 <sup>(2)</sup>  | \$ 1.25 <sup>(4)</sup> | \$ 1.22 <sup>(6)</sup> | \$ 1.35 <sup>(8)</sup> | \$ 1.61 <sup>(11)</sup> |
| Net income . . . . .                        | \$ 1.11 <sup>(2)</sup>  | \$ 1.25 <sup>(4)</sup> | \$ 1.22 <sup>(6)</sup> | \$ 1.32 <sup>(9)</sup> | \$ 1.54 <sup>(12)</sup> |
| Cash dividends declared per share . . . . . | \$ 0.65                 | \$ 1.50                | \$ 1.50                | \$ 1.00                | \$ 0.50                 |

|                                                                 | At December 31 |            |            |            |            |
|-----------------------------------------------------------------|----------------|------------|------------|------------|------------|
|                                                                 | 2009           | 2008       | 2007       | 2006       | 2005       |
| <b>Consolidated balance sheet:</b>                              |                |            |            |            |            |
| Cash and cash equivalents . . . . .                             | 114,463        | \$ 317,547 | \$ 433,641 | \$ 834,540 | \$ 445,289 |
| Working capital . . . . .                                       | 93,734         | 223,198    | 339,439    | 647,337    | 414,033    |
| Total assets . . . . .                                          | 2,067,044      | 1,623,565  | 1,782,115  | 2,192,442  | 2,036,820  |
| Long-term obligations . . . . .                                 | 326,085        | —          | —          | 410,525    | 436,058    |
| Common shares . . . . .                                         | 1,465,004      | 1,463,873  | 1,489,807  | 1,476,930  | 1,461,077  |
| Shareholders' equity (net assets) . . . . .                     | 1,354,372      | 1,201,599  | 1,297,819  | 1,302,257  | 1,228,364  |
| Number of Common Shares issued and outstanding (000s) . . . . . | 158,311        | 158,216    | 161,023    | 160,444    | 159,588    |

- (1) Includes charges of \$59,354 for acquired in-process research and development (“IPR&D”); \$19,065 for restructuring costs; \$10,968 for loss on sale and leaseback of assets; \$6,191 for legal settlements; \$5,596 for acquisition-related costs; \$2,887 for SEC/OSC independent consultant costs; and \$1,028 for proxy contest costs.
- (2) Includes charges of \$59,354 for IPR&D; \$19,065 for restructuring costs; \$10,968 for loss on sale and leaseback of assets; \$6,191 for legal settlements; \$5,596 for acquisition-related costs; \$2,887 for SEC/OSC independent consultant costs; \$1,028 for proxy contest costs; \$5,210 for impairment losses on debt and equity securities; and \$537 for write-down of deferred financing costs. Those charges were partially offset by a \$26,000 deferred income tax benefit; a \$22,000 gain on auction rate security settlement; and a gain of \$804 on disposal of investment.
- (3) Includes charges of \$70,202 for restructuring costs; \$32,565 for legal settlements; and \$13,606 for management succession and proxy contest costs.
- (4) Includes charges of \$70,202 for restructuring costs; \$32,565 for legal settlements; \$13,606 for management succession and proxy contest costs; \$9,869 for impairment losses on debt and equity securities; and an equity loss of \$1,195. Those charges were partially offset by a \$90,000 deferred income tax benefit; and a gain of \$6,534 on disposal of investments.
- (5) Includes charges of \$95,114 for legal settlements (net of insurance recoveries); \$9,910 for intangible asset impairments; and \$668 for restructuring costs. Those charges were partially offset by a \$1,735 contract recovery.
- (6) Includes charges of \$95,114 for legal settlements (net of insurance recoveries); \$9,910 for intangible asset impairments; \$668 for restructuring costs; \$12,463 for loss on early extinguishment of debt; \$8,949 for impairment losses on debt and equity securities; and an equity loss of \$2,528. Those charges were partially offset by a \$1,735 contract recovery; and a gain of \$24,356 on disposal of investments.
- (7) Includes charges of \$143,000 for intangible asset impairments (net of gain on disposal of \$4,000); \$54,800 for contract losses; \$15,126 for restructuring costs; and \$14,400 for legal settlements.
- (8) Includes charges of \$143,000 for intangible asset impairments (net of gain on disposal of \$4,000); \$54,800 for contract losses; \$15,126 for restructuring costs; \$14,400 for legal settlements; and an equity loss of \$529.
- (9) Includes charges of \$143,000 for intangible asset impairments (net of gain on disposal of \$4,000); \$54,800 for contract losses; \$15,126 for restructuring costs; \$14,400 for legal settlements; an equity loss of \$529; and \$1,084 for asset impairments of discontinued operation.

- (10) Includes charges of \$25,833 for intangible asset impairments; \$19,810 for restructuring costs; and \$4,862 for write-off of inventory.
- (11) Includes charges of \$25,833 for intangible asset impairments; \$19,810 for restructuring costs; \$4,862 for write-off of inventory; \$3,397 for loss on impairment of investments; and an equity loss of \$1,160.
- (12) Includes charges of \$25,833 for intangible asset impairments; \$19,810 for restructuring costs; \$4,862 for write-off of inventory; \$3,397 for loss on impairment of investments; an equity loss of \$1,160; and \$5,570 for asset impairments of discontinued operation.

**Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.**



## MANAGEMENT'S DISCUSSION AND ANALYSIS

(All dollar amounts expressed in U.S. dollars)

The following Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") should be read in conjunction with our audited consolidated financial statements and related notes thereto prepared in accordance with United States ("U.S.") generally accepted accounting principles ("GAAP") for the fiscal year ended December 31, 2009 (our "2009 Financial Statements").

Additional information relating to Biovail Corporation, including our Annual Report on Form 10-K for the fiscal year ended December 31, 2009 (our "2009 Form 10-K"), is available on SEDAR at [www.sedar.com](http://www.sedar.com) and on the U.S. Securities and Exchange Commission ("SEC") website at [www.sec.gov](http://www.sec.gov).

The discussion and analysis contained in this MD&A is as of February 26, 2010.

### FORWARD-LOOKING STATEMENTS

Caution regarding forward-looking information and statements and "Safe-Harbor" statements under the U.S. Private Securities Litigation Reform Act of 1995:

To the extent any statements made in this MD&A contain information that is not historical, these statements are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, and may be forward-looking information within the meaning defined under applicable Canadian securities legislation (collectively, "forward-looking statements"). These forward-looking statements relate to, among other things, our objectives, goals, strategies, beliefs, intentions, plans, estimates, and outlook, including, without limitation:

- our intent and ability to implement and effectively execute plans and initiatives associated with our strategic focus on products targeting specialty central nervous system ("CNS") disorders and the anticipated impact of such strategy, including, but not limited to, the amount and timing of expected contribution(s) from our product development pipeline;
- our intent to complete in-license agreements and acquisitions and to successfully integrate such in-license agreements and acquisitions into our business and operations and to achieve the anticipated benefits of such in-license agreements and acquisitions;
- our intent and ability to invest approximately \$600 million in research and development between 2008 and 2012;
- the competitive landscape in the markets in which we compete, including, but not limited to, the prescription trends, pricing and the formulary or Medicare/Medicaid utilization and positioning for our products, the opportunities present in the market for therapies for specialty CNS disorders, the anticipated level of demand for our products and the availability or introduction of generic formulations of our products;
- our intent, timing and ability to complete the planned disposals of certain non-core assets, including, but not limited to, our Carolina, Puerto Rico manufacturing facility and operations and the anticipated costs, impacts and proceeds of such disposition;
- anticipated level of demand for generic Tiazac® and generic Cardizem® CD products;
- our intent and related success or failure regarding the defence of our intellectual property against infringement;
- our views, beliefs and positions related to, results of, and costs associated with, certain litigation and regulatory proceedings and the timing, costs and expected impact of the resolution of certain litigation and regulatory proceedings;
- the timing, results, and progress of research and development efforts, including, but not limited to, the estimated costs and expected timing to complete the development of BVF-018 (tetrabenazine), and efforts related to the development of AZ-004 (Staccato® loxapine), BVF-014 (glial cell line-derived

## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

neurotrophic factor ("GDNF")); BVF-025 (fipamezole), BVF-036, BVF-040 and BVF-048 (pimavanserin), and BVF-324 (tramadol), including the expected potential milestone and royalty payments in connection with pimavanserin, fipamezole, GDNF, Staccato® loxapine, and other research and development arrangements;

- our intent to deploy a specialty U.S. sales force to support our specialty CNS strategy, and the timing and amount of costs associated with establishing such sales force;
- our ability to secure other development partners for, and to share development costs associated with, certain product development programs;
- our intent and ability to make future dividend payments or to repurchase our common shares under our share repurchase program;
- the sufficiency of cash resources, including those available under the accordion feature of our credit facility, to support future spending and business development requirements;
- the expected future taxable income in determining any required deferred tax asset valuation allowance;
- the impact of market conditions on our ability to access additional funding at reasonable rates, and our ability to manage exposure to foreign currency exchange rate changes and interest rate changes;
- our intent and ability to use a net share settlement approach upon conversion of our 5.375% Senior Convertible Notes due 2014 ("Convertible Notes");
- additional expected charges and anticipated annual savings related to ongoing or planned efficiency initiatives;
- expected timing and impact on revenues and earnings of the introduction of generic versions of Ultram® ER (300mg dosage strength), Glumetza® (500mg dosage strength), Cardizem® LA and Cardizem® CD products;
- timing regarding the Zovirax® price allowance;
- investment recovery, liquidity, valuation, impairment and other conclusions associated with our investment in auction rate securities;
- expected timing and amount of principal and interest payments related to long-term obligations;
- the impact of short-term fluctuations in our share price on the fair value of our reporting unit for purposes of testing goodwill for impairment;
- availability of benefits under tax treaties and the continued availability of low effective tax rates for our operations;
- our expected capital expenditures; and
- expected impact of the adoption of new accounting guidance.

These forward-looking statements may not be appropriate for other purposes.

Forward-looking statements can generally be identified by the use of words such as "believe", "anticipate", "expect", "intend", "plan", "will", "may", "target", "potential", and other similar expressions. In addition, any statements that refer to expectations, projections or other characterizations of future events or circumstances are forward-looking statements. Although we have indicated certain of these statements set out herein, all of the statements in this MD&A that contain forward-looking statements are qualified by these cautionary statements. Although we believe that the expectations reflected in such forward-looking statements are reasonable, such statements involve risks and uncertainties, and undue reliance should not be placed on such statements. Certain material factors or assumptions are applied in making forward-looking statements, including, but not limited to,

## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

factors and assumptions regarding the items outlined above. Actual results may differ materially from those expressed or implied in such statements. Important factors that could cause actual results to differ materially from these expectations include, among other things:

- the successful execution of our specialty CNS strategy, including our ability to successfully identify, evaluate, acquire, obtain regulatory approval for, develop, manufacture and commercialize pipeline products;
- the success of preclinical and clinical trials for our drug development pipeline or delays in clinical trials which adversely impact the timely commercialization of our pipeline products;
- the results of continuing safety and efficacy studies by industry and government agencies;
- the uncertainties associated with the development, acquisition and launch of new products, including, but not limited to, the acceptance and demand for new pharmaceutical products, and the impact of competitive products and pricing;
- our reliance on key strategic alliances, our ability to secure and maintain third-party research, development, manufacturing, marketing or distribution arrangements and securing other development partners for, and to share development costs associated with, certain product development programs;
- the availability of capital and our ability to generate operating cash flows to support our growth strategy;
- the continuation of the recent market turmoil, which could result in fluctuations in currency exchange rates and interest rates;
- our eligibility for benefits under tax treaties and the continued availability of low effective tax rates for the business profits of our principal operating subsidiary;
- the difficulty of predicting the expense, timing and outcome within our legal and regulatory environment, including, but not limited to, U.S. Food and Drug Administration ("FDA"), Canadian Therapeutic Products Directorate and European regulatory approvals, legal and regulatory proceedings and settlements thereof, the protection afforded by our patents and other intellectual and proprietary property, successful challenges to our generic products, and infringement or alleged infringement of the intellectual property rights of others;
- our ability to establish or acquire a specialty U.S. sales force to support our specialty CNS strategy;
- our ability to attract and retain key personnel;
- the reduction in the level of reimbursement for, or acceptance of, pharmaceutical products by governmental authorities, health maintenance organizations or other third-party payors;
- our ability to satisfy the financial and non-financial covenants of our credit facility and Convertible Notes' indenture;
- our ability to repay or refinance the principal amount under the Convertible Notes' indenture at maturity;
- the disruption of delivery of our products and the routine flow of manufactured goods across the U.S. border; and
- other risks detailed from time to time in our filings with the SEC and the Canadian Securities Administrators ("CSA"), as well as our ability to anticipate and manage the risks associated with the foregoing.

Additional information about these factors and about the material factors or assumptions underlying such forward-looking statements may be found in the body of this MD&A, as well as under Item 1A. "Risk Factors" of our 2009 Form 10-K. We caution that the foregoing list of important factors that may affect future results is not exhaustive. When relying on our forward-looking statements to make decisions with respect to our

## **MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)**

**(All dollar amounts expressed in U.S. dollars)**

Company, investors and others should carefully consider the foregoing factors and other uncertainties and potential events. We undertake no obligation to update or revise any forward-looking statement, except as may be required by law.

### **OVERVIEW**

#### **Company Profile**

We are a specialty pharmaceutical company with a strategic focus on developing and commercializing products that address unmet medical needs in specialty CNS disorders. We have various research and development, clinical research, manufacturing and commercial operations located in Barbados, Canada, the U.S., Ireland and Puerto Rico.

#### **Strategic Initiatives**

Prior to May 2008, our base business model was focused on the development and large-scale manufacture of pharmaceutical products incorporating oral drug-delivery technologies. Our main therapeutic areas of focus were non-specialty CNS disorders, pain management and cardiovascular disease. In May 2008, as a result of significant changes in the environment for oral controlled-release products over the previous several years, we adopted a new business model that concentrates our research and development and business development efforts on unmet medical needs in specialty CNS disorders.

Since adopting our specialty CNS strategy in May 2008, we have completed a number of in-license agreements and acquisitions that have enhanced our drug-development pipeline. Our business development activities have targeted a number of growth opportunities, including Huntington's disease, Parkinson's disease, and schizophrenia. Our specialty CNS pipeline currently includes seven projects in development, and we are seeking to leverage our growing credibility in the specialty CNS market to further expand our pipeline by entering into agreements with other companies to develop, license, or acquire promising compounds, technologies, or capabilities. Our target is to invest approximately \$600 million on research and development in the 2008 to 2012 timeframe, including upfront and milestone payments related to in-licensing activities.

The growth and development of our specialty CNS business is financially supported by our former base business model, which continues to provide revenues and significant operating cash flows that can be used to support and fund licensing and acquisition opportunities in specialty CNS. In addition, we are pursuing other complementary acquisitions or business opportunities (such as our May 2009 acquisition of the full U.S. commercialization rights to Wellbutrin XL®) that may be accretive to revenues and cash flows in the near-term. At December 31, 2009, we had available capital resources — including cash on hand and available credit under our credit facility — in excess of \$500 million with which to further pursue our specialty CNS strategy.

We also continue to promote efficiency in our operations, significantly reduce our cost structure to better align expenses with current projected revenues, and ensure capital is available to be deployed in support of our specialty CNS business model. Key initiatives in this regard include efforts to: (i) rationalize our manufacturing operations, pharmaceutical sciences operations, and general and administrative expenses; (ii) divest and monetize certain non-core assets; and (iii) resolve legacy litigation and regulatory matters.

We believe that our continued ability to successfully implement our specialty CNS strategy will be driven by a number of factors, including: (i) our strong balance sheet; (ii) ongoing cash flows generated by our former base business model; (iii) the in-licensing and acquisition opportunities currently available in the specialty CNS market; and (iv) our proven expertise in formulation, clinical development, regulatory affairs, manufacturing and marketing of prescription pharmaceutical products.

## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

### Business Development

#### *Staccato® Loxapine*

On February 9, 2010, we entered into a collaboration and license agreement with Alexza Pharmaceuticals, Inc. ("Alexza") to acquire the U.S. and Canadian development and commercialization rights to AZ-004 for the treatment of psychiatric and/or neurological indications and the symptoms associated with these indications, including the initial indication of treating agitation in schizophrenia and bipolar patients. AZ-004 combines Alexza's proprietary Staccato® drug-delivery system with the antipsychotic drug loxapine. Staccato® loxapine for the treatment of agitation in schizophrenia and bipolar patients is directly aligned with our specialty CNS strategy.

In December 2009, Alexza submitted a New Drug Application ("NDA") to the FDA for Staccato® loxapine. The FDA has accepted the NDA for filing and has indicated a Prescription Drug User Fee Act ("PDUFA") goal date of October 11, 2010.

Pursuant to the terms of the collaboration and license agreement, we paid an upfront fee of \$40.0 million, and could pay up to \$90.0 million in potential milestones in connection with the initial indication, contingent on the successful approval of the first AZ-004 NDA, successful commercial manufacturing scale-up, and the first commercial sale on an inpatient and on an outpatient basis, which may require the successful completion of additional clinical trials, regulatory submission, and/or approval of a supplemental NDA. We will also make tiered, royalty payments of 10% to 25% on net commercial sales of Staccato® loxapine. Alexza will supply the product to us for commercialization, and will receive a per-unit transfer price, based on annual product volume.

We intend to deploy a specialty sales force to commercialize Staccato® loxapine in the U.S. We estimate the costs associated with establishing this sales force will amount to between \$10 million and \$20 million in the second half of 2010, and between \$40 million and \$70 million in 2011, depending on the breadth of the label approved by the FDA.

This acquisition will be accounted for as a purchase of acquired in-process research and development ("IPR&D") intangible assets with no alternative future use. Accordingly, the \$40.0 million upfront payment, together with any acquisition costs, will be charged to research and development expenses in the first quarter of 2010.

#### *GDNF*

On December 21, 2009, we entered into a license agreement with Amgen Inc. ("Amgen") and MedGenesis Therapeutix Inc. ("MedGenesis"), pursuant to which we were granted a license to exploit GDNF in certain CNS indications in certain countries (including the U.S., Canada, Japan, and a number of European countries). At the same time, we entered into a collaboration agreement with MedGenesis to develop and commercialize GDNF, initially for the treatment of Parkinson's disease in the U.S., Japan and certain European countries and, potentially, in other countries and other CNS indications. Pursuant to the collaboration agreement, we were granted a license to MedGenesis's Convection Enhanced Delivery platform for use with GDNF in CNS indications. GDNF for the treatment of Parkinson's disease is directly aligned with our specialty CNS strategy.

In connection with the collaboration agreement, we made an upfront payment to MedGenesis of \$6.0 million, and we could pay up to an additional \$20.0 million in potential developmental milestones to MedGenesis. We also have certain funding obligations towards the development of GDNF in Parkinson's disease in the U.S., totaling up to \$14.0 million for the Pre-Investigational New Drug ("IND") development phase and Phase 2 clinical trials. We intend to share with MedGenesis the development costs associated with Phase 3 clinical studies in the U.S. (as well as any development costs associated with Phase 2 clinical trials that exceed our initial funding obligation), and with the development programs in other countries. Together with MedGenesis, we could, in the aggregate, pay Amgen up to \$25.0 million in regulatory milestones and up to \$75.0 million in sales-based milestones, and will pay royalties to Amgen based on net sales of GDNF products.



## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

We will be responsible for commercializing GDNF products in the countries in which we have the GDNF license rights, and will pay MedGenesis a royalty in respect of net sales of GDNF products in those countries.

This acquisition was accounted for as a purchase of IPR&D intangible assets with no alternative future use. Accordingly, the \$6.0 million upfront payment, together with acquisition costs of \$2.9 million, was charged to research and development expenses at the acquisition date.

### *Fipamezole*

On August 24, 2009, we entered into a collaboration and license agreement with Santhera Pharmaceuticals (Switzerland) Ltd. ("Santhera"), a subsidiary of Santhera Pharmaceuticals Holding AG, to acquire the U.S. and Canadian rights to develop, manufacture and commercialize fipamezole for the treatment of a number of neurological and psychiatric conditions, including levodopa-induced dyskinesia (BVF-025), also known as Parkinson's disease dyskinesia ("PDD"). Fipamezole for PDD is directly aligned with our specialty CNS strategy.

Pursuant to the terms of the collaboration and license agreement, we made an upfront payment of \$8.0 million to Santhera at the acquisition date, and made a further payment of \$4.0 million to Santhera on October 5, 2009, upon the closing of Santhera's acquisition of Oy Juvantia Pharma Ltd. We could pay up to \$35.0 million in potential developmental and regulatory milestones associated with the initiation of a Phase 3 study, regulatory submissions and approvals of fipamezole in PDD. Should we pursue a second indication, we could pay an additional \$20.0 million milestone upon regulatory approval. We will also make royalty payments of 8% to 15% on net commercial sales of fipamezole, as well as additional milestone payments of up to \$145.0 million as certain sales thresholds are met.

This acquisition was accounted for as a purchase of IPR&D intangible assets with no alternative future use. Accordingly, the \$8.0 million upfront payment, together with acquisition costs of \$0.1 million, was charged to research and development expenses at the acquisition date. The additional payment of \$4.0 million made to Santhera on October 5, 2009 was charged to research and development expenses in the fourth quarter of 2009.

We will be responsible for the development programs and associated costs in the U.S. and Canada for fipamezole for both PDD and the second indication if pursued.

### *Tetrabenazine*

On June 19, 2009, we acquired the worldwide development and commercialization rights to the entire portfolio of tetrabenazine products, including Xenazine® and Nitoman®, held by Cambridge Laboratories (Ireland) Limited and its affiliates ("Cambridge"). As described below under "— Prestwick", we had previously obtained certain licensing rights to tetrabenazine in the U.S. and Canada through the acquisition of Prestwick Pharmaceuticals, Inc. ("Prestwick") in September 2008. By means of this acquisition, we obtained Cambridge's economic interest in the supply of tetrabenazine for the U.S. and Canadian markets, as well as for a number of other countries in Europe and around the world through existing distribution arrangements. In addition, we assumed Cambridge's royalty obligations to third parties on the worldwide sales of tetrabenazine. The acquisition of tetrabenazine is directly aligned with our specialty CNS strategy.

This acquisition was accounted for as a business combination under the acquisition method of accounting. The total purchase price of \$226.8 million comprised cash consideration of \$200.0 million paid on closing, and additional payments of \$12.5 million and \$17.5 million due to Cambridge on the first and second anniversaries of the closing date, respectively. These additional payments were fair valued at \$26.8 million, using an imputed interest rate comparable to our available borrowing rate at the date of acquisition. We incurred \$5.6 million of costs related to this acquisition, which were expensed in the second quarter of 2009.

The purchase price was allocated to a product rights intangible asset (\$189.7 million), IPR&D intangible assets (\$36.0 million), and inventory (\$1.1 million). The product rights intangible asset represents the value of

## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

the currently marketed immediate-release tetrabenazine products, with an estimated useful life of approximately nine years. The IPR&D intangible asset relates to a modified-release ("MR") formulation of tetrabenazine under development initially for the treatment of Tourette's Syndrome (BVF-018) and an isomer of tetrabenazine (RUS-350), both of which were in pre-clinical stages of development at the acquisition date. The values assigned to BVF-018 and RUS-350 were \$28.0 million and \$8.0 million, respectively.

BVF-018 has been granted orphan drug designation by the FDA for the treatment of Tourette's Syndrome in school-age children (aged 5-16 years), which provides the product with seven years of market exclusivity in the U.S. if successfully developed. We had a pre-IND application meeting with the FDA for this program in early July 2009, and contingent on successful safety assessments, our current plans are to initiate a Phase 2 clinical study in the third quarter of 2010. We expect to complete the development of BVF-018 in 2014. The total estimated costs to complete this project for its primary indication are approximately \$70 million to \$75 million, which will be shared with at least one development partner and possibly others. Through December 31, 2009, we incurred total direct expenditures related to this project of \$2.2 million (net of reimbursements from our development partner, which are reflected as a reduction of research and development expenses).

The efforts required to develop BVF-018 into a commercially viable product include completion of the pre-clinical development, clinical-trial testing, regulatory approval, and commercialization. The principal risks relating to this project include the outcomes of the formulation development, clinical studies, and regulatory filings. Since pharmaceutical products cannot be marketed without regulatory approvals, we will not receive any benefits unless regulatory approval is obtained. As a result, there is no certainty that any of our development efforts related to this project will result in a commercially viable product.

In respect of RUS-350, we have decided to terminate this development program, as we determined, based on the results of development efforts completed subsequent to the acquisition date, that the isomer was unlikely to provide meaningful benefits to patients beyond that provided by tetrabenazine. As a result, in the fourth quarter of 2009, we recorded a charge of \$8.0 million to write off the related IPR&D intangible asset, which is recorded in research and development expenses.

The amount of incremental revenue and earnings (excluding amortization of the acquired product rights intangible asset) recognized from the worldwide sales of tetrabenazine from the acquisition date to December 31, 2009, amounted to approximately \$3.8 million and \$4.5 million, respectively, in our consolidated statement of income.

### ***Wellbutrin XL®***

On May 14, 2009, we acquired the full U.S. commercialization rights to Wellbutrin XL® from The GlaxoSmithKline Group of Companies ("GSK"). We had supplied Wellbutrin XL® to GSK for marketing or distribution in the U.S. since September 2003. The Wellbutrin XL® product formulation was developed, and is manufactured, by us under our own patents and proprietary technology. This acquisition does not materially impact our existing agreement with GSK as that agreement relates to countries outside the U.S. We will continue to manufacture and supply Wellbutrin XL® to GSK for distribution in these countries. In Canada, Wellbutrin® XL will continue to be marketed by our internal sales organization, Biovail Pharmaceuticals Canada ("BPC").

Pursuant to the terms of the asset purchase agreement, we paid \$510.0 million to GSK to acquire the U.S. NDA for Wellbutrin XL®. Pursuant to the terms of a trademark and license agreement with GSK, we also obtained an exclusive, royalty-free license to the Wellbutrin XL® trademark for use in the U.S. This acquisition was accounted for as a purchase of identifiable intangible assets. Accordingly, the total purchase price (including costs of acquisition of \$0.5 million) was allocated to the trademark intangible asset with an estimated useful life of 10 years. In addition, we acquired the Wellbutrin XL® finished goods inventory owned by GSK valued at \$10.5 million.

## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

This acquisition proved accretive to revenue by an amount in excess of \$100 million in 2009. The significant cash flows that were generated have been used to further expand our pipeline of specialty CNS products.

### *Pimavanserin*

On May 1, 2009, we entered into a collaboration and license agreement with ACADIA Pharmaceuticals Inc. ("ACADIA") to acquire the U.S. and Canadian rights to develop, manufacture and commercialize pimavanserin in a number of neurological and psychiatric conditions, including Parkinson's disease psychosis ("PDP") (BVF-036), Alzheimer's disease psychosis ("ADP") (BVF-040), and, as an adjunctive therapy, to treat schizophrenia (BVF-048). Pimavanserin for PDP, ADP, and schizophrenia is directly aligned with our specialty CNS strategy.

Pursuant to the terms of the collaboration and license agreement, we paid an upfront fee of \$30.0 million to ACADIA, and could pay up to \$160.0 million in potential developmental milestones associated with the successful completion of clinical trials, regulatory submissions and approvals for pimavanserin in the PDP and ADP indications. In addition, we could pay up to \$45.0 million in success milestones for pimavanserin in a third indication. At this time, we intend to pursue pimavanserin as an adjunct therapy for schizophrenia as the third indication. We will also make tiered royalty payments of 15% to 20% on net sales of products containing pimavanserin, as well as additional milestone payments of up to \$160.0 million as certain net sales thresholds are met.

This acquisition was accounted for as a purchase of IPR&D intangible assets with no alternative future use. Accordingly, the \$30.0 million upfront payment, together with acquisition costs of \$0.4 million, was charged to research and development expenses at the acquisition date.

We will be responsible for funding all of the PDP, ADP and schizophrenia development expenses for pimavanserin, other than the cost of two Phase 3 clinical trials for PDP that ACADIA had in progress at the time of the agreement. The first of these Phase 3 PDP studies did not meet its primary endpoint of antipsychotic efficacy, but did meet the secondary endpoint of motoric tolerability. On October 5, 2009, we amended the collaboration and license agreement with ACADIA to provide that we will fund a third Phase 3 clinical trial for PDP; provided, however, that if the trial does not meet the primary endpoint, then ACADIA will reimburse us for 50% of the cost of the trial. If the third PDP trial or a subsequent pivotal trial in PDP meets its primary endpoint, we may credit 50% of the costs of the applicable trial against the potential milestone payment triggered by such trial. The amendment also provides that ACADIA may elect to pursue an initial clinical trial in ADP at its own expense. However, if the ADP trial meets its primary endpoint, then we would reimburse ACADIA 100% of the cost of the trial.

### *Prestwick*

On September 16, 2008, we acquired 100% of Prestwick for a total net purchase price of \$101.9 million. The acquisition of Prestwick was accounted for as a business combination under the former purchase method of accounting. The purchase price paid was primarily allocated to identifiable intangible assets of \$157.9 million and deferred revenue of \$50.0 million. The identifiable intangible assets relate to the acquired Xenazine® and Nitoman® product rights as described below, which are being amortized over an estimated useful life of 10 years. Prestwick had acquired the licensing rights to Xenazine® in the U.S. and Nitoman® in Canada from Cambridge, which, at the time, held the worldwide license for tetrabenazine.

In August 2008, an NDA for Xenazine® received FDA approval for the treatment of chorea associated with Huntington's disease. Xenazine® was granted orphan drug designation by the FDA, which provides this product with seven years of market exclusivity in the U.S. from the date of FDA approval. Nitoman® has been available in Canada since 1996, where it is approved for the treatment of hyperkinetic movement disorders, including Huntington's chorea.

## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

Xenazine® is being commercialized in the U.S. by Lundbeck Inc. (a subsidiary of H. Lundbeck A/S) (“Lundbeck”), formerly Ovation Pharmaceuticals, Inc. (“Ovation”), under an exclusive supply and distribution agreement entered into between Prestwick and Ovation prior to our acquisition of Prestwick. Ovation paid Prestwick \$50.0 million for the exclusive rights to market and distribute Xenazine® for an initial term of 15 years. We will supply Xenazine® product to Lundbeck for a variable percentage of Lundbeck’s annual net sales of the product. For annual net sales up to \$125 million, our supply price will be 72% of net sales. Beyond \$125 million, our supply price will be 65% of net sales. Prior to the acquisition of the worldwide development and commercialization rights to tetrabenazine in June 2009, we acquired Xenazine® product from Cambridge at a supply price of 50% of Lundbeck’s net sales.

### Product Development Pipeline

The following table displays selected information regarding our specialty CNS drug-development programs (as more fully described above under “— Business Development”):

| PROGRAM | COMPOUND           | INDICATION(S)                                   | DEVELOPMENT STATUS                          |
|---------|--------------------|-------------------------------------------------|---------------------------------------------|
| AZ-004  | Staccato® loxapine | Agitation in schizophrenia and bipolar patients | NDA filed; PDUFA goal date October 11, 2010 |
| BVF-036 | Pimavanserin       | PDP                                             | Phase 3                                     |
| BVF-048 | Pimavanserin       | Schizophrenia co-therapy                        | Phase 2                                     |
| BVF-025 | Fipamezole         | PDD                                             | Phase 2                                     |
| BVF-040 | Pimavanserin       | ADP                                             | Phase 1                                     |
| BVF-018 | Tetrabenazine MR   | Tourette’s Syndrome                             | Pre-clinical                                |
| BVF-014 | GDNF               | Parkinson’s disease                             | Pre-IND                                     |

In addition to the programs outlined above, we continue to work on the development of a number of legacy programs that originated from our former base business model. In particular, Phase 3 clinical trials are underway in Europe for BVF-324 (the use of non-commercially available doses of tramadol for the treatment of premature ejaculation). In addition, during 2008, we filed three Abbreviated New Drug Applications (“ANDA”) with the FDA for generic formulations of Effexor XR, Tricor and Seroquel XR. The following table displays selected information regarding these legacy programs:

| PROGRAM | COMPOUND                         | INDICATION(S)                      | DEVELOPMENT STATUS                           |
|---------|----------------------------------|------------------------------------|----------------------------------------------|
| BVF-324 | Tramadol                         | Sexual dysfunction                 | Phase 3                                      |
| BVF-065 | Venlafaxine (generic Effexor XR) | Depression                         | ANDA filed April 16, 2008 <sup>(1)</sup>     |
| BVF-203 | Fenofibrate (generic Tricor)     | High cholesterol                   | ANDA filed July 1, 2008 <sup>(2)</sup>       |
| BVF-058 | Quetiapine (generic Seroquel XR) | Schizophrenia and bipolar disorder | ANDA filed September 24, 2008 <sup>(2)</sup> |

- (1) We have settled an infringement claim related to this ANDA filing and have received a license to manufacture and sell the product with an effective date expected to be on or about June 1, 2011, subject to earlier launch in limited circumstances but in no event earlier than January 1, 2011.

## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

- (2) We are subject to infringement claims by the innovator companies related to both of these ANDA filings, thereby triggering a 30-month stay of the FDA's approval pursuant to the provisions of the *Hatch-Waxman Act*.

During 2009, we suspended further development of the legacy program BVF-045 (combination product consisting of Aplenzin™ and an undisclosed selective serotonin reuptake inhibitor), as a result of being unable to secure a development partner.

Any success in our product-development programs would be reflective of the investments in research and development we make over a number of years. On an ongoing basis, we review and optimize the projects in our development portfolio to reflect changes in the competitive environment and emerging opportunities. Our future level of research and development expenditures will depend on, among other things, the outcome of clinical testing of our products under development, delays or changes in government required testing and approval procedures, technological developments, and strategic marketing decisions.

### Financing Arrangements

#### *Convertible Notes*

On June 10, 2009, we issued \$350.0 million principal amount of Convertible Notes in a private placement. The Convertible Notes were issued at par and interest is payable semi-annually on February 1 and August 1 of each year, beginning February 1, 2010. The Convertible Notes will mature on August 1, 2014. Noteholders may convert their holdings based on a conversion rate of 67.0880 common shares per \$1,000 principal amount of Convertible Notes, equivalent to a conversion price of approximately \$14.91 per share, subject to adjustment, at their option at any time prior to the maturity date under the following circumstances: (i) if the closing price of our common shares reaches, or the trading price of the Convertible Notes falls below, specified thresholds; (ii) if the Convertible Notes have been called for redemption; (iii) upon the occurrence of specified corporate transactions; and (iv) during the 25 trading days prior to the maturity date. Upon conversion, we will have the option to deliver cash, common shares or a combination of cash and common shares. In addition, following certain corporate transactions, we will in certain circumstances increase the conversion rate for noteholders who elect to convert their holdings in connection with such corporate transactions. Our current intent and policy is to settle the Convertible Notes using a net share settlement approach, such that the principal amount of any Convertible Notes tendered for conversion would be settled in cash, and any excess conversion value settled in common shares.

We may redeem for cash all or a portion of the Convertible Notes at any time on or after August 2, 2012, at a purchase price equal to 100% of the principal amount being redeemed, plus any accrued and unpaid interest, if the closing price of our common shares reaches a specified threshold. We may not otherwise redeem any of the Convertible Notes at our option prior to maturity, except upon the occurrence of certain changes to the laws governing Canadian withholding taxes.

If we experience specified types of fundamental changes, noteholders may require us to repurchase for cash all or a portion of their holdings at a price equal to 100% of the principal amount of the Convertible Notes to be purchased plus any accrued and unpaid interest to, but excluding, the date of repurchase.

The liability (debt) and equity (conversion option) components of the Convertible Notes were separately accounted for in a manner that reflects our estimated borrowing rate for non-convertible debt with otherwise similar terms. The liability component was fair valued at \$293.3 million and the equity component was valued on a residual basis at \$56.7 million. The value assigned to the liability component was estimated based on a 9.5% market rate of interest for similar debt with no conversion rights. The value allocated to the liability component will be accreted to the face value of the Convertible Notes over the five-year period prior to maturity, using the effective interest method. The accretion of the liability component will be recognized as additional non-cash interest expense. The value assigned to the equity component was recorded in additional paid-in capital in shareholders' equity.



## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

We recognized a deferred tax liability of \$14.6 million for the original basis difference between the principal amount of the Convertible Notes and the value allocated to the liability component, which resulted in a corresponding reduction to the valuation allowance recorded against our deferred tax assets. The recognition of the deferred tax liability and the corresponding reduction in the valuation allowance were recorded as offsetting adjustments to additional paid-in capital. In subsequent periods, the deferred tax benefit resulting from the reversal of the deferred tax liability, will be offset by the deferred tax expense related to the corresponding realization of the deferred tax assets.

### *Credit Facility*

On June 9, 2009, we established a \$410.0 million senior secured revolving credit facility with a syndicate of banks. This facility matures on June 9, 2012 and replaces our former \$250.0 million credit facility. This facility contains an accordion feature that, subject to certain conditions, allows the facility to be increased to up to \$550.0 million. The facility is guaranteed by our material subsidiaries and is secured by charges over substantially all of our assets and the assets of our material subsidiaries, and is subject to certain financial and non-financial covenants. At December 31, 2009, we had no outstanding borrowings under this facility, and were in compliance with all covenants.

### *Restructuring*

In support of our specialty CNS strategy, we initiated restructuring measures in May 2008 that were intended to rationalize our manufacturing operations, pharmaceutical sciences operations, and general and administrative expenses. These measures included the closure of our research and development facility in Dublin, Ireland in August 2008, the sale of our Dorado, Puerto Rico manufacturing facility in January 2010, and the ultimate planned closure of our manufacturing facility in Carolina, Puerto Rico. In addition, in May 2009, we announced the closure of our research and development facility in Mississauga, Ontario and the consolidation of our research and development operations in Chantilly, Virginia. We have also reviewed our procurement levels and practices and the structure of our support functions to ensure they are appropriately aligned with our size and revenue base.

The following table summarizes the major components of the related restructuring costs recognized through December 31, 2009:

| (\$ in 000s)                          | Asset Impairments |                         | Employee Termination Benefits |                         | Contract Termination and Other Costs | Total            |
|---------------------------------------|-------------------|-------------------------|-------------------------------|-------------------------|--------------------------------------|------------------|
|                                       | Manufacturing     | Pharmaceutical Sciences | Manufacturing                 | Pharmaceutical Sciences |                                      |                  |
| Balance, January 1, 2008 . . . . .    | \$ —              | \$ —                    | \$ —                          | \$ —                    | \$ —                                 | \$ —             |
| Costs incurred and charged to expense | 42,602            | 16,702                  | 3,309                         | 2,724                   | 4,865                                | 70,202           |
| Cash payments . . . . .               | —                 | —                       | —                             | (2,724)                 | (333)                                | (3,057)          |
| Non-cash adjustments . . . . .        | (42,602)          | (16,702)                | —                             | —                       | (1,186)                              | (60,490)         |
| Balance, December 31, 2008 . . . . .  | —                 | —                       | 3,309                         | —                       | 3,346                                | 6,655            |
| Costs incurred and charged to expense | 7,591             | 2,784                   | 4,942                         | 1,441                   | 2,307                                | 19,065           |
| Cash payments . . . . .               | —                 | —                       | (2,041)                       | (1,278)                 | (1,321)                              | (4,640)          |
| Non-cash adjustments . . . . .        | (7,591)           | (2,784)                 | —                             | 71                      | —                                    | (10,304)         |
| Balance, December 31, 2009 . . . . .  | <u>\$ —</u>       | <u>\$ —</u>             | <u>\$ 6,210</u>               | <u>\$ 234</u>           | <u>\$ 4,332</u>                      | <u>\$ 10,776</u> |

### *Manufacturing Operations*

The closure of our manufacturing facilities located in Dorado and Carolina, Puerto Rico, and the related transfer of certain manufacturing and packaging processes to our Steinbach, Manitoba manufacturing facility, is expected to reduce our cost infrastructure and improve the capacity utilization of our manufacturing operations.

## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

We expect to incur employee termination costs of approximately \$9.4 million in total for severance and related benefits payable to the approximately 240 employees who have been, or will be, terminated as a result of the closure of our Puerto Rico facilities. As these employees are required to provide service during the shutdown period in order to be eligible for termination benefits, we are recognizing the cost of those termination benefits ratably over the required future service period, including \$4.9 million and \$3.3 million recognized in 2009 and 2008, respectively.

In 2009 and 2008, we recorded impairment charges of \$7.6 million and \$42.6 million, respectively, to write-down the carrying value of the property, plant and equipment located in Puerto Rico to its estimated fair value. As at December 31, 2009, we had entered into an agreement in principle to sell the Dorado facility for net cash proceeds of \$8.5 million. The sale closed on January 15, 2010. We will continue to occupy the Dorado facility until March 31, 2010, pursuant to a short-term lease, during which time any remaining manufacturing and packaging processes will be transferred to the Steinbach facility. While we are continuing to actively market the Carolina facility, this site is expected to now remain open indefinitely, in order to meet higher than anticipated demand for our generic Tiazac® and generic Cardizem® CD products, which is attributable to manufacturing issues involving competitors' products.

### *Pharmaceutical Sciences Operations*

The closures of our Dublin, Ireland and Mississauga, Ontario research and development facilities has reduced the overhead and ongoing infrastructure costs of our pharmaceutical sciences operations, and improved the efficiency of our internal research and development program management at our remaining site in Chantilly, Virginia.

In 2009, we incurred employee termination costs of \$1.4 million for severance and related benefits payable to the approximately 50 employees who have been, or will be, terminated as a result of the closure of the Mississauga facility, and the consolidation of the Chantilly operations. In addition, we recorded an impairment charge of \$0.5 million related to the write-down of the carrying value of the equipment and leasehold improvements located at the Mississauga facility to their estimated fair value. We also recognized \$1.6 million of accelerated depreciation arising from a reduced useful life of the leasehold improvements located at the Chantilly facility, and incurred lease termination costs of \$1.4 million as a result of vacating one of our premises in Chantilly in 2009.

In July 2009, we completed the sale of the Dublin facility for net cash proceeds of \$5.2 million, which resulted in an additional write-down of \$0.7 million to the carrying value of this facility in the second quarter of 2009. We had closed this facility in August 2008 and recorded an impairment charge of \$9.2 million to write down the carrying value of the building and equipment to their estimated fair value at that time. In addition, we recognized employee termination costs of \$2.7 million in 2008 for the approximately 50 employees affected by this closure.

Also in 2008, we recorded an impairment charge of \$7.5 million to write off the carrying value of certain technology intangible assets, which were related to proprietary drug-delivery technologies that were not expected to be utilized in the development of specialty CNS products.

### *Results of Efficiency Initiatives*

In 2009, our efficiency initiatives, including the rationalization of our manufacturing operations, pharmaceutical sciences operations, and general and administrative expenses, resulted in savings of approximately \$30 million. We expect that these initiatives, once fully implemented, may result in annual savings of \$40 million to \$60 million. Our ongoing and planned efficiency initiatives have resulted in cumulative charges to earnings of \$97.2 million recorded through December 31, 2009. These charges are expected to be in the range of \$100 million to \$120 million, of which the cash component is expected to be up to \$40 million, including \$20.1 million incurred through December 31, 2009.

## **MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)**

**(All dollar amounts expressed in U.S. dollars)**

### **Sale of Non-Core Assets**

We are targeting in excess of \$70 million in total proceeds from the divestiture and monetization of non-core assets. To date, we have realized \$63.1 million of this goal, through the following transactions:

- In January 2010, we completed the sale of our Dorado, Puerto Rico manufacturing facility for net cash proceeds of \$8.5 million.
- In November 2009, we completed the sale and leaseback of our corporate headquarters in Mississauga, Ontario for net cash proceeds of \$17.8 million. We recognized a loss on disposal of \$11.0 million in the fourth quarter of 2009, which is recorded in selling, general and administrative expenses. We will continue to occupy this facility under a 20-year operating lease at market rental rates.
- In July 2009, we completed the sale of our Dublin, Ireland research and development facility for net cash proceeds of \$5.2 million.
- In April 2009, we completed the sale of our corporate aircraft for cash proceeds of \$5.3 million and entered into a four-year operating lease for this aircraft. This transaction resulted in a gain on disposal of \$0.9 million, which was deferred and will reduce future lease rental expense over the lease term.
- During 2009 and 2008, we disposed of our investments in Depomed, Inc. ("Depomed"), Financière Verdi ("Verdi"), formerly Ethypharm S.A. ("Ethypharm"), and Hemispherx Biopharma, Inc. ("Hemispherx") for total cash proceeds of \$26.3 million, resulting in a disposal gain of \$7.3 million in the aggregate.

### **Resolution of Legacy Litigation and Regulatory Matters**

Since December 2007, we have resolved the following six legacy litigation and regulatory proceedings relating to matters which arose during the period from 2001 to March 2004:

- an investigation by the U.S. Attorney's Office ("USAO") for the District of Massachusetts regarding promotional and marketing activities surrounding the 2003 commercial launch of Cardizem® LA;
- an investigation and subsequent proceeding commenced by the Ontario Securities Commission ("OSC") related to specific accounting and financial disclosure practices that occurred between 2001 and March 2004;
- an SEC complaint in connection with similar accounting and financial disclosure practices as described in the OSC proceeding for the period of 2001 to March 2004;
- a securities class action lawsuit in the U.S. relating to statements made by our Company and certain former officers and directors between February 7, 2003 and March 2, 2004;
- a Canadian securities class action lawsuit in respect of similar issues alleged in the U.S. class action; and
- litigation involving former Banc of America Securities LLC analyst Jerry Treppel.

In connection with the settlement agreements entered into with the OSC and SEC, we agreed to the appointment of independent consultants to review and report on our accounting and related functions.

As described in note 24 to our 2009 Financial Statements, on February 27, 2010, S.A.C. Capital Advisors, LLC commenced an action against us alleging malicious prosecution related to our legacy complaint against it. A factually similar complaint was filed the same day by Gradient Analytics, Inc., and two individuals.

**MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)**  
**(All dollar amounts expressed in U.S. dollars)**

**Major Products**

The following table displays selected information regarding our major brand name products by therapeutic area:

| BRAND NAME(S)                     | INDICATION(S)                                                  | MARKET                                     | COMMERCIALIZATION                                                                                                       |
|-----------------------------------|----------------------------------------------------------------|--------------------------------------------|-------------------------------------------------------------------------------------------------------------------------|
| <b>Specialty CNS</b>              |                                                                |                                            |                                                                                                                         |
| Xenazine®                         | Huntington's chorea                                            | U.S.                                       | Supply and distribution agreement with Lundbeck.                                                                        |
| Nitoman®                          | Hyperkinetic movement disorders, including Huntington's chorea | Canada                                     | Marketed and distributed by BPC.                                                                                        |
| Xenazine®, Xenazina®, Nitoman®    | Hyperkinetic movement disorders                                | Territories other than the U.S. and Canada | Supply and distribution arrangements with various third-party distributors.                                             |
| <b>Non-Specialty CNS</b>          |                                                                |                                            |                                                                                                                         |
| Wellbutrin XL®                    | Major and seasonal depressive disorders                        | U.S.                                       | Distributed by our subsidiary BTA Pharmaceuticals, Inc. ("BTA") <sup>(1)</sup> .                                        |
| Wellbutrin XL®                    | Major depressive disorder                                      | Territories other than the U.S. and Canada | Supply and distribution agreement with affiliates of GSK.                                                               |
| Ativan®                           | Anxiety                                                        | U.S.                                       | Distributed by BTA.                                                                                                     |
| Aplenzin™                         | Major depressive disorder                                      | U.S.                                       | Supply and distribution agreement with sanofi-aventis U.S. LLC ("sanofi-aventis").                                      |
| Wellbutrin® XL                    | Major and seasonal depressive disorders                        | Canada                                     | Marketed by BPC.                                                                                                        |
| Wellbutrin® SR                    | Major depressive disorder                                      | Canada                                     | Distributed by BPC.                                                                                                     |
| Zyban®                            | Smoking cessation                                              | Canada                                     | Distributed by BPC.                                                                                                     |
| <b>Pain Management</b>            |                                                                |                                            |                                                                                                                         |
| Ultram® ER                        | Moderate to moderately severe chronic pain                     | U.S.                                       | Supply and distribution agreement with PriCara (a division of Ortho-McNeil-Janssen Pharmaceuticals, Inc.).              |
| Ralivia®                          | Moderate to moderately severe chronic pain                     | Canada                                     | Marketed and distributed by BPC.                                                                                        |
| <b>Antiviral</b>                  |                                                                |                                            |                                                                                                                         |
| Zovirax® Cream, Zovirax® Ointment | Herpes                                                         | U.S.                                       | Distributed by BTA and promoted by Publicis Selling Solutions, Inc. ("Publicis"), a contract sales organization.        |
| <b>Cardiovascular</b>             |                                                                |                                            |                                                                                                                         |
| Cardizem® LA                      | Hypertension and angina                                        | U.S.                                       | Supply and distribution agreement with Kos Pharmaceuticals, Inc. ("Kos") (now known as Abbott Laboratories ("Abbott")). |
| Cardizem® CD                      | Hypertension and angina                                        | U.S.                                       | Distributed by BTA.                                                                                                     |
| Vasotec®, Vaseretic®              | Hypertension and congestive heart failure                      | U.S.                                       | Distributed by BTA.                                                                                                     |
| Tiazac®                           | Hypertension and angina                                        | U.S.                                       | Supply and distribution agreement with Forest Laboratories, Inc. ("Forest").                                            |
| Isordil®                          | Angina                                                         | U.S.                                       | Distributed by BTA.                                                                                                     |
| Glumetza®                         | Type 2 diabetes                                                | U.S.                                       | Supply agreement with Depomed.                                                                                          |
| Tiazac® XC, Tiazac®               | Hypertension and angina                                        | Canada                                     | Marketed and/or distributed by BPC.                                                                                     |
| Glumetza®                         | Type 2 diabetes                                                | Canada                                     | Marketed and distributed by BPC.                                                                                        |
| Cardizem® CD                      | Hypertension and angina                                        | Canada                                     | Distributed by BPC.                                                                                                     |

- (1) Prior to the acquisition of the full U.S. commercialization rights on May 14, 2009, Wellbutrin XL® was manufactured and supplied to affiliates of GSK for distribution in the U.S.

## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

In addition to the brand name products noted above, the following table displays selected information regarding our generic product portfolio by therapeutic area:

| BRAND NAME                 | INDICATION(S)                              | MARKET | COMMERCIALIZATION                                                                                                     |
|----------------------------|--------------------------------------------|--------|-----------------------------------------------------------------------------------------------------------------------|
| <b>Authorized Generics</b> |                                            |        |                                                                                                                       |
| Ultram® ER                 | Moderate to moderately severe chronic pain | U.S.   | Supply and distribution agreement with Patriot Pharmaceuticals LLC ("Patriot") (an affiliate of PriCara).             |
| Tiazac®                    | Hypertension and angina                    | U.S.   | Supply and distribution agreement with Inwood Laboratories Incorporated (a subsidiary of Forest).                     |
| Tiazac®                    | Hypertension and angina                    | Canada | Supply and distribution agreement with Teva Novapharm, a subsidiary of Teva Pharmaceuticals Industries Ltd. ("Teva"). |
| <b>ANDA Generics</b>       |                                            |        |                                                                                                                       |
| Adalat CC (nifedipine)     | Hypertension and angina                    | U.S.   | Supply and distribution agreement with affiliates of Teva.                                                            |
| Cardizem® CD (diltiazem)   | Hypertension and angina                    | U.S.   | Supply and distribution agreement with affiliates of Teva.                                                            |
| Cardizem® CD (diltiazem)   | Hypertension and angina                    | Canada | Supply and distribution agreement with Teva Novapharm.                                                                |
| Procardia XL (nifedipine)  | Hypertension and angina                    | U.S.   | Supply and distribution agreement with affiliates of Teva.                                                            |
| Trental (pentoxifylline)   | Peripheral vascular disease                | U.S.   | Supply and distribution arrangement with affiliates of Teva.                                                          |
| Voltaren XR (diclofenac)   | Arthritis                                  | U.S.   | Supply and distribution agreement with affiliates of Teva.                                                            |

### Selected Financial Information

The following table provides selected financial information for each of the last three years:

|                                                            | Years Ended December 31 |           |           | Change       |      |              |      |
|------------------------------------------------------------|-------------------------|-----------|-----------|--------------|------|--------------|------|
|                                                            | 2009                    | 2008      | 2007      | 2008 to 2009 |      | 2007 to 2008 |      |
|                                                            | \$                      | \$        | \$        | \$           | %    | \$           | %    |
| <i>(\$ in 000s, except per share data)</i>                 |                         |           |           |              |      |              |      |
| Revenue . . . . .                                          | 820,430                 | 757,178   | 842,818   | 63,252       | 8    | (85,640)     | (10) |
| Operating expenses . . . . .                               | 639,276                 | 633,069   | 654,804   | 6,207        | 1    | (21,735)     | (3)  |
| Net income . . . . .                                       | 176,455                 | 199,904   | 195,539   | (23,449)     | (12) | 4,365        | 2    |
| Basic and diluted earnings per share . . . . .             | 1.11                    | 1.25      | 1.22      | (0.14)       | (11) | 0.03         | 2    |
| Cash dividends declared per share . . . . .                | 0.65                    | 1.50      | 1.50      | (0.85)       | (57) | —            | —    |
| Total assets . . . . .                                     | 2,067,044               | 1,623,565 | 1,782,115 | 443,479      | 27   | (158,550)    | (9)  |
| Long-term obligations, including current portion . . . . . | 326,085                 | —         | —         | 326,085      | NM   | —            | —    |

NM — Not meaningful

### General Economic Conditions

While pharmaceutical consumption has traditionally been relatively unaffected by economic downturns, the global recession has nevertheless had a negative impact on our business, largely in the U.S. market. In particular, we have observed a decline in prescription demand for a number of our brand name products that we consider related to the growth of the uninsured and underinsured patient population in the U.S., which we believe is increasingly switching from branded to generic drugs where available. In addition, we have noted an increase in



## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

Medicaid utilization, as the recession has also increased the number of patients in these governmental programs, under which sales of pharmaceutical products are subject to substantial rebates and, in many U.S. states, to formulary restrictions limiting access to brand name drugs.

Although the challenging financial markets did not have any impact on our liquidity or our ability to raise capital, we were, however, subject to a higher cost of borrowing, as reflected in the pricing of the Convertible Notes and our credit facility in June 2009 at the then prevailing market rates. We have taken, and will continue to take, a conservative approach to the investment of our cash resources to ensure we maintain strong liquidity that provides us with the financial flexibility to achieve our strategic initiatives.

Beginning in late 2008 and continuing throughout 2009, foreign currency exchange rates between the U.S. dollar and the Canadian dollar have been experiencing significant volatility. Changes in foreign currency exchange rates decreased total revenue by approximately \$6.1 million, or 0.7%, in 2009, compared with 2008, due to a weakening of the Canadian dollar relative to the U.S. dollar on a year-over-year basis; however, changes in foreign currency exchange rates had a negligible overall effect on total revenue in 2008 relative to 2007. A weaker Canadian dollar, while unfavourable on revenue, has a positive impact on our operating expenses. Where possible, we manage our exposure to foreign currency exchange rate changes through operational means, mainly by matching our cash flow exposures in foreign currencies. As a result, the negative impact of a weaker Canadian dollar on revenue generated in Canadian dollars, but reported in U.S. dollars, is largely counteracted by an opposing effect on operating expenses incurred in Canadian dollars. As our Canadian dollar-denominated expenses moderately exceeded our Canadian dollar-denominated revenues, the depreciation of the Canadian dollar in 2009 had the overall effect of marginally increasing our net income as reported in U.S. dollars.

### *Financial Performance*

#### *Changes in Revenue*

Total revenue increased \$63.3 million, or 8%, to \$820.4 million in 2009, compared with \$757.2 million in 2008, primarily due to:

- incremental revenue from Wellbutrin XL®, following the acquisition of the full U.S. commercialization rights in May 2009;
- a full year's contribution from sales of Xenazine®/Nitoman® products in the U.S. and Canada, and the addition of rest-of-world sales of these products following the acquisition of the worldwide development and commercialization rights to tetrabenazine in June 2009;
- the addition of Aplenzin™ to our product portfolio in April 2009; and
- increased demand for our generic Tiazac® and generic Cardizem® CD products, attributable to competitors' manufacturing issues.

Those factors were partially offset by:

- a decline in Ultram® ER product sales, as a result of the introduction of generic competition to the 100mg and 200mg dosage strengths in the fourth quarter of 2009;
- a decline in Cardizem® LA product sales, due to lower inventory levels in the distribution channels and less product promotion by Abbott in anticipation of a potential loss of market exclusivity;
- a decline in revenue from our bioequivalent ("Generic") products, other than generic Cardizem® CD, due to overall reductions in the prices and volume for these products;
- a decline in the volume of third-party studies conducted by our contract research division;
- the impact of lower prescription volumes and increased Medicaid utilization due to existing economic conditions in the U.S.; and

## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

- the unfavourable impact of foreign exchange rate changes on Canadian-dollar denominated revenue.

Total revenue declined \$85.6 million, or 10%, to \$757.2 million in 2008, compared with \$842.8 million in 2007, primarily due to:

- lower revenue from Wellbutrin XL® product sales as a result of the launch of a generic version of the 150mg product in May 2008, which followed the earlier genericization of the 300mg dosage strength in December 2006; and
- a reduction in Cardizem® LA product sales, due to lower prescription volumes in 2008, and higher shipments of 120mg and 180mg dosage strengths in the first quarter of 2007 to address a backorder that existed at the end of 2006.

Those factors were partially offset by:

- the positive impact of higher pricing of our off-patent branded pharmaceutical (“Legacy”) products, which more than offset declining prescription volumes for these products.

### *Changes in Net Income*

Net income declined \$23.4 million, or 12%, to \$176.5 million (basic and diluted earnings per share (“EPS”) of \$1.11) in 2009, compared with \$199.9 million (basic and diluted EPS of \$1.25) in 2008, primarily due to:

- a decline of \$64.0 million in recognized net deferred income tax benefits, related to reductions in the valuation allowance recorded against U.S. operating loss carryforwards of \$26.0 million and \$90.0 million in the fourth quarters of 2009 and 2008, respectively (as described below under “Results of Operations — Income Taxes”);
- a \$59.4 million IPR&D charge in 2009 in connection with the acquisitions of the various rights to pimavanserin, fipamezole and GDNF, as well as the write-off of the \$8.0 million IPR&D intangible asset related to RUS-350;
- a \$53.4 million increase in amortization expense in 2009, primarily related to the acquired Wellbutrin XL® and tetrabenazine intangible assets; and
- a \$24.4 million increase in interest expense in 2009, which included incremental cash interest of \$10.5 million, and non-cash amortization of debt discount of \$5.0 million, on the Convertible Notes.

Those factors were partially offset by:

- an increased contribution from product sales of \$67.3 million in 2009, mainly related to the incremental revenue from Wellbutrin XL®, following the May 2009 acquisition of the full U.S. commercialization rights, and reduced costs and improved capacity utilization of our manufacturing operations;
- a decline of \$51.1 million in restructuring costs in 2009, mainly due to lower asset impairment charges;
- a decline of \$26.4 million in legal settlement charges in 2009, primarily related to the resolution of the USAO and OSC investigations in 2008, partially offset by \$6.2 million accrued in 2009 in connection with the settlement of certain other litigation matters;
- a decline of \$22.3 million in internal research and development program expenses in 2009, reflecting reduced direct project spending as we transitioned from reformulation opportunities to the in-licensing, acquisition and development of specialty CNS products, and cost savings resulting from the closure of our Dublin, Ireland research and development facility; and
- a settlement gain of \$22.0 million in 2009, in respect of our investment in auction rate securities (as described below under “Results of Operations — Non-Operating Income (Expense) — Gain on Auction Rate Security Settlement”).

## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

Net income increased \$4.4 million, or 2%, to \$199.9 million (basic and diluted EPS of \$1.25) in 2008, compared with \$195.5 million (basic and diluted EPS of \$1.22) in 2007, primarily due to:

- the \$90.0 million reduction in the valuation allowance recorded against U.S. operating loss carryforwards in 2008;
- a decline of \$62.5 million in legal settlement charges in 2008, primarily related to the resolution of the U.S. and Canadian securities class action lawsuits and the SEC investigation in 2007; and
- a decline of \$30.8 million in internal research and development program expenses in 2008, reflecting the closure of the Dublin facility and reduced direct project spending, as we sought to optimize the projects in our research and development portfolio.

Those factors were partially offset by:

- a lower contribution from product sales of \$60.0 million in 2008, mainly due to the genericization of Wellbutrin XL®;
- an increase in restructuring costs of \$69.5 million in 2008, mainly related to the impairment of the property, plant and equipment located in Puerto Rico and Ireland;
- a decline of \$17.8 million in gains on the disposal of investments in 2008, mainly related to the disposal of our equity interests in Reliant Pharmaceuticals, Inc. ("Reliant") and Ethypharm in 2007;
- a decline in interest income of \$15.2 million in 2008, reflecting lower cash resources and interest rates; and
- the inclusion of management succession costs of \$7.4 million and proxy contest costs of \$6.2 million in 2008.

### *Specific Items Impacting Net Income*

When assessing our financial performance, management utilizes an internal measure that excludes specific items from net income determined in accordance with U.S. GAAP. Management believes the identification of these items enhances an analysis of our financial performance when comparing our operating results between periods. These items consist of: acquisition-related costs (including IPR&D charges and transaction costs); restructuring costs; legal settlements; gains and losses on asset dispositions; investment gains and losses; and certain other unusual items that are evaluated on an individual basis based on their nature or size. The following are examples of how net income excluding specific items is utilized:

- executive management receives a monthly analysis of our operating results which includes a measure of net income and EPS excluding specific items;
- annual budgets are prepared on a specific item-adjusted basis; and
- executive management's annual compensation is determined, in part, by reference to net income excluding specific items.

We believe that investors' understanding of our financial performance is enhanced by disclosing the specific items identified by management. However, any measure of net income excluding any or all of these items is not, and should not be viewed as, a substitute for net income prepared under U.S. GAAP. These items are presented solely to allow investors to more fully understand how management assesses our financial performance.

## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

The following table displays the specific items identified by management that impacted net income in the last three years, and the impact of these items (individually and in the aggregate) on basic and diluted EPS. EPS figures may not add due to rounding.

| (\$ in 000s, except per share data; Income (Expense))                  | 2009              |                 | 2008              |                 | 2007               |                 |
|------------------------------------------------------------------------|-------------------|-----------------|-------------------|-----------------|--------------------|-----------------|
|                                                                        | Amount            | EPS Impact      | Amount            | EPS Impact      | Amount             | EPS Impact      |
| IPR&D <sup>(1)</sup>                                                   | \$(59,354)        | \$(0.37)        | \$ —              | \$ —            | \$ —               | \$ —            |
| Reduction in valuation allowance on deferred tax assets <sup>(2)</sup> | 26,000            | \$ 0.16         | 90,000            | \$ 0.56         | —                  | \$ —            |
| Gain on auction rate security settlement                               | 22,000            | \$ 0.14         | —                 | \$ —            | —                  | \$ —            |
| Restructuring costs                                                    | (19,065)          | \$(0.12)        | (70,202)          | \$(0.44)        | (668)              | \$ —            |
| Loss on sale and leaseback of assets <sup>(3)</sup>                    | (10,968)          | \$(0.07)        | —                 | \$ —            | —                  | \$ —            |
| Legal settlements, net of insurance recoveries                         | (6,191)           | \$(0.04)        | (32,565)          | \$(0.20)        | (95,114)           | \$(0.59)        |
| Acquisition-related costs                                              | (5,596)           | \$(0.04)        | —                 | \$ —            | —                  | \$ —            |
| Impairment losses on debt and equity securities                        | (5,210)           | \$(0.03)        | (9,869)           | \$(0.06)        | (8,949)            | \$(0.06)        |
| SEC/OSC independent consultant costs <sup>(3)</sup>                    | (2,887)           | \$(0.02)        | —                 | \$ —            | —                  | \$ —            |
| Proxy contest costs <sup>(3)</sup>                                     | (1,028)           | \$(0.01)        | (6,192)           | \$(0.04)        | —                  | \$ —            |
| Gain on disposal of investments                                        | 804               | \$ 0.01         | 6,534             | \$ 0.04         | 24,356             | \$ 0.15         |
| Write-down of deferred financing costs <sup>(4)</sup>                  | (537)             | \$ —            | —                 | \$ —            | —                  | \$ —            |
| Management succession costs <sup>(3)</sup>                             | —                 | \$ —            | (7,414)           | \$(0.05)        | —                  | \$ —            |
| Equity loss                                                            | —                 | \$ —            | (1,195)           | \$(0.01)        | (2,528)            | \$(0.02)        |
| Loss on early extinguishment of debt                                   | —                 | \$ —            | —                 | \$ —            | (12,463)           | \$(0.08)        |
| Intangible asset impairments                                           | —                 | \$ —            | —                 | \$ —            | (9,910)            | \$(0.06)        |
| Contract recovery <sup>(3)</sup>                                       | —                 | \$ —            | —                 | \$ —            | 1,735              | \$ 0.01         |
| Total                                                                  | <u>\$(62,032)</u> | <u>\$(0.39)</u> | <u>\$(30,903)</u> | <u>\$(0.19)</u> | <u>\$(103,541)</u> | <u>\$(0.64)</u> |

(1) Included in research and development expenses.

(2) Included in provision for (recovery of) income taxes.

(3) Included in selling, general and administrative expenses.

(4) Included in interest expenses.

With the exception of the reduction in the valuation allowance on deferred tax assets, the net impact of the preceding specific items on our provision for income taxes in each of the periods presented was not material.

### Cash Dividends

Cash dividends declared per share were \$0.645 in 2009, compared with \$1.50 per share in each of 2008 and 2007. In May 2009, our Board of Directors approved a modification of our dividend policy, which now contemplates the payment of a quarterly dividend of \$0.09 per share, compared with \$0.375 per share under the former policy. The declaration of future dividends pursuant to this new policy is always subject to the discretion of the Board of Directors, and is generally based on our business performance, operational results, future capital requirements, business development requirements and other requirements and applicable laws. On February 24, 2010, our Board of Directors declared a quarterly cash dividend of \$0.09 per share, payable on April 5, 2010.

### Changes in Financial Condition

At December 31, 2009, we had cash and cash equivalents of \$114.5 million (compared with \$317.5 million at December 31, 2008) and we had no borrowings outstanding under our \$410.0 million credit facility. At December 31, 2009, we had a long-term obligation to Cambridge of \$27.8 million in connection with the tetrabenazine acquisition in June 2009, and we had dividends payable of \$14.2 million in respect of our third quarter 2009 results, which dividend was paid on January 4, 2010.

## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

In 2009, we obtained financing of \$350.0 million from the issuance of the Convertible Notes and received total proceeds of \$23.1 million from the sale and leaseback of certain corporate assets. In addition, operating cash flows of \$360.9 million in 2009 were a significant source of liquidity. We paid total cash dividends of \$147.1 million in 2009, and incurred \$26.3 million of financing costs in connection with the issuance of the Convertible Notes and the establishment of our credit facility. We also utilized a substantial portion of our available cash resources to fund the following acquisition activities (exclusive of acquisition costs):

- \$510.0 million for the full U.S. commercialization rights to Wellbutrin XL®;
- \$200.0 million for the worldwide development and commercialization rights to tetrabenazine;
- \$30.0 million for the U.S. and Canadian rights to develop, manufacture and commercialize pimavanserin;
- \$12.0 million for the U.S. and Canadian rights to develop, manufacture and commercialize fipamezole; and
- \$6.0 million to collaborate on the development and commercialization of GDNF in CNS indications.

In February 2010, we paid \$40.0 million in connection with the acquisition of the U.S. and Canadian development and commercialization rights to Staccato® loxapine.

### RESULTS OF OPERATIONS

We operate our business on the basis of a single reportable segment — pharmaceutical products. This basis reflects how management reviews the business, makes investing and resource allocation decisions, and assesses operating performance.

#### Revenue

Our revenue is derived primarily from the following sources:

- sales of pharmaceutical products developed and manufactured by us, as well as sales of proprietary and in-licensed products;
- pharmaceutical clinical research and laboratory testing services; and
- royalties from the sale of products we developed or acquired.

The following table displays the dollar amount of each source of revenue for each of the last three years; the percentage of each source of revenue, compared with total revenue in the respective year; and the percentage changes in the dollar amount of each source of revenue. Percentages may not add due to rounding.

|                                    | Years Ended December 31 |            |                |            |                |            | Change        |          |                 |             |
|------------------------------------|-------------------------|------------|----------------|------------|----------------|------------|---------------|----------|-----------------|-------------|
|                                    | 2009                    |            | 2008           |            | 2007           |            | 2008 to 2009  |          | 2007 to 2008    |             |
|                                    | \$                      | %          | \$             | %          | \$             | %          | \$            | %        | \$              | %           |
| (\$ in 000s)                       |                         |            |                |            |                |            |               |          |                 |             |
| Product sales . . . . .            | 789,026                 | 96         | 714,548        | 94         | 801,046        | 95         | 74,478        | 10       | (86,498)        | (11)        |
| Research and development . . . . . | 14,148                  | 2          | 24,356         | 3          | 23,828         | 3          | (10,208)      | (42)     | 528             | 2           |
| Royalty and other . . . . .        | 17,256                  | 2          | 18,274         | 2          | 17,944         | 2          | (1,018)       | (6)      | 330             | 2           |
| Total revenue . . . . .            | <u>820,430</u>          | <u>100</u> | <u>757,178</u> | <u>100</u> | <u>842,818</u> | <u>100</u> | <u>63,252</u> | <u>8</u> | <u>(85,640)</u> | <u>(10)</u> |



# MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

## Product Sales

The following table displays product sales by internal reporting category for each of the last three years; the percentage of each category compared with total product sales in the respective year; and the percentage changes in the dollar amount of each category. Percentages may not add due to rounding.

| (\$ in 000s)                 | Years Ended December 31 |     |         |     |         |     | Change       |      |              |      |
|------------------------------|-------------------------|-----|---------|-----|---------|-----|--------------|------|--------------|------|
|                              | 2009                    |     | 2008    |     | 2007    |     | 2008 to 2009 |      | 2007 to 2008 |      |
|                              | \$                      | %   | \$      | %   | \$      | %   | \$           | %    | \$           | %    |
| Wellbutrin XL®               | 173,288                 | 22  | 120,745 | 17  | 212,325 | 27  | 52,543       | 44   | (91,580)     | (43) |
| Aplenzin™                    | 11,150                  | 1   | —       | —   | —       | —   | 11,150       | NM   | —            | —    |
| Ultram® ER                   | 53,986                  | 7   | 81,875  | 11  | 86,714  | 11  | (27,889)     | (34) | (4,839)      | (6)  |
| Xenazine® <sup>(1),(2)</sup> | 48,433                  | 6   | 3,736   | 1   | —       | —   | 44,697       | NM   | 3,736        | NM   |
| Zovirax®                     | 146,267                 | 19  | 150,613 | 21  | 147,120 | 18  | (4,346)      | (3)  | 3,493        | 2    |
| BPC <sup>(3)</sup>           | 79,936                  | 10  | 70,580  | 10  | 61,889  | 8   | 9,356        | 13   | 8,691        | 14   |
| Cardizem® LA                 | 42,002                  | 5   | 48,002  | 7   | 69,300  | 9   | (6,000)      | (12) | (21,298)     | (31) |
| Legacy                       | 165,679                 | 21  | 154,206 | 22  | 136,855 | 17  | 11,473       | 7    | 17,351       | 13   |
| Generic                      | 67,035                  | 8   | 83,246  | 12  | 86,843  | 11  | (16,211)     | (19) | (3,597)      | (4)  |
| Glumetza® (U.S.)             | 1,250                   | —   | 1,545   | —   | —       | —   | (295)        | (19) | 1,545        | NM   |
| Total product sales          | 789,026                 | 100 | 714,548 | 100 | 801,046 | 100 | 74,478       | 10   | (86,498)     | (11) |

NM — Not meaningful

(1) Includes Nitoman® sales in Canada made prior to December 1, 2008.

(2) Includes sales of Xenazine®/Xenazina®/Nitoman® outside the U.S. and Canada from June 19, 2009.

(3) Effective December 1, 2008, BPC assumed the marketing and distribution of Nitoman®.

## Wholesaler Inventory Levels

Three drug wholesale customers account for the majority of our Zovirax®, Legacy, and, since May 2009, Wellbutrin XL® product sales in the U.S. Our distribution agreements with these wholesalers limit the amount of inventory they can own to between ½ and 1½ months of supply of our products. As indicated in the following table, at December 31, 2009 and 2008, these wholesalers owned overall 1.0 and 1.1 months of supply of our products, respectively, of which only \$0.2 million of inventory had less than 12 months remaining shelf life as at both December 31, 2009 and 2008.

|                                   | At December 31, 2009 |                 |                |                                                         | At December 31, 2008 |                |                                                         |
|-----------------------------------|----------------------|-----------------|----------------|---------------------------------------------------------|----------------------|----------------|---------------------------------------------------------|
|                                   | Original Shelf Life  | Total Inventory | Months On Hand | Inventory With Less Than 12 Months Remaining Shelf Life | Total Inventory      | Months On Hand | Inventory With Less Than 12 Months Remaining Shelf Life |
| <i>(\$ in 000s)</i>               | In Months            | \$              | In Months      | \$                                                      | \$                   | In Months      | \$                                                      |
| Wellbutrin XL® . . . . .          | 18                   | 15,389          | 1.0            | 34                                                      | NA                   | NA             | NA                                                      |
| Zovirax® . . . . .                | 36-48                | 14,689          | 1.1            | 93                                                      | 17,769               | 1.3            | 91                                                      |
| Cardizem® . . . . .               | 36-48                | 8,380           | 1.1            | 21                                                      | 7,146                | 0.8            | 15                                                      |
| Ativan® . . . . .                 | 24                   | 2,300           | 1.1            | 77                                                      | 2,523                | 1.0            | 80                                                      |
| Vasotec® and Vaseretic® . . . . . | 24                   | 1,468           | 1.1            | 9                                                       | 2,034                | 1.1            | 10                                                      |
| Isordil® . . . . .                | 36-60                | 265             | 1.2            | 1                                                       | 273                  | 1.1            | 1                                                       |
| Total . . . . .                   | 18-60                | 41,491          | 1.0            | 235                                                     | 29,745               | 1.1            | 197                                                     |

NA — Not applicable

## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

### *Wellbutrin XL®*

Wellbutrin XL® product sales increased \$52.5 million, or 44%, to \$173.3 million in 2009, compared with \$120.7 million in 2008, reflecting incremental revenue of approximately \$109.0 million earned following the acquisition of the full U.S. commercialization rights in May 2009, and the positive effect of subsequent price increases. Those factors were partially offset by declines in volumes due to generic competition to the 150mg dosage strength product since May 2008, as well as the continuing sales erosion of the 300mg dosage strength following its genericization in December 2006.

Wellbutrin XL® product sales declined \$91.6 million, or 43%, to \$120.7 million in 2008, compared with \$212.3 million in 2007, reflecting the impact on volumes resulting from the introduction of generic competition, which more than offset the positive effect on our supply prices of price increases implemented by GSK during 2008. In addition, our supply price for Wellbutrin XL® was based on an increasing tiered percentage of GSK's net selling price, which was reset to the lowest tier at the start of each calendar year. As a result of the introduction of generic competition to the 150mg product, GSK's sales of Wellbutrin XL® did not meet the sales-dollar threshold to increase our supply price above the first tier in 2008, which accounted for a portion of the year-over-year decline.

### *Aplenzin™*

Sanofi-aventis launched the 348mg and 522mg dosage strengths of Aplenzin™ in the U.S. in April 2009, and the 174mg dosage strength in July 2009. In 2009, we supplied sanofi-aventis with \$11.2 million of Aplenzin™, including sample supplies.

### *Ultram® ER*

On November 13, 2009, Par Pharmaceuticals Companies, Inc. ("Par") introduced its 100mg and 200mg generic versions of Ultram® ER, following a Court ruling in its favour on patent non-infringement. On the same date, PriCara's affiliate Patriot launched 100mg and 200mg authorized generic versions of Ultram® ER, which we manufacture and supply to Patriot. Upon generic entry, our contractual supply price to PriCara for branded Ultram® ER 100mg and 200mg product (which is determined based on a percentage of PriCara's net selling price) was reduced by 50%. As there is currently no generic equivalent to the Ultram® ER 300mg product, our supply price to PriCara for that dosage strength remains unchanged. Par is, however, seeking FDA approval for a 300mg generic version of Ultram® ER.

Ultram® ER product sales declined \$27.9 million, or 34%, to \$54.0 million in 2009, compared with \$81.9 million in 2008, as a result of lower prescription demand and supply pricing for the 100mg and 200mg dosage strengths, which was partially offset by revenue generated through our supply of the authorized generics. In addition, inventory levels in the distribution channels were reduced during 2009 in anticipation of the loss of market exclusivity, and PriCara increased its provision for expected returns of the branded product, which had a negative impact on our supply price. Also contributing to the decline in prescription volumes was the launch in early May 2009 of a competing once-daily formulation of tramadol in 100mg, 200mg and 300mg dosage strengths. All of those factors were partially offset by higher shipments of 100mg tablets in the first quarter of 2009 to replace certain lots that had been recalled in the fourth quarter of 2008, and a \$1.1 million reduction to the related recall provision in the first quarter of 2009, as a result of lower than expected returns from wholesalers and pharmacies in connection with this recall, as well as the positive effect on our supply price of a price increase implemented by PriCara in 2009.

Ultram® ER product sales declined \$4.8 million, or 6%, to \$81.9 million in 2008, compared with \$86.7 million in 2007, reflecting a provision of \$6.5 million (exclusive of \$0.6 million of inventory write-offs and \$1.0 million of administrative expenses) related to the voluntary recall of certain lots of 100mg tablets, which included affected product still at PriCara. Ultram® ER product sales were also impacted in 2008 by lower sales of sample supplies to PriCara. Those factors were partially offset by the positive effect on our supply price of

## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

price increases implemented by PriCara during 2008 and a change in prescription mix from the 100mg product to the higher 200mg and 300mg dosage strengths.

### *Xenazine®*

Our revenue from sales of Xenazine® amounted to \$48.4 million in 2009 and \$3.7 million in 2008. Xenazine® revenue comprises sales of the product to Lundbeck for marketing and distribution in the U.S. since November 2008, and sales of the product to third-party distributors for distribution in other countries in Europe and around the world following the acquisition of the worldwide development and commercialization rights to tetrabenazine in June 2009. In addition, Xenazine® revenue included sales of Nitoman® in Canada made prior to December 1, 2008; Canadian sales after December 1, 2008 are included in BPC product sales described below.

### *Zovirax®*

Zovirax® product sales declined \$4.3 million, or 3%, to \$146.3 million in 2009, compared with \$150.6 million in 2008, due to lower prescription volumes and a reduction of inventory levels by our major wholesale customers, partially offset by price increases implemented for these products during 2009. The decline in prescription volumes was partially due to increasing competition from available oral therapies. In addition, Publicis is limiting its detailing efforts to certain specialist physicians.

Zovirax® product sales increased \$3.5 million, or 2%, to \$150.6 million in 2008, compared with \$147.1 million in 2007, reflecting price increases we implemented in 2008, which more than offset a modest decline in prescription volumes.

### *BPC*

Sales of BPC products increased \$9.4 million, or 13%, to \$79.9 million in 2009, compared with \$70.6 million in 2008, and increased \$8.7 million, or 14%, in 2008, compared with \$61.9 million in 2007. Excluding the negative effect on BPC Canadian dollar-denominated revenue of the weakening of the Canadian dollar relative to the U.S. dollar, BPC product sales increased 20% in 2009, compared with 2008; however, changes in exchange rates between the Canadian dollar and the U.S. dollar had a negligible overall effect on BPC revenue in 2008, compared with 2007.

The year-over-year increases in BPC revenue in each of 2009 and 2008 reflected higher sales of our promoted Wellbutrin® XL, Tiazac® XC, Ralivia® and Glumetza® products, which more than offset lower sales of our genericized Tiazac® and Wellbutrin® SR products. Also contributing to the increase in 2009, compared with 2008, was the inclusion of \$5.0 million of Nitoman® product sales in 2009, compared with \$0.4 million recognized in December 2008.

In January 2010, a Canadian Court ruled in favour of Apotex Inc. on patent infringement proceedings relating to our Glumetza® 500mg product. The introduction of generic competition to the 500mg dosage strength could result in a substantial reduction in our Glumetza® branded product sales in Canada. Glumetza® generated revenues of \$6.6 million in 2009.

### *Cardizem® LA*

A subsidiary of Watson Pharmaceuticals, Inc. ("Watson") is seeking FDA approval for a generic version of Cardizem® LA in all dosage strengths; however, to our knowledge, Watson has not yet received FDA approval. Although we will be entitled to a royalty from Watson based on any sales of its generic Cardizem® LA product, the introduction of generic competition could have a material adverse impact on our revenues and earnings.

Revenue from sales of Cardizem® LA declined \$6.0 million, or 12%, to \$42.0 million in 2009, compared with \$48.0 million in 2008, which reflected lower prescription volumes and a reduction in inventory levels in the

## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

distribution channels, as promotional activities by Abbott have been curtailed in anticipation of the potential loss of market exclusivity.

Cardizem® LA product sales declined \$21.3 million, or 31%, to \$48.0 million in 2008, compared with \$69.3 million in 2007, reflecting lower prescription volumes in 2008, and higher shipments of 120mg and 180mg Cardizem® LA products to Abbott in the first quarter of 2007 made to address the backorder for those strengths that existed at the end of 2006. Those factors were partially offset by the positive effect on our supply price of price increases implemented by Abbott during 2008.

Cardizem® LA product sales include the amortization of deferred revenue associated with the cash consideration received from the sale to Kos of the distribution rights to Cardizem® LA in May 2005, which is being amortized over seven years on a straight-line basis. This amortization amounted to \$15.1 million in each of the last three years.

### *Legacy*

Our Legacy products include Ativan®, Cardizem® CD, Vasotec®, Vaseretic®, Tiazac® and Isordil®, which are sold primarily in the U.S. Although we do not actively promote these products as they have been genericized, our Legacy products continue to benefit from high brand awareness and physician and patient loyalty.

Sun Pharmaceutical Industries, Ltd., India ("Sun India") is seeking FDA approval for generic versions of Cardizem® CD, including the 360mg dosage strength which currently is not subject to generic competition. There are currently no unexpired patents listed against our 360mg Cardizem® CD product in the FDA's Orange Book database. FDA approval of Sun India's 360mg product could have a material adverse impact on the overall sales of our Cardizem® CD branded product and on the carrying value of the intangible asset associated with the Cardizem® trademark.

Sales of our Legacy products increased \$11.5 million, or 7%, to \$165.7 million in 2009, compared with \$154.2 million in 2008, which reflected higher sales of generic Tiazac®, attributable to competitors' manufacturing issues. In addition, declining prescription volumes for our other Legacy brands were largely offset by price increases implemented during 2009.

Sales of Legacy products increased \$17.4 million, or 13%, to \$154.2 million in 2008, compared with \$136.9 million in 2007, reflecting the price increases implemented for these products in 2008, which more than offset a decline in prescription volumes.

### *Generic*

Our Generic products consist of bioequivalent versions of Adalat CC, Cardizem® CD, Procardia XL, Trental, and Voltaren XR, which are sold to Teva for distribution in the U.S.

Sales of Generic products declined \$16.2 million, or 19%, to \$67.0 million in 2009, compared with \$83.2 million in 2008, reflecting the effects of lower pricing and prescription volumes for most products. Also contributing to the year-over-year decline was the recognition in 2008 of a \$4.5 million adjustment made in our favour by Teva to reduce its chargeback provision related to past sales of our products. Those factors were partially offset by higher sales of generic Cardizem® CD in the fourth quarter of 2009, attributable to competitors' manufacturing issues.

Sales of Generic products declined \$3.6 million, or 4%, to \$83.2 million in 2008, compared with \$86.8 million in 2007, primarily due to lower prescription volumes and pricing for these products, as well as shelf-stock adjustments granted by Teva to its customers. Those factors were partially offset by the favourable impact of the \$4.5 million chargeback adjustment made by Teva in 2008.

## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

### *Research and Development Revenue*

Research and development revenue declined \$10.2 million, or 42%, to \$14.1 million in 2009, compared with \$24.4 million in 2008, as a result of a lower level of clinical research and laboratory testing services provided to external customers by our contract research division, together with the negative impact of the weakening of the Canadian dollar relative to the U.S. dollar.

Research and development revenue increased \$0.5 million, or 2%, to \$24.4 million in 2008, compared with \$23.8 million in 2007, primarily reflecting the relative volume of clinical research and laboratory testing services conducted on behalf of external customers.

### *Royalty and Other Revenue*

Royalties from third parties on sales of products we developed or acquired and other revenue declined \$1.0 million, or 6%, to \$17.3 million in 2009, compared with \$18.3 million in 2008, mainly due to lower revenue based on sales of fenofibrate in the U.S., and increased \$0.3 million, or 2%, in 2008, compared with \$17.9 million in 2007.

### **Operating Expenses**

The following table displays the dollar amount of each operating expense category for each of the last three years; the percentage of each category compared with total revenue in the respective year; and the percentage changes in the dollar amount of each category. Percentages may not add due to rounding.

|                                                                                            | Years Ended December 31 |           |                |           |                |           | Change       |          |                 |            |
|--------------------------------------------------------------------------------------------|-------------------------|-----------|----------------|-----------|----------------|-----------|--------------|----------|-----------------|------------|
|                                                                                            | 2009                    |           | 2008           |           | 2007           |           | 2008 to 2009 |          | 2007 to 2008    |            |
|                                                                                            | \$                      | %         | \$             | %         | \$             | %         | \$           | %        | \$              | %          |
| (\$ in 000s)                                                                               |                         |           |                |           |                |           |              |          |                 |            |
| Cost of goods sold (exclusive of amortization of intangible assets shown separately below) | 204,309                 | 25        | 197,167        | 26        | 223,680        | 27        | 7,142        | 4        | (26,513)        | (12)       |
| Research and development . . . . .                                                         | 120,784                 | 15        | 92,844         | 12        | 118,117        | 14        | 27,940       | 30       | (25,273)        | (21)       |
| Selling, general and administrative . . . . .                                              | 178,601                 | 22        | 188,922        | 25        | 159,266        | 19        | (10,321)     | (5)      | 29,656          | 19         |
| Amortization of intangible assets . . . . .                                                | 104,730                 | 13        | 51,369         | 7         | 48,049         | 6         | 53,361       | 104      | 3,320           | 7          |
| Restructuring costs . . . . .                                                              | 19,065                  | 2         | 70,202         | 9         | 668            | —         | (51,137)     | (73)     | 69,534          | NM         |
| Legal settlements, net of insurance recoveries .                                           | 6,191                   | 1         | 32,565         | 4         | 95,114         | 11        | (26,374)     | (81)     | (62,549)        | (66)       |
| Acquisition-related costs . . . . .                                                        | 5,596                   | 1         | —              | —         | —              | —         | 5,596        | NM       | —               | —          |
| Intangible asset impairments . . . . .                                                     | —                       | —         | —              | —         | 9,910          | 1         | —            | —        | (9,910)         | (100)      |
| Total operating expenses . . . . .                                                         | <u>639,276</u>          | <u>78</u> | <u>633,069</u> | <u>84</u> | <u>654,804</u> | <u>78</u> | <u>6,207</u> | <u>1</u> | <u>(21,735)</u> | <u>(3)</u> |

NM — Not meaningful

### *Cost of Goods Sold*

Cost of goods sold includes: manufacturing, packaging, shipping and handling costs for products we produce; the cost of products we purchase from third parties; royalty payments we make to third parties; depreciation of manufacturing facilities and equipment; and lower of cost or market adjustments to inventories. Cost of goods sold excludes the amortization of intangible assets described separately below under “— Amortization of Intangible Assets”.

Since October 1, 2002, we have been entitled to purchase a pre-determined quantity of Zovirax® inventory from GSK at reduced prices under a price allowance. We expect that any remaining inventory acquired at the reduced supply prices will be sold in the first quarter of 2010, after which time the cost of inventory purchased from GSK at full price will have a material impact on the contribution from Zovirax® product sales.



## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

Cost of goods sold increased \$7.1 million, or 4%, to \$204.3 million in 2009, compared with \$197.2 million in 2008. The percentage increase in cost of goods sold was less than the corresponding 10% increase in total product sales in 2009, primarily due to:

- lower labour and overhead costs at our Puerto Rico manufacturing facilities, and higher absorption at our Steinbach, Manitoba manufacturing facility, as a result of the transfer of certain manufacturing activities from the Puerto Rico facilities to the Steinbach facility;
- an increased contribution from higher margin Wellbutrin XL<sup>®</sup> product sales following the acquisition of the full U.S. commercialization rights in May 2009;
- the positive impact of price increases we implemented for Wellbutrin XL<sup>®</sup>, Zovirax<sup>®</sup> and certain Legacy products during 2009, and the positive effect on our supply prices for Wellbutrin XL<sup>®</sup> (prior to the acquisition of the full U.S. commercialization rights), Ultram<sup>®</sup> ER and Cardizem<sup>®</sup> LA of the price increases implemented in 2009 by GSK, PriCara and Abbott, respectively; and
- the positive impact on labour and overhead costs at the Steinbach facility as a result of the weakening of the Canadian dollar relative to the U.S. dollar.

Those factors were partially offset by:

- the inclusion of lower margin Xenazine<sup>®</sup> and Nitoman<sup>®</sup> product sales;
- a higher cost basis related to the \$10.5 million of Wellbutrin XL<sup>®</sup> inventory reacquired from GSK, in connection with the acquisition of the full U.S. commercialization rights, which was subsequently sold to our wholesale customers during 2009;
- the decline in volume of higher margin 150mg Wellbutrin XL<sup>®</sup> product sales, as a result of the introduction of generic competition in May 2008;
- the reduction in our contractual supply price for Ultram<sup>®</sup> ER, and the increase in PriCara's provision for expected returns of the product as a result of generic entry; and
- an increase of \$3.9 million in costs associated with the transfer of certain manufacturing and packaging processes from the Puerto Rico facilities to the Steinbach facility, partially offset by lower depreciation expense as a result of the write-down of the property, plant and equipment located in Puerto Rico.

Cost of goods sold declined \$26.5 million, or 12%, to \$197.2 million in 2008, compared with \$223.7 million in 2007. The percentage decline in cost of goods sold was greater than the corresponding 11% decline in total product sales in 2008, primarily due to:

- a lower absorption of overhead costs that was mainly due to excess manufacturing capacity associated with decreased production volumes for Wellbutrin XL<sup>®</sup>, Cardizem<sup>®</sup> LA and Generic products;
- the reduced contribution from higher margin 150mg Wellbutrin XL<sup>®</sup> product sales as a result of the introduction of generic competition, and the inclusion of lower margin Xenazine<sup>®</sup> and Nitoman<sup>®</sup> product sales;
- the \$6.5 million provision for returns of recalled Ultram<sup>®</sup> ER 100mg tablets in 2008, and the write-off to cost of goods sold of \$0.6 million of affected Ultram<sup>®</sup> ER product remaining in our inventory;
- an increase in amortization expense of \$6.4 million in 2008, compared with 2007, related to the \$40.7 million deferred charge for payments we made to GSK in consideration for the Zovirax<sup>®</sup> price allowance; and
- the inclusion of \$2.4 million of costs associated with the transfer of certain manufacturing and packaging processes from the Puerto Rico facilities to the Steinbach facility, partially reduced by lower depreciation expense.

## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

Those factors were partially offset by:

- the positive impact of price increases we implemented for Zovirax® and certain Legacy products during 2008, and the positive effect on our supply prices for Wellbutrin XL®, Ultram® ER and Cardizem® LA of the price increases implemented in 2008 by GSK, PriCara and Abbott, respectively;
- the inclusion of the \$4.5 million chargeback adjustment from Teva in 2008; and
- lower charges for obsolescence related to inventories of certain of our products that were in excess of anticipated demand, and a recovery from PriCara in 2008 of \$1.0 million related to the cost of Ultram® oral disintegrating tablet ("ODT") inventory that had been previously written-off.

### *Research and Development Expenses*

Expenses related to internal research and development programs include: employee compensation costs; overhead and occupancy costs; depreciation of research and development facilities and equipment; clinical trial costs; clinical manufacturing and scale-up costs; and other third-party development costs. Acquired IPR&D represents compounds, new indications, or line extensions under development that have not received regulatory approval for marketing at the time of acquisition. IPR&D acquired through an asset acquisition is written-off at the acquisition date if the assets have no alternative future use. IPR&D acquired in a business combination is capitalized as indefinite-lived intangible assets (irrespective of whether these assets have an alternative future use) until completion or abandonment of the related research and development activities. Costs associated with the development of IPR&D are expensed as incurred. The costs associated with providing contract research services to external customers are also included in research and development expenses.

The following table displays the dollar amount of research and development expenses by internal reporting category for each of the last three years; the percentage of each category compared with total revenue in the respective year; and the percentage changes in the dollar amount of each category. Percentages may not add due to rounding.

|                                                                     | Years Ended December 31 |           |               |           |                |           | Change        |           |                 |             |
|---------------------------------------------------------------------|-------------------------|-----------|---------------|-----------|----------------|-----------|---------------|-----------|-----------------|-------------|
|                                                                     | 2009                    |           | 2008          |           | 2007           |           | 2008 to 2009  |           | 2007 to 2008    |             |
|                                                                     | \$                      | %         | \$            | %         | \$             | %         | \$            | %         | \$              | %           |
| (\$ in 000s)                                                        |                         |           |               |           |                |           |               |           |                 |             |
| IPR&D . . . . .                                                     | 59,354                  | 7         | —             | —         | —              | —         | 59,354        | NM        | —               | —           |
| Internal research and development programs . .                      | 47,581                  | 6         | 69,811        | 9         | 100,610        | 12        | (22,230)      | (32)      | (30,799)        | (31)        |
| Contract research services provided to external customers . . . . . | 13,849                  | 2         | 23,033        | 3         | 17,507         | 2         | (9,184)       | (40)      | 5,526           | 32          |
| Total research and development expenses . . . .                     | <u>120,784</u>          | <u>15</u> | <u>92,844</u> | <u>12</u> | <u>118,117</u> | <u>14</u> | <u>27,940</u> | <u>30</u> | <u>(25,273)</u> | <u>(21)</u> |

NM — Not meaningful

As described above under "Overview — Business Development", we recorded a total IPR&D charge of \$59.4 million in 2009, related to the acquisitions of the various rights to pimavanserin, fipamezole and GDNF, as well as the write-off of the \$8.0 million IPR&D intangible asset related to RUS-350 upon the termination of that project.

Internal research and development program expenses declined \$22.2 million, or 32%, to \$47.6 million in 2009, compared with \$69.8 million in 2008, reflecting reduced direct project spending as we transitioned from reformulation opportunities to the in-licensing, acquisition and development of specialty CNS products, and cost savings as a result of the closures of our Dublin, Ireland and Mississauga, Ontario research and development facilities. Also contributing to the year-over-year decline in 2009 was the recognition in the first quarter of 2008 of \$7.9 million in costs related to the termination of the BVF-146 program to develop a combination of tramadol and a non-steroidal anti-inflammatory drug.

## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

Internal research and development program expenses declined \$30.8 million, or 31%, to \$69.8 million in 2008, compared with \$100.6 million in 2007, reflecting the closure of our facility in Ireland and reduced direct project spending as we sought to optimize the projects in our development portfolio. These declines also reflected the cost of clinical trial and scale-up activities conducted in 2007 related to Aplenzin™ and Phase 3 safety studies conducted in connection with the BVF-146 program.

Costs associated with providing contract research services to external customers declined \$9.2 million, or 40%, to \$13.8 million in 2009, compared with \$23.0 million in 2008, reflecting the decline in activity levels at our contract research division, and lower labour costs as a result of headcount reductions in the second quarter of 2009 and the fourth quarter of 2008, as well as a positive impact on labour and overhead costs as a result of the weakening of the Canadian dollar relative to the U.S. dollar.

Contract research services costs increased \$5.5 million, or 32%, to \$23.0 million in 2008, compared with \$17.5 million in 2007, reflecting higher unabsorbed overhead and employee termination costs at our contract research division due to a decline in activity related to internal product-development programs.

### *Selling, General and Administrative Expenses*

Selling, general and administrative expenses include: employee compensation costs associated with sales and marketing, finance, legal, information technology, human resources, and other administrative functions; outside legal fees and consultancy costs; product promotion expenses; overhead and occupancy costs; depreciation of corporate facilities and equipment; and other general and administrative costs.

Selling, general and administrative expenses declined \$10.3 million, or 5%, to \$178.6 million in 2009, compared with \$188.9 million in 2008, and increased \$29.7 million, or 19%, in 2008, compared with \$159.3 million in 2007.

The decline in selling, general and administrative expenses in 2009, compared with 2008, was primarily due to:

- a decrease of \$14.5 million in payments due to Sciele Pharma, Inc. ("Sciele"), as a result of the termination of our Zovirax® promotional services agreement with Sciele in October 2008;
- a decrease of \$10.1 million related to a reversal in the fourth quarter of 2009 of a potential voluntary compliance undertaking ("VCU") liability, as a result of the closure of an investigation into the introductory pricing of Glumetza® in Canada, which determined that our prices for the 500mg and 1000mg dosage strengths were appropriate;
- a decrease of \$7.4 million related to management succession costs, associated primarily with a change in our Chief Executive Officer in May 2008;
- a decrease in proxy contest costs of \$5.2 million, primarily reflecting expenses incurred in 2008 in connection with the contested election of our nominees to the Board of Directors at our 2008 annual meeting of shareholders;
- a decrease of \$4.1 million related to consulting costs incurred in 2008 related to the development and implementation of our specialty CNS strategy; and
- the positive effects of the weakening of the Canadian dollar relative to the U.S. dollar and overall cost containment initiatives.

Those factors were partially offset by:

- the inclusion of the \$11.0 million loss on the sale and leaseback of our Mississauga, Ontario corporate headquarters;

## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

- the inclusion of \$8.8 million in fees owed to Publicis and an increase of \$6.4 million in other costs related to the promotion of Zovirax®;
- an increase in legal fees of \$3.8 million, primarily related to indemnification obligations to certain former officers and directors, primarily in connection with enforcement proceedings against these former officers and directors by the SEC and OSC;
- the inclusion of \$2.9 million in costs related to an examination of our accounting and related functions by independent consultants retained by us pursuant to the settlement agreements we entered into with the OSC and SEC; and
- an increase in compensation expense of \$1.4 million related to deferred share units ("DSUs") granted to directors, primarily due to the impact of a year-over-year increase in the underlying trading price of our common shares.

The increase in selling, general and administrative expenses in 2008, compared with 2007, was primarily due to:

- a decrease in insurance recoveries related to legal costs of \$20.5 million in 2008, as we had exhausted our director and officer liability insurance for claims related to the legacy litigation and regulatory matters in respect of our 2002 to 2004 policy period;
- the inclusion of management succession costs of \$7.4 million and proxy contest costs of \$6.2 million;
- the inclusion of consulting costs of \$4.1 million in connection with the development of our specialty CNS strategy;
- an increase in promotional spending related to the launch of Ralivia™ in Canada of \$3.6 million;
- an increase in DSU-related compensation expense of \$1.5 million, as the cost of the annual grant of DSUs in 2007 was more than offset by a decline in the fair value of outstanding DSUs, due to a decline in the underlying trading price of our common shares during 2007; and
- the inclusion of \$1.0 million of third-party administrative costs associated with the recall of Ultram® ER 100mg tablets in 2008.

Those factors were partially offset by:

- a decrease in legal fees of \$18.9 million in 2008, as a result of the settlement of certain legacy litigation and regulatory matters, partially offset by higher indemnification payments to former officers and directors.

Legal costs amounted to \$45.1 million, \$41.3 million and \$39.6 million in 2009, 2008 and 2007, respectively. Legal costs in 2007 were reported net of insurance recoveries of \$20.5 million. Legal costs included indemnification obligations to certain former officers and directors of \$19.6 million, \$16.4 million and \$10.1 million in 2009, 2008 and 2007, respectively. A portion of these costs may continue for an indefinite period, as we cannot predict the outcome or timing of when the outstanding enforcement proceedings by the SEC and OSC may be resolved.

### *Amortization of Intangible Assets*

Amortization expense increased \$53.4 million, or 104%, to \$104.7 million in 2009, compared with \$51.4 million in 2008, due to the inclusion of amortization of the Wellbutrin XL® trademark intangible asset acquired in May 2009, and the tetrabenazine product rights intangible assets arising from the acquisition of the worldwide development and commercialization rights in June 2009 and in connection with the Prestwick acquisition in September 2008.

## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

Amortization expense increased \$3.3 million, or 7%, to \$51.4 million in 2008, compared with \$48.0 million in 2007, due to the inclusion of amortization of the Prestwick identifiable intangible assets.

### *Restructuring Costs*

We recorded restructuring charges of \$19.1 million and \$70.2 million in 2009 and 2008, respectively, as described above under "Overview — Restructuring".

### *Legal Settlements, Net*

In 2009, we recorded a charge of \$6.2 million in connection with the settlement of certain litigation matters.

In 2008, we recorded a charge of \$32.6 million, of which \$24.6 million related to the USAO settlement in respect of the Cardizem® LA matter and \$5.3 million related to the settlement of the OSC investigation.

In 2007, we recorded a net charge of \$95.1 million, of which \$83.1 million (net of expected insurance recoveries) related to the settlement of the securities class actions in the U.S. and Canada, and \$10.0 million related to the settlement of the SEC investigation.

### *Acquisition-Related Costs*

In the second quarter of 2009, we incurred direct costs of \$5.6 million in connection with the acquisition of the worldwide development and commercialization rights to tetrabenazine.

### *Intangible Asset Impairments, Net*

We perform an evaluation of amortizable intangible assets for impairment at least annually, or whenever events or changes in circumstances indicate that the carrying value of these assets may not be recoverable. Impairment exists when the carrying amount of an asset is not recoverable based on related undiscounted future cash flows, and its carrying amount exceeds its estimated fair value based on related discounted future cash flows.

In 2007, we recorded an impairment charge of \$9.9 million to write down the carrying value of Zolpidem ODT and Ultram® ODT product rights, due to a lack of commercial potential for these products, as well as to write down certain other identified product rights and technology intangible assets.



## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

### Non-Operating Income (Expense)

The following table displays the dollar amount of each non-operating income or expense category for each of the last three years; and the percentage changes in the dollar amount of each category.

| (\$ in 000s; Income (Expense))                 | Years Ended December 31 |              |               | Change         |              |                 |             |
|------------------------------------------------|-------------------------|--------------|---------------|----------------|--------------|-----------------|-------------|
|                                                | 2009                    | 2008         | 2007          | 2008 to 2009   |              | 2007 to 2008    |             |
|                                                | \$                      | \$           | \$            | \$             | %            | \$              | %           |
| Interest income . . . . .                      | 1,118                   | 9,400        | 24,563        | (8,282)        | (88)         | (15,163)        | (62)        |
| Interest expense . . . . .                     | (25,418)                | (1,018)      | (9,745)       | (24,400)       | NM           | 8,727           | (90)        |
| Foreign exchange gain (loss) . . . . .         | 507                     | (1,057)      | 5,491         | 1,564          | (148)        | (6,548)         | (119)       |
| Gain on auction rate security settlement . . . | 22,000                  | —            | —             | 22,000         | NM           | —               | —           |
| Gain on disposal of investments . . . . .      | 804                     | 6,534        | 24,356        | (5,730)        | (88)         | (17,822)        | (73)        |
| Impairment loss on debt securities . . . . .   | (5,210)                 | (8,613)      | (6,000)       | 3,403          | (40)         | (2,613)         | 44          |
| Impairment loss on equity securities . . . . . | —                       | (1,256)      | (2,949)       | 1,256          | (100)        | 1,693           | (57)        |
| Equity loss . . . . .                          | —                       | (1,195)      | (2,528)       | 1,195          | (100)        | 1,333           | (53)        |
| Loss on early extinguishment of debt . . . . . | —                       | —            | (12,463)      | —              | —            | 12,463          | (100)       |
| Total non-operating income (expense) . . . . . | <u>(6,199)</u>          | <u>2,795</u> | <u>20,725</u> | <u>(8,994)</u> | <u>(322)</u> | <u>(17,930)</u> | <u>(87)</u> |

NM — Not meaningful

### Interest Income

Interest income declined \$8.3 million, or 88%, to \$1.1 million in 2009, compared with \$9.4 million in 2008, and declined \$15.2 million, or 62%, in 2008, compared with \$24.6 million in 2007, reflecting year-over-year declines in our cash resources as a result of business development activities and legal settlement payments, as well as the redemption of our 7<sup>7</sup>/<sub>8</sub>% Senior Subordinated Notes ("Subordinated Notes") effective April 1, 2007, together with lower prevailing interest rates.

### Interest Expense

Interest expense increased \$24.4 million to \$25.4 million in 2009, compared with \$1.0 million in 2008, and declined \$8.7 million, or 90%, in 2008, compared with \$9.7 million in 2007. Interest expense incurred in 2009 included non-cash amortization of debt discounts on the Convertible Notes and the Cambridge obligation of \$6.0 million and the non-cash amortization of deferred financing costs associated with the Convertible Notes and our current and former credit facilities of \$3.1 million. In addition, in the second quarter of 2009, we wrote off the remaining unamortized deferred financing costs of \$0.5 million related to our former credit facility.

Prior to 2009, interest expense comprised standby fees and the amortization of deferred financing costs related to our former credit facility, as well as interest on the Subordinated Notes prior to their redemption in April 2007.

### Gain on Auction Rate Security Settlement

In May 2008, we commenced an arbitration against the investment bank that invested our assets in auction rate securities. In May 2009, we resolved this matter with the investment bank for a payment to us in the amount of \$22.0 million, which represented a recovery of 82% of the original \$26.8 million principal invested in these securities. We retained ownership of these securities under the terms of this settlement. This settlement does not change our conclusion that we do not intend to sell these securities and it is not more likely than not that we will be required to sell these securities before a recovery of their amortized cost bases (as described below under "Financial Condition, Liquidity and Capital Resources — Net Financial Assets (Liabilities) — Auction Rate Securities").

## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

### *Gain on Disposal of Investments*

In 2009, we recognized a gain of \$0.8 million on the sale of our equity interests in Depomed and Hemispherx for total cash proceeds of \$0.9 million.

In 2008, we recognized a gain of \$3.1 million on the sale of a portion of our investment in common shares of Depomed for cash proceeds of \$13.2 million, and we recognized a gain of \$3.5 million on the disposal of our investment in common shares and convertible debt of Verdi for cash proceeds of \$12.2 million.

In 2007, we received cash consideration of \$14.9 million on the liquidation of our investment in convertible preferred stock of Reliant, following its acquisition by GSK, resulting in a gain on disposal of \$8.6 million. We also recorded a gain of \$15.7 million on the sale to Verdi of a portion of our investment in common shares of Ethypharm. We received proceeds on disposal of \$39.4 million in cash and \$5.6 million in convertible debt of Verdi. We exchanged the remaining portion of our Ethypharm investment for common shares of Verdi.

### *Impairment Loss on Debt Securities*

We recorded losses related to other-than-temporary declines in the estimated fair value of a portion of our investment in auction rate securities of \$5.2 million, \$8.6 million and \$6.0 million in 2009, 2008 and 2007, respectively (as described below under "Financial Condition, Liquidity and Capital Resources — Net Financial Assets (Liabilities) — Auction Rate Securities").

### *Loss on Early Extinguishment of Debt*

In 2007, we recorded a charge of \$12.5 million on the early redemption of the Subordinated Notes, which comprised the premium paid to the noteholders of \$7.9 million, as well as the net write-off of unamortized deferred financing costs, discount, and fair value adjustment associated with these notes, which totaled \$4.6 million.

### **Income Taxes**

The following table displays the dollar amount of the current and deferred provisions for income taxes for each of the last three years; and the percentage changes in the dollar amount of each provision. Percentages may not add due to rounding.

|                                                    | Years Ended December 31 |               |                 | Change          |             |               |              |
|----------------------------------------------------|-------------------------|---------------|-----------------|-----------------|-------------|---------------|--------------|
|                                                    | 2009                    | 2008          | 2007            | 2008 to 2009    |             | 2007 to 2008  |              |
|                                                    | \$                      | \$            | \$              | \$              | %           | \$            | %            |
| <i>(\$ in 000s; Income (Expense))</i>              |                         |               |                 |                 |             |               |              |
| Current income tax expense . . . . .               | (14,500)                | (17,000)      | (13,200)        | 2,500           | (15)        | (3,800)       | 29           |
| Deferred income tax benefit . . . . .              | 16,000                  | 90,000        | —               | (74,000)        | (82)        | 90,000        | NM           |
| Total recovery of (provision for) income taxes . . | <u>1,500</u>            | <u>73,000</u> | <u>(13,200)</u> | <u>(71,500)</u> | <u>(98)</u> | <u>86,200</u> | <u>(653)</u> |

NM — Not meaningful

Our effective tax rate was approximately 14% in 2009, compared with approximately 13% and 6% in 2008 and 2007, respectively. The effective tax rate reflects the impact of certain items that are not deductible, including IPR&D charges, restructuring costs, and legal settlements, or do not effect the income tax provision because of unrecognized tax losses in the local jurisdictions. In addition, the low effective tax rate reflects the fact that most of our revenue and income was earned in Barbados, which has lower statutory tax rates than those that apply in Canada. Dividends from such after-tax business income are received tax-free in Canada.

In each of the fourth quarters of 2009 and 2008, we assessed the realizability of a portion of our deferred tax assets related to operating loss carryforwards in the U.S. Our U.S. operations have generated positive earnings

## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

in each fiscal year commencing with 2006, reflecting a reduction in the overall cost structure, including the elimination of our U.S. sales force, through restructuring measures implemented in 2006 and 2005. As a result, we reduced the valuation allowance recorded against available U.S. operating loss carryforwards by \$26.0 million and \$90.0 million in the fourth quarters of 2009 and 2008, respectively, with corresponding increases to net income. In determining the amount of the valuation allowance that is necessary, we consider the amount of operating loss carryforwards that we will more likely than not be able to utilize based on the taxable income expected to be generated in the U.S. in future years. In 2009, we recorded a provision for deferred income taxes of \$10.0 million related to the utilization of a portion of these loss carryforwards to reduce taxable income in the U.S.

### SUMMARY OF QUARTERLY RESULTS (UNAUDITED)

The following table presents a summary of our unaudited quarterly results of operations and cash flows in 2009 and 2008:

| (\$ in 000s, except per share data)                           | 2009      |           |           |            | 2008      |           |             |            |
|---------------------------------------------------------------|-----------|-----------|-----------|------------|-----------|-----------|-------------|------------|
|                                                               | Q1        | Q2        | Q3        | Q4         | Q1        | Q2        | Q3          | Q4         |
| Revenue . . . . .                                             | \$173,319 | \$193,535 | \$212,523 | \$241,053  | \$208,498 | \$186,095 | \$181,089   | \$181,496  |
| Expenses . . . . .                                            | 119,704   | 182,988   | 154,179   | 182,405    | 145,358   | 210,368   | 132,726     | 144,617    |
| Operating income (loss) . . . . .                             | 53,615    | 10,547    | 58,344    | 58,648     | 63,140    | (24,273)  | 48,363      | 36,879     |
| Net income (loss) . . . . .                                   | 39,003    | 24,090    | 40,362    | 73,000     | 56,376    | (25,289)  | 48,437      | 120,380    |
| Basic and diluted earnings (loss) per share . . .             | \$ 0.25   | \$ 0.15   | \$ 0.25   | \$ 0.46    | \$ 0.35   | \$ (0.16) | \$ 0.31     | \$ 0.76    |
| Net cash provided by (used in) operating activities . . . . . | \$ 46,972 | \$ 97,081 | \$ 89,197 | \$ 127,647 | \$ 92,676 | \$ 67,056 | \$ (62,370) | \$ 106,963 |

The following table displays the specific items identified by management (as described above under "Overview — Selected Financial Information — Specific Items Impacting Net Income") that impacted net income or loss in each of the quarters in 2009 and 2008, and the impact of these items in the aggregate on basic and diluted EPS.

| (\$ in 000s, except per share data; Income (Expense))                            | 2009      |            |            |            | 2008      |            |           |           |
|----------------------------------------------------------------------------------|-----------|------------|------------|------------|-----------|------------|-----------|-----------|
|                                                                                  | Q1        | Q2         | Q3         | Q4         | Q1        | Q2         | Q3        | Q4        |
| IPR&D <sup>(1)</sup> . . . . .                                                   | \$ —      | \$(30,414) | \$ (8,126) | \$(20,814) | \$ —      | \$ —       | \$ —      | \$ —      |
| Reduction in valuation allowance on deferred tax assets <sup>(2)</sup> . . . . . | —         | —          | —          | 26,000     | —         | —          | —         | 90,000    |
| Gain on auction rate security settlement . . . . .                               | —         | 22,000     | —          | —          | —         | —          | —         | —         |
| Restructuring costs . . . . .                                                    | (1,348)   | (11,367)   | (2,413)    | (3,937)    | —         | (51,760)   | (7,587)   | (10,855)  |
| Loss on sale and leaseback of assets <sup>(3)</sup> . . . . .                    | —         | —          | —          | (10,968)   | —         | —          | —         | —         |
| Legal settlements, net of insurance recoveries . . . . .                         | (241)     | —          | —          | (5,950)    | —         | (24,648)   | (2,000)   | (5,917)   |
| Acquisition-related costs . . . . .                                              | —         | (5,596)    | —          | —          | —         | —          | —         | —         |
| Impairment losses on debt and equity securities . . . . .                        | (2,707)   | (1,617)    | (385)      | (501)      | (3,616)   | (489)      | (1,223)   | (4,541)   |
| SEC/OSC independent consultant costs <sup>(3)</sup> . . . . .                    | (1,427)   | (1,546)    | 169        | (83)       | —         | —          | —         | —         |
| Proxy contest costs <sup>(3)</sup> . . . . .                                     | —         | (629)      | (399)      | —          | —         | (5,414)    | (728)     | (50)      |
| Gain (loss) on disposal of investments . . . . .                                 | (6)       | 344        | 466        | —          | —         | 3,461      | 4,156     | (1,083)   |
| Write-down of deferred financing costs <sup>(4)</sup> . . . . .                  | —         | (537)      | —          | —          | —         | —          | —         | —         |
| Management succession costs <sup>(3)</sup> . . . . .                             | —         | —          | —          | —          | —         | (6,052)    | —         | (1,362)   |
| Equity loss . . . . .                                                            | —         | —          | —          | —          | (1,195)   | —          | —         | —         |
| Total . . . . .                                                                  | \$(5,729) | \$(29,362) | \$(10,688) | \$(16,253) | \$(4,811) | \$(84,902) | \$(7,382) | \$ 66,192 |
| EPS impact . . . . .                                                             | \$ (0.04) | \$ (0.19)  | \$ (0.07)  | \$ (0.10)  | \$ (0.03) | \$ (0.53)  | \$ (0.05) | \$ 0.42   |

(1) Included in research and development expenses.

(2) Included in provision for (recovery of) income taxes.

(3) Included in selling, general and administrative expenses.

## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

(4) Included in interest expense.

### Fourth Quarter of 2009 Compared to Fourth Quarter of 2008

#### *Results of Operations*

##### *Revenue*

Total revenue increased \$59.6 million, or 33%, to \$241.1 million in the fourth quarter of 2009, compared with \$181.5 million in the fourth quarter of 2008, primarily due to:

- incremental revenue of approximately \$42.0 million from Wellbutrin XL<sup>®</sup> product sales, as a result of the acquisition of the full U.S. commercialization rights in May 2009;
- an increase of \$13.7 million in Xenazine<sup>®</sup> product sales, reflecting a growth in prescription volumes in the U.S. since the product's launch in November 2008, and incremental revenue from the inclusion of worldwide sales of the product;
- the recognition in the fourth quarter of 2009 of \$4.4 million of product intended for sale to Teva in the third quarter of 2009 but delayed due to customs clearance issues; and
- a strengthening of the Canadian dollar relative to the U.S. dollar in the fourth quarter of 2009, compared with the fourth quarter of 2008, which positively impacted BPC product sales by approximately \$3.3 million.

Those factors were partially offset by:

- a \$13.1 million decline in Ultram<sup>®</sup> ER product sales, mainly due to the introduction of generic competition in November 2009, which resulted in lower prescription volumes and the reduction in our contractual supply price for the 100mg and 200mg dosage strengths, as well as the increase in PriCara's provision for expected product returns.

##### *Net Income*

Net income declined \$47.4 million, or 39%, to \$73.0 million in the fourth quarter of 2009, compared with \$120.4 million in the fourth quarter of 2008, primarily due to:

- a decrease of \$64.0 million in deferred income tax benefits, related to the reductions in the valuation allowance recorded against U.S. operating loss carryforwards of \$26.0 million and \$90.0 million in the fourth quarters of 2009 and 2008, respectively;
- a decrease of \$20.8 million related to IPR&D charges in the fourth quarter of 2009, comprising \$4.0 million for the additional payment related to fipamezole and \$8.8 million for GDNF, as well as the write-off of the \$8.0 million IPR&D intangible asset related to RUS-350;
- incremental amortization expense of \$18.7 million related to the acquisition of the various rights to Wellbutrin XL<sup>®</sup> and tetrabenazine;
- the inclusion in selling, general and administrative expenses of the \$11.0 million loss on the sale and leaseback of our corporate headquarters; and
- an increase of \$9.7 million in interest expense, primarily related to the Convertible Notes.

Those factors were partially offset by:

- an increased contribution from product sales of \$53.5 million, primarily related to the incremental revenue from Wellbutrin XL<sup>®</sup> and Xenazine<sup>®</sup> (partially offset by lower Ultram<sup>®</sup> ER product sales), and reduced costs and improved capacity utilization of our manufacturing operations;

## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

- an increase of \$10.1 million in selling, general and administrative expenses related to the release of the Glumetza® VCU liability; and
- a decrease of \$6.9 million in restructuring costs, mainly due to lower asset impairment charges.

### *Cash Flows from Operating Activities*

Net cash provided by operating activities increased \$20.7 million, or 19%, to \$127.6 million in the fourth quarter of 2009, compared with \$107.0 million in the fourth quarter of 2008, primarily due to:

- the increased contribution from product sales of \$53.5 million; and
- an increase of \$23.8 million related to the change in accounts payable, mainly due to an increased supply price for Zovirax® inventory purchased from GSK after the conclusion of the price allowance, the addition of clinical trial costs associated with BVF-324, and the inclusion of an amount of \$10.7 million owing to Teva in respect of Generic product sales provisions.

Those factors were partially offset by:

- a decrease of \$28.7 million related to the change in accounts receivable, mainly due to higher sales of Wellbutrin XL® in the fourth quarter of 2009, following the May 2009 acquisition of the full U.S. commercialization rights, and lower Wellbutrin XL® product sales in the fourth quarter of 2008, as a result of the genericization of the 150mg dosage strength; and
- a decrease of \$25.7 million related to the change in inventories, reflecting the higher cost base of Zovirax® inventory, and increased production of generic Tiazac® and generic Cardizem® CD to meet higher expected demand for these products in 2010, attributable to competitors' manufacturing issues.

## FINANCIAL CONDITION, LIQUIDITY AND CAPITAL RESOURCES

### Selected Measures of Financial Condition

The following table presents a summary of our financial condition at December 31, 2009 and 2008:

|                                                  | At December 31 |             | Change    |      |
|--------------------------------------------------|----------------|-------------|-----------|------|
|                                                  | 2009           | 2008        |           |      |
| (\$ in 000s; Asset (Liability))                  | \$             | \$          | \$        | %    |
| Working capital <sup>(1)</sup>                   | 93,734         | 223,198     | (129,464) | (58) |
| Long-lived assets <sup>(2)</sup>                 | 1,539,364      | 968,935     | 570,429   | 59   |
| Long-term obligations, including current portion | (326,085)      | —           | (326,085) | NM   |
| Shareholders' equity                             | (1,354,372)    | (1,201,599) | (152,773) | 13   |

(1) Total current assets less total current liabilities.

(2) Property, plant and equipment, intangible assets, and goodwill.

### *Working Capital*

Working capital declined \$129.5 million, or 58%, to \$93.7 million at December 31, 2009, compared with \$223.2 million at December 31, 2008, primarily due to:

- a net decline in cash and cash equivalents of \$203.1 million, which primarily reflected: \$761.8 million paid in the aggregate to acquire the various rights to Wellbutrin XL®, tetrabenazine, pimavanserin, fipamezole and GDNF, and \$147.1 million paid in dividends; partially offset by \$373.1 million received in the aggregate through the issuance of the Convertible Notes and the sale and leaseback of certain corporate assets, and \$360.9 million in operating cash flows;



## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

- an increase in accrued liabilities of \$36.7 million, mainly due to the inclusion of interest payable on the Convertible Notes, the addition of product return, rebate and chargeback provisions related to Wellbutrin XL<sup>®</sup> sales occurring after the May 2009 acquisition of the full U.S. commercialization rights (including a balance owed to GSK for governmental rebate claims administered and paid by GSK on our behalf), and the assumption of the royalty obligations on worldwide sales of tetrabenazine, partially offset by the release of the Glumetza<sup>®</sup> VCU liability;
- an increase in accounts payable of \$31.0 million, mainly due to the increased supply price for Zovirax<sup>®</sup> inventory and purchases of tetrabenazine inventory, the addition of clinical trial costs associated with BVF-324, and the inclusion of the amount owing to Teva in respect of Generic product sales provisions (offset by a corresponding decrease in deferred revenue); and
- the inclusion of \$12.1 million in current portion of long-term obligations, related to the payment due to Cambridge in June 2010 in connection with the acquisition of the worldwide development and commercialization rights to tetrabenazine.

Those factors were partially offset by:

- a decrease in dividends payable of \$45.1 million, reflecting the reduction in our quarterly cash dividend policy to \$0.09 per share commencing in May 2009, compared with \$0.375 per share in 2008;
- a decrease in accrued legal settlements of \$24.6 million, related to payments of \$30.8 million made in 2009 primarily to settle the USAO and OSC investigations, partially offset by the \$6.2 million accrued in 2009 in connection with the settlement of certain other litigation matters;
- an increase in accounts receivable of \$29.9 million, corresponding to higher Wellbutrin XL<sup>®</sup> product sales following the May 2009 acquisition of the full U.S. commercialization rights; and
- an increase in inventories of \$23.2 million, reflecting the higher cost base of Zovirax<sup>®</sup> inventory and the build-up of generic Tiazac<sup>®</sup> and generic Cardizem<sup>®</sup> CD inventories to meet the higher expected demand for these products in 2010, attributable to competitors' manufacturing issues.

### *Long-Lived Assets*

Long-lived assets increased \$570.4 million, or 59%, to \$1,539.4 million at December 31, 2009, compared with \$968.9 million at December 31, 2008, primarily due to:

- the addition of the Wellbutrin XL<sup>®</sup> trademark intangible asset of \$510.5 million;
- the addition of the tetrabenazine identifiable intangible assets of \$225.7 million;
- an increase of \$15.7 million related to the impact of foreign exchange rate changes on the reported value in U.S. dollars of property, plant and equipment located in Canada, due to the impact of a stronger Canadian dollar relative to the U.S. dollar at December 31, 2009, compared with December 31, 2008; and
- additions to property, plant and equipment of \$7.4 million.

Those factors were partially offset by:

- the depreciation of plant and equipment of \$18.8 million and the amortization of intangible assets of \$113.9 million;
- the sale and leaseback of certain corporate assets with a total carrying value of \$33.2 million;
- an impairment charge of \$7.6 million related to the write-down of the property, plant and equipment located in Puerto Rico, and the reclassification of the remaining \$8.5 million carrying value of the Dorado facility to assets held for sale; and

## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

- the \$8.0 million impairment charge in respect of the write-off of the IPR&D intangible asset related to RUS-350.

### *Long-term Obligations*

Long-term obligations (including the current portion thereof) of \$326.1 million at December 31, 2009, comprised the following:

- the \$298.3 million liability component of the Convertible Notes (net of debt discount of \$51.7 million); and
- the Cambridge obligation of \$27.8 million (net of debt discount of \$2.2 million).

### *Shareholders' Equity*

Shareholders' equity increased \$152.8 million, or 13%, to \$1,354.4 million at December 31, 2009, compared with \$1,201.6 million at December 31, 2008, primarily due to:

- net income of \$176.5 million (including \$5.6 million of stock-based compensation recorded in additional paid-in capital);
- the value assigned to the equity component of the Convertible Notes of \$56.7 million, which was recorded in additional paid-in capital; and
- a positive foreign currency translation adjustment of \$17.2 million to other comprehensive income, mainly due to the impact of the strengthening of Canadian dollar relative to the U.S. dollar at December 31, 2009, compared with December 31, 2008, which increased the reported value of our Canadian dollar-denominated net assets.

Those factors were partially offset by:

- cash dividends declared and dividend equivalents on restricted share units ("RSUs") of \$102.5 million in the aggregate.

### **Cash Flows**

Our primary sources of cash include: the collection of accounts receivable related to product sales; borrowings under our credit facility and the issuance of debt; and proceeds from the sale of non-core assets. Our primary uses of cash include: business development transactions; dividend payments; legal costs and litigation and regulatory settlements; salaries and benefits; inventory purchases; research and development spending; sales and marketing activities; capital expenditures; and interest and principal payments. The following table displays cash flow information for each of the last three years:

|                                                                        | Years Ended December 31 |           |           | Change       |       |              |       |
|------------------------------------------------------------------------|-------------------------|-----------|-----------|--------------|-------|--------------|-------|
|                                                                        | 2009                    | 2008      | 2007      | 2008 to 2009 |       | 2007 to 2008 |       |
|                                                                        | \$                      | \$        | \$        | \$           | %     | \$           | %     |
| (\$ in 000s)                                                           |                         |           |           |              |       |              |       |
| Net cash provided by operating activities . . . . .                    | 360,897                 | 204,325   | 340,853   | 156,572      | 77    | (136,528)    | (40)  |
| Net cash used in investing activities . . . . .                        | (742,772)               | (107,831) | (15,045)  | (634,941)    | 589   | (92,786)     | 617   |
| Net cash provided by (used in) financing activities . . . .            | 177,047                 | (210,311) | (728,650) | 387,358      | (184) | 518,339      | (71)  |
| Effect of exchange rate changes on cash and cash equivalents . . . . . | 1,744                   | (2,277)   | 1,943     | 4,021        | (177) | (4,220)      | (217) |
| Net decrease in cash and cash equivalents . . . . .                    | (203,084)               | (116,094) | (400,899) | (86,990)     | 75    | 284,805      | (71)  |
| Cash and cash equivalents, beginning of year . . . . .                 | 317,547                 | 433,641   | 834,540   | (116,094)    | (27)  | (400,899)    | (48)  |
| Cash and cash equivalents, end of year . . . . .                       | 114,463                 | 317,547   | 433,641   | (203,084)    | (64)  | (116,094)    | (27)  |

## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

### *Operating Activities*

Net cash provided by operating activities increased \$156.6 million, or 77%, to \$360.9 million in 2009, compared with \$204.3 million in 2008, attributable to the net effect of the following factors:

- an increase in income from operations before changes in operating assets and liabilities of \$201.7 million, or 125%, to \$362.4 million in 2009, compared with \$160.8 million in 2008, primarily due to:
  - an increase of \$93.0 million related to payments made in 2008 to fund the settlement of the U.S. and Canadian securities class actions (\$83.0 million) and to settle the SEC investigation (\$10.0 million);
  - an increased contribution from product sales of \$67.3 million, mainly related to the incremental revenue from Wellbutrin XL<sup>®</sup> and Xenazine<sup>®</sup> (partially offset by lower Ultram<sup>®</sup> ER product sales), together with the reduced costs and improved capacity utilization of our manufacturing operations;
  - an increase of \$45.1 million related to a contractual payment made to GSK in 2008 in connection with the introduction of generic competition to Wellbutrin XL<sup>®</sup>; and
  - an increase related to the \$22.0 million gain realized on the auction rate security settlement in the second quarter of 2009.

Those factors were partially offset by:

- a decrease of \$30.8 million primarily related to the payments made in 2009 to settle the USAO and OSC investigations.
- a decrease related to the change in operating assets and liabilities of \$45.1 million, or 104%, to cash used of \$1.5 million in 2009, compared with cash provided of \$43.6 million in 2008, primarily due to:
  - a decrease of \$50.6 million related to the change in accounts receivable, mainly due to higher revenue from Wellbutrin XL<sup>®</sup> product sales in 2009, following the May 2009 acquisition of the full U.S. commercialization rights, and lower sales of Wellbutrin XL<sup>®</sup> in 2008, as a result of the genericization of the 150mg dosage strength; and
  - a decrease of \$46.8 million related to the change in inventories, reflecting the higher cost base of Zovirax<sup>®</sup> inventory and increased inventories of generic Tiazac<sup>®</sup> and generic Cardizem<sup>®</sup> CD in 2009, and lower expected production requirements for Wellbutrin XL<sup>®</sup>, Cardizem<sup>®</sup> LA and Generic products in 2008.

Those factors were partially offset by:

- an increase of \$36.9 million related to the change in accounts payable, mainly due to the increased supply price for Zovirax<sup>®</sup> inventory, the addition of clinical trial costs associated with BVF-324, and the inclusion of the amount owed to Teva in respect of Generic product sales provisions; and
- an increase of \$32.8 million related to the change in accrued liabilities, which reflected the additions of the interest payable on the Convertible Notes, the additions of Wellbutrin XL<sup>®</sup> product sales provisions and the tetrabenazine royalty obligations, partially offset by the release of the Glumetza<sup>®</sup> VCU liability.

Net cash provided by operating activities declined \$136.5 million, or 40%, to \$204.3 million in 2008, compared with \$340.9 million in 2007, attributable to the net effect of the following factors:

- a decrease in income from operations before changes in operating assets and liabilities of \$209.0 million, or 57%, to \$160.8 million in 2008, compared with \$370.0 million in 2007, mainly due to:
  - a decrease of \$93.0 million related to the payments made in 2008 to settle the U.S. and Canadian securities class actions and the SEC investigation;

## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

- a decrease of \$45.1 million related to the Wellbutrin XL<sup>®</sup> contract payment made to GSK in 2008; and
- a decrease in the contribution from product sales of \$60.0 million, reflecting lower sales of Wellbutrin XL<sup>®</sup> and Cardizem<sup>®</sup> LA, partially offset by higher Legacy product sales.
- an increase related to the change in operating assets and liabilities of \$72.5 million, or 251%, to cash provided of \$43.6 million in 2008, compared with cash used of \$28.9 million in 2008, primarily due to:
  - an increase of \$30.1 million related to the change in accrued liabilities, mainly due to the settlement of restructuring costs and the elimination of interest payable following the redemption of the Subordinated Notes in 2007;
  - an increase of \$17.6 million related to the change in inventories, mainly due to lower production requirements for Wellbutrin XL<sup>®</sup>, Cardizem<sup>®</sup> LA and Generic products;
  - an increase of \$16.2 million related to the change in income taxes payable, mainly due to the timing of payments; and
  - an increase of \$15.2 million related to the change in insurance recoveries receivable, reflecting the timing of reimbursement of certain legal costs by our insurance carriers.

### *Investing Activities*

Net cash used in investing activities increased \$634.9 million, or 589%, to \$742.8 million in 2009, compared with \$107.8 million in 2008, primarily due to:

- an increase related to the acquisition in 2009 of the various rights to Wellbutrin XL<sup>®</sup>, pimavanserin, fipamezole and GDNF for \$561.8 million in the aggregate;
- an increase related to the \$200.0 million paid in 2009 to acquire the worldwide development and commercialization rights to tetrabenazine; and
- lower proceeds on the sale of long-term investments, primarily related to the disposal of our investments in Depomed and Verdi in 2008 for cash proceeds of \$25.2 million.

Those factors were partially offset by:

- a decrease related to the \$101.9 million paid in 2008 to acquire Prestwick, net of cash acquired;
- a decrease related to the proceeds of \$23.1 million received on the sale and leaseback of certain corporate assets in 2009; and
- a decrease in capital expenditures of \$14.6 million, mainly due to the wind-down of operations at our Puerto Rico manufacturing facilities.

Net cash used in investing activities increased \$92.8 million, or 617%, to \$107.8 million in 2008, compared with \$15.0 million in 2007, primarily due to:

- an increase related to the \$101.9 million paid to acquire Prestwick in 2008; and
- lower proceeds on the sale of long-term investments, related to the disposal of our investments in Depomed and Verdi in 2008 for cash proceeds of \$25.2 million, compared with the disposal of our investments in Ethypharm and Reliant in 2007 for net proceeds of \$52.7 million.

Those factors were partially offset by:

- a decrease in additions to marketable securities, primarily related to \$27.0 million of auction rate securities purchased in 2007; and

## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

- a decrease in capital expenditures of \$13.1 million, mainly as a result of the decision to close the Puerto Rico facilities.

### *Financing Activities*

Net cash provided by financing activities increased \$387.4 million, or 184%, to \$177.0 million in 2009, compared with cash used of \$210.3 million in 2008, primarily due to:

- an increase of \$350.0 million related to proceeds from the issuance of the Convertible Notes in 2009;
- an increase of \$33.1 million related to dividends paid, reflecting the reduction in our quarterly cash dividend policy to \$0.09 per share commencing in May 2009, compared with \$0.375 per share in 2008; and
- an increase of \$29.8 million related to the repurchase of common shares in 2008 (as described below under “— Share Repurchase Programs”).

Those factors were partially offset by:

- a decrease of \$26.3 million related to deferred financing costs incurred in 2009, in connection with the issuance of the Convertible Notes and the establishment of our credit facility.

Net cash used in financing activities declined \$518.3 million, or 71%, to \$210.3 million in 2008, compared with \$728.7 million in 2007, primarily due to:

- a decrease of \$406.8 million related to principal and premium payments to redeem the Subordinated Notes in 2007;
- a decrease of \$141.2 million in dividends paid related to an increase in declared but unpaid dividends in 2008, and the payment of a special dividend of \$0.50 per share in 2007; and
- a decrease of \$11.2 million related to the final payment made to GSK in 2007 related to the Zovirax® price allowance.

Those factors were partially offset by:

- an increase of \$29.8 million related to the repurchase of common shares in 2008; and
- an increase of \$11.2 million related to proceeds from the issuance of common shares on the exercise of stock options in 2007.



## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

### Net Financial Assets (Liabilities)

The following table displays our net financial asset (liability) position at December 31, 2009 and 2008:

|                                              | At December 31   |                |                  |              |
|----------------------------------------------|------------------|----------------|------------------|--------------|
|                                              | 2009             | 2008           | Change           |              |
|                                              | \$               | \$             | \$               | %            |
| (\$ in 000s)                                 |                  |                |                  |              |
| <b>Financial Assets</b>                      |                  |                |                  |              |
| Cash and cash equivalents . . . . .          | 114,463          | 317,547        | (203,084)        | (64)         |
| Marketable securities . . . . .              | 21,082           | 22,635         | (1,553)          | (7)          |
| Total financial assets . . . . .             | <u>135,545</u>   | <u>340,182</u> | <u>(204,637)</u> | <u>(60)</u>  |
| <b>Financial Liabilities</b>                 |                  |                |                  |              |
| Convertible Notes . . . . .                  | (298,285)        | —              | (298,285)        | NM           |
| Cambridge obligation . . . . .               | (27,800)         | —              | (27,800)         | NM           |
| Total financial liabilities . . . . .        | <u>(326,085)</u> | <u>—</u>       | <u>(326,085)</u> | <u>NM</u>    |
| Net financial assets (liabilities) . . . . . | <u>(190,540)</u> | <u>340,182</u> | <u>(530,722)</u> | <u>(156)</u> |

NM — Not meaningful

We believe that cash expected to be generated by operations and from the potential sale of non-core assets, as well as funds available under our \$410.0 million credit facility, and its \$140.0 million accordion feature, will be sufficient to meet our operational and capital expenditure requirements, support our dividend policy and share repurchase program, cover the costs associated with our operating efficiency initiatives, and meet our working capital needs for at least the next 12 months, based on our current expectations. We anticipate total capital expenditures of approximately \$10 million in 2010, principally to maintain existing facilities and capacity.

We cannot, however, predict the amount or timing of our need for additional funds under various circumstances, such as: significant business development transactions; new product development projects or clinical studies; changes to our capital structure; or other factors that may require us to raise additional funds through borrowings, or the issuance of debt, equity or equity-linked securities. In addition, certain contingent events, such as the resolution of certain legal proceedings (as described in note 24 to our 2009 Financial Statements), if realized, could have a material adverse impact on our liquidity and capital resources. The continuing uncertainty in the credit and capital markets may limit our access to additional funding or affect the pricing thereof.

### Cash and Cash Equivalents

Our cash and cash equivalents are held in cash operating accounts, or are invested in securities such as treasury bills, certain money market funds, term deposits, or commercial paper with the highest investment-grade credit rating obtainable.

### Auction Rate Securities

Our marketable securities portfolio currently includes \$26.8 million of principal invested in nine individual auction rate securities. As described above under “Results of Operations — Non-Operating Income (Expense) — Gain on Auction Rate Security Settlement”, we entered into a settlement with an investment bank in respect of our investment in these securities. Under the terms of this settlement, we received a payment of \$22.0 million and retained ownership of the securities. The estimated fair values of these securities at December 31, 2009 and 2008 were \$6.0 million and \$10.3 million, respectively, which reflected write-downs of \$20.8 million and \$16.4 million, respectively, to the cost bases at those dates. We recorded an impairment charge of \$5.2 million in 2009 (including \$0.7 million reclassified from other comprehensive income), compared with

## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

\$8.6 million in 2008 (including \$4.4 million reclassified from other comprehensive income) and \$6.0 million in 2007, reflecting the portion of the auction rate securities that we concluded has an other-than-temporary decline in estimated fair value due to a shortfall in the underlying collateral value for these securities. These charges did not have a material impact on our liquidity.

Effective April 1, 2009, we adopted the recently issued guidance on the recognition and presentation of other-than-temporary impairments (as described below under "Recent Accounting Guidance — Adoption of New Accounting Guidance"). This guidance requires an other-than-temporary impairment of a debt security to be separated into (i) the amount representing the decrease in cash flows expected to be collected, or the credit loss portion, which is recognized in earnings, and (ii) the amount related to all other factors, or the non-credit portion, which is recognized in other comprehensive income in circumstances in which management asserts that it does not have the intent to sell the security, and it is more likely than not that it will not be required to sell the security before recovery of its amortized cost basis. Prior to the adoption of this guidance, the entire other-than-temporary impairment loss was recognized in earnings. Upon the adoption of this guidance, the cumulative effect adjustment to reclassify the non-credit losses previously recognized through earnings from accumulated other comprehensive income to opening accumulated deficit was not material to our 2009 Financial Statements. In addition, the non-credit portion of the \$5.2 million other-than-temporary impairment charges recognized in 2009 was not material to our 2009 Financial Statements.

We recorded an unrealized gain in other comprehensive income of \$0.2 million in 2009, compared with unrealized losses of \$3.4 million in 2008 and \$2.8 million in 2007, reflecting adjustments to the portion of the auction rate securities that we have concluded have a temporary decline in estimated fair value. We do not consider the overall decline in the estimated fair value of these securities to be other-than-temporary based on the adequacy of the underlying collateral value for the securities. In addition, we concluded that we do not intend to sell these securities and it is not more likely than not that we will be required to sell these securities before a recovery of their amortized cost bases.

If uncertainties in the credit and capital markets continue through 2010 and beyond, or these markets deteriorate further, or we experience any additional declines in underlying collateral values on the auction rate securities, we may incur additional write-downs to these securities; however, any additional write-downs would not have a material impact on our results of operations and cash flows.

### *Debt Capacity*

We currently have \$350.0 million principal amount of Convertible Notes issued and outstanding. We have no outstanding borrowings under our \$410.0 million credit facility. This facility, plus its \$140.0 million accordion feature, may be used for general corporate purposes, including acquisitions and capital expenditures. At December 31, 2009, we were in compliance with all covenants associated with this facility.

### **Share Repurchase Programs**

On August 5, 2009, our Board of Directors approved the purchase of up to 15.8 million of our common shares on the open market under a share repurchase program or normal course issuer bid, subject to a maximum of \$75.0 million of common shares being repurchased during any fiscal year pursuant to a covenant in our credit facility (unless such condition is waived or varied by our lenders). We have not repurchased any of our common shares under this program.

During 2008, we repurchased 2.8 million common shares for total consideration of \$29.8 million under a prior share repurchase program.

### **OFF-BALANCE SHEET ARRANGEMENTS AND CONTRACTUAL OBLIGATIONS**

We have no off-balance sheet arrangements that have a material current effect or that are reasonably likely to have a material future effect on our results of operations, financial condition, capital expenditures, liquidity,

## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

or capital resources. We acquire and collaborate on products still in development and enter into research and development arrangements with third parties that often require milestone and royalty payments to the third party contingent upon the occurrence of certain future events linked to the success of the products in development.

The following table summarizes our contractual obligations at December 31, 2009:

| (\$ in 000s)                                   | Payments Due by Period |          |                  |                  |            |
|------------------------------------------------|------------------------|----------|------------------|------------------|------------|
|                                                | Total                  | 2010     | 2011<br>and 2012 | 2013<br>and 2014 | Thereafter |
| Long-term obligations <sup>(1)</sup> . . . . . | \$487,125              | \$38,127 | \$61,374         | \$387,624        | \$ —       |
| Operating lease obligations . . . . .          | 59,975                 | 7,839    | 13,988           | 10,922           | 27,226     |
| Purchase obligations <sup>(2)</sup> . . . . .  | 61,159                 | 49,583   | 11,337           | 239              | —          |
| Total contractual obligations . . . . .        | \$608,259              | \$95,549 | \$86,699         | \$398,785        | \$27,226   |

(1) Expected interest payments assume repayment of the principal amount of the debt obligations at maturity.

(2) Purchase obligations consist of agreements to purchase goods and services that are enforceable and legally binding and include obligations for minimum inventory and capital expenditures, and outsourced information technology, product promotion and clinical research services.

The above table does not reflect any contingent milestone or royalty payments in connection with research and development arrangements with third parties. These arrangements generally permit us to unilaterally terminate development of the products, which would allow us to avoid making the contingent payments. From a business perspective, however, we view these payments favourably as they signify that the products are moving successfully through the development phase toward commercialization. As described above under “Overview — Business Development”, we may be required to make milestone payments of up to \$775.0 million in the aggregate pursuant to the terms of the collaboration and license agreements for pimavanserin, fipamezole, GDNF, and Staccato® loxapine. These payments are contingent on the achievement of specific developmental, regulatory, and commercial milestones. In addition, we may have to make royalty payments based on a percentage of future net sales of pimavanserin, fipamezole, GDNF, or Staccato® loxapine products in the event regulatory approval is obtained and such products are commercialized.

Also excluded from the above table is a liability for uncertain tax positions totaling \$66.2 million. This liability has been excluded because we cannot currently make a reliable estimate of the period in which the liability will be payable, if ever.

### OUTSTANDING SHARE DATA

Our common shares are listed on the Toronto Stock Exchange and New York Stock Exchange.

At February 24, 2010, we had 158,372,110 issued and outstanding common shares, as well as 3,925,605 stock options, 367,122 RSUs without performance goals and 679,405 RSUs with performance goals outstanding. Each stock option entitles the holder to purchase one of our common shares at the end of the vesting period at a pre-determined option price. Each RSU without performance goals represents the right of the holder to receive one of our common shares at the end of the vesting period. Each vested RSU with performance goals represents the right of a holder to receive a number of our common shares, up to 200% of the RSUs granted, depending on our performance relative to an industry comparator group. If our performance is below a specified performance level, no common shares will be paid. A maximum of 1,358,810 common shares could be issued upon vesting of the RSUs with performance goals outstanding at February 24, 2010.

Assuming full share settlement, 23,480,800 common shares are issuable upon the conversion of the Convertible Notes (based on a conversion rate of 67.0880 common shares per \$1,000 principal amount of

## **MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)**

**(All dollar amounts expressed in U.S. dollars)**

Convertible Notes, subject to adjustment); however, our intent and policy is to settle the Convertible Notes using a net share settlement approach.

### **QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

We are exposed to financial market risks, including changes in foreign currency exchange rates, interest rates on investments and debt obligations, and equity market prices on long-term investments. We use derivative financial instruments from time to time as a risk management tool and not for trading or speculative purposes.

#### **Inflation; Seasonality**

Our results of operations have not been materially impacted by inflation or seasonality.

#### **Foreign Currency Risk**

We operate internationally, but a majority of our revenue and expense activities and capital expenditures are denominated in U.S. dollars. Our only other significant transactions are denominated in Canadian dollars. We also face foreign currency exposure on the translation of our operations in Canada from Canadian dollars to U.S. dollars. Where possible, we manage foreign currency risk by managing same currency assets in relation to same currency liabilities, and same currency revenue in relation to same currency expenses. As a result, both favourable and unfavourable foreign currency impacts to our Canadian dollar-denominated operating expenses are mitigated to a certain extent by the natural, opposite impact on our Canadian dollar-denominated revenue. At December 31, 2009, the effect of a hypothetical 10% immediate and adverse change in the Canadian dollar exchange rate (relative to the U.S. dollar) on our Canadian dollar-denominated cash, cash equivalent, accounts receivable, accounts payable, and intercompany balances would not have a material impact on our net income. In the first quarter of 2009, we entered into limited short-dated forward contracts to seek to mitigate foreign exchange risk. These contracts were settled prior to March 31, 2009, and did not have a material effect on our results of operations or cash flows.

The eventual payment of our U.S. dollar-denominated Convertible Notes will likely result in a foreign exchange gain or loss for Canadian income tax purposes. The amount of this gain or loss will depend on the exchange rate between the U.S. and Canadian dollar at the time the Convertible Notes are paid. At December 31, 2009, the unrealized foreign exchange gain on the translation of the face value of the Convertible Notes to Canadian dollars for Canadian income tax purposes was approximately \$20.0 million. If all of our outstanding Convertible Notes had been paid at December 31, 2009, one-half of this foreign exchange gain would be included in our Canadian taxable income, which would result in a corresponding reduction in our available Canadian operating losses and tax credit carryforward balances (with an offsetting reduction to the valuation allowance provided against those balances). However, the payment of our Convertible Notes will not result in a foreign exchange gain or loss being recognized in our consolidated financial statements, as those statements are prepared in U.S. dollars.

#### **Interest Rate Risk**

The primary objective of our policy for the investment of temporary cash surpluses is the protection of principal, and, accordingly, we generally invest in investment-grade debt securities with varying maturities, but typically less than three months. As it is our intent and policy to hold these investments until maturity, we do not have a material exposure to interest rate risk, and, as a result, a hypothetical 100 basis point immediate and adverse change in interest rates would not have a material impact on the realized value of these investments.

We are also exposed to interest rate risk on our investment in auction rate securities. Interest rates on these securities are typically reset every month; however, following the failure to complete successful auctions and the reset of interest rates due to market liquidity issues, interest on these securities is being calculated based on prescribed spreads to LIBOR. As we are entitled to a fixed spread to market interest rates, our interest rate risk

## **MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)**

**(All dollar amounts expressed in U.S. dollars)**

exposure is minimal, and, as a result, a hypothetical 100 basis point immediate and adverse change in interest rates would not have a material impact on the fair value of these securities.

We are exposed to interest rate risk on borrowings under our credit facility. This variable-rate facility bears interest based on U.S. dollar LIBOR, U.S. dollar base rate, Canadian dollar prime rate, and/or Canadian dollar bankers' acceptance. As we currently have no outstanding borrowings under this facility, a hypothetical 100 basis point change in interest rates would not have any impact on our interest expense or cash flows.

The fair value of our fixed-rate Convertible Notes is affected by changes in interest rates. In addition, the imputed rate of interest used to discount the Cambridge obligation is fixed and, consequently, the fair value of this obligation is also affected by changes in interest rates. A hypothetical 100 basis point change in interest rates would increase or decrease the fair value of our outstanding fixed-rate obligations by approximately \$7.0 million.

### **Market Price Risk**

The fair value of our Convertible Notes is also affected by changes in the market price of our common shares. A hypothetical 10% change in our share price would increase or decrease the fair value of the Convertible Notes by approximately \$22.0 million.

### **Investment Risk**

We are exposed to investment risks on our investment in auction rate securities due to the current market liquidity issues, as described above under "Financial Condition, Liquidity and Capital Resources — Net Financial Assets (Liabilities) — Auction Rate Securities".

## **CRITICAL ACCOUNTING POLICIES AND ESTIMATES**

Critical accounting policies and estimates are those policies and estimates that are most important and material to the preparation of our consolidated financial statements, and which require management's most subjective and complex judgments due to the need to select policies from among alternatives available, and to make estimates about matters that are inherently uncertain. We base our estimates on historical experience and other factors that we believe to be reasonable under the circumstances. Under certain product manufacturing and supply agreements, we rely on estimates for future returns, rebates, and chargebacks made by our commercialization counterparties. On an ongoing basis, we review our estimates to ensure that these estimates appropriately reflect changes in our business and new information as it becomes available. If historical experience and other factors we use to make these estimates do not reasonably reflect future activity, our results of operations and financial condition could be materially impacted.

Our critical accounting policies and estimates relate to the following:

- revenue recognition;
- acquisitions;
- intangible assets;
- goodwill;
- contingencies;
- income taxes; and
- stock-based compensation.



## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

### Revenue Recognition

We recognize product sales revenue when title has transferred to the customer and the customer has assumed the risks and rewards of ownership. Revenue from product sales is recognized net of provisions for estimated cash discounts, allowances, returns, rebates, and chargebacks, as well as distribution fees paid to certain of our wholesale customers. We establish these provisions concurrently with the recognition of product sales revenue.

Our supply prices in the U.S. for Wellbutrin XL<sup>®</sup> (prior to the acquisition of the full U.S. commercialization rights in May 2009), Aplenzin<sup>™</sup>, Ultram<sup>®</sup> ER, Xenazine<sup>®</sup>, Cardizem<sup>®</sup> LA, Tiazac<sup>®</sup>, and Generic products are determined after taking into consideration estimates for future returns, rebates, and chargebacks provided to us by each of our commercialization counterparties. We make adjustments as needed to state these estimates on a basis consistent with our revenue recognition policy and our methodology for estimating returns, rebates, and chargebacks related to our own direct product sales. Revenue from sales of these products accounted for approximately 30% of our total gross product sales in 2009, compared with 45% and 55% in 2008 and 2007, respectively. The year-over-year declines in the percentage of gross product sales comprised of these products was primarily due to the acquisition of the Wellbutrin XL<sup>®</sup> commercialization rights in 2009, and the impact of the genericization of 150mg and 300mg dosage strengths of Wellbutrin XL<sup>®</sup> in May 2008 and December 2006, respectively.

We continually monitor our product sales provisions and evaluate the estimates used as additional information becomes available. We make adjustments to these provisions periodically to reflect new facts and circumstances that may indicate that historical experience may not be indicative of current and/or future results. We are required to make subjective judgments based primarily on our evaluation of current market conditions and trade inventory levels related to our products. This evaluation may result in an increase or decrease in the experience rate that is applied to current and future sales, or an adjustment related to past sales, or both.

### Continuity of Product Sales Provisions

The following table presents the activity and ending balances for our product sales provisions for each of the last three years.

| (\$ in 000s)                         | Cash<br>Discounts | Allowances | Returns   | Rebates and<br>Chargebacks | Distribution<br>Fees | Total     |
|--------------------------------------|-------------------|------------|-----------|----------------------------|----------------------|-----------|
| Balance, January 1, 2007 . . . . .   | \$ 309            | \$ 341     | \$ 25,121 | \$ 6,742                   | \$ 2,350             | \$ 34,863 |
| Current year provision . . . . .     | 6,304             | 1,110      | 13,868    | 18,969                     | 12,583               | 52,834    |
| Prior year provision . . . . .       | —                 | —          | (563)     | (1,500)                    | —                    | (2,063)   |
| Payments or credits . . . . .        | (5,871)           | (1,152)    | (19,064)  | (16,248)                   | (10,607)             | (52,942)  |
| Balance, December 31, 2007 . . . . . | 742               | 299        | 19,362    | 7,963                      | 4,326                | 32,692    |
| Current year provision . . . . .     | 6,766             | 1,632      | 19,919    | 24,448                     | 10,670               | 63,435    |
| Prior year provision . . . . .       | —                 | —          | (4,599)   | (1,297)                    | —                    | (5,896)   |
| Payments or credits . . . . .        | (6,898)           | (1,702)    | (9,590)   | (24,841)                   | (11,278)             | (54,309)  |
| Balance, December 31, 2008 . . . . . | 610               | 229        | 25,092    | 6,273                      | 3,718                | 35,922    |
| Current year provision . . . . .     | 11,711            | 1,679      | 16,498    | 48,350                     | 16,894               | 95,132    |
| Prior year provision . . . . .       | —                 | —          | 3,767     | 6,852                      | —                    | 10,619    |
| Payments or credits . . . . .        | (11,050)          | (1,497)    | (20,773)  | (38,245)                   | (15,154)             | (86,719)  |
| Balance, December 31, 2009 . . . . . | \$ 1,271          | \$ 411     | \$ 24,584 | \$ 23,230                  | \$ 5,458             | \$ 54,954 |

The increase in the provision for product rebates and chargebacks as at December 31, 2009, compared with December 31, 2008, reflects the acquisition of the full U.S. commercialization rights to Wellbutrin XL<sup>®</sup> in May 2009. In particular, we assumed the financial responsibility for governmental rebate programs for product sold after the acquisition date. The provision for rebates and chargebacks at December 31, 2009 includes a balance owing to GSK for rebate claims administered and paid by GSK on our behalf.

## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

### *Use of Information from External Sources*

We use information from external sources to estimate our product sales provisions. We obtain prescription data for our products from IMS Health Inc., an independent provider of information solutions to the pharmaceutical and healthcare industries. We use this data to identify sales trends based on prescription demand and to estimate inventory requirements. We obtain inventory data directly from our three major U.S. wholesalers, McKesson Corporation ("McKesson"), Cardinal Health, Inc. ("Cardinal") and AmerisourceBergen Corporation ("ABC"), which together accounted for approximately 90% of our direct product sales in the U.S. over the past three years. The inventory data received from these wholesalers excludes inventory held by customers to whom they sell. Third-party data with respect to prescription demand and inventory levels are subject to the inherent limitations of estimates that rely on information from external sources, as this information may itself rely on certain estimates and reflect other limitations.

Our inventory levels in the wholesale distribution channel do not vary substantially, as our distribution agreements with McKesson, Cardinal and ABC limit the amount of inventory they can own to between ½ and 1½ months of supply of our products. The inventory data from these wholesalers is provided to us in the aggregate rather than by specific lot number, which is the level of detail that would be required to determine the original sale date and remaining shelf life of the inventory. However, the inventory reports we receive from these wholesalers include data with respect to inventories on hand with less than 12 months remaining shelf life (as described above under "Results of Operations — Revenue — Product Sales — Wholesaler Inventory Levels").

### *Cash Discounts and Allowances*

We offer cash discounts for prompt payment and allowances for volume purchases to customers. Provisions for cash discounts are estimated at the time of sale and recorded as direct reductions to accounts receivable and revenue. Provisions for allowances are recorded in accrued liabilities. We estimate provisions for cash discounts and allowances based on contractual sales terms with customers, an analysis of unpaid invoices, and historical payment experience. Estimated cash discounts and allowances have historically been predictable and less subjective, due to the limited number of assumptions involved, the consistency of historical experience, and the fact that we generally settle these amounts within one month of incurring the liability.

### *Returns*

Consistent with industry practice, we generally allow customers to return product within a specified period before and after its expiration date. Our product returns provision is estimated based on historical sales and return rates over the period during which customers have a right of return. We utilize the following information to estimate our provision for returns:

- historical return and exchange levels;
- external data with respect to inventory levels in the wholesale distribution channel;
- external data with respect to prescription demand for our products;
- remaining shelf lives of our products at the date of sale; and
- estimated returns liability to be processed by year of sale based on an analysis of lot information related to actual historical returns.

In determining our estimates for returns, we are required to make certain assumptions regarding the timing of the introduction of new products and the potential of these products to capture market share. In addition, we make certain assumptions with respect to the extent and pattern of decline associated with generic competition. To make these assessments we utilize market data for similar products as analogs for our estimates. We use our best judgment to formulate these assumptions based on past experience and information available to us at the

## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

time. We continually reassess and make the appropriate changes to our estimates and assumptions as new information becomes available to us.

Our provision for returns was 2.7% of direct product sales in 2009, compared with 4.8% and 3.6% in 2008 and 2007, respectively. The decline in the returns provision as a percentage of direct product sales in 2009, compared with 2008, was mainly due to the inclusion of the \$6.5 million provision for the recall of Ultram® ER 100mg product in the fourth quarter of 2008, and the \$1.1 reduction to that provision in the first quarter of 2009. Excluding the impact of the Ultram® ER recall, our provision for returns would have been 2.8% and 3.2% of direct product sales in 2009 and 2008, respectively.

Our estimate for returns may be impacted by a number of factors, but the principal factor relates to the level of inventory in the distribution channel. When we are aware of an increase in the level of inventory of our products in the distribution channel, we consider the reasons for the increase to determine if the increase may be temporary or other-than-temporary. Increases in inventory levels assessed as temporary will not result in an adjustment to our provision for returns. Other-than-temporary increases in inventory levels, however, may be an indication that future product returns could be higher than originally anticipated, and, as a result, we may need to adjust our estimate for returns. Some of the factors that may suggest that an increase in inventory levels will be temporary include:

- recently implemented or announced price increases for our products;
- new product launches or expanded indications for our existing products; and
- timing of purchases by our wholesale customers.

Conversely, factors that may suggest that an increase in inventory levels will be other-than-temporary include:

- declining sales trends based on prescription demand;
- introduction of new products or generic competition;
- increasing price competition from generic competitors;
- recent regulatory approvals to extend the shelf life of our products, which could result in a period of higher returns related to older products with the shorter shelf life; and
- recent changes to the U.S. National Drug Codes ("NDC") of our products, which could result in a period of higher returns related to products with the old NDC, as our customers generally permit only one NDC per product for identification and tracking within their inventory systems.

We made an adjustment of \$3.8 million to increase the provision for returns in 2009, compared with adjustments to reduce the provision for returns by \$4.6 million and \$0.6 million in 2008 and 2007, respectively. These adjustments generally related to sales made in preceding years, as the shelf lives of our products are in excess of one year, and our customers are not permitted to return product with more than six months of shelf life remaining. The adjustment in 2009 was primarily related to higher than anticipated returns of Tiazac® that had been sold in Canada prior to the genericization of the product in January 2006 (Tiazac® has 48-month dating). The adjustment in 2008 reflected lower actual returns experience in the period since our entry into distribution agreements with our major U.S. wholesale customers in late 2004 and early 2005.

### ***Rebates and Chargebacks***

We are subject to rebates on sales made under governmental and managed-care pricing programs in the U.S. The largest of these rebates is associated with sales covered by Medicaid. We participate in state government-managed Medicaid programs, as well as certain other qualifying federal and state government programs whereby discounts and rebates are provided to participating government entities. Medicaid rebates are typically billed up to 180 days after the product is shipped, but can be as much as 270 days after the quarter in

## **MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)**

**(All dollar amounts expressed in U.S. dollars)**

which the product is dispensed to the Medicaid participant. As a result, our Medicaid rebate provision includes an estimate of outstanding claims for end-customer sales that occurred but for which the related claim has not been billed, and an estimate for future claims that will be made when inventory in the distribution channel is sold through to plan participants. Our calculation also requires other estimates, such as estimates of sales mix, to determine which sales are subject to rebates and the amount of such rebates. Periodically, we adjust the Medicaid rebate provision based on actual claims paid. Due to the delay in billing, adjustments to actual claims paid may incorporate revisions of that provision for several periods.

Chargebacks relate to our contractual agreements to sell products to group purchasing organizations and other indirect customers at contractual prices that are lower than the list prices we charge wholesalers. When these group purchasing organizations or other indirect customers purchase our products through wholesalers at these reduced prices, the wholesaler charges us for the difference between the prices they paid us and the prices at which they sold the products to the indirect customers.

In estimating our provisions for rebates and chargebacks, we consider relevant statutes with respect to governmental pricing programs and contractual sales terms with managed-care providers and group purchasing organizations. We estimate the amount of our product sales subject to these programs based on historical utilization levels. Changes in the level of utilization of our products through private or public benefit plans and group purchasing organizations will affect the amount of rebates and chargebacks that we are obligated to pay. We continually update these factors based on new contractual or statutory requirements, and any significant changes in sales trends that may impact the percentage of our products subject to rebates or chargebacks.

Our provisions for rebates and chargebacks were 7.8%, 5.9% and 5.0% of direct product sales in 2009, 2008 and 2007, respectively. The amount of rebates and chargebacks has become more significant as a result of a combination of deeper discounts due to the price increases we implemented in each of the last three years and increased Medicaid utilization due to existing economic conditions in the U.S. Our estimate for rebates and chargebacks may be impacted by a number of factors, but the principal factor relates to the level of inventory in the distribution channel. If the level of inventory of our products in the distribution channel increased or decreased by a one-month supply, the provision for rebates and chargebacks would increase or decrease, as applicable, by approximately \$3.6 million.

We do not process or track actual rebate payments or credits by period in which the original sale was made, as the necessary lot information is not required to be provided to us by the private or public benefit providers. Accordingly, we generally assume that adjustments made to rebate provisions relate to sales made in the prior years due to the delay in billing. However, we assume that adjustments made to chargebacks are generally related to sales made in the current year, as we settle these amounts within a few months of original sale. We recorded an adjustment of \$6.9 million in 2009 to increase the provision for rebates as a result of higher than anticipated Medicaid utilization, due to the economic condition in the U.S. and the related increase in the number of patients in these governmental programs.

### **Acquisitions**

We account for acquired businesses using the acquisition method of accounting, which requires that assets acquired and liabilities assumed be recorded at fair value, with limited exceptions. Any excess of the purchase price over the fair value of the net assets acquired is recorded as goodwill. Amounts allocated to acquired IPR&D are recognized at fair value and initially characterized as indefinite-lived intangible assets, irrespective of whether the acquired IPR&D has an alternative future use. If the acquired net assets do not constitute a business, the transaction is accounted for as an asset acquisition and no goodwill is recognized. In an asset acquisition, acquired IPR&D with no alternative future use is charged to expense at the acquisition date.

The judgments made in determining the estimated fair value assigned to each class of asset acquired and liability assumed can materially impact our results of operations. As a result, we typically engage independent valuation specialists to perform valuations of the net assets acquired. There are several methods that can be used

## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

to determine fair value. For intangible assets, including IPR&D, we typically use an income approach. This approach starts with a forecast of the net cash flows expected to be generated by the asset over its estimated useful life. These cash flows are then adjusted to present value by applying an appropriate discount rate that reflects the risk factors associated with the cash flow streams. Some of the more significant estimates and assumptions inherent in the income approach include:

- the amount and timing of projected future cash flows, adjusted for the probability of technical and marketing success;
- the amount and timing of projected costs to develop IPR&D into commercially viable products;
- the discount rate selected to measure the risks inherent in the future cash flows; and
- an assessment of the asset's life cycle and the competitive trends impacting the asset, including consideration of any technical, legal, regulatory, or economic barriers to entry.

Determining the useful life of an intangible asset also requires judgment, as different types of intangible assets will have different useful lives and certain assets may even be considered to have indefinite useful lives. Useful life is the period over which the intangible asset is expected to contribute directly or indirectly to our future cash flows. We determine the useful lives of intangible assets based on a number of factors, such as legal, regulatory, or contractual provisions that may limit the useful life, and the effects of obsolescence, anticipated demand, existence or absence of competition, and other economic factors on useful life.

### Intangible Assets

We evaluate amortizable intangible assets acquired through asset acquisitions or business combinations for impairment annually, and more frequently if events or changes in circumstances indicate that the carrying amounts of these assets may not be recoverable. Our evaluation is based on an assessment of potential indicators of impairment, such as:

- an adverse change in legal factors or in the business climate that could affect the value of an asset. For example, a successful challenge of our patent rights resulting in earlier than expected generic competition;
- an adverse change in the extent or manner in which an asset is used or is expected to be used. For example, a decision not to pursue a product line-extension strategy to enhance an existing product due to changes in market conditions and/or technological advances; or
- current or forecasted operating or cash flow losses that demonstrate continuing losses associated with the use of an asset. For example, the introduction of a competing product that results in a significant loss of market share.

Impairment exists when the carrying amount of an amortizable intangible asset is not recoverable and its carrying amount exceeds its estimated fair value. A discounted cash flow analysis is typically used to determine fair value using estimates and assumptions that market participants would apply. Some of the estimates and assumptions inherent in a discounted cash flow model include the amount and timing of the projected future cash flows, and the discount rate used to reflect the risks inherent in the future cash flows. A change in any of these estimates and assumptions could produce a different fair value, which could have a material impact on our results of operations. In addition, an intangible asset's expected useful life can increase estimation risk, as longer-lived assets necessarily require longer-term cash flow forecasts, which for some of our intangible assets can be up to 20 years. In connection with an impairment evaluation, we also reassess the remaining useful life of the intangible asset and modify it, as appropriate.

Indefinite-lived intangible assets, including IPR&D, are tested for impairment annually, or more frequently if events or changes in circumstances between annual tests indicate that the asset may be impaired. Impairment



## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

losses on indefinite-lived intangible assets are recognized based solely on a comparison of their fair value to carrying value, without consideration of any recoverability test.

### Goodwill

Goodwill represents the excess of the purchase price of acquired businesses over the estimated fair value of the identifiable net assets acquired. Goodwill is not amortized but is tested for impairment at least annually at the reporting unit level. A reporting unit is the same as, or one level below, an operating segment. We currently have one operating segment and one reporting unit, which is our Company. The fair value of a reporting unit refers to the price that would be received to sell the unit as a whole in an orderly transaction between market participants. We believe our market capitalization based on the quoted market price of our underlying common shares is the best evidence of the estimated fair value of the reporting unit. Accordingly, we test goodwill for impairment by comparing our market capitalization to the carrying value of our consolidated net assets.

We monitor changes in our share price between annual impairment tests to ensure that our market capitalization continues to exceed the carrying value of the reporting unit. We consider a decline in our share price that corresponds to an overall deterioration in stock market conditions to be less of an indicator of goodwill impairment than a unilateral decline in our share price reflecting adverse changes in our underlying operating performance, cash flows, financial condition, and/or liquidity. In the event that our market capitalization does decline below its book value, we would consider the length and severity of the decline and the reason for the decline when assessing whether potential goodwill impairment exists. We believe that short-term fluctuations in share prices may not necessarily reflect underlying values. For example, a decline in share price due to the following reasons may not be indicative of an actual decline in the fair value of the reporting unit:

- the decline is linked to external events or conditions, such as broad market reaction to circumstances associated with one (or a few) pharmaceutical companies, which could cause temporary market declines for other companies in the same sector; or
- the decline is associated with unusual market activity, such as a spike in short selling activity, which may have a temporary impact on a company's market capitalization but not reflect its underlying fair value.

However, if a decline in our market capitalization below book value persists for an extended period of time, we would likely consider the decline to be indicative of a decline in the fair value of the reporting unit.

### Contingencies

In the normal course of business, we are subject to loss contingencies, such as claims and assessments arising from litigation and other legal proceedings; contractual indemnities; product and environmental liabilities; and tax matters. We are required to accrue for such loss contingencies if it is probable that the outcome will be unfavourable and if the amount of the loss can be reasonably estimated. We are often unable to develop a best estimate of loss, in which case the minimum amount of loss, which could be zero, is recorded. We evaluate our exposure to loss based on the progress of each contingency, experience in similar contingencies, and consultation with internal and external legal counsel. We re-evaluate all contingencies as additional information becomes available. Given the uncertainties inherent in complex litigation and other contingencies, these evaluations can involve significant judgment about future events. The ultimate outcome of any litigation or other contingency may be material to our results of operations, financial condition, and cash flows. For a discussion of our current legal proceedings, see note 24 to our 2009 Financial Statements.

Prior to July 1, 2009, we were self-insured for a portion of our product liability coverage. Reserves have been established for estimates of incurred but not reported claims. Significant judgment is applied to estimate these reserves, and we engage an independent actuary to conduct an actuarial assessment of our liability. If actual claims are in excess of these estimates, additional reserves may be required, which could have a material impact on our results of operations, financial condition and cash flows. Effective July 1, 2009, our entire product liability coverage is provided by third-party insurers.

## **MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)**

**(All dollar amounts expressed in U.S. dollars)**

### **Income Taxes**

We have operations in various countries that have differing tax laws and rates. A significant portion of our revenue and income is earned in Barbados, which has low domestic tax rates. Our tax structure is supported by current domestic tax laws in the countries in which we operate and the application of tax treaties between the various countries in which we operate. Our income tax reporting is subject to audit by domestic and foreign tax authorities. Our effective tax rate may change from year to year based on changes in the mix of activities and income allocated or earned among the different jurisdictions in which we operate, changes in tax laws in these jurisdictions, changes in tax treaties between various countries in which we operate, changes in our eligibility for benefits under those tax treaties, and changes in the estimated values of deferred tax assets and liabilities. Such changes could result in an increase in the effective tax rate on all or a portion of our income and/or any of our subsidiaries to a rate possibly exceeding the applicable statutory tax rate in Canada or the U.S.

Our provision for income taxes is based on a number of estimates and assumptions made by management. Our consolidated income tax rate is affected by the amount of income earned in our various operating jurisdictions, the availability of benefits under tax treaties, and the rates of taxes payable in respect of that income. We enter into many transactions and arrangements in the ordinary course of business in which the tax treatment is not entirely certain. We must therefore make estimates and judgments based on our knowledge and understanding of applicable tax laws and tax treaties, and the application of those tax laws and tax treaties to our business, in determining our consolidated tax provision. For example, certain countries could seek to tax a greater share of income than has been provided for by us. The final outcome of any audits by taxation authorities may differ from the estimates and assumptions we have used in determining our consolidated income tax provisions and accruals. This could result in a material effect on our consolidated income tax provision, results of operations, and financial condition for the period in which such determinations are made.

We have recorded a valuation allowance on the net deferred tax assets primarily relating to our Canadian operating losses, Scientific Research and Experimental Development ("SR&ED") pool, investment tax credit ("ITC") carryforward balances, and future tax depreciation. We have assumed that the deferred tax assets in respect of our Canadian operating losses, SR&ED pool and ITCs are more likely than not to remain unrealized. Our deferred tax assets and related valuation allowances are affected by events and transactions arising in the ordinary course of business, acquisitions of assets and businesses, and non-recurring items. The assessment of the appropriate amount of the valuation allowance against the net deferred tax asset is dependent upon several factors, including estimates of the realization of deferred income tax assets, which realization is primarily based on forecasts of future taxable income. Significant judgment is applied to determine the appropriate amount of valuation allowance to record. Changes in the amount of the valuation allowance required could materially increase or decrease our provision for income taxes in a given period.

### **Stock-Based Compensation**

We recognize employee stock-based compensation, including grants of stock options and RSUs, at estimated fair value. As there is no market for trading our employee stock options, we use the Black-Scholes option-pricing model to calculate stock option fair values, which requires certain assumptions related to the expected life of the stock option, future stock price volatility, risk-free interest rate, and dividend yield. The expected life of the stock option is based on historical exercise and forfeiture patterns. Future stock price volatility is based on historical volatility of our common shares over the expected life of the stock option. The risk-free interest rate is based on the rate at the time of grant for Canadian government bonds with a remaining term equal to the expected life of the stock option. Dividend yield is based on the stock option's exercise price and expected annual dividend rate at the time of grant. Changes to any of these assumptions, or the use of a different option-pricing model, such as the lattice model, could produce a different fair value for stock-based compensation expense, which could have a material impact on our results of operations.

Commencing in 2008, we began to award RSUs, rather than stock options, to most employees under our equity compensation plan. We determine the fair value of each RSU granted based on the trading price of our

## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

common shares on the date of grant, unless the vesting of the RSU is conditional on the attainment of any applicable performance goals, in which case we use a Monte Carlo simulation model. The Monte Carlo simulation model utilizes multiple input variables to estimate the probability that the performance condition will be achieved. Changes to any of these inputs could materially affect the measurement of the fair value of the RSUs with performance goals.

### RECENT ACCOUNTING GUIDANCE

#### Adoption of New Accounting Guidance

Effective October 1, 2009, we adopted the following accounting guidance:

- Authoritative guidance clarifying the measurement of liabilities at fair value. When a quoted price in an active market for the identical liability is not available, this guidance requires that the fair value of a liability be measured using one or more of the prescribed valuation techniques. In addition, the guidance clarifies how the quoted price of a debt security when traded as an asset should be considered in estimating the fair value of the issuer's liability. The adoption of this guidance did not have a material impact on our 2009 Financial Statements.

Effective July 1, 2009, we adopted the following accounting guidance:

- In June 2009, the Financial Accounting Standards Board ("FASB") established the FASB Accounting Standards Codification (the "Codification") as the source of authoritative accounting principles recognized by the FASB to be applied in the preparation of financial statements in conformity with U.S. GAAP. As the issuance of the Codification does not change U.S. GAAP, its adoption did not have any impact on our 2009 Financial Statements.

Effective April 1, 2009, we adopted the following accounting guidance:

- Authoritative guidance on subsequent events, which identifies the circumstances under which an entity should recognize events or transactions occurring after the balance sheet date in its financial statements and the disclosures that should be made about events or transactions that occurred after the balance sheet date. As this guidance is largely consistent with previous auditing literature, its adoption did not have a material impact on our 2009 Financial Statements.
- Authoritative guidance on the recognition and presentation of other-than-temporary impairments, which requires entities to separate an other-than-temporary impairment of a debt security into (i) the amount representing the decrease in cash flows expected to be collected, or the credit loss portion, which is recognized in earnings, and (ii) the amount related to all other factors, or the non-credit portion, which is recognized in other comprehensive income in circumstances in which management asserts that it does not have the intent to sell the security, and it is more likely than not that it will not be required to sell the security before recovery of its amortized cost basis. Upon the adoption of this guidance, the cumulative effect adjustment to reclassify the non-credit losses previously recognized through earnings from accumulated other comprehensive income to opening accumulated deficit was not material to our 2009 Financial Statements.
- Authoritative guidance on determining fair value when the volume and level of activity for the asset or liability have significantly decreased and on identifying transactions that are not orderly, which provides additional guidance on estimating fair value when there has been a significant decrease in the volume and level of activity for the asset or liability in relation to the normal market activity for the asset or liability. The guidance also provides circumstances that may indicate that a transaction for the asset or liability is not orderly. The adoption of this guidance did not have a material impact on our 2009 Financial Statements.

## MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)

(All dollar amounts expressed in U.S. dollars)

Effective January 1, 2009, we adopted the following accounting guidance:

- Authoritative guidance on convertible debt instruments that may be settled in cash upon conversion (including partial cash settlement), which requires that the liability (debt) and equity (conversion option) components of convertible debt instruments that may be settled in cash upon conversion be separately accounted for in a manner that reflects an issuer's non-convertible debt borrowing rate. This new method of accounting results in recognizing interest expense at rates reflective of what the issuer would have incurred had it issued non-convertible debt with otherwise similar terms. The adoption of this guidance impacted our accounting for the Convertible Notes (as described above under "Overview — Financing Arrangements — Convertible Notes"). This guidance will also have a material impact on interest expense recognized during the period that the Convertible Notes remain outstanding, but will have no impact on our future cash flows.
- Authoritative guidance on business combinations and non-controlling interests, which significantly changes the accounting for, and reporting of, business combination transactions and non-controlling (minority) interests in consolidated financial statements, including requirements to: recognize non-controlling interests at fair value; capitalize IPR&D assets acquired; and expense acquisition-related costs as incurred. The guidance also requires post-acquisition adjustments related to business combination deferred tax asset valuation allowances and liabilities for uncertain tax positions to be recorded in current period income tax expense. The adoption of this guidance impacted our accounting for the acquisition of the worldwide development and commercialization rights to tetrabenazine (as described above under "Overview — Business Development — Tetrabenazine").
- Authoritative guidance on fair value measurements, which establishes a framework for measuring fair value in U.S. GAAP, clarifies the definition of fair value within that framework, and expands disclosures about the use of fair value measurements. The guidance applies to all other authoritative guidance that requires (or permits) fair value measurements, but does not require any new fair value measurements in U.S. GAAP. The guidance was effective January 1, 2009 for non-financial assets and non-financial liabilities not recognized or disclosed at fair value on a recurring basis. We previously adopted this guidance for financial assets and financial liabilities effective January 1, 2008. The adoption of this guidance for non-financial assets and non-financial liabilities did not have a material impact on our 2009 Financial Statements.
- Authoritative guidance on the accounting for collaborative arrangements, which provides guidance for determining if a collaborative arrangement exists and establishes reporting requirements for revenues and costs generated from transactions between parties within a collaborative arrangement, as well as between the parties in a collaborative arrangement and third parties, and provides guidance for financial statement disclosures of collaborative arrangements. The adoption of this guidance did not have a material impact on our 2009 Financial Statements.

### Recently Issued Accounting Guidance, Not Adopted as of December 31, 2009

In October 2009, the FASB issued authoritative guidance on multiple-element revenue arrangements, which requires an entity to allocate arrangement consideration at the inception of the arrangement to all of its deliverables based on relative selling prices. This guidance eliminates the use of the residual method of allocation and expands the ongoing disclosure requirements. The guidance is effective for the first fiscal year beginning after June 15, 2010, and may be adopted through prospective or retrospective application. Accordingly, we are required to adopt this guidance beginning January 1, 2011. We are currently evaluating the effect that the adoption of this guidance will have on our consolidated financial statements.

In June 2009, the FASB issued authoritative guidance for determining whether an entity is a variable interest entity ("VIE") and requires an enterprise to perform an analysis to determine whether the enterprise's variable interest or interests give it a controlling financial interest in a VIE. Under this guidance, an enterprise

## **MANAGEMENT'S DISCUSSION AND ANALYSIS (Continued)**

**(All dollar amounts expressed in U.S. dollars)**

has a controlling financial interest when it has (i) the power to direct the activities of a VIE that most significantly impact the entity's economic performance, and (ii) the obligation to absorb losses of the entity or the right to receive benefits from the entity that could potentially be significant to the VIE. We are required to adopt this guidance beginning January 1, 2010. We are currently evaluating the effect that the adoption of this guidance will have on our consolidated financial statements.

### **International Financial Reporting Standards**

International Financial Reporting Standards ("IFRS") will replace Canadian standards and interpretations as Canadian GAAP effective January 1, 2011. On June 27, 2008, the CSA issued Staff Notice 52-321, "Early Adoption of International Financial Reporting Standards, Use of U.S. GAAP and References to IFRS-IASB", which indicates that the CSA staff propose retaining the existing option for Canadian public companies that are also SEC issuers to use U.S. GAAP. Accordingly, we currently intend to continue our practice of following U.S. GAAP in financial statements filed with the CSA and the SEC. We believe that U.S. GAAP financial statements afford better comparability with our U.S.-based industry peers.

## **MANAGEMENT'S REPORT ON DISCLOSURE CONTROLS AND PROCEDURES AND INTERNAL CONTROL OVER FINANCIAL REPORTING**

### **Disclosure Controls and Procedures**

We performed an evaluation of the effectiveness of our disclosure controls and procedures that are designed to ensure that the material financial and non-financial information required to be disclosed on reports and filed or submitted with the SEC is recorded, processed, summarized, and reported in a timely manner. Based on our evaluation, our management, including the CEO and Chief Financial Officer ("CFO"), has concluded that our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934) as of December 31, 2009 are effective. Notwithstanding the foregoing, there can be no assurance that our disclosure controls and procedures will detect or uncover all failures of persons within our Company to disclose material information otherwise required to be set forth in our reports.

### **Internal Controls Over Financial Reporting**

Our management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934. Our internal accounting controls systems are designed to provide reasonable assurance that assets are safeguarded, that transactions are executed in accordance with management's authorization and are properly recorded, and that accounting records are adequate for preparation of financial statements in accordance with U.S. GAAP and other financial information.

Under the supervision and with the participation of management, including the CEO and CFO, our management conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on its evaluation under this framework, management concluded that our internal controls over financial reporting were effective as of December 31, 2009.

The effectiveness of our Company's internal controls over financial reporting as of December 31, 2009 has been audited by Ernst & Young LLP, as stated in their report on page F-4 of our 2009 Form 10-K.

### **Changes in Internal Control Over Financial Reporting**

There were no changes in our internal controls over financial reporting identified in connection with the evaluation thereof by our management, including the CEO and CFO, during the quarter ended December 31, 2009 that have materially affected, or are reasonably likely to materially affect, our internal controls over financial reporting.



**Item 7A. Quantitative and Qualitative Disclosures About Market Risk.**

Information relating to quantitative and qualitative disclosures about market risk is detailed in Item 7. “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and is incorporated herein by reference.

**Item 8. Financial Statements and Supplementary Data.**

The information required by this Item is contained in the financial statements set forth in Item 15. “Exhibits, Financial Statement Schedules” under the caption “*Consolidated Financial Statements and Supplementary Data*” as part of this Annual Report on Form 10-K and is incorporated herein by reference.

**Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.**

There have been no changes in or disagreements with accountants on accounting or financial disclosure matters.

**Item 9A. Controls and Procedures.**

- (a) Disclosure Controls and Procedures. We performed an evaluation of the effectiveness of our disclosure controls and procedures that are designed to ensure that the material financial and non-financial information required to be disclosed on reports and filed or submitted with the SEC is recorded, processed, summarized and reported in a timely manner. Based on our evaluation, our management, including the CEO and CFO, have concluded that our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act) as of the end of the period covered by this report are effective.
- (b) Management’s Annual Report on Changes in Internal Controls Over Financial Reporting. Our management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act. Our internal accounting controls systems are designed to provide reasonable assurance that assets are safeguarded, that transactions are executed in accordance with management’s authorization and are properly recorded, and that accounting records are adequate for preparation of financial statements in accordance with U.S. GAAP and other financial information.

Under the supervision and with the participation of management, including the CEO and CFO, our management conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on its evaluation under this framework, management concluded that our internal controls over financial reporting were effective as of December 31, 2009.

The effectiveness of our Company’s internal control over financial reporting as of December 31, 2009 has been audited by Ernst & Young LLP, as stated in its report on page F-4 herein and is incorporated herein by reference.

- (c) Changes in Internal Control Over Financial Reporting. There were no changes in our internal controls over financial reporting identified in connection with the evaluation thereof by our management, including the CEO and CFO, during the quarter ended December 31, 2009 that have materially affected, or are reasonably likely to materially affect, our internal controls over financial reporting.

**Item 9B. Other Information.**

Not applicable.

### **PART III**

#### **Item 10. Directors, Executive Officers and Corporate Governance.**

Information required under this Item relating to our directors is incorporated herein by reference from information included in our definitive proxy statement for the 2010 Annual and Special meeting of Shareholders expected to be filed with the SEC no later than 120 days after the end of the fiscal year covered by this Form 10-K (the “2010 Proxy Statement”).

Information relating to our executive officers is furnished in Part I hereof under a separate unnumbered item captioned “Executive Officers of the Registrant.”

Information required under this Item relating to certain filing obligations of our directors and executive officers under the federal securities laws set forth in the 2010 Proxy Statement relating to compliance with section 16(a) of the Exchange Act is incorporated herein by reference.

The Board of Directors has adopted a Code of Professional Conduct that applies to our Chief Executive Officer, Chief Financial Officer and the principal accounting officer or controller, or persons performing similar functions. A copy of the Code of Professional Conduct can be found on our website at: [www.biovail.com](http://www.biovail.com) (under the tab “About Biovail” and subtab “Corporate Governance”). In addition, a copy of our Code of Professional Conduct can be provided, without charge, upon request to: Biovail Corporation, 7150 Mississauga Road, Mississauga, Ontario, Canada, L5N 8M5, Attention: Investor Relations; by telephone at (905) 263-3002; by facsimile at (905) 286-3050; or by email to [ir@biovail.com](mailto:ir@biovail.com).

Information required under this Item relating to our audit committee, including the members of the committee and designation of “audit committee financial experts” under applicable SEC and NYSE rules, is incorporated herein by reference from information included in the 2010 Proxy Statement.

#### **Item 11. Executive Compensation.**

Information required under this Item relating to executive compensation is incorporated herein by reference from information included in the 2010 Proxy Statement.

#### **Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.**

Information required under this Item relating to securities authorized for issuance under equity compensation plans and to security ownership of certain beneficial owners and management is incorporated herein by reference from information included in the 2010 Proxy Statement.

#### **Item 13. Certain Relationships and Related Transactions, and Director Independence.**

Information required under this Item relating to certain relationships and transactions with related parties and about director independence is incorporated herein by reference from information included in the 2010 Proxy Statement.

#### **Item 14. Principal Accounting Fees and Services.**

Information required under this Item relating to the fees for professional services rendered by our independent auditors in 2008 and 2009 is incorporated herein by reference from information included in the 2010 Proxy Statement.

## PART IV

### Item 15. Exhibits, Financial Statement Schedules.

Documents filed as a part of the report:

(1) The consolidated financial statements required to be filed in the Annual Report on Form 10-K are listed on page F-1 hereof.

(2) Schedule II — Valuation and Qualifying Accounts.

#### SCHEDULE II — VALUATION AND QUALIFYING ACCOUNTS (All dollar amounts expressed in thousands of U.S. dollars)

| Column A                                                                              | Column B                             | Column C                                                       | Column D                  | Column E                       |
|---------------------------------------------------------------------------------------|--------------------------------------|----------------------------------------------------------------|---------------------------|--------------------------------|
|                                                                                       | Balance at<br>beginning of<br>period | Additions Charged<br>to (recovered from)<br>Costs and Expenses | Deductions/<br>Write-Offs | Balance at<br>end of<br>period |
| Allowance for doubtful accounts and cash discounts, deducted from accounts receivable |                                      |                                                                |                           |                                |
| Year ended December 31, 2009 . . . . .                                                | 1,179                                | 1,304                                                          | (46)                      | 2,437                          |
| Year ended December 31, 2008 . . . . .                                                | 1,217                                | (23)                                                           | (15)                      | 1,179                          |
| Year ended December 31, 2007 . . . . .                                                | 3,194                                | 736                                                            | (2,713)                   | 1,217                          |

(3) Exhibit Index

## EXHIBIT INDEX

| Exhibit<br>Number | Exhibit Description                                                                                                                                                                                                                                                    |
|-------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2.1               | Agreement and Plan of Merger, dated as of September 16, 2008, by and among Biovail Americas Corp., Prestwick Holdings, Inc., Prestwick Pharmaceuticals, Inc. and Sofinnova Management V 2005, LLC and Edgar G. Engleman, M.D., as the Stockholder Representatives.***† |
| 2.2               | Asset Purchase Agreement, dated as of May 5, 2009, by and between Biovail Laboratories International SRL and SmithKline Beecham Corporation.***†                                                                                                                       |
| 2.3               | Asset Purchase Agreement, dated as of May 16, 2009, between Cambridge Laboratories (Ireland) Limited and Biovail Laboratories International (Barbados) SRL (the “Cambridge Asset Purchase Agreement”).***†                                                             |
| 2.4               | Amendment No. 1 to Cambridge Asset Purchase Agreement, dated as of June 19, 2009, between Cambridge Laboratories (Ireland) Limited and Biovail Laboratories International (Barbados) SRL.                                                                              |
| 3.1               | Articles of Continuance of Biovail Corporation.                                                                                                                                                                                                                        |
| 3.2               | By-Law No. 1 of Biovail Corporation.                                                                                                                                                                                                                                   |
| 3.3               | By-Law No. 2 of Biovail Corporation.                                                                                                                                                                                                                                   |
| 4.1               | Indenture, dated as of June 10, 2009, among Biovail Corporation, The Bank of New York Mellon and BNY Trust Company of Canada.                                                                                                                                          |
| 4.2               | Form of 5.375% Senior Convertible Notes due 2014.                                                                                                                                                                                                                      |
| 10.1              | Trademark License Agreement, dated as of May 14, 2009, by and between SmithKline Beecham Corporation and Biovail Laboratories International SRL.**                                                                                                                     |
| 10.2              | License Agreement, dated as of February 9, 2007, among GlaxoSmithKline, PLC, SmithKline Beecham Corporation and Andrx Pharmaceuticals LLC.**                                                                                                                           |
| 10.3              | Amended and Restated Distribution Rights Agreement, effective as of October 26, 2001, by and among SmithKline Beecham Corporation and Biovail Laboratories Incorporated (the “Zovirax Distribution Agreement”).**                                                      |
| 10.4              | Amendment No. 1 to Zovirax Distribution Agreement, dated as of May 1, 2005, by and between Biovail Laboratories International SRL and SmithKline Beecham Corporation.                                                                                                  |
| 10.5              | Amendment No. 2 to Zovirax Distribution Agreement, dated as of October 12, 2005, by and between Biovail Laboratories International SRL and SmithKline Beecham Corporation.**                                                                                           |
| 10.6              | Amendment No. 3 to Zovirax Distribution Agreement, dated as of December 18, 2006, by and between Biovail Laboratories International SRL and SmithKline Beecham Corporation.**                                                                                          |
| 10.7              | Amendment No. 4 to Zovirax Distribution Agreement, dated as of November 21, 2008, by and between Biovail Laboratories International SRL and SmithKline Beecham Corporation.                                                                                            |
| 10.8              | Amendment No. 5 to Zovirax Distribution Agreement, dated as of May 14, 2009, by and between Biovail Laboratories International SRL and SmithKline Beecham Corporation.                                                                                                 |
| 10.9              | Amendment No. 6 to Zovirax Distribution Agreement, dated as of September 16, 2009, by and between Biovail Laboratories International SRL and SmithKline Beecham Corporation.                                                                                           |
| 10.10             | Amendment No. 7 to Zovirax Distribution Agreement, dated as of November 24, 2009, by and between Biovail Laboratories International SRL and SmithKline Beecham Corporation.                                                                                            |
| 10.11             | Supply Agreement, dated as of October 1, 2004, between Plantex USA, Inc. and Biovail Laboratories Incorporated (the “Diltiazem Supply Agreement”).**                                                                                                                   |

| <b>Exhibit<br/>Number</b> | <b>Exhibit Description</b>                                                                                                                                                                                                                                   |
|---------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 10.12                     | Amendment No. 1 to Diltiazem Supply Agreement, dated as of December 30, 2005, between Plantex USA, Inc. and Biovail Laboratories International SRL.**                                                                                                        |
| 10.13                     | Amendment No. 2 to Diltiazem Supply Agreement, dated as of December 19, 2006, by and between Plantex USA, Inc. and Biovail Laboratories International SRL.**                                                                                                 |
| 10.14                     | Amendment No. 3 to Diltiazem Supply Agreement, dated as of June 25, 2007, by and between Plantex USA, Inc. and Biovail Laboratories International SRL.**                                                                                                     |
| 10.15                     | Product Development and License Agreement dated as of May 31, 2000, between Biovail Laboratories Incorporated and Universiteit Gent, (the “Product Development and License Agreement”).**                                                                    |
| 10.16                     | Amendment to Product Development and License Agreement, dated as of July 21, 2009, between Ghent University and Biovail Laboratories International SRL.**                                                                                                    |
| 10.17                     | Non-Exclusive License Agreement, dated as of December 5, 1996, between Ethypharm S.A. and Hoechst Marion Roussel, Inc. (the “Ethypharm License”).**                                                                                                          |
| 10.18                     | Amendment to Ethypharm License, dated as of July 21, 2000, between Aventis Pharmaceuticals Inc. and Ethypharm S.A.**                                                                                                                                         |
| 10.19                     | Amendment to Ethypharm License, dated as of December 29, 2000, between Biovail Laboratories Incorporated and Ethypharm S.A.**                                                                                                                                |
| 10.20                     | Marketing, Distribution and Supply Agreement for Xenazine, dated as of September 16, 2008, by and between Prestwick Pharmaceuticals, Inc. and Ovation Pharmaceuticals, Inc.**                                                                                |
| 10.21                     | License Agreement, dated as of December 10, 1998, between LifeHealth Limited (now H. Lundbeck A/S) and Cambridge Selfcare Diagnostics Limited (the “LifeHealth License Agreement”).**                                                                        |
| 10.22                     | Side Letter to the LifeHealth License Agreement, dated as of October 29, 2002, between LifeHealth Limited (now H. Lundbeck A/S) and Cambridge Laboratories Limited.**                                                                                        |
| 10.23                     | Side Letter to the LifeHealth License Agreement, dated as of March 31, 2004, between LifeHealth Limited (now H. Lundbeck A/S) and Cambridge Laboratories Limited.**                                                                                          |
| 10.24                     | Side Letter to the LifeHealth License Agreement, dated as of August 12, 2004, between LifeHealth Limited (now H. Lundbeck A/S) and Cambridge Laboratories Limited.**                                                                                         |
| 10.25                     | Side Letter to the LifeHealth License Agreement, dated as of June 19, 2009, between LifeHealth Limited (now H. Lundbeck A/S) and Cambridge Laboratories Limited.**                                                                                           |
| 10.26                     | Deed of Novation and Amendment to the LifeHealth License Agreement, dated as of June 19, 2009, between Lifehealth Limited, Cambridge Laboratories (Ireland) Limited, Cambridge Laboratories Limited and Biovail Laboratories International (Barbados) SRL.** |
| 10.27                     | Supply Agreement, dated as of July 31, 1998, between Cambridge Laboratories (Division of Cambridge Selfcare Diagnostics Limited and Plasto S.A. (Synkem Division) (the “Synkem Supply Agreement”).**                                                         |
| 10.28                     | Amendment to Synkem Supply Agreement, dated as of February 25, 2005, between Cambridge Laboratories (Division of Cambridge Selfcare Diagnostics Limited and Plasto S.A. (Synkem Division)).**                                                                |
| 10.29                     | Contract Manufacture Agreement, dated as of May 9, 2005, between Laboratoires Fournier S.A. and Cambridge Laboratories Limited.**                                                                                                                            |
| 10.30                     | Plea Agreement and Side Letter, dated as of May 16, 2008, between United States Attorney for the District of Massachusetts and Biovail Pharmaceuticals, Inc.                                                                                                 |



| <b>Exhibit<br/>Number</b> | <b>Exhibit Description</b>                                                                                                                                                                                                                                                       |
|---------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 10.31                     | Corporate Integrity Agreement, dated as of September 11, 2009, between Biovail Corporation and the Office of Inspector General of the Department of Health and Human Services.                                                                                                   |
| 10.32                     | Settlement Agreement, dated as of September 11, 2009, among the United States of America, United States Department of Justice, Office of Inspector General of the Department of Health and Human Services and Biovail Corporation.                                               |
| 10.33                     | Securities Litigation, Stipulation and Agreement of Settlement, dated as of April 4, 2008, between the United States District Court, Southern District of New York and Biovail Corporation.                                                                                      |
| 10.34                     | Settlement Agreement, dated January 7, 2009, between Staff of the Ontario Securities Commission and Biovail Corporation.                                                                                                                                                         |
| 10.35                     | Settlement Agreement, dated March 2008, between the U.S. Securities and Exchange Commission and Biovail Corporation.                                                                                                                                                             |
| 10.36                     | Credit Agreement, dated as of June 9, 2009, among Biovail Corporation, JPMorgan Chase Bank, N.A., Toronto Branch, J.P. Morgan Securities Inc. and Scotia Capital Inc., The Bank of Nova Scotia and National Bank of Canada and HSBC Bank Canada and The Toronto-Dominion Bank.** |
| 10.37                     | Chairman Agreement of Douglas J.P. Squires, dated as of May 1, 2008.                                                                                                                                                                                                             |
| 10.38                     | Confidential Separation Agreement and General Release of Douglas J.P. Squires, dated as of May 6, 2008.                                                                                                                                                                          |
| 10.39                     | Employment Agreement of William M. Wells effective May 1, 2008.                                                                                                                                                                                                                  |
| 10.40                     | Employment Agreement of Margaret Mulligan effective September 3, 2008.                                                                                                                                                                                                           |
| 10.41                     | Amended and Restated Employment Agreement of Gilbert Godin effective July 3, 2009.                                                                                                                                                                                               |
| 10.42                     | Employment Agreement of Gregory Gubitze effective July 3, 2009.                                                                                                                                                                                                                  |
| 10.43                     | Employment Agreement of Mark Durham effective July 3, 2009.                                                                                                                                                                                                                      |
| 10.44                     | Employment Agreement of Dr. H. Christian Fibiger effective November 4, 2008.                                                                                                                                                                                                     |
| 10.45                     | Employment Agreement of Christine Mayer effective January 1, 2007.                                                                                                                                                                                                               |
| 10.46                     | Employment Agreement of Michel Chouinard effective February 24, 2010.                                                                                                                                                                                                            |
| 10.47                     | Employment Agreement of Michel Chouinard effective June 16, 2008.                                                                                                                                                                                                                |
| 10.48                     | Consulting Agreement by and between Biovail Laboratories SRL and Bord de Lac Ltd. dated as of February 27, 2006.                                                                                                                                                                 |
| 10.49                     | Biovail Corporation 2007 Equity Compensation Plan dated as of May 16, 2007.                                                                                                                                                                                                      |
| 10.50                     | Amendment No. 1 to the Biovail Corporation 2007 Equity Compensation Plan dated as of December 18, 2008.                                                                                                                                                                          |
| 10.51                     | Biovail Corporation Amended and Restated 2004 Stock Option Plan dated as of June 25, 2004 (the “2004 Stock Option Plan”).                                                                                                                                                        |
| 10.52                     | Amendment to the 2004 Stock Option Plan dated March 14, 2007.                                                                                                                                                                                                                    |
| 10.53                     | Amendment to the 2004 Stock Option Plan dated May 16, 2007.                                                                                                                                                                                                                      |
| 10.54                     | Biovail Corporation Amended and Restated 1993 Stock Option Plan (the “1993 Stock Option Plan”).                                                                                                                                                                                  |
| 10.55                     | Amendment to the 1993 Stock Option Plan dated March 14, 2007.                                                                                                                                                                                                                    |
| 10.56                     | Amendment to the 1993 Stock Option Plan dated May 16, 2007.                                                                                                                                                                                                                      |

| <u>Exhibit Number</u> | <u>Exhibit Description</u>                                                                                                                                                                     |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 10.57                 | Biovail Corporation Deferred Share Unit Plan for Canadian Directors, approved on May 3, 2005, as amended.                                                                                      |
| 10.58                 | Biovail Corporation Deferred Share Unit Plan for U.S. Directors, approved on May 3, 2005, as amended and restated.                                                                             |
| 10.59                 | Biovail Laboratories International SRL Deferred Share Unit Plan effective May 3, 2005, as amended.                                                                                             |
| 10.60                 | Biovail Amercias Corp. Executive Deferred Compensation Plan, as amended and restated effective January 1, 2009.                                                                                |
| 10.61                 | Biovail Corporation Short-Term Incentive Plan, as amended and restated effective January 1, 2009.                                                                                              |
| 14.1                  | Code of Professional Conduct for the Senior Finance Executives of Biovail Corporation.                                                                                                         |
| 21.1                  | Subsidiaries of Biovail Corporation.                                                                                                                                                           |
| 23.1                  | Consent of Ernst & Young LLP.                                                                                                                                                                  |
| 31.1                  | Certification of the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.                                                                                        |
| 31.2                  | Certification of the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.                                                                                        |
| 32.1                  | Certificate of the Chief Executive Officer of Biovail Corporation pursuant to 18 U.S.C. § 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.                           |
| 32.2                  | Certificate of the Senior Vice President and Chief Financial Officer of Biovail Corporation pursuant to 18 U.S.C. § 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. |

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<sup>\*\*</sup> An application for confidential treatment for selected portions of this agreement has been filed with the Securities and Exchange Commission.

<sup>††</sup> Pursuant to item 601(b)(2) of Regulation S-K, Biovail Corporation hereby agrees to furnish supplementally to the Securities and Exchange Commission a copy of any omitted schedule or exhibit to this agreement.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

BIOVAIL CORPORATION  
(Registrant)

Date: February 26, 2010

By: /s/ WILLIAM M. WELLS

William M. Wells  
*Chief Executive Officer*  
*(Principal Executive Officer)*

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

| <u>Signature</u>                                                | <u>Title</u>                                                                                                     | <u>Date</u>       |
|-----------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------|-------------------|
| <u>/s/ WILLIAM M. WELLS</u><br>William M. Wells                 | Chief Executive Officer and Director                                                                             | February 26, 2010 |
| <u>/s/ MARGARET MULLIGAN</u><br>Margaret Mulligan               | Senior Vice-President and Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer) | February 26, 2010 |
| <u>/s/ DAVID H. LAIDLEY</u><br>David H. Laidley                 | Director                                                                                                         | February 26, 2010 |
| <u>/s/ DR. DOUGLAS J.P. SQUIRES</u><br>Dr. Douglas J.P. Squires | Director                                                                                                         | February 26, 2010 |
| <u>/s/ FRANK POTTER</u><br>Frank Potter                         | Director                                                                                                         | February 26, 2010 |
| <u>/s/ J. SPENCER LANTHIER</u><br>J. Spencer Lanthier           | Director                                                                                                         | February 26, 2010 |
| <u>/s/ DR. LAURENCE E. PAUL</u><br>Dr. Laurence E. Paul         | Director                                                                                                         | February 26, 2010 |
| <u>/s/ LLOYD M. SEGAL</u><br>Lloyd M. Segal                     | Director                                                                                                         | February 26, 2010 |

| <u>Signature</u>                                    | <u>Title</u> | <u>Date</u>       |
|-----------------------------------------------------|--------------|-------------------|
| _____<br>/s/ MARK PARRISH<br>Mark Parrish           | Director     | February 26, 2010 |
| _____<br>/s/ MICHAEL VAN EVERY<br>Michael Van Every | Director     | February 26, 2010 |
| _____<br>/s/ ROBERT N. POWER<br>Robert N. Power     | Director     | February 26, 2010 |
| _____<br>/s/ SERGE GOUIN<br>Serge Gouin             | Director     | February 26, 2010 |
| _____<br>/s/ SIR LOUIS TULL<br>Sir Louis Tull       | Director     | February 26, 2010 |

## INDEX TO FINANCIAL STATEMENTS

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## **REPORT OF MANAGEMENT ON FINANCIAL STATEMENTS AND INTERNAL CONTROL OVER FINANCIAL REPORTING**

### **Financial Statements**

The Company's management is responsible for preparing the accompanying consolidated financial statements in conformity with United States generally accepted accounting principles ("U.S. GAAP"). In preparing these consolidated financial statements, management selects appropriate accounting policies and uses its judgment and best estimates to report events and transactions as they occur. Management has determined such amounts on a reasonable basis in order to ensure that the consolidated financial statements are presented fairly, in all material respects. Financial information included throughout this Annual Report is prepared on a basis consistent with that of the accompanying consolidated financial statements.

Ernst & Young LLP has been engaged by the Company's shareholders to audit the consolidated financial statements.

The Board of Directors is responsible for ensuring that management fulfills its responsibility for financial reporting and is ultimately responsible for reviewing and approving the consolidated financial statements. The Board of Directors carries out this responsibility principally through its Audit Committee. The members of the Audit Committee are outside Directors. The Audit Committee considers, for review by the Board of Directors and approval by the shareholders, the engagement or reappointment of the external auditors. Ernst & Young LLP has full and free access to the Audit Committee.

Management acknowledges its responsibility to provide financial information that is representative of the Company's operations, is consistent and reliable, and is relevant for the informed evaluation of the Company's activities.

### **Internal Control Over Financial Reporting**

The Company's management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934. The Company's internal accounting controls systems are designed to provide reasonable assurance that assets are safeguarded, that transactions are executed in accordance with management's authorization and are properly recorded, and that accounting records are adequate for preparation of financial statements in accordance with U.S. GAAP and other financial information.

Under the supervision and with the participation of management, including the Company's Chief Executive Officer and Chief Financial Officer, the Company conducted an evaluation of the effectiveness of its internal control over financial reporting based on the framework in Internal Control — Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on its evaluation under this framework, management concluded that the Company's internal controls over financial reporting were effective as of December 31, 2009.

The effectiveness of the Company's internal control over financial reporting as of December 31, 2009 has been audited by Ernst & Young LLP, as stated in their report on page F-4 herein.

/s/ WILLIAM WELLS  
William Wells  
Chief Executive Officer

/s/ MARGARET MULLIGAN  
Margaret Mulligan  
Senior Vice-President and  
Chief Financial Officer

February 26, 2010



## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Shareholders of  
**Biovail Corporation**

We have audited the accompanying consolidated balance sheets of Biovail Corporation as of December 31, 2009 and 2008, and the related consolidated statements of income, shareholders' equity and cash flows for each of the three years in the period ended December 31, 2009. Our audits also included the financial statement schedule II included in Item 15. These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Biovail Corporation at December 31, 2009 and 2008, and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 31, 2009, in conformity with United States generally accepted accounting principles. Also, in our opinion, the related financial statement schedule, when considered in relation to the basic financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

As discussed in note 2 to the consolidated financial statements, effective January 1, 2009, Biovail Corporation changed its method of accounting for convertible debt instruments, business combinations, fair value measurements for non-financial assets and non-financial liabilities and collaborative arrangements, effective April 1, 2009 changed its method of accounting for other-than-temporary impairments and effective January 1, 2008 changed its method of accounting related to the optional use of fair value for certain financial assets and liabilities, in each case due to the issuance of new authoritative guidance.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the effectiveness of Biovail Corporation's internal control over financial reporting as of December 31, 2009, based on criteria established in the Internal Control — Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated February 26, 2010 expressed an unqualified opinion thereon.

Toronto, Canada  
February 26, 2010

/s/ ERNST & YOUNG LLP  
Chartered Accountants  
Licensed Public Accountants

**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM  
ON INTERNAL CONTROL OVER FINANCIAL REPORTING**

To the Board of Directors and Shareholders of  
**Biovail Corporation**

We have audited Biovail Corporation's internal control over financial reporting as of December 31, 2009, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (the "COSO" criteria). Biovail Corporation's management is responsible for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, Biovail Corporation maintained, in all material respects, effective internal control over financial reporting as of December 31, 2009, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the accompanying consolidated balance sheets of Biovail Corporation as of December 31, 2009 and 2008, and the related consolidated statements of income, shareholders' equity, and cash flows for each of the three years in the period ended December 31, 2009, and our report dated February 26, 2010, expressed an unqualified opinion thereon.

Toronto, Canada,  
February 26, 2010

/s/ ERNST & YOUNG LLP  
Chartered Accountants  
Licensed Public Accountants

**BIOVAIL CORPORATION**  
**CONSOLIDATED BALANCE SHEETS**

**In accordance with United States Generally Accepted Accounting Principles**

**(All dollar amounts expressed in thousands of U.S. dollars)**

|                                                                                                                                                                     | <b>At December 31</b> |                    |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|--------------------|
|                                                                                                                                                                     | <b>2009</b>           | <b>2008</b>        |
| <b>ASSETS</b>                                                                                                                                                       |                       |                    |
| <b>Current</b>                                                                                                                                                      |                       |                    |
| Cash and cash equivalents . . . . .                                                                                                                                 | \$ 114,463            | \$ 317,547         |
| Marketable securities . . . . .                                                                                                                                     | 9,566                 | 719                |
| Accounts receivable . . . . .                                                                                                                                       | 119,919               | 90,051             |
| Insurance recoveries receivable . . . . .                                                                                                                           | —                     | 812                |
| Inventories . . . . .                                                                                                                                               | 82,773                | 59,561             |
| Assets held for sale . . . . .                                                                                                                                      | 8,542                 | 6,814              |
| Prepaid expenses and other current assets . . . . .                                                                                                                 | 15,377                | 14,860             |
|                                                                                                                                                                     | <u>350,640</u>        | <u>490,364</u>     |
| Marketable securities . . . . .                                                                                                                                     | 11,516                | 21,916             |
| Property, plant and equipment, net . . . . .                                                                                                                        | 103,848               | 148,269            |
| Intangible assets, net . . . . .                                                                                                                                    | 1,335,222             | 720,372            |
| Goodwill . . . . .                                                                                                                                                  | 100,294               | 100,294            |
| Deferred tax assets, net of valuation allowance . . . . .                                                                                                           | 132,800               | 116,800            |
| Other long-term assets, net . . . . .                                                                                                                               | 32,724                | 25,550             |
|                                                                                                                                                                     | <u>\$2,067,044</u>    | <u>\$1,623,565</u> |
| <b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>                                                                                                                         |                       |                    |
| <b>Current</b>                                                                                                                                                      |                       |                    |
| Accounts payable . . . . .                                                                                                                                          | \$ 72,022             | \$ 41,070          |
| Dividends payable . . . . .                                                                                                                                         | 14,246                | 59,331             |
| Accrued liabilities . . . . .                                                                                                                                       | 121,898               | 85,169             |
| Accrued legal settlements . . . . .                                                                                                                                 | 7,950                 | 32,565             |
| Income taxes payable . . . . .                                                                                                                                      | 6,846                 | 8,596              |
| Deferred revenue . . . . .                                                                                                                                          | 21,834                | 40,435             |
| Current portion of long-term obligations . . . . .                                                                                                                  | 12,110                | —                  |
|                                                                                                                                                                     | <u>256,906</u>        | <u>267,166</u>     |
| Deferred revenue . . . . .                                                                                                                                          | 69,247                | 84,953             |
| Income taxes payable . . . . .                                                                                                                                      | 66,200                | 63,700             |
| Long-term obligations . . . . .                                                                                                                                     | 313,975               | —                  |
| Other long-term liabilities . . . . .                                                                                                                               | 6,344                 | 6,147              |
|                                                                                                                                                                     | <u>712,672</u>        | <u>421,966</u>     |
| <b>Shareholders' equity</b>                                                                                                                                         |                       |                    |
| Common shares, no par value, unlimited shares authorized, 158,310,884 and<br>158,216,132 issued and outstanding at December 31, 2009 and 2008, respectively . . . . | 1,465,004             | 1,463,873          |
| Additional paid-in capital . . . . .                                                                                                                                | 91,768                | 31,966             |
| Accumulated deficit . . . . .                                                                                                                                       | (245,974)             | (319,909)          |
| Accumulated other comprehensive income . . . . .                                                                                                                    | 43,574                | 25,669             |
|                                                                                                                                                                     | <u>1,354,372</u>      | <u>1,201,599</u>   |
|                                                                                                                                                                     | <u>\$2,067,044</u>    | <u>\$1,623,565</u> |

Commitments and contingencies (notes 24 and 25)

On behalf of the Board:

/s/ WILLIAM WELLS

William Wells  
Director

/s/ MICHAEL VAN EVERY

Michael Van Every  
Director

*The accompanying notes are an integral part of the consolidated financial statements.*

**BIOVAIL CORPORATION**  
**CONSOLIDATED STATEMENTS OF INCOME**

In accordance with United States Generally Accepted Accounting Principles  
(All dollar amounts expressed in thousands of U.S. dollars, except per share data)

|                                                                                                      | Years Ended December 31 |                  |                  |
|------------------------------------------------------------------------------------------------------|-------------------------|------------------|------------------|
|                                                                                                      | 2009                    | 2008             | 2007             |
| <b>REVENUE</b>                                                                                       |                         |                  |                  |
| Product sales . . . . .                                                                              | \$789,026               | \$714,548        | \$801,046        |
| Research and development . . . . .                                                                   | 14,148                  | 24,356           | 23,828           |
| Royalty and other . . . . .                                                                          | 17,256                  | 18,274           | 17,944           |
|                                                                                                      | <u>820,430</u>          | <u>757,178</u>   | <u>842,818</u>   |
| <b>EXPENSES</b>                                                                                      |                         |                  |                  |
| Cost of goods sold (exclusive of amortization of intangible assets shown separately below) . . . . . | 204,309                 | 197,167          | 223,680          |
| Research and development . . . . .                                                                   | 120,784                 | 92,844           | 118,117          |
| Selling, general and administrative . . . . .                                                        | 178,601                 | 188,922          | 159,266          |
| Amortization of intangible assets . . . . .                                                          | 104,730                 | 51,369           | 48,049           |
| Restructuring costs . . . . .                                                                        | 19,065                  | 70,202           | 668              |
| Legal settlements, net of insurance recoveries . . . . .                                             | 6,191                   | 32,565           | 95,114           |
| Acquisition-related costs . . . . .                                                                  | 5,596                   | —                | —                |
| Intangible asset impairments . . . . .                                                               | —                       | —                | 9,910            |
|                                                                                                      | <u>639,276</u>          | <u>633,069</u>   | <u>654,804</u>   |
| Operating income . . . . .                                                                           | 181,154                 | 124,109          | 188,014          |
| Interest income . . . . .                                                                            | 1,118                   | 9,400            | 24,563           |
| Interest expense . . . . .                                                                           | (25,418)                | (1,018)          | (9,745)          |
| Foreign exchange gain (loss) . . . . .                                                               | 507                     | (1,057)          | 5,491            |
| Gain on auction rate security settlement . . . . .                                                   | 22,000                  | —                | —                |
| Gain on disposal of investments . . . . .                                                            | 804                     | 6,534            | 24,356           |
| Impairment loss on debt securities . . . . .                                                         | (5,210)                 | (8,613)          | (6,000)          |
| Impairment loss on equity securities . . . . .                                                       | —                       | (1,256)          | (2,949)          |
| Equity loss . . . . .                                                                                | —                       | (1,195)          | (2,528)          |
| Loss on early extinguishment of debt . . . . .                                                       | —                       | —                | (12,463)         |
|                                                                                                      | <u>174,955</u>          | <u>126,904</u>   | <u>208,739</u>   |
| Income before provision for (recovery of) income taxes . . . . .                                     | (1,500)                 | (73,000)         | 13,200           |
| Provision for (recovery of) income taxes . . . . .                                                   |                         |                  |                  |
| Net income . . . . .                                                                                 | <u>\$176,455</u>        | <u>\$199,904</u> | <u>\$195,539</u> |
| Basic and diluted earnings per share . . . . .                                                       | <u>\$ 1.11</u>          | <u>\$ 1.25</u>   | <u>\$ 1.22</u>   |
| <b>Weighted-average number of common shares outstanding (000s)</b>                                   |                         |                  |                  |
| Basic . . . . .                                                                                      | 158,236                 | 159,730          | 160,839          |
| Diluted . . . . .                                                                                    | 158,510                 | 159,730          | 160,875          |
| Cash dividends declared per share . . . . .                                                          | <u>\$ 0.65</u>          | <u>\$ 1.50</u>   | <u>\$ 1.50</u>   |

*The accompanying notes are an integral part of the consolidated financial statements.*

**BIOVAIL CORPORATION**  
**CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY**  
**In accordance with United States Generally Accepted Accounting Principles**  
**(All dollar amounts expressed in thousands of U.S. dollars)**

|                                                                               | Common Shares    |                    | Additional<br>Paid-In<br>Capital | Accumulated<br>Deficit | Accumulated<br>Other<br>Comprehensive<br>Income | Total              |
|-------------------------------------------------------------------------------|------------------|--------------------|----------------------------------|------------------------|-------------------------------------------------|--------------------|
|                                                                               | Shares<br>(000s) | Amount             |                                  |                        |                                                 |                    |
| Balance, January 1, 2007 . . . . .                                            | 160,444          | \$1,476,930        | \$14,952                         | \$(232,733)            | \$43,108                                        | \$1,302,257        |
| Common shares issued under stock-based compensation plans . . . . .           | 580              | 12,877             | (1,660)                          | —                      | —                                               | 11,217             |
| Stock-based compensation . . . . .                                            | —                | —                  | 10,633                           | —                      | —                                               | 10,633             |
| Cash dividends declared (\$1.50 per share) . . . . .                          | —                | —                  | —                                | (241,301)              | —                                               | (241,301)          |
|                                                                               | <u>161,024</u>   | <u>1,489,807</u>   | <u>23,925</u>                    | <u>(474,034)</u>       | <u>43,108</u>                                   | <u>1,082,806</u>   |
| Comprehensive income:                                                         |                  |                    |                                  |                        |                                                 |                    |
| Net income . . . . .                                                          | —                | —                  | —                                | 195,539                | —                                               | 195,539            |
| Other comprehensive income . . . . .                                          | —                | —                  | —                                | —                      | 19,474                                          | 19,474             |
| Total comprehensive income . . . . .                                          |                  |                    |                                  |                        |                                                 | 215,013            |
| Balance, December 31, 2007 . . . . .                                          | <u>161,024</u>   | <u>1,489,807</u>   | <u>23,925</u>                    | <u>(278,495)</u>       | <u>62,582</u>                                   | <u>1,297,819</u>   |
| Repurchase of common shares . . . . .                                         | (2,818)          | (26,077)           | —                                | (3,765)                | —                                               | (29,842)           |
| Common shares issued under stock-based compensation plans . . . . .           | 10               | 143                | (143)                            | —                      | —                                               | —                  |
| Stock-based compensation . . . . .                                            | —                | —                  | 7,906                            | —                      | —                                               | 7,906              |
| Cash dividends declared and dividend equivalents (\$1.50 per share) . . . . . | —                | —                  | 278                              | (239,896)              | —                                               | (239,618)          |
| Cumulative effect adjustment . . . . .                                        | —                | —                  | —                                | 2,343                  | —                                               | 2,343              |
|                                                                               | <u>158,216</u>   | <u>1,463,873</u>   | <u>31,966</u>                    | <u>(519,813)</u>       | <u>62,582</u>                                   | <u>1,038,608</u>   |
| Comprehensive income:                                                         |                  |                    |                                  |                        |                                                 |                    |
| Net income . . . . .                                                          | —                | —                  | —                                | 199,904                | —                                               | 199,904            |
| Other comprehensive loss . . . . .                                            | —                | —                  | —                                | —                      | (36,913)                                        | (36,913)           |
| Total comprehensive income . . . . .                                          |                  |                    |                                  |                        |                                                 | 162,991            |
| Balance, December 31, 2008 . . . . .                                          | <u>158,216</u>   | <u>1,463,873</u>   | <u>31,966</u>                    | <u>(319,909)</u>       | <u>25,669</u>                                   | <u>1,201,599</u>   |
| Equity component of Convertible Notes, net of issuance costs . . . . .        | —                | —                  | 53,995                           | —                      | —                                               | 53,995             |
| Common shares issued under stock-based compensation plans . . . . .           | 95               | 1,131              | (265)                            | —                      | —                                               | 866                |
| Stock-based compensation . . . . .                                            | —                | —                  | 5,613                            | —                      | —                                               | 5,613              |
| Cash dividends declared and dividend equivalents (\$0.65 per share) . . . . . | —                | —                  | 459                              | (102,520)              | —                                               | (102,061)          |
|                                                                               | <u>158,311</u>   | <u>1,465,004</u>   | <u>91,768</u>                    | <u>(422,429)</u>       | <u>25,669</u>                                   | <u>1,160,012</u>   |
| Comprehensive income:                                                         |                  |                    |                                  |                        |                                                 |                    |
| Net income . . . . .                                                          | —                | —                  | —                                | 176,455                | —                                               | 176,455            |
| Other comprehensive income . . . . .                                          | —                | —                  | —                                | —                      | 17,905                                          | 17,905             |
| Total comprehensive income . . . . .                                          |                  |                    |                                  |                        |                                                 | 194,360            |
| Balance, December 31, 2009 . . . . .                                          | <u>158,311</u>   | <u>\$1,465,004</u> | <u>\$91,768</u>                  | <u>\$(245,974)</u>     | <u>\$43,574</u>                                 | <u>\$1,354,372</u> |

*The accompanying notes are an integral part of the consolidated financial statements.*

**BIOVAIL CORPORATION**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**

**In accordance with United States Generally Accepted Accounting Principles**  
**(All dollar amounts expressed in thousands of U.S. dollars)**

|                                                                                         | Years Ended December 31 |            |           |
|-----------------------------------------------------------------------------------------|-------------------------|------------|-----------|
|                                                                                         | 2009                    | 2008       | 2007      |
| <b>CASH FLOWS FROM OPERATING ACTIVITIES</b>                                             |                         |            |           |
| Net income                                                                              | \$ 176,455              | \$ 199,904 | \$195,539 |
| <b>Adjustments to reconcile net income to net cash provided by operating activities</b> |                         |            |           |
| Depreciation and amortization                                                           | 149,260                 | 102,905    | 94,985    |
| Amortization of deferred revenue                                                        | (21,201)                | (18,246)   | (19,168)  |
| Amortization and write-down of discounts on long-term obligations                       | 5,986                   | —          | 962       |
| Amortization and write-down of deferred financing costs                                 | 3,620                   | 520        | 4,821     |
| Deferred income taxes                                                                   | (16,000)                | (90,000)   | —         |
| Acquired in-process research and development                                            | 59,354                  | —          | —         |
| Impairment charges                                                                      | 13,969                  | 69,056     | 21,468    |
| Stock-based compensation                                                                | 5,613                   | 7,906      | 10,633    |
| Loss on sale and leaseback of assets                                                    | 10,968                  | —          | —         |
| Gain on disposal of investments                                                         | (804)                   | (6,534)    | (24,356)  |
| Payment of accrued legal settlements, net of insurance recoveries                       | (30,806)                | (93,048)   | (16,462)  |
| Additions to accrued legal settlements, net of insurance recoveries                     | 6,191                   | 32,565     | 95,114    |
| Accrued contract costs                                                                  | —                       | (45,065)   | (8,000)   |
| Equity loss                                                                             | —                       | 1,195      | 2,528     |
| Premium paid on early extinguishment of debt                                            | —                       | —          | 7,854     |
| Other                                                                                   | (177)                   | (389)      | 3,843     |
| Changes in operating assets and liabilities:                                            |                         |            |           |
| Accounts receivable                                                                     | (30,140)                | 20,441     | 18,052    |
| Insurance recoveries receivable                                                         | 812                     | 7,178      | (7,994)   |
| Inventories                                                                             | (26,212)                | 20,577     | 3,023     |
| Prepaid expenses and other current assets                                               | (796)                   | 318        | 376       |
| Accounts payable                                                                        | 30,771                  | (6,135)    | 3,273     |
| Accrued liabilities                                                                     | 36,414                  | 3,584      | (26,496)  |
| Income taxes payable                                                                    | 726                     | 8,700      | (7,514)   |
| Deferred revenue                                                                        | (13,106)                | (11,107)   | (11,628)  |
| Net cash provided by operating activities                                               | 360,897                 | 204,325    | 340,853   |
| <b>CASH FLOWS FROM INVESTING ACTIVITIES</b>                                             |                         |            |           |
| Acquisition of intangible assets                                                        | (561,829)               | —          | —         |
| Acquisition of businesses, net of cash acquired                                         | (200,000)               | (101,920)  | —         |
| Proceeds from sale and leaseback of assets                                              | 23,113                  | —          | —         |
| Additions to property, plant and equipment, net                                         | (7,423)                 | (21,999)   | (35,086)  |
| Transfer to restricted cash                                                             | (5,250)                 | (83,048)   | —         |
| Transfer from restricted cash                                                           | 5,250                   | 83,048     | —         |
| Proceeds from sale of property, plant and equipment                                     | 5,189                   | —          | —         |
| Additions to marketable securities                                                      | (3,823)                 | (6,290)    | (34,534)  |
| Proceeds from sale and maturity of marketable securities                                | 1,078                   | 4,450      | 3,282     |
| Proceeds on disposal of long-term investments, net of costs                             | 923                     | 25,206     | 52,669    |
| Proceeds from sale of short-term investments                                            | —                       | 79,735     | —         |
| Additions to short-term investments                                                     | —                       | (79,725)   | —         |
| Additions to restricted assets                                                          | —                       | (7,288)    | —         |
| Additions to long-term investments                                                      | —                       | —          | (1,376)   |
| Net cash used in investing activities                                                   | (742,772)               | (107,831)  | (15,045)  |
| <b>CASH FLOWS FROM FINANCING ACTIVITIES</b>                                             |                         |            |           |
| Issuance of Convertible Notes                                                           | 350,000                 | —          | —         |
| Cash dividends paid                                                                     | (147,146)               | (180,287)  | (321,523) |
| Advances under credit facility                                                          | 130,000                 | —          | —         |
| Repayments under credit facility                                                        | (130,000)               | —          | —         |
| Financing costs paid                                                                    | (26,274)                | —          | —         |
| Issuance of common shares                                                               | 866                     | —          | 11,217    |
| Repayment of deferred compensation obligation, net                                      | (399)                   | (182)      | (338)     |
| Repurchase of common shares                                                             | —                       | (29,842)   | —         |
| Redemption of Senior Subordinated Notes                                                 | —                       | —          | (406,756) |
| Repayments of other long-term obligations                                               | —                       | —          | (11,250)  |
| Net cash provided by (used in) financing activities                                     | 177,047                 | (210,311)  | (728,650) |
| Effect of exchange rate changes on cash and cash equivalents                            | 1,744                   | (2,277)    | 1,943     |
| Net decrease in cash and cash equivalents                                               | (203,084)               | (116,094)  | (400,899) |
| Cash and cash equivalents, beginning of year                                            | 317,547                 | 433,641    | 834,540   |
| Cash and cash equivalents, end of year                                                  | \$ 114,463              | \$ 317,547 | \$433,641 |
| <b>NON-CASH INVESTING AND FINANCING ACTIVITIES</b>                                      |                         |            |           |
| Cash dividends declared but unpaid                                                      | (14,246)                | (59,331)   | —         |
| Long-term obligation related to acquisition of business                                 | (26,768)                | —          | —         |
| Proceeds receivable from sale of long-term investment                                   | —                       | 169        | —         |

*The accompanying notes are an integral part of the consolidated financial statements.*



**BIOVAIL CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**In accordance with United States Generally Accepted Accounting Principles**  
**(All tabular dollar amounts expressed in thousands of U.S. dollars, except per share data)**

**1. DESCRIPTION OF BUSINESS**

Biovail Corporation (“Biovail” or the “Company”) was established on March 29, 1994, and was continued under the *Canada Business Corporations Act* on June 29, 2005. Biovail is a specialty pharmaceutical company with a strategic focus on developing and commercializing products that address unmet medical needs in specialty central nervous system (“CNS”) disorders.

**2. SIGNIFICANT ACCOUNTING POLICIES**

**Basis of Presentation**

The consolidated financial statements have been prepared by the Company in United States (“U.S.”) dollars and in accordance with U.S. generally accepted accounting principles (“U.S. GAAP”), applied on a consistent basis.

Certain of the prior years’ figures have been reclassified to conform to the presentation adopted in 2009.

**Principles of Consolidation**

The consolidated financial statements include the accounts of the Company and those of its subsidiaries. All intercompany transactions and balances have been eliminated.

The Company has entered into collaboration and license arrangements with other entities for various products under development. These arrangements typically include upfront and contingent milestone and royalty payments. All such arrangements were determined not to be variable interests in the entities. Accordingly, the Company does not consolidate the financial results of any of these entities.

**Acquisitions**

Acquired businesses are accounted for using the acquisition method of accounting, which requires that assets acquired and liabilities assumed be recorded at fair value, with limited exceptions. Any excess of the purchase price over the fair value of the net assets acquired is recorded as goodwill. Acquired in-process research and development (“IPR&D”) is recognized at fair value and initially characterized as indefinite-lived intangible assets, irrespective of whether the acquired IPR&D has an alternative future use. If the acquired net assets do not constitute a business, the transaction is accounted for as an asset acquisition and no goodwill is recognized. In an asset acquisition, the amount allocated to acquired IPR&D with no alternative future use is charged to expense at the acquisition date.

**Use of Estimates**

In preparing the Company’s consolidated financial statements, management is required to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenue and expenses during the reporting periods. Significant estimates made by management include: provisions for product returns, rebates and chargebacks; useful lives of amortizable intangible assets; expected future cash flows used in evaluating intangible assets for impairment; reporting unit fair value in testing goodwill for impairment; provisions for loss contingencies; provisions for income taxes and realizability of deferred tax assets; and the allocation of the purchase price of acquired assets and businesses. Under certain product manufacturing and supply agreements, management relies on estimates for future returns, rebates and chargebacks made by the Company’s commercialization counterparties. On an ongoing basis, management reviews its estimates to ensure that these estimates appropriately reflect changes in the Company’s business and new information as it becomes available. If historical experience and other factors used by management to make these estimates do not reasonably reflect future activity, the Company’s consolidated financial statements could be materially impacted.

**Fair Value of Financial Instruments**

The estimated fair values of cash and cash equivalents, accounts receivable, accounts payable and accrued liabilities approximate their carrying values due to their short maturity periods. The fair values of marketable securities, short-term and long-term investments, and long-term obligations are based on quoted market prices, if available, or estimated discounted future cash flows.

**Cash and Cash Equivalents**

Cash and cash equivalents include certificates of deposit, treasury bills, and investment-grade commercial paper with maturities of three months or less when purchased.

**BIOVAIL CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**  
**In accordance with United States Generally Accepted Accounting Principles**  
**(All tabular dollar amounts expressed in thousands of U.S. dollars, except per share data)**

**2. SIGNIFICANT ACCOUNTING POLICIES (Continued)**

**Marketable Securities**

Marketable debt securities are classified as being available-for-sale. These securities are reported at fair value with all unrealized gains and temporary unrealized losses recognized in other comprehensive income. Other-than-temporary credit losses that represent a decrease in the cash flows expected to be collected on these securities are recognized in net income. Other-than-temporary non-credit losses related to all other factors are recognized in other comprehensive income, if the Company does not intend to sell the security and it is not more likely than not that the Company will be required to sell the security before recovery of its amortized cost basis. Realized gains and losses on the sale of these securities are recognized in net income. The cost of securities sold, and the amount reclassified out of accumulated other comprehensive income into earnings, is calculated using the specific identification method, if determinable, otherwise the average cost method is applied. The amortization of acquisition premiums or discounts is recorded as a deduction from or addition to interest income earned on these securities.

**Concentrations of Credit Risk**

Financial instruments that potentially subject the Company to significant concentrations of credit risk consist primarily of cash and cash equivalents, marketable securities, and accounts receivable.

The Company invests its excess cash in high-quality, liquid money market instruments with varying maturities, but typically less than three months. The Company maintains its cash and cash equivalents with major financial institutions. The Company has not experienced any significant losses on its cash or cash equivalents.

The Company's marketable securities portfolio includes investment-grade corporate, government or government-sponsored enterprise fixed income debt securities with a maximum term to maturity of three years. No single issuer comprises more than 20% of the portfolio.

The Company's marketable securities portfolio also includes investments in nine individual auction rate securities. These securities represent interests in collateralized debt obligations supported by pools of residential and commercial mortgages or credit cards, insurance securitizations, and other structured credits, including corporate bonds. Some of the underlying collateral for these securities consists of sub-prime mortgages.

A significant portion of the Company's product sales is made to major drug wholesalers in the U.S. and Canada, as well as its commercialization counterparties. At December 31, 2009 and 2008, five individual customer balances accounted for 80% and 67% of trade receivables, respectively. The Company performs periodic credit evaluations of customers and generally does not require collateral. An allowance for doubtful accounts is maintained for potential credit losses based on the aging of accounts receivable, historical bad debts experience, and changes in customer payment patterns. Accounts receivable balances are written off against the allowance when it is probable that the receivable will not be collected. The Company has not experienced any significant losses from uncollectible accounts in the three-year period ended December 31, 2009.

**Inventories**

Inventories comprise raw materials, work in process, and finished goods, which are valued at the lower of cost or market, on a first-in, first-out basis. Cost for work in process and finished goods inventories includes materials, direct labour, and an allocation of overheads. Market for raw materials is replacement cost, and for work in process and finished goods is net realizable value. Allowances are maintained for slow-moving inventories based on the remaining shelf life of, and estimated time required to sell, such inventories. Obsolete inventory is written off against the allowance. Rejected product is written off directly to cost of goods sold.

**Property, Plant and Equipment**

Property, plant and equipment are reported at cost, less accumulated depreciation. Costs incurred on assets under construction are capitalized as construction in progress. Depreciation is calculated using the straight-line method, commencing when the assets become available for productive use, based on the following estimated useful lives:

|                                   |                                     |
|-----------------------------------|-------------------------------------|
| Buildings . . . . .               | 25 years                            |
| Machinery and equipment . . . . . | 5-10 years                          |
| Other equipment . . . . .         | 3-10 years                          |
| Leasehold improvements . . . . .  | Lesser of term of lease or 10 years |

**BIOVAIL CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**  
**In accordance with United States Generally Accepted Accounting Principles**  
**(All tabular dollar amounts expressed in thousands of U.S. dollars, except per share data)**

**2. SIGNIFICANT ACCOUNTING POLICIES (Continued)**

**Intangible Assets**

Intangible assets are reported at cost, less accumulated amortization. Intangible assets with finite lives are amortized over their estimated useful lives. Amortization is calculated using the straight-line method based on the following estimated useful lives:

|                          |             |
|--------------------------|-------------|
| Trademarks . . . . .     | 10-20 years |
| Product rights . . . . . | 7-20 years  |

**IPR&D**

The fair value of IPR&D acquired through a business combination is capitalized as an indefinite-lived intangible asset until the completion or abandonment of the related research and development activities. When the related research and development is completed, the asset will be assigned a useful life and amortized.

The fair value of an IPR&D intangible asset is determined using an income approach. This approach starts with a forecast of the net cash flows expected to be generated by the asset over its estimated useful life. The net cash flows reflect the asset's stage of completion, the probability of technical success, the projected costs to complete, expected market competition, and an assessment of the asset's life cycle. The net cash flows are then adjusted to present value by applying an appropriate discount rate that reflects the risk factors associated with the cash flow streams.

**Impairment of Long-Lived Assets**

The Company tests long-lived assets with finite lives for impairment at least annually, or whenever events or changes in circumstances indicate that the carrying value of an asset may not be recoverable. Indicators of potential impairment include: an adverse change in legal factors or in the business climate that could affect the value of the asset; an adverse change in the extent or manner in which the asset is used or is expected to be used, or in its physical condition; and current or forecasted operating or cash flow losses that demonstrate continuing losses associated with the use of the asset. If indicators of impairment are present, the asset is tested for recoverability by comparing the carrying value of the asset to the related estimated undiscounted future cash flows expected to be derived from the asset. If the expected cash flows are less than the carrying value of the asset, then the asset is considered to be impaired and its carrying value is written down to fair value, based on the related estimated discounted future cash flows.

Indefinite-lived intangible assets, including IPR&D, are tested for impairment annually, or more frequently if events or changes in circumstances between annual tests indicate that the asset may be impaired. Impairment losses on indefinite-lived intangible assets are recognized based solely on a comparison of the fair value of the asset to its carrying value, without consideration of any recoverability test.

**Goodwill**

Goodwill represents the excess of the purchase price of acquired businesses over the estimated fair value of the identifiable net assets acquired. Goodwill is not amortized but is tested for impairment at least annually at the reporting unit level. A reporting unit is the same as, or one level below, an operating segment. The Company currently has one operating segment and one reporting unit, which is the consolidated company. The Company uses its market capitalization as the measurement basis for the estimated fair value of its reporting unit. Accordingly, the Company tests goodwill for impairment by comparing its market capitalization to the carrying value of its consolidated net assets. On that basis, there was no indication of goodwill impairment at December 31, 2009 or 2008.

**Deferred Financing Costs**

Deferred financing costs are reported at cost, less accumulated amortization, and are recorded in other long-term assets. Amortization expense is included in interest expense.

**Derivative Financial Instruments**

From time to time, the Company utilizes derivative financial instruments to manage its exposure to market risks. The Company does not utilize derivative financial instruments for trading or speculative purposes. The Company accounts for derivative financial instruments as either assets or liabilities at fair value. The Company did not hold any derivative financial instruments at December 31, 2009 or 2008.

**BIOVAIL CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**  
**In accordance with United States Generally Accepted Accounting Principles**  
**(All tabular dollar amounts expressed in thousands of U.S. dollars, except per share data)**

**2. SIGNIFICANT ACCOUNTING POLICIES (Continued)**

**Foreign Currency Translation**

The financial statements of the Company's operations having a functional currency other than the U.S. dollar are translated into U.S. dollars at the rate of exchange prevailing at the balance sheet date for asset and liability accounts, and at the average rate of exchange for the reporting period for revenue and expense accounts. The cumulative foreign currency translation adjustment is recorded as a component of accumulated other comprehensive income in shareholders' equity.

Foreign currency exchange gains and losses on transactions occurring in a currency other than an operation's functional currency are recognized in net income.

**Revenue Recognition**

Effective January 1, 2000, the Company adopted the provisions of the U.S. Securities and Exchange Commission ("SEC") Staff Accounting Bulletin ("SAB") No. 101, "Revenue Recognition in Financial Statements" ("SAB 101"), as amended by SAB No. 104, "Revenue Recognition". The amortization of revenue deferred upon the adoption of SAB 101 amounted to \$2,100,000, \$2,200,000 and \$3,400,000 in 2009, 2008 and 2007, respectively. The SAB 101 deferred revenue balance was fully amortized as of December 31, 2009.

Revenue is realized or realizable and earned when persuasive evidence of an arrangement exists, delivery has occurred or services have been rendered, the price to the customer is fixed or determinable, and collectibility is reasonably assured.

**Product Sales**

Product sales revenue is recognized when title has transferred to the customer and the customer has assumed the risks and rewards of ownership. Amounts received from customers as prepayments for products to be shipped in the future are recorded in deferred revenue.

Revenue from product sales is recognized net of provisions for estimated discounts, allowances, returns, rebates, and chargebacks. The Company offers discounts for prompt payment and other incentive allowances to customers. Provisions for discounts and allowances are estimated based on contractual sales terms with customers and historical payment experience. The Company allows customers to return product within a specified period of time before and after its expiration date. Provisions for returns are estimated based on historical return and exchange levels, and third-party data with respect to prescription demand for the Company's products and inventory levels of the Company's products in the wholesale distribution channel. The Company is subject to rebates on sales made under governmental and managed-care pricing programs, and chargebacks on sales made to group purchasing organizations. Provisions for rebates and chargebacks are estimated based on historical experience, relevant statutes with respect to governmental pricing programs, and contractual sales terms with managed-care providers and group purchasing organizations.

The Company is party to manufacturing and supply agreements with a number of commercialization counterparties in the U.S. Under the terms of these agreements, the Company's supply prices for its products are determined after taking into consideration estimates for future returns, rebates, and chargebacks provided to the Company by each counterparty. The Company makes adjustments as needed to state these estimates on a basis consistent with this policy, and the Company's methodology for estimating returns, rebates, and chargebacks related to its own direct product sales.

**Research and Development**

Research and development revenue attributable to the performance of contract research services is recognized as the services are performed, under the proportionate performance convention of revenue recognition. Performance is measured based on units-of-work performed relative to total units-of-work contracted. For clinical research services, units-of-work is generally measured in terms of bed night stays, and for laboratory-testing services, units-of-work is generally measured in terms of numbers of samples analyzed. Costs and profit margin related to these services that are in excess of amounts billed are recorded in accounts receivable, and amounts billed related to these services that are in excess of costs and profit margin are recorded in deferred revenue.

Non-refundable, up-front fees for access to the Company's proprietary technology in connection with certain research and development arrangements are deferred and recognized as revenue on a straight-line basis over the term of the related arrangement. Contingent revenue in connection with those arrangements attributable to the achievement of regulatory or developmental milestones is recognized only on the achievement of the applicable milestone.

**BIOVAIL CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**  
**In accordance with United States Generally Accepted Accounting Principles**  
**(All tabular dollar amounts expressed in thousands of U.S. dollars, except per share data)**

**2. SIGNIFICANT ACCOUNTING POLICIES (Continued)**

***Royalty***

Royalty revenue is recognized based on the terms of the specific licensing contracts, and when the Company has no future obligations with respect to the royalty fee. Royalty revenue is recognized net of amounts payable to sublicensees where the Company is simply acting as an agent for the sublicensee.

***Other***

Licensing revenue is deferred and recognized on a straight-line basis over the licensing period.

**Shipping and Handling Costs**

The Company generally does not charge customers for shipping and handling costs. These costs are included in cost of goods sold.

**Research and Development Expenses**

Research and development expenses include the amount allocated to acquired IPR&D with no alternative future use in an asset acquisition. Costs related to internal research and development programs, including costs associated with the development of IPR&D, are expensed as goods are delivered or services are performed. Under certain research and development arrangements with third parties, the Company may be required to make payments that are contingent on the achievement of specific developmental, regulatory and/or commercial milestones. Before a product receives regulatory approval, milestone payments made to third parties are expensed when the milestone is achieved. Milestone payments made to third parties after regulatory approval is received are capitalized and amortized over the estimated useful life of the approved product.

Amounts due from third parties as reimbursement of development activities conducted under certain research and development arrangements are recognized as a reduction of research and development expenses.

Costs associated with providing contract research services to third parties are included in research and development expenses. These costs amounted to \$13,849,000, \$23,033,000 and \$17,507,000 in 2009, 2008 and 2007, respectively.

**Legal Costs**

Legal fees and other costs related to litigation and other legal proceedings are expensed as incurred and included in selling, general and administrative expenses. Legal costs expensed are reported net of expected insurance recoveries. A claim for insurance recovery is recognized when the claim becomes probable of realization.

**Advertising Costs**

Advertising costs comprise product samples, print media, and promotional materials. Advertising costs related to new product launches are expensed on the first use of the advertisement. The Company did not have any deferred advertising costs at December 31, 2009 or 2008.

Advertising costs expensed in 2009, 2008 and 2007 were \$10,013,000, \$7,757,000 and \$3,773,000, respectively. These costs are included in selling, general and administrative expenses.

**Stock-Based Compensation**

The Company recognizes all share-based payments to employees, including grants of employee stock options and restricted share units ("RSUs"), at estimated fair value. The Company amortizes the fair value of stock option or RSU grants on a straight-line basis over the requisite service period of the individual stock option or RSU grant, which generally equals the vesting period. Stock option and RSU forfeitures are estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates.

The fair value of Deferred Share Units ("DSUs") granted to non-management directors is recognized as compensation expense at the grant date, and a DSU liability is recorded on the consolidated balance sheet. The fair value of the DSU liability is remeasured at each reporting date, with a corresponding adjustment to compensation expense in the reporting period.

**BIOVAIL CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**  
**In accordance with United States Generally Accepted Accounting Principles**  
**(All tabular dollar amounts expressed in thousands of U.S. dollars, except per share data)**

**2. SIGNIFICANT ACCOUNTING POLICIES (Continued)**

Stock-based compensation is recorded in cost of goods sold, research and development expenses, and selling, general and administrative expenses, as appropriate.

**Interest Expense**

Interest expense includes standby fees and the amortization of debt discounts and deferred financing costs. Interest costs are expensed as incurred, except to the extent such interest is related to construction in progress, in which case interest is capitalized. The Company did not capitalize any interest costs in 2009, 2008 or 2007. Interest paid in 2009, 2008 and 2007 amounted to \$4,182,000, \$459,000 and \$16,098,000, respectively.

**Income Taxes**

Income taxes are accounted for under the liability method. Deferred tax assets and liabilities are recognized for the differences between the financial statement and income tax bases of assets and liabilities, and for operating losses and tax credit carryforwards. A valuation allowance is provided for the portion of deferred tax assets that is more likely than not to remain unrealized. Deferred tax assets and liabilities are measured using enacted tax rates and laws.

The tax benefit from an uncertain tax position is recognized only if it is more likely than not that the tax position will be sustained upon examination by the appropriate taxing authority, based on the technical merits of the position. The tax benefits recognized from such a position are measured based on the amount that is greater than 50% likely of being realized upon settlement. Liabilities associated with uncertain tax positions are classified as long-term unless expected to be paid within one year. Interest and penalties related to uncertain tax positions, if any, are recorded in the provision for income taxes and classified with the related liability on the consolidated balance sheet.

**Earnings Per Share**

Basic earnings per share is calculated by dividing net income by the weighted-average number of common shares outstanding during the reporting period. Diluted earnings per share is calculated by dividing net income by the weighted-average number of common shares outstanding during the reporting period after giving effect to dilutive potential common shares for stock options, RSUs, and convertible debt, determined using the treasury stock method.

**Comprehensive Income**

Comprehensive income comprises net income and other comprehensive income. Other comprehensive income comprises foreign currency translation adjustments, unrealized temporary holding gains or losses on available-for-sale investments, and the non-credit component of other-than-temporary losses on marketable debt securities. Accumulated other comprehensive income is recorded as a component of shareholders' equity.

**Contingencies**

In the normal course of business, the Company is subject to loss contingencies, such as claims and assessments arising from litigation and other legal proceedings, contractual indemnities, product and environmental liabilities, and tax matters. Accruals for loss contingencies are recorded when the Company determines that it is both probable that a liability has been incurred and the amount of loss can be reasonably estimated. If the estimate of the amount of the loss is a range and some amount within the range appears to be a better estimate than any other amount within the range, that amount is accrued as a liability. If no amount within the range is a better estimate than any other amount, the minimum amount of the range is accrued as a liability.

**Adoption of New Accounting Standards**

Effective January 1, 2009, the Company adopted the following accounting guidance:

- Authoritative guidance on convertible debt instruments that may be settled in cash upon conversion (including partial cash settlement), which requires that the liability (debt) and equity (conversion option) components of convertible debt instruments that may be settled in cash upon conversion be separately accounted for in a manner that reflects an issuer's non-convertible debt borrowing rate. This new method of accounting results in recognizing interest expense at rates reflective of what the issuer would have incurred had it issued non-convertible debt with otherwise similar terms. The adoption of this guidance impacted the Company's



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### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

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#### 2. SIGNIFICANT ACCOUNTING POLICIES (Continued)

accounting for the Convertible Notes (as described in note 17). This guidance will also have a material impact on interest expense recognized during the period that the Convertible Notes are outstanding, but will have no impact on the Company's future cash flows.

- Authoritative guidance on business combinations and non-controlling interests, which significantly changes the accounting for, and reporting of, business combination transactions and non-controlling (minority) interests in consolidated financial statements, including requirements to: recognize non-controlling interests at fair value; capitalize IPR&D; and expense acquisition-related costs as incurred. The guidance also requires post-acquisition adjustments related to business combination deferred tax asset valuation allowances and liabilities for uncertain tax positions to be recorded in current period income tax expense. The guidance is effective for business combinations occurring on or after January 1, 2009. The adoption of this guidance impacted the Company's accounting for the acquisition of the worldwide development and commercialization rights to tetrabenazine (as described in note 3).
- Authoritative guidance on fair value measurements, which establishes a framework for measuring fair value in U.S. GAAP, clarifies the definition of fair value within that framework, and expands disclosures about the use of fair value measurements. The guidance applies to all other authoritative guidance that requires (or permits) fair value measurements, but does not require any new fair value measurements in U.S. GAAP. The guidance was effective January 1, 2009 for non-financial assets and non-financial liabilities not recognized or disclosed at fair value on a recurring basis. The Company previously adopted this guidance for financial assets and financial liabilities effective January 1, 2008. The adoption of this guidance for non-financial assets and non-financial liabilities did not have a material impact on the Company's consolidated financial statements.
- Authoritative guidance on the accounting for collaborative arrangements, which provides guidance for determining if a collaborative arrangement exists and establishes reporting requirements for revenues and costs generated from transactions between parties within a collaborative arrangement, as well as between the parties in a collaborative arrangement and third parties, and provides guidance for financial statement disclosures of collaborative arrangements. The guidance is effective for collaborative arrangements existing on or after January 1, 2009. The adoption of this guidance did not have a material impact on the Company's consolidated financial statements.

Effective April 1, 2009, the Company adopted the following accounting guidance:

- Authoritative guidance on subsequent events, which identifies the circumstances under which an entity should recognize events or transactions occurring after the balance sheet date in its financial statements and the disclosures that should be made about events or transactions that occurred after the balance sheet date. As this guidance is largely consistent with previous auditing literature, its adoption did not have a material impact on the Company's consolidated financial statements.
- Authoritative guidance on the recognition and presentation of other-than-temporary impairments, which requires entities to separate an other-than-temporary impairment of a debt security into (i) the amount representing the decrease in cash flows expected to be collected, or the credit loss portion, which is recognized in earnings, and (ii) the amount related to all other factors, or the non-credit portion, which is recognized in other comprehensive income in circumstances in which management asserts that it does not have the intent to sell the security, and it is more likely than not that it will not be required to sell the security before recovery of its amortized cost basis. Upon the adoption of this guidance, the cumulative effect adjustment to reclassify the non-credit losses previously recognized through earnings from accumulated other comprehensive income to opening accumulated deficit was not material to the Company's consolidated financial statements.
- Authoritative guidance on determining fair value when the volume and level of activity for the asset or liability have significantly decreased and on identifying transactions that are not orderly, which provides additional guidance on estimating fair value when there has been a significant decrease in the volume and level of activity for the asset or liability in relation to the normal market activity for the asset or liability. The guidance also provides circumstances that may indicate that a transaction for the asset or liability is not orderly. The adoption of this guidance did not have a material impact on the Company's consolidated financial statements.

Effective July 1, 2009, the Company adopted the following accounting guidance:

- In June 2009, the Financial Accounting Standards Board ("FASB") established the FASB Accounting Standards Codification (the "Codification") as the source of authoritative accounting principles recognized by the FASB to be applied in the preparation of financial statements in conformity with U.S. GAAP. As the issuance of the Codification does not change U.S. GAAP, its adoption did not have any impact on the Company's consolidated financial statements.

Effective October 1, 2009, the Company adopted the following accounting guidance:

- Authoritative guidance clarifying the measurement of liabilities at fair value. When a quoted price in an active market for the identical liability is not available, this guidance requires that the fair value of a liability be measured using one or more of the

## BIOVAIL CORPORATION

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

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#### 2. SIGNIFICANT ACCOUNTING POLICIES (Continued)

prescribed valuation techniques. In addition, the guidance clarifies that when estimating the fair value of a liability, an entity is not required to include a separate input or adjustment to other inputs relating to the existence of a restriction that prevents the transfer of the liability. The guidance also clarifies how the quoted price of a debt security when traded as an asset should be considered in estimating the fair value of the issuer's liability. The adoption of this guidance did not have a material impact on the Company's consolidated financial statements.

#### Recently Issued Accounting Guidance, Not Adopted as of December 31, 2009

- In June 2009, the FASB issued authoritative guidance for determining whether an entity is a variable interest entity ("VIE") and requires an enterprise to perform an analysis to determine whether the enterprise's variable interest or interests give it a controlling financial interest in a VIE. Under the guidance, an enterprise has a controlling financial interest when it has (i) the power to direct the activities of a VIE that most significantly impact the entity's economic performance, and (ii) the obligation to absorb losses of the entity or the right to receive benefits from the entity that could potentially be significant to the VIE. In addition, the guidance requires an enterprise to assess whether it has an implicit financial responsibility to ensure that a VIE operates as designed when determining whether it has power to direct the activities of the VIE that most significantly impact the entity's economic performance. The guidance also requires ongoing assessments of whether an enterprise is the primary beneficiary of a VIE, requires enhanced disclosures, and eliminates the scope exclusion for qualifying special purpose entities. The guidance is effective for interim and annual periods beginning after November 15, 2009. Accordingly, the Company is required to adopt this guidance beginning January 1, 2010. The Company is currently evaluating the effect that the adoption of this guidance will have on its consolidated financial statements.
- In October 2009, the FASB issued authoritative guidance on multiple-element revenue arrangements, which requires an entity to allocate arrangement consideration at the inception of the arrangement to all of its deliverables based on relative selling prices. The guidance eliminates the use of the residual method of allocation and expands the ongoing disclosure requirements. The guidance is effective for the first fiscal year beginning after June 15, 2010, and may be adopted through prospective or retrospective application. Accordingly, the Company is required to adopt this guidance beginning January 1, 2011. The Company is currently evaluating the effect that the adoption of this guidance will have on its consolidated financial statements.

#### 3. BUSINESS COMBINATIONS

##### Tetrabenazine

On June 19, 2009, the Company acquired the worldwide development and commercialization rights to the entire portfolio of tetrabenazine products, including Xenazine® and Nitoman®, held by Cambridge Laboratories (Ireland) Limited and its affiliates ("Cambridge"). As described below, the Company had previously obtained certain licensing rights to tetrabenazine in the U.S. and Canada through the acquisition of Prestwick Pharmaceuticals, Inc. ("Prestwick") in September 2008. By means of this acquisition, the Company has obtained Cambridge's economic interest in the supply of tetrabenazine for the U.S. and Canadian markets, as well as for a number of other countries in Europe and around the world through existing distribution arrangements. In addition, the Company assumed Cambridge's royalty obligations to third parties on the worldwide sales of tetrabenazine. The acquisition of tetrabenazine is aligned with the Company's specialty CNS strategy.

This acquisition was accounted for as a business combination under the acquisition method of accounting. The total purchase price comprised cash consideration of \$200,000,000 paid on closing, and additional payments of \$12,500,000 and \$17,500,000 due to Cambridge on the first and second anniversaries of the closing date, respectively. The second payment is subject to a right of set-off against amounts for which the Company has a claim against Cambridge. These additional payments were fair valued at \$26,768,000, using an imputed interest rate comparable to the Company's available borrowing rate at the date of acquisition, and are recorded in long-term obligations (as described in note 17). No gain or loss was recognized in conjunction with the effective settlement of the contractual relationship between Prestwick and Cambridge as a result of this acquisition, as the pre-existing contracts could have been terminated without financial penalty. The Company incurred \$5,596,000 of costs related to this acquisition, which were expensed as acquisition-related costs in the consolidated statement of income as of the acquisition date.

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**3. BUSINESS COMBINATIONS (Continued)**

The following table summarizes the estimated fair values of the assets acquired at the acquisition date.

|                           |                  |
|---------------------------|------------------|
| Inventory . . . . .       | \$ 1,068         |
| Intangible assets:        |                  |
| Product rights . . . . .  | 189,700          |
| IPR&D . . . . .           | 36,000           |
| Assets acquired . . . . . | <u>\$226,768</u> |

A multi-period excess earnings methodology (income approach) was used to determine the estimated fair values of the identifiable intangible assets acquired. These fair value measurements were primarily based on significant inputs that are not observable in the market, and, therefore, represent Level 3 inputs in the fair value hierarchy (as described in note 7). The income approach is used to determine fair value for an acquired asset based on the present value of the cash flows projected to be generated by the asset.

The value of the currently marketed immediate-release tetrabenazine products was allocated to the product rights intangible asset, with an estimated useful life of approximately nine years. The projected cash flows from the products were adjusted for the probabilities of genericization and competition from the IPR&D projects described below. A risk-adjusted discount rate of 17% was used to present value the projected cash flows.

The IPR&D intangible asset relates to a modified-release formulation of tetrabenazine under development initially for the treatment of Tourette's Syndrome (BVF-018) and an isomer of tetrabenazine (RUS-350). The values assigned to BVF-018 and RUS-350 were \$28,000,000 and \$8,000,000, respectively. The projected cash flows from the projects were adjusted for the probabilities of successful development and commercialization of each project. A risk-adjusted discount rate of 20% was used to present value the projected cash flows. Based on the results of development efforts completed subsequent to the acquisition date, the Company has decided to terminate the RUS-350 project, having determined that the isomer was unlikely to provide meaningful benefits to patients beyond that provided by tetrabenazine. As a result, in the three-month period ended December 31, 2009, the Company recorded a charge of \$8,000,000 to write off the related IPR&D intangible asset, which is recorded in research and development expenses.

The amount of incremental revenue and pre-tax earnings (excluding amortization of the acquired product rights intangible asset) recognized from the worldwide sales of tetrabenazine from the acquisition date to December 31, 2009, amounted to approximately \$3,800,000 and \$4,500,000, respectively, in the Company's consolidated statement of income.

The following table presents unaudited pro forma consolidated results of operations as if this acquisition had occurred as of January 1, 2008, and includes amortization of the acquired product rights intangible asset and excludes the acquisition-related costs. All transactions between the Company and Cambridge related to the supply of tetrabenazine for the U.S. and Canadian markets prior to the date of acquisition have been eliminated. This pro forma information is not necessarily indicative of the Company's consolidated results of operations had this acquisition occurred as of January 1, 2008, nor necessarily indicative of the future results of operations of the Company.

|                                                | <u>2009</u>    | <u>2008</u>    |
|------------------------------------------------|----------------|----------------|
| Revenue . . . . .                              | \$827,125      | \$774,253      |
| Net income . . . . .                           | 181,026        | 186,719        |
| Basic and diluted earnings per share . . . . . | <u>\$ 1.14</u> | <u>\$ 1.17</u> |

**Prestwick**

On September 16, 2008, the Company acquired 100% of Prestwick, which was accounted for as a business combination under the former purchase method of accounting. Accordingly, the results of Prestwick's operations have been included in the Company's consolidated financial statements since September 16, 2008. Prestwick had acquired the licensing rights to Xenazine® in the U.S. and Nitoman® in Canada from Cambridge, which, at the time, held the worldwide license for tetrabenazine. On August 15, 2008, a New Drug Application ("NDA") for Xenazine® received U.S. Food and Drug Administration ("FDA") approval for the treatment of chorea associated with Huntington's disease and was granted orphan drug designation by the FDA, which provides the product with seven years of market exclusivity in the U.S. from the date of FDA approval. Nitoman® has been available in Canada since 1996, where it is approved for the treatment of hyperkinetic movement disorders including Huntington's chorea.

## BIOVAIL CORPORATION

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

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#### 3. BUSINESS COMBINATIONS (Continued)

Prior to the Company's acquisition of Prestwick, Prestwick entered into an exclusive supply and distribution agreement with Lundbeck Inc. (a subsidiary of H. Lundbeck A/S) ("Lundbeck"), formerly known as Ovation Pharmaceuticals, Inc. ("Ovation"), for Xenazine® in the U.S. Ovation paid Prestwick \$50,000,000 for the exclusive rights to market and distribute Xenazine® for an initial term of 15 years. Following its acquisition of Prestwick, the Company supplies Xenazine® product to Lundbeck for a variable percentage of Lundbeck's annual net sales of the product. For annual net sales up to \$125,000,000, the Company's supply price will be 72% of net sales. Beyond \$125,000,000, the Company's supply price will be 65% of net sales. Prior to the acquisition of the worldwide development and commercialization rights to tetrabenazine (as described above), the Company acquired Xenazine® product from Cambridge at a supply price of 50% of Lundbeck's net sales.

The total purchase price, including acquisition costs of \$3,442,000, less cash acquired of \$1,067,000, was \$101,920,000. The following table summarizes the estimated fair values of the assets acquired and liabilities assumed at the date of acquisition.

|                                                            |                  |
|------------------------------------------------------------|------------------|
| Current assets (excluding cash acquired) . . . . .         | \$ 2,166         |
| Intangible assets . . . . .                                | 157,862          |
| Current liabilities (excluding deferred revenue) . . . . . | (8,108)          |
| Deferred revenue:                                          |                  |
| Current . . . . .                                          | (3,000)          |
| Long-term . . . . .                                        | (47,000)         |
| Net assets acquired . . . . .                              | <u>\$101,920</u> |

The identifiable intangible assets are associated with the acquired Xenazine® and Nitoman® product rights, and have an estimated useful life of 10 years. The current liabilities assumed at the date of acquisition included \$3,477,000 related to severance benefits payable to 12 employees of Prestwick who were terminated as a result of the acquisition. The affected employees were notified and the related benefits paid out prior to the end of 2008. The deferred revenue liability recognized at the date of acquisition represents a performance obligation assumed by the Company to supply Xenazine® to Lundbeck over the 15-year term of the supply and distribution agreement.

At the date of acquisition, Prestwick had a number of other CNS products in early-stage development, including Lisuride Sub Q (advanced Parkinson's disease), Lisuride Patch (Parkinson's disease), and D-Serine (schizophrenia). The Company does not intend to pursue the development of those products based on its assessment of their technical feasibility and/or commercial viability. In addition, Prestwick obtained options from Cambridge to participate in the development of future tetrabenazine products. As of the date of acquisition, Prestwick had not undertaken any development efforts related to those tetrabenazine products. As a result, no amount was allocated to any of these products in the purchase price allocation.

#### 4. ASSET ACQUISITIONS

##### GDNF

On December 21, 2009, the Company entered into a license agreement with Amgen Inc. ("Amgen") and MedGenesis Therapeutix Inc. ("MedGenesis"), pursuant to which the Company was granted a license to exploit GDNF in certain CNS indications in certain countries (including the U.S., Canada, Japan, and a number of European countries). At the same time, the Company entered into a collaboration agreement with MedGenesis to develop and commercialize GDNF, initially for the treatment of Parkinson's disease in the U.S., Japan and certain European countries and, potentially, in other countries and other CNS indications. Pursuant to the collaboration agreement, the Company was granted a license to MedGenesis's Convection Enhanced Delivery platform for use with GDNF in CNS indications.

In connection with the collaboration agreement, the Company made an upfront payment to MedGenesis of \$5,950,000, and could pay up to an additional \$20,000,000 in potential developmental milestones to MedGenesis. The Company also has certain funding obligations towards the development of GDNF in Parkinson's disease in the U.S., totaling up to \$14,000,000 for the Pre-Investigational New Drug development phase and Phase 2 clinical trials. The Company intends to share with MedGenesis the development costs associated with Phase 3 clinical studies in the U.S., (as well as any development costs associated with Phase 2 clinical trials that exceed the Company's initial funding obligation) and with the development programs in other countries. The Company and MedGenesis could, in the aggregate, pay Amgen up to \$25,000,000 in regulatory milestones and up to \$75,000,000 in sales-based milestones, and will pay royalties to Amgen based on net sales of GDNF products. The Company will be responsible for commercializing GDNF products in the

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**4. ASSET ACQUISITIONS (Continued)**

countries in which it has the GDNF license rights, and will pay MedGenesis a royalty in respect of net sales of GDNF products in those countries.

This acquisition was accounted for as a purchase of IPR&D intangible assets with no alternative future use. Accordingly, the \$5,950,000 upfront payment, together with acquisition costs of \$2,864,000, was charged to research and development expenses at the acquisition date.

**Fipamezole**

On August 24, 2009, the Company entered into a collaboration and license agreement with Santhera Pharmaceuticals (Switzerland) Ltd. (“Santhera”), a subsidiary of Santhera Pharmaceuticals Holding AG, to acquire the U.S. and Canadian rights to develop, manufacture and commercialize fipamezole for the treatment of a number of neurological and psychiatric conditions, including levodopa-induced dyskinesia, also known as Parkinson’s disease dyskinesia (“PDD”).

Pursuant to the terms of the collaboration and license agreement, the Company made an upfront payment of \$8,000,000 to Santhera at the acquisition date, and made a further payment of \$4,000,000 to Santhera on October 5, 2009, upon the closing of Santhera’s acquisition of Oy Juvantia Pharma Ltd. The Company could pay up to \$35,000,000 in potential developmental and regulatory milestones associated with the initiation of a Phase 3 study, regulatory submissions and approvals of fipamezole in PDD. Should the Company pursue a second indication, it could pay an additional \$20,000,000 milestone upon regulatory approval. The Company will also make royalty payments of 8% to 15% on net commercial sales of fipamezole, as well as additional milestone payments of up to \$145,000,000 as certain sales thresholds are met.

This acquisition was accounted for as a purchase of IPR&D intangible assets with no alternative future use. Accordingly, the \$8,000,000 upfront payment, together with acquisition costs of \$126,000, was charged to research and development expenses at the acquisition date. The additional payment of \$4,000,000 made to Santhera on October 5, 2009 was charged to research and development expenses on the payment date.

The Company will be responsible for the development programs and associated costs in the U.S. and Canada for fipamezole for both PDD and the second indication if pursued.

**Wellbutrin XL®**

On May 14, 2009, the Company acquired the full U.S. commercialization rights to Wellbutrin XL® from The GlaxoSmithKline Group of Companies (“GSK”). The Company had supplied Wellbutrin XL® to GSK for marketing or distribution in the U.S. since September 2003. The Wellbutrin XL® product formulation was developed and is manufactured by the Company under its own patents and proprietary technology.

Pursuant to the terms of the asset purchase agreement, the Company paid \$510,000,000 to GSK to acquire the U.S. NDA for Wellbutrin XL®. Pursuant to the terms of a trademark and license agreement with GSK, the Company also obtained an exclusive, royalty-free license to the Wellbutrin XL® trademark for use in the U.S. This acquisition was accounted for as a purchase of identifiable intangible assets. Accordingly, the total purchase price (including costs of acquisition of \$475,000) was allocated to the trademark intangible asset, with an estimated useful life of 10 years. In addition, the Company acquired the Wellbutrin XL® finished goods inventory owned by GSK valued at \$10,490,000.

**Pimavanserin**

On May 1, 2009, the Company entered into a collaboration and license agreement with ACADIA Pharmaceuticals Inc. (“ACADIA”) to acquire the U.S. and Canadian rights to develop, manufacture and commercialize pimavanserin in a number of neurological and psychiatric conditions, including Parkinson’s disease psychosis (“PDP”), Alzheimer’s disease psychosis (“ADP”), and, as an adjunctive therapy, to treat schizophrenia.

Pursuant to the terms of the collaboration and license agreement, the Company paid an upfront fee of \$30,000,000 to ACADIA, and could pay up to \$160,000,000 in potential developmental milestones associated with the successful completion of clinical trials, regulatory submissions and approvals for pimavanserin in the PDP and ADP indications. In addition, the Company could pay up to \$45,000,000 in success milestones for pimavanserin in a third indication. At this time, the Company intends to pursue pimavanserin as an adjunct therapy for schizophrenia as the third indication. The Company will also make tiered royalty payments of 15% to 20% on net sales of products containing pimavanserin, as well as additional milestone payments of up to \$160,000,000 as certain net sales thresholds are met.

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## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

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### 4. ASSET ACQUISITIONS (Continued)

This acquisition was accounted for as a purchase of IPR&D intangible assets with no alternative future use. Accordingly, the \$30,000,000 upfront payment, together with acquisition costs of \$414,000, was charged to research and development expenses at the acquisition date.

The Company will be responsible for funding all of the PDP, ADP and schizophrenia development expenses for pimavanserin, other than the cost of two Phase 3 clinical trials for pimavanserin for PDP that ACADIA had in progress at the time of the agreement. The first of these Phase 3 PDP studies did not meet its primary endpoint of antipsychotic efficacy, but did meet the secondary endpoint of motoric tolerability. As a result, on October 5, 2009, the Company and ACADIA amended the collaboration and license agreement to provide that the Company will fund a third Phase 3 clinical trial for PDP; provided, however, that if the trial does not meet the primary endpoint, then ACADIA will reimburse the Company for 50% of the cost of the trial. If the third PDP trial or a subsequent pivotal trial in PDP meets its primary endpoint, the Company may credit 50% of the costs of the applicable trial against the potential milestone payment triggered by such trial. The amendment also provides that ACADIA may elect to pursue an initial clinical trial in ADP at its own expense. However, if the ADP trial meets its primary endpoint, then the Company would reimburse ACADIA 100% of the cost of the trial.

### 5. LICENSING AGREEMENT

#### Aplenzin™

In December 2008, the Company entered into a distribution and supply agreement with sanofi-aventis U.S. LLC ("sanofi-aventis") for the commercialization of Aplenzin™ in the U.S. and Puerto Rico. Aplenzin™ is a once-daily formulation of bupropion hydrobromide and has been launched by sanofi-aventis in 174mg, 348mg, and 522mg dosage strengths. The Company manufactures and supplies Aplenzin™ to sanofi-aventis at contractually determined supply prices ranging from 25% to 35% of sanofi-aventis's net selling price, depending on the level of net sales of Aplenzin™ in each calendar year.

### 6. RESTRUCTURING

In May 2008, the Company initiated restructuring measures that were intended to rationalize its manufacturing operations, pharmaceutical sciences operations, and general and administrative expenses. These measures included the closure of the Company's research and development facility in Dublin, Ireland in August 2008, the sale of its Dorado, Puerto Rico manufacturing facility in January 2010, and the ultimate planned closure of its manufacturing facility in Carolina, Puerto Rico. In addition, in May 2009, the Company announced the closure of its research and development facility in Mississauga, Ontario and the consolidation of its research and development operations in Chantilly, Virginia.

The following table summarizes the major components of the restructuring costs recognized through December 31, 2009:

|                                                 | Asset Impairments |                         | Employee Termination Benefits |                         | Contract Termination and Other Costs | Total     |
|-------------------------------------------------|-------------------|-------------------------|-------------------------------|-------------------------|--------------------------------------|-----------|
|                                                 | Manufacturing     | Pharmaceutical Sciences | Manufacturing                 | Pharmaceutical Sciences |                                      |           |
| Balance, January 1, 2008 . . . .                | \$ —              | \$ —                    | \$ —                          | \$ —                    | \$ —                                 | \$ —      |
| Costs incurred and charged to expense . . . . . | 42,602            | 16,702                  | 3,309                         | 2,724                   | 4,865                                | 70,202    |
| Cash payments . . . . .                         | —                 | —                       | —                             | (2,724)                 | (333)                                | (3,057)   |
| Non-cash adjustments . . . . .                  | (42,602)          | (16,702)                | —                             | —                       | (1,186)                              | (60,490)  |
| Balance, December 31, 2008 . .                  | —                 | —                       | 3,309                         | —                       | 3,346                                | 6,655     |
| Costs incurred and charged to expense . . . . . | 7,591             | 2,784                   | 4,942                         | 1,441                   | 2,307                                | 19,065    |
| Cash payments . . . . .                         | —                 | —                       | (2,041)                       | (1,278)                 | (1,321)                              | (4,640)   |
| Non-cash adjustments . . . . .                  | (7,591)           | (2,784)                 | —                             | 71                      | —                                    | (10,304)  |
| Balance, December 31, 2009 . .                  | \$ —              | \$ —                    | \$6,210                       | \$ 234                  | \$ 4,332                             | \$ 10,776 |



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### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

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#### 6. RESTRUCTURING (Continued)

##### Manufacturing Operations

The Company expects to incur employee termination costs of approximately \$9,400,000 in total for severance and related benefits payable to the approximately 240 employees who have been, or will be, terminated as a result of the closure of its Dorado and Carolina, Puerto Rico manufacturing facilities. As these employees are required to provide service during the shutdown period in order to be eligible for termination benefits, the Company is recognizing the cost of those termination benefits ratably over the required future service period, including \$4,942,000 and \$3,309,000 recognized in 2009 and 2008, respectively.

In 2009 and 2008, the Company recorded impairment charges of \$7,591,000 and \$42,602,000, respectively, to write down the carrying value of the property, plant and equipment located in Puerto Rico to its estimated fair value. At December 31, 2009, the Company had entered into an agreement in principle to sell the Dorado facility for net cash proceeds of \$8,542,000. Accordingly, the related property, plant and equipment was reclassified as assets held for sale on the consolidated balance sheet at December 31, 2009. The sale closed on January 15, 2010. The Company will continue to occupy the Dorado facility until March 31, 2010, pursuant to a short-term lease agreement with the buyer. The Company is continuing to actively market the Carolina facility.

##### Pharmaceutical Sciences Operations

In 2009, the Company incurred employee termination costs of \$1,441,000 for severance and related benefits payable to the approximately 50 employees who have been, or will be, terminated as a result of the closure of the Company's Mississauga, Ontario research and development facility and the consolidation of its Chantilly, Virginia research and development operations. In addition, the Company recorded an impairment charge of \$463,000 related to the write-down of the carrying value of the equipment and leasehold improvements located at the Mississauga facility to their estimated fair value. The Company also recognized \$1,616,000 of accelerated depreciation arising from a reduced useful life of the leasehold improvements located at the Chantilly facility, and incurred lease termination costs of \$1,422,000 as a result of vacating one of its premises in Chantilly in 2009.

On July 21, 2009, the Company completed the sale of the Dublin, Ireland research and development facility for net cash proceeds of \$5,189,000, which resulted in an additional write-down of \$705,000 to the carrying value of this facility in 2009. The Company had closed this facility in August 2008 and recorded an impairment charge of \$9,242,000 to write down the carrying value of the property, plant and equipment to its estimated fair value of \$5,894,000 at that time, which was classified as assets held for sale on the consolidated balance sheet at December 31, 2008. In addition, the Company recognized employee termination costs of \$2,724,000 in 2008 for the approximately 50 employees affected by this closure.

In December 2008, the Company identified certain of its proprietary drug-delivery technologies that were not expected to be utilized in the development of specialty CNS products consistent with the Company's strategy. As a result, the Company recorded an impairment charge of \$7,460,000 in 2008 to write off the carrying value of the related technology intangible assets.

##### Contract Termination Costs

In connection with a restructuring of its U.S. commercial operations in May 2005, the Company vacated a portion of its Bridgewater, New Jersey facility. The Company recognized a restructuring charge at that time for a gross operating lease obligation related to the vacant space, offset by estimated sublease rentals that could be reasonably obtained. The Company's evaluation of general economic and commercial real estate market conditions indicated that an additional charge of \$4,215,000 was required in 2008 to reflect lower estimated future sublease rentals, based on the expected time required to locate and contract a suitable sublease and the expected market rates for such a sublease.

#### 7. FAIR VALUE MEASUREMENTS

##### Fair Value Hierarchy

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in the principal or most advantageous market in an orderly transaction between market participants at the measurement date. The fair value hierarchy prioritizes the inputs to valuation techniques used in measuring fair value. There are three levels to the fair value hierarchy based on the reliability of inputs, as follows:

- Level 1 — Observable inputs that reflect quoted prices (unadjusted) for identical assets or liabilities in active markets.

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**7. FAIR VALUE MEASUREMENTS (Continued)**

- Level 2 — Inputs other than quoted prices included in Level 1 that are observable for the asset or liability, either directly or indirectly. Level 2 inputs include quoted prices for similar assets or liabilities in active markets, or quoted prices for identical or similar assets and liabilities in markets that are not active.
- Level 3 — Unobservable inputs for the asset or liability.

**Assets Measured at Fair Value on a Recurring Basis**

The following fair value hierarchy table presents the components and classification of the Company's financial assets measured at fair value:

| <b>2009</b>                                  |                           |                                                                                           |                                                                      |                                                              |
|----------------------------------------------|---------------------------|-------------------------------------------------------------------------------------------|----------------------------------------------------------------------|--------------------------------------------------------------|
|                                              | <b>Carrying<br/>Value</b> | <b>Quoted Prices<br/>in Active<br/>Markets for<br/>Identical<br/>Assets<br/>(Level 1)</b> | <b>Significant<br/>Other<br/>Observable<br/>Inputs<br/>(Level 2)</b> | <b>Significant<br/>Unobservable<br/>Inputs<br/>(Level 3)</b> |
| Available-for-sale debt securities . . . . . | \$23,067                  | \$7,994                                                                                   | \$15,073                                                             | \$ —                                                         |
| Auction rate securities . . . . .            | 6,009                     | —                                                                                         | —                                                                    | 6,009                                                        |
| Total financial assets . . . . .             | <u>\$29,076</u>           | <u>\$7,994</u>                                                                            | <u>\$15,073</u>                                                      | <u>\$6,009</u>                                               |
| Cash and cash equivalents . . . . .          | \$ 7,994                  | \$7,994                                                                                   | \$ —                                                                 | \$ —                                                         |
| Marketable securities . . . . .              | 21,082                    | —                                                                                         | 15,073                                                               | 6,009                                                        |
| Total financial assets . . . . .             | <u>\$29,076</u>           | <u>\$7,994</u>                                                                            | <u>\$15,073</u>                                                      | <u>\$6,009</u>                                               |

| <b>2008</b>                                    |                           |                                                                                           |                                                                      |                                                              |
|------------------------------------------------|---------------------------|-------------------------------------------------------------------------------------------|----------------------------------------------------------------------|--------------------------------------------------------------|
|                                                | <b>Carrying<br/>Value</b> | <b>Quoted Prices<br/>in Active<br/>Markets for<br/>Identical<br/>Assets<br/>(Level 1)</b> | <b>Significant<br/>Other<br/>Observable<br/>Inputs<br/>(Level 2)</b> | <b>Significant<br/>Unobservable<br/>Inputs<br/>(Level 3)</b> |
| Available-for-sale debt securities . . . . .   | \$203,688                 | \$112,834                                                                                 | \$90,854                                                             | \$ —                                                         |
| Available-for-sale equity securities . . . . . | 380                       | 380                                                                                       | —                                                                    | —                                                            |
| Auction rate securities . . . . .              | 10,333                    | —                                                                                         | —                                                                    | 10,333                                                       |
| Total financial assets . . . . .               | <u>\$214,401</u>          | <u>\$113,214</u>                                                                          | <u>\$90,854</u>                                                      | <u>\$10,333</u>                                              |
| Cash and cash equivalents . . . . .            | \$191,386                 | \$112,834                                                                                 | \$78,552                                                             | \$ —                                                         |
| Marketable securities . . . . .                | 22,635                    | —                                                                                         | 12,302                                                               | 10,333                                                       |
| Other . . . . .                                | 380                       | 380                                                                                       | —                                                                    | —                                                            |
| Total financial assets . . . . .               | <u>\$214,401</u>          | <u>\$113,214</u>                                                                          | <u>\$90,854</u>                                                      | <u>\$10,333</u>                                              |

Available-for-sale debt securities using Level 1 inputs include U.S. treasury bills and money market funds that are actively traded or have quoted prices. Available-for-sale debt securities using Level 2 inputs include corporate and government bonds and government-sponsored enterprise securities that have quoted prices in markets that are not active. Available-for-sale equity securities included publicly traded securities for which quoted market prices are available.

At December 31, 2009 and 2008, the Company did not have any financial liabilities that were subject to fair value measurements.

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**7. FAIR VALUE MEASUREMENTS (Continued)**

**Assets Measured at Fair Value on a Recurring Basis Using Significant Unobservable Inputs (Level 3)**

The following table presents a reconciliation of auction rate securities measured at fair value on a recurring basis using significant unobservable inputs (Level 3):

|                                                            | <u>2009</u>     | <u>2008</u>     |
|------------------------------------------------------------|-----------------|-----------------|
| Balance, beginning of year . . . . .                       | \$10,333        | \$18,000        |
| Total unrealized gains (losses):                           |                 |                 |
| Included in net income <sup>(1)</sup> :                    |                 |                 |
| Arising during the year . . . . .                          | (4,479)         | (4,261)         |
| Reclassification from other comprehensive income . . . . . | (731)           | (4,352)         |
| Included in other comprehensive income:                    |                 |                 |
| Arising during the year . . . . .                          | 155             | (3,356)         |
| Reclassification to net income . . . . .                   | 731             | 4,352           |
| Settlements . . . . .                                      | —               | (50)            |
| Balance, end of year . . . . .                             | <u>\$ 6,009</u> | <u>\$10,333</u> |

(1) Included in impairment loss on debt securities in the consolidated statements of income.

**Assets Measured at Fair Value on a Non-Recurring Basis**

The following table presents the Company's non-financial assets measured at fair value on a non-recurring basis:

|                                | <u>2009</u>                                                                               |                       |
|--------------------------------|-------------------------------------------------------------------------------------------|-----------------------|
|                                | <b>Quoted Prices<br/>in Active<br/>Markets for<br/>Identical<br/>Assets<br/>(Level 1)</b> |                       |
|                                | <b>Carrying<br/>Value</b>                                                                 | <b>Total<br/>Loss</b> |
| Assets held for sale . . . . . | <u>\$8,542</u>                                                                            | <u>\$7,591</u>        |

As described in note 6, the property, plant and equipment located in Puerto Rico was written down to its fair value less costs to sell, resulting in an impairment charge of \$7,591,000 in 2009.

The Company did not have any non-financial liabilities that were measured at fair value on a recurring or non-recurring basis in 2009.

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**8. MARKETABLE SECURITIES**

The following table summarizes the Company's marketable securities by major security type:

|                                                      | 2009            |                 |              |                   |
|------------------------------------------------------|-----------------|-----------------|--------------|-------------------|
|                                                      | Cost Basis      | Fair Value      | Gross Gains  | Unrealized Losses |
| Corporate and government bonds . . . . .             | \$10,626        | \$10,880        | \$254        | \$ —              |
| Government-sponsored enterprise securities . . . . . | 4,100           | 4,193           | 93           | —                 |
| Auction rate securities . . . . .                    | 26,775          | 6,009           | —            | (20,766)          |
|                                                      | <u>\$41,501</u> | <u>\$21,082</u> | <u>\$347</u> | <u>\$(20,766)</u> |

|                                                      | 2008            |                 |              |                   |
|------------------------------------------------------|-----------------|-----------------|--------------|-------------------|
|                                                      | Cost Basis      | Fair Value      | Gross Gains  | Unrealized Losses |
| Corporate and government bonds . . . . .             | \$ 6,869        | \$ 6,926        | \$ 70        | \$ (13)           |
| Government-sponsored enterprise securities . . . . . | 5,159           | 5,376           | 217          | —                 |
| Auction rate securities . . . . .                    | 26,775          | 10,333          | —            | (16,442)          |
|                                                      | <u>\$38,803</u> | <u>\$22,635</u> | <u>\$287</u> | <u>\$(16,455)</u> |

The contractual maturities of marketable securities held at December 31, 2009 were as follows:

|                              | Cost Basis      | Fair Value      |
|------------------------------|-----------------|-----------------|
| Within one year . . . . .    | \$ 9,391        | \$ 9,566        |
| One to three years . . . . . | 5,335           | 5,507           |
| After three years . . . . .  | 26,775          | 6,009           |
|                              | <u>\$41,501</u> | <u>\$21,082</u> |

Gross gains and losses realized on the sale of marketable securities were not material in 2009, 2008 or 2007.

**Auction Rate Securities**

The Company's marketable securities portfolio currently includes \$26,775,000 of principal invested in nine individual auction rate securities; eight with an original principal amount of \$3,000,000 each, and one with an original principal amount of \$2,775,000. The total estimated fair values of these securities at December 31, 2009 and 2008 were \$6,009,000 and \$10,333,000, respectively, which reflected write-downs of \$20,766,000 and \$16,442,000, respectively, to the cost bases at those dates.

As described in note 24, on May 6, 2008, the Company commenced an arbitration against the investment bank that invested the Company's assets in auction rate securities. On May 28, 2009, the Company resolved this matter with the investment bank for a payment in the amount of \$22,000,000, and the Company retained ownership of these securities under the terms of this settlement.

Of the nine individual auction rate securities, three of the securities have no underlying collateral value, and have defaulted on their interest payments. The Company considers the likelihood of collecting any portion of the outstanding principal or interest on these three securities to be remote, and has written down the carrying value of these securities to zero through an impairment charge to earnings. Two other securities have no underlying collateral value, but are continuing to accrue interest at the prescribed rates. The Company has assessed the likelihood of collecting any portion of the outstanding principal or accrued and unpaid interest on these two securities as remote, and has written down the carrying value of these securities to zero through an impairment charge to earnings.

Of the remaining four individual auction rate securities, two securities are continuing to pay cash interest at the prescribed rates, but have significant shortfalls in their underlying collateral value. In particular, one of these securities has available collateral coverage of 69% and the other has collateral coverage of 23%. As a result, the Company does not consider it probable that it will be able to recover

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## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

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### 8. MARKETABLE SECURITIES (Continued)

the entire cost bases of these two securities, and, therefore, the Company considers these securities to be other-than-temporarily impaired. In accordance with the adoption of the recently issued guidance on the recognition and presentation of other-than-temporary impairments (as described in note 2), the Company assessed whether the other-than-temporary impairment was related to credit factors, or the credit loss portion, or was not related to credit factors, or the non-credit loss portion. The credit loss portion of the other-than-temporary impairment is determined based on the difference between the amortized cost base of each individual security and the estimated present value of the principal and interest cash flows expected to be collected from the security. The non-credit loss portion is the residual amount of the other-than-temporary impairment. In calculating the present value of the expected cash flows to determine the credit loss portion of the other-than-temporary impairment, the Company estimated the amount and timing of projected cash flows for each security based on the underlying collateral coverage, and applied a discount rate equal to the current yield on the securities. Based on this calculation, the Company determined that the portion of the other-than-temporary impairment loss not related to credit factors was not material to the Company's consolidated financial statements. The Company recognized other-than-temporary impairment losses, to write down the carrying value of these securities to their estimated fair value, of \$5,210,000, \$8,613,000 and \$6,000,000 in 2009, 2008 and 2007, respectively.

The remaining two individual auction rate securities currently have adequate underlying collateral value with which to repay the entire principal amount (in particular, one of these securities has available collateral coverage of 222% and the other has collateral coverage of 137%), and cash interest payments on these securities are not in arrears. As a result, the Company does not consider the decline in the fair value of these remaining securities to be other-than-temporary, based on the adequacy of the underlying collateral value, and the Company's conclusion that it does not intend to sell these securities and it is not more likely than not that it will be required to sell these securities before a recovery of their amortized cost bases. Therefore, the Company has recognized the unrealized gains or losses on these securities through other comprehensive income. In 2009, the Company recorded an unrealized gain of \$155,000 in other comprehensive income, compared with unrealized losses of \$3,356,000 and \$2,825,000 in 2008 and 2007, respectively. These securities have been in a continuous overall loss position for at least 12 months.

### 9. ACCOUNTS RECEIVABLE

|                                                | 2009             | 2008            |
|------------------------------------------------|------------------|-----------------|
| Trade . . . . .                                | \$109,607        | \$81,072        |
| Less allowance for doubtful accounts . . . . . | 2,437            | 1,179           |
|                                                | <u>107,170</u>   | <u>79,893</u>   |
| Royalties . . . . .                            | 6,313            | 6,877           |
| Other . . . . .                                | 6,436            | 3,281           |
|                                                | <u>\$119,919</u> | <u>\$90,051</u> |

### 10. INVENTORIES

|                           | 2009            | 2008            |
|---------------------------|-----------------|-----------------|
| Raw materials . . . . .   | \$14,290        | \$19,042        |
| Work in process . . . . . | 25,012          | 13,563          |
| Finished goods . . . . .  | 43,471          | 26,956          |
|                           | <u>\$82,773</u> | <u>\$59,561</u> |

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**11. PROPERTY, PLANT AND EQUIPMENT**

|                                                      | <b>2009</b>      |                                     | <b>2008</b>      |                                     |
|------------------------------------------------------|------------------|-------------------------------------|------------------|-------------------------------------|
|                                                      | <b>Cost</b>      | <b>Accumulated<br/>Depreciation</b> | <b>Cost</b>      | <b>Accumulated<br/>Depreciation</b> |
| Land . . . . .                                       | \$ 3,398         | \$ —                                | \$ 9,528         | \$ —                                |
| Buildings . . . . .                                  | 80,560           | 23,713                              | 103,355          | 22,266                              |
| Machinery and equipment . . . . .                    | 74,560           | 51,199                              | 76,002           | 44,912                              |
| Other equipment and leasehold improvements . . . . . | 56,248           | 43,186                              | 73,182           | 51,271                              |
| Construction in progress . . . . .                   | 7,180            | —                                   | 4,651            | —                                   |
|                                                      | <u>221,946</u>   | <u>\$118,098</u>                    | <u>266,718</u>   | <u>\$118,449</u>                    |
| Less accumulated depreciation . . . . .              | <u>118,098</u>   |                                     | <u>118,449</u>   |                                     |
|                                                      | <u>\$103,848</u> |                                     | <u>\$148,269</u> |                                     |

Depreciation expense amounted to \$18,764,000, \$25,824,000 and \$27,644,000 in 2009, 2008 and 2007, respectively.

**Sale and Leaseback Transactions**

On November 4, 2009, the Company completed the sale and leaseback of its corporate headquarters in Mississauga, Ontario for net proceeds of \$17,813,000. Included in this transaction was a vacant parcel of land adjacent to this facility, which was sold but not leased back. The Company recognized a loss on disposal of \$10,968,000, which is recorded in selling, general and administrative expenses. The Company will continue to occupy the facility under a 20-year operating lease at market rental rates.

In April 2009, the Company completed the sale of its corporate aircraft for proceeds of \$5,300,000 and entered into a four-year operating lease for this aircraft. This transaction resulted in a gain on disposal of \$914,000, which was deferred and will reduce future lease rental expense over the lease term.



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## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

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### 12. INTANGIBLE ASSETS

|                                         | 2009               |                          | 2008              |                          |
|-----------------------------------------|--------------------|--------------------------|-------------------|--------------------------|
|                                         | Cost               | Accumulated Amortization | Cost              | Accumulated Amortization |
| <b>Trademarks</b>                       |                    |                          |                   |                          |
| Wellbutrin XL® . . . . .                | \$ 510,475         | \$ 31,905                | \$ —              | \$ —                     |
| Cardizem® . . . . .                     | 406,058            | 183,849                  | 406,058           | 163,650                  |
| Ativan® and Isordil® . . . . .          | 107,542            | 35,483                   | 107,542           | 30,114                   |
| Vasotec® and Vaseretic® . . . . .       | 35,908             | 7,447                    | 35,908            | 5,156                    |
| Wellbutrin® and Zyban® . . . . .        | 24,243             | 8,565                    | 24,243            | 7,360                    |
|                                         | <u>1,084,226</u>   | <u>267,249</u>           | <u>573,751</u>    | <u>206,280</u>           |
| <b>Product rights</b>                   |                    |                          |                   |                          |
| Xenazine® and Nitoman® . . . . .        | 348,197            | 31,699                   | 157,862           | 4,598                    |
| Zovirax® . . . . .                      | 173,518            | 72,253                   | 173,518           | 63,816                   |
| Cardizem® LA . . . . .                  | 56,719             | 37,814                   | 56,719            | 29,710                   |
| Wellbutrin® and Zyban® . . . . .        | 45,000             | 21,000                   | 45,000            | 18,000                   |
| Vasotec® and Vaseretic® . . . . .       | 17,984             | 5,479                    | 17,984            | 3,792                    |
| Ativan® and Isordil® . . . . .          | 16,041             | 7,029                    | 16,041            | 5,958                    |
| Tiazac® . . . . .                       | 15,000             | 12,857                   | 15,000            | 11,786                   |
| Glumetza® . . . . .                     | 6,667              | 2,500                    | 6,667             | 1,730                    |
| Other . . . . .                         | 14,000             | 12,250                   | 14,000            | 10,500                   |
|                                         | <u>693,126</u>     | <u>202,881</u>           | <u>502,791</u>    | <u>149,890</u>           |
| IPR&D . . . . .                         | 28,000             | —                        | —                 | —                        |
|                                         | <u>1,805,352</u>   | <u>\$470,130</u>         | <u>1,076,542</u>  | <u>\$356,170</u>         |
| Less accumulated amortization . . . . . | <u>470,130</u>     |                          | <u>356,170</u>    |                          |
|                                         | <u>\$1,335,222</u> |                          | <u>\$ 720,372</u> |                          |

### Additions to Intangible Assets

As described in notes 3 and 4, additions to identifiable intangible assets by component in 2009 were as follows:

|                          | Trademarks       | Product Rights         | IPR&D                 | Total            |
|--------------------------|------------------|------------------------|-----------------------|------------------|
| Wellbutrin XL® . . . . . | \$510,475        | \$ —                   | \$ —                  | \$510,475        |
| Tetrabenazine . . . . .  | —                | 189,700 <sup>(1)</sup> | 36,000 <sup>(2)</sup> | 225,700          |
|                          | <u>\$510,475</u> | <u>\$189,700</u>       | <u>\$36,000</u>       | <u>\$736,175</u> |

(1) Included in Xenazine® and Nitoman® product rights.

(2) As described in note 3, subsequent to the acquisition date of the worldwide development and commercialization rights to tetrabenazine, the Company terminated the RUS-350 development program and recorded a charge of \$8,000,000 to write off the related IPR&D intangible asset.

### Weighted-Average Useful Lives

Trademarks and product rights have estimated weighted-average useful lives of approximately 14 years and 11 years, respectively. Total amortizable intangible assets have an estimated weighted-average useful life of approximately 12 years.

### Amortization Expense

Amortization expense related to intangible assets that contribute to multiple business activities, including research and development, manufacturing and supply, royalty and licensing, and/or sales, marketing and distribution, is included in amortization expense.

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**12. INTANGIBLE ASSETS (Continued)**

Amortization expense related to intangible assets that are associated with a single business activity is included in cost of goods sold, or another income statement line item, as appropriate.

Amortization expense for the years ended December 31 was recorded as follows:

|                                     | <u>2009</u>      | <u>2008</u>     | <u>2007</u>     |
|-------------------------------------|------------------|-----------------|-----------------|
| Royalty and other revenue . . . . . | \$ 1,072         | \$ 1,072        | \$ 1,072        |
| Cost of goods sold . . . . .        | 8,103            | 8,103           | 8,103           |
| Amortization expense . . . . .      | 104,730          | 51,369          | 48,049          |
|                                     | <u>\$113,905</u> | <u>\$60,544</u> | <u>\$57,224</u> |

Estimated amortization expense for each of the five succeeding years ending December 31 is as follows:

|                                | <u>2010</u>      | <u>2011</u>      | <u>2012</u>      | <u>2013</u>      | <u>2014</u>      |
|--------------------------------|------------------|------------------|------------------|------------------|------------------|
| Amortization expense . . . . . | <u>\$142,437</u> | <u>\$140,687</u> | <u>\$134,213</u> | <u>\$131,512</u> | <u>\$131,512</u> |

**13. OTHER LONG-TERM ASSETS**

|                                                                                                                              | <u>2009</u>     | <u>2008</u>     |
|------------------------------------------------------------------------------------------------------------------------------|-----------------|-----------------|
| Deferred financing costs, less accumulated amortization (2009 — \$2,865; 2008 — \$9,221) (as described in note 17) . . . . . | \$20,735        | \$ 754          |
| Security in trust pursuant to reinsurance agreement . . . . .                                                                | 7,288           | 7,288           |
| Zovirax® price allowance, less accumulated amortization (2009 — \$40,656; 2008 — \$28,971) . . . . .                         | —               | 11,685          |
| Other . . . . .                                                                                                              | 4,701           | 5,823           |
|                                                                                                                              | <u>\$32,724</u> | <u>\$25,550</u> |

**Zovirax® Price Allowance**

Effective October 1, 2002, the Company amended several terms of the original Zovirax® distribution agreement with GSK, including reductions in the supply price for this product. The supply price reductions consisted of an initial price allowance and a supplemental price allowance. In consideration for the supplemental price allowance, the Company agreed to pay GSK \$11,250,000 per year in four annual instalments on March 31 of each year beginning in 2004. The present value of those payments was determined to be \$40,656,000, which was recorded as a deferred charge. The amortization of the deferred charge commenced once the initial price allowance had been used up in March 2007. Amortization is allocated to the cost of inventory on a proportionate basis relative to the total amount of Zovirax® that can be purchased at the reduced supply price under the supplemental price allowance. In 2009, the remaining supplemental price allowance was used up and the related deferred charge was fully amortized.

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### 14. ACCRUED LIABILITIES

|                                                          | 2009             | 2008            |
|----------------------------------------------------------|------------------|-----------------|
| Product returns . . . . .                                | \$ 24,584        | \$25,092        |
| Product rebates and chargebacks <sup>(1)</sup> . . . . . | 23,230           | 6,273           |
| Employee costs . . . . .                                 | 17,536           | 14,892          |
| Accrued interest . . . . .                               | 11,627           | —               |
| Restructuring costs (as described in note 6) . . . . .   | 10,776           | 6,655           |
| Royalties . . . . .                                      | 9,934            | 2,606           |
| Professional fees . . . . .                              | 5,601            | 8,804           |
| Distribution fees . . . . .                              | 5,458            | 3,718           |
| DSUs . . . . .                                           | 4,796            | 2,137           |
| Other . . . . .                                          | 8,356            | 14,992          |
|                                                          | <u>\$121,898</u> | <u>\$85,169</u> |

(1) In connection with the acquisition of the full U.S. commercialization right to Wellbutrin® XL on May 14, 2009 (as described in note 4), the Company assumed financial responsibility for governmental rebate programs for product sold after the acquisition date. The provision at December 31, 2009 includes a balance owing to GSK for rebate claims administered and paid by GSK on behalf of the Company.

### 15. ACCRUED LEGAL SETTLEMENTS

|                                                       | 2009           | 2008            |
|-------------------------------------------------------|----------------|-----------------|
| U.S. Attorney's Office (MA) investigation . . . . .   | \$ —           | \$24,648        |
| Ontario Securities Commission investigation . . . . . | —              | 5,337           |
| Other litigation matters . . . . .                    | 7,950          | 2,580           |
|                                                       | <u>\$7,950</u> | <u>\$32,565</u> |

#### U.S. Attorney's Office (MA) Investigation

On May 16, 2008, Biovail Pharmaceuticals, Inc. (now Biovail Pharmaceuticals LLC), a subsidiary of the Company, and the Company entered into agreements in principle to settle the U.S. Attorney's Office ("USAO") for the District of Massachusetts investigation into activities surrounding the 2003 commercial launch of Cardizem® LA (as described in note 24). On September 14, 2009, the agreements received Court approval, and Biovail Pharmaceuticals LLC and the Company paid \$22,244,000 and \$2,404,000, respectively, to fully settle this matter.

#### Ontario Securities Commission Investigation

On January 9, 2009, the Ontario Securities Commission ("OSC") approved a settlement agreement in respect of its investigation of the Company related to specific accounting and financial disclosure practices from 2001 to March 2004 (as described in note 24). Pursuant to the terms of the settlement agreement, the Company paid \$5,337,000, including costs, to fully settle this matter.

# BIOVAIL CORPORATION

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

In accordance with United States Generally Accepted Accounting Principles  
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### 16. DEFERRED REVENUE

|                                                                                                            | 2009            | 2008             |
|------------------------------------------------------------------------------------------------------------|-----------------|------------------|
| Xenazine®, less accumulated amortization (2009 — \$3,611; 2008 — \$278) (as described in note 3) . . . . . | \$46,389        | \$ 49,722        |
| Cardizem® LA, less accumulated amortization (2009 — \$70,318; 2008 — \$55,250) . . . . .                   | 35,159          | 50,227           |
| Other . . . . .                                                                                            | 9,533           | 25,439           |
|                                                                                                            | 91,081          | 125,388          |
| Less current portion . . . . .                                                                             | 21,834          | 40,435           |
|                                                                                                            | <u>\$69,247</u> | <u>\$ 84,953</u> |

#### Cardizem® LA

In May 2005, the Company received up-front cash consideration of \$105,477,000 from Kos Pharmaceuticals, Inc. (now known as Abbott Laboratories (“Abbott”)) in connection with the disposition of the distribution rights to Cardizem® LA and product rights to Teveten. Commencing in 2005, this consideration is being amortized to product sales on a straight-line basis over seven years.

#### Other

Other deferred revenue includes up-front licensing fees, research and development fees, customer prepayments, and adjustments made by the Company to product sales provisions estimated by its commercialization counterparties. At December 31, 2009, the Company reclassified from deferred revenue to accounts payable an amount of \$10,701,000 owed to Teva Pharmaceuticals Industries Ltd. (“Teva”) for the Company’s share of returns, rebates and chargebacks in respect of third-party sales of its bioequivalent products by Teva.

### 17. LONG-TERM OBLIGATIONS

|                                                                              | 2009             | 2008       |
|------------------------------------------------------------------------------|------------------|------------|
| Convertible Notes (net of unamortized debt discount of \$51,715) . . . . .   | \$298,285        | \$—        |
| Cambridge obligation (net of unamortized debt discount of \$2,200) . . . . . | 27,800           | —          |
|                                                                              | 326,085          | —          |
| Less current portion . . . . .                                               | 12,110           | —          |
|                                                                              | <u>\$313,975</u> | <u>\$—</u> |

#### Convertible Notes

On June 10, 2009, the Company issued \$350,000,000 principal amount of 5.375% Senior Convertible Notes due 2014 (“Convertible Notes”) in a private placement. The Convertible Notes were issued at par and pay interest at a rate of 5.375%. Interest is payable semi-annually on February 1 and August 1 of each year, beginning February 1, 2010. The Convertible Notes will mature on August 1, 2014. The Convertible Notes may be converted based on a conversion rate of 67.0880 common shares per \$1,000 principal amount of Convertible Notes (which represents a conversion price of approximately \$14.91 per share). The conversion rate will be adjusted if the Company makes specified types of distributions or enters into certain other transactions in respect of its common shares. In addition, following certain corporate transactions that occur prior to maturity, the conversion rate will be increased for Noteholders who elect to convert their holdings in connection with such corporate transactions.

The Convertible Notes are convertible at any time prior to the maturity date under the following circumstances:

- during any calendar quarter if the closing price of the Company’s common shares exceeds 130% of the conversion price then in effect during a defined period at the end of the previous quarter;
- during a defined period if the trading price of the Convertible Notes falls below specified thresholds for a defined trading period;
- if the Convertible Notes have been called for redemption;
- upon the occurrence of specified corporate transactions; or
- 25 trading days prior to the maturity date.

## BIOVAIL CORPORATION

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

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#### 17. LONG-TERM OBLIGATIONS (Continued)

Upon conversion, the Convertible Notes may be settled in cash, common shares, or a combination of cash and common shares, at the Company's option. The Company's current intent and policy is to settle the Convertible Notes using a net share settlement approach, such that the principal amount of any Convertible Notes tendered for conversion would be settled in cash, and any excess conversion value settled in common shares.

The Company may redeem for cash all or a portion of the Convertible Notes at any time on or after August 2, 2012, at a price equal to 100% of the principal amount of the Convertible Notes to be redeemed, plus any accrued and unpaid interest, if during a defined period the closing price of the Company's common shares exceeds 130% of the conversion price then in effect. The Company may not otherwise redeem any of the Convertible Notes at its option prior to maturity, except upon the occurrence of certain changes to the laws governing Canadian withholding taxes. Noteholders may require the Company to repurchase for cash all or a portion of their holdings at 100% of the principal amount of the Convertible Notes to be purchased, plus any accrued and unpaid interest, upon the occurrence of a specified fundamental change (such as a change of control).

Because the Convertible Notes' conversion option would be classified in shareholders' equity (as the Company has no requirement to cash settle the conversion option) and the conversion option is considered indexed to the Company's own common shares, the conversion option was not accounted for as an embedded derivative. Accordingly, the recently issued guidance on the accounting for convertible debt instruments (as described in note 2) applies to the Convertible Notes, such that the principal amount of the Convertible Notes was allocated into a liability component and an equity component. The liability component was fair valued at \$293,331,000, based on a 9.5% market rate of interest for similar debt with no conversion rights. The value allocated to the liability component will be accreted to the face value of the Convertible Notes over the five-year period prior to maturity, using the effective interest method. The accretion of the liability component will be recognized as additional non-cash interest expense. The difference between the principal amount of the Convertible Notes and the value allocated to the liability component of \$56,669,000 was recorded in additional paid-in capital in shareholders' equity, as the carrying amount of the equity component.

In connection with the issuance of the Convertible Notes, the Company incurred financing costs of \$16,515,000, which were allocated to the liability and equity components in proportion to the preceding allocation of the principal amount of the Convertible Notes. Accordingly, \$13,841,000 of the financing costs were accounted for as debt issuance costs to be amortized over five years using the effective interest method, and \$2,674,000 of the financing costs were accounted for as equity issuance costs and recorded as a reduction to additional paid-in capital.

As the Company's current intent and policy is to settle the Convertible Notes using a net share settlement approach, only the common shares potentially issuable with respect to the excess conversion value of the Convertible Notes over their principal amount, if any, will be considered as dilutive potential common shares for purposes of calculating diluted earnings per share. At December 31, 2009, the if-converted value of the Convertible Notes was less than the related principal amount.

Interest expense of \$15,458,000 was recognized on the Convertible Notes in the period ended December 31, 2009, which comprised accrued cash interest of \$10,504,000 and non-cash amortization of the discount on the liability component of \$4,954,000.

At December 31, 2009, the estimated fair value of the Convertible Notes was determined to be approximately \$406,718,000 in the secondary market, based on changes in the underlying trading price of the Company's common shares and market interest rates.

#### **Credit Facility**

On June 9, 2009, the Company established a \$410,000,000 senior secured revolving credit facility with a syndicate of banks. This facility matures on June 9, 2012 and replaces the Company's former \$250,000,000 credit facility. The new facility contains an accordion feature that, subject to certain conditions, allows it to be increased to up to \$550,000,000.

Borrowings under this facility are guaranteed by the Company's material subsidiaries and are secured by charges over substantially all of the assets of the Company and the assets of its material subsidiaries. This facility includes certain financial and non-financial covenants. The financial covenants require the Company to maintain a minimum adjusted equity (defined as shareholders' equity excluding IPR&D charges) of no less than \$1,000,000,000; an EBITDA (defined as earnings before interest, taxes, depreciation, amortization, and certain non-cash and non-recurring charges, including IPR&D charges) to cash interest expense ratio of no less than 3.0 to 1.0; and a total debt to EBITDA ratio of no greater than 2.5 to 1.0. Non-financial covenants include, but are not limited to, restrictions on investments, dispositions, and capital and debt restructurings.

Borrowings under this facility may be by way of U.S. dollar LIBOR and U.S. base rate advances, Canadian dollar prime rate and bankers' acceptance advances, and letters of credit. Borrowing margins, determined by reference to the total debt to EBITDA ratio, range from 3.5% to 5.0% in the case of LIBOR advances, bankers' acceptance advances and letters of credit, and 2.5% to 4.0% in the case of U.S. base rate and prime rate advances.

In connection with the establishment of this facility, the Company incurred financing costs of \$9,759,000, which will be amortized on a straight-line basis over the three-year term of the facility. In 2009, the Company wrote off \$537,000 of unamortized deferred financing costs related to its former credit facility.

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**17. LONG-TERM OBLIGATIONS (Continued)**

At December 31, 2009, the Company had no outstanding borrowings under this credit facility.

**Cambridge Obligation**

In connection with the acquisition of the worldwide development and commercialization rights to tetrabenazine (as described in note 3), the Company will make payments of \$12,500,000 and \$17,500,000 to Cambridge on June 21, 2010 and June 20, 2011, respectively. These payments were discounted based on imputed interest rates of 6.9% and 7.7%, respectively. At December 31, 2009, the fair value of these payments approximated their carrying value based on current borrowing rates available to the Company.

**Maturities**

Aggregate maturities of long-term obligations for the years ending December 31 are as follows:

|                                   | <u>Convertible<br/>Notes</u> | <u>Cambridge<br/>Obligation</u> | <u>Total</u>     |
|-----------------------------------|------------------------------|---------------------------------|------------------|
| 2010 .....                        | \$ —                         | \$12,500                        | \$ 12,500        |
| 2011 .....                        | —                            | 17,500                          | 17,500           |
| 2014 .....                        | 350,000                      | —                               | 350,000          |
| Total gross maturities .....      | 350,000                      | 30,000                          | 380,000          |
| Unamortized discounts .....       | (51,715)                     | (2,200)                         | (53,915)         |
| Total long-term obligations ..... | <u>\$298,285</u>             | <u>\$27,800</u>                 | <u>\$326,085</u> |

**18. SHAREHOLDERS' EQUITY**

**Share Repurchase Programs**

In August 2009, the Company's Board of Directors approved the purchase of up to 15,800,000 common shares of the Company on the open market under a share repurchase program or normal course issuer bid, subject to a maximum of \$75,000,000 of common shares being repurchased during any fiscal year pursuant to a covenant in the Company's credit facility (unless such condition is waived or varied by the Company's lenders). The Company did not repurchase any of its common shares in 2009.

In May 2008, the Company's Board of Directors approved a share repurchase program of up to 14,000,000 common shares. During 2008, a total of 2,818,400 common shares were repurchased through open-market transactions on the New York Stock Exchange ("NYSE"), at a weighted-average price of \$10.46 per share, for total consideration of \$29,842,000. The excess of the cost of the common shares repurchased over their assigned value, totaling \$3,765,000, was charged to accumulated deficit. This share repurchase program terminated on June 1, 2009.

**Stock-Based Compensation Plans**

Under the Company's stock-based compensation plans, the Company may issue up to 12,000,000 common shares on the exercise of stock options and in connection with the vesting of RSUs. Stock options and/or RSUs may be granted to eligible employees, officers, and consultants. The Company's non-management directors are not eligible to receive stock options or RSUs. The Company will use reserved and unissued common shares to satisfy its obligations under its stock-based compensation plans.



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**18. SHAREHOLDERS' EQUITY (Continued)**

The following table summarizes the components and classification of stock-based compensation expense related to stock options and RSUs:

|                                                        | <u>2009</u>    | <u>2008</u>    | <u>2007</u>     |
|--------------------------------------------------------|----------------|----------------|-----------------|
| Stock options . . . . .                                | \$2,613        | \$5,243        | \$10,591        |
| RSUs . . . . .                                         | 3,000          | 2,663          | 42              |
| Stock-based compensation expense . . . . .             | <u>\$5,613</u> | <u>\$7,906</u> | <u>\$10,633</u> |
| Cost of goods sold . . . . .                           | \$ 525         | \$ 581         | \$ 882          |
| Research and development expenses . . . . .            | 726            | 871            | 1,608           |
| Selling, general and administrative expenses . . . . . | 4,362          | 6,454          | 8,143           |
| Stock-based compensation expense . . . . .             | <u>\$5,613</u> | <u>\$7,906</u> | <u>\$10,633</u> |

The Company did not recognize any tax benefits for stock-based compensation expense in 2009, 2008 or 2007.

**Stock Options**

All stock options granted expire on the fifth anniversary of the grant date. The exercise price of any stock option granted, which may be denominated in Canadian or U.S. dollars, will be determined by the Board of Directors, but in any event will not be less than the volume-weighted average trading price of the Company's common shares on the Toronto Stock Exchange ("TSX"), the NYSE, or other stock exchange where the majority of the trading volume and value of the Company's common shares occurs, for the five trading days immediately preceding the date of grant (or, for participants subject to U.S. taxation, on the single trading day immediately preceding the date of grant, whichever is greater). In March 2007, the Board of Directors adopted a policy whereby stock options will vest in equal proportions on the first, second, and third anniversaries of the stock option grant. Prior to this, stock options vested as to 25% on the first, second, third and fourth anniversaries of the stock option grant, or as to 25% on the date of grant and the first, second and third anniversaries of the stock option grant.

The fair values of all stock options granted were estimated as of the date of grant using the Black-Scholes option-pricing model with the following weighted-average assumptions:

|                                                             | <u>2009</u>  | <u>2008</u>  | <u>2007</u> |
|-------------------------------------------------------------|--------------|--------------|-------------|
| Expected stock option life (years) <sup>(1)</sup> . . . . . | 4.0          | 4.0          | 4.0         |
| Expected volatility <sup>(2)</sup> . . . . .                | 45.2%        | 43.2%        | 48.9%       |
| Risk-free interest rate <sup>(3)</sup> . . . . .            | 1.6%         | 3.0%         | 4.0%        |
| Expected dividend yield <sup>(4)</sup> . . . . .            | <u>14.6%</u> | <u>14.1%</u> | <u>6.9%</u> |

(1) Determined based on historical exercise and forfeiture patterns.

(2) Determined based on historical volatility of the Company's common shares over the expected life of the stock option.

(3) Determined based on the rate at the time of grant for zero-coupon Canadian government bonds with maturity dates equal to the expected life of the stock option.

(4) Determined based on the stock option's exercise price and expected annual dividend rate at the time of grant.

The Black-Scholes option-pricing model used by the Company to calculate stock option values was developed to estimate the fair value of freely tradeable, fully transferable stock options without vesting restrictions, which significantly differ from the Company's stock option awards. This model also requires highly subjective assumptions, including future stock price volatility and expected time until exercise, which greatly affect the calculated values.

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**18. SHAREHOLDERS' EQUITY (Continued)**

The following table summarizes stock option activity during 2009:

|                                                     | <b>Stock<br/>Options<br/>(000s)</b> | <b>Weighted-<br/>Average<br/>Exercise<br/>Price</b> | <b>Weighted-<br/>Average<br/>Remaining<br/>Contractual<br/>Term<br/>(Years)</b> | <b>Aggregate<br/>Intrinsic<br/>Value</b> |
|-----------------------------------------------------|-------------------------------------|-----------------------------------------------------|---------------------------------------------------------------------------------|------------------------------------------|
| Outstanding, January 1, 2009 . . . . .              | 4,201                               | \$19.06                                             |                                                                                 |                                          |
| Granted . . . . .                                   | 1,087                               | 10.86                                               |                                                                                 |                                          |
| Exercised . . . . .                                 | (80)                                | 10.86                                               |                                                                                 |                                          |
| Expired or forfeited . . . . .                      | (1,220)                             | 18.97                                               |                                                                                 |                                          |
| Outstanding, December 31, 2009 . . . . .            | <u>3,988</u>                        | <u>\$17.02</u>                                      | <u>2.5</u>                                                                      | <u>\$5,630</u>                           |
| Vested and exercisable, December 31, 2009 . . . . . | <u>2,340</u>                        | <u>\$20.25</u>                                      | <u>1.7</u>                                                                      | <u>\$1,130</u>                           |

The weighted-average fair values of all stock options granted in 2009, 2008 and 2007 were \$0.92, \$1.07 and \$5.41, respectively. The total intrinsic value of stock options exercised in 2009 and 2007 was \$239,000 and \$2,474,000, respectively. Proceeds received on the exercise of stock options in 2009 and 2007 were \$866,000 and \$11,217,000, respectively. No stock options were exercised in 2008.

The following table summarizes non-vested stock option activity during 2009:

|                                         | <b>Stock<br/>Options<br/>(000s)</b> | <b>Weighted-<br/>Average<br/>Grant-Date<br/>Fair Value</b> |
|-----------------------------------------|-------------------------------------|------------------------------------------------------------|
| Non-vested, January 1, 2009 . . . . .   | 1,357                               | \$3.79                                                     |
| Granted . . . . .                       | 1,087                               | 0.92                                                       |
| Vested . . . . .                        | (667)                               | 4.58                                                       |
| Forfeited . . . . .                     | (129)                               | 2.24                                                       |
| Non-vested, December 31, 2009 . . . . . | <u>1,648</u>                        | <u>\$1.81</u>                                              |

At December 31, 2009, the total remaining unrecognized compensation expense related to non-vested stock options amounted to \$1,405,000, which will be amortized over the weighted-average remaining requisite service period of approximately 16 months. The total fair value of stock options vested in 2009 was \$3,055,000 (2008 — \$8,412,000; 2007 — \$11,460,000).

The following table summarizes information about stock options outstanding and exercisable at December 31, 2009:

| <b>Range of Exercise Prices</b> | <b>Outstanding<br/>(000s)</b> | <b>Weighted-<br/>Average<br/>Remaining<br/>Contractual<br/>Life<br/>(Years)</b> | <b>Weighted-<br/>Average<br/>Exercise<br/>Price</b> | <b>Exercisable<br/>(000s)</b> | <b>Weighted-<br/>Average<br/>Exercise<br/>Price</b> |
|---------------------------------|-------------------------------|---------------------------------------------------------------------------------|-----------------------------------------------------|-------------------------------|-----------------------------------------------------|
| \$9.95–\$14.84 . . . . .        | 1,810                         | 3.8                                                                             | \$10.87                                             | 388                           | \$11.14                                             |
| 16.15–24.15 . . . . .           | 1,394                         | 1.5                                                                             | 20.70                                               | 1,219                         | 20.51                                               |
| 24.50–25.78 . . . . .           | 784                           | 1.2                                                                             | 24.69                                               | 733                           | 24.66                                               |
|                                 | <u>3,988</u>                  | <u>2.5</u>                                                                      | <u>\$17.02</u>                                      | <u>2,340</u>                  | <u>\$20.25</u>                                      |

**RSUs**

RSUs vest on the third anniversary date from the date of grant, unless provided otherwise in the applicable unit agreement, subject to the attainment of any applicable performance goals specified by the Board of Directors. If the vesting of the RSUs is conditional upon

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## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

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### 18. SHAREHOLDERS' EQUITY (Continued)

the attainment of performance goals, any RSUs that do not vest as a result of a determination that a holder of RSUs has failed to attain the prescribed performance goals will be forfeited immediately upon such determination. RSUs are credited with dividend equivalents, in the form of additional RSUs, when dividends are paid on the Company's common shares. Such additional RSUs will have the same vesting dates and will vest under the same terms as the RSUs in respect of which such additional RSUs are credited.

Unless provided otherwise in the applicable RSU agreement, the Company may, in lieu of all or a portion of the common shares which would otherwise be provided to a holder, elect to pay a cash amount equivalent to the market price of the Company's common shares on the vesting date for each vested RSU. The amount of cash payment will be determined based on the average market price of the Company's common shares on the vesting date on the TSX, the NYSE, or other stock exchange where the majority of the trading volume and value of the Company's common shares occurs. The Company's current intent and policy is to settle vested RSUs through the issuance of common shares.

#### *RSUs (Without Performance Goals)*

Each vested RSU without performance goals represents the right of a holder to receive one of the Company's common shares. The fair value of each RSU granted is estimated based on the trading price of the Company's common shares on the date of grant.

The following table summarizes non-vested RSU activity during 2009:

|                                           | RSUs<br>(Without<br>Performance<br>Goals)<br>(000s) | Weighted-<br>Average<br>Grant-Date<br>Fair Value |
|-------------------------------------------|-----------------------------------------------------|--------------------------------------------------|
| Non-vested, January 1, 2009 . . . . .     | 182                                                 | \$13.08                                          |
| Granted . . . . .                         | 227                                                 | 10.77                                            |
| Reinvested dividend equivalents . . . . . | 25                                                  | 11.05                                            |
| Vested . . . . .                          | (11)                                                | 12.62                                            |
| Forfeited . . . . .                       | (44)                                                | 11.95                                            |
| Non-vested, December 31, 2009 . . . . .   | <u>379</u>                                          | <u>\$11.71</u>                                   |

At December 31, 2009, the total remaining unrecognized compensation expense related to non-vested RSUs amounted to \$2,165,000, which will be amortized over the weighted-average remaining requisite service period of approximately 21 months. The total fair value of RSUs vested in 2009 was \$133,000 (2008 — \$198,000; 2007 — nil).

#### *RSUs (With Performance Goals)*

Each vested RSU with performance goals represents the right of a holder to receive a number of the Company's common shares, up to 200% of the RSUs granted, based on the performance of the Company's shareholder return relative to an industry comparator group. If the Company's performance is below a specified performance level, no common shares will be paid.

The fair value of each RSU granted was estimated using a Monte Carlo simulation model, which utilizes multiple input variables to estimate the probability that the performance condition will be achieved, with the following weighted-average assumptions:

|                                                                          | 2009        | 2008        | 2007        |
|--------------------------------------------------------------------------|-------------|-------------|-------------|
| Contractual term (years) . . . . .                                       | 5.0         | 4.6         | 5.0         |
| Expected Company share price volatility <sup>(1)</sup> . . . . .         | 44.0%       | 42.9%       | 45.3%       |
| Average comparator group share price volatility <sup>(1)</sup> . . . . . | 35.9%       | 34.0%       | 34.2%       |
| Risk-free interest rate <sup>(2)</sup> . . . . .                         | <u>3.1%</u> | <u>3.0%</u> | <u>3.3%</u> |

(1) Determined based on historical volatility over the contractual term of the RSU.

(2) Determined based on the rate at the time of grant for zero-coupon U.S. government bonds with maturity dates equal to the contractual term of the RSUs.

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**18. SHAREHOLDERS' EQUITY (Continued)**

The following table summarizes non-vested RSU activity during 2009:

|                                           | RSUs<br>(With<br>Performance<br>Goals)<br>(000s) | Weighted-<br>Average<br>Grant-Date<br>Fair Value |
|-------------------------------------------|--------------------------------------------------|--------------------------------------------------|
| Non-vested, January 1, 2009 . . . . .     | 174                                              | \$17.61                                          |
| Granted . . . . .                         | 487                                              | 19.63                                            |
| Reinvested dividend equivalents . . . . . | 15                                               | 11.75                                            |
| Non-vested, December 31, 2009 . . . . .   | <u>676</u>                                       | <u>\$18.94</u>                                   |

At December 31, 2009, the total remaining unrecognized compensation expense related to the non-vested RSUs amounted to \$10,880,000, which will be amortized over the weighted-average remaining requisite service period of approximately 50 months. A maximum of 1,352,000 common shares could be issued upon vesting of the RSUs outstanding at December 31, 2009.

**DSUs**

Non-management directors receive an annual grant of DSUs, and may elect to receive all or part of their annual board and committee retainers in the form of DSUs. A DSU is a notional unit, equivalent in value to a common share. DSUs are credited with dividend equivalents, in the form of additional DSUs, when dividends are paid on the Company's common shares. Directors may not receive any payment in respect of their DSUs until they cease to be a director of the Company.

The amount of compensation deferred is converted into DSUs based on the volume-weighted average trading price of the Company's common shares on the TSX or the NYSE, generally based on where the majority of the trading volume and value occurs, for the five trading days immediately preceding the date of grant (for directors subject to U.S. taxation, the calculation is based on the greater of the five-day or one-day volume-weighted average trading price). The Company recognizes compensation expense throughout the deferral period to the extent that the trading price of its common shares increases, and reduces compensation expense throughout the deferral period to the extent that the trading price of its common shares decreases.

The following table summarizes the Company's DSU activity during 2009:

|                                           | DSUs<br>(000s) | Weighted-<br>Average<br>Grant-Date<br>Fair Value |
|-------------------------------------------|----------------|--------------------------------------------------|
| Outstanding, January 1, 2009 . . . . .    | 226            | \$13.86                                          |
| Granted . . . . .                         | 124            | 12.68                                            |
| Reinvested dividend equivalents . . . . . | 20             | 11.13                                            |
| Settled for cash . . . . .                | <u>(27)</u>    | 19.68                                            |
| Outstanding, December 31, 2009 . . . . .  | <u>343</u>     | <u>\$12.82</u>                                   |

During 2009, a cash payment of \$371,000 was made to settle 26,836 DSUs previously granted to a former director of the Company.

The Company recorded compensation expense related to DSUs of \$2,454,000 and \$1,103,000 in 2009 and 2008, respectively, and recorded a recovery of compensation expense of \$425,000 in 2007. At December 31, 2009 and 2008, the Company had a liability related to its DSU plans of \$4,796,000 and \$2,137,000, respectively, based on the trading price of the Company's common shares at those dates.

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**18. SHAREHOLDERS' EQUITY (Continued)**

**Accumulated Other Comprehensive Income**

The components of accumulated other comprehensive income were as follows:

|                                                                        | Foreign<br>Currency<br>Translation<br>Adjustment | Net Unrealized<br>Holding<br>Gain (Loss) on<br>Available-<br>for-Sale<br>Investments | Unrealized<br>Holding<br>Loss on<br>Auction Rate<br>Securities | Total            |
|------------------------------------------------------------------------|--------------------------------------------------|--------------------------------------------------------------------------------------|----------------------------------------------------------------|------------------|
| Balance, January 1, 2007 . . . . .                                     | \$37,264                                         | \$ 5,844                                                                             | \$ —                                                           | \$ 43,108        |
| Foreign currency translation adjustment . . . . .                      | 21,352                                           | —                                                                                    | —                                                              | 21,352           |
| Net unrealized holding loss on available-for-sale securities . . . . . | —                                                | (2,000)                                                                              | —                                                              | (2,000)          |
| Unrealized holding loss on auction rate securities . . . . .           | —                                                | —                                                                                    | (2,825)                                                        | (2,825)          |
| Reclassification adjustment to net income . . . . .                    | —                                                | 2,947 <sup>(2)</sup>                                                                 | —                                                              | 2,947            |
| Balance, December 31, 2007 . . . . .                                   | 58,616                                           | 6,791                                                                                | (2,825)                                                        | 62,582           |
| Foreign currency translation adjustment . . . . .                      | (32,378)                                         | —                                                                                    | —                                                              | (32,378)         |
| Net unrealized holding loss on available-for-sale securities . . . . . | —                                                | (304)                                                                                | —                                                              | (304)            |
| Unrealized holding loss on auction rate securities . . . . .           | —                                                | —                                                                                    | (3,356)                                                        | (3,356)          |
| Reclassification adjustments to net income . . . . .                   | 828 <sup>(1)</sup>                               | (3,712) <sup>(2)</sup>                                                               | 4,352 <sup>(3)</sup>                                           | 1,468            |
| Cumulative effect adjustment . . . . .                                 | —                                                | (2,343)                                                                              | —                                                              | (2,343)          |
| Balance, December 31, 2008 . . . . .                                   | 27,066                                           | 432                                                                                  | (1,829)                                                        | 25,669           |
| Foreign currency translation adjustment . . . . .                      | 17,220                                           | —                                                                                    | —                                                              | 17,220           |
| Net unrealized holding gain on available-for-sale securities . . . . . | —                                                | 802                                                                                  | —                                                              | 802              |
| Unrealized holding gain on auction rate securities . . . . .           | —                                                | —                                                                                    | 155                                                            | 155              |
| Reclassification adjustments to net income . . . . .                   | —                                                | (1,003) <sup>(2)</sup>                                                               | 731 <sup>(3)</sup>                                             | (272)            |
| Balance, December 31, 2009 . . . . .                                   | <u>\$44,286</u>                                  | <u>\$ 231</u>                                                                        | <u>\$ (943)</u>                                                | <u>\$ 43,574</u> |

(1) The foreign currency translation adjustment reclassified to net income is included in foreign exchange gain (loss) in the consolidated statement of income and resulted from the substantially complete liquidation of the assets of the Company's Irish subsidiary group.

(2) Included in gain on disposal of investments in the consolidated statements of income.

(3) Included in impairment loss on debt securities in the consolidated statements of income.

Income taxes are not provided for foreign currency translation adjustments arising on the translation of the Company's operations having a functional currency other than the U.S. dollar. Income taxes allocated to other components of other comprehensive income, including reclassification adjustments, were not material.

**19. INTANGIBLE ASSET IMPAIRMENTS**

In December 2007, the Company discontinued plans to market Zolpidem oral disintegrating tablets ("ODT") for the treatment of insomnia following a negative assessment of its commercial potential due to the genericization of the brand name drug (Ambien) in April 2007. Also in December 2007, the Company's commercialization counterparty decided to terminate a supply agreement for Ultram® ODT based on market considerations. As a result, the Company recorded an impairment charge of \$4,000,000 to write down the aggregate carrying value of these product rights to zero.

Also in December 2007, during its annual evaluation of intangible assets for impairment, the Company identified certain other product rights and technology intangible assets that had been adversely affected due to changes in market conditions and/or technological advances. As a result, the Company recorded an impairment charge of \$5,910,000 to write down the aggregate carrying value of these assets to zero.

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**20. GAIN ON DISPOSAL OF INVESTMENTS**

In 2009, the Company sold its investment in common shares of Hemispherx Biopharma, Inc. for cash consideration of \$566,000, resulting in a gain of \$466,000, and the Company realized a gain of \$338,000 on the sale of 168,376 common shares of Depomed, Inc. ("Depomed") for cash proceeds of \$357,000.

In 2008, the Company realized a gain of \$3,073,000 on the sale of 4,234,132 common shares of Depomed for cash proceeds of \$13,188,000, and the Company sold its entire investment in common shares and convertible debt of Financière Verdi ("Verdi"), formerly Ethypharm S.A. ("Ethypharm"), for cash consideration of \$12,187,000, resulting in a gain on disposal of \$3,461,000.

In 2007, the Company received cash consideration of \$14,900,000 on the liquidation of its investment in convertible preferred stock of Reliant Pharmaceuticals, Inc. ("Reliant") upon Reliant's acquisition by GSK, resulting in a gain on disposal of \$8,640,000. In addition, the Company sold a portion of its investment in common shares of Ethypharm to Verdi for consideration of \$39,406,000 in cash and \$5,637,000 in convertible bonds of Verdi, resulting in a gain on disposal of \$15,716,000 (net of costs). The Company exchanged the remaining portion of its Ethypharm investment for common shares of Verdi.

**21. LOSS ON EARLY EXTINGUISHMENT OF DEBT**

Effective April 1, 2007, the Company redeemed all of its outstanding 7½% Senior Subordinated Notes for \$406,756,000, which included an early redemption premium of \$7,854,000. The Company recorded a loss on early extinguishment of debt of \$12,463,000, which comprised the premium paid, as well as the net write-off of the unamortized deferred financing costs, discount, and fair value adjustment associated with these notes, which totaled \$4,609,000.

**22. INCOME TAXES**

The components of income before provision for (recovery of) income taxes were as follows:

|                    | <u>2009</u>      | <u>2008</u>      | <u>2007</u>       |
|--------------------|------------------|------------------|-------------------|
| Domestic . . . . . | \$(81,978)       | \$(86,734)       | \$(150,622)       |
| Foreign . . . . .  | 256,933          | 213,638          | 359,361           |
|                    | <u>\$174,955</u> | <u>\$126,904</u> | <u>\$ 208,739</u> |

The components of the provision for (recovery of) income taxes were as follows:

|                    | <u>2009</u>       | <u>2008</u>       | <u>2007</u>     |
|--------------------|-------------------|-------------------|-----------------|
| <b>Current</b>     |                   |                   |                 |
| Domestic . . . . . | \$ —              | \$ —              | \$ —            |
| Foreign . . . . .  | 14,500            | 17,000            | 13,200          |
|                    | <u>14,500</u>     | <u>17,000</u>     | <u>13,200</u>   |
| <b>Deferred</b>    |                   |                   |                 |
| Domestic . . . . . | —                 | —                 | —               |
| Foreign . . . . .  | (16,000)          | (90,000)          | —               |
|                    | <u>(16,000)</u>   | <u>(90,000)</u>   | <u>—</u>        |
|                    | <u>\$ (1,500)</u> | <u>\$(73,000)</u> | <u>\$13,200</u> |



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**22. INCOME TAXES (Continued)**

The reported provision for (recovery of) income taxes differs from the expected amount calculated by applying the Company's Canadian statutory rate to income before provision for income taxes. The reasons for this difference and the related tax effects are as follows:

|                                                                                         | <u>2009</u>       | <u>2008</u>        | <u>2007</u>      |
|-----------------------------------------------------------------------------------------|-------------------|--------------------|------------------|
| Income before provision for (recovery of) income taxes . . . . .                        | \$174,955         | \$126,904          | \$ 208,739       |
| Expected Canadian statutory rate . . . . .                                              | 32.4%             | 33.3%              | 36.1%            |
| Expected provision for income taxes . . . . .                                           | 56,685            | 42,259             | 75,354           |
| Non-deductible amounts:                                                                 |                   |                    |                  |
| IPR&D . . . . .                                                                         | 21,063            | —                  | —                |
| Amortization . . . . .                                                                  | 11,962            | 11,800             | 17,345           |
| Equity loss . . . . .                                                                   | —                 | 398                | 913              |
| Intangible asset impairments . . . . .                                                  | —                 | 2,482              | 3,578            |
| Non-taxable gain on disposal of investments . . . . .                                   | (3,838)           | (2,174)            | (6,276)          |
| Write-down of investments . . . . .                                                     | 1,690             | 3,089              | —                |
| Legal settlement costs . . . . .                                                        | 2,944             | 10,233             | —                |
| Changes in enacted income tax rates . . . . .                                           | 9,800             | —                  | —                |
| Canadian dollar foreign exchange gain for Canadian tax purposes . . . . .               | 2,500             | —                  | 28,887           |
| Change in valuation allowance related to U.S. operating losses . . . . .                | (26,000)          | (90,000)           | —                |
| Change in valuation allowance from utilization of losses and tax rate changes . . . . . | (11,000)          | (13,993)           | (52,006)         |
| Foreign tax rate differences . . . . .                                                  | (99,045)          | (92,581)           | (114,908)        |
| Unrecognized income tax benefit of losses . . . . .                                     | 25,496            | 44,380             | 54,406           |
| Alternative minimum and other taxes . . . . .                                           | 1,877             | —                  | —                |
| Withholding taxes on foreign income . . . . .                                           | 3,450             | 2,886              | 2,105            |
| Other . . . . .                                                                         | 916               | 8,221              | 3,802            |
|                                                                                         | <u>\$ (1,500)</u> | <u>\$ (73,000)</u> | <u>\$ 13,200</u> |

Income taxes paid amounted to \$12,139,000, \$6,738,000 and \$20,424,000 in 2009, 2008 and 2007, respectively. Stock option exercises did not impact taxes paid in 2009, 2008 or 2007.

The Company has provided for foreign withholding taxes on the portion of undistributed earnings of foreign subsidiaries expected to be remitted.

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**22. INCOME TAXES (Continued)**

The tax effect of major items recorded as deferred tax assets and liabilities is as follows:

|                                                                                   | <b>2009</b>       | <b>2008</b>       |
|-----------------------------------------------------------------------------------|-------------------|-------------------|
| <b>Deferred tax assets</b>                                                        |                   |                   |
| Tax loss carryforwards . . . . .                                                  | \$ 159,669        | \$ 159,210        |
| Scientific Research and Experimental Development pool . . . . .                   | 58,914            | 53,095            |
| Investment tax credits . . . . .                                                  | 42,659            | 35,199            |
| Provisions . . . . .                                                              | 24,990            | 20,565            |
| Provisions for legal settlements (net of expected insurance recoveries) . . . . . | —                 | 211               |
| Plant, equipment and technology . . . . .                                         | 34,019            | 24,395            |
| Deferred revenue . . . . .                                                        | 33,433            | 38,825            |
| Deferred financing and share issue costs . . . . .                                | —                 | 361               |
| Other . . . . .                                                                   | 5,014             | 4,189             |
| Total deferred tax assets . . . . .                                               | 358,698           | 336,050           |
| Less valuation allowance . . . . .                                                | (153,955)         | (157,137)         |
| Net deferred tax assets . . . . .                                                 | 204,743           | 178,913           |
| <b>Deferred tax liabilities</b>                                                   |                   |                   |
| Intangible assets . . . . .                                                       | 53,906            | 60,693            |
| Convertible Notes <sup>(1)</sup> . . . . .                                        | 15,622            | —                 |
| Prepaid expenses . . . . .                                                        | 1,434             | 1,314             |
| Other . . . . .                                                                   | 981               | 106               |
| Total deferred tax liabilities . . . . .                                          | 71,943            | 62,113            |
| Net deferred income taxes . . . . .                                               | <u>\$ 132,800</u> | <u>\$ 116,800</u> |

(1) In connection with the issuance of the Convertible Notes (as described in note 17), the Company recognized a deferred tax liability of \$14,621,000 for the original basis difference between the principal amount of the Convertible Notes and the value allocated to the liability component, which resulted in a corresponding reduction to the valuation allowance recorded against deferred tax assets. The recognition of the deferred tax liability and the corresponding reduction in the valuation allowance were recorded as offsetting adjustments to additional paid-in capital. In the period ended December 31, 2009, the deferred tax benefit resulting from the reversal of a portion of the deferred tax liability was offset by the deferred tax expense related to the corresponding realization of the deferred tax assets.

The eventual payment of the U.S. dollar-denominated Convertible Notes will likely result in a foreign exchange gain or loss for Canadian income tax purposes. The amount of this gain or loss will depend on the exchange rate between the U.S. and Canadian dollar at the time the Convertible Notes are paid. At December 31, 2009, the Company recognized a \$2,500,000 deferred tax liability (and corresponding reduction to the valuation allowance) related to the unrealized foreign exchange gain on the translation of the face value of the Convertible Notes to Canadian dollars for Canadian income tax purposes of approximately \$20,000,000. If all of the outstanding Convertible Notes had been paid at December 31, 2009, one-half of this foreign exchange gain would be included in the Company's Canadian taxable income, which would result in a corresponding reduction in the Company's available Canadian operating losses and tax credit carryforward balances (with an offsetting reduction to the valuation allowance provided against those balances). However, the payment of the Convertible Notes will not result in a foreign exchange gain or loss being recognized in the Company's consolidated financial statements, as these statements are prepared in U.S. dollars.

The realization of deferred tax assets is dependent on the Company generating sufficient domestic and foreign taxable income in the years that the temporary differences become deductible. A valuation allowance has been provided for the portion of the deferred tax assets that the Company determined is more likely than not to remain unrealized based on estimated future taxable income and tax planning strategies. In 2009, the valuation allowance decreased by \$3,182,000, due mainly to the recognition of additional future benefits of U.S. tax loss carryforwards and the impact of a decrease in enacted income tax rates on the reported value of net deferred income taxes, partially offset by the impact of foreign exchange rate changes on the reported value in U.S. dollars of Canadian tax loss carryforwards, investment tax credits ("ITCs"), and pooled Scientific Research and Experimental Development ("SR&ED") expenditures. In 2008, the valuation allowance decreased by \$161,146,000 due mainly to the recognition of the future benefit of U.S. tax

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### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

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#### 22. INCOME TAXES (Continued)

loss carryforwards, the recording of a net deferred tax liability in respect of the Prestwick acquisition, and a reversal of temporary differences in respect of provisions for legal settlements.

At December 31, 2009, the Company had accumulated tax losses of approximately \$123,600,000 (2008 — \$87,900,000) available for federal and provincial purposes in Canada. At December 31, 2009, the Company had approximately \$42,700,000 (2008 — \$35,199,000) of unclaimed Canadian ITCs, which expire from 2020 to 2029. These losses and ITCs can be used to offset future years' taxable income and federal tax, respectively.

In addition, at December 31, 2009, the Company had pooled SR&ED expenditures amounting to approximately \$271,000,000 (2008 — \$224,000,000) available to offset against future years' taxable income from its Canadian operations, which may be carried forward indefinitely.

At December 31, 2009, the Company has accumulated tax losses of approximately \$335,000,000 (2008 — \$349,300,000) for federal purposes in the U.S., which expire from 2021 to 2028. These losses can be used to offset future years' taxable income. There may be limitations on the annual utilization of these losses as a result of certain changes in ownership that have occurred, or that may occur in the future.

At December 31, 2009, the total amount of unrecognized tax benefits (including interest and penalties) was \$66,200,000 (2008 — \$63,700,000), of which \$45,200,000 (2008 — \$36,900,000) would affect the effective tax rate. In the year ended December 31, 2009, the Company recognized a \$1,000,000 (2008 — \$1,000,000) increase and a \$1,500,000 (2008 — \$8,600,000) net increase in the amount of unrecognized tax benefits related to tax positions taken in the current and prior years, respectively, which have resulted in a corresponding decrease in the valuation allowance against the net deferred tax asset.

The Company recognizes interest accrued related to unrecognized tax benefits and penalties in the provision for income taxes. At December 31, 2009, approximately \$14,200,000 (2008 — \$12,200,000) was accrued for the payment of interest and penalties. In the year ended December 31, 2009, the Company recognized approximately \$2,000,000 (2008 — \$4,000,000) in interest and penalties.

The Company and one or more of its subsidiaries file federal income tax returns in Barbados, Canada, the U.S., and other foreign jurisdictions, as well as various provinces and states in Canada and the U.S. The Company and its subsidiaries have open tax years primarily from 1996 to 2008 with significant taxing jurisdictions including Barbados, Canada, and the U.S. These open years contain certain matters that could be subject to differing interpretations of applicable tax laws and regulations, and tax treaties, as they relate to the amount, timing, or inclusion of revenues and expenses, or the sustainability of income tax positions of the Company and its subsidiaries. Certain of these tax years are expected to remain open indefinitely.

In 2009, the Canada Revenue Agency ("CRA") continued its audit of the Company's 2003 and 2004 Canadian income tax returns and has recently made a revised proposal for audit adjustments to the Company. The Company is reviewing the revised proposal. While the matter has not been settled, the Company has recorded a \$1,200,000 decrease in the net deferred tax assets and a corresponding decrease in the valuation allowance against the net deferred tax assets. The CRA has commenced audits of the Company's 2005 and 2006 Canadian income tax returns, and claims for SR&ED expenditures and related ITCs for the 2006 and 2007 taxation years. During 2009, the Company settled certain tax audits. The settlement of these audits did not result in adjustments to the total amount of uncertain tax benefits. It is otherwise not possible for the Company to estimate a range of reasonably possible outcomes, or timing, of any adjustments to the total amount of uncertain tax benefits that may result from these audits.

The following table presents a reconciliation of the beginning and ending amounts of unrecognized tax benefits:

|                                                                        | <u>2009</u>     | <u>2008</u>     |
|------------------------------------------------------------------------|-----------------|-----------------|
| Balance, beginning of year . . . . .                                   | \$63,700        | \$54,100        |
| Additions based on tax positions related to the current year . . . . . | 1,000           | 1,000           |
| Additions for tax positions of prior years . . . . .                   | 3,400           | 13,300          |
| Reductions for tax positions of prior years . . . . .                  | (1,900)         | (4,700)         |
| Balance, end of year . . . . .                                         | <u>\$66,200</u> | <u>\$63,700</u> |

The Company does not expect any significant change to the above unrecognized tax benefits during the next 12 months.

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**23. EARNINGS PER SHARE**

Earnings per share were calculated as follows:

|                                                                               | <u>2009</u>    | <u>2008</u>    | <u>2007</u>    |
|-------------------------------------------------------------------------------|----------------|----------------|----------------|
| Net income . . . . .                                                          | \$176,455      | \$199,904      | \$195,539      |
| Basic weighted-average number of common shares outstanding (000s) . . . . .   | 158,236        | 159,730        | 160,839        |
| Dilutive effect of stock options and RSUs (000s) . . . . .                    | 274            | —              | 36             |
| Diluted weighted-average number of common shares outstanding (000s) . . . . . | 158,510        | 159,730        | 160,875        |
| Basic and diluted earnings per share . . . . .                                | <u>\$ 1.11</u> | <u>\$ 1.25</u> | <u>\$ 1.22</u> |

In the period ended December 31, 2009, the average conversion value of the Convertible Notes was less than the related principal amount, and, accordingly, no common shares were assumed to be issued for purposes of calculating diluted earnings per share.

Stock options to purchase approximately 2,950,000, 4,540,000 and 4,555,000 common shares of the Company during 2009, 2008 and 2007, respectively, had exercise prices greater than the average trading price of the Company's common shares. These stock options were not included in the computation of diluted earnings per share because the effect would have been anti-dilutive.

**24. LEGAL PROCEEDINGS**

From time to time, the Company becomes involved in various legal and administrative proceedings, which include product liability, intellectual property, antitrust, governmental and regulatory investigations, and related private litigation. There are also ordinary course employment-related issues and other types of claims in which the Company routinely becomes involved, but which individually and collectively are not material.

Unless otherwise indicated, the Company cannot reasonably predict the outcome of these legal proceedings, nor can it estimate the amount of loss, or range of loss, if any, that may result from these proceedings. An adverse outcome in certain of these proceedings could have a material adverse effect on the Company's business, financial condition and results of operations, and could cause the market value of its common shares to decline.

From time to time, the Company also initiates actions or files counterclaims. The Company could be subject to counterclaims or other suits in response to actions it may initiate. The Company cannot reasonably predict the outcome of these proceedings, some of which may involve significant legal fees. The Company believes that the prosecution of these actions and counterclaims is important to preserve and protect the Company, its reputation and its assets.

***Governmental and Regulatory Inquiries***

In July 2003, the Company received a subpoena from the USAO for the District of Massachusetts requesting information related to the promotional and marketing activities surrounding the commercial launch of Cardizem® LA. In particular, the subpoena sought information relating to the Cardizem® LA Clinical Experience Program, titled P.L.A.C.E. (Proving L.A. Through Clinical Experience). In October 2007, the Company received an additional related subpoena.

On May 16, 2008, Biovail Pharmaceuticals, Inc., the Company's former subsidiary, entered into a written plea agreement with the USAO whereby it agreed to plead guilty to violating the U.S. Anti-Kickback Statute and pay a fine of \$22.2 million.

In addition, on May 16, 2008, Biovail Corporation entered into a non-prosecution agreement with the USAO whereby the USAO agreed to decline prosecution of Biovail Corporation in exchange for Biovail Corporation's continuing cooperation and in exchange for its agreement to finalize a civil settlement agreement and pay a civil penalty of \$2.4 million. The civil settlement agreement has now been signed and the related fine has been paid. A hearing before the U.S. District Court in Boston took place on September 14, 2009 and the plea was approved.

In addition, as part of the overall settlement, the Company entered into a Corporate Integrity Agreement ("CIA") with the Office of the Inspector General and the Department of Health and Human Services on September 11, 2009. The CIA requires us to have a compliance program in place and to undertake a set of defined corporate integrity obligations for a five-year term. The CIA also includes requirements for an independent review of these obligations. Failure to comply with the obligations under the CIA could result in financial penalties.

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### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

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#### 24. LEGAL PROCEEDINGS (Continued)

On November 20, 2003, the Company received notification from the SEC indicating that the SEC would be conducting an informal inquiry relating to the Company's accounting and disclosure practices for the fiscal year 2003. These issues included whether or not the Company had improperly recognized revenue and expenses for accounting purposes in relation to its financial statements in certain periods, disclosure related to those statements, and whether it provided misleading disclosure concerning the reasons for its forecast of a revenue shortfall in respect of the three-month period ended September 30, 2003, and certain transactions associated with a corporate entity that the Company acquired in 2002. On March 3, 2005, the Company received a subpoena from the SEC reflecting the fact that the SEC had entered a formal order of investigation. The subpoena sought information about the Company's financial reporting for the fiscal year 2003. Also, the scope of the investigation became broader than initially thought, and the period under review was extended to encompass the period January 1, 2001 to May 2004.

On March 24, 2008, the SEC filed a civil complaint against the Company, Eugene Melnyk, the Company's former Chairman and Chief Executive Officer ("CEO"), Brian Crombie, the Company's former Chief Financial Officer ("CFO"), and two former officers, Kenneth Howling and John Miszuk, related to the matters investigated by the SEC. The Company has entered into a Consent Decree with the SEC in which it has not admitted to the civil charges contained in the complaint but has paid \$10.0 million to the SEC to fully settle the matter. As part of the settlement, the Company has also agreed to an examination of its accounting and related functions by an independent consultant. The settlement does not include the four individuals although the Company understands Mr. Howling has also reached a settlement with the SEC. The matter is proceeding as against former officers Mr. Melnyk, Mr. Crombie and Mr. Miszuk in the ordinary course and no hearing date has been set. The Company is indemnifying these individuals for their legal costs.

In the Spring of 2007, the Company was contacted by the USAO for the Eastern District of New York ("EDNY"), which informed the Company that the office is conducting an investigation into the same matters that the SEC is investigating. The USAO for the EDNY conducted interviews of several of the Company's current or former employees and requested documents related to fiscal years 2002 and 2003. The Company cooperated with this request and has not been contacted further. The Company cannot predict the outcome or timing of when this matter may be resolved.

Over the last few years, the Company received a number of communications from the OSC relating to its disclosure, and/or seeking information pertaining to certain financial periods. Similar to the SEC, the OSC advised the Company that it had investigated whether the Company improperly recognized revenue for accounting purposes in relation to the interim financial statements filed by the Company for each of the four quarters in 2001, 2002 and 2003, and the first quarter of 2004, and related disclosure issues. The OSC also investigated whether the Company provided misleading disclosure concerning the reasons for its forecast of a revenue shortfall in respect of the three-month period ending September 30, 2003, and certain transactions associated with a corporate entity that the Company acquired in 2002, as well as issues relating to trading in its common shares. These issues included whether the Company's insiders complied with insider reporting requirements, whether persons in a special relationship with the Company may have traded in its common shares with knowledge of undisclosed material information, whether certain transactions may have resulted in, or contributed to, a misleading appearance of trading activity in the Company's securities during 2003 and 2004 and whether certain registrants (who are the Company's former directors) may have had conflicts of interest in relation to the trading of the Company's common shares.

Pursuant to a Notice of Hearing dated July 28, 2006, the staff of the OSC gave notice that an administrative hearing pursuant to sections 127 and 127.1 of the Ontario Securities Act would be held related to the issues surrounding the trading in the Company's common shares. The respondents in the hearing included former Chairman and CEO Eugene Melnyk and a former director of the Company, among others. The Company was not a party to this proceeding. The proceeding as against Eugene Melnyk has been settled. In a decision released June 20, 2008, a panel of the OSC found that the former director acted contrary to the public interest and breached section 107 of the Ontario Securities Act when he (a) failed to provide the Company with accurate information concerning common shares over which he shared control and direction, (b) failed to file insider reports in respect of certain trades in the Company's securities and (c) engaged in a high volume of discretionary trading in its securities during blackout periods imposed by the Company.

Pursuant to a Notice of Hearing dated March 24, 2008, the staff of the OSC gave notice that an administrative hearing would be held related to the other matters investigated. The notice named the Company, former Chairman and CEO Eugene Melnyk, former CFO Brian Crombie, and Kenneth Howling and John Miszuk, two former officers. On January 9, 2009, the OSC approved a settlement reached with the Company. Pursuant to the terms of this settlement, the Company paid approximately \$5.3 million in costs and sanctions and agreed to the appointment of an independent consultant to examine and report on the Company's training of its personnel concerning compliance with financial and other reporting requirements under applicable securities laws in Ontario. On January 27, 2009, the OSC approved a settlement with Messrs. Howling and Miszuk and on February 10, 2009, the OSC approved a settlement with Mr. Crombie. The Company understands that the matter is proceeding against Mr. Melnyk. The hearing has now concluded and a decision is under reserve.

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**24. LEGAL PROCEEDINGS (Continued)**

*Securities Class Action*

On October 8, 2008, a proposed securities class action lawsuit was filed in the U.S. District Court Southern District of New York against the Company, its current Chairman, one current officer and two former officers. The complaint was filed on behalf of all persons and entities that purchased the Company's securities from December 14, 2006 through July 19, 2007. The complaint related to public statements alleged to have been made in respect of Aplenzin® (bupropion hydrobromide tablets) during the product's U.S. regulatory approval process. The Company believed the claim was without merit and filed a motion to dismiss this action in its entirety. The motion was granted and the action was dismissed with prejudice on May 8, 2009. Sanctions were thereafter sought by the Company. The decision granting the motion to dismiss was appealed by the plaintiffs. Pursuant to an agreement reached between the parties, the plaintiffs agreed to dismiss the appeal in exchange for the Company withdrawing its request for sanctions. On June 26, 2009, the appeal was dismissed. This matter has concluded.

*Antitrust*

Several class action and individual action complaints in multiple jurisdictions have been commenced jointly against the Company, Elan Corporation plc ("Elan") and Teva relating to two agreements: one between the Company and Elan for the licensing of Adalat CC products from Elan, and the other between the Company and Teva for the distribution of those products in the U.S. These actions were transferred to the U.S. District Court for the District of Columbia. The agreements in question have since been resolved as a result of a consent decree between Elan and Biovail and the U.S. Federal Trade Commission.

The Company believes these suits are without merit because, among other reasons, the Company believes that any delay in the marketing or out-licensing of the Company's Adalat CC product was due to manufacturing difficulties the Company encountered and not because of any improper activity on its part.

On March 21, 2006, the Company was advised that an additional claim in respect of this fact situation was filed by Maxi Drug Inc. d/b/a Brooks Pharmacy in the U.S. District Court for the District of Columbia. The Company has accepted service of this complaint, and the case is proceeding on the merits according to the schedule set by the Court in the related federal cases pending in the District of Columbia.

The Company and the other defendants filed motions to dismiss, and the Court denied the Company's motion to dismiss the damage claims brought on behalf of both a purported class of so-called "direct purchasers", generally consisting of distributors and large chain drug stores, and certain "direct purchasers" who have opted out of the class and sued the Company individually, but dismissed the claims of a class of consumers and so-called "indirect purchasers". The remainder of the federal action is proceeding on the merits through the normal legal process. The Court granted plaintiffs' motion for class certification on November 21, 2007 and certified a class of alleged "direct purchasers".

In December 2007, the Company and the other defendants moved for the Court to reconsider that decision and the Court denied that motion on November 3, 2008. On November 18, 2008, the Company and the other defendants filed a petition in the D.C. Circuit pursuant to Fed. R. Civ. P. 23(f), requesting leave to appeal from the District Court's grant of class certification. The D.C. Circuit denied the defendants leave to appeal on February 23, 2009. On March 25, 2009, the defendants filed a petition in the D.C. Circuit for rehearing of their petition requesting leave to appeal. This request was denied.

On December 23, 2008, the Company and the other defendants moved for summary judgment in the District Court to dismiss the entirety of the case. This motion was fully briefed in early June 2009 and a related hearing took place on October 7, 2009. A decision is pending. No trial date has been set.

The Company has now reached a settlement with the non-class or individual plaintiffs (the "Opt-outs"). Pursuant to the terms of the settlement the Company paid a settlement amount and made no admission of wrong doing. The Opt-out actions will be dismissed.

On April 4, 2008, a direct purchaser plaintiff filed a class action antitrust complaint in the U.S. District Court for the District of Massachusetts against the Company, GlaxoSmithKline plc, and SmithKline Beecham Inc. (the latter two of which are referred to here as "GSK") seeking damages and alleging that the Company and GSK took actions to improperly delay FDA approval for generic forms of Wellbutrin XL®. The direct purchaser plaintiff in the Massachusetts federal court lawsuit voluntarily dismissed its complaint on May 27, 2008, and shortly thereafter re-filed a virtually identical complaint in the U.S. District Court for the Eastern District of Pennsylvania. In late May and early June 2008, additional direct and indirect purchaser class actions were also filed against the Company and GSK in the Eastern District of Pennsylvania, all making similar allegations, and these complaints were subsequently consolidated into separate direct and indirect purchaser actions.



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### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

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#### 24. LEGAL PROCEEDINGS (Continued)

On September 10, 2008, the Company and GSK filed motions to dismiss both the direct and indirect purchaser actions. Those motions were heard on February 26, 2009. In the direct purchaser case, on March 13, 2009, the Court granted in part and denied in part the motions, dismissing the Sherman Act Section 2 monopolization claim that had been made by the direct purchasers against the Company. The Company and GSK answered the remaining claims in the direct purchaser case on April 16, 2009. On March 26, 2009, before an order issued on the motions to dismiss the indirect purchaser plaintiffs' claims, the indirect purchaser plaintiffs filed an amended complaint. The pending motions were therefore denied as moot, and new motions to dismiss the indirect purchaser plaintiffs' claims were filed on April 30, 2009. On July 30, 2009, the court dismissed all indirect purchaser claims except for the antitrust claims (limited as to Biovail's concerted actions) in California, Nevada, Tennessee and Wisconsin and the consumer protection claims of California and Florida.

Discovery has now commenced. Briefing on the issue of class certification is underway.

The Company believes that each of these complaints lacks merit and that the Company's challenged actions complied with all applicable laws and regulations, including federal and state antitrust laws, FDA regulations, U.S. patent law, and the Hatch-Waxman Act.

#### *Intellectual Property*

On February 3, 2006, the Company and Laboratoires Des Produits Éthiques Ethypharm instituted an action against Sandoz Canada Inc. ("Sandoz") and Andrx Group stating that certain patents applicable to Tiazac® have been infringed contrary to the Patent Act (Canada) by the defendants. In addition, the Company is seeking injunctive relief restraining the defendants from offering for sale and/or manufacturing in Canada any product covered by its patents and/or procuring the infringement of its patents.

The defendants served the Company with a Statement of Defence and Counterclaim on May 15, 2006. The Company delivered its reply on May 30, 2006, and pleadings closed in June 2006. Pursuant to an agreement by the parties, the claim and counter claim have been dismissed.

In August 2006, Sandoz brought an action against the Company under section 8 of the Canadian Patented Medicines Notice of Compliance Regulations ("PMNOC Regulations") demanding damages for having been kept off the market with its generic version of Tiazac® due to prohibition proceedings taken against Sandoz's predecessor RhoxalPharma Inc. by the Company under the PMNOC Regulations. The prohibition proceedings were subsequently dismissed in November of 2005. The Company defended against the action and discovery has been underway. The action was stayed pending a decision by the Supreme Court of Canada on whether to grant leave to appeal a decision on the measure of section 8 damages in another unrelated action. The Supreme Court of Canada has now denied leave. A trial will likely occur in the later half of 2010 or early 2011, depending on the court's schedule.

On November 7, 2008, Novopharm Limited (now Teva Canada) brought an action against the Company under section 8 of the PMNOC Regulations demanding damages for having been kept off the market with its generic version of Wellbutrin® SR due to prohibition proceedings taken against them by the Company under the PMNOC Regulations. The prohibition proceedings were subsequently dismissed in January 2005. The parties reached an agreement to resolve this matter. The action has now been dismissed.

On January 18, 2010, a Canadian Federal Court judge presiding over Biovail Corporation and Depomed, Inc. ("Depomed") v. Apotex Inc. ("Apotex") et al. issued a decision in a proceeding pursuant to the PMNOC Regulations in Canada to determine whether Apotex's allegations that a Depomed patent was invalid and/or not infringed was justified. This proceeding related to a Canadian application filed by Apotex to market a generic version of the 500mg formulation of Glumetza® (extended release metformin hydrochloride tablets) licensed in Canada by Depomed to Biovail Laboratories International SRL ("BLS"). Pursuant to the decision issued by the Court, Health Canada can authorize Apotex to market in Canada its generic version of the 500mg formulation of Glumetza®.

The decision, which was amended on January 20, 2010, found under Canadian law, that Apotex's allegation was justified that the Depomed Canadian patent at issue in the matter (No. 2,290,624) (the "624 Patent") is obvious. The judge found that the evidence presented by the parties was "evenly balanced" as to obviousness. The judge found in favour of Biovail and Depomed as to all other issues related to validity, enforceability and infringement of the '624 Patent under Canadian law. Apotex was authorized to market in Canada its generic version of 500 mg Glumetza® by Health Canada on February 4, 2010. This decision, however, did not find the patent invalid and does not preclude the filing of a subsequent patent infringement suit against Apotex. The Company and Depomed filed a Claim for infringement against Apotex in Canadian Federal Court on February 8, 2010.

Par Pharmaceuticals Companies, Inc. ("Par") filed an Abbreviated New Drug Application ("ANDA") with the FDA seeking approval to market Tramadol Hydrochloride Extended Release Tablets, 200 mg. On May 9, 2007, BLS, along with Purdue Pharma Products L.P. ("Purdue"), Napp Pharmaceutical Group Ltd. ("Napp") and Ortho-McNeil, Inc. ("OMI") filed a complaint in the U.S. District Court

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### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

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#### 24. LEGAL PROCEEDINGS (Continued)

for the District of Delaware alleging infringement of U.S. Patent No. 6,254,887 by the filing of that ANDA, thereby triggering a 30-month stay of FDA's approval of that application. Par has answered the complaint and asserted counterclaims of non-infringement and patent invalidity. The plaintiffs have denied the counterclaims. On May 22, 2007, Par informed the Company that it had filed a supplemental ANDA seeking approval to market Tramadol Hydrochloride Extended Release Tablets, 100 mg. On June 28, 2007, the same plaintiffs filed another complaint in the U.S. District Court for the District of Delaware alleging infringement of U.S. Patent No. 6,254,887 by the filing of that ANDA, thereby triggering a 30-month stay of FDA's approval of the 100 mg strength formulation.

On July 23, 2007, Par answered the second complaint and asserted counterclaims of non-infringement and patent invalidity. On September 24, 2007, Par informed the Company that it had filed another supplemental ANDA seeking approval to market Tramadol Hydrochloride Extended Release Tablets, 300 mg. On October 24, 2007, the same plaintiffs filed another complaint in the U.S. District Court for the District of Delaware alleging infringement of U.S. Patent No. 6,254,887 by the filing of that ANDA, thereby triggering a 30-month stay of FDA's approval of the 300 mg strength formulation. A Markman hearing claims construction ruling was released on November 4, 2008.

BLS filed, and was granted, a motion for dismissal of BLS from the cases. Subsequently, OMI has also been dismissed from the case. The matter continues between the plaintiff and Par. BLS's and OMI's dismissals from the case are not expected to substantively impact the proceedings.

The hearing in this matter commenced and concluded in April 2009. Closing submissions were completed on June 15, 2009. On August 14, 2009, the District Court found in favour of Par, holding that, while Par infringed the patent claims, the patent claims at issue were invalid (there cannot be infringement of invalid claims). Purdue filed an appeal of the decision with the Court of Appeals for the Federal Circuit on September 3, 2009. OMI also appealed its dismissal at the same time, but the appeal has been withdrawn. On November 16, 2009 Par announced that it had received final approval for its 100 mg and 200 mg products and began marketing the drug. Concurrently, Patriot Pharmaceuticals LLC ("Patriot") (a wholly owned subsidiary of Ortho-McNeil-Janssen Pharmaceuticals, Inc.), launched the Company's authorized generic formulation of these two strengths of Ultram® ER.

On July 2, 2008, the Company received a Notice of Paragraph IV Certification for Tramadol Hydrochloride Extended release Tablets, 100 mg, a generic version of Ultram® ER, from Impax Laboratories, Inc ("Impax"). BLS filed suit along with Purdue, Napp and OMI in the U.S. District Court for the District of Delaware pursuant to the provisions of the Hatch-Waxman Act. As a result, FDA approval of Impax's generic product has been automatically stayed for 30 months until January 2, 2011. BLS filed, and was granted, a motion for dismissal from the case. OMI has also been dismissed from this case. This matter is continuing between Par and Purdue and is currently in discovery.

On September 23, 2008, the Company received a Notice of Paragraph IV Certification for Tramadol Hydrochloride Extended release Tablets, 200 mg and 300 mg, generic versions of Ultram® ER, from Impax. Purdue, Napp and OMI filed a complaint in the U.S. District Court for the District of Delaware alleging infringement of U.S. Patent No. 6,254,887 by the filing of that ANDA, thereby triggering a 30-month stay of the FDA's approval of that application. OMI has been dismissed from this case. The matter is proceeding in the ordinary course between Impax and Purdue.

On or about July 22, 2009 the Company received a Notice of Paragraph IV Certification from Paddock Laboratories Inc. ("Paddock") for tramadol hydrochloride extended release tablets in 100 mg, 200 mg and 300 mg dosage strengths, a generic version of Ultram® ER. Purdue filed substantially similar suits against Paddock on September 4, 2009 in the U.S. District Court for the District of Minnesota, and in the U.S. District Court for the District of Delaware thereby triggering a 30-month stay against the approval of Paddock's ANDA. Purdue has requested the Court to stay the litigation, pending resolution of its appeal in the Par case. The Company is not a party to this litigation.

The Company has also received a Notice of Paragraph IV Certification dated and mailed on September 15, 2009 from Cipher Pharmaceuticals, Inc. ("Cipher"), who have filed an NDA pursuant to Section 505(b)(2) of the Federal Food, Drug and Cosmetic Act for tramadol hydrochloride extended release tablets in 100, 200 and 300 mg dosage strengths, a generic version of Ultram® ER. Purdue filed suit against Cipher in the U.S. District Court for the Eastern District of Virginia on October 30, 2009, thereby triggering a 30-month stay. Purdue has indicated that it will seek a stay of its case against Cipher, pending resolution of its appeal in the Par case. The Company is not a party to this litigation.

Purdue has also requested a stay of the actions pending a decision from the Panel on Multidistrict Litigation ("MDL") to create an MDL for the various Ultram® ER cases that have been filed. Purdue is seeking to consolidate the cases.

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**24. LEGAL PROCEEDINGS (Continued)**

The Company received a further Notice of Paragraph IV Certification dated and mailed on December 8, 2009 from Lupin Ltd. (“Lupin”) for Tramadol Hydrochloride Extended Release tablets in 100, 200 and 300mg dosages. Purdue filed suit against Lupin in the U.S. District Court for the District of Delaware on January 21, 2010. The Company is not a party to this litigation.

BLS filed an ANDA with the FDA seeking approval to market venlafaxine hydrochloride extended release capsules equivalent to the 37.5, 75 and 150 mg doses of Effexor® XR. On June 26, 2008, Wyeth Pharmaceuticals Inc. (“Wyeth”) filed a complaint against the Company, Biovail Technologies Ltd. and BLS in the U.S. District Court for the District of Delaware alleging infringement of U.S. Patent Nos. 6,274,171 B1, 6,403,120 and 6,419,958 B2 by the filing of that ANDA, thereby triggering a 30-month stay of the FDA’s approval of that application. On September 25, 2008 the Company filed its Answer and Affirmative Defenses along with counterclaims of non-infringement and invalidity. The Company and Wyeth executed a settlement agreement in November, 2009 and, subsequently, BLS and Wyeth have executed a license agreement as of January 28, 2010 whereby BLS can manufacture, import and sell venlafaxine hydrochloride extended release capsules with an effective date expected to be on or about June 1, 2011, subject to earlier launch in limited circumstances, but in no event earlier than January 1, 2011. BLS will pay Wyeth a royalty fee on the sale of its venlafaxine hydrochloride extended release capsules under the license, computed as a percentage of net sales, as defined in the license agreement. The license royalty fee term begins with the license effective date and ends on the expiration of the Wyeth patents covered by the license agreement. BLS is solely responsible for manufacturing and marketing its venlafaxine hydrochloride extended release capsules. Through December 31, 2009, BLS has not commenced sales of its venlafaxine hydrochloride extended release capsules.

On or about June 26, 2008, BLS received Notices of Paragraph IV Certification from Sun Pharmaceutical Industries, Ltd., India (“Sun India”) for diltiazem hydrochloride extended release capsules, 120 mg, 180 mg, 240 mg, 300 mg, and 360 mg strengths, a generic version of Cardizem® CD. On August 8, 2008, BLS filed suit against Sun India in the U.S. District Court of New Jersey alleging patent infringement of U.S. Patent Nos. 5,470,584, 5,286,497 and 5,439,689 pursuant to the provisions of the Hatch-Waxman Act. BLS has also sought declaratory judgment of infringement for all three patents. These suits are expected to result in a 30-month stay of the FDA approval of the 120 mg, 180 mg, 240 mg and 300 mg strengths. The patents-in-suit were listed in the FDA’s Orange Book against the 360 mg strength after the filing of the complaint in this action. On September 30, 2008, Sun India delivered its Answer and Counterclaim, which include declarations of non-infringement, invalidity and unenforceability as well as certain antitrust allegations. This case is currently stayed, pending settlement discussions.

BLS filed an ANDA with the FDA seeking approval to market Fenofibrate Tablets in 48 mg and 145 mg dosage sizes. On November 3, 2008, Abbott and Laboratoires Fournier S.A. filed a complaint against Biovail Corporation and BLS in the U.S. District Court for the Northern District of Illinois alleging infringement of U.S. Patent Nos. 6,277,405, 7,037,529, and 7,041,319 by the filing of the ANDA, thereby triggering a 30-month stay of FDA’s approval of that application. This matter has now been transferred to the District of New Jersey. On November 3, 2008, Elan Pharma International Ltd. and Fournier Laboratories Ireland Ltd. also filed a complaint against Biovail Corporation and BLS in the U.S. District Court for the District of New Jersey alleging infringement of U.S. Patent Nos. 5,145,684, 7,276,249 and 7,320,802 by the filing of the ANDA. The Answers and Counterclaims of Biovail Corporation and BLS have been filed. These cases are proceeding in the ordinary course. No trial date has yet been set.

On or about December 1, 2008, the FDA accepted an ANDA filed by BLS seeking approval to market generic formulations of the 200 mg, 300 mg and 400 mg strengths of quetiapine fumarate extended release tablets (sold under the brand name Seroquel® XR by AstraZeneca Pharmaceuticals LP (“AstraZeneca”). On January 9, 2009, AstraZeneca and AstraZeneca UK Limited filed a complaint against Biovail Corporation, BLS, and BTA Pharmaceuticals, Inc. in the U.S. District Court for the District New Jersey alleging infringement of U.S. Patent Nos. 4,879,288 (the “‘288 Patent”) and 5,948,437 (the “‘437 Patent”) by the filing of that ANDA, thereby triggering a 30-month stay of the FDA’s approval of that application. Answers and Counterclaims have been filed. Discovery relating to invalidity of the ‘288 Patent has been stayed pending a decision from the Court of Appeals for the Federal Circuit in a related case not involving the Company. That case has now been resolved and the Company is currently reviewing documents. The case, including discovery on the ‘437 Patent, is proceeding in the ordinary course. No Markman hearing to determine claim scope and meaning nor a trial date have yet been set.

On or about July 3, 2009, BLS received a Notice from Cary Pharmaceuticals Inc. (“Cary”), related to Cary’s NDA pursuant to Section 505(B)(2) for bupropion hydrochloride 450 mg extended-release tablets. The Certification references U.S. Patent No. 6,096,341, which is listed in the FDA’s Orange Book for the 150 mg and 300 mg dosage strength of Wellbutrin XL®, and No. 6,143,327, which is currently listed in the FDA’s Orange Book for the 150 mg dosage strength of Wellbutrin XL®. On August 13, 2009, the Company filed suit in the U.S. District Court for the District of Delaware, thereby triggering a 30-month stay of the approval of Cary’s NDA. The Complaint was served on Cary on August 24, 2009 and Cary served its Answer on September 24, 2009. Following a scheduling conference with the judge in mid-January 2010, a Markman hearing has been scheduled for late May 2010, with fact and expert discovery to follow. The case is proceeding in the ordinary course. No trial date has yet been set.

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#### 24. LEGAL PROCEEDINGS (Continued)

On or about January 5, 2010, BLS received a Notice of Paragraph IV Certification dated January 4, 2010 from Watson Laboratories, Inc. - Florida ("Watson"), related to Watson's ANDA filing for Bupropion Hydrobromide Extended-release Tablets, 174 mg and 348 mg, which correspond to the Company's Aplenzin® Extended-release Tablets 174 mg and 348 mg products. Watson asserted that U.S. Patent Nos. 7,241,805, 7,569,610, 7,572,935 and 7,585,897 which are listed in the FDA's Orange Book for Aplenzin® are invalid and/or not infringed. BLS subsequently received from Watson a second Notice of Paragraph IV Certification for U.S. Patent Nos 7,645,802 and 7,649,019 which were listed in the FDA's Orange Book after Watson's initial certification. Watson has alleged these patents are not infringed and/or invalid. The Company filed suit pursuant to the Hatch-Waxman Act against Watson on February 18, 2010 in the U.S. District Court for the District of Delaware and on February 19, 2010 in the U.S. District Court for the Southern District of Florida thereby triggering a 30-month stay of the approval of Watson's ANDA.

On or about January 27, 2010, BLS received a Notice of Paragraph IV Certification from Paddock dated January 22, 2010, relating to Paddock's ANDA filing for Bupropion Hydrobromide Extended-release Tablets, 174 mg and 522 mg, which correspond to the Company's Aplenzin® Extended-release Tablets 174 mg and 522 mg products. Paddock has certified that the six patents currently listed in the FDA's Orange Book for Aplenzin® plus an additional unlisted BLS patent relating to bupropion hydrobromide are not infringed and/or invalid. The Company will be filing suit against Paddock no later than March 8, 2010.

#### *Biovail Action Against S.A.C. and Others*

On February 22, 2006, the Company filed a lawsuit in Superior Court, Essex County, New Jersey, seeking \$4.6 billion in damages from 22 defendants (the "S.A.C. Complaint"). The S.A.C. Complaint alleges that the defendants participated in a stock market manipulation scheme that negatively affected the market price of the Company's common shares and alleges violations of various state laws, including the New Jersey Racketeer Influenced and Corrupt Organizations Act.

The original defendants included: S.A.C. Capital Management, LLC, S.A.C. Capital Advisors, LLC, S.A.C. Capital Associates, LLC, S.A.C. Healthco Funds, LLC, Sigma Capital Management, LLC, Steven A. Cohen, Arthur Cohen, Joseph Healey, Timothy McCarthy, David Maris, Gradient Analytics, Inc., Camelback Research Alliance, Inc., James Carr Bettis, Donn Vickrey, Pinnacle Investment Advisors, LLC, Helios Equity Fund, LLC, Hallmark Funds, Gerson Lehrman Group, Gerson Lehrman Group Brokerage Services, LLC, Thomas Lehrman, Patrick Duff, and James Lyle. The defendant Hallmark Funds was voluntarily dismissed from the action by the Company.

On January 26, 2007, the Company was found to have breached the terms of a protective order in a securities class action then proceeding against it and certain of its former officers in New York Federal Court (the "New York class action"). The New York class action was settled in December 2008. Specifically, the Company was found to have breached the terms of the protective order by using documents obtained from a non-party in the S.A.C. Complaint. The Court ordered that the Company and its counsel return copies of the documents and redact the S.A.C. Complaint accordingly. On February 22, 2007, the Company filed an Amended Complaint. On September 10, 2007, the Company resolved a motion for sanctions previously pending in the New York class action in connection with the breach of the protective order referred to above. As part of that resolution, the Company dismissed defendant Maris from this action and filed a First Amended Complaint on October 3, 2007.

The case was subsequently stayed by an order of the Trial Judge, dated March 16, 2007, pending disposition of certain issues in a factually similar shareholder class action that did not involve the Company (the "New Jersey shareholder class action").

The stay of this action imposed by the Court's March 16, 2007 Order was lifted on March 20, 2009. On April 17, 2009, the Company filed a motion for leave to file a Second Amended Complaint, amending the allegations to assert trade libel and conspiracy, and seeking damages in excess of \$100.0 million. The proposed Second Amended Complaint names as defendants only the S.A.C. related entities, Timothy McCarthy and Gradient Analytics, LLC (formerly Camelback Research Alliance Inc.). All other remaining defendants were dismissed from the lawsuit.

The named defendants opposed the filing of the Second Amended Complaint and moved to dismiss it. The motion was heard on July 10, 2009. A decision was subsequently rendered in the defendants' favour on August 20, 2009. As a result, the matter was dismissed.

On February 17, 2010 SAC Capital Advisors, LLC commenced an action against the Company in the United States District Court for the District of Connecticut. The complaint alleges malicious prosecution related to the Company's complaint against it. A factually similar complaint was filed the same day by Gradient Analytics, Inc., Donn Vickery and James Carleton Carr Bettis in the United States Court for the District of Arizona. The Company believes that these complaints are without merit and will defend once served.

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#### 24. LEGAL PROCEEDINGS (Continued)

##### *General Civil Actions*

Complaints have been filed by the City of New York, the State of Alabama, the State of Mississippi and a number of counties within the State of New York, claiming that the Company, and numerous other pharmaceutical companies, made fraudulent misstatements concerning the “average wholesale price” of their prescription drugs, resulting in alleged overpayments by the plaintiffs for pharmaceutical products sold by the companies.

The City of New York and plaintiffs for all the counties in New York (other than Erie, Oswego and Schenectady) have voluntarily dismissed the Company and certain others of the named defendants on a without prejudice basis. Similarly, the State of Mississippi has voluntarily dismissed its claim against the Company and a number of defendants on a without prejudice basis.

In the case brought by the State of Alabama, the Company has answered the State’s Amended Complaint and discovery is ongoing. On October 16, 2009, the Supreme Court of Alabama issued an opinion reversing judgments in favour of the State in the first three cases that were tried against co-defendant companies. The Supreme Court also rendered judgment in favour of those defendants, finding that the State’s fraud-based theories failed as a matter of law. The Company’s case is presently scheduled to proceed to trial in January 2011.

The cases brought by the New York State counties of Oswego, Schenectady and Erie, each of which was originally brought in New York State court, were removed by defendants to Federal Court on October 11, 2006. The Company answered the complaint in each case after the removal to Federal Court. The cases were subsequently remanded and, following the remand, the New York State Litigation Coordinating Panel granted the defendants’ application to coordinate the three actions for pretrial purposes in Erie County. Discovery is ongoing with trial presently scheduled to commence in February 2011.

On December 15, 2009, Biovail was served with a Seventh Amended Complaint under the False Claims Act in an action captioned United States of America, ex rel. Constance A. Conrad v. Actavis Mid-Atlantic, LLC, et al., United States District Court, District of Massachusetts. This case was originally filed in 2002 and maintained under seal until shortly before Biovail was served. Twenty other companies are named as defendants. In the Seventh Amended Complaint, Conrad alleges that various formulations of Rondec, a product formerly owned by Biovail, was not properly approved by the FDA and therefore not a “Covered Outpatient Drug” within the meaning of the Medicaid Rebate Statute. As such, Conrad alleges that Rondec was not eligible for reimbursement by federal healthcare programs, including Medicaid. Conrad seeks treble damages and civil penalties under the False Claims Act. According to the briefing schedule set by the court, motions to dismiss are due on or before April 19, 2010.

On May 6, 2008, BLS commenced an arbitration under Financial Industry Regulatory Authority rules against an investment institution at which it held a cash management account seeking \$26.8 million in compensatory damages and \$53.6 million in punitive damages. The Statement of Claim alleged that the investment institution, as non-discretionary manager of BLS’s cash management account, fraudulently or negligently, and in breach of the parties’ customer agreement, invested BLS’s assets in auction rate securities, which were not among BLS’s approved investments. The investment institution subsequently delivered its Answer and Response. A hearing was scheduled to commence on July 8, 2009. The matter has now been settled as between the parties for payment to BLS in the amount of \$22.0 million. BLS continues to hold the auction rate securities.

#### 25. COMMITMENTS AND CONTINGENCIES

##### *Operating Lease Commitments*

The Company leases certain facilities, vehicles and equipment under operating leases. Rental expense amounted to \$4,832,000, \$4,928,000 and \$4,088,000 in 2009, 2008 and 2007, respectively.

Minimum future rental payments under non-cancelable operating leases (net of sublease rentals) for the years ending December 31 are as follows:

|                                      |                 |
|--------------------------------------|-----------------|
| 2010                                 | \$ 7,839        |
| 2011                                 | 6,974           |
| 2012                                 | 7,014           |
| 2013                                 | 5,562           |
| 2014                                 | 5,360           |
| Thereafter                           | 27,226          |
| Total minimum future rental payments | <u>\$59,975</u> |



**BIOVAIL CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**  
**In accordance with United States Generally Accepted Accounting Principles**  
**(All tabular dollar amounts expressed in thousands of U.S. dollars, except per share data)**

**25. COMMITMENTS AND CONTINGENCIES (Continued)**

**Other Commitments**

Commitments related to capital expenditures totaled approximately \$2,300,000 at December 31, 2009.

Net sales of certain products of the Company are subject to royalties payable to third parties. Royalty expense recorded in cost of goods sold amounted to \$24,230,000, \$11,829,000 and \$15,024,000 in 2009, 2008 and 2007, respectively.

Under certain research and development agreements, the Company may be required to make payments contingent upon the achievement of specific developmental, regulatory, or commercial milestones. As described in notes 4 and 27, the Company may be required to make milestone payments of up to \$775,000,000 in the aggregate pursuant to the terms of the collaboration and license agreements for pimavanserin, fipamezole, GDNF, and Staccato® loxapine. Because it is uncertain if and when these milestones will be achieved, the Company did not accrue for any of these payments at December 31, 2009 or 2008.

**Product Liability Insurance**

Prior to July 1, 2009, the Company was self-insured for up to the first \$20,000,000 of costs incurred relating to product liability claims arising during an annual policy period. The Company provided for unsettled reported losses and losses incurred but not reported based on an independent review of all claims made against the Company. Accruals for estimated losses related to the period of self-insurance were not material at December 31, 2009 or 2008. Effective July 1, 2009, the Company's entire product liability coverage is provided by third-party insurers.

**Indemnification Provisions**

In the normal course of business, the Company enters into agreements that include indemnification provisions for product liability and other matters. These provisions are generally subject to maximum amounts, specified claim periods, and other conditions and limits. At December 31, 2009 or 2008, no material amounts were accrued for the Company's obligations under these indemnification provisions. In addition, the Company is obligated to indemnify its officers and directors in respect of any legal claims or actions initiated against them in their capacity as officers and directors of the Company in accordance with applicable law. Pursuant to such indemnities, the Company is indemnifying certain former officers and directors in respect of certain litigation and regulatory matters (as described in note 24).

**26. SEGMENT INFORMATION**

The Company operates in one operating segment — pharmaceutical products. Management assesses performance and makes resource decisions based on the consolidated results of operations of this operating segment.

**Revenue by Therapeutic Area**

The following table displays revenue by therapeutic area:

|                                          | <u>2009</u>      | <u>2008</u>      | <u>2007</u>      |
|------------------------------------------|------------------|------------------|------------------|
| <b>Product sales</b>                     |                  |                  |                  |
| CNS <sup>(1)</sup> . . . . .             | \$299,430        | \$186,007        | \$269,828        |
| Cardiovascular <sup>(2)</sup> . . . . .  | 284,668          | 292,371          | 296,907          |
| Antiviral <sup>(3)</sup> . . . . .       | 146,267          | 150,613          | 147,120          |
| Pain management <sup>(4)</sup> . . . . . | 58,661           | 85,557           | 87,191           |
|                                          | <u>789,026</u>   | <u>714,548</u>   | <u>801,046</u>   |
| Research and development . . . . .       | 14,148           | 24,356           | 23,828           |
| Royalty and other . . . . .              | 17,256           | 18,274           | 17,944           |
|                                          | <u>\$820,430</u> | <u>\$757,178</u> | <u>\$842,818</u> |

(1) CNS products consist of Wellbutrin®, Aplenzin™, Zyban®, Ativan®, Xenazine®, and Nitoman®.

(2) Cardiovascular products include Cardizem®, Tiazac®, Vasotec®, Vaseretic®, Isordil®, Glumetza®, and bioequivalent versions of Cardizem® CD, Procardia XL, and Adalat CC.



**BIOVAIL CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**  
**In accordance with United States Generally Accepted Accounting Principles**  
**(All tabular dollar amounts expressed in thousands of U.S. dollars, except per share data)**

**26. SEGMENT INFORMATION (Continued)**

- (3) Antiviral products consist of Zovirax®.  
(4) Pain management products consist of Ultram® and Ralivia™.

**Geographic Information**

The following table displays revenue and long-lived assets by geographic area:

|                                | Revenue <sup>(1)</sup> |                  |                  | Long-Lived Assets <sup>(2)</sup> |                  |                  |
|--------------------------------|------------------------|------------------|------------------|----------------------------------|------------------|------------------|
|                                | 2009                   | 2008             | 2007             | 2009                             | 2008             | 2007             |
| Canada . . . . .               | \$ 94,142              | \$ 88,952        | \$ 75,051        | \$ 83,471                        | \$107,918        | \$139,279        |
| U.S. and Puerto Rico . . . . . | 710,214                | 656,490          | 755,484          | 11,067                           | 31,377           | 77,379           |
| Barbados . . . . .             | —                      | —                | —                | 9,310                            | 8,974            | 4,703            |
| Other countries . . . . .      | 16,074                 | 11,736           | 12,283           | —                                | —                | 17,096           |
|                                | <u>\$820,430</u>       | <u>\$757,178</u> | <u>\$842,818</u> | <u>\$103,848</u>                 | <u>\$148,269</u> | <u>\$238,457</u> |

(1) Revenue is attributed to countries based on the location of the customer.

(2) Long-lived assets consist of property, plant and equipment, net of accumulated depreciation. Property, plant and equipment is attributed to countries based on physical location.

**Major Customers**

The following table identifies external customers that accounted for 10% or more of the Company's total revenue:

|                                         | 2009      | 2008       | 2007       |
|-----------------------------------------|-----------|------------|------------|
| McKesson Corporation . . . . .          | 25%       | 22%        | 20%        |
| Cardinal Health, Inc. . . . .           | 21%       | 16%        | 10%        |
| AmerisourceBergen Corporation . . . . . | 10%       | 7%         | 6%         |
| Teva . . . . .                          | 7%        | 11%        | 11%        |
| PriCara . . . . .                       | 5%        | 11%        | 10%        |
| GSK . . . . .                           | <u>4%</u> | <u>16%</u> | <u>25%</u> |

**27. SUBSEQUENT EVENT**

The Company has evaluated subsequent events for disclosure in these consolidated financial statements through February 26, 2010, the date on which the financial statements were issued.

**Staccato® Loxapine**

On February 9, 2010, the Company entered into a collaboration and license agreement with Alexza Pharmaceuticals, Inc. ("Alexza") to acquire the U.S. and Canadian development and commercialization rights to AZ-004 for the treatment of psychiatric and/or neurological indications and the symptoms associated with these indications, including the initial indication of treating agitation in schizophrenia and bipolar patients. AZ-004 combines Alexza's proprietary Staccato® drug-delivery system with the antipsychotic drug loxapine. In December 2009, Alexza submitted an NDA to the FDA for Staccato® loxapine. The FDA has accepted the NDA for filing and has indicated a Prescription Drug User Fee Act goal date of October 11, 2010.

Under the terms of the agreement, the Company paid an upfront fee of \$40,000,000, and could pay up to \$90,000,000 in potential milestones in connection with the initial indication contingent on the successful approval of the first AZ-004 NDA, successful commercial manufacturing scale-up, and the first commercial sale on an inpatient and on an outpatient basis, which may require the successful completion of additional clinical trials, regulatory submission, and/or approval of a supplemental NDA. The Company will also make tiered, royalty payments of 10% to 25% on net commercial sales of Staccato® loxapine. Alexza will supply Staccato® loxapine to the Company for commercialization, and will receive a per-unit transfer price, based on annual product volume.

This acquisition will be accounted for as a purchase of IPR&D intangible assets with no alternative future use. Accordingly, the \$40,000,000 upfront payment, together with any acquisition costs, will be charged to research and development expenses at the acquisition date.

**CONFIDENTIAL TREATMENT REQUESTED:**

*Portions of this Exhibit have been redacted pursuant to a request for confidential treatment under Rule 24b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended. Such redacted portions have been replaced with “{\*\*\*}” in this Exhibit. An unredacted version of this document has been filed separately with the Securities and Exchange Commission along with the request for confidential treatment.*

**AGREEMENT AND PLAN OF MERGER**

**by and among**

**BIOVAIL AMERICAS CORP.,**

**PRESTWICK HOLDINGS, INC.,**

**PRESTWICK PHARMACEUTICALS, INC.,**

**and**

**SOFINNOVA MANAGEMENT V 2005, LLC**

**and**

**EDGAR G. ENGLEMAN, M.D.,  
as the STOCKHOLDER REPRESENTATIVES**

**dated as of September 16, 2008**

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## **AGREEMENT AND PLAN OF MERGER**

**THIS AGREEMENT AND PLAN OF MERGER** (this “Agreement”), is dated as of September 16, 2008, by and among Biovail Americas Corp., a Delaware corporation (“Parent”), Prestwick Holdings, Inc., a Delaware corporation and a wholly-owned subsidiary of Parent (“Merger Sub”), Prestwick Pharmaceuticals, Inc., a Delaware corporation (the “Company”), and Sofinnova Management V 2005, LLC, a Delaware limited liability company, and Edgar G. Engleman, M.D., as Stockholder Representatives (the “Stockholder Representatives”).

### **RECITALS**

A. Upon the terms and subject to the conditions of this Agreement and in accordance with the Delaware General Corporation Law (the “DGCL”), Parent and the Company will enter into a business combination transaction pursuant to which Merger Sub will merge with and into the Company (the “Merger”).

B. The Boards of Directors of each of Parent and Merger Sub have (i) approved and declared advisable this Agreement, the Merger and the other Transactions (as defined below) and (ii) determined that the Merger is in the best interests of Parent.

C. The Board of Directors of the Company has (i) approved and declared advisable this Agreement, the Merger and the other Transactions, (ii) determined that the Merger is in the best interests of the Company and its Stockholders, and (iii) determined, upon the terms and subject to the conditions of this Agreement, to recommend that the holders of Company Capital Stock (as defined below) on the record date for the Transactions adopt this Agreement.

D. Immediately following execution of this Agreement by the parties hereto, this Agreement will be submitted to the holders of the Company Capital Stock on the record date for the Transaction for adoption by written consent in lieu of a meeting in accordance with the requirements of the DGCL and Amended and Restated Certificate of Incorporation and the Amended and Restated Bylaws and in a form approved by Parent and the Company (such written consent, the “Written Consent”).

E. On the date of this Agreement (and without giving effect to the Redemption), the authorized capital stock of the Company consists of 166,700,000 shares of common stock, par value \$0.001 per share, of the Company (the “Company Common Stock”), and 101,718,929 shares of preferred stock of the Company. Of the authorized preferred stock, (i) 10,065,999 shares are designated Series A-1 Preferred Stock, par value \$0.001 per share, of the Company (the “Company Series A-1 Preferred Stock”); (ii) 13,030,570 shares are designated A-2 Preferred Stock, par value \$0.001 per share, of the Company (the “Company Series A-2 Preferred Stock” and, together with the Company Series A-1 Preferred Stock, the “Company Series A Preferred Stock”); (iii) 27,482,730 shares are designated Series B Preferred Stock, par value \$0.001 per share, of the Company (the “Company Series B Preferred Stock”); (iv) 29,711,059 shares are designated Series C-1 Preferred Stock, par value \$0.001 per share, of the Company (the “Company Series C-1 Preferred Stock”); and (v) 21,428,571 shares are designated Series C-2 Preferred Stock, par value \$0.001 per share, of the Company (the “Company Series C-2 Preferred Stock” and, together with the Company Series C-1 Preferred Stock, the “Company

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Series C Preferred Stock”; and the Company Series A Preferred Stock, the Company Series B Preferred Stock and the Company Series C Preferred Stock, the “Company Preferred Stock”; and the Company Common Stock together with the Company Preferred Stock, the “Company Capital Stock”).

F. Pursuant to the Merger, as of the Effective Time (as defined below) each outstanding share of Company Capital Stock and Warrant (as defined below) shall either (i) be converted into the right to receive the cash and other consideration at the rate determined in this Agreement or (ii) terminated as provided for in this Agreement.

H. On or prior to the date hereof, the Company has delivered to each Optionholder (a) an Option Notice, notifying such Optionholders that (i) any unexercised options shall terminate at Closing pursuant to the Option Plan and (ii) any Optionholder that elects to exercise Options prior to Closing must pay to the Company the full exercise price in cash upon such exercise and (b) and the Company has given each Optionholder any notice required under the Option Plan to exercise or terminate the Option pursuant to the Option Plan.

I. As part of the Transactions, the Company shall, on the date hereof, distribute Eighty-Five Million Dollars (\$85,000,000) pro rata to holders of Company Preferred Stock in pro rata redemption of certain shares of their Company Preferred Stock (the “Redemption”), which, together with the Merger shall terminate each such stockholder’s interest in the Company.

**AGREEMENTS**

In consideration of the mutual covenants of the Parties (as defined below) as hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Parties hereby agree as follows:

**ARTICLE 1  
DEFINITIONS**

In addition to the capitalized terms defined elsewhere in this Agreement, the following capitalized terms shall have the meanings specified in this Article 1.

“Adjusted Aggregate Preferred Liquidation Preference” means the sum of the Series Preferred Liquidation Preference (as defined in the Amended and Restated Certificate of Incorporation) for all shares of Company Preferred Stock outstanding as of immediately prior to the Effective Time minus the Excess Severance Obligations. For purposes of clarity, the parties acknowledge and agree that the Adjusted Aggregate Preferred Liquidation Preference is set forth in the Aggregate Consideration Allocation Schedule.

“Affiliate” means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by or is under common control with such Person. As used herein, the term “control” means: (i) the power to vote at least ten percent (10%) of the voting power of a Person, or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such a Person, whether through ownership of voting securities, by contract or otherwise. In addition, each Stockholder, each Person who is a director or officer of

the Company or any Subsidiary thereof, and each Affiliate of any of the foregoing, shall be deemed an “Affiliate” of the Company.

“Affiliated Group” means an “affiliated group” as defined in Section 1504 of the Code (or analogous combined, consolidated or unitary group defined under state, local or foreign Income Tax Law).

“Aggregate Common Escrow Consideration” means the greater of (x) zero and (y) the sum of the Escrow Amount and exercise price of all Eligible Warrants and Eligible Options (solely to the extent such exercise price was not taken into account in calculating the portion of the Aggregate Initial Consideration Amount payable to each holder of an Eligible Warrant or n Eligible Option) minus the Aggregate Preferred Escrow Consideration.

“Aggregate Initial Consideration Amount” means an amount equal to (i) a cash payment of Thirty Nine Million Seven Hundred Thousand Dollars (\$39,700,000), minus (ii) the sum of (A) the aggregate amount of Nonpermitted Indebtedness outstanding as of the Closing, and (B) the aggregate amount of the Company Expenses, plus or minus, as the case may be, (iii) the Estimated Net Working Capital Adjustment, if any. For purposes of clarity, the parties acknowledge and agree that the Aggregate Initial Consideration Amount is set forth in the Aggregate Consideration Allocation Schedule.

“Aggregate Preferred Initial Cash Consideration” means the sum of (i) the product of (A) the Per Share Series A Initial Cash Consideration and (B) the number of shares of Company Series A Preferred Stock that are outstanding as of immediately prior to the Effective Time, plus (ii) the product of (A) the Per Share Series B Initial Cash Consideration, and (B) the number of shares of Company Series B Preferred Stock that are outstanding as of immediately prior to the Effective Time, plus (iii) the product of (A) the Per Share Series C Initial Cash Consideration, and (B) the number of shares of Company Series C Preferred Stock that are outstanding as of immediately prior to the Effective Time.

“Aggregate Preferred Escrow Consideration” means the greater of (x) zero and (y) the lesser of (1) the Escrow Amount and (2) the difference between the Aggregate Preferred Liquidation Preference minus the Aggregate Preferred Initial Cash Consideration.

“Amended and Restated Bylaws” means the bylaws of the Company as in effect immediately prior to the Closing.

“Amended and Restated Certificate of Incorporation” means the certificate of incorporation of the Company as in effect immediately prior to the Closing.

“Books and Records” means all books and records of the Company and the Subsidiaries thereof as of the Effective Time, including, but not limited to, all records, files, papers, sales and purchase correspondence, books of account and financial and employment records, whether in tangible or digital form.

“Business” shall mean the business that the Company and its Subsidiaries are currently engaged in.

“Business Day” means a day other than Saturday, Sunday or a public holiday on which banks are closed under the laws of the State of New York.

“Cambridge” means Cambridge Laboratories (Ireland) Limited, a company incorporated under the laws of Ireland.

“Cambridge Agreement” means that certain Second Amended and Restated Agreement, dated as of November 18, 2005, by and between Cambridge and the Company, as amended from time to time and that certain First Amended and Restated Agreement for Canadian Rights to Nitoman, dated November 18, 2005, by and between Cambridge and the Company, as amended from time to time.

“Cambridge Amendment” means that certain agreement with Cambridge, amending certain terms of the Cambridge Agreement attached hereto as Exhibit A-1.

“Cambridge Waiver” means that certain waiver with Cambridge, with respect to the Cambridge Agreement attached hereto as Exhibit A-2.

“Code” means the Internal Revenue Code of 1986, as amended.

“Common Escrow Distribution” means any distribution to the Stockholders, Warrantholders and Eligible Optionholders of the Aggregate Common Escrow Consideration pursuant to this Agreement and the Escrow Agreement.

“Company Expenses” means the liabilities, costs, fees and expenses incurred by the Company and its Subsidiaries in connection with the Transactions at or prior to the Closing, including, but not limited to, (i) the fees and expenses of the Company and its Subsidiaries to: (A) O’Melveny & Myers LLP and other legal counsel for legal services rendered to the Company and its Subsidiaries (but not Morgan Lewis and Bockius LLP or other counsel to Parent), (B) Ernst & Young LLP for all tax, accounting, valuation and other services rendered to the Company and its Subsidiaries, (C) Morgan Stanley & Co. Incorporated for services rendered to the Company and its Subsidiaries, and (D) the Exchange Agent for exchange agent services rendered to the Company (including with respect to fees to be paid after Closing under the Exchange Agent Agreement); (ii) {\*\*\*}† of any fees and expenses to the Escrow Agent which are due at or prior to the Closing; (iii) Excess Severance Obligations; (iv) all Transfer Taxes incurred in connection with entering into or executing this Agreement or the consummation of the Merger; (v) any costs, fees and expenses incurred in connection with obtaining any consent or waiver required in connection with the Transactions; and (vi) the cost of the D&O Tail. For the avoidance of doubt, Company Expenses shall not include up to {\*\*\*}† in the aggregate of (i) costs (including without limitation, costs of legal counsel of the Company) relating to the Redemption and (ii) costs for which Parent has separately agreed in writing to reimburse the Company.

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† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

“Company Material Adverse Effect” means any material adverse effect upon the business, assets, condition (financial or otherwise), operations or operating results of the Company and its Subsidiaries taken as a whole; *provided, however*, that no Company Material Adverse Effect shall be attributable to (i) any failure by the Company and its Subsidiaries to meet internal projections or forecasts or revenue or earnings predictions for any period (provided that any material adverse effect that may have caused or contributed to such failure to meet such projections, forecasts or predictions shall not be excluded); (ii) any conditions affecting the industry in which the Company and its Subsidiaries participate as a whole, the United States economy as a whole or the capital markets in general or the markets in which the Company and its Subsidiaries operate; (iii) any change in accounting requirements or principles or any change in applicable Laws, rules or regulations or the implementation or interpretation thereof; (iv) the execution and delivery of this Agreement; or (v) any action taken by the Company at Parent’s or Merger Sub’s request or required to be taken by the Company pursuant to this Agreement or any Transaction Documents or (vi) any matters disclosed in the Company Disclosure Schedule but only to the extent the applicability of such disclosure to this definition would be reasonably apparent to a reasonable Person under the circumstances, *provided* that with respect to clauses (ii) and (iii), such conditions or change do not disproportionately affect in any material respect the Company and its Subsidiaries, taken as a whole, as compared to the majority of persons engaged in the same businesses as the Company.

“Company Plan Affiliate” means the Company, any Subsidiary thereof and/or a predecessor of any of them and any other Person who constitutes or has constituted all or part of a controlled group or has been or is under common control with, or whose employees were or are treated as employed by, the Company, any Subsidiary thereof and/or a predecessor of any of them, under Section 414 of the Code or Section 4001 of ERISA.

“Contracts” means, with respect to any Person, any contracts, commitments, purchase orders, sales orders, licenses, leases and other agreements, whether written or oral, to which such Person is a party or by which such Person is bound.

“Current Assets” means the Company’s current assets on a consolidated basis determined in accordance with GAAP applied on a basis consistent with the methodologies, practices, estimation techniques, assumptions and principles used in the preparation of the Latest Balance Sheet, but specifically excluding any deferred Income Tax assets, and any receivables relating to the Lisuride Settlement Agreement.

“Current Liabilities” means the Company’s current liabilities on a consolidated basis determined in accordance with GAAP applied on a basis consistent with the methodologies, practices, estimation techniques, assumptions and principles used in the preparation of the Latest Balance Sheet, but (a) specifically *excluding*: (i) any Permitted Indebtedness, (ii) any severance obligations set forth on Schedule 2, (iii) any Nonpermitted Indebtedness taken into account in determining the Aggregate Initial Consideration Amount, (iv) any Company Expenses taken into account in determining the Aggregate Initial Consideration Amount, (v) any Excess Severance Obligations taken into account in determining the Aggregate Initial Consideration Amount, but (b) specifically *including*: (w) the employer’s portion of payroll taxes relating to any severance obligations set forth on Schedule 2, (x) the employer’s portion of all payroll taxes resulting from the exercise of any Option or Warrant prior to Closing and (y) any Nonpermitted Indebtedness,

Company Expenses, and Excess Severance Obligations (and the employer's portion of the payroll taxes relating thereto), in each case, to the extent not included in the calculation of the Aggregate Initial Consideration Amount.

"Distribution" means any and all activities related to the distribution, marketing, promoting, offering for sale and selling of any Product, including advertising, detailing, educating, planning, promoting, conducting reporting, storing, handling, shipping and communicating with Governmental Authorities and third parties in connection therewith.

"D&O Tail" means the "tail" directors' and officers' liability insurance policy to be purchased by the Company before Closing covering acts or omissions occurring at or prior to the Closing by those Persons who were the directors and officers of the Company prior to the Closing for a period of six (6) years after the Closing, but shall not include any other directors' and officers' liability insurance policy purchased by the Company in the ordinary course of its business.

"Eligible Warrants" means any Warrant for which the exercise price per share is less than the sum of (A) the Per Share Common Initial Cash Consideration and (B) the Per Share Common Escrow Consideration (it being understood that the sum of all Common Escrow Distributions after the Effective Time are to be taken into account in determining whether the exercise price of a Warrant outstanding immediately prior to the Effective Time is less than the sum of (A) and (B)).

"Eligible Optionholder" means an Optionholder with Eligible Options.

"Eligible Options" means any Option for which the exercise price per share is less than the sum of (A) the Per Share Common Initial Cash Consideration and (B) the Per Share Common Escrow Consideration (it being understood that the sum of all Common Escrow Distributions after the Effective Time are to be taken into account in determining whether the exercise price of an Option outstanding immediately prior to the Effective Time is less than the sum of (A) and (B)).

"Employee Benefit Plan" means any of the following (whether written, unwritten or terminated) which the Company or any Subsidiary of the Company sponsors, maintains or contributes to, or with respect to which the Company or any Subsidiary of the Company is obligated to make contributions, or has, or could reasonably be expected to have, any Liability: (i) any employee welfare benefit plan, as defined in Section 3(1) of ERISA, including, but not limited to, any medical plan, life insurance plan, short-term or long-term disability plan, dental plan, or sick leave plan; (ii) any "employee pension benefit plan," as defined in Section 3(2) of ERISA, including, but not limited to, any excess benefit, top hat or deferred compensation plan or any nonqualified deferred compensation or retirement plan or arrangement or any qualified defined contribution or defined benefit plan; or (iii) any other material plan, policy, program, arrangement or agreement which provides employee benefits or benefits to any current or former employee, dependent, beneficiary, director or independent contractor, including, but not limited to, any severance agreement or plan, personnel policy, vacation time, holiday pay, tuition reimbursement program, service award, moving expense reimbursement programs, tool allowance, safety equipment allowance, material fringe benefit plan or program, bonus or



incentive plan, equity appreciation, stock option, restricted stock, stock bonus or deferred bonus or compensation plan, salary reduction, change-of-control or employment agreement or consulting agreement.

“Environmental and Safety Requirements” means any Law or requirement of any applicable Contract that is related to (i) pollution, contamination, cleanup, preservation, protection, reclamation or remediation of the environment, (ii) health or safety, (iii) the Release or threatened Release of or exposure to any Hazardous Material, including investigation, study, assessment, testing, monitoring, containment, removal, remediation, response, cleanup, abatement, prevention, control or regulation of such Release or threatened Release or (iv) the management of any Hazardous Material, including the manufacture, generation, formulation, processing, labeling, use, treatment, handling, storage, disposal, transportation, distribution, re-use, recycling or reclamation of any Hazardous Material; and includes the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6091 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Clean Water Act (33 U.S.C. § 7401 et seq.), the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.), the Toxic Substance Control Act (15 U.S.C. § 2601 et seq.) and the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 136 et seq.).

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“Escrow Agent” shall have the meaning ascribed to such term in the Escrow Agreement.

“Escrow Agreement” means an escrow agreement, dated as of the date hereof, by and among the Stockholder Representatives, Parent and the Escrow Agent.

“Escrow Amount” means fifteen million three hundred thousand dollars (\$15,300,000).

“Excess Severance Obligations” means (i) any severance, termination or notice obligations or transaction bonus payments or carveout payments to any directors, employees, board observers or independent contractor of the Company or its Subsidiaries listed on Schedule 2 in excess of the amount set forth with respect to such directors, employees, board observers or independent contractors on Schedule 2 and (ii) any severance, termination or notice obligations or transaction bonus payments or carveout payments to any other director, employees, board observers or independent contractor of the Company or its Subsidiary that is not set forth on Schedule 2, including in the case of (i) and (ii) the employer’s portion of the payroll taxes relating to such severance, termination or notice obligations or transaction bonus payments or carveout payments.

“Exchange Agent Agreement” means an exchange agent agreement, dated as of the date hereof, by and among the Stockholder Representatives, the Company and the Exchange Agent.

“FDA” means the United States Food and Drug Administration, and any successor agency thereto.

“Financial Statements” shall have the meaning ascribed to such term in Section 6.6 hereof.

“GAAP” means United States generally accepted accounting principles, consistently applied.

“Governmental Authority” means any court, tribunal, arbitrator, authority, agency, commission, official or other instrumentality of the United States, any foreign country, or any domestic or foreign state, province, county, city or other political subdivision.

“Hazardous Material” means (i) hazardous substances, as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 *et seq.*; (ii) hazardous wastes, as defined by the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.*; (iii) petroleum, including without limitation, crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute); (iv) radioactive material, including, without limitation, any source, special nuclear, or by-product material as defined in 42 U.S.C. §2011 *et seq.*; (v) asbestos that is friable or reasonably likely to become friable; (vi) polychlorinated biphenyls; (vii) microbial matter, biological toxins, mycotoxins, mold or mold spores; and (viii) other material, substance or waste to which liability or standards of conduct may be imposed under any applicable Environmental and Safety Requirements.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the regulations promulgated by the Federal Trade Commission thereunder.

“Income Taxes” means any federal, state, local or foreign tax which is imposed or determined with reference to (i) gross or net income or profits (including, but not limited to, capital gains, franchise, gross receipts or minimum tax but in no event including any sales or use tax, property tax, withholding tax, social security tax, or payroll tax), or (ii) multiple bases, including corporate franchise, gross receipts, net worth, privilege, doing business or occupation taxes, if one of the bases is listed in clause (i), together with any interest and penalties, fines, additions to tax or additional amounts imposed by any tax authority.

“Indebtedness” means, with respect to any Person, (i) all obligations of such Person for borrowed money, whether current or funded, secured or unsecured, but only to the extent that money has been borrowed and is outstanding, (ii) the deferred purchase price of any property or services (other than trade accounts payable arising in the ordinary course of the business of such Person and taken into account in determining the final Net Working Capital Adjustment), (iii) all obligations of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of a default may be limited to repossession or sale of such property), (iv) all obligations of such Person secured by a purchase money mortgage or other Lien to secure all or part of the purchase price of property subject to such mortgage or Lien, (v) all obligations under leases which GAAP requires to be recorded as capital leases in respect of which such Person is liable as lessee, (vi) any obligation of such Person in respect of bankers’ acceptances or letters of credit, (vii) any obligations secured by Liens (other than Permitted Liens) on property acquired by such Person, whether or not such obligations were assumed by such Person at the time of acquisition of such property, (viii) all obligations of a type referred to in clause (i), (ii), (iii), (iv), (v), (vi) or (vii) above which is directly or indirectly guaranteed by such Person or which it has agreed (contingently or

otherwise) to purchase or otherwise acquire or in respect of which it has otherwise assured a credit against loss, and (ix) any refinancings of any of the foregoing obligations; *provided, however*, that, except with respect to Section 6.3, Section 6.7 and Section 6.9, Indebtedness shall not include any Current Liabilities taken into account in determining the final Net Working Capital Adjustment.

“Law” means the common law of any state, or any provision of any foreign, federal, state or local law, statute, rule, regulation, order, Permit, judgment, injunction, decree or other decision of any Governmental Authority legally binding on the relevant party or its properties.

“Liabilities” means any indebtedness (including, but not limited to, any Indebtedness), liabilities or obligations of any nature (whether accrued, absolute, contingent, direct, indirect, known, unknown, perfected, inchoate, unliquidated or otherwise, whether due or to become due).

“Liens” means any claims, liens, charges, rights, restrictions, options, preemptive rights, mortgages, deeds of trust, hypothecations, assessments, pledges, encumbrances, claims of equitable interest or security interests of any kind or nature whatsoever.

“Lisuride” means any pharmaceutical preparation for administration of human use containing lisuridehydrogenmaleate and lisuride base as an active pharmaceutical ingredient.

“Lisuride Settlement Agreement” means that certain settlement agreement for an in connection with the Development and Commercialization License and Clinical Supply Agreement by and between Axxonis Pharma AG, Berlin and the Company, dated May 7, 2008.

“Manufacturing Requirements” means (i) all applicable formulae, production and packaging specifications with respect to the Products, (ii) all applicable quality control specifications with respect to the Products and (iii) the quality systems and current good manufacturing practices set forth in 21 C.F.R. (Parts 210 and 211 and Parts 600 and 610 (as applicable)), and all applicable directives, regulatory requirements and FDA rules, regulations, guides and guidance promulgated thereunder and their foreign equivalents in the Territory.

“Merrill Lynch Facility” means that certain Credit and Security Agreement, dated July 27, 2007, between Merrill Lynch Capital and the Company.

“NDA” means United States New Drug Application as defined in the FDA Act (and the regulations promulgated thereunder) pursuant to Section 505 of the FDA Act (21 U.S.C. Section 355) and the regulations promulgated thereunder for approval to market a pharmaceutical drug or product in the United States (including, where applicable, applications for pricing and reimbursement approval).

“NDA Approval” means FDA approval for Tetrabenazine for the treatment of chorea associated with Huntington’s Disease as received by the Company in letter NDA #21-894 dated August 15, 2008 from the FDA describing the terms of the approval and the ongoing obligations of the Company (including the Phase IV conditions set forth thereon) and the FDA approval packaging, labeling and package insert.

“Net Working Capital Adjustment” shall have the meaning ascribed to such term in Section 3.6(b) of this Agreement.

“Net Working Capital Amount” means the amount, if any, by which the Current Assets of the Company and its Subsidiaries on a consolidated basis as of the close of the Business Day immediately preceding the Closing Date exceeds or is less than the Current Liabilities of the Company and its Subsidiaries on a consolidated basis as of the close of the Business Day on the Business Day immediately preceding the Closing Date, as determined in accordance with GAAP and Section 3.6 hereof.

“Nonpermitted Indebtedness” means all Indebtedness of the Company or any of its Subsidiaries other than the Permitted Indebtedness, including but not limited to (i) the aggregate amount of principal and interest outstanding under the Merrill Lynch Facility in excess of the Permitted Indebtedness, and (ii) any prepayment penalty that would be due upon payment of the Merrill Lynch Facility in full as of the Closing.

“Number of Fully-Diluted Common Shares Outstanding” means the sum of (1) the aggregate number of shares of Company Common Stock outstanding as of the Effective Time plus (2) the aggregate number of shares of Company Common Stock issuable as of the Effective Time (i) upon conversion of all shares of Company Preferred Stock outstanding as of the Effective Time, (ii) upon exercise of all Eligible Warrants outstanding as of the Effective Time and (iii) upon exercise of all Eligible Options outstanding as of the Effective Time. For purposes of clarity, the parties acknowledge and agree that the Number of Fully-Diluted Common Shares Outstanding is set forth on the Aggregate Consideration Allocation Schedule.

“Option Notice” means that certain Option notice delivered in connection with the Transactions prior to the execution of this Agreement to the holders of all Options pursuant to Section 11(c) of the Option Plan, in substantially the form approved by Parent.

“Option Plan” means the Company’s 2003 Equity Incentive Plan, as amended through the date hereof.

“Optionholder” means a holder of Options.

“Options” means the options to purchase Company Capital Stock pursuant to the Option Plan.

“Party” means any party to this Agreement.

“Per Share Common Initial Cash Consideration” means an amount equal to the greater of (x) zero and (y) the quotient of (I) the Aggregate Initial Consideration Amount minus the Adjusted Aggregate Preferred Liquidation Preference, divided by (II) the Number of Fully-Diluted Common Shares Outstanding. For purposes of clarity, the parties acknowledge and agree that the Per Share Common Initial Cash Consideration is set forth on the Aggregate Consideration Allocation Schedule.

“Per Share Common Escrow Consideration” means an amount equal to the greater of (x) zero and (y) the quotient of (I) the Aggregate Common Escrow Consideration, divided by (II) the

Number of Fully-Diluted Common Shares Outstanding. For purposes of clarity, the parties acknowledge and agree that the Per Share Common Escrow Consideration is set forth on the Aggregate Consideration Allocation Schedule.

“Per Share Series A Initial Cash Consideration” means, for each share of Company Series A Preferred Stock that is outstanding immediately prior to the Effective Time, an amount equal to the Series Preferred Liquidation Preference (as defined in the Amended and Restated Certificate of Incorporation after pro rata deduction for the Excess Severance Obligations) of such share, unless the Aggregate Initial Consideration Amount is less than the Adjusted Aggregate Preferred Liquidation Preference, in which case the Per Share Series A Initial Cash Consideration shall be the product of the Aggregate Initial Consideration Amount multiplied by a fraction, the numerator of which is the Series Preferred Liquidation Preference (as defined in the Amended and Restated Certificate of Incorporation after pro rata deduction for the Excess Severance Obligations) of such share and the denominator of which is the Aggregate Preferred Liquidation Preference. For purposes of clarity, the parties acknowledge and agree that the Per Share Series A Initial Cash Consideration is set forth on the Aggregate Consideration Allocation Schedule.

“Per Share Series A Escrow Consideration” means an amount equal to the greater of (x) zero and (y) the Series Preferred Liquidation Preference (as defined in the Amended and Restated Certificate of Incorporation after pro rata deduction for the Excess Severance Obligations) for a share of Company Series A Preferred Stock minus the Per Share Series A Initial Cash Consideration. For purposes of clarity, the parties acknowledge and agree that the Per Share Series A Escrow Consideration is set forth on the Aggregate Consideration Allocation Schedule.

“Per Share Series B Initial Cash Consideration” means, for each share of Company Series B Preferred Stock that is outstanding immediately prior to the Effective Time, an amount equal to the Series Preferred Liquidation Preference (as defined in the Amended and Restated Certificate of Incorporation after pro rata deduction for the Excess Severance Obligations) of such share, unless the Aggregate Initial Consideration Amount is less than the Adjusted Aggregate Preferred Liquidation Preference, in which case the Per Share Series B Initial Cash Consideration shall be the product of the Aggregate Initial Consideration Amount multiplied by a fraction, the numerator of which is the Series Preferred Liquidation Preference (as defined in the Amended and Restated Certificate of Incorporation) and the denominator of which is the Adjusted Aggregate Preferred Liquidation Preference. For purposes of clarity, the parties acknowledge and agree that the Per Share Series B Initial Cash Consideration is set forth on the Aggregate Consideration Allocation Schedule.

“Per Share Series B Escrow Consideration” means an amount equal to the greater of (x) zero and (y) the Series Preferred Liquidation Preference (as defined in the Amended and Restated Certificate of Incorporation after pro rata deduction for the Excess Severance Obligations) for a share of Company Series B Preferred Stock minus the Per Share Series B Initial Cash Consideration. For purposes of clarity, the parties acknowledge and agree that the Per Share Series B Escrow Consideration is set forth on the Aggregate Consideration Allocation Schedule.

“Per Share Series C Initial Cash Consideration” means, for each share of Company Series C Preferred Stock that is outstanding immediately prior to the Effective Time, an amount equal to the Series Preferred Liquidation Preference (as defined in the Amended and Restated Certificate of Incorporation of the Company after pro rata deduction for the Excess Severance Obligations) of such share, unless the Aggregate Initial Consideration Amount is less than the Adjusted Aggregate Preferred Liquidation Preference, in which case the Per Share Series C Initial Cash Consideration shall be the product of the Aggregate Initial Consideration Amount multiplied by a fraction, the numerator of which is the Series Preferred Liquidation Preference (as defined in the Amended and Restated Certificate of Incorporation) for such share and the denominator of which is the Adjusted Aggregate Preferred Liquidation Preference. For purposes of clarity, the parties acknowledge and agree that the Per Share Series C Initial Cash Consideration is set forth on the Aggregate Consideration Allocation Schedule.

“Per Share Series C Escrow Consideration” means an amount equal to the greater of (x) zero and (y) the Series Preferred Liquidation Preference (as defined in the Amended and Restated Certificate of Incorporation after pro rata deduction for the Excess Severance Obligations) for a share of Company Series C Preferred Stock minus the Per Share Series C Initial Cash Consideration. For purposes of clarity, the parties acknowledge and agree that the Per Share Series C Escrow Consideration is set forth on the Aggregate Consideration Allocation Schedule.

“Permit” or “Permits” means all permits, licenses, certifications, approvals, consents and authorizations by or of, or registrations or filings with, any Governmental Authority, other than a Regulatory Health Authority.

“Permitted Indebtedness” means the aggregate amount of principal and interest outstanding under the Merrill Lynch Facility as of the Closing and any prepayment penalty that would be due upon payment of the Merrill Lynch Facility in full as of the Closing; provided that in no event shall the Permitted Indebtedness exceed \$9,300,000.

“Permitted Liens” means any (i) inchoate mechanics’, carriers’, workers’, contractor’s repairman’s, and other similar Liens arising in the ordinary course of business that are not delinquent and that in the aggregate are not material in amount and do not interfere with the present use of the assets to which they apply; (ii) inchoate Liens for current Taxes and assessments not yet due and payable; or (iii) Liens set forth on Schedule 6.3 of the Company Disclosure Schedule attached hereto; *provided, however*, that if any inchoate Lien described in clause (i) or (ii) above becomes a choate Lien (and, with respect to (ii), such Taxes exceed the amount specifically accrued or reserved therefor on the Closing Balance Sheet as finally determined pursuant to Section 3.5, other than accrual or reserve for deferred Taxes established to reflect timing differences between book and Tax income), the cost of removing such Lien shall be deemed a Current Liability.

“Person” means any individual, sole proprietorship, general partnership, limited partnership, limited liability company, joint venture, trust, unincorporated association, corporation, entity or Governmental Authority.



“Preferred Escrow Distribution” means any distribution to the Stockholders and Warrantholders from the Escrow Account pursuant to the Escrow Agreement that are not Common Escrow Distributions.

“Products” means all dosage forms, formulations, strengths, package sizes and types of Tetrabenazine and Lisuride pharmaceutical products (whether branded or generic) for administration of human use of the Company and its Subsidiaries.

“Proprietary Rights” means (i) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all patents, patent applications, and patent disclosures, together with all reissuances, continuations, continuations in part, revisions, extensions, and reexaminations thereof, (ii) all trademarks, service marks, trade dress, logos, domain names, trade names, and corporate names, together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith, (iii) all copyrightable works, all copyrights (both statutory and common law), and all applications, registrations, and renewals in connection therewith, (iv) all regulatory exclusivity rights, (v) all trade secrets and confidential business information (including ideas, research and development, know-how, templates, formulas, algorithms, compositions, production and business processes and techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information, and business and marketing plans and proposals), (vi) the percentages and specifications of ingredients, the manufacturing processes, specifications, technology, quality control and testing procedures used or held for use in connection with the manufacture, the formulation, testing and packaging of the Product (or the active pharmaceutical ingredients used therein) for sale, marketing, distribution, or use in the Territory, (vii) product specifications, processes, product designs, plans, trade secrets, ideas, concepts, inventions, patents, patent applications, manufacturing, engineering and other manuals and drawings, SOPs, PLCs, flow diagrams, chemical, pharmacological, toxicological, pharmaceutical, physical and analytical, safety, quality assurance, quality control and clinical data, technical information, data, research records, all promotional literature, supplier lists and similar data and information, and all other confidential or proprietary technical and business information relating to, used or held for use exclusively in connection with the Products (including, but not limited to, any license or other rights, whether as a licensor, a licensee, or otherwise relating thereto) or the active pharmaceutical ingredients used therein, (viii) all other proprietary rights, and (ix) all copies and tangible embodiments thereof (in whatever form or medium).

“Registrations” means the regulatory approvals, authorizations, licenses, applications, agreements, Permits, Investigational New Drug Applications, MAAs, NDAs, Marketing Applications, Orphan Drug Applications and other permissions held by the Company or a Subsidiary of the Company relating primarily or exclusively to any Product issued or to be issued by Governmental Authorities in the Territory, as set forth on Schedule 6.22.

“Regulatory Health Authority” means any Governmental Authority in the Territory that is concerned with the safety, efficacy, reliability, manufacture, investigation, sale or marketing of pharmaceuticals, medical products, biologics or biopharmaceuticals, including the FDA.

“Release” means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping into the indoor or outdoor environment.

“Securities Act” means the Securities Act of 1933, as amended.

“Stockholders” means the holders of Company Capital Stock as of the Effective Time.

“Subsidiary” means, with respect to any Person, any corporation, partnership, limited liability company, association or other entity of which securities or other equity interests representing more than fifty percent (50%) of the ordinary voting power are, at the time as of which any determination is being made, owned or controlled by such Person or one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person.

“Tax” means any federal, state, local or foreign income, gross receipts, franchise, estimated, alternative minimum, add-on minimum, sales, use, transfer, registration, value added, excise, natural resources, severance, stamp, occupation, premium, windfall profit, environmental, customs, duties, real property, personal property, escheat, abandoned property, capital stock, social security, unemployment, disability, payroll, license, employee or other withholding, or other tax, of any kind whatsoever, including any interest, penalties or additions to tax or additional amounts in respect of the foregoing; the foregoing shall include any transferee or secondary liability for a Tax and any liability for a Tax assumed by agreement or arising as a result of being (or ceasing to be) a member of any Affiliated Group (or being included or required to be included) in any Tax Returns relating thereto.

“Tax Returns” means returns, declarations, reports, claims for refund, information returns or other documents (including any related or supporting schedules, statements or information) filed or required to be filed with a Tax authority in connection with the determination, assessment or collection of any Taxes of any party or the administration of any Laws or administrative requirements relating to any Taxes.

“Territory” means the United States of America and Canada.

“Tetrabenazine” means all dosage forms, formulations, strengths and package sizes (whether branded or generic) of the pharmaceutical product for administration for human use containing tetrabenazine as an active pharmaceutical ingredient to be commercialized in the United States under the brand name Xenazine® (NDA # 21,894) and commercialized in Canada under the brand name Nitoman®.

“Transaction Documents” means this Agreement, the Escrow Agreement and the other agreements, documents, certificates and instruments being delivered pursuant to or specifically contemplated by this Agreement.

“Transactions” means the Merger and all of the transactions contemplated by the Transaction Documents, including the Redemption.

“Transfer Tax” means any stamp or other sales, transfer, use, value added, registration, documentary, excise or similar transaction Tax or fee imposed under the Laws of the United

States or any state, country or municipality or other subdivision thereof or of any foreign jurisdiction, arising as a result of the consummation of the Merger, including any penalties and interest thereon.

“Warrantholder” means a holder of a Warrant.

“Warrants” means the warrants to purchase Company Capital Stock outstanding as of the Effective Time.

**ARTICLE 2**  
**THE MERGER**

**2.1      The Merger.** Upon the terms of this Agreement and subject to the conditions set forth in this Agreement, and in accordance with the DGCL, at the Effective Time (as defined in Section 2.2), Merger Sub shall be merged with and into the Company. As a result of the Merger, the separate corporate existence of Merger Sub shall cease, and the Company shall continue as the surviving corporation of the Merger (the “Surviving Corporation”).

**2.2      Effective Time; Closing.** On the Closing Date, subject to the satisfaction or, if permissible, waiver of the conditions set forth in Article 8, the Parties shall cause the Merger to be consummated by (i) filing a certificate of merger (the “Certificate of Merger”) with the Secretary of State of the State of Delaware in such form as is required by, and executed in accordance with, the relevant provisions of the DGCL and (ii) making all other filings and recordings required under the DGCL. The term “Effective Time” means the date and time of the filing of the Certificate of Merger.

**2.3      Effect of the Merger.** At and after the Effective Time, the Merger shall have the effects as set forth in this Agreement and the applicable provisions of the DGCL. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, all the property, rights, privileges, powers and franchises of each of the Company and Merger Sub shall vest in the Surviving Corporation, and all debts, liabilities, obligations, restrictions, disabilities and duties of each of the Company and Merger Sub shall become the debts, liabilities, obligations, restrictions, disabilities and duties of the Surviving Corporation.

**2.4      Certificate of Incorporation; Bylaws.**

(a) At the Effective Time, by virtue of the Merger and without any action on the part of Merger Sub or the Company, the Certificate of Incorporation of the Company as in effect immediately prior to the Effective Time shall be amended to read in its entirety as set forth in Exhibit D, and as so amended shall be the Certificate of Incorporation of the Surviving Corporation, until thereafter amended, restated, repealed or otherwise modified in accordance with the DGCL and the Certificate of Incorporation of the Surviving Corporation.

(b) At the Effective Time, by virtue of the Merger and without any action on the part of Merger Sub or the Company, the Bylaws of Merger Sub, as in effect immediately prior to the Effective Time, shall be the Bylaws of the Surviving Corporation, until thereafter amended, restated, repealed or otherwise modified in accordance with DGCL, the Certificate of Incorporation of the Surviving Corporation and such Bylaws, except that all references to Merger

Sub in the Bylaws of the Surviving Corporation shall be changed to refer to Prestwick Pharmaceuticals, Inc.

2.5 Directors and Officers. The directors of Merger Sub immediately prior to the Effective Time shall be the initial directors of the Surviving Corporation, in each case until their respective successors are duly elected or appointed and qualified or their earlier death, resignation or removal, and the officers of Merger Sub immediately prior to the Effective Time shall be the initial officers of the Surviving Corporation, in each case until their respective successors are duly elected or appointed and qualified or their earlier death, resignation or removal.

**ARTICLE 3**  
**MERGER CONSIDERATION, EXCHANGE OF CERTIFICATES**

3.1 Conversion of Shares. At the Effective Time, by virtue of the Merger and without any action on the part of Parent, Merger Sub, the Company or the holders of any of the following securities:

(a) each share of Company Common Stock issued and outstanding immediately prior to the Effective Time (other than any shares of Company Common Stock to be canceled pursuant to Section 3.1(e) and any Dissenting Shares (as defined in Section 3.5)) shall be converted into the right to receive an amount of cash equal to the sum of (i) the Per Share Common Initial Cash Consideration, if any, and (ii) a pro rata portion of any Common Escrow Distribution, if any, determined by multiplying the amount of such Common Escrow Distribution by a fraction, the numerator of which is the Per Share Common Escrow Consideration and the denominator of which is the Aggregate Common Escrow Consideration;

(b) each share of Company Series A Preferred Stock issued and outstanding immediately prior to the Effective Time (other than any shares of Company Series A Preferred Stock to be canceled pursuant to Section 3.1(e) and any Dissenting Shares) shall be converted into the right to receive an amount of cash equal to the sum of (i) the Per Share Series A Initial Cash Consideration, (ii) the product of the Per Share Common Initial Cash Consideration, if any, multiplied by the number of shares of Company Common Stock into which such share of Company Series A Preferred Stock was convertible as of immediately prior to the Effective Time, (iii) a pro rata portion of any Preferred Escrow Distribution, if any, determined by multiplying the amount of such Preferred Escrow Distribution by a fraction, the numerator of which is the Per Share Series A Escrow Consideration and the denominator of which is the Aggregate Preferred Escrow Consideration, and (iv) a pro rata portion of any Common Escrow Distribution, if any, determined by multiplying the amount of such Common Escrow Distribution by a fraction, the numerator of which is the product of the Per Share Common Escrow Consideration, multiplied by the number of shares of Company Common Stock into which such share of Company Series A Preferred Stock was convertible as of immediately prior to the Effective Time, and the denominator of which is the Aggregate Common Escrow Consideration;

(c) each share of Company Series B Preferred Stock issued and outstanding immediately prior to the Effective Time (other than any shares of Company Series B Preferred Stock to be canceled pursuant to Section 3.1(e) and any Dissenting Shares) shall be converted

into the right to receive an amount of cash equal to the sum of (i) the Per Share Series B Initial Cash Consideration, (ii) the product of the Per Share Common Initial Cash Consideration, if any, multiplied by the number of shares of Company Common Stock into which such shares of Company Series B Preferred Stock was convertible as of immediately prior to the Effective Time, (iii) a pro rata portion of any Preferred Escrow Distribution, if any, determined by multiplying the amount of such Preferred Escrow Distribution by a fraction, the numerator of which is the Per Share Series B Escrow Consideration and the denominator of which is the Aggregate Preferred Escrow Consideration, and (iv) a pro rata portion of any Common Escrow Distribution, if any, determined by multiplying the amount of such Common Escrow Distribution by a fraction, the numerator of which is the product of the Per Share Common Escrow Consideration, multiplied by the number of shares of Company Common Stock into which such share of Company Series B Preferred Stock was convertible as of immediately prior to the Effective Time, and the denominator of which is the Aggregate Common Escrow Consideration;

(d) each share of Company Series C Preferred Stock issued and outstanding immediately prior to the Effective Time (other than any shares of Company Series C Preferred Stock to be canceled pursuant to Section 3.1(e) and any Dissenting Shares) shall be converted into the right to receive an amount of cash equal to the sum of (i) the Per Share Series C initial Cash Consideration, (ii) the product of the Per Share Common Initial Cash Consideration, if any, multiplied by the number of shares of Company Common Stock into which such share of Company Series C Preferred Stock was convertible as of immediately prior to the Effective Time, (iii) a pro rata portion of any Preferred Escrow Distribution, if any, determined by multiplying the amount of such Preferred Escrow Distribution by a fraction, the numerator of which is the Per Share Series C Escrow Consideration and the denominator of which is the Aggregate Preferred Escrow Consideration, and (iv) a pro rata portion of any Common Escrow Distribution, if any, determined by multiplying the amount of such common Escrow Distribution by a fraction, the numerator of which is the product of the Per Share Common Escrow Consideration, multiplied by the number of shares of Company Common Stock into which such share of Company Series C Preferred Stock was convertible as of immediately prior to the Effective Time, and the denominator of which is the Aggregate Common Escrow Consideration

(e) each share of Company Capital Stock held in the treasury of the Company immediately prior to the Effective Time shall be canceled and extinguished without any conversion thereof and no payment or distribution shall be made with respect thereto;

(f) each share of common stock, par value \$0.001 per share, of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into one validly issued, fully paid and nonassessable share of common stock, par value \$0.001 per share, of the Surviving Corporation. The stock certificate evidencing shares of common stock of Merger Sub shall then evidence ownership of the outstanding shares of common stock of the Surviving Corporation;

(g) each Warrant outstanding immediately prior to the Effective Time shall, pursuant to the terms of such Warrant, be canceled in exchange for the right to receive (i) an amount of cash equal to the product of (A) the number of shares of Company Common Stock issuable upon exercise of such Warrant and (B) the difference between the Per Share Common Initial Cash Consideration, if any, minus the per share exercise price of such Warrant and (ii) a

pro rata portion of any Common Escrow Distribution, if any, determined by multiplying the amount of such Common Escrow Distribution by a fraction, the numerator of which is the product of the difference between the Per Share Common Escrow Consideration and the per share exercise price of such Warrant (solely to the extent such exercise price was not taken into account in calculating the amount payable pursuant to clause (i) above), multiplied by the number of shares of Company Common Stock into which such Warrant is then convertible as of immediately prior to the Effective Time, and the denominator of which is the Aggregate Common Escrow Consideration (provided that if such calculation results in a negative number, the lump sum cash payment shall be deemed to be \$0); and

(h) each Eligible Option outstanding immediately prior to the Effective Time shall, pursuant to the terms of such Eligible Options, be converted into the right to receive an amount of cash equal to (i) the product of (A) the number of shares of Company Common Stock issuable upon exercise of such Eligible Option and (B) the difference between the Per Share Common Initial Cash Consideration, if any, minus the per share exercise price of such Eligible Option and (ii) the right to receive a pro rata portion of any Common Escrow Distribution, if any, determined by multiplying the amount of such Common Escrow Distribution by a fraction, the numerator of which is the product of the difference between the Per Share Common Escrow Consideration and the per share exercise price of such Eligible Option (solely to the extent such exercise price was not taken into account in calculating the amount payable pursuant to clause (i) above), multiplied by the number of shares of Company Common Stock into which such Eligible Option is then convertible as of immediately prior to the Effective Time, and the denominator of which is the Aggregate Common Escrow Consideration (provided that if such calculation results in a negative number, the cash payment shall be deemed to be \$0). As of the Effective Time, all Options shall be cancelled pursuant to the terms of such Options without payment of any consideration thereon other than as provided in this Section 3.1(h).

(i) It is acknowledged that pursuant to Section 1(b)(iv) of the Redemption Agreement, at the time of any Preferred Escrow Distribution, holders of Company Preferred Stock that were redeemed in the Redemption shall have the right, pursuant to Section 1(b)(iv) of the Redemption Agreement, to receive out of the Escrow Account an amount of up to the amount listed, for each series of Company Preferred Stock so redeemed, as set forth on Schedule 2 to the Redemption Agreement, on a pro rata basis based on the number of shares of Company Preferred Stock outstanding as of immediately prior to the Redemption. The other provisions of this Agreement related to the relative amounts of Preferred Escrow Distributions payable to holders of Company Preferred Stock are hereby adjusted to give effect to this right.

For purposes of calculating the amount of cash payable to each Stockholder, Warrantholder and Eligible Optionholder pursuant to this Section 3.1, all shares of Company Capital Stock held by such Stockholder, all Eligible Warrants held by such Warrantholder and all Eligible Options held by such Eligible Optionholder pursuant to this Section 3.1 shall be aggregated, and the aggregate amount of cash payable to such Stockholder shall be rounded (up or down) to the nearest whole cent. Notwithstanding anything in this Agreement to the contrary, the aggregate amount paid to the Stockholders, Warrantholders and Optionholders with respect to all Company Capital Stock, Warrants and Options shall not exceed (A) the sum of (i) the Aggregate Initial Consideration Amount, (ii) the aggregate amount of all Preferred Escrow



Distributions and Common Escrow Distributions, minus (B) the aggregate amounts that would be payable with respect to all Dissenting Shares if such shares were not Dissenting Shares.

**3.2 Exchange Fund.** At Closing, Parent will pay in trust to the Exchange Agent (as defined below) for the benefit of each Stockholder, Warrantholder or Eligible Optionholder (the “Exchange Fund”), by wire transfer of immediately available funds, the Aggregate Initial Consideration Amount set forth on the Aggregate Consideration Allocation Schedule.

**3.3 Surrender of Certificates and Warrant Agreements**

(a) **Letter of Transmittal.** Parent has engaged JP Morgan Exchange Services, as exchange agent (the “Exchange Agent”), on terms and conditions as set forth in the Exchange Agent Agreement. On the Closing Date, Parent will instruct the Exchange Agent to deliver to each Stockholder, Warrantholder and Eligible Optionholder, as the case may be, a letter of transmittal (the “Letter of Transmittal”), in the form attached hereto as Exhibit B, with respect to the certificates representing Company Capital Stock (the “Certificates”) and the original Warrants issued to the Warrantholders (the “Warrant Agreements”), respectively. Parent shall instruct the Exchange Agent to deliver promptly upon receipt of an executed Letter of Transmittal and Certificates or Warrant Agreements from such Stockholder, Warrantholder or Eligible Optionholder, without interest, the consideration payable in respect of such shares of Company Capital Stock, Warrants or Options, as the case may be, and the Certificates or Warrant Agreements so surrendered, shall forthwith be canceled. Until so surrendered as contemplated by this Article 3, each outstanding Certificate or Warrant Agreement shall, subject to appraisal rights under the DGCL and Section 3.5, be deemed at any time after the Effective Time to represent only the right to receive the consideration payable in respect of such shares of Company Capital Stock, Warrant or Option, as the case may be, in accordance with this Agreement, and until such Certificate or Warrant Agreement is surrendered along with a properly executed Letter of Transmittal, no consideration shall be payable for such shares of Company Capital Stock, Warrant or Option.

(b) **Payments with respect to Unsurrendered Shares and Warrants; No Liability.** Any portion of the Exchange Fund which remains undistributed to the Stockholders, Warrantholders and Eligible Optionholders for one hundred eighty (180) calendar days after the Closing shall be delivered to Parent, upon demand, and any Stockholder, Warrantholder or Eligible Optionholder who has not thereto complied with this Section 3.3 shall thereafter look only to Parent and the Surviving Corporation for, and Parent and the Surviving Corporation shall remain jointly and severally liable for, payment of their claim for the consideration, provided, however, until the remaining Exchange Fund is delivered to Parent, any Stockholder, Warrantholder or Eligible Optionholder’s remedy for any claim for any portion of such undistributed funds shall be against the Exchange Agent and not against Parent or the Company and neither Parent nor the Company shall have any liability for such undistributed funds prior to delivery of such funds to Parent from the Exchange Agent. Notwithstanding the foregoing, neither Parent nor the Surviving Corporation shall be liable to any Stockholder, Warrantholder or Eligible Optionholder for any consideration delivered by Parent in respect of such share of Company Capital Stock, Warrant or Option to a public official in compliance with any abandoned property, escheat or other similar Law

(c) Transfers of Ownership. If the payment of the consideration payable in respect of shares of Company Capital Stock or Warrants in accordance with Section 3.1 is to be paid to a Person other than the Person in whose name the Certificates or Warrant Agreements surrendered in exchange therefor are registered, it will be a condition of payment that the Certificates or Warrant Agreements so surrendered be properly endorsed (or accompanied by an appropriate instrument of transfer) and otherwise in proper form for transfer (excluding any medallion guarantee), and that the Persons requesting such payment will have paid any transfer or other Taxes required by reason of the payment of such consideration to a Person other than the registered holder of the Certificates or Warrant Agreements surrendered, or established to the reasonable satisfaction of Parent or any agent designated by it that such Tax is not applicable.

(d) Withholding for Payment of Taxes. Parent and the Surviving Corporation shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement such amounts as it is required to deduct and withhold with respect to the making of such payment under the Code, or any provision of state, local or foreign Tax Law. To the extent that amounts are so withheld by the Exchange Agent, Parent or the Surviving Corporation, as the case may be, and paid over to the proper Governmental Authority, such withheld and paid amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding were made by Parent or the Surviving Corporation, as the case may be. The Exchange Agent, Parent or the Surviving Corporation, as the case may be, shall give written notice to each such holder of any such withholding, and shall further promptly provide any such Person any additional documentation required for such Person's Tax filings, as may be reasonably be requested by such Person.

(e) Lost, Stolen or Destroyed Certificates or Warrant Agreements. In the event that any Certificates or Warrant Agreements shall have been lost, stolen or destroyed, the Exchange Agent, Parent or the Surviving Corporation, as the case may be, shall pay in exchange for such lost, stolen or destroyed Certificates or Warrant Agreements, upon the making of an affidavit of that fact by the holder thereof, in addition to an indemnity and bond reasonably acceptable to the Company, the consideration payable in respect of such shares of Company Capital Stock or Warrants in accordance with Section 3.1.

(f) Investment of Exchange Fund. The Exchange Agent shall invest the cash in the Exchange Fund as reasonably directed by Parent and approved by the Stockholder Representatives. Any interest and other income resulting from such investments shall be paid to Parent.

### **3.4** Aggregate Consideration Allocation Schedule.

(a) Attached hereto as Schedule 3 is a schedule prepared by the Company and certified and signed on behalf of the Company by an executive officer of the Company (the "Aggregate Consideration Allocation Schedule") that (i) lists all of the Stockholders, Warrantholders and Eligible Optionholders of record immediately prior to the Effective Time, (ii) reflects, as determined pursuant to the Amended and Restated Certificate of Incorporation of the Company immediately prior to the Effective Time and this Agreement, the Aggregate Initial Consideration Amount (and all components in calculating thereof) payable to each such Stockholder, Warrantholder or Eligible Optionholder and the Per Share Common Escrow

Consideration, Per Share Series A Escrow Consideration, Per Share Series B Escrow Consideration and Per Share Series C Escrow Consideration with respect to each Stockholder, Warrantholder and Eligible Optionholder.

(b) The Company and its Subsidiaries hereby acknowledge and agree that (x) Parent, Merger Sub and the Surviving Corporation are entitled to rely solely on the accuracy of the Aggregate Consideration Allocation Schedule, (y) neither Parent, Merger Sub nor the Surviving Corporation shall have any responsibility for any mistakes or errors in the calculation or miscalculation of the amount of consideration paid to any Stockholder, Warrantholder or Eligible Optionholder in reliance on the Aggregate Consideration Allocation Schedule or as a result thereof and (z) that no Stockholder, Warrantholder or Eligible Optionholder shall have any recourse against Parent, Merger Sub or the Surviving Corporation for any such mistake or error in the Aggregate Consideration Allocation Schedule or any payments made in reliance thereon.

**3.5 Dissenting Shares.** Notwithstanding any provision of this Agreement to the contrary, each issued and outstanding share of Company Capital Stock that is held by a Person who has not voted in favor of the Merger or consented thereto in writing or executed an enforceable waiver of appraisal rights to the extent permitted by applicable Law and, in the case of any Person required to have exercised appraisal rights under Section 262 of the DGCL as of the Effective Time in order to preserve such rights, with respect to which appraisal rights under the DGCL have been properly exercised, shall not be converted into the right to receive any portion of the Aggregate Initial Consideration Amount or the Escrow Amount and shall be converted into the right to receive payment of the fair value of such Dissenting Shares from the Surviving Corporation with respect thereto as provided by the DGCL (and, at the Effective Time, such Dissenting Shares shall no longer be outstanding and shall automatically be canceled and shall cease to exist, and such holder of Dissenting Shares shall cease to have any rights with respect thereto, except the right to receive the fair value of such Dissenting Shares as provided by the DGCL), unless and until the holder of any such share shall have failed to perfect or shall have effectively withdrawn or lost his, her or its right to appraisal and payment under the DGCL, in which case such share shall thereupon be deemed, as of the Effective Time, to have been converted into and exchangeable for the right to receive, upon surrender of such Certificate (unless Section 3.3(e) has been complied with) and delivery of a Letter of Transmittal in accordance with this Article 3, without interest, in accordance with this Agreement, the amount into which shares are converted pursuant to Section 3.1. From and after the Effective Time, no Stockholder who has demanded appraisal rights shall be entitled to vote his, her or its shares of Company Capital Stock for any purpose or to receive payment of dividends or other distributions on his, her or its shares. Any shares of Company Capital Stock for which appraisal rights have been properly exercised, and not subsequently withdrawn, lost or failed to be perfected, are referred to herein as the “Dissenting Shares.” The defense of any claim related to the appraisal of Company Capital Stock with respect to the Merger and with respect to any holder of Dissenting Shares (a “Dissenters Rights Claim”) shall be controlled exclusively by the Parent, subject to regular written notice to the Stockholders or the Stockholders Representative, and subject to acting reasonably and in good faith. All legal fees, costs, valuations or any other expenses of any kind whatsoever incurred by or paid by the Company and its Subsidiaries in connection with the defense, settlement or other disposition of any Dissenters Rights Claim to the extent related to such Dissenters Rights Claim, and any and all amounts paid as a judgment or settlement or any other proceeding with respect to such Dissenters Rights Claim to the extent

amounts paid in such judgment or settlement exceed the consideration otherwise payable in respect of such shares under this Agreement shall be paid one-half by the Parent and one-half from the Escrow Amount. If the Parent reasonably and actually incurs any costs in connection with a Dissenters Rights Claim, it shall submit a detailed calculation and description of such amounts to the Stockholder Representatives and within ten (10) Business Days of the receipt of such notice, the Stockholder Representatives and Parent shall cause a Joint Direction (as defined in the Escrow Agreement) to be delivered pursuant to the Escrow Agreement, which Joint Direction shall direct the Escrow Agent to make a payment of fifty percent (50%) of the amount of such costs out of the Escrow Account, and Parent shall concurrently pay fifty percent (50%) of the amount of such costs. In the event Parent receives any reimbursement recovery or credit for any such costs which were actually paid, fifty percent (50%) of such amount shall be paid by Parent into the Escrow Account.

### **3.6      Escrow and Net Working Capital Adjustment.**

(a)      At Closing, Parent shall deliver to the Escrow Agent, by wire transfer of immediately available funds, an aggregate amount equal to the Escrow Amount to be held in an escrow account and disbursed in the manner set forth in the Escrow Agreement, which shall provide that fifty percent (50%) of the Escrow Amount, less (i) any payments paid out of the Escrow during the first twelve (12) months and (ii) Parent's reasonable estimate of the maximum aggregate amount of all pending claims against the Escrow Amount, subject to the procedural requirements of the Escrow Agreement, shall be paid to the Exchange Agent for payment to the Stockholders, Warrantholders and Eligible Optionholders in accordance with the Letters of Transmittal twelve (12) months after Closing and the balance of such funds shall be paid to Exchange Agent for payment to the Stockholders, Warrantholders and Eligible Optionholders in accordance with the Letters of Transmittal eighteen (18) months after the Closing less the total amount of any pending claims. The Parties hereto agree that Parent shall be treated as the owner of the Escrow Amount, all interest and other income earned on the Escrow Account shall be reported as taxable income of Parent, and no Stockholder, Warrantholder or Eligible Optionholder shall be treated for Tax purposes as having received any of the Escrow Amount, in each case, except to the extent and until such amount is actually disbursed to the Stockholders, Warrantholder or Eligible Optionholder in accordance with the Escrow Agreement. Except as otherwise required by law, the Parties hereto shall file applicable Tax forms consistent with such treatment. Any disputes relating to the distribution of the Escrow Amount shall be subject to the dispute resolution provisions set forth in the Escrow Agreement. Any distribution of the Escrow Amount to the Stockholders, Warrantholders and Eligible Optionholders shall be done in accordance with instructions (including allocation instructions) provided to the Escrow Agent by the Stockholder Representatives. None of Parent, Merger Sub or the Surviving Corporation shall have any Liability to any Stockholder, Warrantholder and Eligible Optionholder with respect to such allocation of the Escrow Amount.

(b)      Determination of Adjustment Amount. The Parties hereto have agreed that the “Net Working Capital Adjustment” shall be the amount of the difference between the Net Working Capital Amount and zero, which shall result in a change in the Aggregate Initial Consideration Amount such that if the difference is positive, there shall be an increase in the Aggregate Initial Consideration Amount and, if the difference is negative, there shall be a decrease in the Aggregate Initial Consideration Amount.

(c) Estimated Net Working Capital Adjustment. The Company has prepared, in good faith, an estimated consolidated balance sheet of the Company and its Subsidiaries as of a date no later than the close of business on the Business Day prior to the Closing Date, in form and substance reasonably acceptable to Parent and the Company (the “Estimated Closing Balance Sheet”), and a statement which shall set forth estimates of the Net Working Capital Amount (the “Estimated Net Working Capital Adjustment Statement”) and the resulting Net Working Capital Adjustment, if any (the “Estimated Net Working Capital Adjustment”). The Company has prepared such Estimated Closing Balance Sheet and Estimated Net Working Capital Adjustment Statement in accordance with GAAP using, to the extent consistent with GAAP, the same accounting methods, policies, principles, practices and procedures, with consistent classifications, judgments and estimation methodology, as were used in the preparation of the balance sheet of the Company for the period ended December 31, 2007 and did not include any changes in assets or liabilities as a result of purchase accounting adjustments or other changes arising from or resulting from the Merger or the other Transactions (the “Applicable Principles”). The Aggregate Initial Consideration Amount to be delivered by Parent at the Closing pursuant to Section 3.2 shall be changed by the amount of the Estimated Net Working Capital Adjustment, which change shall be an increase if the Estimated Net Working Capital Adjustment is a positive number and which change shall be a decrease if the Estimated Net Working Capital Adjustment is a negative number. The Estimated Closing Balance Sheet and Estimated Net Working Capital Adjustment shall be accepted for purposes of determining the amount of cash payable at the Closing, but shall not affect the rights of the Parties to dispute the Closing Balance Sheet as provided in Sections 3.6(e), (f) and (g).

(d) Preparation of Closing Balance Sheet. As promptly as practicable, but not later than sixty (60) calendar days after the Closing Date (the “Preparation Period”), Parent shall prepare in good faith, or cause to be prepared in good faith, and shall deliver to the Stockholder Representatives a consolidated balance sheet of the Company and its Subsidiaries as of the close of business on the Business Day immediately preceding the Closing Date (the “Closing Balance Sheet”), and a statement which shall set forth the Net Working Capital Amount (the “Net Working Capital Adjustment Statement”) and the resulting Net Working Capital Adjustment which shall be prepared in accordance with GAAP, using, to the extent consistent with GAAP, the Applicable Principles. The Stockholder Representatives and their accountants and representatives may meet with or make inquiries of Parent and its accountants and representatives at any time (whether prior to, during or subsequent to the preparation of the Closing Balance Sheet and Net Working Capital Adjustment Statement) regarding questions concerning, or disagreements with, the Closing Balance Sheet and the other statement arising in the course of their review thereof, and Parent shall use its, and shall cause the Company and its Subsidiaries to use their respective, commercially reasonable efforts to cause any such accountants to cooperate with and respond to such inquiries. Immediately after receipt of the Closing Balance Sheet or the other statement, the Stockholder Representatives shall be given reasonable access to (and reasonable numbers of copies of), the books and records of the Company and its Subsidiaries and all of Parent’s and its representatives’ work papers, worksheets, notes and schedules used in the preparation of the Closing Balance Sheet during reasonable business hours for the purpose of reviewing the Closing Balance Sheet and the Net Working Capital Adjustment Statement. Unless Parent provides the Stockholder Representatives the Closing Balance Sheet and the Net Working Capital Adjustment Statement in writing within such Preparation Period, the Estimated Closing Balance Sheet and the Estimated Net Working

Capital Adjustment Statement delivered to Parent by the Company prior to Closing and the resulting Estimated Net Working Capital Adjustment, if any, shall be binding on the Parties, and shall be the final Closing Balance Sheet and the final Net Working Capital Adjustment for purposes of this Agreement.

(e) Review of Closing Balance Sheet. Within twenty (20) days after the receipt of the Closing Balance Sheet and the Net Working Capital Adjustment Statement by the Stockholder Representatives (the “Review Period”), the Stockholder Representatives shall propose in good faith to Parent such adjustments (if any) therein as shall in the Stockholder Representatives’ good faith judgment be required to cause the Closing Balance Sheet and the Net Working Capital Adjustment Statement to reflect fairly those items required to be included therein. Unless the Stockholder Representatives notifies Parent in writing within such Review Period of an objection to any item or computation set forth on the Closing Balance Sheet and the Net Working Capital Adjustment Statement, specifying in reasonable detail the basis for such objection, the Closing Balance Sheet and the Net Working Capital Adjustment Statement delivered to the Stockholder Representatives by Parent, and the resulting Net Working Capital Adjustment, if any, shall be binding on the Parties hereto, and shall be the final Closing Balance Sheet and the final Net Working Capital Adjustment for purposes of this Agreement.

(f) Dispute Resolution. Any dispute concerning any portion or amount of the Net Working Capital Adjustment set forth on the Closing Balance Sheet and the Net Working Capital Adjustment Statement which cannot be resolved by the Parties despite good faith negotiations, all within ten (10) calendar days after Parent’s receipt of the Stockholder Representatives’ written objection, shall be submitted for determination to a nationally-recognized certified public accounting firm which is independent of Parent and the Company and reasonably approved by Parent and the Company (the “Arbiter”) for resolution of the disputed items and determination of the Closing Balance Sheet, the Net Working Capital Amount and the resulting Net Working Capital Adjustment. Prior to referring the matter to the Arbiter, the Parties shall agree on the procedures to be followed by the Arbiter, including procedures with regard to the presentation of evidence. If the Parties are unable to agree upon procedures within the time prescribed for referral of the dispute to the Arbiter, the Arbiter shall establish such procedures giving due regard to the intention of the Parties to resolve disputes as quickly, efficiently and inexpensively as possible, which procedures may, but need not, be those proposed by either Parent or the Stockholder Representatives. Parent, the Stockholder Representatives and their respective representatives will each furnish to the Arbiter and the other Parties such work papers, schedules and other documents relating to the unresolved disputed issues as the Arbiter may request. The Arbiter shall be directed to render a written report to the Parties on the unresolved disputed issues with respect to the Closing Balance Sheet and the resulting Net Working Capital Adjustment as promptly as practicable, and to resolve only those issues in dispute that were identified with reasonable specificity by the Stockholder Representatives in its objection. The determination by the Arbiter shall be based solely on presentations by Parent, on the one hand, and the Stockholder Representatives, on the other hand, and shall not involve independent review. Any determination of the Net Working Capital Adjustment by the Arbiter shall not be outside the range defined by the respective amounts in the Closing Balance Sheet proposed by Parent and the Stockholder Representatives proposed adjustments thereto, and such determination shall be final and binding upon the Parties. Any further submissions to the Arbiter must be written and delivered to each Party. The Arbiter’s determination shall be based solely



on the definitions of Net Working Capital Amount contained herein and the provisions of this Section 3.6. The Stockholder Representatives and Parent shall use their reasonable efforts to cause the Arbiter to resolve all disagreements as soon as practicable. The costs and expenses of the Arbiter shall be allocated between Parent, on the one hand, and the Stockholder Representatives (solely from and to the extent of the Escrow Amount), on the other hand, based upon the percentage which the portion of the contested amount not awarded to each Party hereto bears to the amount actually contested by such Party hereto. For example, if the Stockholder Representatives claims the appropriate adjustments are \$1,000 greater than the amount determined by Parent's accountants, and Parent contests only \$500 of the amount claimed by the Stockholder Representatives, and if the Arbiter ultimately resolves the dispute by awarding to Parent \$300 of the \$500 contested, then the costs and expenses of arbitration will be allocated 60% (i.e.,  $300 \div 500$ ) to the Stockholders, Warrantholders and Eligible Optionholders and 40% (i.e.,  $200 \div 500$ ) to Parent.

(g) Payment of Net Working Capital Adjustment. Within five (5) Business Days following (i) the termination of the Review Period, if no written objection to the Closing Balance Sheet and Net Working Capital Adjustment has been delivered by the Stockholder Representatives during the Review Period in accordance with Section 3.6, (ii) the acceptance by Parent of the Stockholder Representatives' proposed adjustments to the Closing Balance Sheet and the Net Working Capital Adjustment, (iii) the agreement by Parent and the Stockholder Representatives to a Closing Balance Sheet and Net Working Capital Adjustment in accordance with this Section 3.6 or (iv) resolution by the Arbiter of any Closing Balance Sheet and Net Working Capital Adjustment disputes pursuant to subsection (f) above, (A) in the event that the Estimated Net Working Capital Adjustment exceeds the final Net Working Capital Adjustment the Stockholder Representatives and Parent shall execute and cause a Joint Direction (as defined in the Escrow Agreement) to be delivered pursuant to the Escrow Agreement within five (5) Business Days after such resolution, which Joint Direction shall direct the Escrow Agent to make a payment out of the Escrow Account to Parent in an amount equal to such excess, and (B) in the event the final Net Working Capital Adjustment exceeds the Estimated Net Working Capital Adjustment, Parent shall pay the Exchange Agent (for the benefit of all of the Stockholders, Warrantholders and Eligible Optionholders in accordance with their Per Share Common Escrow Consideration, Per Share Series A Escrow Consideration, Per Share Series B Escrow Consideration or Per Share Series C Escrow Consideration, as the case may be) the amount of such excess by wire transfer of immediately available funds to an account designated in writing by the Stockholder Representatives.

(h) Severance Obligations. All obligations set forth in Schedule 2 required to be paid at the Closing shall be paid to Parent to the beneficiary named therein on behalf of the Company at Closing, and the remaining obligations under Schedule 2 shall be satisfied as soon as required thereafter.

(i) Permitted Indebtedness. Parent shall pay the Permitted Indebtedness on behalf of the Company at the Closing.

**ARTICLE 4**  
**OTHER AGREEMENTS AND COVENANTS**

**4.1**      Director and Officer Liability and Indemnification.

(a)          For a period of six (6) years after the Closing, Parent and Merger Sub shall not, and shall not permit any of their respective Subsidiaries (including the Company and the Surviving Corporation) to, amend, repeal or modify any provision in the organizational and governance documents of the Company or any Subsidiary of the Company or the Surviving Corporation relating to the exculpation or indemnification of any officers and directors thereof in any way adverse to such officers and directors (unless required by Law), it being the intent of the Parties that the officers and directors of the Company or any Subsidiary of the Company or the Surviving Corporation shall continue to be entitled to such exculpation and indemnification to the fullest extent of the Law.

(b)          For a period of six (6) years after the Closing, Parent and Merger Sub shall cause the Company and the Surviving Corporation to, maintain in effect the D&O Tail. Prior to the Closing, the Company shall pay for all premiums for the D&O Tail.

**4.2**      Tax Matters.

(a)          The Stockholder Representatives shall, at Parent's reasonable expense, timely prepare or cause to be prepared all Tax Returns of the Company and its Subsidiaries relating to Income Taxes for all periods ending on or prior to the Closing Date with respect to which a Tax Return was not due on or before the Closing Date ("Pre-Closing Returns"); provided, however, that Parent shall prepare any portion of the Tax Return that relates to transactions occurring on the Closing Date or Two Business Days immediately preceding the Closing Date. All such Pre-Closing Returns shall be prepared and filed in a manner consistent with the past practice of the Company and its Subsidiaries unless otherwise required by applicable Law. The Stockholder Representatives shall pay to Parent at least three (3) Business Days prior to the date on which Income Taxes are due with respect to any Pre-Closing Period (taking into account extensions) an amount equal to the portion of the Income Taxes for such Pre-Closing Period (as finally determined under this Section 4.2(a)) that are allocable to the portion of such Pre-Closing Period ending on September 5, 2008, determined using the principles set forth in Section 4.2(c). The Stockholder Representatives shall submit each of the Pre-Closing Returns to Parent for review at least thirty (30) calendar days prior to the due date for the filing of such Pre-Closing Return (taking into account properly obtained any extensions). Parent shall have the right to review and comment on each Pre-Closing Return prior to the filing of such Pre-Closing Return. The Stockholder Representatives and Parent agree to consult and resolve in good faith any issues and comments arising as a result of Parent's review of each Pre-Closing Return, and mutually to consent to filing as promptly as possible each Pre-Closing Return; *provided that* if the Stockholder Representatives and Parent are unable to resolve any such issue within fifteen (15) calendar days after any Pre-Closing Return is submitted to Parent, the dispute shall be submitted to the Arbiter for resolution in accordance with Section 3.6(f). Parent will have final authority over the treatment of all items in the portion of any Tax Return that it prepares pursuant to this Section 4.2(a) and disputes (if any) in respect of such items will not be submitted to the Arbiter; provided, however, that if the treatment of any such items could

reasonably be expected to adversely affect the Tax liability of the Stockholders, Optionholders or Warrantholders or to create an indemnification obligation with respect to Taxes under Section 10.1(a) (it being acknowledged for purposes of this Section 4.2(a) that solely the completion of the transactions occurring on the Closing Date or the Two Business Days immediately preceding the Closing Date, themselves, will not have such adverse effect or create an indemnification obligation), then such items shall be submitted to the Arbiter for resolution in accordance with Section 3.6(f).

(b) Parent shall timely prepare or cause to be prepared and file or cause to be filed any Tax Returns of the Company and its Subsidiaries with respect to any period beginning on or before the Closing Date and ending after the Closing Date (each, a “Straddle Period”) relating to Income Taxes (the “Parent’s Returns”). All such Parent’s Returns shall be prepared and filed in a manner consistent with the past practice of the Company and its Subsidiaries in filing Income Tax Returns relating to Taxes unless otherwise required by applicable Law. The Stockholder Representatives shall pay to Parent at least three (3) Business Days prior to the date on which Income Taxes are due with respect to any Straddle Period (taking into account extensions) an amount equal to the portion of the Income Taxes for such Straddle Period (as finally determined under this Section 4.2(b)) that are allocable to the portion of such Straddle Period ending on September 5, 2008, determined using principles set forth in Section 4.2(c). Parent shall deliver, at least thirty (30) calendar days prior to the due date for the filing of each Parent’s Return (taking into account extensions), to the Stockholder Representatives a statement setting forth the amount of Income Tax for which the Stockholder Representatives is responsible pursuant to this Section 4.2(b) with respect to such Tax Return and copies of such Tax Return. The Stockholder Representatives shall have the right to review and comment on such Tax Return and the statement prior to the filing of such Tax Return. The Stockholder Representatives and Parent agree to consult and resolve in good faith any issue arising as a result of the Stockholder Representatives’ review of such Tax Return and statement, and mutually to consent to the filing as promptly as possible of such Tax Return; *provided that* if the Stockholder Representatives and Parent are unable to resolve any such issue within fifteen (15) calendar days after such Tax Return is submitted to the Stockholder Representatives, the dispute shall be submitted to the Arbiter for resolution in a manner consistent with the dispute resolution provisions of Section 3.6(f).

(c) If the Company and its Subsidiaries are permitted under any applicable foreign, state or local income tax Law to treat the Closing Date as the last day of a taxable period, the Stockholder Representatives and Parent shall treat (and cause their respective Affiliates to treat) the Closing Date as the last day of a taxable period. For all purposes under this Agreement, in the case of Taxes that are payable with respect to any Straddle Period, the portion of any such Tax that is allocable to the portion of the period ending on the close of the Closing Date shall be (i) in the case of Taxes that are (x) based upon or related to income or receipts, (y) imposed in connection with the sale or other transfer or assignment of property (real or personal, tangible or intangible), (z) employment, social security or other similar Taxes, deemed equal to the amount which would be payable if the taxable year ended on the Closing Date; and (ii) in the case of Taxes imposed on a periodic basis with respect to any assets or otherwise measured by the level of any item, deemed to be the amount of such Taxes for the entire period (or, in the case of such Taxes determined on an arrears basis, the amount of such Taxes for the immediately preceding period) multiplied by a fraction the numerator of which is

the number of calendar days in the period ending at the end of the Closing Date and the denominator of which is the number of calendar days in the entire period; provided, however, that, in such case, any Taxes of the Company resulting from the Transactions other than the Merger shall be solely borne by Parent.

(d) The Stockholder Representatives and Parent shall, upon written request of the other, (i) provide the other, and Parent shall cause the Company and its Subsidiaries to provide the Stockholder Representatives, with such assistance as may be reasonably requested by any of them in connection with the preparation of any Tax Return, audit, or other examination by any taxing authority or judicial or administrative proceedings relating to Liability for Taxes involving the Company or its Subsidiaries, (ii) retain and provide the other, and Parent shall cause the Company and its Subsidiaries to retain and provide the Stockholder Representatives with, any records or other information that may be relevant to such Tax Return, audit or examination, proceeding, or determination, and (iii) provide the other with any final determination of any such audit or examination, proceeding, or determination that affects any amount required to be shown on any Tax Return of the other or the Company or its Subsidiary of the Company for any period. Without limiting the generality of the foregoing, Parent shall retain, and shall cause the Company and its Subsidiaries to retain, and Stockholder Representatives shall retain, until the applicable statutes of limitations (including any extensions) have expired, copies of all Tax Returns, supporting work schedules, and other records or information that may be relevant to such returns for all Tax periods or portions thereof ending before or including the Closing Date involving the Company or its Subsidiaries and shall not destroy or otherwise dispose of any such records without first providing the other Party with a reasonable opportunity to review and copy the same. Except as set forth in this Agreement, each Party shall bear its own expenses in complying with the foregoing provisions; *provided, however*, that the Stockholder Representatives shall have the right to reimbursement as set forth in Section 10.6(c) and be able to deduct its own expenses (including, without limitation, any Taxes) from such amount from the Escrow Amount.

(e) Parent shall promptly notify the Stockholder Representatives in writing upon receipt by Parent or any of its Affiliates of notice of any audits, examinations, adjustments or assessments relating to Taxes for which any of Parent or the Company or its Subsidiary of the Company may be entitled to receive indemnity under this Agreement (each, a "Tax Claim"). The Stockholder Representatives, in its sole discretion, may contest such Tax Claim in any permissible forum and shall otherwise have the sole right at its sole expense to direct, control and settle any administrative or judicial proceedings relating to such Tax Claim; *provided that* the Stockholder Representatives (i) notifies Parent in writing within five (5) Business Days of Parent's notification of the Stockholder Representatives of such Tax Claim of its intent to exercise its right to direct, control, and settle such Tax Claim, (ii) Parent shall be entitled to participate at its sole expense in such administrative or judicial proceedings and (iii) to the extent any settlement of any such proceeding is reasonably expected to increase any Tax or result in any Liability to Parent or any of its Affiliates, including, for the avoidance of doubt, the Company or its Subsidiaries in respect of any Tax or Liability not indemnified under this Agreement at the time of such settlement, the Stockholder Representatives may not settle any such proceeding without the prior written consent of Parent, which consent shall not be unreasonably conditioned, withheld or delayed.

(f) All Tax allocation and Tax sharing agreements, arrangements, policies and guidelines, formal or informal, express or implied, that may exist between any of the Company and its Subsidiaries, on one hand, and the Stockholders or any of their Affiliates (other than the Company and its Subsidiaries), on the other hand, and all obligations and rights thereunder, shall terminate as of the Closing Date, will have no further effect for any taxable year (whether the current year, a future year or a past year), and the Company and its Subsidiaries shall cease to have any liability to make or rights to receive any payment thereunder for any amounts due in respect of periods ending prior to or on or after the Closing Date.

(g) Except as otherwise required by a determination within the meaning of Section 1313(a), (i) no part of the consideration received by the Stockholders shall be reported other than as consideration for the sale or exchange of stock of the Company, including for U.S. or other withholding purposes, except with respect to any interest paid or deemed to be paid with respect to proceeds from the Escrow Amount, if any, and (ii) the parties shall treat the Transaction in a manner consistent with Revenue Ruling 77-226, 1977-2 C.B. 90 and the Company shall not issue Form 1099-DIVs or, unless required by Law, withhold on any other portion of the redemption distribution for any other Tax purposes. The Parties further agree, upon request by any other Party, to use their reasonable best efforts to obtain any certificate or other document from any Governmental Authority or any other Person as may be necessary to mitigate, reduce or eliminate any Tax that could be imposed with respect to the Transactions.

#### **4.3**      Closing Efforts.

(a) Each of the Parties shall use its commercially reasonable efforts to take all actions and to do all things necessary, proper or advisable to consummate the transactions contemplated by this Agreement, including using its commercially reasonable efforts to ensure that the conditions to the obligations of the other Parties to consummate the Merger and the other Transactions are promptly satisfied. None of the Parties shall take any action that would reasonably be expected to delay or prevent the timely consummation of the Merger and the other Transactions.

(b) Without limitation of Section 4.3(a), the Company shall use its commercially reasonable efforts to obtain, as promptly as practicable, the Requisite Stockholder Approval, including (i) by submitting this Agreement to the holders of the Company Capital Stock as of the record date for the Transactions for adoption by written consent in lieu of a meeting in accordance with the requirements of the DGCL and the Amended and Restated Certificate of Incorporation and the Amended and Restated Bylaws, and (ii) except to the extent that the Board of Directors of the Company has effected a Change in Recommendation in accordance with the terms of Section 4.4, recommending that the holders of the Company Capital Stock adopt this Agreement.

(c) If the Requisite Stockholder Approval is obtained by means of the Written Consent, the Company shall promptly send, pursuant to Sections 228 and 262(d) of the DGCL, a written notice to all Stockholders of the Company that did not execute such Written Consent informing them that this Agreement was adopted by the Requisite Stockholders and that appraisal rights are available for their shares of Company Capital Stock pursuant to Section 262 of the DGCL (which notice shall include a copy of such Section 262).

**4.4**      Change in Recommendation. During the period beginning on the date hereof and ending on the earlier of the receipt of the Requisite Stockholder Approval and the termination of this Agreement in accordance with its terms (the “Applicable Period”), without the prior written consent of Parent, the Company’s Board of Directors shall not withdraw or modify, or propose publicly to withdraw or modify, in a manner adverse to Parent, its recommendation that the holders of the Company Capital Stock as of the record date for the Transactions adopt this Agreement. Notwithstanding the foregoing, during the Applicable Period, if the Company’s Board of Directors determines in good faith (after consultation with its outside counsel and financial advisor) that it would be a breach of its fiduciary duties to the Stockholders under applicable Law not to take any action prohibited by the previous sentence (any such action, a “Change in Recommendation”), it may effect a Change in Recommendation; provided, however, that the Company’s Board of Directors may only effect a Change in Recommendation if: (1) the Company has provided prior written notice to Parent advising Parent that the Company’s Board is considering effecting a Change in Recommendation; (2) Parent has not made an offer that the Company’s Board of Directors has determined (after consultation with its outside counsel and financial advisor) in its good faith judgment to no longer require that the Company’s Board of Directors effect a Change in Recommendation in order to not breach its fiduciary duties to the Stockholders under applicable Law; and (3) the Company has not violated any of the provisions of this Agreement either intentionally or in a manner that is materially adverse to Parent.

**4.5**      Operation of the Business. Except as set forth on Schedule 4.5, during the period beginning on the execution of this Agreement and the earlier of the Effective Time and the termination of this Agreement, the Company will use its commercially reasonable efforts to conduct the Business only in the ordinary course of business consistent with past custom and practice in all material respects.

**4.6**      Cambridge Amendment and Cambridge Waiver. Concurrently with the execution of this Agreement, the Parties shall execute the Cambridge Waiver and the Cambridge Amendment; it being understood that the Company shall only execute the Cambridge Waiver and Cambridge Amendment following the execution thereof by Parent and at the instruction of Parent to so execute.

**ARTICLE 5**  
**INTENTIONALLY OMITTED**

**ARTICLE 6**  
**REPRESENTATIONS AND WARRANTIES OF THE COMPANY**

Except as set forth in the disclosure schedule delivered by the Company to Parent and Merger Sub concurrently with the execution of this Agreement (the “Company Disclosure Schedule”; the Company Disclosure Schedule has been arranged for purposes of convenience in separately titled sections corresponding to the sections of this Article 6; however, each section of the Company Disclosure Schedule shall be deemed to incorporate by reference all information disclosed in any other section of the Company Disclosure Schedule, but only to the extent the applicability of such disclosure to such other section would be reasonably apparent to a

reasonable Person under the circumstances), the Company hereby represents and warrants to Parent and Merger Sub as of the date hereof as follows:

**6.1**     Ownership of Company Capital Stock. Each of the shares of the outstanding Company Capital Stock was validly issued, and is a fully paid and non-assessable share of Company Capital Stock. The Company Capital Stock listed on Schedule 6.1 represents all of the issued and outstanding shares of capital stock of the Company immediately prior to the Redemption. Except for the Transactions and as set forth in Schedule 6.1, there are no agreements, arrangements, options, warrants, calls, rights or commitments of the Company relating to the issuance and sale or redemption or other transfer of any of the shares of Company Capital Stock. Schedule 6.1 sets forth a complete and accurate list, as of the date of this Agreement, of (i) all Stockholders showing the number shares of Company Capital Stock (including the class and series of such shares) Stockholder and (with respect to the shares of Company Preferred Stock) the number of shares of Company Common Stock into which such share of Company Preferred Stock is convertible, (ii) all Optionholders, indicating, with respect to each Option, the Option Plan under which it was granted, the number of shares of Common Stock subject to such Option, the exercise price, the date of grant, and the vesting schedule (including any acceleration provisions with respect thereto); and (iii) all Warrantholders, indicating with respect to each Warrant the number and type of shares of Company Capital Stock subject to such Warrant, the exercise price, the date of issuance and the expiration date thereof.

**6.2**     Authorization.

(a)       The Company has all necessary corporate power and authority to execute and deliver this Agreement and each of the Transaction Documents to be executed and delivered by the Company to perform its obligations hereunder and thereunder and to consummate the Merger and the Transactions. The Redemption will be effected in compliance with all applicable law (including the DGCL).

(b)       The execution, delivery and performance by the Company of this Agreement and each of the Transaction Documents to which the Company is or will be a party has been duly and properly authorized by the board of directors of the Company in accordance with applicable Law and with the Amended and Restated Certificate of Incorporation of the Company and the Amended and Restated Bylaws of the Company. The execution and delivery of the Written Consent by the Stockholders owning at least the percentages set forth in Schedule 1 of each class of the issued and outstanding Company Capital Stock (the “Requisite Stockholders”) is the only vote of the holders of any class or series of the Company Capital Stock legally required to approve the Merger, this Agreement and the other transactions contemplated by this Agreement (such approval, the “Requisite Stockholder Approval”). No other corporate proceedings on the part of the Company or its Stockholders are necessary to authorize the execution, delivery and performance of this Agreement or to consummate the Merger or the other Transactions.

(c)       This Agreement has been duly executed and delivered by the Company and, assuming the due authorization, execution and delivery by Parent and Merger Sub, constitutes the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with its terms subject to (i) the effect of any applicable Law of general



application relating to bankruptcy, reorganization, insolvency, moratorium or similar Laws affecting creditors' rights and relief of debtors generally and (ii) the effect of rules of law and general principles of equity, including rules of law and general principles of equity governing specific performance, injunctive relief and other equitable remedies (regardless of whether such enforceability is considered in a proceeding in equity or at law). Each of the other Transaction Documents to be executed and delivered by or on behalf of the Company will be duly executed and delivered by the Company, and, when so executed and delivered and assuming due authorization, execution and delivery by Parent and Merger Sub thereto, will constitute the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to (i) the effect of any applicable Law of general application relating to bankruptcy, reorganization, insolvency, moratorium or similar Laws affecting creditors' rights and relief of debtors generally and (ii) the effect of rules of law and general principles of equity, including rules of law and general principles of equity governing specific performance, injunctive relief and other equitable remedies (regardless of whether such enforceability is considered in a proceeding in equity or at law).

**6.3** No Conflicts. Except as set forth on Schedule 6.3, neither the execution and delivery of this Agreement and the Transaction Documents by the Company nor the performance by the Company of the Transactions shall (with or without notice or lapse of time or both):

- (a) violate or conflict with or result in a breach of any of the terms, conditions or provisions of the organizational documents of the Company or any Subsidiary of the Company;
- (b) violate or conflict with or result in a breach of any Law or conflict with or result in the breach of any of the terms, conditions or provisions thereof;
- (c) constitute a default under or otherwise violate any Permit, Contract, mortgage, note, bond, license or other instrument to which the Company or any Subsidiary of the Company is a party or by which the properties or assets of any of the foregoing are bound;
- (d) constitute an event which would permit any party to terminate, or accelerate the maturity of any Indebtedness or other obligation under, any Contract, mortgage, note, bond, license or other instrument to which the Company or any Subsidiary of the Company is a party or by which the properties or assets of any of the foregoing are bound;
- (e) result in the creation or imposition of any Lien upon the assets of the Company or any Subsidiary of the Company;
- (f) require on the part of the Company or any Subsidiary any notice to or any Permit of, any Person;
- (g) except with respect to clauses (b), (c), (d), (e) and (f) for such violations, conflicts, breaches, defaults, rights of termination, acceleration or cancellation, payments or Liens as would not reasonably be expected, individually or in the aggregate, to be material.

**6.4 Organization.** The Company is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware. Each Subsidiary of the Company is duly organized, validly existing and in good standing under the Laws of the state of its formation or incorporation, as the case may be. Each of the Company and the Subsidiaries thereof has all requisite corporate power and authority to carry on the Business as now conducted by it and to own or hold under lease the properties and assets it now owns or holds under lease. Each of the Company and the Subsidiaries thereof is duly qualified as a foreign corporation or company (as applicable) to do business and is in good standing as a foreign corporation or company (as applicable) in all jurisdictions where the nature of the property owned or leased by it, or the nature of its business, makes such qualification necessary, except where the absence of such qualification would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, which jurisdictions are listed opposite such company's name on Schedule 6.4. The Company does not have any Subsidiaries or any equity interests in a Person other than those set forth on Schedule 6.4. Other than as set forth on Schedule 6.4, the Company owns beneficially and of record one hundred percent (100%) of the outstanding capital stock of each Subsidiary of the Company thereof set forth thereon, free and clear of all Liens. Except as set forth in Schedule 6.4, there are no agreements, arrangements, options, warrants, calls, rights or commitments of the Company relating to the issuance and sale or redemption or other transfer of any capital stock of any Subsidiary of the Company. The name of each director and officer of the Company and each Subsidiary of the Company thereof as of the date here of is set forth opposite the position held by same, on Schedule 6.4. Correct and complete copies of the Company's and the Subsidiaries' organizational documents have been previously made available to Parent. Neither the Company nor any of its Subsidiaries are in material default under or in violation of any provision of its organizational documents.

**6.5 Capitalization.** The authorized capital stock of the Company consists of 166,700,000 shares of Company Common Stock and 101,718,919 shares of preferred stock of the Company. Of the authorized Company Preferred Stock, (i) 10,065,999 shares are designated Company Series A-1 Preferred Stock, (ii) 13,030,570 shares are designated Company Series A-2 Preferred Stock, (iii) 27,482,730 shares are designated Company Series B Preferred Stock, (iv) 29,711,059 shares are designated Company Series C-1 Preferred Stock, and (v) 21,428,571 shares are designated Company Series C-2 Preferred Stock. All of the outstanding shares of capital stock of any Subsidiary of the Company thereof have been validly issued and are fully paid and non-assessable. No shares of capital stock of the Company or any Subsidiary of the Company are subject to, nor have been issued in violation of, preemptive or similar rights which were not waived or have not been terminated. Except as set forth on Schedule 6.5, neither the Company nor any Subsidiary of the Company thereof has any outstanding stock (other than the Company Capital Stock), or other securities convertible into or exchangeable for shares of its capital stock or authorized stock appreciation, phantom stock, profit participation or similar rights, and neither the Company nor any Subsidiary of the Company thereof has any outstanding options, warrants or rights to subscribe for or to purchase its capital stock or any stock or securities convertible into or exchangeable for capital stock. Neither the Company nor any Subsidiary of the Company thereof is subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any shares of its capital stock or any warrants, options or other rights to acquire its capital stock. All issuances and sales and repurchases by the Company and any Subsidiary of the Company thereof of its respective capital stock have been effected in compliance in all material respects with all applicable Laws, including, without

limitation, applicable federal and state securities Laws. As of the date hereof, each of the Options will have been either exercised or terminated pursuant to the Option Plan with no Liability to the Company. The Aggregate Consideration Allocation Schedule is true, accurate and complete.

**6.6** Financial Statements. Schedule 6.6(a) contains the following financial statements of the Company (collectively, the “Financial Statements”):

(a) The unaudited consolidated balance sheet of the Company as of December 31, 2006 and 2007, and the related unaudited consolidated statements of income, shareholders’ equity and cash flow for the years ended December 31, 2006 and 2007; and

(b) The unaudited consolidated balance sheet (the “Latest Balance Sheet”) of the Company as of June 30, 2008 (the “Latest Balance Sheet Date”), and the related unaudited consolidated statements of income, shareholders’ equity and cash flow for the six-month period then ended (collectively, the “Latest Financial Statements”).

Except as set forth on Schedule 6.6(b), the Financial Statements are true, accurate and complete in all material respects, are consistent with the Books and Records, and fairly present the financial condition of the Company and its Subsidiaries, taken as a whole, as of their respective dates and the results of operations and cash flows for the periods related thereto in accordance with GAAP, except that the Latest Financial Statements lack the footnote disclosure and are subject to normal year-end adjustments otherwise required by GAAP, which are not reasonably expected to be material individually or in the aggregate.

**6.7** Absence of Undisclosed Liabilities.

(a) Except as set forth on Schedule 6.7(a) and Liabilities arising under this Agreement, none of the Company nor any Subsidiary thereof has any material Liabilities (regardless of whether or not such Liability has been asserted), including without limitation, Liabilities on account of Taxes or Employee Benefit Plans, or in respect thereto, except as and to the extent accurately reflected and accrued for or reserved against in, the Latest Balance Sheet or incurred in the ordinary course of business consistent with past practice since the Latest Balance Sheet Date and are not material in amount.

(b) Except as set forth on Schedule 6.7(b), neither the Company nor any Subsidiary thereof has any material Liabilities to any Affiliate of the Company or any Stockholder of the Company.

**6.8** Tangible Personal Property. The Company or a Subsidiary thereof is in possession of and has good title to, or valid leasehold interests in or valid rights under Contract to use, all tangible personal property necessary to conduct the Business of the Company or any of its Subsidiaries as presently conducted in all material respects, including all tangible personal property reflected on the balance sheet included in the Latest Financial Statements and tangible personal property acquired since June 30, 2008, other than property disposed of since such date in the ordinary course of business consistent with past practice in all material respects or as set forth on Schedule 6.8. All such tangible personal property is free and clear of all Liens, other than Permitted Liens. Other than as set forth on Schedule 6.8, no Person other than the Company

and its Subsidiaries owns or has any right to the use or possession of such tangible personal property other than lessors and licensors of such tangible personal property constituting leasehold interests or licenses. To the knowledge of the Company, all of the Company's inventory as of the Closing Date was manufactured, produced, tested, validated and released in accordance with all applicable Laws and Manufacturing Requirements in all material respects.

**6.9** Contracts. Schedule 6.9(i) contains a list of each of the following contracts, agreements, instruments or commitments of any type to which the Company or any of its Subsidiaries is a party or by which any of them or any of their properties is bound (each, a "Material Contract" and, collectively, the "Material Contracts"):

- (a) any agreement which could require payments by or to the Company or any of its Subsidiaries in excess of \$50,000 or upon termination of such agreement could result in payments in excess of \$50,000;
- (b) any agreement under which the Company or any of its Subsidiaries has agreed to indemnify any third Person in any manner, excluding pursuant to commercial agreements with respect to the sale, licensing of tetrabenazine by the Company entered into in the ordinary course of business;
- (c) any agreement or commitment to make a capital expenditure or to purchase a capital asset in excess of \$50,000 by or on behalf of the Company or any of its Subsidiaries;
- (d) any bond, indenture, note, loan or credit agreement or other agreement relating to any Indebtedness or to the direct or indirect guarantee or assumption of the obligations of any other Person for Indebtedness;
- (e) any agreement limiting or restricting the freedom of the Company or any of its Subsidiaries or Affiliates (i) to engage in any line of business, (ii) to own, operate, sell, transfer, pledge or otherwise dispose of or encumber any asset, (iii) to compete with any Person or (iv) to engage in any business or activity in any geographic region.
- (f) any lease or similar agreement under which the Company or any of its Subsidiaries is the lessor of, or makes available for use by any third Person, any tangible personal property owned by the Company or any of its Subsidiaries, in each case for an annual rent in excess of \$50,000 individually;
- (g) any lease pursuant to which the Company or its Subsidiaries leases any real property;
- (h) any joint venture or partnership (or other ownership arrangement) agreements;
- (i) any agreement that contains restrictions with respect to the payment of dividends or any other distribution in respect of the shares of Company Capital Stock or the shares of any of its Subsidiaries' capital stock or the purchase, redemption or other acquisition of any such shares;

(j) any agreement relating to the acquisition or divestiture by the Company of shares of Company Capital Stock or shares of any of its Subsidiaries' capital stock, assets or business of any Person, which provides for consideration or payments not made in the ordinary course of business;

(k) any outstanding loan, advance or investment by the Company or any of its Subsidiaries to or in any Person, or any agreement or commitment relating to the making of any such loan, advance or investment (excluding trade receivables and advances to employees for normally incurred business expenses each arising in the ordinary course of business consistent with past practice, and excluding loans to employees not exceeding \$25,000);

(l) any agreement for the disposition of any material properties, assets or business of the Company or any Subsidiary (other than sales in the ordinary course of business) or any agreement for the acquisition of the assets or business of any other entity (other than purchases of inventory or components in the ordinary course of business);

(m) any employment or material consulting agreement; and

(n) any other agreement either involving more than \$50,000 or not entered into in the ordinary course of business.

Correct and complete copies of the Material Contracts of the Company or any Subsidiary of the Company listed on Schedule 6.9(i) have previously been made available to Parent. All material terms and provisions of each oral Material Contract of the Company or any Subsidiary are described on Schedule 6.9(i). Except as set forth on Schedule 6.9(ii), none of the Company nor any Subsidiary thereof is in default, nor has any event occurred which with the giving of notice or the passage of time or both would constitute a default by the Company or any Subsidiary thereof, under any Material Contract and no event has occurred which with the giving of notice or the passage of time or both would constitute a default by any other party to any such Material Contract, in each case except as would not reasonably be expected, individually or in the aggregate, to have a Company Material Adverse Effect. Except as set forth on Schedule 6.9(ii), assuming the due authorization, execution and delivery by the other parties to the Material Contracts, each of the Material Contracts of the Company and its Subsidiaries is in full force and effect, is valid and enforceable in accordance with its terms and is not subject to any claims, charges, set offs or defenses, except as would not reasonably be expected, individually or in the aggregate, to result in a Company Material Adverse Effect. Except as set forth on Schedule 6.9(ii), all of the Contracts of the Company or any Subsidiary of the Company will continue in full force and effect without any change or modification after the consummation of the transactions contemplated by this Agreement, without the necessity of obtaining any consent, approval, novation or waiver of any third party. The Company has delivered to Parent a true and complete copy of the Cambridge Agreement and the Cambridge Agreement is the only binding agreement between the Company and Cambridge.

**6.10** Real Property.

(a) Neither the Company nor any of its Subsidiaries owns any fee simple interest in any real property.

(b) Schedule 6.10 lists all real property used or held for use by the Company or any Subsidiary thereof which is leased by the Company or any Subsidiary thereof from third parties (the “Leased Real Property”). Either the Company or the Subsidiaries thereof is the sole tenant with respect to the tenant’s interest in the Leased Real Properties and such respective entity possesses a tenant’s interest thereto, free and clear of all Liens (other than Permitted Liens) placed on the tenant’s interest, and the right to quiet enjoyment of such Leased Real Property as a tenant. True, correct and complete copies of all existing lease agreements with respect to the Leased Real Property as of the Closing Date have heretofore been made available to Parent. Neither the Company nor any Subsidiary thereof has exercised any option to purchase any parcel of Leased Real Property. The Leased Real Property constitutes the only material real property used or occupied by the Company or any Subsidiary thereof in the conduct of the Business. There are no breaches of the leases of the Leased Real Property which, with notice or the passage of time or both, would result in a material default by either the landlord or the tenant thereunder that would trigger any termination or payment obligations or other Liability.

**6.11** Litigation. Except as set forth in Schedule 6.11, there is no suit, action, proceeding, investigation, arbitration, mediation, written and noticed claim or order pending or, to the knowledge of the Company, threatened against the Company or any Subsidiary thereof (or, to the knowledge of the Company, pending, threatened against any of the current or former officers, directors or employees of the Company or any Subsidiary thereof with respect to their service as an officer, director or employee of the Company or any Subsidiary thereof) before any court, or before any governmental department, commission, board, agency, or instrumentality that would reasonably be expected, individually or in the aggregate, to be material. Except as set forth in Schedule 6.11, neither the Company nor any Subsidiary thereof (a) is subject to any judgment, order or decree of any court or governmental agency; or (b) is engaged in any material legal action to recover monies due it or for damages sustained by it.

**6.12** Compliance with Applicable Laws. Except as set forth on Schedule 6.12, neither the Company nor any Subsidiary thereof is or has been in violation of any Law in connection with the conduct, ownership, use, occupancy or operation of the Business, its assets or the Leased Real Property, including, without limitation, any alleged failure to possess any license, Permit, authorization or other approval, and neither the Company nor any Subsidiary thereof has received written notice of any such violation, in each such case (A) and (B) except as would not reasonably be expected individually or in the aggregate, to have a Company Material Adverse Effect.

**6.13** Proprietary Rights.

(a) Except as set forth on Schedule 6.13(a)(i), to the Company’s knowledge, the Company and its Subsidiaries own, or are licensed, or otherwise possess legally enforceable rights, to use, sell or license, as applicable, all Proprietary Rights used, sold or licensed in connection with Products for use by the Company and its Subsidiaries. Schedule 6.13(a)(ii) contains a complete and correct list of all of the Company’s and its Subsidiaries’ patents and patent applications; trademark and service mark registrations and applications for registration thereof; domain names; copyright registrations and applications for registration thereof; and material computer software owned or used by the Company (excluding Commercial Software (as defined below)), including, where applicable, the name of the registered owner, date of

registration or application and name of registration body where the registration or application was made. The Company has made available to Parent correct and complete copies of all such patents, registrations and applications and has made available to Parent correct and complete copies of all written documentation evidencing ownership and prosecution (if applicable) of each such item. To the Company's knowledge, all renewal and maintenance fees in respect of the items listed in Schedule 6.13(a)(ii) (if applicable) have been duly paid. Except as disclosed on Schedule 6.13(a)(i), to the Company's knowledge, the Company and its Subsidiaries have licenses for all Commercial Software used in their business, use of such Commercial Software is in accordance with such licenses and the Company and its Subsidiaries do not have any obligation to pay fees, royalties and other amounts at any time pursuant to any such license, including by virtue of the Company's current usage thereof. "Commercial Software" means packaged commercially available software programs generally available to the public which (i) have been licensed to the Company or its Subsidiaries pursuant to end-user licenses, and (ii) with respect to each such end-user license agreement, have a cumulative cost or license fee for all software and rights to use thereunder of less than \$50,000.

(b) Schedule 6.13(b) sets forth a complete list of all (excluding Commercial Software) licenses, sublicenses and other agreements as to which the Company or any of its Subsidiaries is a party (as licensor, licensee or otherwise) and pursuant to which the Company, any of its Subsidiaries or any other Person is authorized to use, sell, distribute or license any Proprietary Rights. To the Company's knowledge, neither the Company nor its Subsidiaries is in violation, in any material respect, of any such license, sublicense or agreement, and each such license, sublicense and agreement will continue to be legal, valid, binding, enforceable and in full force and effect following the Closing.

(c) Except as disclosed on Schedule 6.13(c), to the Company's knowledge, neither the Company nor any of its Subsidiaries has infringed on any intellectual property rights of any third Persons.

(d) To the actual knowledge of the Company, the sale or use of the Products for the indication set forth in the NDA Approval does not infringe or conflict with the Proprietary Rights of any Person.

**6.14** Conduct of Business. Except as set forth on Schedule 6.14, since June 30, 2008, the Business has been conducted only in the ordinary course of business consistent with past custom and practice in all material respects, and none of the Company nor any Subsidiary thereof has incurred any Liabilities other than in the ordinary course of business consistent with past custom and practice in all material respects and there has been no event, occurrence or development that has had or would reasonably be expected to have a Company Material Adverse Effect. Without limiting the generality of the foregoing and except as set forth on Schedule 6.14, since June 30, 2008, none of the Company nor any of its Subsidiaries has:

(a) sold, assigned or transferred any material asset or mortgaged, pledged or subjected any material asset or the Leased Real Property to any Lien (other than Permitted Liens) or assigned or sublet the Leased Real Property;



(b) sold, assigned, transferred, abandoned or permitted to lapse any material licenses or Permits, any material Proprietary Rights or any other material intangible assets, or disclosed any material proprietary confidential information to any Person, granted any material license or sublicense of any rights under or with respect to any Proprietary Rights;

(c) conducted its cash management customs and practices (including, without limitation, the timing of collection of receivables and payment of payables and other current liabilities) and maintained the Books and Records other than in the usual and ordinary course of business consistent with past practice in all material respects;

(d) made any loans or advances to, or guarantees for the benefit of, or entered into any transaction with, any employee, officer, director, shareholder or agent of the Company, any Stockholder, Optionholder, Warrantholder or any Affiliate of the Company or any of the foregoing;

(e) suffered any material extraordinary loss, damage, destruction or casualty loss to the Business or waived any rights of material value, whether or not covered by insurance and whether or not in the ordinary course of business;

(f) changed any material pricing, investment, financial reporting, credit, allowance, Tax or accounting policy or practice, any method of calculating any bad debt, contingency or other reserve for accounting, financial reporting or tax purposes, or its fiscal year;

(g) declared, set aside or paid any dividend or distribution of cash, capital stock or other property to any Stockholder or purchased, redeemed or otherwise acquired any shares of its capital stock, made any other payments to any Stockholder or issued any capital stock or granted any other equity (or phantom equity or similar interest) interest or option or right to acquire any capital stock or other equity (or phantom equity or similar) interest;

(h) entered into any other material transaction, including but not limited to any merger, acquisition, joint venture, partnership or incurred any Nonpermitted Indebtedness (other than trade payables incurred in the ordinary course of business consistent with past practice), or formed any other new material arrangement for the operation of the Business, other than in the ordinary course of business consistent with past practice;

(i) amended its certificate or articles of incorporation or bylaws (or other comparable corporate charter documentation), or engaged in any merger, consolidation reorganization, reclassification, liquidation, dissolution or similar transaction; or

(j) committed to do any of the foregoing.

**6.15** Absence of Questionable Payments. None of the Company nor any Subsidiary thereof has, and none of their respective directors, officers, agents, employees, Affiliates or any other Persons acting on their respective behalf has: (i) used or committed to use any corporate or other funds for unlawful contributions, payments, gifts or entertainment, or made or committed to make any unlawful expenditures relating to political activity to government officials or others or established or maintained any unlawful or unrecorded funds in violation of any applicable provincial, foreign, federal or state law; (ii) accepted or received any

unlawful contributions, payments, expenditures or gifts; or (iii) established or maintained any fund or asset that has not been recorded in the Books and Records.

**6.16 Insurance.** Schedule 6.16 is a true and correct list, including policy numbers, carriers, risks insured, amounts of coverage, deductibles and expiration dates, of all material insurance policies (with respect to liability, property, workers' compensation, directors' and officers' liability or otherwise) of the Company or any Subsidiary thereof as in effect as of the date hereof, correct and complete copies of policies have previously been made available to Parent. The Company has in full force and effect insurance policies providing insurance in such amounts and against such risks as each of the Company and its subsidiaries reasonably has determined to be prudent in accordance with the conduct of their respective businesses and none of the Company nor any Subsidiary thereof is in default thereunder. None of the Company nor any Subsidiary thereof has received any notice of cancellation or intent to cancel, or materially increase or intent to materially increase premiums, with respect to such insurance policies. None of the Company nor any Subsidiary has received any notice that any insurer under any insurance policy listed on Schedule 6.16 is denying liability with respect to a claim thereunder or defending under a reservation of rights clause.

**6.17 Permits.** Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (i) each of the Company and its Subsidiaries hold all Permits and approvals of Governmental Authorities necessary for its current conduct, ownership, use, occupancy or operation of its assets or the Business; (ii) each such Permit is valid and in full force and effect; (iii) the Company or the applicable Subsidiary is in compliance with the terms of each such Permit; and (iv) no suspension or cancellation of such Permit is pending or, to the knowledge of the Company, threatened.

**6.18 Employee Benefit Plans.**

(a) Schedule 6.18(a) sets forth a complete list of Employee Benefit Plans.

(b) The Company has delivered complete copies to Parent of (i) each written Employee Benefit Plan, as amended to the Closing, together with audited financial statements and actuarial reports for the three (3) most recent plan years, if any; (ii) each funding vehicle with respect to each such plan; (iii) the most recent and any other determination letter, ruling or notice issued by or filed with any Governmental Authority with respect to each such plan; (iv) the Form 5500 Annual Report for the three (3) most recent plan years with respect to each such Plan; (v) the most recent summary plan description or summary of modifications with respect to each such Plan; and (vi) each other document, explanation or communication which describes any relevant aspect of any such plan that is not disclosed in previously delivered materials with respect to each such Plan. A description of any unwritten Employee Benefit Plans, including a description of any material terms of each such plan, is set forth in Schedule 6.18(b). Each Employee Benefit Plan that is intended to be a "qualified plan" under Section 401(a) of the Code has received a favorable determination letter from the IRS on which it can rely and the Company has no knowledge of any facts or circumstances that would jeopardize the qualification of any such Plan.

(c) Other than as set forth on Schedule 6.18(c), each Employee Benefit Plan has been in compliance and currently complies in all material respects in form and in operation with ERISA, the Code or any other applicable Law, and with its terms.

(d) None of the Company or any Company Plan Affiliate has at any time participated in or made contributions to or had any other liability with respect to, any “employee benefit plan” (as defined in Section 3(3) of ERISA) which is (i) a “multiemployer plan” (as defined in Section 3(37) or 4001 of ERISA), (ii) a “multiple employer plan” (within the meaning of Code Section 413(c)), (iii) a “multiple employer welfare arrangement” (within the meaning of Section 3(40) of ERISA), or (iv) subject to Section 302 or Title IV of ERISA or Section 412 of the Code.

(e) Except as set forth in Schedule 6.18(e), there are no actions, suits, investigations or claims pending or, to the knowledge of the Company, threatened with respect to any Employee Benefit Plan, or the assets thereof (other than routine claims for benefits), and there are no facts known to the Company which could reasonably give rise to any material liability, action, suit, investigation, or claim against any Employee Benefit Plan, any fiduciary or plan administrator or other Person dealing with any Employee Benefit Plan or the assets thereof.

(f) No Person has entered into any non-exempt “prohibited transaction,” as defined in ERISA and the Code, with respect to an Employee Benefit Plan.

(g) Except as disclosed on Schedule 6.18(g), no Employee Benefit Plan of the Company or any Subsidiary thereof provides medical, health, life insurance or other welfare-type benefits to retirees or former employees, owners or consultants or individuals who terminate (or have terminated) employment with the Company or any Subsidiary thereof, or the spouses or dependents of any of the foregoing (except for limited continued medical benefit coverage for former employees, their spouses and other dependents as required to be provided under Section 4980B of the Code or Part 6 of Subtitle B of Title I of ERISA (“COBRA”)), except in the nature of cash severance pay.

(h) With respect to all periods prior to the Closing, the requirements of COBRA (or similar applicable state law) and the Health Insurance Portability and Accountability Act of 1996, as amended (“HIPAA”) have been satisfied with respect to each Employee Benefit Plan of the Company or any Subsidiary thereof.

(i) No Employee Benefit Plan, or any other agreement program, policy or other arrangement by or to which the Company or any Subsidiary thereof is a party, is bound or is otherwise liable, by its terms or in effect could reasonably be expected to require any payment or transfer of money, property or other consideration on account of or in connection with the transactions contemplated by this Agreement or any subsequent termination of employment which payment could constitute an “excess parachute payment” within the meaning of Section 280G of the Code.

(j) No Employee Benefit Plan, or any other agreement, program, policy or other arrangement by or to which the Company or any Subsidiary thereof is a party, is bound or is otherwise liable, and which constitutes a nonqualified deferred compensation plan for

purposes of Section 409A of the Code, has been administered in a manner which could reasonably be expected to result in the imposition of the additional Tax described in Section 409(a)(1)(B) of the Code with respect to the benefits due or accruing thereunder.

(k) Each individual that renders services to the Company or any Subsidiary who is classified by the Company or by such Subsidiary, as applicable, as having the status of an independent contractor or other non-employee status for any purpose (including for purposes of taxation and tax reporting and under Employee Benefit Plans) is properly so classified.

(l) Except as otherwise specifically set forth herein, all Options may be terminated as of the Effective Time without the consent of the Optionholder and without the payment of any consideration.

**6.19** Health, Safety and Environment. The Company and its Subsidiaries are, and at all times have been, in material compliance with all and have no Liabilities under or related to, Environmental and Safety Requirements (including all Permits and licenses required thereunder), including any such Environmental and Safety Requirements or Liabilities that arise under any applicable Contract or other arrangements or agreements with third parties. Except as set forth on Schedule 6.19, neither the Company nor any of its Subsidiaries has received any written notice of any actual or alleged violation of, or any actual or alleged material liability under or relating to, any Environmental Law that remain outstanding. No facts or circumstances with respect to the operations or facilities of the Company or any of its Subsidiaries or otherwise (including any onsite or offsite disposal or Release of, or contamination by, Hazardous Materials, substances or wastes) will hinder or prevent continued compliance with, or give rise to any material Liabilities (including any corrective or remedial obligation) under or related to, any Environmental and Safety Requirements, including any such Environmental and Safety Requirements or Liabilities that arise under any applicable Contract or other arrangements or agreements with third parties.

**6.20** Employees; Salaries; Personnel Agreements, Plans and Arrangements.

(a) Schedule 6.20(a) contains a true, complete and correct list as of the date hereof setting forth (i) the names, hire dates, current compensation rates and job titles of all individuals presently employed by the Company or any Subsidiary thereof on a salaried basis, (ii) the names, hire dates, current compensation rates and job titles of all individuals presently employed by the Company or any Subsidiary thereof on an hourly or piecework basis, (iii) the names and total annual compensation for all independent contractors who are natural Persons who presently render services on a regular basis to the Company or any Subsidiary thereof whose current annual compensation is in excess of \$25,000, and (iv) all other Persons whose employment or independent contractor relationship with the Company or any Subsidiary thereof has been terminated since the Latest Balance Sheet Date.

(b) Except as listed in Schedule 6.20(b), neither the Company nor any Subsidiary thereof is a party to or obligated with respect to any (i) outstanding material Contracts of the Company or its Subsidiaries with current or former employees, agents, consultants, advisers, salesmen, sales representatives, distributors, sales agents, independent contractors, or dealers, or (ii) collective bargaining agreements or contracts with any labor union or other

representative of employees or any employee benefits provided for by any such agreement. Correct and complete copies of all documents listed on Schedule 6.20(b) have been previously furnished to Parent.

(c) The provisions of the Worker Adjustment and Retraining Notification Act of 1988, as amended (the “WARN Act”) are not applicable to the Company and its Subsidiaries. The consummation of the Merger and the Transactions will not give rise to any liability under the WARN Act respecting reductions in force or the impact on employees of plant closings or sales of businesses.

**6.21     Taxes.**

(a) The Company and its Subsidiaries have timely filed (taking into account any valid extensions) all Tax Returns required to be filed by the Company or its Subsidiaries on or prior to the Closing Date. All such Tax Returns were correct and complete in all material respects and have been prepared in compliance with all applicable Laws. All Taxes due and owing by the Company and any of its Subsidiaries (whether or not shown on any Tax Return) have been timely paid. The unpaid Taxes of the Company and its Subsidiaries did not, as of the Latest Balance Sheet Date, exceed the reserve for Tax Liability (other than any reserve for deferred Taxes established to reflect timing differences between Book and Tax income) set forth on the face of the Latest Financial Statements (other than in any notes thereto).

(b) The Company and its Subsidiaries have timely withheld and, if due, has remitted with respect to its employees, creditors, independent contractors or other third parties all federal and state Taxes, FICA, FUTA, and other Taxes required to be withheld and/or, if due, remitted.

(c) There is no Tax deficiency outstanding or threatened in writing by any Tax authority against the Company or any of its Subsidiaries. Neither the Company nor any of its Subsidiaries has executed or requested any waiver of any statute of limitations on or extending the period for the assessment or collection of any Tax.

(d) No audit or other examination of any Return of the Company or any of its Subsidiaries is presently in progress, pending or threatened.

(e) There are no Liens for Taxes (other than Permitted Liens) on the assets of the Company or any of its Subsidiaries other than Taxes not yet due and payable.

(f) No claim has ever been made by any Tax authority in a jurisdiction where the Company or any of its Subsidiaries does not file Tax Returns that it is or may be subject to taxation by that jurisdiction.

(g) None of the Company’s or any of its Subsidiaries’ assets are treated as “tax-exempt use property” within the meaning of Section 168(h) of the Code.

(h) There is no Contract, plan or arrangement, including, but not limited to, the provisions of this Agreement, covering any employee or former employee of the Company or

any of its Subsidiaries that, individually or collectively, could give rise to the payment of any amount that would not be deductible pursuant to Sections 280G, 404 or 162 of the Code.

(i) Neither the Company nor any of its Subsidiaries is, nor has been at any time, a “United States real property holding corporation” within the meaning of Section 897(c)(2) of the Code.

(j) Neither the Company nor any of its Subsidiaries is a party to or bound by any Tax indemnity, Tax sharing or Tax allocation agreements (other than any such agreement solely between the Company and its Subsidiaries).

(k) Neither the Company nor any of its Subsidiaries has ever been a member of an Affiliated Group (other than an Affiliated Group for which the Company was the common parent).

(l) None of the assets of the Company or any of its Subsidiaries is property that the Company or any of its Subsidiaries is required to treat as being owned by any other Person pursuant to the “safe harbor lease” provisions of former Section 168(f)(8) of the predecessor to the Code.

(m) Neither the Company nor any of its Subsidiaries has agreed to make nor is it required to make any adjustment under Section 481(a) of the Code by reason of a change in accounting method or otherwise.

(n) Other than Prestwick Pharmaceuticals Canada Inc., neither the Company nor any of its Subsidiaries has ever had a permanent establishment in any foreign country, as defined in any applicable Tax treaty or convention between the United States and such foreign country.

(o) Neither the Company nor any of its Subsidiaries has participated in an international boycott within the meaning of Section 999 of the Code.

(p) Neither the Company nor any of its Subsidiaries is a party to any joint venture, partnership, or other arrangement or Contract that could be treated as a partnership for federal income Tax purposes.

(q) Neither the Company nor any of its Subsidiaries has distributed stock of another Person, or has had its stock distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Section 355 or 361 of the Code.

(r) Neither the Company nor any of its Subsidiaries will be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any: (i) change in method of accounting made on or prior to the Closing Date; (ii) “closing agreement” as described in section 7121 of the Code (or any corresponding or similar provision of state, local or foreign law) executed on or prior to the Closing Date; (iii) deferred intercompany gain or any excess loss account described in Treasury Regulations under section 1502 of the Code (or any corresponding or similar provision of state, local or foreign law) in existence on the Closing

Date; (iv) installment sale or open transaction disposition made on or prior to the Closing Date or (v) prepaid amount received on or prior to the Closing Date or (vi) pursuant to Section 951 of the Code with respect to amounts earned on or before the Closing Date.

(s) On December 31, 2007, the “net operating losses” of the Company for federal and state income tax purposes for each state identified on Schedule 6.21 (“NOLs”) were no less than the amounts set forth on Schedule 6.21. Schedule 6.21 shows the year that each of the unutilized NOLs of the Company were generated, the original NOL for that year, the carryback and carryforward of such NOL and the remaining unutilized NOL for such year. There have not been any actual transfers of the Company Capital Stock from the period beginning on May 31, 2008 and ending on the day immediately preceding the Closing Date, including transfers of Company Capital Stock among holders of such stock, issuances of new shares of Company Capital Stock or redemptions or other repurchases of Company Capital Stock, except as set forth on Schedule 6.21. To the knowledge of the Company there has been not been any change in the equity ownership of the stockholders of the Company, from the period beginning on May 31, 2008 and ending on the day immediately preceding the Closing Date, including transfers of equity interests among owners, issuances of new equity interests by the stockholders, or redemptions or other repurchases of equity interests by such stockholders, except as set forth on Schedule 6.21. To the knowledge of the Company, the representations set forth in the Certificate of Representations provided by the Company to Ernst & Young (“EY”) in respect of EY’s “Section 382 Owner Shift Analysis” dated September 8, 2008 are true, accurate, and complete.

(t) The Company and each of its Subsidiaries has disclosed on its federal income and state income and franchise Tax returns all positions taken therein that could give rise to a substantial understatement of federal income tax within the meaning of Section 6662 of the Code or any corresponding or similar provision of state Tax law.

(u) Neither the Company nor any of its Subsidiaries has ever “participated” in a “reportable transaction” within the meaning of Treasury Regulation Section 1.6011-4.

(v) The Company has taken all necessary actions in compliance with Section 280G(b)(5) seek to obtain the requisite stockholder approval under Section 280G(b)(5) of the Code of any payments or benefits that could be considered “excess parachute payments” within the meaning of Section 280G of the Code and shall require all “disqualified individuals” within the meaning of Section 280G of the Code to subject their existing benefits and payments to the stockholder approval requirements of Section 280G(b)(5) of the Code to the extent necessary such that no such benefits or payments shall constitute parachute payments under Section 280G of the Code.

## **6.22 Regulatory Matters.**

(a) All existing material Registrations held by the Company and its Subsidiaries are set forth on Schedule 6.22(a). Except as otherwise set forth on Schedule 6.22(a), the Company has the exclusive right to use such Registrations in the Territory, including in connection with Tetrabenazine, pursuant to the Cambridge Agreement, and has not transferred any right to use any such Registrations.



(b) The Distribution of any Product by the Company and its Subsidiaries has been conducted in material compliance with the Registrations and all Laws.

(c) Neither the Company nor any Subsidiary of the Company has received any written or other notice of proceedings from a Governmental Authority alleging that any Product or the ownership, manufacturing, operation, storage, Distribution, warehousing, packaging, labeling, handling and/or testing thereof is in violation of any Law.

(d) The Company and its Subsidiaries have completed and filed all annual or other reports required by the FDA or other Regulatory Health Authority or other Governmental Authority in order to maintain the Registrations.

(e) There have been no adverse events involving any Product that have led the Company or its Subsidiaries to withdraw, or consider withdrawing, the Products or the Registrations from any market.

(f) No clinical trial for the Product has been suspended, put on hold or terminated prior to completion due to reasons pertaining to the safety and/or efficacy of the Products.

(g) Except as otherwise set forth on Schedule 6.22(g), neither the Company nor any of its Subsidiaries have received: (i) any FDA form 483's, (ii) any FDA Notices of Adverse Findings; or (iii) warning letters or other similar correspondence from any Regulatory Health Authority with respect to the Products or the Registrations.

(h) Seller has delivered to the Parent all correspondence from any Regulatory Health Authority with respect to the Products or the Registrations.

(i) None of the Company and its Subsidiaries is subject to any pending or, to the knowledge of the Company, threatened, investigation by any Regulatory Health Authority. None of the Company and its Subsidiaries, nor to the knowledge of the Company (i) any officer or employee of the Company and its Subsidiaries, (ii) any authorized agent of the Company and its Subsidiaries or (iii) any principal investigator or sub-investigator of any clinical investigation sponsored by the Company or its Subsidiaries has, in the case of each of (i) through (iii) on account of actions taken for or on behalf of the Company or any of its Subsidiaries, been debarred by FDA or convicted of any crime under 21 U.S.C. Section 335a(a) or any similar state or foreign Law or under 21 U.S.C. Section 335a(b) or any similar state or foreign Law.

(j) Attached hereto as Exhibit C is the true and complete copy of the NDA Approval.

(k) Except under the Cambridge Agreement as set forth in Schedule 6.22(k), the Company is not sponsoring, has committed to sponsor or is otherwise providing, or has committed to provide, any financial support to, any clinical trial. Schedule 6.22(k) sets forth a complete and accurate list of any on-going or scheduled pre-clinical activities, conducted by or otherwise financially supported by the Company or its Subsidiaries.

**6.23**     HSR Matters. The Company is its own “ultimate parent entity” as defined under the HSR Act. Based on the requirements and standards set forth in the HSR Act, after giving effect to the payments under the Redemption, the “total assets” of the Company and the “annual net sales” of the Company (each as calculated in accordance with 16 C.F.R. § 801.11) are less than \$12.6 million as of the date hereof.

**6.24**     Brokers’ or Finders’ Fees. The Company has delivered to Parent a true and complete copy of the Morgan Stanley & Co. Incorporated engagement letter regarding the Merger, which letter has not been amended or modified in any respect; and except for Morgan Stanley & Co. Incorporated, no agent, broker, investment banker, Person or firm acting under the authority of the Company, is or will be entitled to any brokers’ or finders’ fee or any other commission or similar fee directly from any of the Parties in connection with the Merger and the Transactions.

**6.25**     Optionholder Notice. The Option Notice, as of its respective date, did not and does not contain any material misstatements or omissions. Prior to the date hereof, the Company has delivered to each Optionholder (a) an Option Notice, notifying such Optionholders that (i) any unexercised options shall terminate at Closing pursuant to the Option Plan and (ii) any Optionholder that elects to exercise Options prior to Closing must pay to the Company the full exercise price upon such exercise (b) and the Company has given each Optionholder any notice required under the Option Plan to exercise or terminate the Option pursuant to the Option Plan.

**6.26**     Disclosure. Except for the representations and warranties contained in this Agreement (as qualified by the Company Disclosure Schedule) or in the Transaction Documents, neither the Company nor any of its Subsidiaries nor any of their respective directors, officers, employees, stockholders, agents, Affiliates or representatives (including Morgan Stanley & Co. Incorporated), has made or shall be deemed to have made any representation or warranty to Parent or Merger Sub, express or implied, at Law or in equity, with respect to the Company or its subsidiaries or the execution and delivery of this Agreement or the Merger and the other Transactions, including, without limitation, as to the accuracy or completeness of any information, documents or materials regarding the Company or its Subsidiaries furnished or made available to Parent and its representatives in any “data rooms,” “virtual data rooms,” management presentations or in any other form in expectation of, or in connection with, the Merger and the other transactions contemplated by this Agreement (“Evaluation Material”). The Company hereby disclaims any such representations or warranties and Parent and Merger Sub each hereby disclaim any reliance upon any Evaluation Material and each acknowledges and agrees that neither the Company nor any of its Subsidiaries nor any of their respective directors, officers, employees, stockholders, agents, Affiliates or representatives (including, without limitation, Morgan Stanley & Co. Incorporated), shall have or be subject to any liability to Parent, Merger Sub or any other Person resulting from the distribution to Parent of, or Parent’s use or reliance on, any such Evaluation Material. Notwithstanding anything in this Section 6.25 to the contrary, in no event shall any of the disclaimers and other statements set forth in this Section 6.25 limit or otherwise effect or be applicable to any claim based on fraud.

**ARTICLE 7**  
**REPRESENTATIONS AND WARRANTIES OF PARENT**

Parent hereby represents and warrants to the Company and its Subsidiaries as of the date hereof that:

**7.1**      Authorization.

(a)          Each of Parent and Merger Sub has all necessary corporate power and authority to execute and deliver this Agreement and each of the Transaction Documents to be executed and delivered by Parent and Merger Sub, to perform its obligations hereunder and thereunder and to consummate the Merger and the Transactions.

(b)          The execution, delivery and performance by Parent and Merger Sub of this Agreement and each of the Transaction Documents to which Parent or Merger Sub is or will be a party have been duly and properly authorized by the board of directors of Parent and Merger Sub in accordance with applicable Law and with the organizational documents of Parent.

(c)          This Agreement has been duly executed and delivered by Parent and Merger Sub (other than the adoption of this Agreement by Parent as the sole stockholder of Merger Sub which will occur immediately after the execution of this Agreement) and, assuming the due authorization, execution and delivery by the Company, constitutes the legal, valid and binding obligations of Parent and Merger Sub, enforceable against Parent and Merger Sub in accordance with its terms, subject to (i) the effect of any applicable Law of general application relating to bankruptcy, reorganization, insolvency, moratorium or similar Laws affecting creditors' rights and relief of debtors generally and (ii) the effect of rules of law and general principles of equity, including rules of law and general principles of equity governing specific performance, injunctive relief and other equitable remedies (regardless of whether such enforceability is considered in a proceeding in equity or at law). Each of the Transaction Documents to be executed and delivered by or on behalf of Parent or Merger Sub will be duly executed and delivered by Parent or Merger Sub, as the case may be, and, when so executed and delivered and, assuming due authorization, execution and delivery by the Company thereto, will be the legal, valid and binding obligation of Parent or Merger Sub, enforceable against Parent or Merger Sub in accordance with its terms, subject to (i) the effect of any applicable Law of general application relating to bankruptcy, reorganization, insolvency, moratorium or similar Laws affecting creditors' rights and relief of debtors generally and (ii) the effect of rules of law and general principles of equity, including rules of law and general principles of equity governing specific performance, injunctive relief and other equitable remedies (regardless of whether such enforceability is considered in a proceeding in equity or at law).

**7.2**      No Conflicts. Except as set forth on Schedule 7.2, neither the execution and delivery of this Agreement and the Transaction Documents by Parent or Merger Sub nor the performance by Parent or Merger Sub of the Transactions or thereby will:

(a)          violate or conflict with or result in a breach of any of the terms, conditions or provisions of the organizational documents of Parent or Merger Sub; or

(b) violate or conflict with or result in a breach of any Law or conflict with or result in the breach of any of the terms, conditions or provisions thereof.

### 7.3 Organization.

(a) Parent is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware. Parent has full power and authority to carry on the business as conducted by it and to own or hold under lease the properties and assets it now owns or holds under lease. Parent is duly qualified to do business and is in good standing as a foreign corporation in all jurisdictions where the absence of such qualification would reasonably be expected to, individually or in the aggregate, have a material adverse effect on the validity or enforceability of this Agreement or the Transaction Documents.

(b) Merger Sub is a corporation duly incorporated, validly existing and in good standing under the Laws of the State of Delaware.

7.4 **Brokers' or Finders' Fees.** No agent, broker, investment banker, Person or firm acting on behalf of Parent or Merger Sub, or under the authority thereof, is or will be entitled to any brokers' or finders' fee or any other commission or similar fee directly or indirectly from any of the Parties hereto in connection with any of the transactions contemplated by this Agreement and the Transaction Documents.

7.5 **Parent's Due Diligence; Limitations on Representations and Warranties of Parent.** Parent and Merger Sub hereby acknowledge that, except for the representations and warranties of Parent expressly set forth in this Agreement or in any Transaction Document, Parent and Merger Sub are relying on their own investigation and analysis in entering into this Agreement and the Merger and the other Transactions. Parent is an informed and sophisticated participant in the Merger and the other Transactions and has undertaken such investigation (and has been provided with the Evaluation Material (it being understood that no representation and warranties have been made with respect to such materials except as expressly set forth in this Agreement), as it has deemed necessary in connection with the execution, delivery and performance of this Agreement and the consummation of the Merger and the other Transactions. Parent and Merger Sub acknowledge and agree that they are consummating the Merger and the other transactions contemplated by this Agreement without any representation or warranty, express or implied, by the Company or any of its Subsidiaries or any of their respective directors, officers, employees, Stockholders, Warrantholders, Eligible Optionholders, agents, Affiliates or representatives (including, without limitation, Morgan Stanley & Co. Incorporated), except as expressly set forth in this Agreement, in the other Transaction Documents and in the Letters of Transmittal. In furtherance of the foregoing, and not in limitation thereof, Parent and Merger Sub acknowledge and agree that no representation or warranty, express or implied, at Law or in equity, of the Company or any of its Subsidiaries or any of their respective directors, officers, employees, Stockholders, Warrantholders, Eligible Optionholders, agents, Affiliates or representatives (including Morgan Stanley & Co. Incorporated), including the Evaluation Material and any financial projection or forecast delivered to Parent with respect to the revenues or profitability which may arise from the operation of the Company either before or after the Closing Date, shall (except as otherwise expressly represented to in this Agreement) form the basis of any claim against the Company or any of its Subsidiaries or any of their respective

directors, officers, employees, Stockholders, Warrantholders, Eligible Optionholders, agents, Affiliates or representatives (including, without limitation, Morgan Stanley & Co. Incorporated) with respect thereto or with respect to any related matter. With respect to any projection or forecast delivered by or on behalf of the Company to Parent, Parent and Merger Sub acknowledge and agree that (i) there are uncertainties inherent in attempting to make such projections and forecasts, (ii) the accuracy and correctness of such projections and forecasts may be affected by information which may become available through discovery or otherwise after the date of such projections and forecasts, and (iii) it is familiar with each of the foregoing. Notwithstanding anything in this Section 7.6 to the contrary, in no event shall any of the disclaimers and other statements set forth in this Section 7.6 limit or otherwise effect or be applicable to any fraud.

**7.6** No Knowledge of Misrepresentations or Omissions. To the actual knowledge of Parent as of the date hereof, none of the representations and warranties of the Company set forth in this Agreement or the Schedule are untrue or incorrect in any material respect or has any material errors or material omissions (except to the extent that the Company has actual knowledge that such actual knowledge of Parent of an untrue or incorrect statement of material error or material omission has been conveyed to the Company in a writing in which the objections of Parent to such statement or omission would be reasonably apparent to a reasonable person under the circumstances). It being understood by the Parties hereto that for the purposes of this Agreement the availability of any information in a document in the data room shall not by itself impute actual knowledge to Parent of a breach of any representation or warranty or any error or omission unless such Person is actually aware that such information or document constitutes a breach of any representation or warranty or any error or omission.

**ARTICLE 8**  
**CONDITIONS PRECEDENT TO THE CLOSING; TERMINATION**

**8.1** Conditions Precedent to Obligations of Parties. The respective obligations of the Company, Parent and Merger Sub to consummate the Merger and the other Transactions contemplated by this Agreement are subject to the satisfaction or waiver (where permissible) at or prior to the Closing of the following conditions:

- (a) Company Stockholder Approval. The Requisite Stockholder Approval shall have been received.
- (b) No Order. No Governmental Authority or court of competent jurisdiction located or having jurisdiction in the United States shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, decree, judgment, injunction or other order, whether temporary, preliminary or permanent (each an “Order”) which is then in effect and has the effect of making the Merger and the other Transactions illegal or otherwise prohibiting consummation of the Merger and the other Transactions.
- (c) No Restraints. There shall not be pending or threatened any suit, action, investigation or proceeding to which a Governmental Authority is a party seeking to restrain or prohibit the consummation of the Merger or the other Transactions.

(d) Redemption. The Redemption (and the conditions precedent to the Redemption) shall have occurred.

**8.2** Conditions Precedent to Obligations of Parent. The obligations of Parent under this Agreement to consummate the Merger hereby will be subject to the satisfaction, at or prior to the Closing, of all of the following conditions, any one or more of which may be waived in whole or in part in writing in the sole discretion of Parent:

(a) No Breach of Covenants; True and Correct Representations and Warranties. There shall have been no breach in any material respect by the Stockholder Representatives or the Company in the performance of any of the obligations herein to be performed thereby in whole or in part prior to the Closing under this Agreement, and the representations and warranties of the Company contained in this Agreement shall have been true and correct in all material respects as of the date hereof (except that any representation or warranty that is qualified by materiality or Material Adverse Effect shall be true and correct in all respects).

(b) Delivery of Documents. Parent shall have received all documents and other items to be delivered thereto under Section 9.2 of this Agreement.

(c) No Company Material Adverse Effect. Since the time of the execution of this Agreement, there shall have been no event, occurrence or development that has had or would reasonably be expected to have a Company Material Adverse Effect.

(d) Contracts and Permits. Parent shall have received evidence reasonably satisfactory to it that the Permits set forth on Schedule 8.2 attached hereto have been obtained.

(e) Payoff Letters and Lien Releases. Parent shall have received payoff letters issued by all Persons who, as of the Closing Date, have a Lien in the assets of the Company or any Subsidiary thereof, and evidence reasonably satisfactory to Parent of the release of all Liens (including without limitation Permitted Liens) on such assets.

(f) Stockholder Release. Each of (i) the holders of Company Preferred Stock owning at least the percentage of Company Preferred Stock set forth on Schedule 1, (ii) Martin Stogniew, (iii) Robert Radie, and (iv) George Horner (collectively, the "Preferred Releasors") shall have executed and delivered to the Company a release (the "Preferred Stockholder Release") in substantially the form approved by the Parent, which releases the Parent and the Company from any and all claims such Preferred Releasors had or may have against the Company.

(g) Director Release. Each of members of the Board of Directors (the "Directors") of the Company shall have executed and delivered to the Company a release (the "Director Release") in substantially the form approved by the Parent, which releases the Parent and the Company from any and all claims such directors had or may have against the Company.

(h) Stockholder Consent. The Stockholders owning at least the percentage of each class of the issued and outstanding Company Capital Stock set forth on Schedule 1 shall

have executed and delivered the Written Consent, and such Written Consent shall remain valid and no such Stockholder shall have made any attempt to withdraw the Written Consent.

(i) Board Resignations. The Company shall have received written letters of resignation from each of the current members of the Board of Directors of the Company and each Subsidiary of the Company, in each case effective at the Effective Time.

(j) FIRPTA Certificate. The Company shall have delivered to Parent a properly executed statement in form reasonably acceptable to the Parent for purposes of satisfying Parent’s obligations under Treasury Regulation section 1.1445-2(c)(3).

(k) Cambridge. Cambridge shall have executed and delivered the Cambridge Amendment and the Cambridge Waiver.

**8.3** Conditions Precedent to Obligations of the Company. The obligations of the Company under this Agreement to consummate the Merger will be subject to the satisfaction, at or prior to the Closing, of all the following conditions, any one or more of which may be waived in whole or in part in writing in the sole discretion of the Company:

(a) No Breach of Covenants; True and Correct Representations and Warranties. There shall have been no breach in any material respect by Parent in the performance of any of the obligations herein to be performed thereby in whole or in part prior to the Closing under this Agreement, and the representations and warranties of Parent contained in Section 7 shall have been true and correct in all material respects as of the date hereof.

(b) Delivery of Documents. Parent shall have delivered all documents and other items to be delivered thereby under Section 9.3 of this Agreement.

**8.4** Termination.

(a) Termination of Agreement. This Agreement may be terminated and the Merger and the other Transactions may be abandoned at any time prior to the Effective Time, notwithstanding any requisite approval and adoption of this Agreement, the Merger and the other Transactions, as follows:

(i) upon the written consent of Parent and the Company;

(ii) by the Parent or Company (i) upon the commencement of any claim, action, suit, proceeding or arbitration or any threat thereof with respect to tetrabenazine other than by Cambridge or (ii) if the Cambridge Waiver is not received by the date of this Agreement by Cambridge;

(iii) by Parent, if the conditions set forth in Sections 8.1 and 8.2 shall not be satisfied or waived by Parent and the Closing shall not have occurred on or before 5:00 pm (New York City time) on the date hereof (unless such failure to satisfy results primarily from Parent itself breaching any of its representations, warranties or covenants contained in this Agreement);



(iv) by the Company, if the conditions set forth in Sections 8.1 and 8.3 hereof shall not be satisfied or waived by the Company and the Closing shall not have occurred on or before 5:00 pm (New York City time) on the date hereof (unless such failure to satisfy results primarily from the Company breaching any of its representations, warranties or covenants contained in this Agreement);

(v) by either Parent or the Company upon the issuance of any Order which is final and nonappealable which would prevent the consummation of the Merger or make the consummation of the Merger illegal; *provided, however*, that the right to terminate this Agreement under this Section 8.4(v) shall not be available to any Party whose failure or whose Affiliate's failure to perform any material covenant, agreement or obligation hereunder has been the cause of, or resulted in, such action or event;

(vi) by the Parent, if there has been a material violation or breach by the Company or Stockholder Representatives of any covenant, representation or warranty contained in this Agreement which would prevent the satisfaction of any condition set forth in Section 8.2(a) to the obligations of Parent at the Closing and such violation or breach has not been waived by the Parent or, in the case of a breach, cured by the Company within thirty (30) calendar days after written notice thereof by the Parent; *provided, however*, that Parent is not then in material breach of any representation, warranty, covenant or other agreement contained in this Agreement;

(vii) by the Company, if there has been a material violation or breach by the Parent of any covenant, representation or warranty contained in this Agreement which would prevent the satisfaction of any condition set forth in Section 8.3(a) to the obligations of the Company at the Closing and such violation or breach has not been waived by the Company or, in the case of a breach, cured by the Parent within thirty (30) calendar days after written notice thereof by the Company; *provided, however*, that the Company is not then in material breach of any representation, warranty, covenant or other agreement contained in this Agreement; or

(viii) by Parent if the condition set forth in Section 8.2(h) has not been satisfied on or before 2:00 pm (New York City time) on the date hereof.

(b) Effect of Termination. In the event of termination of this Agreement pursuant to Section 8.4, this Agreement shall forthwith become void, there shall be no liability under this Agreement on the part of Parent, Merger Sub or the Company or any of their respective officers or directors, and all rights and obligations of each Party hereto shall cease; *provided, however*, that (i) Article 11 and the Non-Disclosure Agreement, shall remain in full force and effect and survive any termination of this Agreement, and (ii) nothing herein shall relieve any Party from liability for the willful breach of any of its representations, warranties, covenants or agreements set forth in this Agreement.

**ARTICLE 9**  
**CLOSING**

**9.1** Closing Time. Immediately prior to the filing of the Certificate of Merger, the closing of the transactions contemplated hereby (the "Closing") shall be consummated on the

date hereof (the “Closing Date”), at the offices of O’Melveny & Myers LLP, 7 Times Square Tower, New York, NY 10036 at such time as Parent and the Company shall mutually agree.

**9.2 Deliveries of the Company.** At the Closing, the Company will deliver or cause to be delivered to Parent:

(a) **Resolutions; Written Consent.** (i) A copy of the resolutions of the board of directors of the Company, certified by the secretary thereof as having been duly and validly adopted and in full force and effect, authorizing the execution and delivery of this Agreement and the Transaction Documents to which such entity is a Party and the performance of the Transactions; (ii) a copy of the Written Consent duly executed by the Requisite Stockholders and certified by an officer of the Company as having been duly and validly adopted by the Requisite Stockholders in accordance with the requirements of the DGCL and the Amended and Restated Certificate of Incorporation and the Amended and Restated Bylaws;

(b) **Corporate Documents.** Certificate of Incorporation (or comparable corporate charter documents), of each of the Company and any Subsidiary thereof as in effect at the Closing, certified by the Secretary of State of the state of its formation as of a date not more than five (5) Business Days prior to the Closing Date, and the bylaws of each of the Company and any Subsidiary thereof as in effect at the Closing, certified by the secretary of the Company or such Subsidiary of the Company, as applicable;

(c) **Certificates of Good Standing.** Certificates of Good Standing, dated not more than five (5) Business Days prior to the Closing Date, with respect to each of the Company and any Subsidiary thereof, issued by the Secretary of State of the state of its formation and by the Secretary of State of each jurisdiction in which the Company or such Subsidiary of the Company is qualified to do business as a foreign corporation;

(d) **Closing Certificate.** A certificate, dated as of the Closing Date, duly executed by the Company, certifying as to the fulfillment of the conditions set forth in Section 8.2(a) and (c);

(e) **Cambridge Waiver and Cambridge Amendment.** The Cambridge Waiver and the Cambridge Amendment duly executed by Cambridge, Parent and the Company;

(f) **Escrow Agreement.** The Escrow Agreement, duly executed by the Stockholder Representatives;

(g) **Certificate of Merger.** The Certificate of Merger duly filed with the Secretary of State of the State of Delaware in such form as is required by the relevant provisions of the DGCL;

(h) **Payoff Letters.** Payoff letters in a commercially reasonable form from each payee of any Indebtedness, including the Merrill Lynch Facility, which letters provide for full payment and satisfaction of all obligations of the Company and its Subsidiaries for Indebtedness and the release of all Liens (including without limitation Permitted Liens) upon receipt of such amounts provided for in such letters;

(i) Termination of Employees, Employee Benefit Plans and Company Liabilities. Evidence reasonably satisfactory to Parent that the Company and its Subsidiaries have (i) terminated each of the employees of the Company and its Subsidiaries and the Employee Benefit Plans, other than the employees and Employee Benefit Plans listed on Schedule 9.2(i) and the employment agreements and severance agreements listed on Schedule 4 and (ii) satisfied all liabilities and obligations with respect to such termination;

(j) Books and Records. All corporate minute books, stock ledgers and stock records of the Company and its Subsidiaries in the possession of the Company at the Effective Time;

(k) Redemption Agreement. Fully executed copies of the redemption agreement(s) entered into by the Company and the Stockholders party thereto in the form previously provided to Parent; and

(l) Other Documents. Such other documents and instruments as Parent reasonably shall deem necessary to consummate the Transactions.

All documents delivered pursuant to this Section 9.2 shall be in form and substance reasonably satisfactory to Morgan, Lewis & Bockius LLP, counsel for Parent.

**9.3** Deliveries of Parent. At the Closing, Parent will deliver to the Company and the Stockholder Representatives, as appropriate (for the benefit of all the Stockholders):

(a) Resolutions. A copy of the resolutions of the board of directors of Parent, certified by the secretary thereof as having been duly and validly adopted and in full force and effect, authorizing the execution and delivery of this Agreement and the Transaction Documents to which such entity is a Party and the performance of the Transactions;

(b) Corporate Documents. Certificate of Incorporation (or comparable corporate charter documents), of each of Parent and Merger Sub as in effect at the Closing, certified by the Secretary of State of the State of Delaware as of a date not more than five (5) Business Days prior to the Closing Date, and the bylaws of each of Parent and Merger Sub as in effect at the Closing, certified by the secretary or an assistant secretary of Parent;

(c) Certificates of Good Standing. Certificates of Good Standing, dated not more than five (5) Business Days prior to the Closing Date, with respect to each of the Company and Merger Sub, issued by the Secretary of State of the State of Delaware;

(d) Closing Certificate. A certificate, dated as of the Closing Date, duly executed by Parent, certifying as to the fulfillment of the conditions set forth in Section 8.3(a);

(e) Escrow Agreement. The Escrow Agreement, duly executed by Parent; and

(f) Other Documents. Such other documents and instruments as the Company reasonably shall deem necessary to consummate the Transactions.

**ARTICLE 10**  
**INDEMNIFICATION**

**10.1**     Indemnification of the Parent.

(a)        Subject to the provisions of this Article 10, after the Effective Time, each of the Parent and its Affiliates (collectively, the “Parent Indemnified Parties”) shall be indemnified and held harmless from and against and paid or reimbursed for out of the Escrow Amount, as and when incurred, for any and all liabilities, losses, demands, damages, diminution in value, actions, causes of action, assessments, claims, costs, expenses, fines, fees, deficiencies, interest, awards, judgments, amounts paid in settlement and penalties (including, without limitation, reasonable attorneys’, consultants’ and experts’ fees and expenses and other costs of defending, investigating or settling claims) suffered, incurred, accrued or paid by them (including, without limitation, in connection with any action brought or otherwise initiated by any of them) (collectively, “Losses”), arising out of or resulting from:

(i)        any misrepresentation or breach of, or omission from, any representation or warranty under Article 6 of this Agreement, or any misrepresentation or breach of, or omission from, any of the representations, warranties, statements, Schedules and Exhibits, certificates or other instruments or documents furnished to any Parent Indemnified Party by the Company made in or pursuant to this Agreement (without regard and without giving effect to any “materiality” or “material adverse effect” standard or qualification contained in such representation or warranty for the purposes of determining the amount of any Losses);

(ii)       any nonfulfillment or breach of any covenant or agreement on the part of the Company or Stockholder Representatives under this Agreement or other instruments or documents, including, without limitation, any Transaction Document, furnished to any Parent Indemnified Party by the Company;

(iii)      any Company Expenses to the extent not taken specifically into account in determining the Aggregate Initial Consideration Amount or included as a Current Liability on the Closing Balance Sheet and reflected in the determination of the Net Working Capital Amount;

(iv)       any (A) unpaid Taxes attributable to the Company or any Subsidiary thereof for any taxable period (or portion of any taxable period) ending on or prior to September 5, 2008, but, with respect to Taxes other than Income Taxes that are not due as of the Closing Date, only to the extent that the amount of such unpaid Taxes exceeds the amount of such Taxes specifically accrued for or reserved against on the Closing Balance Sheet and reflected in the Net Working Capital Amount as finally determined pursuant to Section 3.6, and (B) any Transfer Taxes;

(v)        any Nonpermitted Indebtedness to the extent not specifically taken into account in determining the Aggregate Initial Consideration Amount included as a Current Liability on the Closing Balance Sheet and reflected in the Net Working Capital Amount;

(vi) any breach of the representations and warranties in any Letter of Transmittal;

(vii) any Excess Severance Obligations to the extent not specifically taken into account in determining the Aggregate Initial Consideration Amount or included as a Current Liability on the Closing Balance Sheet and reflected in the Net Working Capital Amount;

(viii) any Losses described on Schedule 10.1(a)(viii);

(ix) fifty percent (50%) of any and all amounts paid, including but not limited to all costs and expenses, including attorneys' fees, incurred, in respect of a Dissenters Rights Claim which are required to be paid out of the Escrow Amount pursuant to Section 3.5.

For purposes of this Agreement, the term "Losses" shall include the reduction in net operating loss carryforwards of Parent's affiliated group (within the meaning of section 1504(a) of the Code and as determined immediately prior to the Closing) multiplied by forty percent (40%).

(b) Except to the extent that Parent has actual knowledge as of the date hereof that any representation or warranty of the Company set forth in this Agreement or the Schedule is untrue or incorrect in any material respect or has any material errors or material omissions, (except to the extent that the Company has actual knowledge that such actual knowledge of Parent of an untrue or incorrect statement of material error or material omission has been conveyed to the Company in a writing in which the objections of Parent to a statement or omission would be reasonably apparent to a reasonable person under the circumstances), the rights of Parent Indemnified Parties to indemnification under this Section 10.1 shall apply notwithstanding the availability of any information in the data room or any examination made by, for, or on behalf of, or otherwise disclosed to, Parent, or the knowledge of any of Parent's officers, directors, stockholders, employees or agents (not included in the definition of knowledge set forth in Section 11.19), or the acceptance of any certificate in connection with this Agreement that did not result in Parent having actual knowledge.

(c) Notwithstanding anything in this Agreement to the contrary, the rights of the Parent Indemnified Parties to indemnification under this Section 10.1 shall not apply with respect to, and in no event shall the Parent Indemnified Parties have (i) any right to indemnification for any matters arising out of, the last sentence of Section 6.21(s), or (ii) any cause of action with respect thereto.

(d) The rights of Parent Indemnified Parties to indemnification under Sections 10.1(a)(ii), (a)(iii), (a)(iv), (a)(v), (a)(vi), (a)(vii), (a)(viii) and (a)(ix) shall apply notwithstanding that the matter in question may be disclosed in a Schedule to this Agreement or in any Transaction Document or may be otherwise known by Parent or any of its Affiliates, or may be the subject of, excluded from or beyond the scope of any representation or warranty of the Company in this Agreement.

## **10.2     Indemnification by Parent.**

(a) Parent, Merger Sub and the Surviving Corporation, on behalf of themselves and their respective successors and assigns, hereby agree to jointly and severally indemnify the Stockholders, Warrantholders, Eligible Optionholders and their respective Affiliates, shareholders, directors, officers, partners employees, agents, representatives, successors and permitted assigns (the “Stockholder Indemnified Parties”) and save and hold each of them harmless from and against and pay on behalf of or reimburse the Stockholder Indemnified Parties as and when incurred for any and all Losses arising out of or resulting from:

(i) any misrepresentation or breach of, or omission from, any representation or warranty under Article 7 of this Agreement, or any misrepresentation or breach of, or omission from, any of the representations, warranties, statements, Schedules and Exhibits, certificates or other instruments or documents furnished to any Stockholder Indemnified Party by Parent made in or pursuant to this Agreement; or

(ii) any nonfulfillment or breach of any covenant or agreement on the part of Parent under this Agreement or other instruments or documents, including, without limitation, the Transaction Documents, furnished to the Stockholders by Parent.

## **10.3     Indemnification Procedure for Third Party Claims.**

(a) In the event that, subsequent to the Closing, any Person entitled to indemnification under this Agreement (an “Indemnified Party”) receives notice of the assertion of any claim or of the commencement of any action or proceeding by any Person who is not a Party or an Affiliate of a Party (including, but not limited to any Governmental Authority) (a “Third Party Claim”) against such Indemnified Party, against which a Party is required to provide indemnification under this Agreement (an “Indemnifying Party”), the Indemnified Party shall give written notice regarding such claim to the Indemnifying Party within thirty (30) Business Days after learning of such claim. Subject to Section 10.3(d) below, the Indemnifying Party shall have the right, upon written notice to the Indemnified Party (the “Defense Notice”) within thirty (30) calendar days after receipt from the Indemnified Party of notice of such claim, which notice by the Indemnifying Party shall specify the counsel it will appoint to defend such claim (“Defense Counsel”), to conduct, at its expense, the defense against such claim in its own name, or if necessary in the name of the Indemnified Party; *provided, however*, that the Indemnified Party shall have the right to approve the Defense Counsel, which approval shall not be unreasonably withheld or delayed.

(b) In the event that the Indemnifying Parties shall fail to give the Defense Notice within said thirty (30)-calendar day period, it shall be deemed to have elected not to conduct the defense of the subject claim, and in such event the Indemnified Party shall have the right to conduct the defense in good faith and to compromise and settle the claim in good faith without prior consent of the Indemnifying Parties and the Indemnifying Parties will be liable for all reasonable costs, expenses, settlement amounts or other Losses paid or incurred in connection therewith.

(c) Notwithstanding anything to the contrary herein, this Section 10.3 shall not apply to Dissenters Rights Claims, which claims shall be exclusively governed by Section 3.5 herein.

(d) Subject to Section 10.3(f) below, in the event that the Indemnifying Parties deliver a Defense Notice and thereby elects to conduct the defense of the subject claim, the Indemnifying Parties shall be entitled to have the exclusive control over said defense settlement of the subject claim and the Indemnified Parties will cooperate with and make available to the Indemnifying Parties such assistance and materials as it may reasonably request, all at the expense of the Indemnifying Parties, and the Indemnified Parties shall have the right at its expense to participate in the defense assisted by counsel of its own choosing. Notwithstanding the generality of the foregoing, the Indemnifying Parties delivery of a Defense Notice shall constitute an acceptance of its obligation to indemnify the Indemnified Party with respect to all Losses, if any, resulting from the subject claim.

(e) Without the prior written consent of the Indemnified Party which may be withheld for any reason or no reason, the Indemnifying Parties will not enter into any settlement of any Third Party Claim or cease to defend against such claim, if pursuant to or as a result of such settlement or cessation, (i) injunctive relief or specific performance would be imposed against the Indemnified Party, or (ii) such settlement or cessation would lead to liability or create any financial or other obligation on the part of the Indemnified Party for which the Indemnified Party are not entitled to full indemnification hereunder.

(f) Notwithstanding Section 10.3(d), the Indemnifying Parties shall not be entitled to control, but may participate in, and the Indemnified Party shall be entitled to have sole control over (and the right to select counsel to defend), the defense or settlement of any claim (i) that seeks a temporary restraining order, a preliminary or permanent injunction or specific performance against the Indemnified Party, (ii) that involves criminal allegations against the Indemnified Party, (iii) that if unsuccessful, would set a precedent that would materially interfere with, or have a material adverse effect on, the business, assets, condition (financial or otherwise), operations, operating results, or prospects of the Indemnified Party, (iv) that imposes liability on the part of the Indemnified Party for which the Indemnified Party are not entitled to full indemnification hereunder or (v) involves Taxes, which shall be exclusively governed by Section 4.2(e). In such an event, the Indemnifying Parties will still have all of its obligations hereunder provided that the Indemnified Party will not settle the subject claim without the prior written consent of the Indemnifying Parties, which consent will not be unreasonably withheld.

(g) Any final judgment entered or settlement agreed upon in the manner provided herein shall be binding upon the Indemnifying Parties, and shall conclusively be deemed to be an obligation with respect to which the Indemnified Party are entitled to prompt indemnification hereunder.

(h) Each of the Parent Indemnified Parties and their respective successors and permitted assigns hereby absolutely, unconditionally and irrevocably covenants and agrees that it (or they) will not directly sue (at law, in equity, in any regulatory proceeding or otherwise) the Preferred Releasors or Directors on the basis of any claim or cause of action arising at any time in relation to, or in any way in connection with this Agreement other than a claim based on such Preferred Releasors' or Directors' Letter of Transmittal, provided, however, Parent Indemnified Parties shall have the right to subpoena such Preferred Releasors and Directors to testify in any proceeding related to or in connection with this Agreement or any litigation involving the Company or Surviving Corporation. For purposes of clarification, any claim against the Escrow



Amount pursuant to the Escrow Agreement in connection with the indemnification in this Article 10 shall not be deemed a direct suit against the Preferred Releasors or Directors under this Section 10.3(h).

(i) A failure by an Indemnified Party to give timely, complete or accurate notice as provided in this Section 10.3 will not affect the rights or obligations of any Party under this Article 10 except and only to the extent that, as a result of such failure, any Party entitled to receive such notice (A) lost any material defense warranted by existing law or based on a non-frivolous argument (or a non-frivolous reversal or extension of existing law) for which factual contentions supporting such arguments have actual support, (B) was deprived of any material right to recover any payment, without litigation, or otherwise, or (C) was otherwise directly and materially damaged as a result of such failure to give timely notice.

**10.4** Indemnification Procedures for Non-Third Party Claims. In the event an Indemnified Party should have a claim against an Indemnifying Party hereunder which does not involve a Third Party Claim (a “Direct Claim”), the Indemnified Party (acting through the Stockholder Representatives in the case of a Company Indemnified Party) shall transmit to the Indemnifying Party a written notice (the “Direct Indemnification Notice”) containing (i) an estimate of the amount of damages attributable to such Direct Claim, (ii) the basis of the Indemnified Party’s request for indemnification under this Agreement and (iii) the individual items of such Loss included in the estimate. If the Indemnifying Party does not notify (the “Direct Indemnification Defense Notice”) the Indemnified Party in writing within thirty (30) calendar days from its receipt of the Direct Indemnification Notice that the Indemnifying Party disputes such Direct Claim, the Direct Claim specified by the Indemnified Party in the Direct Indemnification Notice shall be deemed a liability of the Indemnifying Party hereunder. If the Indemnifying Party has timely disputed such Direct Claim, as provided above, such dispute shall be resolved by litigation.

**10.5** Certain Limitations on Remedies.

(a) All representations and warranties of the Parties contained in or arising out of this Agreement or otherwise in connection herewith shall survive the Closing hereunder and shall continue in full force and effect thereafter until the {\*\*\*}† anniversary of the Closing Date, except for the several but not joint representations and warranties of each of the Stockholders, Warrantholders and Eligible Optionholders in the Letters of Transmittal which will survive thereafter solely with respect to the Stockholder or Warrantholder making such representation without effect on the Escrow Amount or any other Stockholder, Warrantholder or Eligible Optionholder. All agreements and covenants contained in this Agreement and in any Transaction Documents will survive the Closing and remain in effect indefinitely. Notwithstanding anything herein to the contrary, indemnification for any claim for which written notice as provided in this Article 10 has been timely given prior to the expiration of the representation and warranty upon which such claim is based as provided herein shall not expire

† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

with respect to such claim, and such claim for indemnification may be pursued, until the final resolution of such claim in accordance with the provisions of this Article 10.

(b) Notwithstanding anything to the contrary set forth in this Agreement (but subject to the terms of this Section 10.5(b)), the Parent Indemnified Parties shall not be entitled to indemnification under Section 10.1(a)(i), other than as a result of any misrepresentation or breach of, or omission from, any representation or warranty contained in Sections 6.1 or 6.5, unless and until the Losses incurred by all Parent Indemnified Parties, in the aggregate, as a result thereof exceed, in the aggregate, \$250,000 (the “Basket Amount”); *provided, however*, that in the event that such Losses exceed the Basket Amount, the Stockholders shall fully indemnify the applicable Parent Indemnified Party for all Losses incurred by such Parent Indemnified Party subject to indemnification obligations of the Stockholders pursuant to Section 10.1(a), including the amount applied to the Basket Amount. Notwithstanding the foregoing, the Basket Amount shall not apply to Losses in connection with the following items: (i) indemnification under Sections 10.1 (a)(ii), (a)(iii), (a)(iv), (a)(v), (a)(vi), (a)(vii), (a)(viii) and (a)(ix) or relating to the representations in Sections 6.1 or 6.5, (ii) any claims for breach of the representations or warranties in any Letters of Transmittal or (iii) any payment required to be made out of the Escrow Amount with respect to Dissenters Rights Claims.

(c) Notwithstanding anything to the contrary set forth in this Agreement (but subject to the terms of this Section 10.5(b)), the Stockholders, Warranholders and Eligible Optionholders shall not be entitled to indemnification under Section 10.2(a), other than as a result of any misrepresentation or breach of, or omission from, any representation or warranty contained in Sections 7.1, 7.2 and 7.3 unless and until the Losses incurred by all Stockholders, Warranholders and Eligible Optionholders, in the aggregate, as a result thereof exceed, in the aggregate, the Basket Amount, *provided, however*, that in the event that such Losses exceed the Basket Amount, the Parent shall fully indemnify the applicable Stockholders, Warranholders and Eligible Optionholders for all Losses incurred by such Stockholders, Warranholders and Eligible Optionholders, including the amount applied to the Basket Amount. Notwithstanding the foregoing, the Basket Amount shall not apply to losses in connection with indemnification under Section 10.2(a)(iii).

(d) The maximum aggregate amount of all indemnifiable Losses, arising out of or resulting from the causes enumerated in Section 10.1 of this Agreement (other than for Losses resulting from or in any way in connection with any breach of the representations or warranties set forth in any Letter of Transmittal) shall not exceed the Escrow Amount.

(e) With respect to any Losses arising out of or resulting from a breach of Section 6.1, only the Stockholder, Warranholder and Eligible Optionholder (and no other Person) that actually breached the “title” representation in the Letter of Transmittal shall be the Indemnifying Party and the maximum aggregate amount of indemnifiable Losses arising out of or resulting from such breach that may be recovered from the Stockholder, Warranholder and Eligible Optionholder shall not exceed the amount of the Aggregate Initial Consideration Amount and Escrow Amount actually received by such holder; provided that any such recovery shall first come from such holder’s portion of the amount of funds then available in the Escrow Account. For the avoidance of doubt, any Loss from such breach shall not be deducted from an

Escrow Amount allocated to Stockholders, Warrantholders and Eligible Optionholders not breaching such representation.

(f) Notwithstanding any provision of this Agreement to the contrary, the Parent Indemnified Parties shall not be entitled to indemnification for any Losses to the extent such Losses are directly caused by any transactions occurring on the Closing Date or the day immediately preceding the Closing Date (other than the Merger).

**10.6** Stockholder Representatives.

(a) Sofinnova Management V 2005, LLC and Edgar G. Engleman, M.D. (such Persons and any successor or successors to such Persons being the “Stockholder Representatives”) shall act as the representative of the holders of Company Stock, and is authorized to act on behalf of the Stockholders, Warrantholders and Eligible Optionholders and to take any and all actions required or permitted to be taken by the Stockholder Representatives under this Agreement and the other Transaction Documents with respect to any claims (including the settlement thereof) made by a Parent Indemnified Party or a Company Stockholder (as the case may be) for indemnification pursuant to this Article 10 and with respect to any actions to be taken by the Stockholder Representatives pursuant to the terms of this Agreement or the other Transaction Documents (including, without limitation, the exercise of the power to agree to, negotiate, enter into settlements and compromises of, and comply with orders of courts or arbiters with respect to any claims for indemnification). After the Closing, in all matters relating to this Agreement and the other Transaction Documents, the Stockholder Representatives shall be the only party entitled to assert the rights of the Stockholders, Warrantholders and Eligible Optionholders, and the Stockholder Representatives shall perform all of the obligations of the Stockholders, Warrantholders and Eligible Optionholders hereunder. A decision, act, consent, or statement of the Stockholder Representatives shall constitute a decision, act, consent or statement of the Stockholders, Warrantholders and Eligible Optionholders and shall be final, binding and conclusive upon each Company Stockholder, and the Parent Indemnified Parties shall be entitled to rely on all such decisions, acts, consents and statements of the Stockholder Representatives. Parent is hereby relieved from any liability to any Person for acts done by it in accordance with such decision, act, consent or statement of the Stockholder Representatives.

(b) The Stockholders, Warrantholders and Eligible Optionholders shall be bound by all actions taken by the Stockholder Representatives in their capacity thereof, except for any action that conflicts with the limitations set forth in subsection (d) below. The Stockholder Representatives shall promptly, and in any event within five Business Days, provide written notice to the Stockholders, Warrantholders and Eligible Optionholders of any action taken on behalf of them by the Stockholder Representatives pursuant to the authority delegated to the Stockholder Representatives under this Section 10.6. The Stockholder Representatives may rely upon and shall not be liable for acting or refraining from acting upon any written notice, document, instrument or request furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper party or parties without inquiry and without requiring substantiating evidence of any kind. Neither of the Stockholder Representatives nor any of their respective directors, officers, agents or employees, if any, shall be liable to any Person for any error of judgment, or any action taken, suffered or omitted to be taken under this Agreement, except in the case of its gross negligence or willful misconduct.

The Stockholder Representatives may consult with legal counsel, independent public accountants and other experts selected by it. The Stockholder Representatives shall not have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement. As to any matters not expressly provided for in this Agreement or the other Transaction Documents, the Stockholder Representatives shall not exercise any discretion or take any action.

(c) Each Stockholder, Warrantholder and Eligible Optionholder shall indemnify and hold harmless and reimburse the Stockholder Representatives from and against such Company Stockholder's ratable share of any and all liabilities, losses, damages, claims, costs or expenses (including, without limitation, the costs of legal or accounting advisors incurred in performance of the obligations of the Stockholder Representatives under Section 4.2 and otherwise under this Agreement) suffered or incurred by the Stockholder Representatives arising out of or resulting from any action taken or omitted to be taken by the Stockholder Representatives under this Agreement, other than such liabilities, losses, damages, claims, costs or expenses arising out of or resulting from the Stockholder Representatives' gross negligence or willful misconduct.

(d) Any actions taken by the Stockholder Representatives pursuant to this Agreement shall require the consent of both Stockholder Representatives.

**10.7     Insurance Tax Effect; Payments.**

(a) The amount of any Loss subject to indemnification hereunder or of any claim therefor shall be calculated net of any insurance proceeds received by the Parent Indemnified Parties (including the Company and the Surviving Corporation) on account of such Loss. Parent Indemnified Parties (including the Company and the Surviving Corporation) shall seek full recovery under all insurance policies covering any Loss to the same extent as they would if such Loss were not subject to indemnification hereunder. In the event that an insurance recovery is made by the Parent Indemnified Parties (including the Company and the Surviving Corporation) with respect to any Loss for which any such Person has been indemnified hereunder, then a refund equal to the aggregate amount of the recovery shall be made promptly to Seller.

(b) If a Parent Indemnified Party (including the Surviving Corporation) receives a Tax Benefit after an indemnification payment is made, such Parent Indemnified Party shall promptly pay the Stockholders, Warrantholders and Eligible Optionholders the amount of such Tax Benefit at such time or times as and to the extent that such Tax Benefit is realized. For purposes hereof, a "Tax Benefit" shall mean any actual cash refund of Taxes paid or cash reduction in the amount of Taxes that otherwise would have been paid, calculated on a last-dollar basis and after taking into account any offsetting Taxes or other costs or expenses.

(c) With respect to any claim of a Parent Indemnified Party made in good faith or portion thereof that is not being contested in good faith, the Stockholder Representatives, on behalf of the Stockholders, shall cause such claim or portion thereof to be paid from the Escrow Account within thirty (30) Business Days after receipt of written notice from such Parent Indemnified Party stating the amount of the claim. If any payment is due to a Parent Indemnified

Party upon the resolution of a claim or portion thereof contested by the Stockholders as provided in this Article 10, the Stockholder Representatives and Parent shall cause a Joint Direction (as defined in the Escrow Agreement) to be delivered pursuant to the Escrow Agreement within five (5) Business Days of such resolution, which Joint Direction shall direct the Escrow Agent to make such payment out of the Escrow Account. Any uncontested payment required under this Section 10.7 that is not made when due shall bear interest until paid in full at the interest rate accrued on the applicable funds held pursuant to the Escrow Agreement or, if less, the maximum rate permitted by applicable usury Laws.

**10.8**     Mitigation. Each Person entitled to indemnification hereunder shall take all reasonable steps to mitigate all Losses after becoming aware of any event that could reasonably be expected to give rise to any Losses that are indemnifiable or recoverable hereunder or in connection herewith.

**10.9**     Purchase Price Adjustment. Except as otherwise required by Law, any indemnification payment made pursuant to this Agreement shall be treated for all tax purposes by all Parties as an adjustment to the purchase price (as determined for U.S. federal income tax purposes).

**10.10**    Limitation of Recourse.

(a)        The indemnification provided by Section 10.1(a) shall be the sole and exclusive remedy for any Losses of the Parent Indemnified Parties with respect to any misrepresentation or inaccuracy in, or breach of, any representations or warranties or any breach or failure in performance of any covenants or agreements made by the Company in this Agreement or in any exhibit or schedules hereto or any certificate delivered hereunder, other than for breach of the representations and covenants contained in any Letter of Transmittal. Recovery from the Escrow Account, solely to the extent of the funds therein and pursuant to Section 10.1, constitutes Parent Indemnified Parties' sole and exclusive source of funds for payment of the indemnification provided in Section 10.1(a) and for any other Losses or other claims relating to or arising from this Agreement or in connection with the transactions contemplated hereby or any exhibit, schedule or certificate delivered hereunder and the Parent Indemnified Parties shall have no recourse to or remedy against any of its Stockholders, Warrantheolders Eligible Optionholders or any of their respective Affiliates for any such indemnification or any other Loss, other than for breach of the representations and covenants contained in any Letter of Transmittal.

(b)        Notwithstanding anything in this Agreement, no Parent Indemnified Party shall have any right to set off any amount or any monies otherwise to be paid or delivered to any of the Stockholders, Eligible Optionholders or Warrantheolders of the Company, against anything, including, without limitation, any monies owed by any of the Stockholders, Eligible Optionholders or Warrantheolders of the Company. The exercise of such set off will constitute a material breach of this or any other agreement between any of the Parties.

(c)        Notwithstanding anything in this Article 10 to the contrary, in no event shall any of the limitations on indemnification set forth in this Article 10 be applicable to any fraud or for breach of any representation or warranty in any of the Letters of Transmittal.

(d) The Parent Indemnified Parties shall only be indemnified and held harmless from the Escrow Account for Losses incurred with respect to a breach of the representation contained in Section 6.21(s) (i) after taking into account any limitations on, or reductions of, such net operating losses resulting from any of the Transactions, (ii) after taking into account the actual expiration dates applicable to such net operating losses and any increase to such net operating losses resulting from any “net unrealized built-in gain” that is utilized by the Company on or after the Closing Date to increase the Section 382 limitation, and (iii) only to the extent that (x) the actual Tax liability of the Company or Parent’s Affiliated Group or any successor would not have been increased but for a breach of such representation or if such representation had been accurate or (y) Parent’s Affiliated Group or any successor would not have utilized its own net operating losses but for a breach of such representation or if such representation had been accurate; *provided, however*, that no indemnification shall be available under (y) to the extent that the NOLs utilized by Parent’s Affiliated Group or any successor, as applicable, would have expired in the taxable year in which utilized.

**ARTICLE 11**  
**MISCELLANEOUS**

**11.1** Notices, Consents, etc. Any notices, consents or other communications required or permitted to be sent or given hereunder by any of the Parties shall in every case be in writing and shall be deemed properly served if (i) delivered personally, (ii) sent by registered or certified mail, in all such cases with first class postage prepaid, return receipt requested, (iii) delivered by a recognized overnight courier service, or (iv) sent by facsimile transmission to the Parties at the addresses as set forth below or at such other addresses as may be furnished in writing.

(i) If to the Company, to:

Prestwick Pharmaceuticals, Inc.  
1825 K Street NW, Suite 1475  
Washington, D.C. 20006  
Facsimile No.: (202) 296-7450  
Attention: Mr. George F. Horner III

with a copy to (which shall not constitute notice):

O’Melveny & Myers LLP  
Two Embarcadero Center, 28th Floor  
San Francisco, California 94111  
Facsimile No.: (415) 984-8701  
Attention: Peter T. Healy, Esq.  
Eric C. Sibbitt, Esq.

(ii) If to the Stockholders or the Stockholder Representatives, to:

Sofinnova Ventures  
850 Oakgrove Avenue

Menlo Park, CA 94025  
Facsimile No.: (415) 228-3390  
Attention: James I. Healy, M.D., Ph.D.

and

Edgar Engleman, M.D.  
c/o Vivo Ventures  
575 High Street, Suite 201  
Palo Alto, CA 94301  
Facsimile No.: (650) 688-0815

with a copy to (which copy shall not constitute notice hereunder):

O'Melveny & Myers LLP  
Two Embarcadero Center, 28th Floor  
San Francisco, California 94111  
Facsimile No.: (415) 984-8701  
Attention: Peter T. Healy, Esq.  
Eric C. Sibbitt, Esq.

(iii) If to Parent, to:

Biovail Americas Corp.  
700 Route 202/206  
Bridgewater, NJ 08807  
Facsimile No.: (908) 927-1401  
Attention: Vice President, Human Resources

with copies to (which copies shall not constitute notice hereunder):



Biovail Corporation  
7150 Mississauga Road  
Mississauga, Ontario L5N 8M5  
Facsimile No.: (905) 286-3150  
Attention: General Counsel

Morgan Lewis & Bockius LLP  
502 Carnegie Center  
Princeton, NJ 08540-6289  
Facsimile No.: (609) 919-6701  
Attention: Denis Segota, Esq.

Date of service of such notice shall be (w) the date such notice is personally delivered, (x) three (3) Business Days after the date of mailing if sent by certified or registered mail, (y) one (1) Business Day after date of delivery to the overnight courier if sent by overnight courier or (z) the same Business Day after transmission by facsimile (provided a confirmation of delivery is emitted by such machine upon transmission).

**11.2** No Third Party Beneficiary. The terms and provisions of this Agreement are intended solely for the benefit of each Party hereto and their respective successors or permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary rights upon any other Person, including but not limited to the employees, Stockholders, Warrantholders and Optionholders of the Company, other than any Person entitled to indemnification under Article 10.

**11.3** Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of any Party hereto under this Agreement is held to be materially and adversely affected thereby, (i) such provision will be fully severable, (ii) this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (iii) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom and (iv) the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement be consummated as originally contemplated to the fullest extent.

**11.4** Amendment and Waiver. This Agreement may be amended or modified only by a written instrument executed by the Company and Parent. The waiver by any Party hereto of a breach of any provision of this Agreement shall not operate or be construed as a continuing waiver or as a waiver of any other breach.

**11.5** Further Assurances. From time to time, as and when requested by any Party and at such Party's expense, the other Party will execute all documents and take such other

actions as such Party may reasonably request in order to consummate the transactions provided for herein and to accomplish the purposes of this Agreement.

**11.6 Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, including counterparts bearing a PDF or facsimile signature copy, each of which shall be deemed an original but all of which together shall constitute one and the same agreement and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other. The Parties intend that a PDF or facsimile signature copy on this Agreement shall have the same force and effect as an original signature.

**11.7 Governing Law; Forum.** This Agreement shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Agreement shall be governed by, the internal laws of the State of Delaware, without giving effect to provisions thereof regarding conflict of laws. In any action between the Parties arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement: (i) each of the Parties irrevocably and unconditionally consents and submits to the exclusive jurisdiction and venue of either the state courts located in New Castle County, Delaware or the United States District Court for the District of Delaware and (ii) each of the Parties irrevocably consents to service of process by first class certified mail, return receipt requested, postage prepaid.

**11.8 Waiver of Jury Trial.** Each of the Parties hereto hereby irrevocably waives any and all right to trial by jury of any claim or cause of action in any legal proceeding arising out of or related to this Agreement or the transactions or events contemplated hereby or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any Party hereto. The Parties hereto each agree that any and all such claims and causes of action shall be tried by the court without a jury. Each of the Parties hereto further waives any right to seek to consolidate any such legal proceeding in which a jury trial has been waived with any other legal proceeding in which a jury trial cannot or has not been waived.

**11.9 Specific Performance.** The Parties acknowledge that irreparable damage may result if this Agreement and the Transaction Documents were not specifically enforced, and they therefore agree that the non-breaching Party may seek a decree of specific performance from a court of competent jurisdiction to enforce this Agreement. Such remedy shall, however, not be exclusive and shall be in addition to any other remedies which any Party may have under this Agreement, the Transaction Documents or otherwise.

**11.10 Headings.** The subject headings of Articles and Sections of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

**11.11 Assignment.** Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the Parties (whether by operation of Law or otherwise) without the prior written consent of the other Parties. Subject to the preceding sentence, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns, *provided, however*, that nothing in this Agreement shall or is intended to limit the ability of Parent to assign its rights or delegate its responsibilities,

liabilities and obligations under this Agreement, in whole or in part, without the consent of the Company to (i) any Affiliate of Parent provided that such Affiliate expressly assumes such assignment or delegation, (ii) any buyer of all or substantially all of the assets of Parent, the Company or any Subsidiary thereof provided that such Buyer expressly assumes such assignment or delegation, or (iii) subject to observance of Parent obligations under the Escrow Agreement, commercial bank lenders to any of Parent, the Company or any Subsidiary thereof as security for borrowings at any time whether prior to or following the Closing Date. Notwithstanding anything contained in this Agreement to the contrary, except as specifically provided in Article 10, nothing in this Agreement, expressed or implied, is intended to confer on any Person other than the Parties or their respective successors and assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement.

**11.12** Entire Agreement. This Agreement and all the Schedules and Exhibits attached to this Agreement (all of which shall be deemed incorporated in the Agreement and made a part hereof), and the Transaction Documents set forth the entire understanding of the Parties with respect to the subject matter hereof and supersede all prior agreements, written or oral, of the Parties hereto, and shall not be modified or affected by any offer, proposal, statement or representation, oral or written, made by or for any Party in connection with the negotiation of the terms hereof, and may be modified only by instruments signed by all of the Parties required in accordance with Section 11.4.

**11.13** Interpretative Matters. Unless the context otherwise requires, (i) all references to Articles, Sections, Schedules or Exhibits are to Articles, Sections, Schedules or Exhibits contained in or attached to this Agreement, (ii) each accounting term not otherwise defined in this Agreement has the meaning assigned to it in accordance with GAAP, (iii) words in the singular or plural include the singular and plural and pronouns stated in either the masculine, the feminine or neuter gender shall include the masculine, feminine and neuter, (iv) the use of the word “including” in this Agreement shall be by way of example rather than limitation and (v) except as otherwise indicated, all references (A) to any agreement (including this Agreement), contract or Law are to the agreement, contract or Law as amended, modified, supplemented or replaced from time to time, and (B) to any Government Authority include any successor to that Government Authority.

**11.14** No Strict Construction. The language used in this Agreement will be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction will be applied against any Party.

**11.15** Publicity. Prior to the Closing, the Parties agree that they shall not issue any announcement or press release relating, directly or indirectly, to the Transactions unless such announcement or release is mutually agreed to by each of the Parties. Notwithstanding the foregoing, each Party may release such information that is required of them pursuant to any Law; *provided that* such releasing Party (prior to such release) immediately inform the other Parties hereto regarding the requirement and content of such release.

**11.16** Time of the Essence. For purposes of this Agreement and the transactions contemplated by this Agreement, time is of the essence.

**11.17    Incorporation of Exhibits.** The Company Disclosure Schedule, the Parent Disclosure Schedule, the Schedules and all Exhibits attached hereto and referred to herein are hereby incorporated herein and made a part hereof for all purposes as if fully set forth herein.

**11.18    Disclosure Generally.** The Company Disclosure Schedule and the Parent Disclosure Schedule attached hereto are incorporated herein and expressly made a part of this Agreement as though completely set forth herein. The inclusion of any information in any Schedule (or updated Schedule) shall not be deemed to be an admission or acknowledgment by the Company, in and of itself, that such information is material to or outside the ordinary course of the businesses of the Company and its Subsidiaries. Capitalized terms used in the schedules and not otherwise defined therein have the meanings given to them in this Agreement. Any information or document posted in the online data room and available for inspection at least three (3) Business Days prior to the date hereof by all Persons Affiliated with or representing Parent with access to the online data room as of such time shall be deemed to have been provided to, and made available to, Parent. Any information or document not posted prior thereto shall be deemed not to have been provided to, and made available to, Parent.

**11.19    Knowledge.** Where any representation or warranty of the Company contained in this Agreement is expressly qualified by reference “to the knowledge of the Company,” “to the Company’s knowledge” or words of similar import, it refers to the knowledge of any of George F. Horner III, Robert S. Radie, J. Paul Hoppenjans with respect to financial matters, and Martin Stogniew with respect to scientific or regulatory matters, as to the existence or absence of facts or circumstances that are the subject of such representations and warranties. Where any statement in this Agreement is expressly qualified by reference “to the knowledge of Parent,” “to the Parent’s knowledge,” or words of similar import, it refers to the knowledge of Greg Gubitz, Alex Matheson and, with respect to tax matters, Chris Bovaird as to the existence or absence of facts or circumstances that are the subject of such representations and warranties.

***[end of document; signature page follows]***

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

“PARENT”

BIOVAIL AMERICAS CORP.

By: /s/  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

“COMPANY”

PRESTWICK PHARMACEUTICALS, INC.

By: /s/ G.F. Horner III  
Name: G.F. Horner III  
Title: President and CEO

“MERGER SUB”

PRESTWICK HOLDINGS, INC.

By: /s/  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

“STOCKHOLDER REPRESENTATIVES”

SOFINNOVA MANAGEMENT V 2005, LLC

/s/ James I. Healy  
  
Name: James I. Healy  
Title: Managing Director

EDGAR G. ENGLEMAN, M.D.

/s/ Edgar G. Engleman  
By: Edgar G. Engleman, M.D.

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**CONFIDENTIAL TREATMENT REQUESTED:**

*Portions of this Exhibit have been redacted pursuant to a request for confidential treatment under Rule 24b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended. Such redacted portions have been replaced with “{\*\*\*}” in this Exhibit. An unredacted version of this document has been filed separately with the Securities and Exchange Commission along with the request for confidential treatment.*

**ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT (this “Agreement”), dated as of May 5, 2009 (the “Agreement Date”), is made by and between Biovail Laboratories International SRL, a Barbados society with restricted liability (“Buyer”), and SmithKline Beecham Corporation d/b/a GlaxoSmithKline, a corporation of the Commonwealth of Pennsylvania (“Seller”).

WHEREAS, Seller and Buyer are parties to that certain Amended and Restated Development, License and Copromotion Agreement, dated as of November 15, 2004, as amended (the “License Agreement”), by and among Seller, Buyer and Seller’s Affiliate (as defined below), Glaxo Group Limited (“GGL”);

WHEREAS, pursuant to the License Agreement, Buyer granted to Seller for the Territory (as defined below) and to GGL for certain other countries in the world, an exclusive license to make, have made, use, sell, offer for sale, and import any once daily formulation of bupropion hydrochloride, which formulation is currently marketed and sold by Seller in the Territory as Wellbutrin XL®;

WHEREAS, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller certain Purchased Assets (as defined below) related to the Product (as defined below) in the Territory as well as the Product Inventory (as defined below), all upon the terms and subject to the conditions set forth in this Agreement;

WHEREAS, Seller desires to transfer to Buyer, and Buyer desires to obtain from Seller certain Transferred Assets (as defined below) related to the Product in the Territory, all upon the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, in connection with the sale and purchase of the Purchased Assets, Buyer desires to secure certain rights to the Product Trademark (as defined below) and Product Trade Dress (as defined below) in the Territory and Seller desires to grant such rights to the Product Trademark and the Product Trade Dress in the Territory to Buyer.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Buyer and Seller agree as follows:

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ARTICLE I  
DEFINITIONS

Section 1.1      Definitions. As used in this Agreement, the following terms shall have the meanings ascribed to them below:

“Actual Inventory Amount” has the meaning set forth in Section 3.3(e).

“Affiliate” means, with respect to any Person, any other Person that directly or indirectly Controls, is Controlled by or is under common Control with such first Person. A Person will be deemed to “Control” another Person if such first Person has (a) direct or indirect ownership of more than fifty percent (50%) of the equity (or such lesser percentage which is the maximum allowed to be owned by a foreign corporation in a particular jurisdiction) having the power to vote on or direct the affairs of such other Person, or (b) the power, directly or indirectly, to direct or cause the direction of the policies and management of the other Person, whether by the ownership of stock, by contract, or otherwise.

“Agreement” has the meaning set forth in the introductory paragraph.

“Agreement Date” has the meaning set forth in the introductory paragraph.

“AMP” has the meaning set forth in Section 9.1(f)(i).

“Assigned Contracts” means each of the Contracts listed on Schedule 5.11.

“Assumed Contractual Obligations” means the obligations of Seller under the Assigned Contracts and Buyer Accepted Customer Orders but only to the extent such obligations relate to the period of time from and after the Closing Date. For purposes of clarification, Assumed Contractual Obligations shall not include any Liabilities (including for any pre-Closing breaches) arising or relating to periods prior to the Closing Date.

“Assumed Liabilities” has the meaning set forth in Section 2.3.

“Assumption Agreement” means an assumption agreement to be delivered by Buyer and Seller at Closing, substantially in the form of Exhibit A.

“Bill of Sale” means a bill of sale and assignment to be delivered by Buyer and Seller at Closing, substantially in the form of Exhibit B.

“Books and Records” means those certain files, documents, instruments, papers, books and records of Seller as listed on Schedule 1.1.

“Business Day” means any day other than a Saturday, Sunday or other day on which banks in the City of New York are permitted or required to close by any Governmental Rule.

“Buyer” has the meaning set forth in the introductory paragraph.



“Buyer Accepted Customer Orders” means all unfilled customer orders for Product on the Closing Date.

“Buyer Indemnified Parties” has the meaning set forth in Section 14.2(a).

“Canadian Wellbutrin® and Zyban® Amendment” means the First Amendment to Rights Agreement to be delivered by Buyer and Seller at Closing, substantially in the form of Exhibit C.

“Chargeback Contracts” has the meaning set forth in Section 9.1(d).

“Chargeback Contract Termination Date” has the meaning set forth in Section 9.1(d).

“Clinical Study” has the meaning set forth in Section 9.7(c).

“Closing” has the meaning set forth in Section 4.1.

“Closing Date” has the meaning set forth in Section 4.1.

“CMS” has the meaning set forth in Section 9.1(f)(i).

“Competing Product” has the meaning set forth in Section 10.1.

“Content” means all content, information, graphics, text, photographs and other data contained on the websites associated with the Domain Names. Notwithstanding the foregoing, “Content” shall not include the Seller Trademarks.

“Contracts” means contracts, leases, indentures, agreements, purchase orders and all other legally binding arrangements, including all amendments thereto, in effect as of the Closing Date.

“Customer Lists” means a list of all Third Parties who have purchased the Product directly from Seller (and, for clarity purposes, not purchased from a wholesaler or other Third Party with rights to sell the Product) in the Territory from January 2008 through March 31, 2009.

“Direct Customer Contracts” has the meaning set forth Section 9.1(e).

“Disclosure Schedule” has the meaning set forth in the introductory paragraph to ARTICLE V.

“DOJ” has the meaning set forth in Section 10.2.

“Domain Names” means the Domain Names set forth on Schedule 1.2.

“Domain Names Assignment Agreement” means a Domain Names assignment agreement to be delivered by Buyer and Seller at Closing, substantially in the form of Exhibit D.

“Encumbrance” means any mortgage, charge, deed of trust, lien, security interest, easement, right of way, pledge, assessment, encumbrance or restriction of any nature whatsoever.

“Estimated Inventory Purchase Amount” has the meaning set forth in Section 3.3(b).

“Excluded Assets” has the meaning set forth in Section 2.2.

“Excluded Intellectual Property” means: (i) the Seller Trademarks; (ii) the Product Trademarks; (iii) the Product Trade Dress; and (iv) any computer programs and software.

“FDA” means the United States Food and Drug Administration, and any successor thereto.

“Finished Goods” means the Product in bottles, labeled, packaged and ready for distribution and sale to end-users.

“FSS” has the meaning set forth in Section 9.1(d).

“FSS Termination Date” has the meaning set forth in Section 9.1(d).

“FTC” has the meaning set forth in Section 10.2.

“GGL” has the meaning set forth in the recitals.

“Government Rebate Programs” has the meaning set forth in Section 9.1(b).

“Governmental Entity” means any court, administrative agency or commission, regulatory authority or other governmental authority or instrumentality of the applicable jurisdiction, whether domestic or foreign.

“Governmental Rule” means any applicable law, judgment, order, decree, statute, ordinance, rule or regulation issued or promulgated by any Governmental Entity.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

“HSR Approval” means the waiting period applicable to the consummation of the transactions under the HSR Act shall have expired or been terminated, and no Governmental Entity shall have applied or threatened to apply for an injunction or other order under the antitrust laws of the Territory or any state thereof.

“IFF” has the meaning set forth in Section 9.1(d).

“IND” means an Investigational New Drug Application as defined in the Federal Food, Drug and Cosmetic Act, 21 USC Section 301, et seq. and applicable regulations promulgated thereunder by the FDA.

“Indemnification Claim Notice” has the meaning set forth in Section 14.5(a).

“Indemnified Party” has the meaning set forth in Section 14.5(a).

“Indemnifying Party” has the meaning set forth in Section 14.5(a).

“Liabilities” means any and all debts, liabilities and obligations, whether accrued or fixed, known or unknown, absolute or contingent, matured or unmatured, due or become due, or determined or determinable, including any liability for Taxes and those arising under any Governmental Rule, Contract, or otherwise.

“License Agreement” has the meaning set forth in the recitals.

“License Agreement Amendment” means the Second Amended and Restated Development, License and Copromotion Agreement related to the Product to be delivered by Buyer’s Affiliate and Seller at Closing, substantially in the form of Exhibit E.

“Licensed Rights” means the rights licensed by Seller to Buyer pursuant to Section 2.4.

“Losses” means any and all damages, losses, Taxes, Liabilities, claims, judgments, penalties, costs and expenses (and any interest imposed thereon), including reasonable attorneys’ fees and litigation expenses.

“Market Withdrawal” means the partial or total withdrawal of the Product in the Territory either on a temporary or permanent basis due to the decision of Seller or a Governmental Entity.

“Material Adverse Effect” means a change, circumstance or effect that has had or could have a materially adverse effect on the Product or any of the Purchased Assets or Licensed Rights, taken as a whole, but shall exclude any events, change, circumstance or effect caused by or relating to: (A) the announcement of or consummation of the transaction contemplated by this Agreement or the other transaction documents; (B) events, circumstances, changes in conditions or effects that generally affect the (i) healthcare or pharmaceutical industry or (ii) the United States or world economy or securities markets; (C) changes caused by a material worsening of current conditions caused by acts of terrorism or war (whether or not declared) occurring after the Agreement Date, or (D) any changes in law.

“NDA” means a new drug application or supplemental new drug application and any amendments thereto submitted to the FDA.

“NDC Number” means the national drug code number associated with the Product in the Territory (including the labeler code, product code and package code, in connection with the drug listing requirements of Section 510(j) of the FDCA, and applicable FDA rules and regulations).

“Parent” has the meaning set forth in Section 6.9.

“Patents” means all patents and patent applications, provisionals or any substitute applications, any patent issued with respect to any such patent applications, including reissues, divisions, continuations, continuations-in-part, renewal and extensions (including any supplementary protection certificate) thereof and reexamination certificates therefor, and any confirmation patent or registration patent or patent of addition based on any such patent.

“Permitted Encumbrance” means any Encumbrance for Taxes, assessments and other governmental charges that are not yet due and payable or that may thereafter be paid without penalty, or that are being contested in good faith by appropriate proceedings.

“Person” means any individual, corporation, partnership, limited liability company, joint venture, trust, business association, organization, Governmental Entity or other entity.

“Pharmacovigilance Agreement” has the meaning set forth in Section 9.7(b)(i).

“Product” means and collectively refers to those certain dosage strengths of the once-daily pharmaceutical formulation of bupropion hydrochloride (i.e. the 150 mg and the 300 mg dosage strengths) that are marketed by Seller in the Territory under the Trademark “Wellbutrin XL®” as of the Closing Date.

“Product Approvals” means the Regulatory Approvals for the Product which are set forth on Schedule 5.9(b), together with all supporting documents, submissions, correspondence, reports and clinical studies referred therein.

“Product Inventory” has the meaning set forth Section 3.3(a).

“Product Marketing Materials” means the marketing, advertising and promotional materials attached as Schedule 1.3.

“Product Patents” means the Patent listed on Schedule 1.4.

“Product Regulatory Materials” means (a) all adverse event reports and other data, information and materials relating to adverse experiences with respect to the Product in the Territory; and (b) all written notices, communications or other correspondence between Seller, on the one hand, and any Governmental Entity, on the other hand, relating to the Product in the Territory, including any safety reports or updates, complaint files and product quality reviews, all clinical or pre-clinical data derived from clinical studies conducted or sponsored by Seller, which data relates to the Product in the Territory and is maintained by or otherwise in the possession of Seller as of the Closing Date.

“Product Trade Dress” means the current trade dress of the Product, including the shape, size, color and lettering of the Product packaging and the tablets of Product.

“Product Trademarks” means the Trademarks listed on Schedule 1.5.

“Purchase Price” has the meaning set forth in Section 3.1.

“Purchased Assets” means (i) the Product Approval, (ii) the Assigned Contracts, (iii) the Product Inventory, (iv) the Domain Names and (v) any and all goodwill relating to the foregoing.

“Rebate Contracts” has the meaning set forth in Section 9.1(b).

“Regulation S-X” has the meaning set forth in Section 6.9.

“Regulatory Approvals” means any approvals (including pricing and reimbursement approvals), licenses, registrations or authorizations of any national or international or local regulatory authority, department, bureau or other governmental entity, necessary for the marketing, distribution and sale of a product in a regulatory jurisdiction in the Territory, including NDAs and INDs.

“REMS Study” means that certain Risk Evaluation and Mitigation Strategy requirement set forth in the Supplemental Request.

“Responsible Party” has the meaning set forth in Section 9.7(c)(ii).

“Retained Liabilities” has the meaning set forth in Section 2.3.

“SEC” has the meaning set forth in Section 6.9.

“Seller” has the meaning set forth in the introductory paragraph.

“Seller Indemnified Parties” has the meaning set forth in Section 14.3(a).

“Seller Trademark” means the “GlaxoSmithKline” company name, any corporate logos of the Seller, and, in each case, any variations thereof.

“Seller’s Warehouse” means the Seller’s distribution centers located in Knoxville, TN and Richmond, VA.

“Shared Lot” means a lot of Product that was sold by Seller prior to Closing Date and sold by Buyer, or by Buyer’s distributor, from and after the Closing Date.

“Supplemental Request” means that certain notice titled “Supplemental Request” from the FDA to Seller dated February 19, 2009.

“Tax” means all taxes of any kind imposed by a federal, state, local or foreign Governmental Entity, including those on, or measured by or referred to as, income, gross receipts, financial operation, sales, use, ad valorem, value added, franchise, profits, license, excise, stamp, premium, property, transfer or windfall profits taxes, customs, duties or similar fees, assessments or charges of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amounts imposed by such Governmental Entity with respect to such amounts.

“Territory” means the United States of America and its territories and possessions, such as but not limited to Puerto Rico.

“Third Party” means any Person other than Buyer, Seller or their respective Affiliates.

“Third Party Claim” has the meaning set forth in Section 14.5(b).

“Trademark License Agreement” means the Trademark License Agreement to be entered into by Buyer and Seller at Closing, substantially in the form of Exhibit E.

“Trademarks” means all trademarks, trade names, brand names, logotypes, symbols, service marks and the goodwill of the business symbolized thereby, including registrations and applications for registrations thereof and all renewals, modifications and extensions thereof.

“Transferred Assets” means (i) the Product Regulatory Materials, (ii) the Books and Records (including the Customer Lists), (iii) the Buyer Accepted Customer Orders, and (iv) any and all goodwill related to the foregoing.

“VANAC” has the meaning set forth in Section 9.1(d).

“Wellbutrin®” means Wellbutrin® immediate release tablets, a three times a day formulation of bupropion hydrochloride.

“Wellbutrin SR®” means Wellbutrin® sustained release tablets, a twice daily formulation of bupropion hydrochloride.

“Zovirax Distribution Rights Letter” means that certain letter with respect to Distribution Rights Agreement, dated as of the Closing Date, by and between Seller and Buyer’s Affiliate, in substantially the form of Exhibit G.

“Zyban®” means Zyban® sustained release tablets, a twice daily formulation of bupropion hydrochloride indicated as an aid for smoking cessation treatment.

Section 1.2      Interpretation.

(a)      When used in this Agreement, the words “include”, “includes” and “including” shall be deemed to be followed by the words “without limitation.”

(b)      Any terms defined in the singular shall have a comparable meaning when used in the plural, and vice-versa.

(c)      All references to any introductory paragraph, recitals, Articles, Sections, Exhibits and Schedules shall be deemed references to the introductory paragraph, recitals, Articles, Sections, Exhibits and Schedules to this Agreement.

(d)      This Agreement shall be deemed drafted jointly by Buyer and Seller and shall not be specifically construed against either party based on any claim that such party or its counsel drafted this Agreement.

Section 1.3      Currency. All currency amounts referred to in this Agreement are in United States Dollars unless otherwise specified.

ARTICLE II  
SALE AND PURCHASE OF PURCHASED ASSETS; LICENSES

Section 2.1      Purchase and Sale. Upon the terms and subject to the conditions of this Agreement, on the Closing Date, Seller shall sell, assign, transfer, convey and deliver to Buyer (or its designated Affiliates) and Buyer (or its designated Affiliates) shall purchase, acquire and

accept, all right, title and interest of Seller in, to and under the Purchased Assets and the Transferred Assets.

Section 2.2        Excluded Assets. Buyer and Seller expressly agree and acknowledge that none of the Purchased Assets, the Transferred Assets nor the Product Inventory shall include any of the following (collectively, the “Excluded Assets”):

- (i)        the Excluded Intellectual Property; and
- (ii)       any Seller employees.

Section 2.3        Assumption of Certain Liabilities and Obligations. As of the Closing Date, Buyer shall assume, be responsible for and pay, perform and discharge when due the following Liabilities of Seller (collectively, the “Assumed Liabilities”):

- (a)       any Liabilities (including attorneys’ fees and expert witness fees) arising from any product liability claims relating to any Product sold by Buyer or its distributor after the Closing Date (based on lot number);
- (b)       any Liabilities (including attorneys’ fees and expert witness fees) arising from any product liability claims relating to Shared Lots (based on lot number), regardless of the seller of the Product; and
- (c)       the Assumed Contractual Obligations.

It is expressly understood and agreed that other than the Assumed Liabilities and Buyer’s indemnification obligations under the License Agreement Amendment, Buyer shall not assume, nor shall it be liable for, any Liabilities of Seller or its Affiliates, including any Liabilities arising from any litigation, claim, action, suit, proceeding, investigation, hearing, arbitration, judgment, decree, injunction, rule or order related to the Product sold by or on behalf of Seller or its Affiliates (collectively, the “Retained Liabilities”). For purposes of clarity, the Retained Liabilities shall include any Liability for product liability claims related to Product sold by or on behalf of Seller or its Affiliates (based on lot number). Notwithstanding the foregoing provisions of this Section 2.3, the parties hereby agree and acknowledge that, to the extent any Liability for product liability claims relate to any Product that cannot be identified by lot or by the date such Product was sold, such Liability will be allocated between the parties as follows: (a) with respect to any such Liability that arises from any litigation, claim, action, suit, or proceeding wherein the prescription fill date of the Product was on or prior to the {\*\*\*}† day after the Closing Date, such Liability shall be a Retained Liability; and (b) with respect to such Liability that arises from any litigation, claim, action, suit, proceeding wherein the prescription fill date of the Product was on or after the {\*\*\*}† day after the Closing Date, such Liability shall be an Assumed Liability.

Section 2.4        Trademark and Trade Dress License. Seller shall grant to Buyer a license to the Product Trademarks and the Product Trade Dress pursuant to the terms and conditions of the Trademark License Agreement.

† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.



Section 2.5      Rights of Reference.

(a) Grant to Buyer. Effective from and after the Closing Date, Seller hereby grants Buyer and its designees the right to reference solely in connection with the Product in the Territory, at no cost, all regulatory approvals, owned or otherwise controlled by Seller or any of its Affiliates, associated with (i) the Product outside of the Territory and (ii) Zyban®, Wellbutrin SR® and Wellbutrin® worldwide. Regulatory approvals, as used in Section 2.5(a) and Section 2.5(b), shall include preclinical and clinical data and reports, regulatory submissions and filings, any adverse event reports and customer complaints, each of which have been filed with the applicable regulatory approval. In furtherance of the foregoing, Seller shall, promptly upon the written request of Buyer specifying the Governmental Entity, deliver a letter to the applicable Governmental Entity authorizing Buyer to reference, solely in connection with the Product in the Territory, the applicable regulatory approvals related to (1) the Product outside of the Territory and (2) Zyban®, Wellbutrin SR® and the Wellbutrin® worldwide.

(b) Grant to Seller. Effective from and after the Closing Date, Buyer hereby grants Seller and its designees the right to reference, at no cost, all regulatory approvals associated with the Product in the Territory and Canada (i) in connection with the Product outside of the Territory, and (ii) in connection with Zyban®, Wellbutrin SR® and Wellbutrin® worldwide. In furtherance of the foregoing, Buyer shall, promptly upon the written request of Seller specifying the Governmental Entity, deliver a letter to the applicable Governmental Entity authorizing Seller to reference, solely in connection with the Product outside of the Territory or in connection with Zyban®, Wellbutrin SR® and Wellbutrin® worldwide, as applicable, the applicable regulatory approvals related to the Product in the Territory and Canada.

ARTICLE III  
PURCHASE PRICE

Section 3.1      Purchase Price. In consideration of the sale, assignment, conveyance, and delivery of the Purchased Assets (other than the Product Inventory), the Transferred Assets and the Licensed Rights granted pursuant to the Trademark License Agreement, Buyer shall, on the Closing Date, assume the Assumed Liabilities and:

(a) pay to Seller an amount equal to Five Hundred Ten Million Dollars (\$510,000,000) (the “Purchase Price”), provided that, in the event that the Closing does not occur on or prior to May 14, 2009, the Purchase Price shall be reduced by an amount equal to {\*\*\*}† for each Business Day on which the Closing Date does not occur subsequent to {\*\*\*}†; provided that in the event the Closing Date occurs subsequent to {\*\*\*}†, then {\*\*\*}† shall be the first day for purposes of calculating the foregoing adjustment (e.g., if, the Closing Date occurs on {\*\*\*}†, the Purchase Price shall be reduced by {\*\*\*}†. The Purchase Price is non-refundable and not creditable against other payments of the Buyer under this Agreement or any other transaction document. The Purchase Price shall be due and payable at the Closing in accordance with Section 4.2(a); and

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† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

(b) pay to Seller the Estimated Inventory Purchase Amount for the Product Inventory, as such amount may be adjusted pursuant to Section 3.3(e).

Section 3.2      Transfer Taxes. All transfer, sales, value added, stamp duty and similar Taxes (including any penalties and interest) payable in connection with the transactions contemplated hereby, to the extent payable to any Governmental Entity, shall be borne by Buyer. Notwithstanding the foregoing, Buyer and Seller shall each be obligated for any Taxes that it is legally responsible for, if any, arising out of the sale by Seller of the Purchased Assets and Transferred Assets to Buyer pursuant to this Agreement, or assessed based upon the income or worth of such party.

Section 3.3      Product Inventory.

(a) Buyer shall purchase the lots of Finished Goods available at Seller’s Warehouse which are listed on Schedule 3.3(a) (which Schedule also sets forth the quantities of such lots and whether such lots are full), less any such Finished Goods that are sold by Seller during the period between the Agreement Date and the Closing Date (the “Product Inventory”). On the Agreement Date, Seller shall provide to Buyer a written report, as set forth on Schedule 3.3(a), with respect to the estimated quantities of Product Inventory, by lot, available at Seller’s Warehouse for delivery to Buyer or an Affiliate of Buyer (as directed by Buyer) on the Closing Date. All Product Inventory shall not have less than {\*\*\*}† shelf life remaining as of the Closing Date. Between the Agreement Date and the Closing Date, Seller shall not break into any full lot of Product Inventory set forth on Schedule 3.3(a) without providing two (2) Business Days prior written notice thereof to Buyer.

(b) Buyer shall purchase all of the Product Inventory at Closing at a purchase price equal to the quantity of each SKU of Product Inventory set forth in the report identified in Section 3.3(a), which report shall be updated by Seller as of the Business Day immediately prior to the Closing, multiplied by the prices set forth in Schedule 3.3(b) applicable to such SKU (the “Estimated Inventory Purchase Amount”).

(c) Seller shall deliver the Product Inventory EXW (Incoterm 2000) Seller’s Warehouse, on the Closing Date. Buyer shall pick-up the Product Inventory within two (2) Business Days of the Closing Date. For purposes of clarification, Buyer shall be solely responsible for all costs and expenses related to the delivery of the Product Inventory from Seller’s Warehouse to destination determined by Buyer, including without limitation, all shipping, insurance, and all import and export duties.

(d) At the time of pick-up of the Product Inventory, prior to leaving Seller’s Warehouse, Buyer shall cause a physical counting of the Product Inventory to be picked up pursuant to Section 3.3(c) to be conducted to determine the actual quantities of such Product Inventory. Buyer shall permit a representative of Seller to be present at such examination.

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† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

(e) In the event that the purchase price of the actual quantities of Product Inventory picked up at Closing, calculated pursuant to the formula set forth in Section 3.3(b) (the “Actual Inventory Amount”), is less than the Estimated Inventory Purchase Amount, then, within fifteen (15) days of the determination of the Actual Inventory Amount, Seller shall pay an amount equal to such difference to an account designated by Buyer by wire transfer in immediately available funds.

#### ARTICLE IV THE CLOSING

Section 4.1 Closing Date. The closing of the sale of the Purchased Assets, Product Inventory and the transfer of the Transferred Assets (the “Closing”) shall take place by facsimile or electronic transmission of signature pages on the first Business Day following HSR Approval or at such other date as may be mutually agreed by Buyer and Seller (the “Closing Date”). The Closing shall be deemed to occur at 12:01 a.m. ET on the Closing Date.

Section 4.2 Closing Activities.

(a) At the Closing, (i) payment of the Purchase Price shall be made by Buyer, in U.S. Dollars, by wire transfer of immediately available funds to Seller’s account listed in Schedule 4.2(a), and (ii) payment of the Estimated Inventory Purchase Amount for the Product Inventory shall be made by Buyer, in U.S. Dollars, by wire transfer of immediately available funds to Seller’s account listed in Schedule 4.2(a):

(b) At the Closing, Seller will sell, assign, convey and transfer to Buyer or, as directed by Buyer, to Buyer’s Affiliate, Seller’s right, title and interest in, to and under the Purchased Assets and Transferred Assets.

(c) At the Closing, Seller shall deliver to Buyer or to an Affiliate as directed by Buyer, in electronic form only, the Product Approval, the Product Marketing Materials, Books and Records and the Buyer Accepted Customer Orders. The delivery of the Product Inventory shall be performed in accordance with Section 3.3(c).

(d) Within thirty (30) days after the Closing Date, Seller shall deliver to Buyer or to an Affiliate of Buyer as directed by Buyer, in electronic form only, the Product Regulatory Materials.

(e) At the Closing, Seller will have executed and delivered to Buyer all instruments of conveyance and other documentation relating to the sale and purchase of the Purchased Assets and Transferred Assets, including: (i) the Assumption Agreement; (ii) the Bill of Sale; (iii) the License Agreement Amendment; (iv) the Domain Names Assignment Agreement; (v) the Canadian Wellbutrin® and Zyban® Amendment; (vi) the Zovirax Distribution Rights Letter; and (vii) the Trademark License Agreement.

(f) At the Closing, Buyer shall receive from Seller a certificate certifying to the satisfaction of the conditions set forth in Section 12.2(a) and Section 12.2(b) dated the Closing Date and executed by a duly authorized officer of Seller.

(g) At the Closing, Seller shall receive from Buyer a certificate certifying to the satisfaction of the conditions set forth in Section 12.3(a) and Section 12.3(b) dated the Closing Date and executed by a duly authorized officer of Buyer.

(h) At the Closing, Buyer will have executed and delivered to Seller: (i) the Assumption Agreement; (ii) the Bill of Sale; (iii) the License Agreement Amendment; (iv) the Domain Names Assignment Agreement; (v) the Canadian Wellbutrin® and Zyban® Amendment; (vi) the Zovirax Distribution Rights Letter; and (vii) the Trademark License Agreement.

(i) At Closing, Seller shall deliver or cause to be delivered to Buyer: (i) a letter from Seller to the FDA, duly executed by Seller, transferring the rights to the Product Approval to Buyer; and (ii) a letter from Seller to the FDA, Division of Drug Marketing, Advertising and Communication, notifying of the transfer of the Product Approval to Buyer.

(j) At Closing, Buyer shall deliver or cause to be delivered to Seller: (i) a letter from Buyer to the FDA, duly executed by Buyer, assuming responsibility for the Product Approval from Seller; and (ii) a letter from Buyer to the FDA, Division of Drug Marketing, Advertising and Communication, notifying of the transfer of the Product Approval from Seller to Buyer.

ARTICLE V.  
REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Buyer as of the Agreement Date and as of the Closing Date (except to the extent a separate date is specified within the representation and warranty, in which case, the date set forth therein shall apply), except as set forth on the Disclosure Schedule attached hereto as Exhibit H (the “Disclosure Schedule”), which Disclosure Schedule shall be deemed to be representations and warranties of Seller as if made herein, as follows:

Section 5.1      Organization; Good Standing. Seller is a corporation, duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation. Seller has the requisite power and authority to own the Purchased Assets, Transferred Assets and to license the Licensed Rights, as the case may be, and to carry on its business with respect to the Product in the Territory as currently conducted. Seller is duly qualified to conduct business as a foreign corporation and is in good standing in each jurisdiction where the nature of the business conducted by it makes such qualification necessary, except where the failure to so qualify or be in good standing would not have a Material Adverse Effect.

Section 5.2      Authority; Execution and Delivery. Seller has the requisite power and authority to enter into this Agreement and the other transaction documents (including the License Agreement Amendment) and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the other transaction documents (including the License Agreement Amendment) by Seller and the consummation of the transactions contemplated hereby and thereby have been duly authorized and no additional corporate or shareholder authorization or consent is required in connection with the execution, delivery and performance by Seller of this Agreement and the other transaction documents (including the

License Agreement Amendment). This Agreement and the transaction documents (including the License Agreement Amendment) have been duly executed and delivered by Seller and, assuming the due authorization, execution and delivery of this Agreement and the transaction documents by Buyer, will constitute legal, valid and binding obligations of Seller, enforceable against it in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and other similar laws affecting creditors' rights generally from time to time in effect and to general principles of equity regardless of whether considered in a proceeding in equity or at law.

Section 5.3        No Violation; Consents. The execution and delivery of this Agreement and the other transaction documents do not, and the consummation of the transactions contemplated hereby and thereby and compliance with the terms hereof and thereof will not: (i) assuming HSR Approval has been obtained, violate any Governmental Rule applicable to Seller or the Purchased Assets or Transferred Assets; (ii) result in the creation or imposition of any Encumbrance upon, any Purchased Asset or Transferred Assets; (iii) require any approval, authorization, consent, license, exemption, filing or registration with any Person, except for such approvals, authorizations, consents, licenses, exemptions, filings or registrations which have been obtained or made prior to the Closing; (iv) conflict with or violate any provisions of the charter, bylaws or other organizational documents of Seller; (v) result in the breach of, or a default under any Contract to which such Seller is a party, or (vi) result in the breach of, or a default under any order, writ, injunction, judgment or decree to which such Seller is bound or subject, except in the case of clauses (v) and (vi) for such breaches or defaults, which would not have, individually or in the aggregate, a Material Adverse Effect.

Section 5.4        Financial Information. Seller has made available to Buyer all material, historical sales information related to the gross and net sales of the Product in the Territory for the twelve (12) months ended December 31, 2007 and December 31, 2008, and the three (3) months ended March 31, 2009. Such financial information was prepared by Seller in good faith, was derived from and is consistent with, the Books and Records of the Seller, and fairly presents, in all material respects, the gross and net sales of the Product in the Territory as of the dates and for the periods shown.

Section 5.5        Consents. There are no consents, approvals, waivers or authorizations of, filing with, notice to, or exemption by, any Person, including any Governmental Entity, required to be obtained by the Seller or on its behalf in connection with the execution, delivery, or performance of its obligations under this Agreement or the other transaction documents or to consummate the transactions contemplated hereby or thereby, including the transfer of the Purchased Assets and Transferred Assets to Buyer and the grant of the Licensed Rights to Buyer, except (a) in connection with the transfer of the Product Approvals, (b) as relate solely to Buyer, (c) pursuant to the HSR Act or (d) failure to make such filings or notifications, or obtain such consents, approvals, authorizations or waiver, would not, individually or in the aggregate, have a Material Adverse Effect.

Section 5.6        Title to Assets. Seller has good, marketable and valid title to each of the Purchased Assets and Transferred Assets, as the case may be, free and clear of all Encumbrances other than Permitted Encumbrances and is exclusively entitled to possess and dispose of same. To Seller's knowledge, there are no adverse claims of ownership to the Product in the Territory,

the Purchased Assets or Transferred Assets. Seller has not received any written notice that any Person has asserted a claim of ownership or right of possession or use in and to any of the Product in the Territory, the Purchased Assets or the Transferred Assets.

Section 5.7      Sufficiency of Assets. Except as set forth on Schedule 5.7, the Purchased Assets and the Licensed Rights constitute all of the assets and rights (i) controlled by Seller that are currently used, or have been used in the prior twelve (12) months, by Seller in connection with the distribution and sale of the Product in the Territory or (ii) that are otherwise necessary for the distribution and sale of the Product in the Territory. None of Seller's Affiliates owns or controls any of the Purchased Assets, Transferred Assets, Licensed Rights, or any other assets or rights currently used, or used in the prior twelve (12) months, by Seller for the distribution or sale of the Product in the Territory. To Seller's knowledge, none of Seller's Affiliates is a party to a Contract related to the Product in the Territory.

Section 5.8      Litigation. Except as disclosed on Schedule 5.8, there is no claim, action, suit, proceeding, investigation, hearing, arbitration, judgment, decree, injunction, rule or order before any Governmental Entity in progress or, to the knowledge of Seller, pending or threatened against or relating to Seller (a) in connection with the Purchased Assets, the Product in the Territory or the Licensed Rights, (b) to the knowledge of Seller, in connection with the Transferred Assets, (c) that would have a Material Adverse Effect, or (d) that would otherwise delay or impair the ability of Seller to consummate the transactions contemplated by this Agreement or the other transaction documents or to perform Seller's obligations hereunder or thereunder.

Section 5.9      Regulatory Issues.

(a)      With respect to the Product since January 1, 2007, except as set forth in Schedule 5.9(a) or as otherwise provided to Buyer in the Product Approval, (i) neither Seller nor any of Seller's Affiliates has received or been subject to any written notice from any Governmental Entity of adverse findings relating to the Product; and (ii) there has not been any occurrence of any product recall, Market Withdrawal or post sale warning conducted by or on behalf of Seller concerning the Product.

(b)      The Product Approvals are in full force and effect. There is no action or proceeding by any Governmental Entity pending or, to the knowledge of Seller, threatened seeking the recall of the Product or the revocation or suspension of any of the Product Approvals. As of the Agreement Date, Seller has made available to Buyer complete and correct copies of the Product Approval. The Product Approvals, as set forth on Schedule 5.9(b), are the only Regulatory Approvals required from the FDA to distribute and sell the Product in the Territory in the manner as currently conducted by Seller and as conducted by Seller during the twelve (12) months prior to the Agreement Date.

(c)      Seller has provided Buyer with (i) a true, complete and correct copy of the Supplemental Request and any amendments thereto and (ii) a true, complete and correct copy of the proposal with respect to the REMS Study delivered by Seller to the FDA and any amendments thereto, and (iii) all other written materials and correspondence to or from the FDA related to the Supplemental Request and the matters set forth therein.

Section 5.10 Compliance with Laws. Except to the extent non-compliance would not have a Material Adverse Effect, Seller is in compliance with all Governmental Rules applicable to it which relate to the Purchased Assets, the Product and the Licensed Rights. Seller has not received any written notice (a) of any asserted violation of any such Governmental Rules relating to the Purchased Assets, the Product and the Licensed Rights that remains outstanding or (b) except as set forth on Schedule 5.8, Schedule 5.10(b) or as otherwise provided to Buyer in the Product Approvals, that any investigation or review by any Governmental Entity with respect to the Domain Names, the Product or the Licensed Rights is currently pending or threatened.

Section 5.11 No Defaults Under Assigned Contracts. Each of the Assigned Contracts is in full force and effect and constitutes a legal, valid and binding agreement of Seller and the other parties thereto, enforceable in accordance with its terms, except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, and (b) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies; and Seller has performed all of its required material obligations under any Assigned Contract. Seller has not received written notice that it is in default under, or in breach of, any Assigned Contract. Neither Seller nor, to the knowledge of Seller, the other party to each of the Assigned Contracts is in default under, or in breach of, such Assigned Contract. Seller has delivered true, complete and accurate copies of all Assigned Contracts except to the extent redacted to remove provisions which relate to products other than the Product, including any written amendments, written alterations or written correspondence that alter any of the terms set forth therein.

Section 5.12 Intellectual Property Rights.

(a) Schedule 5.12(a) contains a list of all the Patents, Trademarks and Domain Names used by Seller in the distribution and sale of the Product in the Territory as currently conducted by Seller and as conducted by Seller during the twelve (12) months prior to the Agreement Date.

(b) The Product Trademarks and Domain Names listed on Schedule 5.12(a), each as registered or filed, have been duly registered or filed with, and all necessary registration, maintenance and renewal fees with respect to such Product Trademarks and Domain Names have been paid to, the appropriate Governmental Entities. To the knowledge of Seller, Seller has complied with all other requirements to maintain in full force the Product Trademarks and the Domain Names in the Territory.

(c) Seller has not received any notice of a claim, and to the knowledge of Seller, there has not been any threatened claim, made by any Third Party of infringement or misappropriation, or contesting the validity, enforceability, use or ownership of the Product Trademarks, Domain Names or the Product Trade Dress.

(d) The Product Trademarks, Product Trade Dress and Domain Names are not subject to any contractual obligation (i) restricting Seller's use or rights thereof, (ii) entitling Third Parties to use the same in the Territory or (iii) in any way obligating Seller to make royalty or similar payments to others. The Product Patent is licensed to Seller by Andrx Pharmaceuticals, LLC. pursuant to a license agreement that is an Assigned Contract.

(e) As of the Agreement Date, (i) to the knowledge of Seller, the sale or distribution of the Product does not infringe or misappropriate any intellectual property of any other Person and (ii) there is no written notice of any claims asserted against Seller alleging that the import, use, marketing, distribution, commercialization or sale of the Product by Seller infringes or misappropriates any intellectual property of any other Person.

(f) Seller is the exclusive owner of the Product Trademarks and the Product Trade Dress and Seller owns or otherwise has the right to license the Product Trademarks and the Product Trade Dress to Buyer pursuant to the Trademark License Agreement. The Product Trademarks have not been abandoned by Seller.

Section 5.13 No Adverse Effect. Since January 1, 2009, (a) there has been no change in the Purchased Assets, the Licensed Rights or the Product in the Territory that would have a Material Adverse Effect; (b) there has been no damage or impairment to, or destruction or loss of, the Purchased Assets, or the Licensed Rights that would have a Material Adverse Effect; and (c) there has been no sale, assignment, transfer or Encumbrance (other than a Permitted Encumbrance) of any of the Purchased Assets or the Licensed Rights outside the ordinary course of business and consistent with past practice.

Section 5.14 Conduct of Business. Since January 1, 2009, Seller has conducted its business operation in connection with the Product in the Territory only in the ordinary course of business and consistent with past practice. The monthly gross sales of the Product by Seller in the Territory in each of the three (3) immediately preceding full calendar months prior to the Agreement Date do not materially exceed the average monthly gross sales of the Product by Seller in the Territory in the twelve (12) full calendar months ending February 28, 2009.

Section 5.15 No Brokers. Seller has not entered into any agreement, arrangement or understanding with any Person which will result in the obligation to pay any finder's fee, brokerage commission or similar payment in connection with the transactions contemplated hereby.

Section 5.16 Product Inventory. All Product Inventory (a) was stored and handled by or on behalf of Seller in compliance with the Specifications and cGMP (in each case, as defined in the License Agreement), (b) is unadulterated as a result of Seller's storage and handling, and (c) as of the Closing Date, will have not less than thirteen (13) months of shelf-life remaining.

Section 5.17 Customers. Schedule 5.17 sets forth a complete and accurate list of the direct customers accounting for five percent (5%) or more of its gross sales (stated in WAC) arising from sales of the Product in the Territory (a) during the fiscal year ended December 31, 2008 and (b) during the three-month period ending March 31, 2009. To the knowledge of Seller, no customer named on Schedule 5.17 has provided notice to Seller during the six (6) months immediately preceding the Agreement Date of such customer's intention to decrease or limit materially, or threatened to decrease or limit materially, its purchase of the Product in the Territory.

Section 5.18 No Other Contracts. Except for distribution agreements, warehousing agreements and customer contracts/purchase orders or as otherwise set forth on Schedule 5.18,



Seller is not a party to, bound by, or otherwise subject to, any material Contract other than the Assigned Contracts, relating to the Product in the Territory.

Section 5.19      Trade Allowances.

- (a)      Schedule 5.19(a) sets forth (i) all upfront discounts for current indirect customers that purchase Products from direct customers of Seller and (ii) all discounts and other price reductions that have been processed through April 28, 2009 and relate to claims for the fourth calendar quarter of 2008 for current indirect customers that purchase Products from direct customers of Seller.
- (b)      Schedule 5.19(b) sets forth the maximum rebates allowed for Products under current Medicare and managed care contracts.
- (c)      Schedule 5.19(c) sets forth all discounting and other price reductions provided through April 30, 2009 for claims related to Product dispensed in the fourth calendar quarter of 2008 under current Medicaid and State programs for Product in the Territory.

Section 5.20      Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN, SELLER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO THE PRODUCT, THE PURCHASED ASSETS, THE TRANSFERRED ASSETS AND THE LICENSED RIGHTS, INCLUDING (A) THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, (B) THE USE, MARKETING, DISTRIBUTION, OFFER FOR USE, SALE OR COMMERCIALIZATION WITH RESPECT TO THE PRODUCT BY BUYER AFTER THE CLOSING IN ANY MANNER OTHER THAN AS PERFORMED BY SELLER AS OF THE CLOSING DATE, (C) THE PROBABLE SUCCESS OR PROFITABILITY OF THE PRODUCT AFTER THE CLOSING OR (D) AS TO THE CONDITION, VALUE, OR QUALITY OF THE PURCHASED ASSETS AND THE TRANSFERRED ASSETS.

ARTICLE VI  
CERTAIN COVENANTS AND AGREEMENTS OF SELLER

Section 6.1      Conduct of Business Until Closing. During the period from the Agreement Date and continuing until the Closing, except as otherwise provided in this Agreement or to the extent that Buyer otherwise consents in writing, Seller will conduct its business with respect to the Product in the Territory, the Purchased Assets, the Transferred Assets and the Licensed Rights in the ordinary course, consistent with past practices. In particular, during such period, Seller shall, and shall cause its Affiliates to: (a) not transfer any asset that would otherwise constitute a Purchased Asset, Transferred Asset or Licensed Right, except inventories of the Product and Product Marketing Materials in the ordinary course of business consistent with its past practice; (b) not enter into any material Trademark licenses, or any other material Contracts or other commitments, relating to the Purchased Assets, the Transferred Assets, the Licensed Rights or the Product except in the ordinary course of business consistent with its past practice; (c) not make or consent to any amendment to, or renewal of, any of the Assigned Contracts without the prior written consent of Buyer; (d) hold and store all Product Inventory in compliance in all material respects with the Specifications and cGMP (in

each case, as defined in the License Agreement) for the Product set forth in the applicable Product Approvals; (e) use commercially reasonable efforts to maintain relationships with its customers and suppliers in the ordinary course of business consistent with its past practice; (f) cooperate with Buyer and use commercially reasonable efforts to obtain and diligently assist Buyer in obtaining (i) all necessary consents, approvals and authorizations, under any applicable law, including HSR Approval and (ii) all necessary consents and approvals under the Assigned Contracts; (g) promptly advise Buyer orally and, if then requested, in writing: (i) of any fact or any change in the business, operations, affairs, assets, liabilities, financial condition or prospects of the Product in the Territory that could reasonably have a Material Adverse Effect and (ii) of any breach by Seller of any material covenant or agreement contained in this Agreement.

Section 6.2      Buyer Access. During the period from the Agreement Date and continuing until the Closing, Seller shall permit Buyer and its representatives to have reasonable access, during regular business hours and upon reasonable advance notice, to the Purchased Assets and the Transferred Assets, subject to reasonable rules and regulations of Seller and any applicable Governmental Rules. Seller shall furnish to Buyer copies of Books and Records as Buyer shall from time to time reasonably request.

Section 6.3      Commercially Reasonable Efforts. Seller shall use commercially reasonable efforts to take, or cause to be taken, all actions, or to do, or cause to be done, all things necessary, proper or advisable under applicable Governmental Rules to consummate and make effective the transactions contemplated by this Agreement and to cause the conditions to its obligations to consummate the transactions contemplated hereby to be satisfied, including obtaining all consents and approvals of all Persons and Governmental Entities and removing any injunctions or other impairments or delays that are necessary, proper or advisable to the consummation of the transactions contemplated by this Agreement.

Section 6.4      Further Assurances.

(a)      On and after the Closing, Seller shall, from time to time, at the request of Buyer, execute and deliver, or cause to be executed and delivered, such other instruments of conveyance and transfer and take such other actions as Buyer may reasonably request in order to more effectively consummate the transactions contemplated hereby, including to vest in Buyer good and marketable title to the Purchased Assets, the Transferred Assets (including assistance in the collection or reduction to possession of any of the Purchased Assets and Transferred Assets) and to grant the Licensed Rights to Buyer.

(b)      On and after the Closing, Buyer shall, from time to time, at the request of Seller, execute and deliver, or cause to be executed and delivered, such other instruments of conveyance and transfer and take such other actions as Seller may reasonably request in order to more effectively consummate the transactions contemplated hereby.

Section 6.5      Covenant Not to Sue. Notwithstanding anything to the contrary contained in this Agreement, Seller shall not, and shall cause its Affiliates not to, sue or bring an action or proceeding seeking to enforce any intellectual property rights to prevent or restrict Buyer or its Affiliates, sublicensees or subcontractors from importing, manufacturing, using, marketing, commercializing, distributing or selling the Product in the Territory as currently imported,

manufactured, used, marketed, commercialized, distributed or sold and as imported, manufactured, used, marketed, commercialized, distributed or sold during the twelve (12) months prior to the Agreement Date.

Section 6.6 No Other Transactions. Seller agrees to terminate any and all discussions, negotiations and other communications, whether directly or indirectly through any representative of Seller or any of its Affiliates, with any Third Party regarding (a) the sale or other disposition of all or a portion of the Purchased Assets (except for the Product Inventory, which Seller may continue to sell in the ordinary course of business as set forth herein), the Transferred Assets or the Product or (b) the grant of all or any portion of the Licensed Rights. Seller agrees that it will not (and will cause its Affiliates not to), directly or indirectly, solicit, encourage, entertain or support, or engage in any discussions with respect to, any inquiry, proposal or offer from any other party regarding (x) a sale or other disposition involving all or a portion of the Purchased Assets, the Transferred Assets or the Product or (y) the grant of all or any part of the Licensed Rights, in each case, unless and until the Agreement is terminated in accordance with ARTICLE XIII. As of the date hereof, the Seller does not have any other commitments or understandings regarding the sale of the Purchased Assets, Transferred Assets or the Product, or the grant of the Licensed Rights.

Section 6.7 Website Information. Within ten (10) days following the Closing Date, Seller shall remove all Product information from its websites, except as necessary for Seller to maintain, in accordance with internal policies and procedures, its clinical trial registry with respect to the Product in the Territory.

Section 6.8 Sales Information. Provided the Closing does not occur on or before May 31, 2009, commencing June 1, 2009 and for each calendar month thereafter until the Closing Date, within ten (10) days after the end of each calendar month, Seller shall provide to Buyer all material sales information and wholesaler inventory information relating to the Product in the Territory for the preceding calendar month.

Section 6.9 Delivery of Financial Statements. Seller shall prepare or cause to be prepared and deliver to Buyer (i) audited financial statements of the Product's business as shall be required by Regulation S-X ("Regulation S-X") promulgated by the U.S. Securities and Exchange Commission (the "SEC"); and (ii) such other financial statements and financial information with respect to such accounting periods of the Product's business as shall be required for financial statements of the Purchased Assets and Transferred Assets as prescribed by Regulation S-X in connection with any filings of Buyer's indirect parent, Biovail Corporation ("Parent"), with the SEC. The financial statements shall contain such information, and be in such form, and shall be delivered with such reports of certified public accountants thereon and such consents of such certified public accountants, if any, as shall be required by the SEC and Parent's auditors, provided however, that Buyer and/or Parent shall complete any and all forms and consents requested by Seller's auditors. Seller shall use commercially reasonable efforts to deliver the foregoing audited financial information to Parent within ninety (90) days after Parent provides Seller with written notice that such information is required and/or requested by the SEC to the extent such information is available to Seller, but in no event later than a date reasonably determined by Seller and Buyer to ensure that Parent is able to timely comply with the SEC filing obligations referred to above. Promptly following such notification, Seller shall engage its

independent auditors, in consultation with Buyer on terms reasonably consistent with its usual audit engagement to conduct the audit of the foregoing financial information. {\*\*\*}†. Furthermore, at the request of the Seller, its auditor or other third party vendor, Buyer shall make available to the Seller, its auditor and other third party vendor, as applicable, such representatives of Buyer, Parent, and Parent’s auditor as deemed reasonably appropriate by the Seller, its auditor or other third party vendor for the purpose of complying with this Section 6.9, and shall cause such persons to cooperate with Seller, its auditor and any third party vendors. {\*\*\*}†. Seller shall cooperate with Seller’s auditors and provide them with access to all financial and other information reasonably necessary to conduct such audit, including management representation letters to such auditors.

ARTICLE VII  
REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller as follows:

Section 7.1        Buyer’s Organization; Good Standing. Buyer is a society with restricted liability duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation. Buyer has all requisite power and authority to carry on its business as it is currently being conducted. Buyer is duly qualified to conduct business as a foreign entity and is in good standing in every jurisdiction where the nature of the business conducted by it makes such qualification necessary, except where the failure to so qualify or be in good standing would not prevent or materially delay the consummation of the transactions contemplated hereby.

Section 7.2        Authority; Execution and Delivery. Buyer has the requisite power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by Buyer and the consummation of the transactions contemplated hereby have been duly authorized. This Agreement has been duly executed and delivered by Buyer and, assuming the due authorization, execution and delivery of this Agreement by Seller, constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and other similar laws affecting creditors’ rights generally from time to time in effect and to general principles of equity regardless of whether considered in a proceeding in equity or at law.

Section 7.3        No Violations; Consents. The execution and delivery of this Agreement do not, and the consummation of the transactions contemplated hereby and compliance with the terms hereof will not: (a) violate any Governmental Rule applicable to Buyer or conflict with any material Contract to which Buyer is a party or by which it is otherwise bound, except for such

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† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

violations or conflicts which would not materially interfere with Buyer’s performance of its obligations hereunder; or (b) require any approval, authorization, consent, license, exemption, filing or registration with any Person, except for such approvals, authorizations, consents, licenses, exemptions, filings or registrations which have been obtained or made prior to Closing or which, if not obtained or made, would not materially interfere with Buyer’s performance of its obligations hereunder.

Section 7.4        Litigation. There is no suit, claim, action, investigation or proceeding in progress or, to the knowledge of Buyer, pending or threatened against Buyer, (a) relating to and adversely affecting this Agreement or any transaction documents or (b) that would materially delay the ability of Buyer to perform its obligations hereunder.

Section 7.5        No Brokers. Buyer has not entered into any agreement, arrangement or understanding with any Person which will result in the obligation to pay any finder’s fee, brokerage commission or similar payment in connection with the transactions contemplated hereby.

Section 7.6        Consents. No notice to, filing with, authorization of, exemption by, or consent of, any Person, including any applicable Governmental Entity, is required for Buyer to consummate the transactions contemplated herein, except (a) where the failure to make such filings or notifications, or obtain such consents, approvals, authorizations or permits, would not, individually or in the aggregate, prevent or delay the consummation by Buyer of the transactions contemplated herein, (b) in connection with the Product Approvals, (c) as relate solely to Buyer and (d) pursuant to the HSR Act.

Section 7.7        Financing. Buyer will have sufficient immediately available funds to pay, in cash, the Purchase Price as contemplated in Section 3.1 and all other amounts payable pursuant to this Agreement and any other agreement referenced herein or otherwise necessary to consummate all the transactions contemplated herein at the time any such payments are due. Upon the consummation of the transactions contemplated herein, (a) Buyer will not be insolvent, (b) Buyer will not be left with unreasonably small capital, (c) Buyer will not have incurred debts beyond its ability to pay such debts as they mature and (d) the capital of Buyer will not be impaired in any manner that would prevent or prohibit the consummation by Buyer of the transactions contemplated herein.

ARTICLE VIII  
CERTAIN COVENANTS AND AGREEMENTS OF BUYER

Section 8.1        Records. Buyer shall, for a period of the greater of (a) seven (7) years from the Closing Date or (b) as required by applicable Governmental Rule, preserve all Books and Records (including financial information) included within the Transferred Assets prior to the Closing Date and make such Books and Records available for inspection, copying and use (subject to reasonable rules and regulations of Buyer and any applicable Governmental Rules) by Seller for Tax purposes or to comply with any applicable Governmental Rule, upon reasonable request and upon reasonable notice. In addition, upon reasonable written notice to Buyer, Seller shall have the right to use the data contained in the Books and Records purchased by Buyer hereunder solely in connection with (i) the prosecution or defense of any litigation, claim, action,

suit, proceeding, investigation, hearing, arbitration, judgment, decree, injunction, rule or order related to the Product in the Territory and (ii) with Third Party supply chain members, including distributors and wholesalers. Such written notice from Seller shall specifically detail the facts and circumstances pursuant to which Seller seeks to use such data contained in the Books and Records. In addition to the foregoing, Buyer hereby consents to Seller utilizing such data contained in the Books and Records in the clinical trial registry maintained by Seller and in existence immediately prior to the Agreement Date.

Section 8.2      Assumption of Regulatory Commitments. Subject to ARTICLE IX, from and after the Closing Date, Buyer shall assume control of, and responsibility for, all costs, obligations and Liabilities arising from or related to any commitments or obligations to any Governmental Entities first arising on or after the Closing Date solely in connection with the Product in the Territory.

Section 8.3      Bulk Transfer Laws. Buyer hereby waives compliance by Seller with the provisions of any so-called “bulk transfer law” of any jurisdiction in connection with the sale of the Purchased Assets to Buyer. Seller shall indemnify and hold harmless Buyer against any and all Liabilities that may be asserted by third parties against Buyer as a result of noncompliance with any such bulk transfer law.

Section 8.4      Commercially Reasonable Efforts. Buyer shall use commercially reasonable efforts to (a) take, or cause to be taken, all actions, or to do, or cause to be done, all things necessary, proper or advisable under applicable Governmental Rules to consummate and make effective the transactions contemplated by this Agreement and to cause the conditions to its obligations to consummate the transactions contemplated hereby to be satisfied, including obtaining all consents and approvals of all Persons and Governmental Entities and removing any injunctions or other impairments or delays that are necessary, proper or advisable to the consummation of the transactions contemplated by this Agreement.

ARTICLE IX  
TRANSITION

Section 9.1      Trade Returns; Rebates; Chargebacks.

(a)      Returns.

(i)      All returns labeled with Seller’s NDC Number shall continue to be sent to Seller until {\*\*\*}†. Beginning {\*\*\*}†, all returns labeled with Seller’s NDC Number shall be sent to Buyer. Returns will be processed in accordance with the receiving party’s then-current returned goods policy, regardless of which party made the corresponding original sale.

(ii)      From and after the Closing Date, Buyer shall, or shall cause its distributor to, process and be financially responsible for all return of a Product that is labeled

† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

with Buyer’s NDC Numbers. Seller shall process and be financially responsible for all return of a Product that is labeled with Seller’s NDC Numbers until {\*\*\*}†; thereafter, Buyer shall, or shall cause its distributor to, process and be financially responsible for such returns.

(iii) For any Product that is returned to one party but is the processing responsibility of the other party, the party receiving the return will destroy, or cause to be destroyed, all such Product and by the tenth (10<sup>th</sup>) Business Day of each month, provide the other party a reporting of such Product returned, including documentation sufficient to determine any appropriate customer reimbursement or credit, which shall be processed according to the processing party’s then-current returned goods policy. Each of Buyer and Seller shall destroy, or cause to be destroyed, all such returned Product in a manner consistent with applicable law and the costs of such destruction shall not be reimbursed.

(iv) Neither Buyer nor Seller shall instruct, recommend or attempt to induce customers who have previously purchased Product from it to (A) return such Product when that would not otherwise have been the case but for such party’s instructions, recommendations or inducement or (B) delay the return of such Product. For the avoidance of doubt, Buyer’s shipment of units of Product to customers in the ordinary course will not be deemed to violate this Section 9.1(a)(iv).

(b) Government Rebates. Seller shall administer (including processing, reporting, payment and dispute resolution), in compliance with applicable laws, all federal, state (including state supplemental) and local government rebate programs (collectively, “Government Rebate Programs”) for Product sold bearing the Seller’s NDC Number, and Buyer shall administer the Government Rebate Programs for Product sold bearing any NDC Number other than Seller’s NDC Number. Seller shall be financially responsible for all payments related to rebate claims for Product sold bearing Seller’s NDC Number that are submitted by Government Rebate Programs for periods prior to and including the calendar quarter during which the Closing Date takes place. Buyer will be financially responsible for all payments related to Government Rebate Program claims for Product sold bearing Seller’s NDC Number that are for periods beginning with the calendar quarter immediately following the calendar quarter during which the Closing Date takes place. Buyer shall, or shall cause its distributor to, administer and be financially responsible for all payments related to Government Rebate Program claims for Product sold bearing any NDC Number other than Seller’s NDC Number. To the extent that either Buyer or Seller processes, issues credits or remits payment for rebate claims in respect of Product for which the other party is financially responsible under this subsection, such other party shall reimburse such processing or paying party within thirty (30) days of receipt of invoices that describe the requested reimbursements in reasonable detail, other than amounts that are the subject of bona fide disputes.

(c) Commercial Rebates and Patient Assistance Programs. Seller shall use commercially reasonable efforts to terminate (including providing all applicable written notices of termination) all Contracts providing for the payment of commercial rebates and patient assistance

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program rebates with respect to the Product in the Territory (“Rebate Contracts”), effective thirty (30) days following the Closing. Seller shall not assign to Buyer, and Buyer shall not assume, any of the Rebate Contracts. Seller shall be solely responsible for the processing, handling and payment of all rebates owed under the Rebate Contracts with respect to the Product dispensed prior to the termination of such Rebate Contracts. As soon as practicable following the Closing, Seller shall notify all relevant Third Parties that any future Rebate Contracts will need to be entered into with Buyer or its distributors. For all rebate claims that are submitted to one party but are the processing responsibility of the other party, the party receiving the claim shall deny the claim.

(d) Chargeback Claims and Associated Fees. Seller shall use commercially reasonable efforts to terminate (including providing all applicable written notices of termination) all Contracts providing for the payment of chargebacks and associated contracted fees with respect to the Product in the Territory (“Chargeback Contracts”), effective thirty (30) days following the Closing. Seller shall not assign to Buyer, and Buyer shall not assume, any of the Chargeback Contracts. Seller shall process and be financially responsible for all chargeback claims and associated contracted fees related to Product sold by distributors with distributor invoice dates up to and including the termination date of each such Chargeback Contract (the “Chargeback Contract Termination Date”), and Buyer shall, or shall cause its distributor to, process and be financially responsible for all chargeback claims and associated contracted fees related to Product sold by distributors with distributor invoice dates from and after such Chargeback Contract Termination Date. As soon as practicable after Closing, the parties will notify the VA National Acquisition Center (the “VANAC”) that the Product should be added to the Buyer’s Federal Supply Schedule (“FSS”), effective thirty (30) days following the Closing (“FSS Termination Date”), and that the Buyer or its distributor at that time will be responsible for any federal price calculations, reporting, and other obligations relating to FSS submissions and the processing of FSS chargebacks and the associated Industrial Fund Fee (“IFF”). The parties acknowledge that the VANAC must approve the removal of the Product from Seller’s FSS before the responsibility of processing such chargebacks and fees is transferred from Seller to Buyer. Notwithstanding the third sentence of this section, until such approval is obtained, Seller shall continue (on Buyer’s or its distributor’s behalf) to be responsible for processing the FSS chargebacks and fees claimed for sales by distributors bearing the Seller’s NDC Numbers and with distributor invoice dates up to but not including the approved VANAC Product transfer date, and Buyer or its distributor shall reimburse Seller for such FSS chargeback claims and associated Third Party fees with distributor invoice dates from and after the FSS Termination Date. Buyer and Seller agree that Seller shall have no financial liability for such FSS chargeback claims and associated Third Party fees from and after the FSS Termination Date. Buyer shall, or shall cause its distributor to, be responsible for any reporting and other obligations relating to Public Health Service (PHS) pricing and chargeback processing for the Product relating to periods from the Chargeback Contract Termination Date and forward. Seller shall provide Buyer or its distributor with applicable PHS pricing for the Product for the calendar quarter during which the Closing Date takes place and the immediately following calendar quarter. As soon as practicable following the Closing, the parties will notify all relevant Third Parties that Buyer shall, or shall cause its distributor to, be responsible for chargebacks and associated fees in accordance with the terms of this subsection. For all chargeback claims that are submitted to one party but are the processing responsibility of the other party (or Buyer’s distributor, as applicable), the party receiving the claim shall deny the claim. To the extent that either Buyer or Seller processes,



issues credits or remits payment for chargeback claims in respect of Product for which the other party is financially responsible under this subsection, such other party shall reimburse such processing or paying party within thirty (30) days of receipt of invoices that describe the requested reimbursements in reasonable detail, other than amounts that are the subject of bona fide disputes.

(e) Other Direct Customer Discounts. Seller shall use commercially reasonable efforts to terminate (including providing all applicable written notices of termination) all Contracts with direct customers providing for the issuance of rebates and other discounts to such direct customers with respect to the Product in the Territory ("Direct Customer Contracts"), effective on the Closing Date. Seller shall not assign to Buyer, and Buyer shall not assume, any of the Direct Customer Contracts. Seller shall be solely responsible for the processing, handling and payment of all rebates and other discounts owed under the Direct Customer Contracts with respect to Product sold to direct customers up to the Closing date. On the Closing Date, Seller shall notify all relevant Third Parties that Buyer or Buyer's distributor, as applicable, will be responsible for any direct customer discount programs in accordance with the terms of this subsection. For all direct customer discount program claims that are submitted to one party but are the processing responsibility of the other party, the party receiving the claim shall deny the claim.

(f) Medicaid Information.

(i) With respect to Product sold by Buyer from and after the Closing Date that bears an NDC Number of Seller, Buyer will cause to be delivered to Seller, within fifteen (15) days after the end of each calendar quarter or reporting period as designated by the Center for Medicare and Medicaid Services ("CMS") to include the following information: (a) on a quarterly basis, the "Best Price" (as defined under the Social Security Act, 42 U.S.C. § 1396r-8(c)(1)(C)) for Product, identified by NDC Number; and (b) on a monthly and quarterly basis, the average manufacturer price ("AMP") (as defined under the Social Security Act, 42 U.S.C. § 1396r-8(k)(1)) and the relevant AMP eligible sales dollar amounts, as well as the number of AMP eligible units for such Product, each identified by NDC Number.

(ii) Buyer agrees to cause to be provided to Seller any additional data or other information required for the calculation and reporting of a government mandated price, as well as the calculation of the rebates contemplated in this Section 9.1(f)(ii). Buyer agrees that Seller may use all information described in this Section 9.1(f)(ii) in reporting to the CMS. Buyer further agrees that all Medicaid pricing data described in Section 9.1(f)(iii) that is included in any report to Seller will be calculated utilizing systems, processes, policies, practices and pricing methodologies that comply with the requirements of the Medicaid Rebate Law, the Medicaid Regulations, Buyer's or its distributor's (as applicable) Medicaid agreement, if any, with the Secretary of Health and Human Services and applicable CMS Medicaid rebate program releases.

(iii) Seller will provide Buyer with all applicable Medicaid pricing data for the Product required to support continued filings with CMS after the transition to Buyer's NDC Number, including Base Date Average Manufacturer's Price as defined under the Medicaid Rebate Law, and such other relevant information reasonably requested by Buyer.

(a) Transitional License. Effective for the period beginning on the Closing Date and ending on the {\*\*\*}† of (i) {\*\*\*}† days following the Closing Date or (ii) sale or destruction of all Product Inventory and component inventory bearing Seller Trademarks, Seller hereby grants to Buyer and Buyer's Affiliates and each of their respective distributors the limited, irrevocable royalty-free, non-exclusive, non-transferable, non-sublicensable license, to use the Seller Trademarks that have been used by Seller in connection with its respective marketing, sale and distribution of the Product in the Territory solely for marketing, sale and distribution of the Product in the Territory (including the right to use the Seller Trademarks on the Product Inventory and component inventory bearing Seller Trademark). Notwithstanding the foregoing, the license provide in the preceding sentence shall expire one (1) year from the Closing Date. For purposes of clarity, Buyer's right to use Seller's NDC Number is set forth in Section 9.3(b)(iii). All use of the Seller Trademarks by Buyer under this Section 9.2 shall conform to the standards followed by the Seller in operating the business with respect to the Product prior to the Closing Date, and upon reasonable notice to Buyer, Seller shall have the right to review the standards used by Buyer to operate the business with respect to the Product after the Closing Date to ensure Buyer's compliance with this requirement related to the Seller Trademarks. Following such time period, Buyer and Buyer's Affiliates will not use, in any manner or for any purpose, directly or indirectly, the Seller Trademarks. All use of the Seller Trademarks by Buyer or Buyer's Affiliates shall inure to the benefit of Seller, as the case may be. Buyer hereby acknowledges and agrees that no right, license or any transfer is granted by Seller to Buyer or its Affiliates by implication or otherwise with respect to the Seller Trademarks, except as provided in this Section 9.2. Seller retains and shall retain all right, title and interest in and to, and shall be responsible for maintaining, the Seller Trademarks. Nothing herein is intended to restrict Buyer's right at any time to (a) manufacture, market, commercialize, sell or distribute Product in the Territory having the same shape, size, configuration, packaging and labeling as that used by Seller prior to the Closing Date; or (b) operate website(s) having the same "look and feel" used by Seller on Product website(s) prior to the Closing Date. Specifically, Buyer may manufacture, market, commercialize, sell and distribute Product in the Territory in bottles identical to those used by Seller prior to the Closing Date and in internal and external packaging of the same shape, size and configuration as that used by Seller prior to the Closing Date.

(b) Marketing License. Seller hereby grants to Buyer an irrevocable, royalty-free, non-exclusive, transferable, and sublicensable license to the Content and Product Marketing Materials solely for marketing, sale and distribution of the Product in the Territory. The foregoing license is granted as an accommodation to Buyer and Seller makes no representation or warranty of any kind with respect to such license. Pursuant to this marketing license, with respect to the Content and/or Product Marketing Materials, Buyer, Buyer's Affiliates, and/or their sublicensees and transferees may (but have no obligation to) (i) use all or any portion of them for the purposes permitted under this Section 9.2(b), (ii) revise, delete, supplement, and/or translate any of them, (iii) except as otherwise prohibited by this Agreement, combine all or any portion of them with other materials, and (iv) cease using all or any portion of them at any time (retaining the right to resume such use in the future if desired).

(c) Limited License. For the purposes of providing proper Trademark attribution notice of Seller's ownership of the Product Trademark under the Trademark License Agreement, Seller hereby grants Buyer a limited license to use the corporate entity name "SmithKline Beecham Corporation" solely in connection with the attribution notice and such use

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is expressly limited as follows: “WELLBUTRIN XL® is a federally registered trademark of SmithKline Beecham Corporation.” Buyer hereby acknowledges and agrees that no right, license or any transfer is granted by Seller to Buyer or its Affiliates by implication or otherwise with respect to Seller’s entity name or any associated trademark rights therein. Seller retains and shall retain all right, title and interest in and to its corporate entity name. Upon termination of the Trademark License Agreement for any reason whatsoever, the limited license set forth in this Section 9.2(c) shall immediately cease.

Section 9.3      Promotion and Marketing.

(a)      Product Selling Price. Effective as of the Closing Date, Buyer shall independently determine and set prices for the Product in the Territory, including the selling price, volume discounts, rebates and similar matters.

(b)      Advertising and Promotional Materials.

(i)      Buyer Promotion. From and after the Closing Date, Buyer shall be responsible, at its own cost and expense, for all marketing, advertising and promotional materials and shall obtain or develop, at its own expense, new product labeling, package inserts, imprinting and packaging data, as appropriate, in the Territory related to the Product.

(ii)      Governmental Contacts. From and after the Closing Date, Buyer shall be the contact for review and discussion of all promotional materials for the Product with the applicable Governmental Entity in the Territory.

(iii)      NDC Number. Buyer shall use commercially reasonable efforts to obtain a new NDC Number for the Product as soon as reasonably possible but not later than twelve (12) months after the Closing Date. For clarity, until such time as Buyer obtains a new NDC Number for the Product in the Territory, Buyer shall be entitled to use Seller’s NDC Number for the sales of the Product in the Territory.

(c)      Notification to Customers. On the Closing Date, the parties shall jointly issue a letter, in a form to be agreed to by the parties, to customers within the trade (wholesalers and distributors) notifying such customers that all future Product orders are to be placed with Buyer and that all returns of Products shall be made in accordance with the procedure described in Section 9.1(a), and providing the appropriate contact information for Seller’s or Buyer’s personnel. After the issuance of such letter, the parties will at all times reasonably cooperate in (i) notifying and continuing to notify customers that all future Product orders are to be placed with Buyer and the return procedure agreed to by the parties and (ii) taking such other actions as are reasonably necessary to effect the foregoing (including Seller forwarding all purchase orders to Buyer immediately following receipt thereof). In addition, one (1) month prior to December 31, 2010, upon Buyer’s written request Seller shall issue a second letter to such customers notifying such customers that, beginning on December 31, 2010, Buyer shall be responsible for processing all returns of Product.

(d)      Customer Services. Commencing on the Closing Date, Buyer or its Affiliates will be responsible for receiving and processing all orders, undertaking all invoicing,

collection and receivables, and providing all customer service related to the sale of the Product in the Territory.

Section 9.4      Medical and Other Inquiries.

(a)      Seller Obligations. For a period not to exceed {\*\*\*}† days after the Closing Date, Seller shall be responsible for, and shall respond to, all medical inquiries related to the Product in the Territory in the ordinary and usual course consistent with its practice existing during the twelve (12) months immediately prior to the Closing Date and shall promptly provide copies of all such documents to Buyer or to an Affiliate of Buyer as directed by Buyer. Furthermore, promptly following the Closing Date, Seller shall provide to Buyer all form response letters, if any, which contain information responding to the most frequent or routine questions received regarding the Product. Commencing on a date agreed by Buyer and Seller, but no later than {\*\*\*}† days after the Closing Date, except to the extent otherwise required in the case of medical emergency (in which case, Seller shall promptly inform Buyer of the question and response) Seller will refer all questions raised by health care professionals and customers relating to the Product to Buyer for response.

(b)      Buyer Obligations. Commencing as soon as reasonably practicable, but in no event more than {\*\*\*}† days after the Closing Date, Buyer shall assume responsibility for all correspondence and communication with health care professionals and customers in the Territory relating to the Product, provided that Seller has delivered to Buyer prior to the Closing Date all Purchased Assets and Transferred Assets hereunder that are necessary to assume and perform such responsibility for the Product in the Territory. Buyer shall also thereafter keep such records and make such reports relating to the Product in the Territory as shall be reasonably necessary to document such communications in compliance with all applicable regulatory requirements.

Section 9.5      Coordination of Litigation. From and after the Closing Date, in the defense by the other party (or any of its Affiliates) of any litigation, hearing, regulatory proceeding or investigation directly relating to the Product in the Territory, each party shall, at the request of the other party, and at no expense to the requesting party:

(a)      make available to the other party (or such Affiliate), during normal business hours but without unreasonably disrupting its business, all records as to the Product in the Territory held by it and reasonably necessary to permit the defense or investigation of such matters;

(b)      make available for interviews with counsel and/or experts for the other party, for deposition, and for testimony at any hearing or trial, current officers and employees of the party who possess information that would assist the other party to defend the litigation, hearing, regulatory proceeding or investigation, provided that the requesting party shall provide reasonable notice and shall take reasonable steps to minimize disruption to the business of the other party;

(c)      make commercially reasonable efforts to make available for the purposes enumerated in Section 9.5(b) above former officers and employees of the party who possess

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information that would assist the other party to defend the litigation, hearing, regulatory proceeding or investigation, provided that the requesting party shall provide reasonable notice and shall take reasonable steps to minimize disruption to the business of the other party and the former officers and employees.

Each party shall give prompt written notice to the other party of any litigation or regulatory proceeding (including any government investigation) in which such party (or any of its Affiliates) is involved as a party that concerns, and might affect, the Product in the Territory or any rights relating to the Product of the other party (or any of its Affiliates), Wellbutrin®, Wellbutrin SR® and Zyban®.

For the avoidance of doubt, subject to Section 14.5, each party shall have absolute control over its own litigation and regulatory proceedings, and neither party shall have any control over the litigation strategy, choice of counsel or any other aspect relating to the other party in any litigation or regulatory proceeding.

Section 9.6      Customer Complaints. For a period not to exceed {\*\*\*}† days after the Closing Date, Seller shall handle customer complaints and inquiries (medical and non-medical) with respect to the Product in the Territory in the ordinary and usual course consistent with its practice existing during the twelve (12) months prior to the Agreement Date. Following the Closing Date, Buyer and Seller shall each cooperate to transition the handling of customer complaints and inquiries. In any event, within {\*\*\*}† after the Closing Date, Buyer shall assume responsibility for and handle all customer complaints and inquiries (medical and non-medical) with respect to the Product in the Territory.

Section 9.7      Regulatory Commitments.

(a)      Annual Reports and Periodic Safety Update Reports.

(i)      Seller Obligations. Within sixty (60) days after the Closing Date, Seller shall provide Buyer with all of Seller's Product information that is reasonably necessary or useful for Buyer to prepare and submit reports to the FDA or any other applicable Governmental Entity with respect to the Product in the Territory.

(ii)      Buyer Obligations. On the Closing Date, Buyer shall assume responsibility for the submission of all reports relating to the Product in the Territory to the FDA or any other applicable Governmental Entity, provided that Seller has delivered all of the necessary information in accordance with this Section 9.7.

(b)      Pharmacovigilance.

(i)      Seller Obligations. For a period not to exceed {\*\*\*}† days after the Closing Date, Seller shall be responsible for drug safety surveillance of the Product in the Territory, consistent with its practice over the twelve (12) months prior to the Closing Date and in compliance with all applicable Governmental Rules and regulatory requirements. Commencing on the Closing Date, Seller shall promptly provide Buyer with all expedited safety reports for Buyer to submit to the FDA or any other applicable Governmental

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Entity in the Territory. As soon as reasonably practicable, but in no event more than ninety (90) days after the Closing Date, Seller shall transfer the safety database (including the line listing of the adverse events and serious adverse events) for the Product in the Territory to Buyer. Within sixty (60) days after the Closing Date, Seller shall enter into an agreement with Buyer (or an amendment to an applicable existing safety data exchange agreement) regarding the exchange of safety information for the Product based on reports from the Territory and any country outside of the Territory where the Product is marketed or sold (the “Pharmacovigilance Agreement”).

(ii) Buyer Obligations. As soon as reasonably practicable, but in no event more than {\*\*\*}† days after the Closing Date, Buyer shall be responsible for drug safety surveillance of the Product in the Territory, provided that Seller has transferred the safety database to Buyer and the Pharmacovigilance Agreement is in effect between the parties.

(c) Supplemental Request.

(i) Seller shall be responsible for conducting the REMS Study. Seller shall be responsible for conducting the smoking cessation study referenced in the Supplemental Request (the “Clinical Study”).

(ii) With respect to each of the REMS Study and the Clinical Study, the party conducting the applicable study (the “Responsible Party”) shall promptly notify the other party of any meetings, conferences and discussions scheduled with or requested by the FDA relating to such study prior to the event. The other party shall have the right to have two (2) representatives attend and participate in any meetings, conferences or discussions with the FDA with respect to each such study.

(iii) When conducting the REMS Study, the Responsible Party shall include any or all of the Product, Zyban®, Wellbutrin®, Wellbutrin SR® in such REMS Study, as required by the FDA.

(iv) To the extent the Clinical Study is required to be conducted, prior to the commencement of the Clinical Study, the parties shall discuss and agree in good faith upon the protocols, other study parameters and a budget with respect thereto.

(v) Buyer and Seller shall equally share the out-of-pocket costs incurred by the Responsible Party in conducting each applicable study. Any reimbursements hereunder shall be made by the other party within thirty (30) days after receipt of quarterly invoices from the Responsible Party with appropriate information documenting the expenses incurred.

(vi) The Responsible Party shall promptly provide to the other party copies of any documents or correspondence received from the FDA that pertains to the applicable study. In addition, the Responsible Party shall provide the other party with any documents or correspondence to be submitted to the FDA that relate to the applicable study in time sufficient to allow the other party to review and comment on such documents or correspondence, and the Responsible Party shall consider such comments in good faith.

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(vii) The Responsible Party shall, on an on-going quarterly basis, provide to the other party, at no cost or expense to the other party, a written report summarizing all of the data, information and results of the applicable study as well as a budget for the estimated costs to be incurred during the following four (4) calendar quarters (set forth on a calendar quarter by calendar quarter basis).

Section 9.8 Performance by Affiliates. The parties hereby agree that all or some of the obligations of Buyer under this Agreement may be performed by an Affiliate of Buyer.

ARTICLE X

OTHER COVENANTS AND AGREEMENTS

Section 10.1 Non-Competition. For the period beginning on the Closing Date and ending {\*\*\*}† thereafter, Seller shall not, and shall cause its Affiliates not to, import, use, market, commercialize, distribute, offer for sale or sell in the Territory any once-daily extended or sustained release formulation of bupropion hydrochloride (either alone or in combination with other active ingredients) in any form or dosage strength, whether such formulation is available by prescription or over the counter, and including any product that is marketed as a generic product AB rated to the Product (“Competing Product”); provided, however, that the foregoing shall not apply to any Competing Product that is acquired by Seller or any of its Affiliates after the Agreement Date through a merger or acquisition of a Third Party that owns such Competing Product, if (a) in the event gross sales of such Competing Product equal or exceed {\*\*\*}† in the full calendar year immediately preceding such merger or acquisition, such Competing Product is divested within {\*\*\*}† of the consummation of such merger or acquisition and (b) such merger or acquisition is not consummated primarily to obtain such Competing Product; provided, further that, in the event the gross sales of a Competing Product are less than {\*\*\*}† in the full calendar year immediately preceding such merger or acquisition but exceed {\*\*\*}† in any subsequent full calendar year, Seller shall divest such Competing Product within {\*\*\*}† of the end of such subsequent full calendar year. For clarity, the parties agree and acknowledge that the restrictive covenant set forth in this Section 10.1 shall not limit Seller’s or its Affiliates’ rights to market, sell or distribute Wellbutrin®, Zyban® or Wellbutrin SR® in the Territory, as such products are marketed, sold and distributed immediately prior to the Closing Date. Notwithstanding anything in this Agreement to the contrary, this Section 10.1 shall terminate upon the {\*\*\*}†.

Section 10.2 HSR Filings. Each of the parties represents that it has made such filings required of such party under the HSR Act with respect to the transactions contemplated by this Agreement prior to the Agreement Date. Each of the parties covenants to (a) comply, at the earliest practicable date, with any request under the HSR Act for additional information, documents or other materials received by such party from the Federal Trade Commission (“FTC”) or the Department of Justice (“DOJ”) or any other Governmental Entity in respect of such filings or the transactions contemplated by this Agreement; (b) cooperate with the other

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party in connection with any filings, conferences or other submissions related to resolving any investigation or other inquiry by any such Governmental Entity under the HSR Act with respect to the transactions contemplated by this Agreement, including furnishing to the other party any information that the other party may reasonably request; (c) keep the other party apprised of the status of any inquiries made by a Governmental Entity; and (d) use commercially reasonable efforts to cause the waiting periods under the HSR Act to terminate or expire at the earliest possible date after the date of the HSR filing; provided however, that nothing in this Section shall require Buyer to (i) incur any material Liability or obligation of any kind, (ii) agree to any sale, transfer, license, separate holding, divestiture or other disposition of, or to any prohibition of, or to any limitation on, the acquisition, ownership, operation, effective control or exercise of full right of ownership of any asset or assets of the businesses of Buyer or Seller, (iii) agree to any other structural or conduct remedy or (iv) agree to litigate. Buyer and its counsel shall be responsible for discussions with the FTC, DOJ and any other antitrust authorities, after reasonable consultation and coordination with Seller and its counsel. Any and all fees required in connection with the filing of the notices required under the HSR Act shall be borne solely by Buyer.

Section 10.3      Confidentiality.

(a) Seller undertakes with Buyer, and Buyer undertakes with Seller, to keep confidential (except as expressly provided in this Agreement) at all times after the Agreement Date, and not directly or indirectly reveal, disclose or use for its own or any other purposes unrelated to its performance hereunder, any confidential information received or obtained as a result of entering into or performing, or supplied by or on behalf of a party in the negotiations leading to, this Agreement and which relates to: (i) the negotiations relating to this Agreement; or (ii) the subject matter and/or provisions of this Agreement. The parties acknowledge that, for purposes of this Agreement but subject to Section 10.3(b), the Purchased Assets and the Transferred Assets, including the Books and Records, shall be deemed the confidential information of Buyer from and after the Closing Date and Buyer and its Affiliates shall be free to disclose and use such information for any and all purposes.

(b) The prohibition in Section 10.3(a) does not apply if: (i) the information was in the public domain before it was furnished to the relevant party or, after it was furnished to that party, entered the public domain otherwise than as a result of (x) a breach by that party of this Section 10.3 or any other confidentiality agreement which that party is bound or (y) a breach of a confidentiality obligation by the disclosure by a Third Party where the breach was previously known to that party; or (ii) disclosure is necessary in order to comply with applicable legislation, regulatory requirements, legal process, stock exchange rules or to obtain Tax or other clearances or consents from a taxation authority, provided that any such information disclosable pursuant to this Section 10.3(b) shall be disclosed only to the extent required by applicable Governmental Rule or regulatory requirements and (unless such consultation is prohibited by applicable Governmental Rule or regulatory requirements or is not reasonably practicable) only after consultation with Buyer or Seller (as the case may be).



## ARTICLE XI

### INTELLECTUAL PROPERTY

Section 11.1 Domain Names Rights. Buyer shall have the ownership of and the exclusive right to maintain websites and web addresses using the Content and the Domain Names. Buyer shall own the Content and have the exclusive right to determine all new content of any website developed for the Product in the Territory. All right, title and interest in and to, and ownership of any Content and new content posted on such website shall remain at all times exclusively in Buyer.

Section 11.2 Wellbutrin.com. Seller shall have the exclusive right to maintain websites and web addresses using the domain name “wellbutrin.com.” Within ninety (90) days after the Closing Date, any such websites and web addresses shall be maintained so that a user who arrives at the website shall first encounter a screen in which the user is given a choice among “Wellbutrin XL®”, “Wellbutrin IR®” and “Wellbutrin SR®”. Users choosing “Wellbutrin XL®” will be directed to the Domain Names and a website owned and maintained by Buyer (or Buyer’s distributor), as described in Section 11.1; provided, however, that this Section 11.2 shall only apply if such Domain Names and website owned and maintained by Buyer (or Buyer’s distributor), even if further sold or assigned, relate to the Product. Users choosing “Wellbutrin IR®” and “Wellbutrin SR®” shall be automatically directed to the website “www.gsk.com” or to such other website owned and maintained by Seller, even if further sold or assigned, and related to Wellbutrin or Wellbutrin SR, as Seller may determine in its sole discretion.

## ARTICLE XII

### CONDITIONS PRECEDENT

Section 12.1 Conditions to Each Party’s Obligations. The obligations of Buyer to purchase the Purchased Assets from Seller and to assume the Assumed Liabilities, and the obligations of Seller to sell, assign, convey and deliver all right, title and interest of Seller in, to and under the Purchased Assets and Transferred Assets to Buyer, are subject to the satisfaction of, or compliance with, each of the following conditions at or before the Closing:

(a) There will be no effective temporary restraining order, preliminary or permanent injunction or other legal restraint or prohibition preventing the consummation of the transactions contemplated by this Agreement.

(b) No action or proceeding that questions the validity or legality of the transactions contemplated hereby shall have been instituted or threatened and not settled or otherwise terminated.

(c) No Governmental Rule shall have been enacted, entered, promulgated or enforced by any Governmental Entity that is in effect and has the effect of making the purchase, sale and license of the Product, Purchased Assets, or Licensed Rights hereunder illegal or otherwise prohibiting the consummation of such purchase, sale and license.

(d) HSR Approval shall have been obtained.

Section 12.2 Conditions to Obligations of Buyer. The obligations of Buyer to purchase the Purchased Assets and Transferred Assets from Seller and to assume the Assumed Liabilities are subject to the satisfaction of, or compliance with, each of the following conditions at or

before the Closing (each of which is acknowledged to be inserted for the exclusive benefit of the Buyer and may be waived by it in whole or in part):

(a) The representations and warranties of Seller set forth in this Agreement will be true and correct in all material respects as of the Closing as though made on and as of the Closing, except to the extent such representations and warranties relate to an earlier date (in which case such representations and warranties will be true and correct as of such earlier date).

(b) Seller will have performed or complied in all material respects with all obligations, conditions and covenants required to be performed by it under this Agreement at or prior to the Closing.

(c) There shall have been no Material Adverse Effect since the Agreement Date.

Section 12.3 Conditions to the Obligations of Seller. The obligations of Seller to sell, assign, convey and deliver all right, title and interest of Seller in, to and under the Purchased Assets and Transferred Assets to Buyer are subject to the satisfaction of, or compliance with, each of the following conditions as of the Closing (each of which is acknowledged to be inserted for the exclusive benefit of the Seller and may be waived by it in whole or in part):

(a) The representations and warranties of Buyer set forth in this Agreement will be true and correct in all material respects as of the Closing as though made on and as of the Closing, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties will be true and correct as of such earlier date).

(b) Buyer will have performed or complied in all material respects with all obligations, conditions and covenants required to be performed by it under this Agreement at or prior to the Closing.

ARTICLE XIII  
TERMINATION, AMENDMENT AND WAIVER

Section 13.1 Termination.

(a) Notwithstanding anything to the contrary in this Agreement, this Agreement may be terminated and the transactions contemplated hereby abandoned:

(i) by mutual written consent of Buyer and Seller at any time prior to the Closing;

(ii) by Seller if any of the conditions set forth in Section 12.1 and Section 12.3 have not been fulfilled at or before Closing and have not been expressly waived by Seller;

(iii) by Buyer if any of the conditions set forth in Section 12.1 and Section 12.2 have not been fulfilled at or before Closing and have not been expressly waived by Buyer;

(iv) by Seller or Buyer if the Closing does not occur on or prior to the date that is ninety (90) days after the Agreement Date.

provided, however, that the party seeking termination pursuant to clause (ii), (iii), or (iv) is not in breach in any material respect of any of its representations, warranties, covenants or agreements contained in this Agreement.

(b) In the event of termination by either Seller or Buyer pursuant to this Section 13.1, written notice thereof shall be given to the other party and the transactions contemplated by this Agreement shall be terminated, without further action by any party.

(c) If this Agreement is terminated and the transactions contemplated hereby are abandoned, this Agreement shall become null and void and of no further force and effect, except as otherwise provided in Section 10.3. Nothing in this Section 13.1 shall be deemed to release any party from any liability for any breach by such party of the terms and provisions of this Agreement.

Section 13.2 Amendments and Waivers. This Agreement may not be amended except by an instrument in writing signed on behalf of each party hereto. By an instrument in writing, Buyer or Seller may waive compliance by the other party with any term or provision of this Agreement that such other party was or is obligated to comply with or perform.

ARTICLE XIV  
INDEMNIFICATION

Section 14.1 Survival. All representations and warranties of Buyer and Seller contained herein or made pursuant hereto shall survive the Closing Date for a period of {\*\*\*}† months after the Closing Date; provided that, notwithstanding the foregoing, the representations and warranties set forth in Section 5.6 shall survive the Closing Date for a period of {\*\*\*}† months after the Closing Date. The covenants and agreements of the parties hereto contained in this Agreement shall survive and remain in full force for the applicable periods described therein or, if no such period is specified, indefinitely. Any right of indemnification pursuant to this ARTICLE XIV with respect to a claimed breach of a representation, warranty or covenant shall expire at the date of termination of the representation, warranty or covenant claimed to be breached, unless on or prior to such expiration date the party from whom indemnification is sought has received notice of a good faith claim in accordance with the provisions of Section 14.5.

Section 14.2 Indemnification by Seller.

(a) Seller shall indemnify Buyer and its Affiliates and their respective officers, directors, employees, agents, successors and assigns (the “Buyer Indemnified Parties”) against, and shall hold them harmless from, any Loss to the extent such Loss arises from or in connection with the following:

(i) any misrepresentation or incorrectness in or breach by Seller of any representation or warranty made by it contained in this Agreement or in any certificate or other document furnished by or on behalf of Seller pursuant to this Agreement;

† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

(ii) any non-fulfillment or breach by Seller of any of its covenants or agreements contained in this Agreement or in any certificate or other document furnished by or on behalf of Seller pursuant to this Agreement, whether required to be performed on, prior to, or after the Closing;

(iii) any Excluded Assets, including any Excluded Intellectual Property; or

(iv) any Retained Liabilities.

(b) Buyer acknowledges and agrees that the indemnification provided in this Section 14.2 shall be Buyer's sole and exclusive remedy for all Losses related to or arising, at law, under any statute or in equity, or otherwise, out of this Agreement (other than claims of, or causes of action arising from (x) fraud or willful misconduct, or (y) breach of Section 10.1 or Section 10.3) and, in furtherance thereof, Buyer waives, from and after the Closing, to the fullest extent permitted under applicable Governmental Rules, any and all rights, claims, actions or causes of action (other than claims of, or causes of action arising from (A) fraud or willful misconduct or (B) breach of Section 10.1 or Section 10.3) it may have against Seller or any of Seller's Affiliates relating to the subject matter of this Agreement, other than the remedies provided in this Section 14.2; provided, however, that Buyer shall be entitled to seek temporary or permanent injunctive relief in order to enforce its rights hereunder.

Section 14.3 Indemnification by Buyer.

(a) Buyer shall indemnify Seller and its Affiliates and their respective officers, directors, employees, agents, successors and assigns (the "Seller Indemnified Parties") against, and shall hold them harmless from, any Loss to the extent such Loss arises from or in connection with the following:

(i) any misrepresentation or any incorrectness in or breach by Buyer of any representation or warranty made by it contained in this Agreement or in any certificate or other document furnished by or on behalf of Buyer pursuant to this Agreement;

(ii) any non-fulfillment or breach by Buyer of any of its covenants contained in this Agreement or in any certificate or other document furnished by or on behalf of Buyer pursuant to this Agreement, whether required to be performed on, prior to, or after the Closing Date; or

(iii) any Assumed Liabilities.

(b) Seller acknowledges and agrees that the indemnification provided in this Section 14.3 shall be Seller's sole and exclusive remedy for all Losses related to or arising, at law, under any statute or in equity, or otherwise, out of this Agreement (other than claims of, or causes of action arising from (x) fraud or willful misconduct, or (y) breach of Section 10.3) and, in furtherance thereof, Seller waives, from and after the Closing, to the fullest extent permitted under applicable Governmental Rules, any and all rights, claims, actions or causes of action (other than claims of, or causes of action arising from (A) fraud or willful misconduct or (B) breach of Section 10.3) it may have against Buyer or any of Buyer's Affiliates relating to the subject matter

of this Agreement, other than the remedies provided in this Section 14.3; provided, however, that Seller shall be entitled to seek temporary or permanent injunctive relief in order to enforce its rights hereunder.

Section 14.4      Termination of Indemnification. The obligations to indemnify and hold harmless any party pursuant to Section 14.2(a)(i), Section 14.2(a)(ii), Section 14.3(a)(i) and Section 14.3(a)(ii) shall terminate when the applicable representation, warranty or covenant terminates, except as otherwise provided in Section 14.1. Buyer's obligation to indemnify and hold harmless the Seller Indemnified Parties pursuant to Section 14.3(a)(iii) shall not terminate. Seller's obligation to indemnify and hold harmless the Buyer Indemnified Parties pursuant to Section 14.2(a)(iii) and Section 14.2(a)(iv) shall not terminate.

Section 14.5      Procedure.

(a)      In order for an indemnified party under this ARTICLE XIV (an "Indemnified Party") to be entitled to any indemnification provided for under this Agreement, such Indemnified Party shall, promptly following the discovery of the matters giving rise to any Loss, notify the indemnifying party under this ARTICLE XIV (the "Indemnifying Party") in writing of its claim for indemnification for such Loss, specifying in reasonable detail the nature of such Loss and the amount of the liability estimated to accrue therefrom (the "Indemnification Claim Notice"); provided, however, that failure to give such prompt notification shall not affect the indemnification provided hereunder except to the extent the Indemnifying Party will have been actually prejudiced as a result of such failure. Thereafter, the Indemnified Party shall deliver to the Indemnifying Party, within five (5) Business Days after the Indemnified Party's receipt of such request, all information and documentation reasonably requested by the Indemnifying Party with respect to such Loss.

(b)      If the indemnification sought pursuant hereto involves a claim made by a Third Party against the Indemnified Party (a "Third Party Claim"), the Indemnifying Party shall be entitled to participate in the defense of such Third Party Claim and, if it so chooses within forty-five (45) days after its receipt of an Indemnification Claim Notice, to assume the defense of such Third Party Claim with counsel selected by the Indemnifying Party; provided, however that the Indemnifying Party shall not be entitled to assume the defense of any Third Party Claim to the extent such claims involve or seek injunctive or other relief that does not involve solely monetary obligations. Should the Indemnifying Party so elect to assume the defense of a Third Party Claim, the Indemnifying Party shall not be liable to the Indemnified Party for any legal expenses subsequently incurred by the Indemnified Party in connection with the defense thereof. If the Indemnifying Party assumes such defense, the Indemnified Party shall have the right to participate in the defense thereof and to employ counsel, at its own expense, separate from the counsel employed by the Indemnifying Party, it being understood that the Indemnifying Party shall control such defense. The Indemnifying Party shall be liable for the reasonable fees and expenses of counsel employed by the Indemnified Party for any period during which the Indemnifying Party has not assumed the defense thereof. If the Indemnifying Party chooses to defend or prosecute a Third Party Claim, all of the parties hereto shall cooperate in the defense or prosecution thereof. Such cooperation shall include (i) the retention and (upon the Indemnifying Party's request) the provision to the Indemnifying Party of records and information which are reasonably relevant to such Third Party Claim, and (ii) making relevant employees and agents available on a mutually

convenient basis to provide additional information and explanation of any material provided hereunder; provided, that the Indemnifying Party shall reimburse the Indemnified Party for all its reasonable out-of-pocket expenses in connection therewith.

(c) If the Indemnifying Party chooses to defend or prosecute any Third Party Claim, to the extent that it involves any agreement, performance or observance by the Indemnified Party, the Indemnifying Party shall not agree to such agreement, performance or observance without the Indemnified Party's prior written consent (which shall not be unreasonably withheld, conditioned or delayed). Further, with respect to all Losses in connection with Third Party Claims where the Indemnifying Party has assumed the defense or prosecution of the Third Party Claim in accordance with Section 14.5(b) above, the Indemnifying Party shall not be liable for any settlement or other disposition of such Losses by an Indemnified Party that is reached without the written consent of the Indemnifying Party. Whether or not the Indemnifying Party will have assumed the defense of a Third Party Claim, the Indemnified Party shall not admit any liability with respect to, or settle, compromise or discharge, such Third Party Claim without the Indemnifying Party's prior written consent (which shall not be unreasonably withheld, conditioned or delayed). If the Indemnifying Party chooses not to defend or prosecute any Third Party Claim, no Indemnified Party shall admit any liability with respect to, or settle, compromise or discharge, any Third Party Claim without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

(d) Without limiting Section 14.5(b), any Indemnified Party shall be entitled to participate in, but not control, the defense of such Third Party Claim and to employ counsel of its choice for such purpose; provided, however, that such employment shall be at the Indemnified Party's own expense unless (i) the employment thereof has been specifically authorized by the Indemnifying Party in writing, or (ii) the Indemnifying Party has failed to assume the defense and employ counsel in accordance with Section 14.5(b) (in which case the Indemnified Party shall control the defense). The reasonable and verifiable costs and expenses incurred pursuant to Section 14.5(d)(i) and Section 14.5(d)(ii), including fees and disbursements of counsel, incurred by the Indemnified Party in connection with any Third Party Claim shall be reimbursed on a quarterly basis by the Indemnifying Party, without prejudice to the Indemnifying Party's right to contest the Indemnified Party's right to indemnification and subject to refund in the event the Indemnifying Party is ultimately held not to be obligated to indemnify the Indemnified Party. Buyer and Seller shall cooperate in reasonable good faith to minimize their respective indemnification obligations with respect to any and all Losses.

ARTICLE XV  
GENERAL PROVISIONS

Section 15.1 Expenses. Except as otherwise specified in this Agreement, all costs and expenses (including fees and disbursements of counsel, financial advisors and accountants) incurred in connection with this Agreement and the transactions contemplated hereby will be paid by the party incurring such costs and expenses, whether or not the Closing will have occurred.

Section 15.2 Further Assurances and Actions. Buyer and Seller, whether before or after the Closing and without further consideration, shall each do, execute, acknowledge and deliver

or cause to be done, executed, acknowledged or delivered all such further acts, deeds, documents, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably necessary in order to consummate or implement expeditiously the transactions contemplated by this Agreement (including, as applicable, upon the request of the other party).

Section 15.3 Notices. All notices, requests and other communications hereunder shall be in writing and shall be sent, delivered or mailed, addressed as follows:

(a) if to Buyer:

Biovail Laboratories International SRL  
Welches, Christ Church  
Barbados WI, BB17154  
Facsimile: 1-246-420-1635  
Attn: Chief Operating Officer

with a copy to:

Biovail Corporation  
7150 Mississauga Road  
Mississauga, Ontario, Canada L5M 8L5  
Attn: Associate General Counsel  
Facsimile: 1-905-286-3206

and

Morgan, Lewis & Bockius LLP  
502 Carnegie Center  
Princeton, New Jersey 08540  
Telephone: (609) 919-6600  
Facsimile: (609) 919-6701  
Attn: Denis Segota, Esq.

(b) if to Seller, to:

SmithKline Beecham Corporation d/b/a GlaxoSmithKline  
5 Moore Drive  
Research Triangle Park, North Carolina 27709  
Facsimile: (919) 315-3183  
Attn: Senior Vice President, US Pharmaceuticals RTP

with a copy to:

SmithKline Beecham Corporation d/b/a GlaxoSmithKline  
5 Moore Drive  
Research Triangle Park, North Carolina 27709  
Facsimile: (919) 315-3183

Attn: US Business Development

and

SmithKline Beecham Corporation d/b/a GlaxoSmithKline  
2301 Renaissance Boulevard  
King of Prussia, PA 19406-2772  
Facsimile: (610) 787-7084

Attn: Vice President and Associate General Counsel, Business Development Transactions Team

Each such notice, request or other communication shall be given by: (i) hand delivery; (ii) by certified mail; or (iii) nationally recognized courier service. Each such notice, request or communication shall be effective when delivered at the address specified in this Section 15.3 (or in accordance with the latest unrevoked direction from the receiving party).

Section 15.4      Headings. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 15.5      Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced under any Governmental Rule or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties hereto as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

Section 15.6      Counterparts. This Agreement may be executed by facsimile and in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each party hereto and delivered by each party hereto to the other party hereto, it being understood that all parties hereto need not sign the same counterpart.

Section 15.7      Entire Agreement; Schedules, Exhibits and Other Documents. This Agreement (together with the Schedules and Exhibits attached hereto), together with the License Agreement Amendment, Trademark License Agreement, and the Domain Names Assignment Agreement, constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, between or among the parties hereto with respect to the subject matter hereof. The Exhibits, Schedules, certificates and notices specifically referred to herein, and delivered pursuant hereto, are an integral part of this Agreement.

Section 15.8      Third Party Beneficiaries. Except as specifically provided herein, this Agreement is intended solely for the benefit of each party hereto and their respective successors or permitted assigns and it is not intended to confer upon any Person other than the parties hereto any rights or remedies hereunder.



Section 15.9 Governing Law. This Agreement will be deemed to have been made in the State of New York and its form, execution, validity, construction and effect will be determined in accordance with the laws of the State of New York, without giving effect to the principles of conflicts of law thereof, and the parties agree to the personal jurisdiction of and venue in any federal court located in the Southern District of New York or state court located in New York County, New York. The application of the United Nations Convention for Contracts for the International Sales of Goods is hereby expressly excluded.

Section 15.10 WAIVER OF JURY TRIAL. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT, THE AGREEMENTS, INSTRUMENTS AND DOCUMENTS CONTEMPLATED HEREBY OR THE TRANSACTIONS CONTEMPLATED HEREBY AND FOR ANY COUNTERCLAIM THEREIN.

Section 15.11 Waiver. No waiver by either party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion.

Section 15.12 Publicity. Neither party shall make any public announcement concerning, or otherwise publicly disclose, any information with respect to the transactions contemplated by this Agreement or any of the terms and conditions hereof without the prior written consent of the other party, which consent will not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, either party may make any public disclosure concerning the transactions contemplated hereby that in the opinion of such party's counsel may be required by law or the rules of any stock exchange or interdealer quotation service on or through which such party's or its Affiliates' securities trade; provided, however, the party making such disclosure shall provide the non-disclosing party with a copy of the intended disclosure reasonably, and to the extent practicable, prior to public dissemination, and the parties hereto shall coordinate with one another regarding the timing, form and content of such disclosure; and provided, further, Buyer and Seller agree that the form of press release attached hereto as Exhibit I may be issued by Buyer, Seller or either of their respective Affiliates at any time following the Closing.

Section 15.13 Assignment.

(a) Neither party may assign any or all of its rights or obligations under this Agreement without the other party's prior written consent; provided, however, that (i) either party may assign any or all of its rights or obligations under this Agreement to an Affiliate of such party, (ii) Buyer may license, assign, subcontract or delegate to any Affiliate all or part of the rights and obligations of Buyer under this Agreement and (iii) either party may assign all of its rights or obligations under this Agreement to a Third Party to which such party has sold all or substantially all of its assets relating to this Agreement.

(b) In the event that a party assigns any of its rights and obligations hereunder to an Affiliate or Third Party, the assigning party shall, at the request of the non-assigning party, enter into, or cause such Third Party to enter into, such supplemental agreements pursuant to which such Third Party will expressly assume all of the obligations of the assigning party

hereunder. Any assignment to an Affiliate of a party shall not release the assigning or transferring party of its obligations hereunder. In the event that a party assigns any of its rights and obligations hereunder to a person, firm or other entity that qualifies as an Affiliate hereunder and during the term of this Agreement such person, firm or other entity ceases to qualify as an Affiliate hereunder, such person, firm or other entity shall promptly, with written notice to the other party, assign back to such party any of its rights and obligations hereunder.

(c) This Agreement shall be binding upon and inure to the benefit of the parties, and their respective successors and permitted assigns.

Section 15.14 Advice of Counsel. The language in all parts of this Agreement shall be deemed to be the language mutually chosen by the parties hereto. The parties hereto and their counsel have cooperated in the drafting and preparation of this Agreement, and this Agreement therefore shall not be construed against any party hereto by virtue of its role as the drafter thereof. No drafts of this Agreement or any other similar or related document exchanged by the parties hereto prior to the Closing Date shall be offered by a party hereto, nor shall any draft be admissible in any proceeding, to explain or construe this Agreement or for any other purpose.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective representatives thereunto duly authorized, all as of the Agreement Date.

**SMITHKLINE BEECHAM CORPORATION  
D/B/A GLAXOSMITHKLINE**

By: /s/ William J. Mosher  
Name: William J. Mosher  
Title: Vice-President and Secretary

**BIOVAIL LABORATORIES INTERNATIONAL SRL**

By: /s/ Michel Chouinard  
Name: Michel Chouinard  
Title: Chief Operating Officer

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List of Exhibits

|           |                                            |
|-----------|--------------------------------------------|
| Exhibit A | -- Assumption Agreement                    |
| Exhibit B | -- Bill of Sale                            |
| Exhibit C | -- Canadian Wellbutrin and Zyban Amendment |
| Exhibit D | -- Domain Names Assignment Agreement       |
| Exhibit E | -- License Agreement Amendment             |
| Exhibit F | -- Trademark License Agreement             |
| Exhibit G | -- Zovirax Distribution Rights Letter      |
| Exhibit H | -- Disclosure Schedule                     |
| Exhibit I | -- Form of Press Release                   |

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| Schedule 1.3     | -- Product Marketing Materials          |
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| Schedule 3.3(a)  | -- Lots of Finished Goods               |
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| Schedule 5.10(b) | -- Compliance with Laws                 |
| Schedule 5.11    | -- Assigned Contracts                   |
| Schedule 5.12(a) | -- Patents, Trademarks and Domain Names |
| Schedule 5.17    | -- Customers                            |
| Schedule 5.18    | -- Material Contracts                   |
| Schedule 5.19(a) | -- Trade Allowances                     |
| Schedule 5.19(b) | -- Trade Allowances                     |
| Schedule 5.19(c) | -- Trade Allowances                     |

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\* Attached hereto.

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Schedule 1.2

Domain Names

Wellbutrin-xl.com  
WellbutrinXL.com  
wellbutrinxlsavenow.com  
wellbutrin-xlsavenow.com  
wellbutrinxlsavings.com  
wellbutrin-xlsavings.com  
wellbutrinxlsucks.com  
WellbutrynXL.com

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**Schedule 1.4**

**Product Patents**

U.S. Patent No. 6,905,708 (the “Andrx Patent”)

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**Schedule 1.5**

**Product Trademarks**

U.S. Trademark Registration No. 2,826,347 for the mark “WELLBUTRIN XL”

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Schedule 3.3(b)

Product Prices

Wellbutrin XL Finished Goods - Net Prices

| Product    | Net Price |
|------------|-----------|
| 150mg 30's | {***}†    |
| 150mg 90's | {***}†    |
| 300mg 30's | {***}†    |

† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.



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**CONFIDENTIAL TREATMENT REQUESTED:**

*Portions of this Exhibit have been redacted pursuant to a request for confidential treatment under Rule 24b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended. Such redacted portions have been replaced with “{\*\*\*}” in this Exhibit. An unredacted version of this document has been filed separately with the Securities and Exchange Commission along with the request for confidential treatment.*

ASSET PURCHASE AGREEMENT

BETWEEN

CAMBRIDGE LABORATORIES (IRELAND) LIMITED

AND

BIOVAIL LABORATORIES INTERNATIONAL (BARBADOS) SRL

\_\_\_\_\_  
Dated May 16, 2009  
\_\_\_\_\_

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ASSET PURCHASE AGREEMENT (including the Exhibits and Schedules hereto, this “Agreement”), dated May 16, 2009, between CAMBRIDGE LABORATORIES (IRELAND) LIMITED, a company organized under the laws of the Republic of Ireland (“Seller”), and BIOVAIL LABORATORIES INTERNATIONAL (BARBADOS) SRL, a society with restricted liability under the laws of Barbados (“Purchaser”).

Seller desires to sell to Purchaser certain assets owned and used by Seller and its Affiliates in the development, manufacturing, registration, sale, distribution and packaging of the TBZ Products (as defined herein) (such activities, the “TBZ Business”), and to have Purchaser assume specified liabilities associated with the TBZ Business, and Purchaser desires to purchase such assets, and to assume such liabilities, with a view to carrying on the TBZ Business as a going concern in succession to Seller, upon the terms and subject to the conditions of this Agreement.

Accordingly, the parties hereby agree as follows:

## ARTICLE I

### Purchase and Sale of Acquired Assets

SECTION 1.01. Purchase and Sale. On the terms and subject to the conditions of this Agreement, at and with effect from Closing (as defined in Section 2.01), Seller shall, or shall procure its applicable Affiliate to, sell, assign, transfer, convey and deliver to Purchaser, and Purchaser shall purchase from Seller or its applicable Affiliate, the Acquired Assets (as defined in Section 1.02(a)), for (i) an aggregate amount in cash as set forth in and payable in accordance with Article II and (ii) the assumption of the Assumed Liabilities (as defined in Section 1.03(a)). The sale and purchase of the Acquired Assets and the assumption of the Assumed Liabilities is referred to in this Agreement as the “Acquisition”.

SECTION 1.02. Acquired Assets; Excluded Assets. (a) The term “Acquired Assets” means all Seller’s and its Affiliates’ legal and beneficial title and interest in and to the following tangible and intangible assets at Closing, other than the Excluded Assets (as defined in Section 1.02(b)):

(i) all rights owned by Seller and its Affiliates in and to all tetrabenazine products, in any jurisdiction, including all prodrugs, analogues, metabolites, salts, hydrates, solvates, polymorphs, crystalline, amorphous and nanonized forms thereof, including desmethyltetrabenazines (collectively, the “TBZ Products”), including rights owned by Seller and its Affiliates in and to (A) all immediate release formulations of tetrabenazine (“Xenazine IR”), (B) all controlled release formulations of tetrabenazine, whether currently in development or to be developed in the future (“Xenazine CR”), (C) all tetrabenazine products corresponding to Xenazine products marketed under a different name in any jurisdiction, including Nitoman, (D) the (2S, 3S, 11bR) isomer of cis-dihydrotetrabenazine referred to as RUS 350, including all prodrugs, salts, hydrates, solvates, polymorphs, crystalline, amorphous and nanonized forms of RUS 350, (E) the (2R, 3R, 11bS) isomer of cis-dihydrotetrabenazine referred to as RUS 351, including all

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prodrugs, salts, hydrates, solvates, polymorphs, crystalline, amorphous and nanonized forms of RUS 351, (F) the (2R, 3S, 11bR) isomer of cis-dihydrotetrabenazine referred to as RUS 345, including all prodrugs, salts, hydrates, solvates, polymorphs, crystalline, amorphous and nanonized forms of RUS 345, (G) the (2S, 3R, 11bS) isomer of cis-dihydrotetrabenazine referred to as RUS 346, including all prodrugs, salts, hydrates, solvates, polymorphs, crystalline, amorphous and nanonized forms of RUS 346 and (H) trans dihydrotetrabenazine and all prodrugs, metabolites and analogs of cis and trans dihydrotetrabenazine and all salts, hydrates, solvates, polymorphs, crystalline, amorphous and nanonized forms thereof, including desmethyldihydrotetrabenazines;

(ii) all raw materials, active pharmaceutical ingredient (“API”), work-in-process, finished goods, components, packaging materials, samples, supplies and other inventories of or relating to TBZ Products (including in transit, on consignment or in the possession of any third party) owned by Seller and its Affiliates (collectively, the “Inventory”) that is unsold at Closing (such unsold Inventory, the “Assigned Inventory”);

(iii) all machinery and equipment (if any) that is owned by Seller and its Affiliates and used, held for use or intended to be used primarily in the development, manufacturing or packaging of the TBZ Products, regardless of whether Seller or a third party is in physical possession of such machinery or equipment on the Closing Date (the “CMO Equipment”);

(iv) all rights held by Seller and its Affiliates (subject to the obligations thereunder) in regulatory approvals in any jurisdiction with respect to any TBZ Product (the “Regulatory Approvals”) or pending applications therefor, including all new drug applications for any TBZ Product and the rights of Seller and its Affiliates thereunder (subject to the obligations thereunder) in any jurisdiction (each such application, a “Drug Approval Dossier”), filed by Seller or any of its Affiliates with any regulatory authority in any jurisdiction, and all rights of Seller and its Affiliates in all related information and research supporting such Regulatory Approvals, Drug Approval Dossiers and all subsequent amendments and supplements thereto (any such documentation regarding the Regulatory Approvals, the “Regulatory Files”);

(v) all patents (including all reissues, divisions, continuations, continuations-in-part and extensions thereof), patent applications, patent rights, trade marks, trade mark registrations, trade mark applications, service marks, trade names, trade dress, business names, brand names, copyrights, copyright registrations, designs and design registrations in any jurisdiction, and all rights to any of the foregoing (“Intellectual Property”), that are owned by Seller and its Affiliates and relate primarily to the TBZ Business and/or the TBZ Products (including, for the avoidance of doubt, Intellectual Property owned by Seller and its Affiliates related to the CAM 28 and CAM 31 draft patent applications) (such Intellectual Property, the “Assigned Intellectual Property”);

(vi) all trade secrets, confidential information, inventions, know-how, formulae, processes, procedures, research records, records of inventions, test information, manufacturing and packaging specifications, technical, clinical and other data and other technical information, market surveys and marketing know-how, that are owned by Seller

and its Affiliates, in each case, to the extent relating to the TBZ Business and/or the TBZ Products (the “Technology”);

(vii) the internet and domain names set forth on Schedule 1.02(a)(vii);

(viii) subject to Sections 1.03 and 1.04, the benefit (subject to the burden) of the Assigned Contracts;

(ix) copies of all books and records and other materials and documentation to the extent relating to the TBZ Business, any TBZ Product and/or any other Acquired Asset that are in the possession or control of Seller or any of its Affiliates, including books of account, ledgers, files, invoices, customer and supplier lists, other distribution lists, billing records, manuals, customer account data, customer and supplier correspondence, laboratory notebooks and other research records, product complaint information, clinical studies and data and all other regulatory files or documentation (including correspondence held by Seller and its Affiliates with, applications to and approvals from any regulatory authority in any jurisdiction), in all cases, in any form or medium (the “Records”);

(x) all credits, prepaid expenses, deferred charges, advance payments, security deposits and prepaid items arising in respect of the Assigned Contracts or that are otherwise used, held for use or intended to be used primarily in, or that arise primarily out of, the TBZ Business; and

(xi) all rights, claims and credits to the extent relating to any tangible Acquired Asset (including Assigned Inventory), including any such items arising under all warranties, indemnities and similar rights in favour of Seller and its Affiliates in respect of any such Acquired Asset.

(b) The term “Excluded Assets” means:

(i) all assets identified on Schedule 1.02(b), including all rights of Seller or any of its Affiliates under the Contracts and regulatory approvals identified on such Schedule;

(ii) all cash in hand and at bank of Seller or any of its Affiliates;

(iii) the Debts;

(iv) all Inventory of Seller or any of its Affiliates sold prior to Closing, and all Inventory purchased from Seller and owned by Cambridge Laboratories Limited in the ordinary course pursuant to the distribution agreement dated May 11, 2009 (the “UK/Ireland Distribution Agreement”);

(v) all computer hardware, software and related information technology infrastructure of Seller or any of its Affiliates;

(vi) all real property, leaseholds and other interests in real property of Seller or any of its Affiliates, in each case together with any right, title and interest in all buildings, improvements and fixtures thereon and all other appurtenances thereto;

(vii) all tangible personal property (except the CMO Equipment) of Seller or any of its Affiliates and interests therein, including all furniture, furnishings and vehicles;

(viii) all rights, claims and credits of Seller or any of its Affiliates to the extent relating primarily to any other Excluded Asset or any Excluded Liability (as defined in Section 1.03(b)), including any such items arising under insurance policies and all guarantees, warranties, indemnities and similar rights in favour of Seller or any of its Affiliates in respect of any other Excluded Asset or any Excluded Liability;

(ix) all rights, claims and credits of Seller or any of its Affiliates under the Assigned Contracts accrued in the period prior to Closing;

(x) all rights, claims and credits of Seller or any of its Affiliates under any contract of insurance and any foreign exchange hedging contract;

(xi) all rights of Seller or any of its Affiliates under this Agreement and the other agreements and instruments executed and delivered in connection with this Agreement;

(xii) all records prepared in connection with the Acquisition;

(xiii) the Excluded Marks; and

(xiv) all financial and Tax records relating to the TBZ Business that form part of the general ledgers of Seller or any of its Affiliates.

(c) With respect to each Contract set forth on Schedule 1.02(c) (each, a “Shared Contract”), Seller shall reasonably cooperate with Purchaser (at Purchaser’s request and expense) to agree upon a reasonable approach to allocating or sharing the benefit and burden under such Shared Contract after Closing, save that with respect to each Shared Contract identified in Part 2 of Schedule 1.02(c) the parties hereto shall allocate only to Seller (and shall not share) any benefit of such Shared Contract that assigns, delivers or confirms to Seller or its relevant Affiliate its right, title or interest in or to an Acquired Asset or provides Seller or its relevant Affiliate the right to perfect its right, title or interest in or to an Acquired Asset (which right, title and interest are agreed to be conveyed at Closing to Purchaser by Seller or its applicable Affiliate pursuant hereto). Without limitation of the foregoing, each of Purchaser and Seller shall use reasonable endeavours to ensure that the benefits and burdens of the Contract Manufacture Agreement between Seller and Pharmaserve Limited, dated May 6, 2005, as it relates to the TBZ Business, are available to Purchaser at Closing.

SECTION 1.03. Assumption of Certain Liabilities. (a) Subject to Section 1.04, Purchaser shall assume, effective as of Closing, and, from and after Closing, Purchaser shall pay, perform and discharge when due, all liabilities, obligations and commitments of Seller and its Affiliates (i) under any trade accounts payable in respect of any Assigned Inventory that are outstanding at Closing (“Assumed Accounts Payable”) and (ii) under the Assigned Contracts, the



Regulatory Approvals or otherwise in connection with the TBZ Business or any Acquired Asset solely to the extent related to the period from and after Closing, except for any such liabilities that are Excluded Liabilities (together with the Assumed Accounts Payable, the “Assumed Liabilities”), and Purchaser shall indemnify Seller and its Affiliates against all Costs (other than Taxes arising in connection with the assumption of such Assumed Liabilities) incurred or suffered by Seller or any of its Affiliates in respect of the Assumed Liabilities following Closing, including any failure on the part of Purchaser to carry out, perform or complete any obligations with respect to the Assumed Liabilities.

(b) Notwithstanding any other provision of this Agreement, and regardless of any disclosure to Purchaser, Purchaser shall not assume any of the following liabilities, obligations and commitments of Seller or any of its Affiliates (the “Excluded Liabilities”), all of which shall be retained and paid, performed and discharged by Seller or its Affiliates:

(i) any liability or obligation of Seller or any of its Affiliates, except as specifically set forth in Section 1.03(a), relating to or arising out of the TBZ Business or any Acquired Asset, whether express or implied, accrued or contingent, in each case to the extent based upon, arising out of or resulting from any fact, circumstance, occurrence, condition, act or omission existing, committed by Seller or any of its Affiliates or otherwise occurring prior to Closing;

(ii) any liability, obligation or commitment of Seller or any of its Affiliates, whether express or implied, accrued or contingent, to the extent that it relates to, or arises out of, any Excluded Asset or the operation or conduct by Seller or any of its Affiliates of any business other than the TBZ Business;

(iii) any liability or obligation of Seller or any of its Affiliates to the extent (A) arising out of any actual or alleged breach by Seller or any of its Affiliates of, or non-performance by Seller or any of its Affiliates under, any contract, licence, sublicense, agreement (including all manufacturing, confidentiality, licence, supply and distribution agreements), commitment or other legally binding arrangement (including purchase orders and sales orders), whether oral or written (“Contracts”) (including any Assigned Contract), prior to Closing, (B) accruing under any Assigned Contract with respect to any period prior to Closing (except as otherwise specifically set forth in Section 1.03(a)) or (C) arising under any Contract entered into in violation of this Agreement;

(iv) any liability, obligation or commitment of Seller or any of its Affiliates with respect to Taxes, other than withholding taxes payable in the ordinary course of the TBZ Business in respect of payments made under any Assigned Contract following Closing;

(v) any liability, obligation or commitment of Seller or any of its Affiliates arising out of (A) any suit, action or proceeding (“Proceeding”) to the extent such Proceeding relates to the activities of Seller or any of its Affiliates prior to Closing or (B) any actual or alleged violation by Seller or any of its Affiliates of any Applicable Law (as defined in Section 3.03) prior to Closing;

(vi) any liability, obligation or commitment of Seller or any of its Affiliates under or in relation to all Regulatory Approvals and Drug Approval Dossiers to the extent related to the period prior to Closing;

(vii) any liability, obligation or commitment of Seller or any of its Affiliates that relates to, or arises out of, products, including the TBZ Products, sold by or on behalf of Seller or any of its Affiliates prior to Closing (including claims of negligence, personal injury, product damage, product liability, product warranties, promotional obligations, strict liability, product recall or any other claims (including workers' compensation, employer's liability or otherwise)), whether such liability, obligation or commitment relates to or arises out of accidents, injuries or losses occurring prior to or after Closing; and

(viii) any liability, obligation or commitment of Seller or any of its Affiliates to Seller or any of its Affiliates.

(c) Seller shall indemnify Purchaser and its Affiliates against all Costs incurred or suffered by Purchaser or any of its Affiliates in respect of the Excluded Liabilities, including any failure on the part of Seller or any of its Affiliates to carry out, perform or complete any obligations with respect to the Excluded Liabilities.

(d) Purchaser shall acquire the Acquired Assets free and clear of all liabilities, obligations and commitments of Seller and its Affiliates, other than the Assumed Liabilities, and free and clear of all Liens (as defined in Section 3.05), other than for (i) customary retention or reservation of title provisions in favour of suppliers, common carriers or warehousemen in respect of Assigned Inventory and (ii) any obligations with respect to Regulatory Approvals imposed by Applicable Law or the terms thereof.

(e) For the avoidance of doubt, (i) royalty obligations payable pursuant to the 1998 LifeHealth Licence shall be allocated on the basis of net profits (as defined under, and calculated in accordance with, the 1998 LifeHealth Licence), determined on a daily basis, with the royalty obligations in respect of net profits prior to Closing to be for the account of Seller and for the period from and after Closing to be for the account of Purchaser, and (ii) payment obligations in respect of development projects properly accrued in the period prior to Closing shall be for the account of Seller and such obligations properly accrued in the period from and after Closing shall be for the account of Purchaser.

SECTION 1.04. Assigned Contracts. (a)(i) Subject to Section 1.04(a)(ii), Purchaser shall become entitled to the benefits of Seller or its Affiliates under the Assigned Contracts and this Agreement shall constitute an assignment of the benefit of all Assigned Contracts to Purchaser with effect from Closing.

(ii) This Agreement shall not constitute an assignment or attempted assignment of any Assigned Contract if the assignment or attempted assignment would constitute a breach of such Assigned Contract.

(iii) Where the consent of a third party is required to the assignment of the benefit of any of the Assigned Contracts (other than the Prestwick Agreements) to Purchaser,

Seller shall, and shall procure that its relevant Affiliates shall (both before and after Closing, but only until the one year anniversary of the Closing Date), use reasonable endeavours with the co-operation of Purchaser to obtain such consent in substantially the Agreed Form (other than in respect of the LifeHealth Agreements, which shall be in the Agreed Form), with such material changes as may be requested by such third party and agreed between Seller and Purchaser (such agreement, other than in respect of the LifeHealth Agreements, not to be unreasonably withheld or delayed) (each such consent to be obtained prior to Closing if practicable using reasonable endeavours). Purchaser shall use reasonable endeavours to assist Seller in obtaining the documents described in Sections 6.02(b), (e) and (f), and shall consult with Seller with respect to, and shall consider in good faith, any changes to the Agreed Forms thereof as may be proposed by the applicable counterparties (without prejudice to Purchaser's right to withhold its consent to any such changes). Upon whichever is the later of Closing and any such consent being obtained, this Agreement shall constitute an assignment of the benefit of the Assigned Contract to which that consent relates. Any Costs incurred in connection with obtaining any such consent shall be borne (A) prior to Closing, by the party incurring such Costs and (B) following Closing, by Purchaser.

(b) At Purchaser's request with respect to any Assigned Contract, Seller shall, and shall procure that its relevant Affiliates shall (both before and after Closing, but only until the one year anniversary of the Closing Date), use reasonable endeavours with the co-operation of Purchaser to procure that all counterparties to such Assigned Contract enter into a novation agreement among Seller, Purchaser and any such counterparties in respect of such Assigned Contract in substantially the Agreed Form (other than in respect of the LifeHealth Agreements, which shall be in the Agreed Form), with such material changes as may be requested by any such counterparties and agreed between Seller and Purchaser (such agreement, other than in respect of the LifeHealth Agreements, not to be unreasonably withheld or delayed), with the intent that, with effect from Closing, Purchaser shall perform such Assigned Contract and be bound by it as if Purchaser were a party to such Assigned Contract in lieu of Seller or its Affiliate. Any Costs incurred in connection with entering into any such novation agreement shall be borne (A) prior to Closing, by the party incurring such Costs and (B) following Closing, by Purchaser.

(c) After Closing and until any necessary consent to the assignment of an Assigned Contract is obtained:

(i) Seller shall be treated as holding the benefit of such Assigned Contract in trust for Purchaser (to the extent it is permissible and lawful under the Assigned Contract to so hold in trust), and any benefit will be promptly paid over to Purchaser;

(ii) Purchaser shall indemnify Seller and its Affiliates against all Costs (except Costs related to Excluded Liabilities) incurred or suffered by Seller or its Affiliates in respect of any such Assigned Contract;

(iii) to the extent it is permissible and lawful under such Assigned Contract, Purchaser shall perform on behalf of Seller the obligations of Seller or its Affiliates under such Assigned Contract arising after Closing and shall indemnify Seller against all Costs in respect of any failure on the part of Purchaser to perform those obligations;

(iv) in respect of any Assigned Contract containing a licence of Intellectual Property, until the relevant licence is assigned, Seller shall, to the extent it is permissible and lawful under the Assigned Contract, sub-licence to Purchaser so as to provide Purchaser (to the fullest extent possible) the benefit of that licence; provided that any such sub-licence shall be on and subject to the terms of any such licence; and

(v) Seller shall not, and shall procure its Affiliates not to, amend or terminate such Assigned Contract without the prior written consent of Purchaser.

(d) Nothing in the foregoing clauses of this Section 1.04 shall limit or otherwise modify Purchaser's rights pursuant to Section 6.02(b), (e) or (f) or Article VIII in respect of the failure of any consent to be obtained at or prior to Closing. Neither Seller's obligation under this Section 1.04 to use reasonable endeavours to procure the assignment or novation of any Assigned Contracts, nor Purchaser's obligation to use reasonable endeavours to assist Seller in obtaining applicable consents, shall require Seller or Purchaser to make or offer to make any payment to any Person, or to provide any guarantee or security or any benefit in kind or by way of amendment to the Contract to any Person or to deposit any cash or other asset with any Person.

SECTION 1.05. Assigned Inventory Indemnification. (a) Seller shall pay to Purchaser the amount (the "Inventory Deficit"), if any, by which the amount of Assumed Accounts Payable at Closing exceeds the book value of the Assigned Inventory at Closing (at the lower of cost and net realisable value) after provisions for old, obsolete, damaged or slow moving Inventory.

(b) Within 30 Business Days after the Closing Date, Purchaser shall notify Seller of any such Inventory Deficit and, within 10 Business Days of receipt of such notice, Seller shall either (i) pay Purchaser an amount equal to the Inventory Deficit or (ii) give written notice to Purchaser of any disagreement it has with respect to the amount of the Inventory Deficit. During the 10-Business Day period following the delivery of any such notice of disagreement, Seller and Purchaser shall use reasonable endeavours to agree upon the amount of the Inventory Deficit, including, if necessary, retaining the services of an independent accounting firm (acting as expert and not arbitrator) to finally determine the amount of such Inventory Deficit.

(c) At Purchaser's option, upon reasonable advance notice to Seller and at Purchaser's expense, a physical inventory shall be conducted by Seller on the Closing Date for the purpose of determining the amount of Assigned Inventory as of the Closing Date, and each of Seller and Purchaser and their respective independent auditors shall have the right to observe the taking of such physical inventory.

SECTION 1.06. Transfer of Intellectual Property. (a) Section 1.02 shall operate as an assignment of such of the Technology and Assigned Intellectual Property that is not subject to a registration or an application for registration with effect from the Closing Date. Any Assigned Intellectual Property that is either owned by an Affiliate of Seller (but not Seller) or is registered or subject to an application for registration shall be assigned to Purchaser pursuant to assignment agreements in the Agreed Form with respect to the Assigned Intellectual Property to be entered into at Closing.

(b) If Purchaser identifies to Seller any specific Intellectual Property which at Closing was licensed to Seller or any of its Affiliates by a third party and which was used in (but did not relate primarily to) the TBZ Business and/or the TBZ Products at Closing, to the extent that the terms of such licence agreement allow the grant of a sub-licence of such Intellectual Property to Purchaser, Seller shall, or shall procure that its relevant Affiliate shall, grant to Purchaser a sub-licence to use such Intellectual Property in relation to the TBZ Business on and subject to the terms of such licence agreement; provided that any such sub-licence shall terminate no later than the second anniversary of the Closing Date.

ARTICLE II

The Closing Date and Payment of the Purchase Price

SECTION 2.01. Closing Date. The closing of the Acquisition (“Closing”) shall take place at the offices of Seller’s Irish Solicitors in Dublin, Republic of Ireland, at 10:00 a.m. on June 15, 2009, or, if on such day any condition set forth in Article VI has not been satisfied (or, to the extent permitted, waived by the party entitled to the benefit thereof), on the fifth Business Day after the last of the conditions set forth in Article VI has been satisfied or so waived, or at such other place, time and date as shall be agreed between Seller and Purchaser. The date on which Closing occurs is referred to in this Agreement as the “Closing Date”. Neither Purchaser nor Seller shall be entitled in any circumstance to rescind or terminate this Agreement after Closing.

SECTION 2.02. Transactions to be Effected at Closing. At Closing:

- (a) Seller shall observe and perform the provisions of Part 1 of Schedule 2.02; and
- (b) Purchaser shall observe and perform the provisions of Part 2 of Schedule 2.02.

SECTION 2.03. Purchase Price. (a) The cash consideration for the Acquisition shall be \$230,000,000 (the “Purchase Price”).

(b) The Purchase Price set forth in clause (a) above shall be payable as follows:

- (i) an amount equal to \$200,000,000 shall, under Section 2.02, be paid by Purchaser to Seller on the Closing Date;
- (ii) \$12,500,000 shall be paid by Purchaser to Seller on the first Business Day following the date that is the first anniversary of the Closing Date; and
- (iii) \$17,500,000 shall be paid by Purchaser to Seller on the first Business Day following the date that is the second anniversary of the Closing Date (subject, solely in the case of this clause (iii), to Purchaser’s rights of set off, deduction and retention as described in Section 9.05).

SECTION 2.04. Transfer of a Going Concern. (a) Seller and Purchaser shall use reasonable endeavours to procure that the supply of those Acquired Assets under this Agreement which would otherwise be chargeable to VAT as a supply of goods or services (but for the sale

being treated, for the purposes of Articles 19 and 29 of Council Directive 2006/112/EC and/or any equivalent applicable VAT legislation or legislation enacting these articles, as a transfer of all or part of the assets of a business as a going concern as hereinafter mentioned) and which Seller and Purchaser consider should qualify as a transfer of all or part of the assets of a business as a going concern for the purposes of Articles 19 and 29 of Council Directive 2006/112/EC and/or any equivalent applicable VAT legislation or legislation enacting these articles is so treated by the relevant Taxing Authority, except that Seller and/or its Affiliates shall not be required by virtue of this Section 2.04(a) to make any appeal to any court against any determination of the relevant Taxing Authority that that sale does not fall to be so treated. However, if the completion of the sale of any of the Acquired Assets under this Agreement is treated as a supply of goods or services for the purposes of VAT, Purchaser shall be liable to pay to Seller an amount equal to the VAT owing in respect of that supply within five Business Days of the production by Seller to Purchaser of a valid VAT invoice in relation thereto.

(b) Seller warrants to Purchaser that it is, and will continue until at least the time of Closing to be, registered for the purposes of VAT in each of the Republic of Ireland and the United Kingdom.

(c) Purchaser warrants to Seller that it is, or will prior to or immediately at the time of Closing become, registered for the purposes of VAT in each of the Republic of Ireland and the United Kingdom.

(d) Each amount stated as payable by Purchaser under or pursuant to this Agreement is exclusive of any amount in respect of VAT. If any VAT is payable on any supply by Seller under this Agreement, Purchaser shall pay to Seller an amount equal to that VAT in addition to its other obligations hereunder; provided that Purchaser shall not be required to pay to Seller any amount in respect of any increases in VAT attributable to or arising as a result of any action by Seller or its Affiliates or any failure by Seller or its Affiliates to take reasonable steps to reduce or avoid such increases in VAT.

ARTICLE III

Warranties of Seller

Seller warrants to Purchaser, as of the date hereof and as of Closing, that, except as Disclosed to Purchaser, each of the statements (the "Warranted Statements") set out in Sections 3.01 to 3.19 is true and accurate; provided that:

(a) none of the Warranted Statements, other than those set out in Section 3.12, relates in any way to Taxes; and

(b) the following Warranted Statements shall not be given by Seller in respect of any Intellectual Property or Technology or in respect of any licence of Intellectual Property or Technology: Section 3.01, Section 3.08, Section 3.09 and Section 3.14; provided that (i) with respect to each such Warranted Statement, to the extent such Warranted Statement concerns any Acquired Asset or Assigned Contract that is not Intellectual Property, Technology or a licence of Intellectual Property or Technology, each such Warranted Statement shall not be excluded; and

(ii) save as expressly set out in the second and third sentence of Section 3.06(b), Seller gives no warranty that the operation of the TBZ Business or the development, marketing, manufacture, commercialisation, sale or offering for sale of any TBZ Product does not or will not infringe, or has not infringed, the Intellectual Property of any Person; and

(c) each of the Warranted Statements shall be construed as separate and independent and shall not be limited or restricted by reference to, or inference from, the terms of any other Warranted Statement.

SECTION 3.01. Organization, Standing and Power. Seller is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized and has full power and authority and possesses all governmental franchises, licences, permits, authorizations and approvals necessary to enable it to own, lease or otherwise hold its assets, including the Acquired Assets, and, together with its Affiliates, to conduct the TBZ Business as presently conducted, other than such franchises, licences, permits, foreign qualifications, authorizations and approvals the lack of which, individually and in the aggregate, have not had and would not reasonably be expected to have a material adverse effect (i) on the business, assets (including the Acquired Assets), condition (financial or otherwise), liabilities or results of operations of the TBZ Business, (ii) on the ability of Seller together with its Affiliates to perform its obligations under this Agreement or (iii) on the ability of Seller to consummate the Acquisition and the other transactions contemplated hereby (a “Seller Material Adverse Effect”).

SECTION 3.02. Authority; Execution and Delivery; Enforceability. Seller has full power and authority to execute this Agreement and to consummate (or, as applicable, to procure its Affiliates to consummate) the Acquisition and the other transactions contemplated hereby. The execution and delivery by Seller of this Agreement and the consummation by Seller together with its Affiliates of the Acquisition and the other transactions contemplated hereby have been duly authorized by all necessary action. Seller has duly executed and delivered this Agreement, and this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms.

SECTION 3.03. No Conflicts; Consents. (a) The execution and delivery by Seller of this Agreement do not, and the consummation of the Acquisition and the other transactions contemplated hereby and compliance by Seller with the terms hereof will not, conflict with, or result in any violation of or default under, or give rise to a right of termination, cancellation or acceleration of any material obligation or to loss of a material benefit under, or result in the creation of any Lien upon any of the Acquired Assets under, any provision of (i) the memorandum and articles of association of Seller, (ii) any Assigned Contract to which Seller or any of its Affiliates is a party or by which any of the Acquired Assets is bound, (iii) any judgment, order or court decree (“Judgment”) or (iv) any statute, law (including common law), ordinance, rule or regulation applicable to Seller or any of its Affiliates or the Acquired Assets (“Applicable Law”), other than, in the case of clauses (ii), (iii) and (iv) above, any such items that, individually and in the aggregate, have not had and would not reasonably be expected to have a Seller Material Adverse Effect.

(b) No consent, approval, licence, permit, order or authorization (“Consent”) of, or registration, declaration or filing with, any national, state or local government or any court of

competent jurisdiction, administrative agency or commission, regulatory body or other governmental body, agency, authority or instrumentality in any jurisdiction (a “Governmental Entity”), is required to be obtained or made by or with respect to Seller or any of its Affiliates in connection with the execution, delivery and performance of this Agreement or the consummation of the Acquisition or the other transactions contemplated hereby, other than filings with the Portuguese Competition Authority, the Spanish National Competition Commission and the Brazilian Administrative Council for Economic Defence (together, the “Relevant Competition Authorities”), as applicable.

SECTION 3.04. Financial Information. Schedule 3.04 sets forth the unaudited consolidated balance sheet and the unaudited balance sheet of Cambridge Laboratories Group Limited and its subsidiaries and of Cambridge Laboratories Group Limited, respectively, as of December 31, 2008 (the “Financial Information Date”), and the related unaudited consolidated statement of total recognised gains and losses, the unaudited consolidated profit and loss account and the unaudited consolidated cash flow statement, in each case for Cambridge Laboratories Group Limited and its subsidiaries for the fiscal year ended on December 31, 2008 (such financial information, collectively, the “Financial Information”). The Financial Information has been properly prepared in accordance with the Companies Acts, 1963 to 2006, and generally accepted accounting practices in the Republic of Ireland and from the books and records of Cambridge Laboratories Group Limited and its subsidiaries, and gives a true and fair view of the state of Cambridge Laboratories Group Limited and its subsidiaries’ and Cambridge Laboratories Group Limited’s affairs, and of Cambridge Laboratories Group Limited and its subsidiaries’ profit, as of the date and for the period indicated.

SECTION 3.05. Title to Acquired Assets. (a) All of the Acquired Assets that are of a nature capable of being legally or beneficially owned are legally and beneficially owned by Seller and its Affiliates, and Seller and its Affiliates have the right to transfer or procure the transfer of legal and beneficial title with full title guarantee to such Acquired Assets or, in the case of Assigned Contracts, Regulatory Approvals, Drug Approval Dossiers and the rights and benefits referred to in Sections 1.02(a)(vii), (x) and (xi), the right to transfer or procure the transfer of the rights and benefits thereunder) to Purchaser, in each case free and clear of all mortgages, liens, security interests, charges, options, licences or encumbrances of any kind or other rights exercisable by, or claims by, third parties (collectively, “Liens”), subject to (i) in the case of Assigned Inventory, customary retention or reservation of title provisions in favour of suppliers, common carriers or warehousemen, and the terms of the Assigned Contracts, (ii) in the case of the Assigned Intellectual Property, the Technology and the Records, the terms of the Assigned Contracts, (iii) in the case of rights in Assigned Contracts, the terms of such Assigned Contracts, (iv) in the case of the rights and benefits referred to in Sections 1.02(a)(vii), (x) and (xi), the terms attaching to such rights and benefits, and (v) in the case of Regulatory Approvals and Drug Approval Dossiers, the obligations with respect to such Regulatory Approvals and Drug Approval Dossiers imposed by Applicable Law or by the terms thereof.

(b) Schedule 3.05(b) sets forth a true and complete list of all TBZ Products which are (i) sold by Seller and its Affiliates or (ii) in pre-clinical development (including any discovery phase development) or clinical development (including such TBZ Products that have received regulatory approvals for marketing) by Seller and its Affiliates (such clinical and pre-



clinical development programmes being conducted by Seller and its Affiliates being herein called the “Development Programmes”).

SECTION 3.06. Intellectual Property. (a) Schedule 3.06(a)(i) sets forth a true and complete list of (i) all registered Assigned Intellectual Property, all applications for registration of Assigned Intellectual Property, the names of all legal proprietors and all jurisdictions in which such Assigned Intellectual Property is registered, or in which such applications have been submitted and (ii) all draft (but not filed) patent applications prepared by or on behalf of Seller or any of its Affiliates related to the TBZ Business. Except for the Assigned Intellectual Property and the Intellectual Property licensed to Seller or its Affiliates under the Assigned Contracts, there is no registered Intellectual Property (including applications for registration) or material unregistered Intellectual Property owned by or licensed to Seller or any of its Affiliates that is, individually or in the aggregate, material to (i) the Development Programmes or (ii) the TBZ Business as conducted in the 12 months immediately preceding the date of this Agreement. Neither Seller nor any of its Affiliates has in the three years immediately preceding the date of this Agreement received any written communication from any Person asserting any ownership interest in any Assigned Intellectual Property (and any such communication delivered prior to such period either (x) has not been pursued by such Person or (y) has been fully resolved). So far as Seller is aware, no Person is infringing or making unauthorized use of any Assigned Intellectual Property. The registered Assigned Intellectual Property (including applications for registration) have not lapsed or been cancelled and all renewal, application and other official registry fees and administrative steps required for the maintenance of such registered Assigned Intellectual Property have been paid or taken.

(b) Except pursuant to the Assigned Contracts, neither Seller nor any of its Affiliates (i) has granted any licence of any kind relating to any Technology or Assigned Intellectual Property or (ii) is bound by or a party to any option, licence or similar Contract relating to any Technology or Assigned Intellectual Property. So far as Seller is aware, the conduct of the TBZ Business (A) does not violate, conflict with or infringe, and (B) has not in the three years immediately preceding the date of this Agreement violated, conflicted with or infringed in any material respect, the Intellectual Property of any other Person or constitute a misuse of the confidential information of any other Person. Neither Seller nor any of its Affiliates has in the 12 months immediately preceding the date of this Agreement received any written communication alleging that Seller or any of its Affiliates has in the conduct of the TBZ Business violated any rights relating to Intellectual Property of any Person or misused the confidential information of any Person and so far as Seller is aware, no claims are pending or threatened against Seller or any of its Affiliates by any Person with respect to (1) the ownership, validity or enforceability of the Assigned Intellectual Property or (2) the use in the TBZ Business of any Intellectual Property of any Person.

(c) All Technology the continued confidentiality of which is material to the Development Programs or the TBZ Business as conducted in the 12 months immediately preceding the date of this Agreement has been maintained by Seller and its Affiliates in confidence in accordance with reasonable confidentiality protection procedures and, so far as Seller is aware, no Person is using any such confidential material Technology without authorization in a way that has had or would reasonably be expected to have a Seller Material Adverse Effect. Neither Seller nor any of its Affiliates is a party to any agreement or subject to

any obligation that restricts the free use or disclosure of the Technology, except under the Assigned Contracts. Neither Seller nor any of its Affiliates has received notice of any claim for compensation from any former or current personnel in connection with the involvement of any such personnel in the conception and development of any Technology and so far as Seller is aware no such claim has been asserted or is threatened. Neither Seller nor any of its Affiliates has received written notice of any claim by any employee to pay compensation pursuant to section 40 of the Patents Act 1977, or any like provision in any other jurisdiction.

(d) Seller has furnished Purchaser with access to the material information contained in the European core dossier in CTD format, set out in folder 5.3 of the Data Room, that supports each of the Drug Approval Dossiers, including all amendments and supplements thereto, in each case to the extent such information is in Seller's or any of its Affiliates' control. Seller has complied in all material respects with all Applicable Laws and regulations in connection with the preparation and submission, to the applicable Governmental Entity in each jurisdiction with respect to which Seller or any of its Affiliates holds any marketing authorisation related to the TBZ Business, of each of the Drug Approval Dossiers prepared or submitted by Seller or any of its Affiliates. So far as Seller is aware, the Drug Approval Dossiers are in good standing with the applicable Governmental Entity in each jurisdiction where a corresponding regulatory submission has been made by Seller or any of its Affiliates. Seller has furnished to Purchaser copies of all warning letters received by Seller or its Affiliates from any Governmental Entity relating to the TBZ Products or arising out of the conduct of the TBZ Business.

SECTION 3.07. Contracts. (a) Schedule 3.07(a) sets forth a list of all written Assigned Contracts as of the date hereof. Except for the Assigned Contracts, there are no Contracts to which Seller or any of its Affiliates is a party that are material to Seller's ability to conduct the TBZ Business as currently conducted. Complete and accurate copies of all written Assigned Contracts, together with all modifications and amendments thereto that are currently in effect, have been made available to Purchaser in the Data Room.

(b) All Assigned Contracts are valid, binding and in full force and effect and Seller and its Affiliates have performed all material obligations required to be performed by them to date under the Assigned Contracts, and are not in breach or default in any material respect thereunder, and so far as Seller is aware, no other party to any Assigned Contract is in material breach or default thereunder. Seller and its Affiliates have not received any written notice of the intention of any party to terminate any Assigned Contract or any written notice of any material dispute under any Assigned Contract and, so far as Seller is aware, no party intends to terminate any such Assigned Contract.

SECTION 3.08. Assigned Inventory. Each item of Assigned Inventory is in good, usable and currently marketable condition in the ordinary course of the TBZ Business (subject, in the case of raw materials and work-in-process, to the completion of the production process).

SECTION 3.09. CMO Equipment. Schedule 3.09 sets forth a brief description of each item of CMO Equipment. Each item of CMO Equipment is in good working order (ordinary wear and tear excepted), is free from any material defect and has been maintained in all material respects in accordance with the past practice of the TBZ Business and generally

accepted pharmaceutical industry practice, and no repairs, replacements or regularly scheduled maintenance relating to any such item has been deferred. Any leased CMO Equipment is in all material respects in the condition required of such property by the terms of the lease applicable thereto.

SECTION 3.10. Ownership. Substantially all of the Acquired Assets are owned by Seller or, in the case of rights under Assigned Contracts or Regulatory Approvals, held by Seller (and not Affiliates of Seller).

SECTION 3.11. Regulatory Approvals. (a) The Regulatory Approvals set forth on Schedule 3.11 are the only Regulatory Approvals that are necessary for Seller and its Affiliates to operate or conduct the TBZ Business and the Development Programmes as operated and conducted by Seller and its Affiliates or as otherwise required by Seller and its Affiliates to use the Acquired Assets as such Acquired Assets are used by Seller and its Affiliates. All such Regulatory Approvals are held by Seller or its applicable Affiliate and neither Seller nor any of its Affiliates has in the 12 months immediately preceding the date of this Agreement received written notice that it is materially in default under any such Regulatory Approval. None of the Regulatory Approvals will be subject to suspension, modification, revocation or nonrenewal as a result of the execution and delivery of this Agreement or the consummation of the Acquisition or the other transactions contemplated hereby.

(b) Neither Seller nor any of its Affiliates has in the 12 months immediately preceding the date of this Agreement received notice of any Proceedings relating to the revocation or modification of any Regulatory Approval the loss of which, individually or in the aggregate, has had or would reasonably be expected to have a Seller Material Adverse Effect, and so far as Seller is aware, no such Proceedings are pending.

SECTION 3.12. Taxes. (a) For purposes of this Agreement, “Tax” means (i) any tax, governmental fee or other like assessment or charge of any kind whatsoever (including any net income, capital gains, alternative or add-on minimum tax, gross income, gross receipts, sales, use, ad valorem, value added, transfer, franchise, profits, licence, withholding tax on amounts paid, payroll, employment, excise, severance, stamp, capital stock, occupation, property, environmental or windfall profit tax, premium, custom, duty or other tax), together with any interest, penalty, addition to tax or additional amount due, imposed by any Governmental Entity (in any jurisdiction) responsible for the imposition of any such tax (a “Taxing Authority”) and (ii) any liability for the payment of any amount of the type described in clause (i) above as a result of a party to this Agreement being a member of an affiliated, consolidated or combined group with any other corporation, company, body corporate or partnership at any time on or prior to the Closing Date.

(b) No Liens on any Acquired Asset have been filed, and no claims with respect to any Acquired Asset are applicable with respect to any Taxes, and all documents relating to the Acquired Assets that are subject to stamp duty or a similar duty have been duly stamped. No Lien currently applies to any Acquired Asset for any Taxes.

SECTION 3.13. Proceedings. There are not any outstanding Judgments against Seller or any of its Affiliates in respect of the TBZ Business or any Acquired Asset that,

individually or in the aggregate, have had or would reasonably be expected to have a Seller Material Adverse Effect. Except as claimant in the collection of debts arising in the ordinary course of business, neither Seller nor any of its Affiliates is, in relation to the TBZ Business, a claimant or defendant in, or otherwise a party to, any Proceeding which is in progress that, individually or in the aggregate, has had or would reasonably be expected to have a Seller Material Adverse Effect.

SECTION 3.14. Absence of Changes or Events. Since the Financial Information Date, there has not been any change or event that has had or would be reasonably likely to have a Seller Material Adverse Effect, other than those relating to the economy or those generally affecting businesses similar to the TBZ Business in the pharmaceutical industry that do not disproportionately impact the TBZ Business or the Acquired Assets. Purchaser acknowledges that there may be disruption to the TBZ Business as a result of the announcement by Purchaser or any of its Affiliates of its intention to buy the TBZ Business (and there may be disruption to the TBZ Business as a result of the execution of this Agreement and the consummation of the transactions contemplated hereby), and Purchaser acknowledges that such disruptions do not and shall not constitute a breach of this Section 3.14. From the Financial Information Date to the date of this Agreement, Seller and its Affiliates have conducted the TBZ Business in the ordinary course consistent with past practices.

SECTION 3.15. Compliance with Applicable Laws. In relation to the TBZ Business, Seller and its Affiliates are in compliance in all material respects with all Applicable Laws. Seller and its Affiliates have not in the 12 months immediately preceding the date of this Agreement received any communication from any Governmental Entity that alleges that Seller or any of its Affiliates is not, in relation to the TBZ Business, in compliance with any Applicable Law where such non-compliance has had or would reasonably be expected to have a Seller Material Adverse Effect (and any such communication delivered prior to such period either (i) has not been pursued by such Governmental Entity or (ii) has been fully resolved).

SECTION 3.16. Transactions with Affiliates. Other than as a party to any Assigned Contract or in relation to the Regulatory Approvals, after Closing none of Seller's Affiliates will have any interest in any Acquired Asset.

SECTION 3.17. Effect of Transaction. No customer, supplier or other Person having a material business relationship with Seller or any of its Affiliates in relation to the TBZ Business has informed Seller or any of its Affiliates in writing that such Person intends to change such relationship because of the Acquisition or the consummation of any other transaction contemplated hereby or for any other reason.

SECTION 3.18. Relationships with Customers, Suppliers and Licensors. Since the Financial Information Date, there has not been (a) any material adverse change in the business relationship of Seller or any of its Affiliates in relation to the TBZ Business with any material customer, supplier or licensor under any Assigned Contract, (b) any material dispute relating to the TBZ Business with any material customer, supplier or licensor under any Assigned Contract or (c) so far as Seller is aware, any material disruption in the supply chain related to the TBZ Products.

SECTION 3.19. Regulatory Issues. (a)(i) The information contained in folder 4.2 of the Data Room contains all adverse event information held by Seller and its Affiliates relating to the TBZ Products and (ii) neither Seller nor any of its Affiliates has, in the 12 months immediately preceding the date of this Agreement, received or been subject to any communication from any Governmental Entity regarding adverse findings relating to any TBZ Product that has had or would reasonably be expected to have a Seller Material Adverse Effect (and any such communication delivered prior to such period either (i) has not been pursued by such Governmental Entity or (ii) has been fully resolved).

(b) (i) With respect to the TBZ Products, there has not been any product recall or market withdrawal conducted by or on behalf of Seller or any of its Affiliates or any other Person in respect of TBZ Products placed on the market by or on behalf of Seller or any of its Affiliates, and (ii) so far as Seller is aware, there is no action or Proceeding by any Governmental Entity seeking the recall of any TBZ Products placed on the market by or on behalf of Seller or any of its Affiliates currently pending or threatened.

SECTION 3.20. Warranty Claims. (a) Subject to clause (b) below, the Warranties and any Warranty Claim shall be subject to the limitations and other provisions set out in Article VIII. Without prejudice to the requirement that such matters be fairly disclosed, notwithstanding the reference to a particular Schedule to this Agreement in a particular Warranty, all matters Disclosed are Disclosed against all the Warranties.

(b) Nothing in Section 8.05(b) or (c) shall qualify or limit the liability of Seller in relation to the Warranted Statements set out in Sections 3.01, 3.02 and 3.05 (a) (the "Fundamental Warranted Statements"). Nothing in Section 8.05(a) shall qualify or limit the liability of Seller in relation to the Warranted Statements set out in Sections 3.01 and 3.02.

## ARTICLE IV

### Warranties of Purchaser

Purchaser warrants to Seller, as of the date hereof and as of Closing, that each of the statements set out in Sections 4.01 to 4.07 is true and accurate.

SECTION 4.01. Organization, Standing and Power. Purchaser is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized and has full power and authority and possesses all governmental franchises, licences, permits, authorizations and approvals necessary to enable it to own, lease or otherwise hold its assets and to carry on its business as currently conducted, other than such franchises, licences, permits, authorizations and approvals the lack of which, individually and in the aggregate, have not had and would not reasonably be expected to have a material adverse effect on the ability of Purchaser to perform its obligations under this Agreement or to consummate the Acquisition and the other transactions contemplated hereby (a "Purchaser Material Adverse Effect").

SECTION 4.02. Authority; Execution and Delivery; Enforceability. Purchaser has full power and authority to execute this Agreement and to consummate the Acquisition and the other transactions contemplated hereby. The execution and delivery by Purchaser of this

Agreement and the consummation by Purchaser of the Acquisition and the other transactions contemplated hereby have been duly authorized by all necessary action. Purchaser has duly executed and delivered this Agreement, and this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms.

SECTION 4.03. No Conflicts; Consents. The execution and delivery by Purchaser of this Agreement do not, and the consummation of the Acquisition and the other transactions contemplated hereby and compliance by Purchaser with the terms hereof will not, conflict with, or result in any violation of or default under, or give rise to a right of termination, cancellation or acceleration of any material obligation or to loss of a material benefit under, or result in the creation of any Lien upon any of the properties or assets of Purchaser under, any provision of (i) the certificate of formation or by-laws of Purchaser, (ii) any Contract to which Purchaser is a party or by which any of its assets is bound or (iii) any Judgment or law applicable to Purchaser or its assets, other than, in the case of clauses (ii) and (iii) above, any such items that, individually and in the aggregate, have not had and would not reasonably be expected to have a Purchaser Material Adverse Effect. No Consent of, or registration, declaration or filing with, any Governmental Entity is required to be obtained or made by or with respect to Purchaser in connection with the execution, delivery and performance of this Agreement or the consummation of the Acquisition and the other transactions contemplated hereby, other than (A) compliance with and filings under the U.S. Securities Exchange Act of 1934 and applicable Canadian securities legislation and (B) filings with the Relevant Competition Authorities, as applicable.

SECTION 4.04. Litigation. There are not any outstanding Judgments against Purchaser that, individually or in the aggregate, have had or would reasonably be expected to have a Purchaser Material Adverse Effect. Except as claimant in the collection of debts arising in the ordinary course of business, Purchaser is not a claimant or defendant in, or otherwise a party to, any Proceeding which is in progress that, individually or in the aggregate, has had or would reasonably be expected to have a Purchaser Material Adverse Effect.

SECTION 4.05. Necessary Cash Resources. Purchaser will have immediately available on an unconditional basis (as of Closing) the necessary cash resources to meet its obligations under this Agreement.

SECTION 4.06. Required Consents. As of the date hereof, so far as Purchaser is aware, there is no reason specific to Purchaser that is reasonably likely to form the basis for any consent described in Section 6.02(b), (e) or (f) not being obtained.

SECTION 4.07. No Prohibitions. As of the date hereof, so far as Purchaser is aware, there is no Applicable Law or injunction enacted, entered, promulgated, enforced or issued by any Governmental Entity or other legal restraint or prohibition preventing the consummation of the Acquisition.

Covenants

SECTION 5.01. Covenants of Seller Relating to Operation of TBZ Business. (a) Except with the written consent of Purchaser (such consent not to be unreasonably withheld or delayed) and except for matters expressly permitted by the terms of this Agreement, from the date hereof to Closing, Seller shall, and shall cause its Affiliates to, conduct the TBZ Business in the normal and ordinary day-to-day course in substantially the same manner as conducted in the 12 months immediately preceding the date of this Agreement (including with respect to research and development efforts, collections of accounts receivable, payment of accounts payable and Inventory levels) and use reasonable endeavours to keep intact the TBZ Business and the Acquired Assets, keep available the services of the current employees and preserve the relationships with customers, suppliers, licensors, licensees, employees and distributors. In addition (and without limiting the generality of the foregoing), except as set forth on Schedule 5.01 or as otherwise expressly permitted or required by the terms of this Agreement, Seller shall not do, and Seller shall cause its Affiliates not to do, any of the following in connection with the TBZ Business or the Acquired Assets without the prior written consent of Purchaser (such consent not to be unreasonably withheld or delayed) or save as required by Applicable Law:

(i) permit, allow or suffer any Acquired Asset to become subjected to any Lien of any nature whatsoever other than (A) licences of Intellectual Property granted in the ordinary course of business and on terms substantially consistent with past practices and (B) customary retention and reservation of title provisions in favour of suppliers, common carriers or warehousemen in respect of Inventory;

(ii) except for intercompany transactions with Seller's Affiliates in the ordinary course of business, pay, loan or advance any amount to, or sell, transfer or lease any of the Acquired Assets to, or enter into any agreement or arrangement with, any Affiliate of Seller in relation to the TBZ Business;

(iii) acquire by merging or consolidating with, or by purchasing a substantial portion of the assets of, or by any other manner, any business or any corporation, company, body corporate, partnership, firm, joint venture, association or other business organization or division thereof (whether or not having a separate legal personality) or otherwise acquire any assets (other than Inventory and Regulatory Approvals (where appropriate)) that would constitute a part of, and that are material, individually or in the aggregate, to, the TBZ Business, other than licences of Intellectual Property in the ordinary course of business and on terms substantially consistent with past practices;

(iv) enter into any transaction or any Contract or commitment relating to the Acquired Assets or the TBZ Business, except in the ordinary course of business consistent with past practices, or amend in any material respect, terminate or enter into any material Assigned Contract, save that this clause shall not require Seller to renew any Assigned Contract which terminates in accordance with its terms;

(v) make any material changes in development, registration, manufacturing, selling, pricing or advertising practices inconsistent with the practices of Seller or any of its Affiliates in relation to the TBZ Business during the 12 months immediately preceding the date of this Agreement (other than as required to satisfy the obligations contained in the second amended and restated distribution agreement, dated November 18, 2005, between Seller and Prestwick Pharmaceuticals, Inc., as amended by the amendment letter dated September 12, 2008, among Seller, Prestwick Holdings, Inc. and Ovation Pharmaceuticals, Inc.);

(vi) transfer to any third party any rights under any licences, sublicences or other agreements with respect to any Assigned Intellectual Property other than licences or sublicences in the ordinary course of business and on terms substantially consistent with past practices;

(vii) sell, lease, licence or otherwise dispose of, or grant any rights or options in or to, any of the tangible Acquired Assets, except for Inventory and obsolete equipment in the ordinary course of business;

(viii) accelerate delivery of TBZ Products relative to past practices, or otherwise modify distribution or Inventory volume or revenue recognition practices in any material respect relative to past practices; or

(ix) authorize any of, or commit or agree to take, whether in writing or otherwise, any of the foregoing actions.

Without limitation of the foregoing, Seller shall not, and shall procure its Affiliates not to, consummate the sale of, or enter into any Contract to sell, Seller's and its Affiliates' TBZ Products distribution business in the United Kingdom and the Republic of Ireland, or assign to any third party the UK/Ireland Distribution Agreement, in each case without the prior written consent of Purchaser (not to be unreasonably withheld or delayed).

Nothing in this Section 5.01 shall prevent Seller from agreeing with Cambridge Laboratories Limited to terminate the UK/Ireland Distribution Agreement with effect from the Closing Date in accordance with its terms.

(b) Advise of Changes. Seller shall, promptly upon becoming aware of it, advise Purchaser in writing of the occurrence of any matter or event that is material to the business, assets, condition (financial or otherwise), liabilities or results of operations of the TBZ Business.

(c) Affirmative Covenants. Until Closing, Seller shall, and shall cause each of its Affiliates, as applicable, to:

(i) maintain the Acquired Assets in the ordinary course of business; and

(ii) upon any damage, destruction or loss to any material Acquired Asset, apply any and all insurance proceeds received with respect thereto to the prompt repair, replacement and restoration thereof to the condition of such Acquired Asset before such



event or, if required, to such other (better) condition as may be required by Applicable Law.

(d) Consultation. Between the date hereof and the Closing Date, and provided that such consultation does not unreasonably disrupt the operations of Seller or any of its Affiliates, Seller shall, to the extent permitted by Applicable Law, use reasonable endeavours to consult in good faith on a regular and frequent basis with the representatives for Purchaser to report material developments with respect to, and the general status of, the TBZ Business and each of the Acquired Assets pursuant to procedures reasonably requested by Purchaser or such representatives. Each party acknowledges that any such consultation shall not constitute a waiver by either party of any rights it may have under this Agreement. Purchaser shall not have any liability or responsibility for any actions of Seller or any of its officers or directors with respect to matters that are the subject of such consultations unless Purchaser expressly consents to such action in writing.

(e) Audited Financial Information. Seller shall provide to Purchaser, as promptly as reasonably practicable following the date hereof, the audited consolidated balance sheet and the audited balance sheet of Cambridge Laboratories Group Limited and its subsidiaries and of Cambridge Laboratories Group Limited, respectively, as of December 31, 2008, and the related audited consolidated statement of total recognised gains and losses, the audited consolidated profit and loss account and the audited consolidated cash flow statement, in each case for Cambridge Laboratories Group Limited and its subsidiaries for the fiscal year ended on December 31, 2008 (the "Audited Financial Information").

(f) Inventory. No less than 10 days prior to the Closing Date, Purchaser and Seller shall meet to review the status and condition of the Assigned Inventory and to determine what part of the Assigned Inventory should be destroyed, and Seller shall, following Closing, promptly arrange for the proper destruction of such Assigned Inventory.

SECTION 5.02. No Solicitation. From the date hereof until the earlier of (a) Closing and (b) the date this Agreement is terminated pursuant to Article VII, Seller shall not, and Seller shall cause its Affiliates and its and their officers, directors and employees and its and their investment bankers, attorneys, accountants and other representatives not to, directly or indirectly, (i) solicit, initiate or encourage any "other bid", (ii) enter into any agreement with respect to any other bid or (iii) participate in any discussions or negotiations regarding, or furnish to any Person any information with respect to, or take any other action to facilitate any inquiries or the making of any proposal that constitutes, or may reasonably be expected to lead to, any other bid. Without limiting the foregoing, it is understood that any violation of the restrictions set forth in the preceding sentence by any officer, director or employee of Seller or any of its Affiliates or any investment banker, attorney or other advisor or representative of Seller or any of its Affiliates, whether or not such Person is purporting to act on behalf of Seller or otherwise, shall be deemed to be a breach of this Section 5.02 by Seller. As used in this Section 5.02, "other bid" shall mean any proposal to acquire in any manner the TBZ Business or any part thereof, including any Acquired Asset, other than (A) the transactions contemplated by this Agreement and (B) the sale of Inventory in the ordinary course of business. Notwithstanding the foregoing, this Section 5.02 shall not restrict solicitations, agreements, discussions, negotiations or the furnishing to any Person of information solely with respect to the sale or proposed sale of

Seller's and its Affiliates' TBZ Products distribution business in the United Kingdom and the Republic of Ireland; provided that Seller shall keep Purchaser reasonably informed of the general status of any such activities. For the avoidance of doubt, this Section 5.02 does not restrict solicitations, agreements, discussions, negotiations or the furnishing to any Person of information with respect to the sale or proposed sale of any of Seller's and its Affiliates' businesses other than the TBZ Business or any portion thereof.

SECTION 5.03. Access to Information. Subject to Applicable Law, Seller shall procure that Purchaser and its accountants, counsel and other representatives are given reasonable access, upon reasonable notice during normal business hours during the period prior to Closing, to the TBZ Business, and during such period shall furnish promptly to Purchaser any information concerning the Acquired Assets and the TBZ Business as Purchaser may reasonably request; provided that such access does not unreasonably disrupt the normal operations of Seller or any of its Affiliates.

SECTION 5.04. Competition Filings. (a) If required in connection with the execution, delivery and performance of this Agreement or the consummation of the Acquisition or the other transactions contemplated hereby, Purchaser shall, as promptly as practicable following the date of this Agreement, use reasonable endeavours to procure the filing of any notifications, reports or other submissions necessary with the Relevant Competition Authorities and to submit any supplemental information requested in connection therewith. Seller shall furnish to Purchaser such necessary information and reasonable assistance as Purchaser may request in connection with Purchaser's preparation of any notification, report or other submission or additional information that is required by the Relevant Competition Authorities.

(b) Purchaser shall use reasonable endeavours (i) to obtain any clearance, on terms reasonably satisfactory to Purchaser, from any Relevant Competition Authority that is necessary for the consummation of the Acquisition or the other transactions contemplated hereby, or (ii) to allow any applicable waiting periods required by any such Relevant Competition Authority to expire, lapse or terminate, in each case prior to the Closing Date. Notwithstanding the foregoing, in the event that any such required clearance has not been obtained or any applicable waiting period has not expired, lapsed or been terminated prior to the Closing Date, Purchaser and Seller shall cooperate in good faith to agree and implement any commercially reasonable measures that are permitted under applicable law and that (A) will enable Closing to proceed and (B) will to the greatest extent practicable preserve the relative intended economic benefits and burdens of Purchaser and Seller under this Agreement; provided that unless otherwise agreed such measures will cease to be operated no later than 24 months after Closing.

SECTION 5.05. Confidentiality. (a) Purchaser acknowledges that the information being provided to it in connection with the Acquisition and the consummation of the other transactions contemplated hereby is subject to the terms of the confidentiality agreement between Purchaser and Cambridge Laboratories Group Limited, dated as of April 2, 2009 (the "Confidentiality Agreement"), the terms of which are incorporated herein by reference. Effective upon, and only upon, Closing, the Confidentiality Agreement shall terminate with respect to information relating solely to the Acquired Assets or the TBZ Business; provided, however, that Purchaser acknowledges that any and all other information provided to it by Seller

or its Affiliates or representatives concerning Seller shall remain subject to the terms and conditions of the Confidentiality Agreement after the Closing Date as provided therein.

(b) Subject to Section 5.05(e), Seller shall keep confidential, and cause its Affiliates and its and their officers, directors, employees and advisors to keep confidential, all information relating to the Acquisition and this Agreement and the terms hereof, except as required by Applicable Law, Judgment, the rules of any stock exchange or administrative process or pursuant to a request of a Taxing Authority, and except for information that is available to the public on the Closing Date or thereafter becomes available to the public other than as a result of a breach of this Section 5.05(b). The covenant set forth in this Section 5.05(b) shall terminate three years after the Closing Date.

(c) Purchaser shall keep confidential, and cause its Affiliates and its and their respective officers, directors, employees and advisors to keep confidential, all information relating to this Agreement and the terms hereof, except as required by applicable law, Judgment, regulation, the rules of any stock exchange or administrative process or pursuant to a request of a Taxing Authority, and except for information that is available to the public on the Closing Date or thereafter becomes available to the public other than as a result of a breach of this Section 5.05(c). The covenant set forth in this Section 5.05(c) shall terminate three years after the Closing Date.

(d) Subject to Section 5.05(e), Seller shall not, and shall cause its Affiliates not to, (i) use or disclose any Technology or any other information, in each case related exclusively to the TBZ Business or the Acquired Assets or (ii) disclose any other Technology or information relating to the TBZ Business or the Acquired Assets the disclosure of which (A) Seller knows or reasonably ought to know is reasonably likely to adversely affect Purchaser or the TBZ Business in a material respect or (B) is not made in the ordinary course of business, except, in each case, as required by any Applicable Law, the rules of any stock exchange or any administrative process, or as required to be disclosed pursuant to any Assigned Contract to which Seller or any of its Affiliates is still a party or pursuant to any Regulatory Approval which is still held by Seller or any of its Affiliates following Closing, and except for information that is available to the public on the Closing Date or thereafter becomes available to the public other than as a result of a breach of this Section 5.05(d).

(e) Nothing in Section 5.05(b) or 5.05(d) shall prohibit Seller or any of its Affiliates from using or disclosing any Technology or information to the extent reasonably required to perform Seller's obligations under this Agreement. Nothing in Section 5.05(b) or Section 5.05(d)(ii) above shall prohibit Seller or any of its Affiliates (or any successor of any of them to the non-TBZ Business of Seller or any of its Affiliates) from (1) using any Technology or any information which does not relate exclusively to the TBZ Business in the ordinary course of its business or (2) disclosing any Technology or information which does not relate exclusively to the TBZ Business to any Person (i) in the ordinary course of Seller's or any of its Affiliate's (or its or their successors to the non-TBZ Business) business or (ii) in connection with the sale or attempted sale of all or any part of Seller's or any of its Affiliate's business; provided in each case that any such disclosure is made subject to an express obligation of confidentiality and covenant not to use the same in relation to any Competitive Activities.

SECTION 5.06. Expenses. Whether or not the Closing takes place, and except as set forth in Section 1.03, Section 1.04, Section 2.04, Section 5.10(b), Section 5.14, Section 5.16, Article VIII and Schedule 5.09, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such expense.

SECTION 5.07. Brokers or Finders. Purchaser warrants, as to itself and its Affiliates, that, except for Lazard Limited (the fees of which will be paid by Purchaser), no agent, broker, investment banker or other firm or Person is or will be entitled to any broker's or finder's fee or any other commission or similar fee in connection with any of the transactions contemplated by this Agreement, and Seller warrants, as to itself and its Affiliates, that no agent, broker, investment banker or other firm or Person is or will be entitled to any broker's or finder's fee or any other commission or similar fee in connection with any of the transactions contemplated by this Agreement.

SECTION 5.08. Debts. Seller shall collect the Debts for its own account and Purchaser shall give reasonable assistance (if necessary) to Seller to enable Seller to collect such Debts. Purchaser shall collect receivables constituting Acquired Assets for its own account and Seller shall give reasonable assistance (if necessary) to Purchaser to enable Purchaser to collect such receivables. Each party shall account to the other for any such items to which the other party is entitled and which are paid to it (including any part of such items as constitutes an amount in respect of the VAT liability of the other party) within 10 Business Days of receipt thereof.

SECTION 5.09. Transition Services. On and after Closing, each of Seller and Purchaser shall observe and perform those provisions of Schedule 5.09 as are expressed to be observed and performed by it.

SECTION 5.10. Post-Closing Cooperation. (a) After the Closing, upon reasonable notice, Purchaser and Seller shall provide, or cause to be provided, to each other and their respective employees, counsel, auditors and representatives access, during normal business hours, to such information and assistance relating to the TBZ Business (to the extent within the control of such party or its Affiliates) as is reasonably necessary for either party's financial reporting and accounting matters.

(b) Each party shall reimburse the other for reasonable out-of-pocket costs and expenses incurred in assisting the other pursuant to Section 5.10(a). Neither party shall be required by this Section 5.10 to take any action that would unreasonably interfere with the conduct of its business or unreasonably disrupt its normal operations (or, in the case of Purchaser, the TBZ Business). Any information relating to the Acquired Assets and the TBZ Business received by Seller pursuant to this Section 5.10 shall be subject to Section 5.05(b).

(c) Upon the request of Purchaser and at Purchaser's expense, if required by United States securities laws, Seller shall provide any financial information necessary for, and reasonable assistance with respect to, the preparation of complete carve-out audited financial statements of the TBZ Business for the three most recent fiscal years (and unaudited financial statements for any subsequent interim period) ending prior to the date of such request.

SECTION 5.11. Publicity. From the date hereof through the Closing Date, no public release or announcement concerning the transactions contemplated hereby shall be issued by any party without the prior consent of the other party (which consent shall not be unreasonably withheld), except as such release or announcement may be required by applicable law, any Judgment or the rules or regulations of any applicable securities exchange, in which case the party required to make the release or announcement shall, to the extent permitted by law or such rules or regulations, allow the other party reasonable time to comment on such release or announcement and use reasonable endeavours to obtain such other party's approval for such release or announcement in advance of such issuance.

SECTION 5.12. Records. Purchaser recognizes that certain Records may contain incidental information relating primarily to Seller or its Affiliates or businesses of Seller or its Affiliates unrelated to the Acquired Assets, the Assumed Liabilities or the TBZ Business, and that Seller may retain copies of the relevant portions thereof.

SECTION 5.13. Further Assurances. (a) Without limitation of any other provision of this Agreement, for a period of 12 months following Closing, as and when requested by any party (at the cost of such requesting party), each party shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such reasonable further actions, as such other party may reasonably deem necessary or desirable to vest any of the Acquired Assets in Purchaser or its assignee or as otherwise necessary to give full effect to this Agreement. Without limiting the foregoing, Seller shall deliver to Purchaser, at Purchaser's cost, any Assigned Inventory delivered to Seller or any of its Affiliates as soon as reasonably practicable after Closing.

(b) For a period of 12 months following Closing, Seller shall, and shall cause its Affiliates to, at Purchaser's cost, until the registration, or the application for registration, of any Assigned Intellectual Property right has been recorded in the name of Purchaser at the appropriate registry, do such things as are specifically requested by Purchaser and are reasonably necessary to enable Purchaser (i) to prosecute the application to register such Assigned Intellectual Property right, (ii) to maintain such Assigned Intellectual Property right and (iii) to establish, confirm or defend title to such Assigned Intellectual Property right.

(c) Without prejudice to the rights of Purchaser to any trademarks, logos or devices constituting Assigned Intellectual Property, for a period ending on the date that is the later of (i) the third anniversary of the Closing Date and (ii) the date on which neither Purchaser nor any of its Affiliates retains an interest in any such trademarks, logos or devices, Seller shall not, and shall cause its Affiliates not to, use as a trade mark the trade marks, logos or devices listed in Schedule 3.06(a)(i) or any confusingly similar trade mark, logo or device used in any business that develops, imports, markets, commercializes, sells, offers for sale or otherwise distributes in any manner the TBZ Products; provided that this Section 5.13(c) shall not be deemed breached solely as a result of (i) the performance of Seller's obligations under this Agreement or (ii) sales of TBZ Products by Cambridge Laboratories Limited in the United Kingdom and Republic of Ireland pursuant to the UK/Ireland Distribution Agreement.

(d) With effect from Closing, Purchaser shall not (i) except to the extent contained in any labelling of Inventory manufactured and packaged prior to 90 days following

the Closing Date or as set out in Section 5.14(f) below, use or display (including on or in its business stationery, documents, signs, promotional materials or website) any Excluded Mark or (ii) represent that Seller or any of its Affiliates retains any connection with the TBZ Business, save as the former owner of the TBZ Business.

SECTION 5.14. Regulatory Approvals. (a) For a period of 24 months from Closing, the parties shall procure the transfer or re-registration to Purchaser, on the terms of and in accordance with this Section 5.14, of each Regulatory Approval held by Seller or any of its Affiliates and acquired by Purchaser pursuant to this Agreement. Neither party nor any of its Affiliates shall have any other obligations with respect to the transfer or re-registration of any Regulatory Approval to Purchaser or the maintenance of any Regulatory Approval after Closing, except as expressly set out in this Section 5.14. For the avoidance of doubt, this Section 5.14 does not apply to any marketing authorisation relating to any TBZ Product which is held by a third party and which will continue to be held by such third party on the terms of the relevant Assigned Contract.

(b) Purchaser shall, at Purchaser's cost and expense, as soon as reasonably practicable following Closing, prepare and submit all notices, applications, submissions, reports and other instruments, documents, correspondence and filings necessary to transfer or re-register to Purchaser each such Regulatory Approval and shall pay all fees payable in connection therewith.

(c) For a period of 24 months from Closing, Seller shall, or shall procure the Affiliate of Seller that holds the Regulatory Approval to:

(i) as soon as reasonably practicable following their presentation by Purchaser to Seller, sign any notices, applications, submissions, reports and other instruments, documents, correspondence or filings presented to it by Purchaser that are necessary for the transfer or re-registration to Purchaser of the relevant Regulatory Approval;

(ii) provide notice of its consent to the transfer of the relevant Regulatory Approval to Purchaser if requested by Purchaser and required by any applicable Governmental Entity; and

(iii) provide to Purchaser or to any relevant Governmental Entity such information as is in Seller's or its Affiliate's possession and is required by any applicable Governmental Entity to enable Purchaser to obtain the transfer or re-registration to Purchaser of the relevant Regulatory Approval (as applicable); provided that nothing in this Section 5.14 shall oblige Seller or any of its Affiliates to carry out any additional clinical trials, testing or manufacturing.

(d) For a period of 24 months from Closing, Seller shall, or shall procure the Affiliate of Seller that holds the Regulatory Approval to:

(i) hold the benefit of the relevant Regulatory Approval which has not yet been transferred or re-registered to Purchaser for the account, risk and benefit of Purchaser;

(ii) maintain in force and not voluntarily vary, amend, cancel or surrender the relevant Regulatory Approval, save (A) as requested to do so by Purchaser or (B) as required to do so by any applicable Governmental Entity (and Seller shall promptly notify Purchaser following receipt of any notice of any such requirement); and

(iii) fulfil all the legal and regulatory obligations of a holder of the relevant Regulatory Approval,

and in carrying out such activities Seller shall comply with any reasonable instructions given by Purchaser consistent with the relevant Regulatory Approval being held for the account, risk and benefit of Purchaser.

(e) For a period of 24 months from Closing, to the extent permitted by the terms of the relevant Regulatory Approval, Purchaser shall market, distribute and sell TBZ Products, which are the subject of any Regulatory Approvals that have not yet been transferred to Purchaser, in the name of Seller or the Affiliate of Seller that holds the relevant Regulatory Approval and, for the avoidance of doubt, the proceeds and the Costs of any such marketing, distribution and sales shall be for the benefit and account of Purchaser.

(f) Seller hereby grants, and shall procure that its Affiliates shall grant, to Purchaser from Closing a non-exclusive, royalty-free, non-assignable licence, with the right to sub-licence, to use for a period of 30 months from Closing the Intellectual Property (including the Excluded Marks) that is owned by Seller or any of its Affiliates and is required to be used by Purchaser following Closing as a result of a Regulatory Approval being held by Seller and its Affiliates pending its transfer or re-registration to Purchaser or its designee following Closing to market and sell TBZ Products; provided that such licence (i) shall be limited (1) in relation to each Regulatory Approval, to those TBZ Products that are sold by Seller and its Affiliates under such Regulatory Approval at Closing; (2) in respect of each such TBZ Product, to those countries in which the relevant Regulatory Approval has not been transferred to Purchaser; and (3) to using and depicting such Intellectual Property in the same manner as such Intellectual Property was used and depicted by Seller and its Affiliates in such country in relation to such TBZ Products at Closing and (ii) shall terminate automatically on the later of (x) the date on which the relevant Regulatory Approval is transferred to or re-registered in the name of Purchaser or its designee and (y) the date on which any inventory of TBZ Products packaged by or on behalf of Purchaser prior to the date of the transfer of such Regulatory Approval has been depleted and provided that such licence shall terminate no later than 30 months from the Closing Date.

(g) Purchaser shall use reasonable endeavours to complete the transfer or re-registration to Purchaser of each such Regulatory Approval as soon as possible and in any event within a 12 month period from Closing. If, at the end of this 12 month period, the relevant Regulatory Approval has not been transferred or re-registered in accordance with this Section 5.14, Seller and Purchaser shall negotiate in good faith to agree upon reasonable actions that should be taken to enable Purchaser to sell the TBZ Product to which the relevant Regulatory Approval relates in the countries covered by it (such agreement not to be unreasonably withheld or delayed by either party). Following agreement of any reasonable actions in accordance with this Section 5.14, the parties shall co-operate with each other with respect to the implementation of such actions.

(h) Purchaser shall reimburse Seller and its Affiliates for all out-of-pocket costs and liabilities incurred by any of them (including amounts paid to any subcontractors or consultants) in carrying out Seller's obligations under this Section 5.14, including all costs incurred in complying with clauses (c) and (d) above and in implementing any actions agreed pursuant to clause (g) above. Following termination of the transition services arrangement described in Section 5.09, Purchaser shall also pay Seller a reasonable management fee for carrying out Seller's obligations under this Section 5.14. In addition, Purchaser shall bear all of its own costs incurred in relation thereto.

(i) The parties shall regularly consult with each other from time to time so as to facilitate the transfer or re-registration of the Regulatory Approvals held by Seller or any of its Affiliates to Purchaser in as efficient and timely a manner as is reasonably possible.

(j) Nothing in this Section 5.14 shall oblige either party or to do or to procure any act or thing which violates any Applicable Law or Judgment.

**SECTION 5.15. Agreement Not To Compete.** (a) Seller understands that Purchaser shall be entitled to protect and preserve the going concern value of the TBZ Business to the extent permitted by law and that Purchaser would not have entered into this Agreement absent the provisions of this Section 5.15 and, therefore, for a period of {\*\*\*}† from the Closing Date, within the Territory, Seller shall not, and shall cause its Affiliates not to: (i) directly or indirectly engage or be interested in activities or businesses, or establish any new businesses, that develop, import, market, commercialize, sell, offer for sale or otherwise distribute in any manner TBZ Products or any derivatives thereof or any other products with applications for treating the symptoms of any organic or inorganic hyperkinetic movement disorder, including: (A) Chorea associated with Huntington's Disease, (B) Tourette Syndrome, (C) dystonia of any sort, (D) dyskinesia of any sort, (E) tics and (F) hemiballismus (such products, "Competing Products", and such activities, "Competitive Activities"), (ii) solicit any customer or prospective customer of the TBZ Business to purchase Competing Products from anyone other than Purchaser and its Affiliates or (iii) assist any Person in any way to do, or attempt to do, anything prohibited by clause (i) or (ii) above.

(b) Section 5.15(a) shall not be deemed breached solely as a result of (i) the ownership by Seller or any of its Affiliates of less than an aggregate of {\*\*\*}† of any class of stock of a Person engaged, directly or indirectly, in Competitive Activities; provided that such stock is held for investment purposes only; (ii) the performance of Seller's obligations under this Agreement; or (iii) sales of TBZ Products by Cambridge Laboratories Limited in the United Kingdom and Republic of Ireland pursuant to the UK/Ireland Distribution Agreement.

(c) Notwithstanding any other provision of this Agreement, it is understood and agreed that remedies under this Agreement and other remedies at law may be inadequate in the case of any breach of the covenants contained in Section 5.15(a). Purchaser shall be entitled to

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† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.



seek equitable relief, including the remedy of specific performance, with respect to any breach or attempted breach of such covenants.

(d) Each undertaking contained in this Section 5.15 shall be considered a separate undertaking and if one or more of the undertakings is held to be against the public interest, unlawful or in any way an unreasonable restraint of trade, the remaining undertakings shall continue to bind Seller.

SECTION 5.16. Employees; Acquired Rights Directive. (a) The parties hereto acknowledge that the Council Directive 2001/23/EC of March 12, 2001 (the “Acquired Rights Directive”) and any Applicable Law implementing the Acquired Rights Directive may apply to the transfer of the Acquired Assets under this Agreement, so that the employment contracts of employees of Seller or any of its Affiliates (except, to the extent permitted by Applicable Law, in respect of terms relating to occupational pension arrangements) may have effect from the Closing Date as if originally made between Purchaser or any of its Affiliates and such employees as of the Closing Date.

(b) If, as a result of the transactions contemplated by this Agreement, an employment contract of any Person employed by Seller or any of its Affiliates is found or alleged to have effect after the date hereof as if originally made with Purchaser or any of its Affiliates, Seller shall, on behalf of itself and as agent and/or trustee for any of its Affiliates, indemnify Purchaser and its Affiliates for any Costs incurred or suffered by Purchaser or any of its Affiliates in connection with or arising out of (A) the employment prior to Closing of any such Person, (B) the termination of employment of any such Person, (C) the employment by Purchaser or any of its Affiliates of any such Person or any allegation that such Person should be so employed by Purchaser or any of its Affiliates and (D) any failure by Seller or any of its Affiliates to comply with any obligations to inform and/or consult with any of its employees and any representatives of its employees; provided however that Seller shall not be required to indemnify Purchaser or its Affiliates in accordance with clause (B) or (C) of this Section 5.16(b) for any Costs incurred or suffered by Purchaser or any of its Affiliates in respect of the period following the 90th day after Closing with respect to any Transferred Employee (as defined below) to whom Purchaser offers continuing employment, and who accepts such offer of continuing employment, pursuant to Section 5.16(c)(i) below (each, an “Accepting Employee”).

(c) For each of the Persons listed on Schedule 5.16(c) (each, a “Transferred Employee”), Purchaser shall, on or prior to the 90th day following the Closing Date, either (i) offer continuing employment to such Transferred Employee for the period following such 90th day (which offer shall be on terms and conditions which are in all material respects comparable to (or better than) such Transferred Employee’s terms and conditions of employment by Seller or its relevant Affiliate, but such that the Transferred Employee is not reasonably required to relocate to fulfill the terms of such offer) or (ii) if no such employment offer is made

to such Transferred Employee, pay Seller an amount equal to {\*\*\*}† for such Transferred Employee (up to an aggregate amount not to exceed {\*\*\*}† for all Transferred Employees).

(d) Purchaser shall, on behalf of itself and as agent and/or trustee for any of its Affiliates, indemnify Seller and its Affiliates for any Costs incurred or suffered by Seller or any of its Affiliates in connection with or arising out of (A) the employment of any Accepting Employee in respect of the period following the 90th day after Closing, including any liability, obligation or commitment in connection with the transfer or termination of such Person and (B) the termination of employment by Seller or any of its Affiliates or by Purchaser or any of its Affiliates of any Accepting Employee.

ARTICLE VI

Conditions Precedent

SECTION 6.01. Conditions to Each Party’s Obligation. The obligation of Purchaser to purchase and pay for the Acquired Assets and assume the Assumed Liabilities and the obligation of Seller to sell, or procure the sale of, the Acquired Assets to Purchaser is subject to the satisfaction or waiver on or prior to Closing of the following condition:

(a) No Applicable Law or injunction enacted, entered, promulgated, enforced or issued by any Governmental Entity or other legal restraint or prohibition preventing the consummation of the Acquisition shall be in effect.

SECTION 6.02. Conditions to Obligation of Purchaser. The obligation of Purchaser to purchase and pay for the Acquired Assets and assume the Assumed Liabilities is subject to the satisfaction (or waiver by Purchaser) on or prior to Closing of the following conditions:

(a) Save as Disclosed, (i) the Fundamental Warranted Statements of Seller shall be true and accurate in all material respects as of the date of this Agreement and as of Closing (except to the extent such statements expressly relate to an earlier date, in which case as of such earlier date), (ii) the Warranted Statement contained in the first sentence of Section 3.14 shall be true and accurate as of the date of this Agreement and as of the first date on which all documents described in Sections 6.02(b), (e) and (f) have been obtained (or the requirement therefor waived by Purchaser) as if made on such date, and (iii) all other Warranted Statements of Seller contained in this Agreement (excluding those described in clauses (i) and (ii)) shall be true and accurate (disregarding all qualifications or limitations as to “materiality” and “Seller Material Adverse Effect” set forth therein) as of (A) the date of this Agreement (except to the extent such statements expressly relate to an earlier date, in which case as of such earlier date), except, in the case of this clause (A), where the failure of such Warranted Statements to be so true and accurate, individually and in the aggregate, has not had and would not reasonably be expected to

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have a Seller Material Adverse Effect, and (B) Closing (except to the extent such statements expressly relate to an earlier date, in which case as of such earlier date), except, in the case of this clause (B), where the failure of such Warranted Statements to be so true and accurate, individually and in the aggregate, would not reasonably be expected to give rise to Warranty Claims with an aggregate value exceeding {\*\*\*}† (without giving effect to the limitations described in Section 8.05(a) and Section 8.05(b)).

(b) All consents, substantially in the Agreed Form, with such material changes as may be requested by the applicable counterparty and agreed between Seller and Purchaser (such agreement not to be unreasonably withheld or delayed), from the counterparty to each Assigned Contract specified on Schedule 6.02(b) to the assignment to Purchaser of the rights of Seller and its Affiliates' under each such Assigned Contract shall have been obtained, and such consents shall not have been revoked by any counterparty prior to Closing.

(c) Seller shall have performed or complied in all material respects with all obligations and covenants required by this Agreement to be performed or complied with by Seller by the time of Closing.

(d) A non-compete agreement in the Agreed Form shall have been executed and delivered by each of the shareholders of Cambridge Laboratories Group Limited set forth on Schedule 6.02(d).

(e) The letter agreement referred to in Schedule 6.02(e), in the Agreed Form, shall have been executed and delivered by LifeHealth Limited.

(f) The consent, in the Agreed Form, from LifeHealth Limited to the novation to Purchaser of the LifeHealth Agreements shall have been obtained, and such consent shall not have been revoked by LifeHealth Limited prior to Closing.

(g) Seller shall have delivered to Purchaser the Audited Financial Information, which Audited Financial Information shall be substantively identical to the Financial Information.

SECTION 6.03. Conditions to Obligations of Seller. The obligation of Seller to sell, assign, convey and deliver the Acquired Assets is subject to the satisfaction (or waiver by Seller) on or prior to Closing of the following conditions:

(a) The warranted statements of Purchaser contained in this Agreement shall be true and accurate (disregarding all qualifications or limitations as to "materiality" and "Purchaser Material Adverse Effect" set forth therein) as of the date of this Agreement and as of Closing (except to the extent such statements expressly relate to an earlier date, in which case as of such earlier date), except where the failure of such statements to be so true and accurate, individually

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and in the aggregate, has not had and would not reasonably be expected to have a Purchaser Material Adverse Effect.

(b) Purchaser shall have performed or complied in all material respects with all obligations and covenants required by this Agreement to be performed or complied with by Purchaser by the time of Closing.

(c) The guarantee in favour of Seller by Biovail Corporation of the monetary obligations of Purchaser hereunder, dated the Closing Date and in the Agreed Form, shall be in full force and effect.

(d) The consent, substantially in the Agreed Form, from Prestwick Pharmaceuticals, Inc. to the assignment to Purchaser of the rights of Seller and its Affiliates under the Prestwick Agreements shall have been obtained, and such consents shall not have been revoked by Prestwick Pharmaceuticals, Inc. prior to Closing.

SECTION 6.04. Frustration of Closing Conditions; Waivers of Closing Conditions. Neither Purchaser nor Seller may rely on the failure of any condition set forth in this Article VI to be satisfied if such failure was caused by such party's failure to act in good faith or to use its reasonable endeavours to cause Closing to occur, as required by Section 6.05. Purchaser may waive all or any of the conditions set out in Section 6.02 above (either in whole or in part) at any time by giving notice to Seller, and Seller may waive all or any of the conditions set out in Section 6.03 above (either in whole or in part) at any time by giving notice to Purchaser.

SECTION 6.05. Endeavours to Satisfy Conditions. Each party shall use reasonable endeavours to procure (so far as it is so able to procure) that each of the conditions set out in this Article VI is satisfied as soon as reasonably practicable and in any event on or before September 30, 2009 (the "Long Stop Date").

## ARTICLE VII

### Termination, Amendment and Waiver

SECTION 7.01. Termination. (a) Notwithstanding anything to the contrary in this Agreement, this Agreement may be terminated and the Acquisition and the other transactions contemplated by this Agreement abandoned at any time prior to Closing:

(i) by mutual written consent of Seller and Purchaser;

(ii) by Seller if any of the conditions set forth in Section 6.01 or 6.03 shall have become incapable of fulfillment, and shall not have been waived by Seller;

(iii) by Purchaser if any of the conditions set forth in Section 6.01 or 6.02 shall have become incapable of fulfillment, and shall not have been waived by Purchaser; or

(iv) by Seller or Purchaser if Closing does not occur on or prior to the Long Stop Date.

(b) In the event of termination by Seller or Purchaser pursuant to this Section 7.01, written notice thereof shall forthwith be given to the other party and the transactions contemplated by this Agreement shall be terminated, without further action by either party. If the transactions contemplated by this Agreement are terminated as provided herein:

(i) Purchaser shall return all documents and other material received from Seller relating to the transactions contemplated hereby, whether so obtained before or after the execution hereof, to Seller; and

(ii) all confidential information received by Purchaser with respect to the businesses of Seller shall be treated in accordance with the Confidentiality Agreement, which shall remain in full force and effect notwithstanding the termination of this Agreement.

SECTION 7.02. Effect of Termination. If this Agreement is terminated and the transactions contemplated hereby are abandoned, this Agreement shall become null and void and of no further force and effect, except for the provisions of (a) Sections 5.05(a), (b) and (c) relating to the obligations of Purchaser and Seller to keep confidential certain information and data, (b) Section 5.06 relating to certain expenses, (c) Section 5.07 relating to finder's fees and broker's fees, (d) Section 5.11 relating to publicity, (e) Section 7.01 and this Section 7.02 relating to termination, (f) Section 9.01 relating to assignment, (g) Section 9.02 relating to no third-party beneficiaries, (h) Section 9.03 relating to notices, (i) Section 9.04 relating to interpretation and certain definitions, (j) Section 9.06 relating to counterparts, (k) Section 9.07 relating to entire agreement, (l) Section 9.08 relating to severability, (m) Section 9.09 relating to governing law and jurisdiction, (n) Section 9.11 relating to language, (o) Section 9.12 relating to payments and (p) Section 9.13 relating to default interest. Nothing in this Section 7.02 shall be deemed to release any party from any liability for any breach by such party of the terms and provisions of this Agreement or to impair the right of any party to compel specific performance by any other party of its obligations under this Agreement.

SECTION 7.03. Amendments and Waivers. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto. By an instrument in writing Purchaser, on the one hand, or Seller, on the other hand, may waive compliance by the other party with any term or provision of this Agreement that such other party was or is obligated to comply with or perform. Delay in exercising or non-exercise of any such right is not a waiver of that right. The rights of each party under this Agreement may be exercised as often as necessary and, except as otherwise expressly provided by this Agreement, are cumulative and not exclusive of rights and remedies provided by law.

ARTICLE VIII

Warranty Claims

SECTION 8.01. No Additional Warranty. Purchaser acknowledges that (i) neither Seller nor any other Person has made any representation or warranty, expressed or implied, as to the Acquired Assets or the TBZ Business, or the accuracy or completeness of any information regarding the Acquired Assets or the TBZ Business furnished or made available to

Purchaser and its representatives, except as expressly set forth in this Agreement or the Schedules hereto and (ii) neither Seller nor any other Person shall have or be subject to any liability to Purchaser or any other Person resulting from the distribution to Purchaser, or Purchaser's use of, any such information, including any management presentations or in any other form in expectation of the transactions contemplated hereby. Purchaser acknowledges that, should Closing occur, Purchaser shall acquire the Acquired Assets without any representation or warranty as to merchantability or fitness for any particular purpose, in an "as is" condition and on a "where is" basis, except as otherwise expressly set forth in this Agreement.

SECTION 8.02. Notice. If Purchaser becomes aware of a matter or circumstance which is likely to give rise to a Warranty Claim, Purchaser shall give notice to Seller specifying that matter or circumstance in reasonable detail (including, if practicable, Purchaser's estimate, on a without prejudice basis, of the amount of such claim) as soon as reasonably practicable (and in any event within 30 days) after it becomes aware that Seller is or may become liable under the Warranted Statements. Any failure by Purchaser to give notice as contemplated by this Section 8.02 in relation to any matter or circumstance shall not, for the avoidance of doubt, prevent Purchaser from making any Warranty Claim arising from that matter or circumstance, but Seller shall not be liable for any Costs in respect of any such Warranty Claim to the extent such costs are increased, or are not mitigated, as a result of such failure.

SECTION 8.03. Breach of Warranted Statement at Closing. (a) If, following the date of this Agreement, Seller becomes aware of any matter that results or would result in any of the Warranted Statements being untrue or inaccurate as at the date of this Agreement or as remade at Closing, Seller shall promptly give notice of such matter to Purchaser together with such reasonable details as are reasonably available. Not less than two Business Days prior to Closing, Seller may deliver to Purchaser a second disclosure letter (the "Second Disclosure Letter") setting out any matter of which Seller is aware that would result in any of the Warranted Statements being untrue or inaccurate when remade at Closing. Neither Purchaser's receipt of notice of such matter nor the delivery of the Second Disclosure Letter shall (i) modify Purchaser's rights pursuant to Article VI hereof or be deemed Disclosed for purposes of Section 6.02(a) or (ii) except as set forth in Section 8.03(b), modify Purchaser's or Seller's rights or obligations pursuant to this Article VIII or be deemed Disclosed for purposes of this Article VIII. Seller shall provide to Purchaser such additional information as Seller may have with respect to the matters set forth in the Second Disclosure Letter as Purchaser may reasonably request.

(b) If (i) Seller delivers to Purchaser on or prior to the date immediately preceding the otherwise scheduled Closing Date a written acknowledgement (a "Condition Failure Notice") that the effect of any matter or matters set forth in the Second Disclosure Letter (identifying with reasonable specificity the matter or matters with respect to which such acknowledgement is given) is a failure of the condition to Purchaser's obligation to proceed with Closing in Section 6.02(a)(iii)(B) and (ii) Purchaser, following receipt and review of such Condition Failure Notice, waives such failure of the condition to Purchaser's obligation to proceed with Closing in Section 6.02(a)(iii)(B) and proceeds with Closing, then the matters fairly disclosed in the Second Disclosure Letter and acknowledged in the Condition Failure Notice shall be deemed to have been Disclosed for purposes of Section 8.04(a)(i).

SECTION 8.04. Exclusions. Seller shall not be liable in respect of a Warranty Claim to the extent that:

(a) the matter or circumstance giving rise to such Warranty Claim:

(i) is or arises from any matter or circumstance that has been Disclosed; or

(ii) is a matter or circumstance of which Purchaser has actual knowledge at the date of this Agreement; or

(iii) has been or is made good or is otherwise compensated for without cost or disruption to Purchaser or the TBZ Business.

(b) the relevant liability would not have arisen but for:

(i) a change in legislation or a change in the generally accepted interpretation of legislation on the basis of case law made after the date of this Agreement (whether relating to Tax, the rate of Tax or otherwise) or any amendment to or the withdrawal of any practice previously published by HM Revenue and Customs or any other Taxing Authority, in either case occurring after the date of this Agreement, whether or not that change, amendment or withdrawal purports to be effective retrospectively in whole or in part;

(ii) any change at or after Closing of the date to which the accounts relating to the TBZ Business are made up or in the basis, methods, principles or policies of account of the TBZ Business; or

(iii) any act or omission of Seller on or before Closing carried out at the written request of Purchaser.

SECTION 8.05. Financial Limits. The liability of Seller under or in respect of the Warranties shall be limited as follows:

(a) Seller shall not be liable in respect of any Warranty Claim unless the amount of the damages to which Purchaser would, but for this clause, be entitled as a result of that Warranty Claim exceeds {\*\*\*}†;

(b) Seller shall not be liable in respect of any Warranty Claim unless the amount of damages resulting from any and all Warranty Claims (including claims contemplated (but excluded) by clause (a) above) exceeds in aggregate {\*\*\*}†;

(c) the maximum aggregate liability of Seller in respect of any and all Warranty Claims other than the Fundamental Warranted Statements shall not exceed {\*\*\*}†; and

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† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

(d) the maximum aggregate liability of Seller in respect of any and all Warranty Claims shall not exceed the total consideration actually paid by Purchaser under this Agreement.

SECTION 8.06. Time Limits. The liability of Seller in respect of the Warranties shall terminate on the date falling {\*\*\*}† after the Closing Date, except in respect of any Warranty Claim of which notice is given to Seller as contemplated by Section 8.02 before the relevant date. The liability of Seller in respect of any Warranty Claim shall in any event terminate if Proceedings in respect of it have not been commenced at the earlier of (i) six months after the giving of notice of that Warranty Claim as contemplated by Section 8.02 and (ii) 23 months after the Closing Date (such earlier date, the “Claim Expiration Date”), unless that Warranty Claim arises as a result of, or in connection with, a Third Party Claim (as defined in Section 8.08) and Seller shall have assumed conduct of that Third Party Claim in accordance with Section 8.08. Notwithstanding the foregoing, Purchaser shall have up to an additional six months following the applicable Claim Expiration Date to commence such Proceedings if Purchaser reasonably determines (based on advice of independent counsel chosen by both parties (or failing such agreement, chosen by the Chairman of the Bar Council)) that such Proceedings would not result in any reasonable prospect of success in claiming sufficient damages due to none of or only part of the anticipated loss having been suffered prior to the Claim Expiration Date.

SECTION 8.07. Payment of Damages. Any payment made by Seller in respect of a Warranty Claim or made by Seller pursuant to the indemnity in Section 1.03(c) shall, to the maximum extent possible, be deemed to be a reduction in the Purchase Price.

SECTION 8.08. Third Party Claims. (a) If a Warranty Claim arises as a result of, or in connection with:

(i) a liability or alleged liability to a third party (a “Third Party Claim”), then Seller may, in respect of a Third Party Claim that is solely for monetary damages all or a majority of which Seller would be liable for in accordance with the terms hereof, within 90 days of becoming aware of such Third Party Claim, and before any final compromise, agreement, expert determination or non-appealable decision of a court or tribunal of competent jurisdiction is made in respect of such Third Party Claim or such Third Party Claim is otherwise disposed of, give notice to Purchaser that it elects to assume the conduct of any dispute, compromise, defence or appeal of the Third Party Claim and of any incidental negotiations on the following terms (provided that Seller shall not have the right to so elect to defend any Third Party Claim in respect of which Purchaser reasonably believes that to do so would reasonably be expected to result in a Material Commercial Matter (as defined below)):

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† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.



(A) Seller shall indemnify Purchaser against all liabilities, charges, costs and expenses which it may incur in taking any such action as Seller may request pursuant to clauses (B) and (C) below;

(B) Purchaser shall make available to Seller such Persons and all such information as Seller may reasonably request for assessing, contesting, disputing, defending, appealing or compromising the Third Party Claim;

(C) Except in any case in which Purchaser reasonably believes to do so would reasonably be expected to result in a Material Commercial Matter, Purchaser shall take such action to assess, contest, dispute, defend, appeal or compromise (subject to clause (E) below) the Third Party Claim as Seller may reasonably request and shall not make any admission of liability, agreement, settlement or compromise in relation to the Third Party Claim without the prior written consent of Seller (which consent shall not be unreasonably withheld or delayed);

(D) Seller shall keep Purchaser informed of the progress of the Third Party Claim and provide Purchaser with copies of all relevant documents and such other information in its possession as may be reasonably requested by Purchaser;

(E) Seller shall not, without Purchaser's prior written consent (which consent shall not be unreasonably withheld or delayed), agree to any settlement or compromise of such Third Party Claim unless such settlement or compromise obliges Seller to pay the full amount of the liability (if any) in connection with such Third Party Claim, releases Purchaser completely in connection with such Third Party Claim and would not otherwise adversely affect Purchaser in any material respect; and

(F) Purchaser shall have the right to participate in the defence of the Third Party Claim and to employ counsel (not reasonably objected to by Seller), at its own expense, separate from the counsel employed by Seller.

(ii) a Third Party Claim, Purchaser shall, until the earlier of such time as Seller shall give any notice as contemplated by clause (i) above and such time as any final compromise, agreement, expert determination or non-appealable decision of a court or tribunal of competent jurisdiction is made in respect of the Third Party Claim or the Third Party Claim is otherwise finally disposed of:

(A) consult with Seller, and take account of the reasonable requirements of Seller, in relation to the conduct of any dispute, defence, compromise or appeal of the Third Party Claim; and

(B) keep Seller promptly informed of the progress of the Third Party Claim and provide Seller with copies of all relevant documents and such other information in Purchaser's possession as may be reasonably requested by Seller; and

(C) not cease to defend the Third Party Claim or make any admission of liability, agreement or compromise in relation to the Third Party Claim without the prior written consent of Seller (which consent shall not be unreasonably withheld or delayed).

(b) Nothing in this Section 8.08 shall require the provision by any Person of any information to the extent such provision would contravene any applicable law or regulation or Judgement or would breach any duty of confidentiality owed to any third party or would, in the reasonable opinion of the Person otherwise obliged to provide the information, be likely to compromise litigation privilege or privilege in respect of future litigation. If any information is provided by any Person (the “Provider”) to any other Person (the “Recipient”) pursuant to this Section 8.08:

(i) that information shall only be used by the Recipient in connection with the Third Party Claim and Section 5.05 of this Agreement shall in all other respects apply to that information; and

(ii) to the extent that information is privileged:

(A) no privilege shall be waived by reason of or as a result of its being provided to the Recipient; and

(B) if a third party requests disclosure by the Recipient in relation to that information, the Recipient shall promptly notify the Provider and, to the extent it can do so, itself assert privilege in opposition to that disclosure request.

(c) In this Section 8.08, the expression “Material Commercial Matter” shall mean (i) the loss by Purchaser or any of its Affiliates of any material sales (from the TBZ Business or otherwise) or of any relationship with any material customer, supplier, licensor, licensee or distributor or (ii) the material impairment of Purchaser’s business reputation.

(d) Any failure by Purchaser to comply with the provisions of this Section 8.08 shall not prevent any Warranty Claim by Purchaser or extinguish any liability of Seller under the Warranted Statement in question, but shall be taken into account in calculating any such liability of Seller to the extent that such liability is increased or not mitigated by reason of such failure.

SECTION 8.09. Mitigation. Nothing in this Agreement shall be deemed to relieve Purchaser from any common law duty to mitigate any loss or damage incurred by it as a result of any of the Warranted Statements being untrue or inaccurate.

SECTION 8.10. Recovery from Third Parties. If:

(a) Seller makes a payment to Purchaser or its designee in respect of a Warranty Claim (the “Damages Payment”);

(b) at any time after the making of such payment Purchaser or any of its Affiliates receives any sum other than from Seller which would not have been received but for the matter or circumstance giving rise to that Warranty Claim (the “Third Party Sum”);

(c) the receipt of the Third Party Sum was not taken into account in calculating the Damages Payment; and

(d) the aggregate of the Third Party Sum and the Damages Payment exceeds the amount required to compensate Purchaser in full for the loss or liability which gave rise to the Warranty Claim in question,

Purchaser shall, promptly following receipt of the Third Party Sum by it, repay to Seller such amount as leaves Purchaser, after taking into account such Damages Payment and all costs reasonably incurred by Purchaser in recovering the Third Party Sum, in the same after-Tax position as if the circumstances giving rise to the Warranty Claim had not arisen.

SECTION 8.11. Insurance. Without prejudice to Purchaser's duty to mitigate any loss in respect of any of the Warranted Statements being untrue or inaccurate, if, in respect of any matter which would otherwise give rise to a Warranty Claim, Purchaser or any of its Affiliates is entitled to claim under any policy of insurance, the amount of insurance monies to which Purchaser or any of its Affiliates is entitled, less all reasonable costs of recovery, any Tax thereon and any directly related increase in the future premiums payable for such insurance, shall reduce *pro tanto* or extinguish that Warranty Claim.

SECTION 8.12. Waiver of Set Off Rights. Purchaser waives any and all rights of set off, deduction or retention against or in respect of any of its payment obligations under this Agreement which it might otherwise have by virtue of any Warranty Claim.

SECTION 8.13. Remedy of Breaches. If the matter or circumstance giving rise to a Warranty Claim is capable of remedy or mitigation, Purchaser shall, if reasonable to do so, consult with Seller to provide Seller with a reasonable opportunity to remedy or mitigate the relevant matter or circumstance (without prejudice to Purchaser's rights hereunder).

## ARTICLE IX

### General Provisions

SECTION 9.01. Assignment. None of the rights and obligations under this Agreement shall be assigned or transferred (including by operation of law in connection with a merger or consolidation of Purchaser or Seller) without the prior written consent of the other party hereto. Notwithstanding the foregoing:

(a) Purchaser may (without cost to Seller) assign, sublicense (to the extent permitted by the terms of any head licence and subject to its terms), subcontract or delegate any or all of its rights and obligations under this Agreement to an Affiliate of Purchaser for the time being without the prior written consent of Seller and, if in the case of assignment, it assigns all (but not part) of its rights under this Agreement, the assignee may enforce the obligations on the part of Seller as if it had been named in this Agreement as Purchaser; provided that (i) no such assignment, sublicense, subcontract or delegation shall limit or affect Purchaser's obligations hereunder and Purchaser shall be liable for the acts and omissions of any such assignee, sublicensee, subcontractor or delegate as though they were Purchaser's own acts and omissions, (ii) prior to any such Affiliate of Purchaser (to which such assignment, sublicense,

subcontracting or delegation has been made), ceasing to be an Affiliate of Purchaser for the time being, Purchaser shall procure that any such sublicense, subcontract or delegation is automatically and immediately terminated and, in the case of assignment, that the entire benefit of this Agreement is reassigned or otherwise returned to Purchaser or assigned to another Affiliate of Purchaser for the time being and (iii) no such assignment, sublicense, subcontract or delegation shall result in an increase of Taxes payable by Seller unless, to the extent such assignment, sublicense, subcontract or delegation does result in Taxes or additional Costs payable by Seller on an after-Tax basis, Purchaser shall indemnify Seller for any such increase in Taxes.

(b) Seller may (without cost to Purchaser) assign its right to payment under this Agreement to an Affiliate of Seller for the time being without the prior written consent of Purchaser and, if it does so, the assignee may enforce the payment obligations on the part of Purchaser as if it had been named in this Agreement as Seller; provided that (i) no such assignment shall limit or affect Seller's obligations hereunder, (ii) prior to the assignee ceasing to be an Affiliate of Seller for the time being, Seller shall procure that the right to payment under this Agreement is re-assigned to Seller or assigned to another Affiliate of Seller for the time being and (iii) no such assignment shall result in an increase of Taxes payable by Purchaser unless, to the extent such assignment does result in Taxes or additional Costs payable by Purchaser on an after-Tax basis, Seller shall indemnify Purchaser for any such increase in Taxes. Seller may also subcontract performance of all or any of its obligations under this Agreement (other than its obligations under Schedule 5.09, except to the extent provided therein) to an Affiliate of Seller and to any third party subcontractor used by Seller or any of its Affiliates in the TBZ Business during the 12 months prior to the date of this Agreement or any other subcontractor approved by Purchaser, such approval not to be unreasonably withheld or delayed; provided that no such subcontracting shall limit or affect Seller's obligations hereunder and Seller shall be liable for the acts and omissions of any such subcontractor as though they were Seller's own acts and omissions.

(c) No assignment under this Section 9.01 shall in any way operate so as to increase the liability or reduce the rights of any parties under this Agreement. Any attempted assignment in violation of this Section 9.01 shall be void.

**SECTION 9.02. No Third-Party Beneficiaries.** (a) Except as expressly stated in this Agreement, a Person who is not a party to this Agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

(b) Notwithstanding Section 9.02(a), (i) this Agreement may be rescinded or varied in any way and at any time by the parties hereto without the consent of any Person who is not a party to this Agreement and (ii) no Person who is not a party to this Agreement may enforce, or take any step to enforce, the provisions of this Agreement without the prior written consent of the relevant party hereto.

**SECTION 9.03. Notices.** All notices or other communications required or permitted to be given hereunder shall be in writing and shall be delivered by hand or sent by facsimile or sent, postage prepaid, by registered, certified or express mail or overnight courier service as follows:

(i) if to Purchaser,

Biovail Laboratories International (Barbados) SRL  
Welches  
Christ Church, Barbados  
BB17154  
Fax: 246.420.1532  
Attention: Chief Operating Officer;

with copies to:

Biovail Corporation  
7150 Mississauga Road  
Mississauga, Ontario  
L5N 8M5  
Canada  
Fax: 905.286.3050  
Attention: General Counsel;

and

Cravath, Swaine & Moore LLP  
825 8th Avenue  
Worldwide Plaza  
New York, New York 10019  
United States of America  
Fax: 212.474.3700  
Attention: Eric Schiele; and

(ii) if to Seller,

Cambridge Laboratories (Ireland) Limited  
Alexandra House  
The Sweepstakes  
Ballsbridge  
Dublin 4  
Republic of Ireland  
Fax: +353.1.631.9452  
Attention: Chief Executive Officer;

with a copy to:

Cambridge Laboratories Limited  
First Floor  
Deltic House  
Kingfisher Way  
Silverlink Business Park  
Wallsend

Tyne & Wear  
NE28 9NX  
United Kingdom  
Fax: +44.191.296.9371  
Attention: Chief Executive Officer,

or at any such other address or fax number of which it shall have given notice for this purpose to the other parties under this Section 9.03. Any notice or other communication shall be deemed to have been given:

(i) if delivered personally or sent by courier, on the date of delivery if such date is a Business Day, and otherwise on the next following Business Day; or

(ii) if sent by mail, on the fourth Business Day after it was put into the post; or

(iii) if sent by fax, on the date of transmission, if transmitted before 3.00 p.m. (local time in the country of destination) on any Business Day, and in any other case on the Business Day following the date of transmission.

In proving the giving of a notice or other communication, it shall be sufficient to prove that delivery was made or that the fax was properly addressed and transmitted or that the envelope containing the communication was properly addressed and sent, postage prepaid, by registered, certified or express mail or overnight courier service, as the case may be. This Section 9.03 shall not apply in relation to the service of any claim form, notice, order, judgment or other document relating to or in connection with any Proceedings arising out of or in connection with this Agreement.

SECTION 9.04. Interpretation; Exhibits and Schedules; Certain Definitions. (a) The headings contained in this Agreement, in any Exhibit or Schedule hereto and in the table of contents to this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall have the meaning as defined in this Agreement. When a reference is made in this Agreement to a Section, Exhibit or Schedule, such reference shall be to a Section of, or an Exhibit or Schedule to, this Agreement unless otherwise indicated.

(b) For all purposes hereof:

“Affiliate” of any Person which is not an individual means another Person which is not an individual that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such first Person.

“Agreed Form” means, in relation to any document, the form of that document which has been initialled for the purpose of identification by or on behalf of Seller and Purchaser with such changes as Seller and Purchaser may agree in writing before Closing; provided that (other than with respect to the documents referred to in Sections 6.02(e) and 6.02(f)) non-material changes can be made by Seller or Purchaser without the other party’s consent.

“Assigned Contracts” means all Contracts to which Seller or any of its Affiliates is a party or by which Seller or any of its Affiliates is bound, that relate primarily to the TBZ Business and/or the TBZ Products (excluding any employment Contracts), and including, for the avoidance of doubt, the (A) licence agreement between LifeHealth Limited and Cambridge Laboratories Limited (previously known as Cambridge Selfcare Diagnostics Limited), dated December 10, 1998, as amended (the “1998 LifeHealth Licence”), (B) licence and consent agreement between Seller and LifeHealth Limited, dated as of September 22, 2006, as amended (such agreement, together with the 1998 LifeHealth Licence, the “LifeHealth Agreements”), (C) consultancy agreement between Cambridge Laboratories Limited and High Crane Limited, dated as of December 20, 1996, as amended by the supplemental agreement, dated as of March 30, 2000, (D) second amended and restated agreement dated November 18, 2005 between Seller and Prestwick Pharmaceuticals, Inc., as amended by the amendment letter dated September 12, 2008 among Seller, Prestwick Holdings, Inc. and Ovation Pharmaceuticals, Inc., and (E) first amended and restated agreement for Canadian rights to Nitoman dated November 18, 2005 between Seller and Prestwick Pharmaceuticals, Inc., as amended by the amendment letter dated September 15, 2008 among Seller, Prestwick Pharmaceuticals, Inc. and Biovail Americas Corp. (such agreement, together with the agreement described in clause (D), the “Prestwick Agreements”).

“Business Day” means a day (other than a Saturday or Sunday) on which banks are generally open in London and Barbados for normal business.

“Control” as applied to any Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management of that Person, whether through ownership of voting securities or otherwise.

“Costs” means all liabilities, actions, proceedings, costs (including reasonable legal and other professional fees and costs), expenses, damages, claims and demands.

“Data Room” means the documents that are both (i) available to Purchaser in Seller’s electronic data room as of the date immediately prior to the date of this Agreement and (ii) referred to in the index of data room documents annexed to the Disclosure Letter.

“Debts” means:

(i) any debts or other sums due or payable to Seller or its Affiliates in connection with the TBZ Business and outstanding at Closing;

(ii) any debts or other sums which become due or payable to Seller after Closing to the extent in respect of goods sold (including TBZ Products) or services performed in connection with the TBZ Business prior to Closing;

(iii) any interest payable on the debts or other sums described in clauses (i) and (ii); and

(iv) the benefit of all securities, guarantees, indemnities and rights relating to the debts or other sums described in clauses (i), (ii) and (iii).

“Disclosed” means those matters fairly disclosed to Purchaser (a) as at the date of this Agreement, in the Disclosure Letter and (b) as at the date of Closing, in any of the Disclosure Letter and (solely to the extent set forth in Section 8.03(b)) the Second Disclosure Letter.

“Disclosure Letter” means the letter of the same date of this Agreement from Seller to Purchaser.

“\$” means United States dollars.

“Excluded Marks” means all rights in and to:

- (i) the word Cambridge;
- (ii) the word CambLabs;
- (iii) the logo used by Seller and its Affiliates depicted in Schedule 1.02(b)(xiii); and
- (iv) all variations of, and all words or marks confusingly similar to, (i), (ii) and (iii) above or any of them.

“extent”, in the phrase “to the extent”, means the degree to which a subject or other such thing extends, and such phrase shall not mean simply “if”.

“including” means including, without limitation.

“Person” means any individual, firm, corporation, company, body corporate, partnership, limited liability company, trust, joint venture, Governmental Entity, association or other entity (whether or not having separate legal personality).

“Purchase Price” means purchase price for the Acquired Assets set out in Section 2.03.

“Seller’s Irish Solicitors” means Arthur Cox of Earlsfort Centre, Earlsfort Terrace, Dublin 2, Republic of Ireland.

“Territory” means (i) with respect to any Competitive Activities relating to the development of any Competing Products, worldwide, and (ii) with respect to other Competitive Activities, any jurisdiction (A) into which Seller or any of its Affiliates distributes, directly or indirectly, TBZ Products or (B) with respect to which Seller or any of its Affiliates has made any investment of time or any other resource to advance any plan or intention to distribute, directly or indirectly, TBZ Products in the future, in the case of each of clauses (A) and (B), as of the Closing Date.

“VAT” means value added tax chargeable under or pursuant to VATA 1994 or the Value Added Tax Act 1972 of Ireland (as amended) or any equivalent legislation enacted



pursuant to Council Directive 2006/112/EC or any similar sales, purchase or turnover tax chargeable outside the European Union.

“VATA 1994” means the Value Added Tax Act 1994 of the United Kingdom.

“Warranted Statement” has the meaning given in Article III.

“Warranties” means the warranties on the part of Seller contained in Sections 3.01 to 3.19.

“Warranty Claim” means a claim by Purchaser the basis of which is that a Warranted Statement is, or is alleged to be, untrue or inaccurate.

(c) Where any statement in Article III or in the Disclosure Letter is qualified by the expression “so far as Seller is aware” or “to the best of Seller’s knowledge, information and belief” or any similar expression, that statement shall be deemed to refer to the actual knowledge of Seller after making reasonable enquiries of the following individuals: Mark Evans, David Wildy, Philip Nichols and Andrew Duffield.

SECTION 9.05. Limited Waiver of Set Off Rights. Each of Purchaser and Seller waives any and all rights of set off, deduction or retention against or in respect of any of its payment obligations under this Agreement which it might otherwise have by virtue of any claim under this Agreement, save that this waiver shall not apply to the amount payable by Purchaser pursuant to Section 2.03(b)(iii), against which Purchaser shall have the right to set off, deduct or retain amounts of the following claims (and only the following claims): any claim by Purchaser under (a) the indemnity set out in Section 1.03(c), (b) the indemnity set out in Section 5.16(b) and (c) Section 1.05 (in each case with the reasonable amount of any such claim that is unliquidated determined by independent counsel chosen by the Chairman of the Bar Council).

SECTION 9.06. Counterparts. This Agreement may be executed in one or more counterparts and by each party hereto on separate counterparts, all of which shall be considered one and the same agreement, but which shall not be effective until each party hereto has executed at least one counterpart.

SECTION 9.07. Entire Agreement. (a) This Agreement, along with the Schedules and Exhibits hereto, constitute the whole and only agreement between the parties hereto relating to the subject matter of this Agreement and supersede all previous agreements, whether oral or in writing, between the parties relating to the subject matter of this Agreement.

(b) Each party hereto acknowledges that, in entering into this Agreement, it is not relying upon any pre-contractual statement that is not set forth in this Agreement and that, except in the case of fraud, neither party hereto shall have any right of action against the other party hereto arising out of or in connection with any pre-contractual statement, except to the extent that such statement is repeated in this Agreement.

(c) For the purposes of this Section 9.07, “pre-contractual statement” means any express or implied agreement, undertaking, representation, warranty, promise, assurance or arrangement of any nature whatsoever, and any draft of any of the foregoing, whether or not in

writing, relating to the subject matter of this Agreement made or given by any Person at any time prior to the time at which this Agreement becomes legally binding.

SECTION 9.08. Severability. If any provision of this Agreement (or any portion thereof) or the application of any such provision (or any portion thereof) to any Person or circumstance is or becomes invalid, illegal or unenforceable in any respect under the law of any jurisdiction, such invalidity, illegality or unenforceability shall not affect or impair the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement or the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.

SECTION 9.09. Governing Law. (a) 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.

(b) The English courts have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to any non-contractual obligations arising out of or in connection with this Agreement) and the parties irrevocably submit to the exclusive jurisdiction of the English courts, the Judgments of which shall be conclusive and binding upon the parties and may be enforced in any other jurisdiction.

(c) Seller irrevocably appoints Cambridge Laboratories Limited of First Floor Deltic House, Kingfisher Way, Silverlink Business Park, Wallsend, Tyne & Wear NE28 9NX as its agent in England for service of process.

(d) Purchaser irrevocably appoints Cravath, Swaine & Moore LLP of CityPoint, One Ropemaker Street, London EC2Y 9HR, as its agent in England for service of process.

(e) The parties waive and agree not to raise any objection to the English courts on grounds that they are an inconvenient or inappropriate forum to settle any such dispute.

(f) Each party irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any legal action or proceeding arising, directly or indirectly, out of or relating to this Agreement or the transactions contemplated by it and for any counterclaim therein (in each case whether based on contract, tort or any other theory and whether predicated on common law, statute or otherwise). Each party (i) certifies that no representative, agent or attorney of any other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other parties have been induced to enter into this Agreement by, amongst other things, the mutual waivers and certifications in this clause.

SECTION 9.10. Law of Property (Miscellaneous Provisions) Act 1994. For avoidance of doubt, Part I of the Law of Property (Miscellaneous Provisions) Act 1994 shall not apply to the Acquired Assets that are not of a nature capable of being legally or beneficially owned.

SECTION 9.11. Language. The language of this Agreement and the transactions envisaged by it is English and all notices to be given in connection with this Agreement must be in English. All demands, requests, statements, certificates or other documents or communications to be provided in connection with this Agreement and the transactions envisaged by it must be in English or accompanied by a certified English translation; in this case the English translation prevails unless the document or communication is a statutory or other official document or communication.

SECTION 9.12. Payments. Unless otherwise expressly stated (or as otherwise agreed in the case of a given payment), each payment to be made to Seller or Purchaser under this Agreement shall be made in United States dollars by transfer of the relevant amount into the relevant account on or before the date the payment is due for value on that date. The relevant account for a given payment is:

(a) if that payment is to Seller, the account of Seller at:

Ulster Bank  
College Green  
Branch  
PO Box 145  
33 College Green  
Dublin 2

account number: {\*\*\*}†  
sort code: {\*\*\*}†  
BIC: {\*\*\*}†  
IBAN: {\*\*\*}†

or such other account as Seller shall, not less than three Business Days before the date that payment is due, have specified by giving notice to Purchaser for the purpose of that payment; and

(b) if that payment is to Purchaser, such account of Purchaser as Purchaser shall, not less than three Business Days before the date that payment is due, have specified by giving notice to Seller for the purpose of that payment.

SECTION 9.13. Default Interest. If a party defaults in making any payment when due of any sum payable under this Agreement, it shall pay interest on that sum from (and including) the date on which payment is due until (but excluding) the date of actual payment (after as well as before judgment) at an annual rate of 3% above the base rate from time to time of Ulster Bank, which interest shall accrue from day to day and be compounded monthly.

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† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

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IN WITNESS WHEREOF, Seller and Purchaser have duly executed this Agreement on the date first written above.

CAMBRIDGE LABORATORIES (IRELAND) LIMITED,  
by: /s/ Mark P. Evans  
Name: Mark P. Evans  
Title: Chief Executive Officer

BIOVAIL LABORATORIES INTERNATIONAL  
(BARBADOS) SRL,  
by: /s/ Michel Chouinard  
Name: Michel Chouinard  
Title: Chief Operating Officer

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List of Schedules

|                        |                                                |
|------------------------|------------------------------------------------|
| Schedule 1.02(a)(vii)  | Domain Names                                   |
| Schedule 1.02(b)       | Excluded Assets                                |
| Schedule 1.02(b)(xiii) | Excluded Marks                                 |
| Schedule 1.2(c)        | Shared Contracts                               |
| Schedule 2.02          | Closing                                        |
| Schedule 3.04          | Financial Information                          |
| Schedule 3.05(b)       | TBZ Products Sold by Seller and its Affiliates |
| Schedule 3.06(a)(i)    | Assigned Intellectual Property                 |
| Schedule 3.07(a)       | Assigned Contracts                             |
| Schedule 3.09          | CMO Equipment                                  |
| Schedule 3.11          | Regulatory Approvals                           |
| Schedule 5.01          | Non-Restricted Activities                      |
| Schedule 5.09          | Transition Services                            |
| Schedule 5.16(c)       | Transferred Employees                          |
| Schedule 6.02(b)       | Assigned Contracts Requiring Consent           |
| Schedule 6.02(d)       | Shareholders Subject to Non-Compete            |
| Schedule 6.02(e)       | Agreed Form of LifeHealth Limited Letter       |

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AMENDMENT NO .1  
TO  
ASSET PURCHASE AGREEMENT

BETWEEN

CAMBRIDGE LABORATORIES (IRELAND) LIMITED

AND

BIOVAIL LABORATORIES INTERNATIONAL (BARBADOS) SRL

\_\_\_\_\_  
Dated June 19th, 2009  
\_\_\_\_\_

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AMENDMENT NO. 1 (this “Amendment”) dated June 19th, 2009 to the ASSET PURCHASE AGREEMENT (the “Agreement”), dated May 16, 2009, between CAMBRIDGE LABORATORIES (IRELAND) LIMITED, a company organized under the laws of the Republic of Ireland (“Seller”), and BIOVAIL LABORATORIES INTERNATIONAL (BARBADOS) SRL, a society with restricted liability under the laws of Barbados (“Purchaser”).

Purchaser and Seller desire to amend the Agreement as provided herein in accordance with the provisions of Section 7.03 of the Agreement. Capitalised terms used but not defined in this Amendment shall have the meanings set forth in the Agreement.

Accordingly, and in consideration of the payment of £1 by Purchaser to Seller (the receipt of which is hereby acknowledged), the parties hereby agree as follows:

ARTICLE I

SECTION 1.01. Waiver of Part 2(b)(viii) of Schedule 2.02 to the Agreement. Seller hereby waives compliance with Purchaser’s obligations set forth in Part 2(b)(viii) of Schedule 2.02 to the Agreement.

SECTION 1.02. Amendment of Schedule 3.07(a) to the Agreement. The following contract is hereby added to the list of Assigned Contracts set forth on Schedule 3.07(a) to the Agreement:

“91. Agreement between Propharma Partners Limited and Cambridge Laboratories (Ireland) Limited dated 1 May 2008”

SECTION 1.03. Amendment of Schedule 5.09 to the Agreement. (a) Schedule 5.09 to the Agreement is hereby amended by adding the following as Section 1(n):

“Pharmaceutical distribution services under its existing wholesalers authorization from the Irish Medicines Board.”

(b) Section 1(m) of Schedule 5.09 to the Agreement is hereby amended by deleting the second sentence of such section and replacing it with the following:

“Purchaser acknowledges that any request pursuant to this subparagraph for additional services not set forth in subparagraphs (a)-(l) and (n) above may give rise to additional charges.”

ARTICLE II

General Provisions

SECTION 2.01. No Third-Party Beneficiaries. (a) Except as expressly stated in this Amendment, a Person who is not a party to this Amendment may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

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(b) Notwithstanding Section 2.01(a), (i) this Amendment may be rescinded or varied in any way and at any time by the parties hereto without the consent of any Person who is not a party to this Amendment and (ii) no Person who is not a party to this Amendment may enforce, or take any step to enforce, the provisions of this Amendment without the prior written consent of the relevant party hereto.

SECTION 2.02. Counterparts. This Amendment may be executed in one or more counterparts and by each party hereto on separate counterparts, all of which shall be considered one and the same agreement, but which shall not be effective until each party hereto has executed at least one counterpart.

SECTION 2.03. Agreement in Full Force and Effect. Except as expressly amended hereby, the Agreement will continue in full force and effect in accordance with the provisions thereof as in existence on the date hereof.

SECTION 2.04. Severability. If any provision of this Amendment (or any portion thereof) or the application of any such provision (or any portion thereof) to any Person or circumstance is or becomes invalid, illegal or unenforceable in any respect under the law of any jurisdiction, such invalidity, illegality or unenforceability shall not affect or impair the legality, validity or enforceability in that jurisdiction of any other provision of this Amendment or the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Amendment.

SECTION 2.05. Governing Law. (a) This Amendment shall be governed by and construed in accordance with English law. Any matter, claim or dispute arising out of or in connection with this Amendment, whether contractual or non-contractual, is to be governed by and determined in accordance with English law.

(b) The English courts have exclusive jurisdiction to settle any dispute arising out of or in connection with this Amendment (including a dispute relating to any non-contractual obligations arising out of or in connection with this Amendment) and the parties irrevocably submit to the exclusive jurisdiction of the English courts, the Judgments of which shall be conclusive and binding upon the parties and may be enforced in any other jurisdiction.

(c) Seller irrevocably appoints Cambridge Laboratories Limited of First Floor Deltic House, Kingfisher Way, Silverlink Business Park, Wallsend, Tyne & Wear NE28 9NX as its agent in England for service of process.

(d) Purchaser irrevocably appoints Cravath, Swaine & Moore LLP of CityPoint, One Ropemaker Street, London EC2Y 9HR, as its agent in England for service of process.

(e) The parties waive and agree not to raise any objection to the English courts on grounds that they are an inconvenient or inappropriate forum to settle any such dispute.

(f) Each party irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any legal action or proceeding arising, directly or indirectly, out of or relating to this Amendment and for any



counterclaim therein (in each case whether based on contract, tort or any other theory and whether predicated on common law, statute or otherwise). Each party (i) certifies that no representative, agent or attorney of any other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other parties have been induced to enter into this Amendment by, amongst other things, the mutual waivers and certifications in this clause.

IN WITNESS WHEREOF, Seller and Purchaser have duly executed this Amendment on the date first written above.

CAMBRIDGE LABORATORIES (IRELAND) LIMITED,  
by: /s/ Mark P. Evans  
Name: Mark P. Evans  
Title: CEO

BIOVAIL LABORATORIES INTERNATIONAL  
(BARBADOS) SRL,  
by: /s/ Michel Chouinard  
Name: Michel Chouinard  
Title: COO

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Industry Canada

Industrie Canada

Certificate  
of Continuance

Canada Business  
Corporations Act

Certificat  
de prorogation

Loi canadienne sur  
les sociétés par actions

Biovail Corporation

430861-1

Name of corporation-Dénomination de la société

Corporation number-Numéro de la société

I hereby certify that the above-named corporation was continued under section 187 of the *Canada Business Corporations Act*, as set out in the attached articles of continuance.

Je certifie que la société susmentionnée a été prorogée en vertu de l'article 187 de la *Loi canadienne sur les sociétés par actions*, tel qu'il est indiqué dans les clauses de prorogation ci-jointes.

/s/ RICHARD G. SHAW

Richard G. Shaw  
Director — Directeur

June 29, 2005 / le 29 juin 2005

Date of Continuance — Date de la prorogation





|                                                                                                                                                                                                                                                                                                                                                                |                                                                                          |                                                                                              |                            |                                                                  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------|----------------------------|------------------------------------------------------------------|
| 1 –                                                                                                                                                                                                                                                                                                                                                            | Name of the Corporation                                                                  | Dénomination sociale de la société                                                           | 2 –                        | Taxation Year End<br>Fin de l'année d'imposition<br>M      D – J |
| Biovail Corporation                                                                                                                                                                                                                                                                                                                                            |                                                                                          | 12 / 31                                                                                      |                            |                                                                  |
| 3 –                                                                                                                                                                                                                                                                                                                                                            | The province or territory in Canada where the registered office is to be situated        | La province ou le territoire au Canada où se situera le siège social                         |                            |                                                                  |
| Ontario                                                                                                                                                                                                                                                                                                                                                        |                                                                                          |                                                                                              |                            |                                                                  |
| 4 –                                                                                                                                                                                                                                                                                                                                                            | The classes and any maximum number of shares that the corporation is authorized to issue | Catégories et le nombre maximal d'actions que la société est autorisée à émettre             |                            |                                                                  |
| The Corporation is authorized to issue an unlimited number of Class A Special shares and an unlimited number of common shares. The rights, privileges, restrictions and conditions attaching to each of the Class A Special shares and the common shares are provided for in Schedule A annexed hereto, which Schedule A is incorporated as part of this Form. |                                                                                          |                                                                                              |                            |                                                                  |
| 5 –                                                                                                                                                                                                                                                                                                                                                            | Restrictions, if any, on share transfers                                                 | Restrictions sur le transfert des actions, s'il y a lieu                                     |                            |                                                                  |
| None                                                                                                                                                                                                                                                                                                                                                           |                                                                                          |                                                                                              |                            |                                                                  |
| 6 –                                                                                                                                                                                                                                                                                                                                                            | Number (or minimum and maximum number) of directors                                      | Nombre (ou nombre minimal et maximal) d'administrateurs                                      |                            |                                                                  |
| Minimum: 3    Maximum: 20                                                                                                                                                                                                                                                                                                                                      |                                                                                          |                                                                                              |                            |                                                                  |
| 7 –                                                                                                                                                                                                                                                                                                                                                            | Restrictions, if any, on business the corporation may carry on                           | Limites imposées à l'activité commerciale de la société, s'il y a lieu                       |                            |                                                                  |
| None                                                                                                                                                                                                                                                                                                                                                           |                                                                                          |                                                                                              |                            |                                                                  |
| 8 –                                                                                                                                                                                                                                                                                                                                                            | (1) If change of name effected, previous name                                            | (1) S'il y a changement de dénomination sociale, indiquer la dénomination sociale antérieure |                            |                                                                  |
|                                                                                                                                                                                                                                                                                                                                                                | (2) Details of incorporation                                                             | (2) Détails de la constitution                                                               |                            |                                                                  |
| Ontario Certificate and Articles of Amalgamation dated February 18, 2000                                                                                                                                                                                                                                                                                       |                                                                                          |                                                                                              |                            |                                                                  |
| 9 –                                                                                                                                                                                                                                                                                                                                                            | Other provisions, if any                                                                 | Autres dispositions, s'il y a lieu                                                           |                            |                                                                  |
| See Schedule B annexed hereto, which Schedule is incorporated as part of this Form.                                                                                                                                                                                                                                                                            |                                                                                          |                                                                                              |                            |                                                                  |
| Signature                                                                                                                                                                                                                                                                                                                                                      | Printed Name – Nome en lettres moulées                                                   | 10 – Capacity of – en qualité de                                                             | 11 – Tel. No. – N° de tél. |                                                                  |
| /s/ CHARLES A. ROWLAND, JR.                                                                                                                                                                                                                                                                                                                                    | Charles A. Rowland, Jr.                                                                  | Senior Vice-President and Chief Financial Officer                                            | 905-286-3000               |                                                                  |
| FOR DEPARTMENT USE ONLY – À L'USAGE DU MINISTÈRE SEULEMENT                                                                                                                                                                                                                                                                                                     |                                                                                          |                                                                                              |                            |                                                                  |

JUN 30 2005

## CLASS A SPECIAL SHARES

The rights, privileges, restrictions and conditions attaching to the Class A Special Shares are as follows:

### 1. Issuable in Series

1.1 The Class A Special Shares may from time to time be issued in one or more series and subject to the following provisions, the directors may fix from time to time before such issue the number of shares that is to comprise each series and the designation, rights, privileges, restrictions and conditions attaching to each series of Class A Special Shares including, without limiting the generality of the foregoing, the rate or amount of dividends or the method of calculating dividends, the dates of payment, the redemption, purchase and/or conversion, and any sinking fund or other provisions, subject to regulatory approval, if applicable.

### 2. Dividends

2.1 The Class A Special Shares of each series shall, with respect to the payment of dividends and the distribution of assets or return of capital in the event of liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, or any other return of capital or distribution of the assets of the Corporation among its shareholders for the purposes of winding up its affairs, rank on a parity with the Special shares of every other class or series and be entitled to preference over the common shares and over any other shares of the Corporation ranking junior to the Class A Special Shares. The Class A Special Shares of any series may also be given such other preferences, not inconsistent with these articles, over the common shares and any other shares of the Corporation ranking junior to such Class A Special Shares as may be fixed in accordance with clause (i).

2.2 If any amounts payable on the return of capital in respect of a series of Class A Special Shares are not paid in full, all series of Class A Special Shares shall participate rateably in respect of such dividends and return of capital.

### 3. Conversion Into Common

3.1 The Class A Special Shares of any series may be made convertible into common shares.

### 4. Voting Rights

4.1 Unless the directors otherwise determine, the holder of each share of a series of Class A Special Shares shall not be entitled to vote at a meeting of shareholders.

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**COMMON SHARES**

The rights, privileges, restrictions and conditions attaching to the common shares are as follows:

**1.   Dividends**

1.1 Subject to the prior rights of the holders of the Class A Special Shares and any other shares ranking senior to the common shares with respect to priority in the payment of dividends, the holders of common shares shall be entitled to receive dividends and the Corporation shall pay dividends thereon, as and when declared by the board of directors of the Corporation out of moneys properly applicable to the payment of dividends, in such amount and in such form as the board of directors of the Corporation may from time to time determine, and all dividends which the board of directors of the Corporation may declare on the common shares shall be declared and paid in equal amounts per share on all common shares at the time outstanding.

**2.   Dissolution**

2.1 In the event of the dissolution, liquidation or winding-up of the Corporation, whether voluntary or involuntary, or any other distribution of assets of the Corporation among its shareholders for the purpose of winding up its affairs, subject to the prior rights of the holders of the Class A Special Shares and any other shares ranking senior to the common shares with respect to priority in the distribution of assets upon dissolution, liquidation, winding-up or distribution for the purpose of winding-up, the holders of the common shares shall be entitled to receive the remaining property and assets of the Corporation.

**3.   Voting Rights**

3.1 The holders of the common shares shall be entitled to receive notice of and to attend all meetings of the shareholders of the Corporation and shall have one vote for each common share held at all meetings of the shareholders of the Corporation, except meetings at which only holders of another specified class or series of shares of the Corporation are entitled to vote separately as a class or series.

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**THIS IS SCHEDULE "B" REFERRED TO IN THE FOREGOING ARTICLES OF CONTINUANCE**

The board of directors of the Corporation may, at any time and from time to time, by resolution appoint one or more additional directors, who shall hold office for a term expiring not later than the close of the next following annual meeting of shareholders of the Corporation, provided that the total number of directors so appointed by the board of directors of the Corporation during the period between any two annual meetings of shareholders of the Corporation shall not exceed one-third of the number of directors elected at the earlier of such two annual meetings of shareholders of the Corporation.

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**BIOVAIL CORPORATION**  
**AMENDED AND RESTATED**  
**BY-LAW 1**

A by-law relating generally to the conduct of the affairs of BIOVAIL CORPORATION (the “Corporation”).

BE IT ENACTED AND IT IS HEREBY ENACTED as a by-law of the Corporation as follows:

**INTERPRETATION**

1. Definitions

In this by-law and all other by-laws of the Corporation, unless the context otherwise specifies or requires:

- (a) “Act” means the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 and the regulations thereunder, as from time to time amended, and every statute or regulation that may be substituted therefor and, in the case of such amendment or substitution, any reference in the by-laws of the Corporation shall be read as referring to the amended or substituted provisions;
- (b) “by-law” means any by-law of the Corporation from time to time in force and effect;
- (c) all terms contained in the by-laws which are defined in the Act shall have the meanings given to such terms in the Act;
- (d) words importing the singular number only shall include the plural and vice versa; words importing any gender shall include all genders; words importing persons shall include partnerships, syndicates, trusts and any other legal or business entity; and
- (e) the headings used in the by-laws are inserted for reference purposes only and are not to be considered or taken into account in construing the terms or provisions thereof or to be deemed in any way to clarify, modify or explain the effect of any such terms or provisions.

**REGISTERED OFFICE**

2. The Corporation may from time to time (i) by resolution of the directors change the place and address of the registered office of the Corporation within the Province in Canada specified in its articles, and (ii) by an amendment to its articles, change the Province in Canada in which its registered office is situated.

**SEAL**

3. The Corporation may, but need not, have a corporate seal. An instrument or agreement executed on behalf of the Corporation by a director, an officer or an agent of the Corporation is not invalid merely because the corporate seal, if any, is not affixed thereto.

**DIRECTORS**

4. Number and Powers

The number of directors, or the minimum and maximum number of directors of the Corporation, is set out in the articles of the Corporation. If a minimum and maximum number of directors is set out in the articles of the Corporation, the number of directors of the Corporation shall be the number of directors elected by the shareholders of the Corporation at the most recent meeting of shareholders. At least twenty-five percent of the directors (or one director, if the Corporation has less than four directors) shall be resident Canadians. If the Corporation is a distributing corporation and any of its outstanding securities are held by

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more than one person, it shall have at least three directors, at least two of whom are not officers or employees of the Corporation or its affiliates.

The directors shall manage, or supervise the management of, the business and affairs of the Corporation and may exercise all such powers and do all such acts and things as may be exercised or done by the Corporation and are not by the Act, the articles, the by-laws, any special resolution of the Corporation, a unanimous shareholder agreement or by statute expressly directed or required to be done in some other manner.

5. Duties

Every director and officer of the Corporation in exercising their powers and discharging their duties shall:

- (a) act honestly and in good faith with a view to the best interests of the Corporation; and
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Every director and officer of the Corporation shall comply with the Act, the regulations thereunder, the Corporation's articles and by-laws and any unanimous shareholder agreement.

6. Qualification

Every director shall be an individual 18 or more years of age and no one who is of unsound mind and has been so found by a court in Canada or elsewhere or who has the status of a bankrupt shall be a director.

7. Election of Directors

Directors shall be elected by the shareholders of the Corporation by ordinary resolution. Whenever at any election of directors of the Corporation the number or the minimum number of directors required by the articles is not elected by reason of the lack of consent, disqualification, incapacity or death of any candidates, the directors elected at that meeting may exercise all the powers of the directors if the number of directors so elected constitutes a quorum, but such quorum of directors may not fill the resulting vacancy or vacancies.

An individual who is elected or appointed to hold office as a director is not a director and is deemed not to have been elected or appointed to hold office as a director unless

- (a) he or she was present at the meeting when the election or appointment took place and he or she did not refuse to hold office as a director; or
- (b) he or she was not present at the meeting when the election or appointment took place and
  - (i) he or she consented to hold office as a director in writing before the election or appointment or within 10 days after it, or
  - (ii) he or she has acted as a director pursuant to the election or appointment.

8. Term of Office

A director's term of office (subject to the provisions (if any) of the Corporation's articles and paragraph 11 below), unless such director was elected for an expressly stated term, shall be from the date of the meeting at which such director is elected or appointed until the close of the annual meeting of shareholders next

following such director's election or appointment or until such director's successor is elected or appointed. If qualified, a director whose term of office has expired is eligible for re-election as a director.

9. Ceasing to Hold Office

A director ceases to hold office if such director:

- (a) dies or sends to the Corporation a written resignation and such resignation, if not effective upon receipt by the Corporation, becomes effective in accordance with its terms;
- (b) is removed from office in accordance with paragraph 11 below;
- (c) becomes bankrupt; or
- (d) is found by a court in Canada or elsewhere to be of unsound mind.

10. Vacancies

Notwithstanding any vacancy among the directors, the remaining directors may exercise all the powers of the directors so long as a quorum of the number of directors remains in office. Subject to subsections 111(1) and (3) of the Act and to the provisions (if any) of the Corporation's articles, where there is a quorum of directors in office and a vacancy occurs, such quorum of directors may appoint a qualified person to fill such vacancy for the unexpired term of such appointee's predecessor.

11. Removal of Directors

Subject to subsection 109(2) of the Act and unless the articles of the Corporation provide for cumulative voting, the shareholders of the Corporation may by ordinary resolution at a special meeting remove any director before the expiration of such director's term of office and may, by a majority of the votes cast at the meeting, elect any person in such director's stead for the remainder of such director's term.

If a meeting of shareholders was called for the purpose of removing a director from office as a director, the director so removed shall vacate office forthwith upon the passing of the resolution for such director's removal.

12. Validity of Acts

An act of a director or officer is valid notwithstanding an irregularity in their election or appointment or a defect in their qualification.

## **MEETINGS OF DIRECTORS**

13. Place of Meetings

Meetings of directors and of any committee of directors may be held at any place.

14. Calling Meetings

A meeting of directors may be convened by the Chair of the Board (if any), the President or any director at any time and the Secretary shall upon direction of any of the foregoing convene a meeting of directors.

15. Notice

Notice of the time and place for the holding of any such meeting shall be sent to each director not less than two days (exclusive of the day on which the notice is sent but inclusive of the day for which notice is given) before the date of the meeting; provided that meetings of the directors or of any committee of directors may be held at any time without formal notice if all the directors are present (except where a director attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called) or if all the absent directors have waived notice. The notice shall specify any matter referred to in subsection 115(3) of the Act that is to be dealt with at the meeting.

For the first meeting of directors to be held following the election of directors at an annual or special meeting of the shareholders or for a meeting of directors at which a director is appointed to fill a vacancy in the board, no notice of such meeting need be given to the newly elected or appointed director or directors in order for the meeting to be duly constituted, provided a quorum of the directors is present.

16. Waiver of Notice

Notice of any meeting of directors or of any committee of directors or any irregularity in any meeting or in the notice thereof may be waived in any manner by any director, and such waiver may be validly given either before or after the meeting to which such waiver relates. Attendance of a director at a meeting of directors is a waiver of notice of the meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

17. Electronic Participation

Where all the directors of the Corporation consent thereto (either before or after the meeting), a director may participate in a meeting of directors or of any committee of directors by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting, and a director participating in a meeting by such means shall be deemed for the purposes of the Act and the by-laws to be present at that meeting.

18. Quorum and Voting

At least 2/3 of the number of directors of the Corporation then in office shall constitute a quorum for the transaction of business, however, if there are fewer than 3 directors, all must be present to constitute a quorum. Subject to subsections 111(1), 114(4) and 117(1) of the Act, no business shall be transacted by the directors except at a meeting of directors at which a quorum is present and at which at least twenty-five per cent of the directors present are resident Canadians or, if the Corporation has less than four directors, at least one of the directors present is a resident Canadian. Questions arising at any meeting of directors shall be decided by a majority of votes. In the event of an equality of votes at any meeting of directors, the chair of the meeting shall not be entitled to a second or casting vote.

19. Adjournment

Any meeting of directors or of any committee of directors may be adjourned from time to time by the chair of the meeting, with the consent of the meeting, to a fixed time and place. No notice of the time and place for the holding of the adjourned meeting need be given to any director if the time and place of the adjourned meeting is announced at the original meeting. Any adjourned meeting shall be duly constituted if held in accordance with the terms of the adjournment and a quorum is present thereat. The directors who form the quorum at the adjourned meeting need not be the same directors who formed the quorum at the original meeting. If there is no quorum present at the adjourned meeting, the original meeting shall be deemed to have terminated forthwith after its adjournment.

20. Resolutions in Writing

A resolution in writing, signed by all the directors entitled to vote on that resolution at a meeting of directors or committee of directors, is as valid as if it had been passed at a meeting of directors or committee of directors.

**COMMITTEES OF DIRECTORS**

21. General

The directors may from time to time appoint from their number one or more committees of directors. The directors may delegate to each such committee any of the powers of the directors, except that no such committee shall have the authority to:

- (a) submit to the shareholders any question or matter requiring the approval of the shareholders;
- (b) fill a vacancy among the directors or in the office of auditor, or appoint additional directors;
- (c) subject to subsection 189(2) of the Act, issue securities except as authorized by the directors;
- (d) issue shares of a series under section 27 of the Act except as authorized by the directors;
- (e) declare dividends;
- (f) purchase, redeem or otherwise acquire shares issued by the Corporation;
- (g) pay any commission referred to in section 41 of the Act, except as authorized by the directors;
- (h) approve a management proxy circular;
- (i) approve a take-over bid circular or directors' circular;
- (j) approve any annual financial statements to be placed before the shareholders of the Corporation; or
- (k) adopt, amend or repeal by-laws of the Corporation.

22. Audit Committee

If the Corporation is a distributing corporation and any of its outstanding securities are held by more than one person, the board of directors shall elect annually from among their number an audit committee to be composed of not fewer than three directors, a majority of whom are not officers or employees of the Corporation or any of its affiliates.

Each member of the audit committee shall serve during the pleasure of the board of directors and, in any event, only so long as such member shall be a director. The directors may fill vacancies in the audit committee by election from among their number.

The audit committee shall have power to fix its quorum at not less than a majority of its members and to determine its own rules of procedure subject to any regulations imposed by the board of directors from time to time and to the following paragraph.

The auditor of the Corporation is entitled to receive notice of every meeting of the audit committee and, at the expense of the Corporation, to attend and be heard thereat; and, if so requested by a member of the audit committee, shall attend every meeting of the committee held during the term of office of the auditor. The auditor of the Corporation or any member of the audit committee may call a meeting of the committee.

The audit committee shall review the financial statements of the Corporation prior to approval thereof by the board of directors and shall have such other powers and duties as may from time to time by resolution be assigned to it by the board.

**REMUNERATION OF DIRECTORS, OFFICERS AND EMPLOYEES**

23. The remuneration to be paid to the directors of the Corporation shall be such as the directors shall from time to time by resolution determine and such remuneration shall be in addition to the salary paid to any officer or employee of the Corporation who is also a director. The directors may also by resolution award special remuneration to any director in undertaking any special services on the Corporation’s behalf other than the normal work ordinarily required of a director of a corporation. The confirmation of any such resolution or resolutions by the shareholders shall not be required. The directors may fix the remuneration of the officers and employees of the Corporation. The directors, officers and employees shall also be entitled to be paid their travelling and other expenses properly incurred by them in connection with the affairs of the Corporation.

**INDEMNITIES TO DIRECTORS AND OTHERS**

24. Subject to the provisions hereof and subsections 124(3) and (4) of the Act, the Corporation shall indemnify a director or officer of the Corporation, a former director or officer of the Corporation or another individual who acts or acted at the Corporation’s request as a director or officer, or an individual acting in a similar capacity, of another entity, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the individual in respect of any civil, criminal, administrative, investigative or other proceeding in which the individual is involved because of that association with the Corporation or other entity.

The Corporation may not indemnify an individual pursuant hereto unless the individual:

- (a) acted honestly and in good faith with a view to the best interests of the Corporation or, as the case may be, to the best interests of the other entity for which the individual acted as director or officer or in a similar capacity at the Corporation’s request; and
- (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the individual had reasonable grounds for believing that the individual’s conduct was lawful.

The Corporation is hereby authorized to execute agreements evidencing its indemnity in favour of the foregoing persons to the full extent permitted by law.

**OFFICERS**

25. Appointment of Officers

The directors may annually or as often as may be required appoint such officers as they shall deem necessary, who shall have such authority and shall perform such functions and duties as may from time to time be prescribed by resolution of the directors, delegated by the directors or by other officers or properly incidental to their offices or other duties, provided that no officer shall be delegated the power to do anything referred to in paragraph 21 above. Such officers may include, without limitation, any of a President, a Chief Executive Officer, a Chairman of the Board, one or more Vice Presidents, a Chief

Financial Officer, a Controller, a Secretary, a Treasurer and one or more Assistant Secretaries and/or one or more Assistant Treasurers. None of such officers (except the Chair of the Board) need be a director of the Corporation. A director may be appointed to any office of the Corporation. Two or more of such offices may be held by the same person.

26. Removal of Officers

All officers shall be subject to removal by resolution of the directors at any time, with or without cause. The directors may appoint a person to an office to replace an officer who has been removed or who has ceased to be an officer for any other reason.

27. Duties of Officers may be Delegated

In case of the absence or inability or refusal to act of any officer of the Corporation or for any other reason that the directors may deem sufficient, the directors may delegate all or any of the powers of such officer to any other officer or to any director for the time being.

### **SHAREHOLDERS' MEETINGS**

28. Annual or Special Meetings

The directors of the Corporation

- (a) shall call an annual meeting of shareholders not later than 18 months after the Corporation comes into existence and subsequently not later than 15 months after holding the last preceding annual meeting but no later than 6 months after the end of the Corporation's preceding financial year; and
- (b) may at any time call a special meeting of shareholders.

29. Place of Meetings

Meetings of shareholders of the Corporation shall be held at such place within Canada as the directors may determine, or at a place outside Canada if the place is specified in the articles or all the shareholders entitled to vote at the meeting agree that the meeting is to be held at that place.

30. Electronic Participation and Voting

Subject to the Act, any person entitled to attend a meeting of shareholders may participate in the meeting by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting, if the Corporation makes available such a communication facility. A person participating in a meeting by such means is deemed for all purposes of the Act and the by-laws to be present at the meeting. Subject to the Act, if the directors or the shareholders of the Corporation call a meeting of shareholders pursuant to the Act, those directors or shareholders, as the case may be, may determine that the meeting shall be held entirely by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting. Subject to the Act, any vote at a meeting of shareholders may be held entirely by means of a telephonic, electronic or other communication facility, if the Corporation makes available such a communication facility, and any person participating in a meeting of shareholders by means of such facility and entitled to vote at that meeting may vote by means of such facility, provided that any such facility made available by the Corporation shall enable the votes to be gathered in a manner that permits their subsequent verification and permit the tallied votes to be presented to the Corporation without it being possible for the Corporation to identify how each shareholder or group of shareholders voted.

31. Record Dates for Shareholder Meetings

Subject to section 134 of the Act, the directors may fix in advance a date as the record date for the purpose of determining shareholders entitled to receive notice of a meeting of shareholders and/or entitled to vote at a meeting of shareholders, but such record date shall not precede by more than 60 days or by less than 21 days the date on which the meeting is to be held.

If no record date is fixed, the record date for the determination of the shareholders entitled to receive notice of a meeting of the shareholders and to vote shall be:

- (a) at the close of business on the day immediately preceding the day on which the notice is given; or
- (b) if no notice is given, the day on which the meeting is held.

32. Shareholder List

The Corporation shall prepare an alphabetical list of the shareholders entitled to receive notice of a meeting and vote at the meeting, showing the number of shares held by each shareholder,

- (a) if a record date for determining the shareholder entitled to receive notice of the meeting and/or entitled to vote at the meeting has been fixed, not later than 10 days after that date; or
- (b) if no record date has been fixed, on the record date established in accordance with paragraph 31 above.

A shareholder whose name appears on such list is entitled to vote the shares shown opposite such shareholder's name at the meeting to which the list relates.

33. Notice

A notice stating the day, hour and place of meeting and, if special business is to be transacted thereat, stating (i) the nature of that business in sufficient detail to permit the shareholder to form a reasoned judgment thereon, and (ii) the text of any special resolution to be submitted to the meeting, shall be sent to each shareholder entitled to vote at the meeting, to each director of the Corporation and to the auditor (if any) of the Corporation. Such notice shall be personally delivered or sent by prepaid mail, if the Corporation is a distributing corporation, not less than 21 days (or, if the Corporation is not a distributing corporation, not less than such number of days as may be fixed by the directors) and not more than 60 days (exclusive of the day of mailing and of the day for which notice is given) before the date of every meeting, and shall be addressed to the latest address of each such person as shown in the records of the Corporation or its transfer agent, or if no address is shown therein, then to the last address of each such person known to the Secretary. Notwithstanding the foregoing, a meeting of shareholders may be held for any purpose at any date and time and, subject to subsection 132(2) of the Act, at any place without notice if all the shareholders and other persons entitled to notice of such meeting are present in person or represented by proxy at the meeting (except where a shareholder or such other person attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called) or if all the shareholders and other persons entitled to notice of such meeting and not present in person nor represented by proxy thereat waive notice of the meeting. Notice of any meeting of shareholders or the time for the giving of any such notice or any irregularity in any such meeting or in the notice thereof may be waived in any manner by any shareholder, the duly appointed proxy of any shareholder, any director or the auditor of the Corporation and any other person entitled to attend a meeting of shareholders, and any such waiver may be validly given either before or after the meeting to which such waiver relates.

The auditor (if any) of the Corporation is entitled to receive notice of every meeting of shareholders of the Corporation and, at the expense of the Corporation, to attend and be heard thereat on matters relating to the auditor's duties.

34. Omission of Notice

The accidental omission to give notice of any meeting to or the non-receipt of any notice by any person shall not invalidate any resolution passed or any proceeding taken at any meeting of shareholders.

35. Chair

The Chair of the Board (if any) shall when present preside at all meetings of shareholders. In the absence of the Chair of the Board (if any), the President or, if the President is also absent, a Vice-President (if any) shall act as chair. If none of such officers is present at a meeting of shareholders, the shareholders present entitled to vote shall choose a director as chair of the meeting and if no director is present or if all the directors decline to take the chair then the shareholders present shall choose one of their number to be chair.

36. Votes

Votes at meetings of the shareholders may be cast either personally or by proxy. At every meeting at which a shareholder is entitled to vote, such shareholder (if present in person) or the proxyholder for such shareholder shall have one vote on a show of hands. Upon a ballot on which a shareholder is entitled to vote, every shareholder (if present in person or by proxy) shall (subject to the provisions, if any, of the Corporation's articles) have one vote for every share registered in such shareholder's name.

Every question submitted to any meeting of shareholders shall be decided in the first instance on a show of hands and in case of an equality of votes the chair of the meeting shall both on a show of hands and on a ballot have a second or casting vote in addition to the vote or votes to which the chair may be entitled as a shareholder or proxy nominee.

At any meeting, unless a ballot is demanded by a shareholder or proxyholder entitled to vote at the meeting, either before or after any vote by a show of hands, a declaration by the chair of the meeting that a resolution has been carried or carried unanimously or by a particular majority or lost or not carried by a particular majority shall be evidence of the fact without proof of the number or proportion of votes recorded in favour of or against the motion.

If at any meeting a ballot is demanded on the election of a chair or on the question of adjournment or termination, the ballot shall be taken forthwith without adjournment. If a ballot is demanded on any other question or as to the election of directors, the ballot shall be taken in such manner and either at once or later at the meeting or after adjournment as the chair of the meeting directs. The result of a ballot shall be deemed to be the resolution of the meeting at which the ballot was demanded. A demand for a ballot may be made either before or after any vote by show of hands and may be withdrawn.

If the chair of a meeting of shareholders declares to the meeting that, if a ballot is conducted, the total number of votes attached to shares represented at the meeting by proxy required to be voted against what to the knowledge of the chair will be the decision of the meeting in relation to any matter or group of matters is less than 5% of all of the votes that might be cast by shareholders personally or by proxy at the meeting on the ballot, unless a shareholder or proxyholder demands a ballot prior to the vote,

- (a) the chair may conduct the vote in respect of that matter or group of matters by a show of hands; and



- (b) a proxyholder or alternate proxyholder may vote in respect of that matter or group of matters by a show of hands, notwithstanding any directions to the contrary given to such proxyholder or alternate proxyholder from any shareholder who appointed such proxyholder or alternate proxyholder, or any conflicting instructions from more than one such shareholder.

Where a body corporate or association is a shareholder, any individual authorized by a resolution of the directors or governing body of the body corporate or association may represent it at any meeting of shareholders and exercise at such meeting on behalf of the body corporate or association all the powers it could exercise if it were an individual shareholder, provided that the Corporation or the chair of the meeting may require such shareholder or such individual authorized by it to furnish a certified copy of such resolution or other appropriate evidence of the authority of such individual.

Where two or more persons hold the same share or shares jointly, any one of such persons present at a meeting of shareholders has the right, in the absence of the other or others, to vote such share or shares, but if more than one of such persons are present or represented by proxy and vote, they shall vote together as one on the share or shares jointly held by them.

37. Proxies

A shareholder entitled to vote at a meeting of shareholders may by means of a proxy appoint a proxyholder or proxyholders or one or more alternate proxyholders, who are not required to be shareholders, to attend and act at the meeting in the manner and to the extent authorized by the proxy and with the authority conferred by the proxy.

A form of proxy shall be a written or printed form that complies with the regulations under the Act (to the extent applicable). A form of proxy becomes a proxy on completion by or on behalf of a shareholder and execution by the shareholder or such shareholder's attorney authorized in writing. Alternatively, a proxy may be an electronic document that satisfies the requirements of Part XX.1 of the Act. A proxy is valid only at the meeting in respect of which it is given or at any adjournment thereof.

The directors may specify in a notice calling a meeting of shareholders a time not exceeding 48 hours, excluding Saturdays and holidays, preceding the meeting or an adjournment thereof before which time proxies to be used at the meeting must be deposited with the Corporation or its agent (subject to the rights of shareholders to revoke proxies, as provided below).

A shareholder may revoke a proxy either (i) by depositing an instrument in writing executed by the shareholder or by the shareholder's attorney authorized in writing at the registered office of the Corporation at any time up to and including the last business day preceding the day of the meeting, or an adjournment thereof, at which the proxy is to be used, or with the chair of the meeting on the day of the meeting or an adjournment thereof, or (ii) in any other manner permitted by law.

38. Adjournment

The chair of the meeting may with the consent of the meeting adjourn any meeting of shareholders from time to time to a fixed time and place. If the meeting is adjourned for less than 30 days, no notice of the time and place for the holding of the adjourned meeting need be given to any shareholder, other than by announcement at the earliest meeting that is adjourned. If a meeting of shareholders is adjourned by one or more adjournments for an aggregate of 30 days or more, notice of the adjourned meeting shall be given as for an original meeting but, unless the meeting is adjourned by one or more adjournments for an aggregate of more than 90 days, subsection 149(1) of the Act does not apply. Any adjourned meeting shall be duly constituted if held in accordance with the terms of the adjournment and a quorum is present thereat. The persons who form the quorum at the adjourned meeting need not be the same persons who formed the quorum at the original meeting. If there is no quorum present at the adjourned meeting, the original meeting shall be deemed to have terminated forthwith after its adjournment. Any business may be brought before or

dealt with at any adjourned meeting which might have been brought before or dealt with at the original meeting in accordance with the notice calling the same.

39. Quorum

A quorum for the transaction of business at any meeting of shareholders of the Corporation shall be two persons present, each being a shareholder entitled to vote thereat or a duly appointed proxyholder or representative for a shareholder so entitled, and together holding or representing shares of the Corporation having not less than 25% of the outstanding votes entitled to be cast at the meeting.

40. Resolutions in Writing

Subject to subsection 142(1) of the Act,

- (a) a resolution in writing signed by all the shareholders entitled to vote on that resolution at a meeting of shareholders is as valid as if it had been passed at a meeting of the shareholders; and
- (b) a resolution in writing dealing with all matters required by the Act to be dealt with at a meeting of shareholders, and signed by all the shareholders entitled to vote at that meeting, satisfies all the requirements of the Act relating to meetings of shareholders.

**SHARES AND TRANSFERS**

41. Issuance

Subject to the articles of the Corporation, shares in the Corporation may be issued at such time and issued to such persons and for such consideration as the directors may determine.

42. Security Certificates

Security certificates (and the form of transfer power on the reverse side thereof) shall (subject to compliance with section 49 of the Act) be in such form as the directors may from time to time by resolution approve and such certificates shall be signed by a director or officer of the Corporation, or by a registrar, transfer agent or branch transfer agent of the Corporation, or an individual on their behalf, or by a trustee who certifies it in accordance with a trust indenture, or the signature shall be printed or otherwise mechanically reproduced on the certificate. If a security certificate contains a printed or mechanically reproduced signature of a person, the Corporation may issue the security certificate, notwithstanding that the person has ceased to be a director or an officer of the Corporation, and the security certificate is as valid as if the person were a director or an officer at the date of its issue.

43. Agent

The directors may from time to time by resolution appoint or remove an agent to maintain a central securities register and branch securities registers for the Corporation.

44. Surrender of Security Certificates

Subject to the Act, no transfer of a security issued by the Corporation shall be recorded or registered unless and until either (i) the security certificate representing the security to be transferred has been surrendered and cancelled, or (ii) if no security certificate has been issued by the Corporation in respect of such share, a duly executed security transfer power in respect thereof has been presented for registration.

45. Defaced, Destroyed, Stolen or Lost Security Certificates

In case of the defacement, destruction, theft or loss of a security certificate, the fact of such defacement, destruction, theft or loss shall be reported by the owner to the Corporation or to a trustee, registrar, transfer agent or other agent of the Corporation (if any) acting on behalf of the Corporation, with a statement verified by oath or statutory declaration as to the defacement, destruction, theft or loss and the circumstances concerning the same and with a request for the issuance of a new security certificate to replace the one so defaced, destroyed, stolen or lost. Upon the giving to the Corporation (or, if there is such an agent, then to the Corporation and to such agent) of an indemnity bond of a surety company in such form as is approved by any authorized officer of the Corporation, indemnifying the Corporation (and such agent, if any) against all loss, damage and expense, which the Corporation and/or such agent may suffer or be liable for by reason of the issuance of a new security certificate to such shareholder, and provided the Corporation or such agent does not have notice that the security has been acquired by a *bona fide* purchaser, a new security certificate may be issued in replacement of the one defaced, destroyed, stolen or lost, if such issuance is ordered and authorized by any authorized officer of the Corporation or by resolution of the directors.

**DIVIDENDS**

46. Declaration and Payment of Dividends

The directors may from time to time by resolution declare and the Corporation may pay dividends on its issued shares, subject to the provisions (if any) of the Corporation’s articles.

The directors shall not declare and the Corporation shall not pay a dividend if there are reasonable grounds for believing that:

- (a) the Corporation is, or would after the payment be, unable to pay its liabilities as they become due; or
- (b) the realizable value of the Corporation’s assets would thereby be less than the aggregate of its liabilities and stated capital of all classes.

The Corporation may pay a dividend by issuing fully paid shares of the Corporation and, subject to section 42 of the Act, the Corporation may pay a dividend in money or property.

47. Joint Securityholders

In case several persons are registered as the joint holders of any securities of the Corporation, any one of such persons may give effectual receipts for all dividends and payments on account of dividends, principal, interest and/or redemption payments on redemption of securities (if any) subject to redemption in respect of such securities.

**RECORD DATES**

48. Shareholders’ Meetings

Subject to section 134 of the Act, the directors may fix in advance a date as the record date for the purpose of determining shareholders entitled to receive notice of a meeting of shareholders and/or entitled to vote at a meeting of shareholders, but such record date shall not precede by more than 60 days or by less than 21 days the date on which the meeting is to be held.

If no record date is fixed, the record date for the determination of the shareholders entitled to receive notice of a meeting of the shareholders and to vote shall be:

- (a) at the close of business on the day immediately preceding the day on which the notice is given; or
- (b) if no notice is given, the day on which the meeting is held.

49. Dividends, Distributions or Other Purposes

Subject to section 134 of the Act, the directors may fix in advance a date as the record date for the determination of shareholders (i) entitled to receive payment of a dividend, (ii) entitled to participate in a liquidation or distribution, or (iii) for any other purpose (other than to establish a shareholder's right to receive notice of a meeting or to vote), but such record date shall not precede by more than 60 days the particular action to be taken.

If no record date is fixed, the record date for the determination of shareholders for any purpose other than to establish a shareholder's right to receive notice of a meeting or to vote shall be at the close of business on the day on which the directors pass the resolution relating thereto.

**VOTING SECURITIES IN OTHER ISSUERS**

50. All securities of any other body corporate or issuer of securities carrying voting rights held from time to time by the Corporation may be voted at all meetings of shareholders, bondholders, debenture holders or holders of such securities, as the case may be, of such other body corporate or issuer and in such manner and by such person or persons as the directors of the Corporation shall from time to time determine and authorize by resolution. The duly authorized signing officers of the Corporation may also from time to time execute and deliver for and on behalf of the Corporation proxies and/or arrange for the issuance of voting certificates and/or other evidence of the right to vote in such names as they may determine without the necessity of a resolution or other action by the directors.

**NOTICES, ETC.**

51. Service

Any notice or other document required to be given or sent by the Corporation to any shareholder or director or the auditor of the Corporation shall be delivered personally or sent by prepaid mail or by fax, electronic mail or other electronic means capable of producing a written copy addressed to:

- (a) such shareholder at such shareholder's latest address as shown on the records of the Corporation or its transfer agent;
- (b) such director at such director's latest address as shown in the records of the Corporation or in the last notice filed under section 106 or 113 of the Act; and
- (c) the auditor of the Corporation at the auditor's latest address known to the Corporation.

With respect to every notice or other document sent by prepaid mail, it shall be sufficient to prove that the envelope or wrapper containing the notice or other document was properly addressed and put into a post office or into a post office letter box.

52. Shareholders Who Cannot be Found

If the Corporation sends a notice or document to a shareholder and the notice or document is returned on two consecutive occasions because the shareholder cannot be found, the Corporation is not required to send any further notices or documents to the shareholder until the shareholder informs the Corporation in writing of the shareholder's new address.

53. Shares Registered in More than One Name

All notices or other documents shall, with respect to any shares in the capital of the Corporation registered in more than one name, be given to whichever of such persons is named first in the records of the Corporation and any notice or other document so given shall be sufficient notice or delivery of such document to all the holders of such shares.

54. Persons Becoming Entitled by Operation of Law

Every person who by operation of law, transfer or by any other means whatsoever shall become entitled to any shares in the capital of the Corporation shall be bound by every notice or other document in respect of such shares which prior to such person's name and address being entered on the records of the Corporation shall have been duly given to the person or persons from whom such person derives title to such shares.

55. Deceased Shareholder

Any notice or other document delivered or sent by post or left at the address of any shareholder as the same appears in the records of the Corporation shall, notwithstanding that such shareholder be then deceased and whether or not the Corporation has notice of such shareholder's death, be deemed to have been duly served in respect of the shares held by such shareholder (whether held solely or with other persons) until some other person be entered in such shareholder's stead in the records of the Corporation as the holder or one of the holders thereof and such service shall for all purposes be deemed a sufficient service of such notice or other document on such shareholder's heirs, executors or administrators and all persons (if any) interested with such shareholder in such shares.

56. Signatures to Notices

The signature of any director or officer of the Corporation to any notice may be written, printed or otherwise mechanically reproduced.

57. Computation of Time

Where a given number of days notice or notice extending over any period is required to be given under any provisions of the articles or by-laws of the Corporation, the day of service, posting or other communication of the notice shall, unless it is otherwise provided, be counted in such number of days or other period and such notice shall be deemed to have been given or sent on the day of service, posting or other communication.

58. Proof of Service

A certificate of any officer of the Corporation in office at the time of the making of the certificate or of an agent of the Corporation as to facts in relation to the mailing or delivery or service or other communication of any notice or other documents to any shareholder, director, officer or auditor or as to the publication of any notice or other document shall be conclusive evidence thereof and shall be binding on every shareholder, director, officer or auditor of the Corporation, as the case may be.

## **CHEQUES, DRAFTS, NOTES, ETC.**

59. All cheques, drafts or orders for the payment of money and all notes, acceptances and bills of exchange shall be signed by such officer or officers or other person or persons, whether or not officers of the Corporation, and in such manner as the directors, or such officer or officers as may be delegated authority by the directors to determine such matters, may from time to time designate.

## **CUSTODY OF SECURITIES**

60. All securities (including warrants) owned by the Corporation shall be lodged (in the name of the Corporation) with a chartered bank or a trust company or in a safety deposit box or, if so authorized by resolution of the directors, with such other depositaries or in such other manner as may be determined from time to time by the directors.

All securities (including warrants) belonging to the Corporation may be issued and held in the name of a nominee or nominees of the Corporation (and if issued or held in the names of more than one nominee shall be held in the names of the nominees jointly with right of survivorship) and shall be endorsed in blank with endorsement guaranteed in order to enable transfer thereof to be completed and registration thereof to be effected.

## **EXECUTION OF CONTRACTS, ETC.**

61. Contracts, documents or instruments in writing requiring the signature of the Corporation may be signed by any two of the Executive Chairman, the Chief Executive Officer or the Secretary of the Corporation together, provided that (i) any such contracts, documents or instruments in writing that involve a consideration of \$250,000 or more must be signed by the Executive Chairman and any one other officer of the Corporation and (ii) any such contracts, etc. that involve a consideration of less than \$100,000 may be signed by any two officers of the Corporation and all contracts, documents or instruments in writing so signed shall be binding upon the Corporation without any further authorization or formality. The directors are authorized from time to time by resolution to appoint any officer or officers or any other person or persons on behalf of the Corporation either to sign contracts, documents or instruments in writing generally or to sign specific contracts, documents or instruments in writing.

The corporate seal, if any, of the Corporation may, when required, be affixed to contracts, documents or instruments in writing signed as aforesaid or by an officer or officers, person or persons appointed as aforesaid by resolution of the board of directors.

The term “contracts, documents or instruments in writing” as used in this by-law shall include deeds, mortgages, hypothecs, charges, conveyances, transfers and assignments of property, real or personal, immovable or movable, powers of attorney, agreements, releases, receipts and discharges for the payment of money or other obligations, conveyances, transfers and assignments of securities and all paper writings.

The signature or signatures of any officer or director of the Corporation and/or of any other officer or officers, person or persons appointed as aforesaid by resolution of the directors may, if specifically authorized by resolution of the directors, be printed, engraved, lithographed or otherwise mechanically reproduced upon all contracts, documents or instruments in writing or bonds, debentures or other securities of the Corporation executed or issued by or on behalf of the Corporation and all contracts, documents or instruments in writing or securities of the Corporation on which the signature or signatures of any of the foregoing officers, directors or persons shall be so reproduced, by authorization by resolution of the directors, shall be deemed to have been manually signed by such officers, directors or persons whose signature or signatures is or are so reproduced and shall be as valid to all intents and purposes as if they had been signed manually and notwithstanding that the officers, directors or persons whose signature or signatures is or are so reproduced may have ceased to hold office at the date of delivery or issue of such contracts, documents or instruments in writing or securities of the Corporation.

**FINANCIAL YEAR**

62. The financial year of the Corporation shall end on such day in each year as the board of directors may from time to time by resolution determine.

**Biovail Corporation**

**BY-LAW 2**

BE IT ENACTED AND IT IS HEREBY ENACTED as a by-law of BIOVAIL CORPORATION (the "Corporation") as follows:

1. The directors may and they are hereby authorized from time to time to, without authorization of the shareholders,
    - (a) borrow money upon the credit of the Corporation;
    - (b) limit or increase the amount to be borrowed;
    - (c) issue, reissue, sell or pledge bonds, debentures, notes or other debt obligations of the Corporation for such sums and at such prices as may be deemed expedient;
    - (d) give a guarantee on behalf of the Corporation to secure payment or performance of an obligation of any person; and
    - (e) mortgage, hypothecate, charge, pledge or otherwise create a security interest in all or any currently owned or subsequently acquired real and personal, movable and immovable, property of the Corporation and the undertaking and rights of the Corporation, to secure any such bonds, debentures, notes or other debt obligations, or to secure any present or future borrowing, liability or obligation of the Corporation, including any guarantee given pursuant to subparagraph 1(d) of this by-law.
  2. The directors may from time to time by resolution delegate to any one or more directors or officers, or to any committee of directors, of the Corporation all or any of the powers conferred on the directors by paragraph 1 of this by-law to the full extent thereof or such lesser extent as the directors may in any such resolution provide.
  3. The powers hereby conferred shall be deemed to be in supplement of and not in substitution for any other powers to borrow money for the purposes of the Corporation or to do any other acts or things referred to in paragraph 1 of this by-law possessed by its directors or officers pursuant to the articles of the Corporation, any other by-law of the Corporation or applicable law.
-



**BIOVAIL CORPORATION**  
**as Issuer**  
**AND**  
**THE BANK OF NEW YORK MELLON**  
**as Trustee**  
**AND**  
**BNY TRUST COMPANY OF CANADA**  
**as Co-Trustee**

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**Indenture**  
**Dated as of June 10, 2009**

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**5.375% Senior Convertible Notes due 2014**

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INDENTURE, dated as of June 10, 2009, between BIOVAIL CORPORATION, a corporation duly organized and subsisting under the laws of Canada, as Issuer (herein called the “**Company**”), having its principal office at 7150 Mississauga Road, Mississauga, Ontario, Canada, L5N 8M5 (Facsimile No. (905) 286-3370), Attention: Senior Vice-President and Associate General Counsel, and THE BANK OF NEW YORK MELLON, a New York banking corporation, as Trustee (herein called the “**Trustee**”), and BNY TRUST COMPANY OF CANADA, a Canadian trust corporation, as Co-Trustee (herein called the “**Co-Trustee**”).

The Company has duly authorized the creation of an issue of 5.375% Senior Convertible Notes due 2014 (each a “**Security**” and collectively, the “**Securities**”) of substantially the tenor and amount hereinafter set forth, and to provide therefor the Company has duly authorized the execution and delivery of this Indenture.

All things necessary to make this Indenture a valid and binding agreement of the Company have been done and all things necessary to make the Securities, when executed by the Company and authenticated and delivered hereunder, the valid and binding obligations of the Company, have been done.

The Company, the Trustee and the Co-Trustee agree, for the benefit of each other and for the equal and ratable benefit of all Holders of the Securities, as follows:

ARTICLE I

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.01 Definitions. For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

- (a) the terms defined in this Article I have the meanings assigned to them in this Article I and include the plural as well as the singular;
- (b) all other terms used herein that are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;
- (c) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP;
- (d) unless otherwise noted, references to “**U.S. Dollars**” or “**\$**” shall mean the currency of the United States of America; and
- (e) the words “**herein**,” “**hereof**” and “**hereunder**” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

“**Act**,” when used with respect to any Holder, has the meaning specified in Section 1.04.

“**Additional Amounts**” has the meaning specified in Section 10.10.

---

**“Additional Interest Amount”** means a one-time payment of 50 basis points made by the Company to the Holders (or, with respect to any Securities that have been previously converted, to the Holders of such converted Securities at the time of such conversion) in the circumstances described in Section 10.11. The amount of the payment to any Holder (or previous Holder in the case of previously converted Securities) shall be determined by applying 50 basis points to the current principal amount of such Holder’s Securities then outstanding (or to the principal amount of such previous Holder’s converted Securities immediately prior to their conversion in the case of previously converted Securities).

**“Additional Interest Notice”** has the meaning specified in Section 10.11.

**“Additional Securities”** means additional Securities which may be issued after the Issue Date pursuant to this Indenture (other than in exchange for, or in replacement of, Outstanding Securities). All references herein to “Securities” shall be deemed to include Additional Securities to the extent any have been issued.

**“Additional Shares”** has the meaning specified in Section 13.05.

**“Affiliate”** of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control” when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

**“Agent Members”** has the meaning specified in Section 2.15.

**“Bid Solicitation Agent”** means J.P. Morgan Securities Inc. or such other Person as may be appointed, from time to time, by the Company to solicit market bid quotations for the Securities in accordance with Section 13.01(a)(ii).

**“Applicable Procedures”** has the meaning specified in Section 2.12.

**“Board of Directors”** means, with respect to any Person, either the board of directors of such Person or any duly authorized committee of that board.

**“Board Resolution”** means, with respect to any Person, a copy of a resolution certified by the Secretary or an Assistant Secretary of such Person to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Trustee and the Co-Trustee.

**“Business Day”** means any day other than a Saturday, a Sunday or a day on which banking institutions in either the City of New York or in the City of Toronto are authorized or obligated by law, or executive order or governmental decree to be closed.

**“Canadian Private Placement Legend”** has the meaning specified in Section 2.05.



**“Canadian Securities Laws”** means the securities laws, rules, regulations and written policy statements of any province or territory of Canada, as the same may be amended from time to time.

**“Canadian Taxes”** has the meaning specified in Section 10.10.

**“Capital Stock”** means any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock, including, without limitation, with respect to partnerships, partnership interests (whether general or limited) and any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, such partnership.

**“Closing Sale Price”** of a Common Share on any date means the closing per share sale price (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on such date as reported in composite transactions for the principal United States securities exchange on which the Common Shares are traded or, if the Common Shares are not listed on a United States national or regional securities exchange, as reported by the NASDAQ System or by the National Quotation Bureau Incorporated.

**“Commission”** means the United States Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act, or, if at any time after the execution of this Indenture such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

**“Common Equity”** of any Person means capital stock of such Person that is generally entitled to (i) vote in the election of directors of such Person or (ii) if such Person is not a corporation, vote or otherwise participate in the selection of the governing body, partners, managers or others that will control the management or policies of such Person.

**“Common Shares”** means the common shares without par value of the Company as it exists on the date of this Indenture.

**“Company”** means the Person named as the “Company” in the first paragraph of this instrument until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Company” shall mean such successor Person.

**“Company Request”** or **“Company Order”** means a written request or order signed in the name of the Company (i) by its Chairman of the Board, its Vice Chairman of the Board, its Chief Executive Officer, its Chief Operating Officer, its Chief Financial Officer or any Vice President, and by its Treasurer, an Assistant Treasurer, its Secretary or an Assistant Secretary or (ii) by an authorized signatory (by virtue of a power of attorney, Board Resolution or other similar instrument), and delivered to the Trustee.

**“Continuing Director”** means, at any date, a member of the Company’s Board of Directors (i) who was a member of such board on June 10, 2009 or (ii) who was nominated or elected by at least a majority of the directors who were Continuing Directors at the time of such nomination or election or whose election to the Company’s Board of Directors was

recommended or endorsed by at least a majority of the directors who were Continuing Directors at the time of such nomination or election or such lesser number comprising a majority of a nominating committee comprised of independent directors if authority for such nominations or elections has been delegated to a nominating committee whose authority and composition have been approved by at least a majority of the directors who were Continuing Directors at the time such committee was formed. (Under this definition, if the Board of Directors of the Company as of the date of this Indenture were to approve a new director or directors and then resign, no Fundamental Change would occur even though the current Board of Directors would thereafter cease to be in office.)

“**Conversion Agent**” means the Trustee or such other office or agency designated by the Company where Securities may be presented for conversion.

“**Conversion Date**” has the meaning specified in Section 13.02.

“**Conversion Notice**” has the meaning specified in Section 13.02.

“**Conversion Price**” means, at any time, \$1,000 divided by the Conversion Rate in effect at such time, rounded to three decimal places (rounded up if the fourth decimal place thereof is 5 or more and otherwise rounded down).

“**Conversion Rate**” has the meaning specified in the Securities.

“**Corporate Trust Office**” means (i) with respect to the Trustee, the principal office of the Trustee at which at any particular time its corporate trust business shall be administered, which office at the date of the execution of this Indenture is located at 101 Barclay Street, New York, NY 10286, 4-East, Attention: Global Trust Services (Facsimile No.: (212) 815-5366) or at any other time at such other address as the Trustee may designate from time to time by notice to the Company, and (ii) with respect to the Co-Trustee, the principal office of the Co-Trustee at which at any particular time its corporate trust business shall be administered, which office at the date of the execution of this Indenture is located at Suite 1101, 4 King Street West, Toronto, Ontario, Canada M5H 1B6 or at any other time at such other address as the Co-Trustee may designate from time to time by notice to the Company.

“**corporation**” means a corporation, association, company, joint-stock company or business trust.

“**Co-Trustee**” means the Person named as the “**Co-Trustee**” in the first paragraph of this Indenture until a successor Co-Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “**Co-Trustee**” shall mean such successor Co-Trustee.

“**Cure Period**” has the meaning specified in Section 10.11.

“**Current Market Price**” has the meaning specified in Section 13.04.

“**Daily VWAP**” means the per share volume-weighted average price as displayed under the heading “Bloomberg VWAP” on Bloomberg page “BVF <equity> VAP” in respect of the period from 9:30 a.m. to 4:00 p.m. (New York City time) on such Trading Day (or if such

volume-weighted average price is unavailable, the market value of one Common Share on such Trading Day on the Toronto Stock Exchange (such price to be converted into U.S. dollars based on the Bank of Canada noon exchange rate as reported for conversion into U.S. dollars on such date) or otherwise as the Company’s Board of Directors determines in good faith using a volume-weighted method); *provided* that after the consummation of a Fundamental Change in which the consideration is comprised entirely of cash, “Daily VWAP” means the cash price per Common Share received by holders of the Company’s Common Shares in such Fundamental Change.

“**Default**” means any event that is, or with the passage of time or the giving of notice or both would become, an Event of Default.

“**Defaulted Interest**” has the meaning specified in Section 2.17.

“**Depository**” means The Depository Trust Company until a successor Depository shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Depository” shall mean such successor Depository.

“**Effective Date**” has the meaning specified in Section 13.05.

“**Event of Default**” has the meaning specified in Section 5.01.

“**Exchange Act**” means the United States Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission promulgated thereunder.

“**Excluded Holder**” has the meaning specified in Section 10.10.

“**Excluded Taxes**” has the meaning specified in Section 10.10.

“**Ex-Dividend Date**” means, with respect to any dividend or distribution, the first date on which the Common Shares trade in the regular way without the right to receive such dividend or distribution on the New York Stock Exchange, the Toronto Stock Exchange or such other national or regional exchange or market on which the Common Shares are then listed or quoted.

“**fair market value**” has the meaning specified in Section 13.04.

“**Fundamental Change**” has the meaning specified in Section 12.01.

“**Fundamental Change Notice**” has the meaning specified in Section 12.01.

“**Fundamental Change Purchase Date**” has the meaning specified in Section 12.01.

“**Fundamental Change Purchase Notice**” has the meaning specified in Section 12.01.

“**Fundamental Change Purchase Offer**” has the meaning specified in Section 12.01.

**“Fundamental Change Purchase Price”** has the meaning specified in Section 12.01.

**“GAAP”** means generally accepted accounting principles in the United States, as in effect from time to time.

**“Global Security”** means a Security in global form registered in the Security Register in the name of a Depositary or a nominee thereof.

**“Global Security Legend”** has the meaning specified in Section 2.05.

**“Holder”** or **“Securityholder”** means a Person in whose name a Security is registered in the Security Register.

**“Indenture”** means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof, including, for all purposes of this instrument and any such supplemental indenture, the provisions of the Trust Indenture Act that are deemed to be a part of and govern this instrument and any such supplemental indenture, respectively.

**“Ineligible Consideration”** has the meaning set forth in Section 13.06.

**“Initial Dividend Threshold”** has the meaning specified in Section 13.04.

**“Interest Payment Date”** means each February 1 and August 1 of each year.

**“Issue Date”** means the date the Securities are originally executed and authenticated as set forth in the applicable Security issued under this Indenture.

**“Judgment Currency”** has the meaning specified in Section 1.19.

**“Market Disruption Event”** means (i) a failure by the primary United States national securities exchange on which the Common Shares are listed (or the Toronto Stock Exchange if the Common Shares are not then listed on a United States national securities exchange) or admitted to trading to open during its regular trading session or (ii) the occurrence or existence prior to 1:00 p.m. on any Trading Day for the Common Shares for an aggregate one half hour period of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the stock exchange or otherwise) in the Common Shares or in any options, contracts or future contracts relating to the Common Shares.

**“Maturity”** means, when used with respect to any Security, the date on which the Principal Amount, Redemption Price or Fundamental Change Purchase Price of such Security becomes due and payable as therein or herein provided, whether at the Stated Maturity, Redemption Date or Fundamental Change Purchase Date, or by declaration of acceleration or otherwise.

**“Measurement Period”** has the meaning specified in Section 13.01.

**“Notice of Default”** has the meaning specified in Section 5.01.

**“Notice of Election”** has the meaning specified in Section 11.01.

**“Notice of Optional Redemption”** has the meaning specified in Section 3.03.

**“Notice of Redemption”** means a Notice of Optional Redemption or a Notice of Tax Redemption.

**“Notice of Tax Redemption”** has the meaning specified in Section 11.02.

**“Offering”** means the initial offering of the Securities by the Company.

**“Offering Memorandum”** means the confidential offering memorandum, dated June 3, 2009, pursuant to which the Securities were offered and sold in the Offering.

**“Officers’ Certificate”** means a certificate signed by the Chairman of the Board, the Chief Executive Officer, the President, the Chief Financial Officer or any Vice President, and by the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary, of the Company, and delivered to the Trustee and the Co-Trustee. One of the officers signing an Officers’ Certificate given pursuant to Section 10.04 shall be the principal executive, financial or accounting officer of the Company.

**“Opinion of Counsel”** means a written opinion of counsel, who may be external or in-house counsel for the Company.

**“Optional Redemption”** has the meaning set forth in Section 3.01.

**“Outstanding,”** when used with respect to Securities, means, as of the date of determination, all Securities theretofore authenticated and delivered under this Indenture, except:

(i) Securities theretofore cancelled by the Trustee or delivered to the Trustee or the Co-Trustee for cancellation;

(ii) Securities, or portions thereof, for which payment in the necessary amount has been theretofore deposited with the Trustee, the Co-Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Securities; and

(iii) Securities which have been paid, or Securities in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, other than any such Securities in respect of which there shall have been presented to the Trustee or the Co-Trustee proof satisfactory to it that such Securities are held by a protected purchaser in whose hands such Securities are valid obligations of the Company;

*provided, however*, that, in determining whether the Holders of the requisite Principal Amount of the Outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Securities owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or of such other obligor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee and the Co-Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities which a Responsible Officer of the Trustee or the Co-Trustee actually knows to be so owned shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee or the Co-Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company or of such other obligor.

**“Paying Agent”** means any Person authorized by the Company to pay the principal of, or interest (including Additional Interest Amounts or Additional Amounts, if any) on, or the Redemption Price or Fundamental Change Purchase Price of, any Securities on behalf of the Company. The Trustee shall initially be the Paying Agent.

**“Person”** means any individual, corporation, partnership, limited liability company, joint venture, trust, unincorporated organization or government or any agency or political subdivision thereof.

**“Physical Securities”** means permanent certificated Securities in registered form issued in denominations of \$1,000 Principal Amount and integral multiples thereof.

**“Principal Amount”** of a Security means the principal amount as set forth on the face of the Security.

**“Private Placement Legend”** has the meaning specified in Section 2.05.

**“Rate(s) of Exchange”** has the meaning specified in Section 1.19.

**“Record Date”** has the meaning specified in Section 13.04.

**“Redemption Date”** means, when used with respect to any Security to be redeemed, the date fixed for redemption pursuant to this Indenture.

**“Redemption Price”** means, when used with respect to any Security to be redeemed, the price at which it is to be redeemed pursuant to this Indenture.

**“Reference Property”** has the meaning set forth in Section 13.06.

**“Regular Record Date”** for the payment of interest on the Securities (including Additional Interest Amounts or Additional Amounts, if any), means January 15 (whether or not a Business Day) next preceding an Interest Payment Date on February 1 and July 15 (whether or not a Business Day) next preceding an Interest Payment Date on August 1.

**“Required Currency”** has the meaning set forth in Section 1.19.

“**Responsible Officer**” means any officer of the Trustee or the Co-Trustee within the Corporate Trust Office of the Trustee or the Co-Trustee, as applicable, with direct responsibility for the administration of this Indenture and also, with respect to a particular matter, any other officer of the Trustee or the Co-Trustee to whom such matter is referred because of such officer’s knowledge and familiarity with the particular subject.

“**Restricted Global Security**” means a Global Security that bears the Private Placement Legend.

“**Restricted Physical Security**” means a Physical Security that bears the Private Placement Legend.

“**Rule 144**” means Rule 144 under the Securities Act, as the same may be amended from time to time.

“**Securities Act**” means the United States Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder.

“**Security**” or “**Securities**” have the respective meanings specified in the first paragraph of this Indenture.

“**Security Register**” has the meaning specified in Section 2.10.

“**Security Registrar**” has the meaning specified in Section 2.10.

“**Share Price**” has the meaning specified in Section 13.05.

“**Significant Subsidiary**” has the meaning set forth in Rule 1-02(w) of Regulation S-X under the Exchange Act.

“**Special Interest Payment Date**” has the meaning specified in Section 2.17.

“**Special Record Date**” has the meaning specified in Section 2.17.

“**Spin-Off**” has the meaning specified in Section 13.04.

“**Stated Maturity**” when used with respect to any Security, means August 1, 2014.

“**Stock Transfer Agent**” means CIBC Mellon Trust Company at its offices in Toronto, Ontario, Canada and BNY Mellon Shareowner Services at its offices in New York, New York, or such other Person or Persons designated by the Company as a transfer agent for the Common Shares.

“**Subsidiary**” means a corporation more than 50% of the outstanding voting stock of which is owned, directly or indirectly, by the Company or by one or more other Subsidiaries, or by the Company and one or more other Subsidiaries. For the purposes of this definition, “**voting stock**” means stock which ordinarily has voting power for the election of directors,

whether at all times or only so long as no senior class of stock has such voting power by reason of any contingency.

“**Successor Company**” has the meaning specified in Section 8.01.

“**Trading Day**” means a day during which (i) trading in the Common Shares generally occurs, (ii) there is no Market Disruption Event and (iii) a Closing Sale Price for the Common Shares may be obtained for that day.

“**Tax Act**” means the *Income Tax Act* (Canada), as amended, and any reference thereto includes a reference to an equivalent provision of a Canadian, provincial or territorial income tax statute, as amended.

“**Tax Redemption**” has the meaning set forth in Section 11.01.

“**Trading Price**” means, as of any date of determination, the average of the secondary market bid quotations per \$1,000 Principal Amount of Securities obtained by the Bid Solicitation Agent for \$5,000,000 Principal Amount of Securities at approximately 3:30 p.m., New York City time, on such date of determination from three independent nationally-recognized securities dealers selected by the Company; *provided*, that if at least three such bids cannot reasonably be obtained by the Bid Solicitation Agent, but two such bids are obtained, then the Trading Price, as of such determination date, shall mean the average of such two bids, and if only one bid can reasonably be obtained by the Bid Solicitation Agent, then the Trading Price, as of such determination date, shall mean such one bid; *provided, however*, that if the Bid Solicitation Agent, through the exercise of reasonable efforts, is unable to obtain at least one bid for \$5,000,000 Principal Amount of Securities from an independent nationally-recognized securities dealer, then the Trading Price per \$1,000 Principal Amount of Securities for such date of determination shall be deemed to be less than 98% of the product of the Closing Sale Price of the Common Shares on such date of determination and the Conversion Rate in effect as of such date of determination.

“**Trigger Event**” has the meaning specified in Section 13.04.

“**Trust Indenture Act**” means the Trust Indenture Act of 1939 as in force at the date as of which this instrument was executed; *provided, however*, that in the event the Trust Indenture Act of 1939 is amended after such date, “**Trust Indenture Act**” means, to the extent required by any such amendment, the Trust Indenture Act of 1939 as so amended.

“**Trustee**” means the Person named as the “**Trustee**” in the first paragraph of this instrument until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “**Trustee**” shall mean such successor Trustee.

“**Unrestricted Global Security**” means a Global Security that does not bear the Private Placement Legend.

“**Unrestricted Physical Security**” means a Physical Security that does not bear the Private Placement Legend.



“**Vice President**” when used with respect to the Company, means any vice president, whether or not designated by a number or a word or words added before or after the title “vice president”.

Section 1.02 Compliance Certificates and Opinions. Upon any application or request by the Company to the Trustee or the Co-Trustee to take any action under any provision of this Indenture, the Company shall furnish to the Trustee and the Co-Trustee, as applicable, such certificates and opinions as may be required under the Trust Indenture Act and as may otherwise be required hereunder. Each such certificate or opinion shall be given in the form of an Officers’ Certificate, if to be given by an officer of the Company, or an Opinion of Counsel, if to be given by counsel, and shall comply with the requirements of the Trust Indenture Act and any other requirement set forth in this Indenture.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

- (a) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;
- (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (c) a statement that, in the opinion of each such individual, such individual has made such examination or investigation as is necessary to enable such individual to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (d) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

Section 1.03 Form of Documents Delivered to Trustee and Co-Trustee. In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any Opinion of Counsel may contain customary assumptions, limitations and qualifications and be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company, unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

Section 1.04 Acts of Holders; Record Dates.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in, and evidenced by, one or more instruments of substantially similar tenor signed by such Holders in person or by agent duly appointed in writing and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and the Co-Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the “**Act**” of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and (subject to Section 6.01) conclusive in favor of the Trustee, the Co-Trustee and the Company, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by a signer acting in a capacity other than his individual capacity, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which the Trustee or the Co-Trustee reasonably deems sufficient.

(c) The Company may, in the circumstances permitted by the Trust Indenture Act, fix any day as the record date for the purpose of determining the Holders entitled to give or take any request, demand, authorization, direction, notice, consent, waiver or other action, or to vote on any action, authorized or permitted to be given or taken by Holders. If not set by the Company prior to the first solicitation of a Holder made by any Person in respect of any such action, or, in the case of any such vote, prior to such vote, the record date for any such action or vote shall be the 30th day (or, if later, the date of the most recent list of Holders required to be provided pursuant to Section 10.08) prior to such first solicitation or vote, as the case may be. With regard to any record date, only the Holders on such date (or their duly designated proxies) shall be entitled to give or take, or vote on, the relevant action.

(d) The ownership of Securities shall be proved by the Security Register.

(e) Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holder of any Security shall bind every future Holder of the same Security and the Holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee, the Co-Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Security.

Section 1.05 Notices, Etc., to Trustee, Co-Trustee and Company. Any request, demand, authorization, direction, notice, consent, waiver or other Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with:

(a) the Trustee by any Holder or by the Company shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing (which may be via facsimile) and sent to the Trustee at its Corporate Trust Office, with a copy to the Co-Trustee at its Corporate Trust Office; or

(b) the Company by the Trustee, the Co-Trustee or by any Holder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to the Company, addressed to it at the address of its principal office specified in the first paragraph of this Indenture or at any other address previously furnished in writing to the Trustee or the Co-Trustee by the Company, Attention: Senior Vice-President and Associate General Counsel. In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice by mail, then such notification via facsimile shall constitute a sufficient notification for every purpose hereunder.

Section 1.06 Notice to Holders; Waiver. Where this Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Holder affected by such event, at such Holder's address as it appears in the Security Register, not later than the latest date (if any), and not earlier than the earliest date (if any), prescribed for the giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee and the Co-Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver. In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice by mail, then such notification as shall be made with the approval of the Trustee and the Co-Trustee shall constitute a sufficient notification for every purpose hereunder.

Section 1.07 Conflict with Trust Indenture Act. If any provision hereof limits, qualifies or conflicts with a provision of the Trust Indenture Act that is required under such Act to be a part of and govern this Indenture, the latter provision shall control. If any provision of this Indenture modifies or excludes any provision of the Trust Indenture Act that may be so modified or excluded, the latter provision shall be deemed to apply to this Indenture as so modified or to be excluded, as the case may be.

Section 1.08 Effect of Headings and Table of Contents. The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 1.09 Successors and Assigns. All covenants and agreements in this Indenture

by the Company shall bind its successors and assigns, whether so expressed or not.

Section 1.10 Separability Clause. In case any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 1.11 Benefits of Indenture. Except as provided in Section 1.14, nothing in this Indenture or in the Securities, express or implied, shall give to any Person, other than the parties hereto and their respective successors hereunder and the Holders, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 1.12 Governing Law. This Indenture and the Securities shall be governed by and construed in accordance with the laws of the State of New York.

Section 1.13 Legal Holiday. If any Interest Payment Date (other than an Interest Payment Date coinciding with the Stated Maturity or earlier required Fundamental Change Purchase Date or Redemption Date) falls on a day that is not a Business Day, such Interest Payment Date will be postponed to the next succeeding Business Day, and no interest on such payment will accrue for the period from the Interest Payment Date to such next succeeding Business Day. If the Stated Maturity or earlier required Fundamental Change Purchase Date or Redemption Date would fall on a day that is not a Business Day, the required payment of interest, if any (including Additional Interest Amounts and Additional Amounts, if any), and principal will be made on the next succeeding Business Day, and no interest on such payment will accrue for the period from and after the Stated Maturity or earlier required Fundamental Change Purchase Date or Redemption Date to such next succeeding Business Day. If any other specified date (including a date for giving notice) falls on a day that is not a Business Day, the action required to be taken on such specified date shall be taken on the next succeeding Business Day.

Section 1.14 No Recourse Against Others. No director, officer, employee, shareholder or Affiliate, as such, of the Company from time to time shall have any liability for any obligations of the Company under the Securities or this Indenture. Each Holder by accepting a Security waives and releases all such liability. This waiver and release are part of the consideration for the Securities. Each of such directors, officers, employers, shareholders and Affiliates of the Company is a third party beneficiary of this Section 1.14.

Section 1.15 Force Majeure. In no event shall the Trustee or the Co-Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee and the Co-Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 1.16 Counterparts. This instrument may be executed in any number of counterparts, each of which shall be deemed to be an original, and all such counterparts shall together constitute one and the same instrument.

Section 1.17 Waiver of Jury Trial. EACH OF THE COMPANY, THE TRUSTEE AND THE CO-TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE SECURITIES OR THE TRANSACTIONS CONTEMPLATED THEREBY.

Section 1.18 Consent to Service of Process. The Company irrevocably submits to the nonexclusive jurisdiction of any New York State or Federal court sitting in The City of New York over any suit, action or proceeding arising out of or relating to this Indenture or any Security. The Company irrevocably waives, to the fullest extent permitted by law, any objection which it may have to the laying of the venue of any such suit, action or proceeding brought in such a court and any claim that any such suit, action or proceeding brought in such a court has been brought in any inconvenient forum. The Company agrees that final judgment in any such suit, action or proceeding brought in such a court shall be conclusive and binding upon the Company and may be enforced in the courts of Canada (or any other courts to the jurisdiction of which the Company is subject) by a suit upon such judgment, *provided* that service of process is effected upon the Company in the manner specified in the following paragraph or as otherwise permitted by law; *provided, however*, that the Company does not waive, and the foregoing provisions of this sentence shall not constitute or be deemed to constitute a waiver of, (i) any right to appeal any such judgment, to seek any stay or otherwise to seek reconsideration or review of any such judgment or (ii) any stay of execution or levy pending an appeal from, or a suit, action or proceeding for reconsideration or review of, any such judgment.

As long as any of the Securities remain outstanding, the Company will at all times have an authorized agent in The Borough of Manhattan, The City of New York upon whom process may be served in any legal action or proceeding arising out of or relating to the Indenture or any Security. Service of process upon such agent together with the mailing of a copy thereof by registered or certified mail, postage prepaid, return receipt requested, to the address of the Company set forth in the first paragraph of this Indenture or to any other address of which the Company shall have given written notice to the Trustee or the Co-Trustee shall to the extent permitted by law be deemed in every respect effective service of process upon the Company in any such legal action or proceeding. The Company hereby appoints CT Corporation System as its agent for such purpose, and covenants and agrees that service of process in any such legal action or proceeding may be made upon it at the office of such agent at 111 Eighth Avenue, New York, New York 10011 (or at such other address in The Borough of Manhattan, The City of New York, as the Company may designate by written notice to the Trustee). The Company irrevocably waives, to the fullest extent permitted by law, all claim of error by reason of any such service (but does not waive any right to assert lack of subject matter jurisdiction) and agrees that such service (i) shall be deemed in every respect effective service of process upon the Company in any such suit, action or proceeding and (ii) shall, to the fullest extent permitted by law, be taken and held to be valid personal service upon and personal delivery to the Company.

Nothing in this Section shall affect the right of the Trustee, the Co-Trustee or any Holder to serve process in any manner permitted by law or limit the right of the Trustee or the Co-Trustee to bring proceedings against the Company in the courts of any jurisdiction or jurisdictions.

Section 1.19 Conversion of Currency.

(a) The Company covenants and agrees that the following provisions shall apply to conversion of currency in the case of the Securities and this Indenture:

(i) If for the purposes of obtaining judgment in, or enforcing the judgment of, any court in any country, it becomes necessary to convert into any other currency (the “**Judgment Currency**”) an amount due or contingently due under the Securities and this Indenture (the “**Required Currency**”), then the conversion shall be made at the Rate of Exchange prevailing on the Business Day before the day on which a final judgment which is not appealable or is not appealed is given or the order of enforcement is made, as the case may be (unless a court shall otherwise determine).

(ii) If there is a change in the Rate of Exchange prevailing between the Business Day before the day on which the judgment referred to in (i) above is given or an order of enforcement is made, as the case may be (or such other date as a court shall determine), and the date of receipt of the amount due, the Company shall pay such additional (or, as the case may be, such lesser) amount, if any, as may be necessary so that the amount paid in the Judgment Currency, when converted at the Rate of Exchange prevailing on the date of receipt, will produce the amount in the Required Currency originally due.

(b) In the event of the winding-up of the Company at any time while any amount or damages owing under the Securities and this Indenture, or any judgment or order rendered in respect thereof, shall remain outstanding, the Company shall indemnify and hold the Holders, the Trustee and the Co-Trustee harmless against any deficiency arising or resulting from any variation in rates of exchange between (1) the date as of which the equivalent of the amount in the Required Currency (other than under this Section 1.19(b)) is calculated for the purposes of such winding-up and (2) the final date for the filing of proofs of claim in such winding-up. For the purpose of this Section 1.19(b) the final date for the filing of proofs of claim in the winding-up of the Company shall be the date fixed by the liquidator or otherwise in accordance with the relevant provisions of applicable law as being the latest practicable date as at which liabilities of the Company may be ascertained for such winding-up prior to payment by the liquidator or otherwise in respect thereto.

(c) The obligations contained in Sections 1.19(a)(ii) and 1.19(b) shall constitute separate and independent obligations of the Company from its other obligations under the Securities and this Indenture, shall give rise to separate and independent causes of action against the Company, shall apply irrespective of any waiver or extension granted by any Holder, the Trustee or the Co-Trustee from time to time and shall continue in full force and effect notwithstanding any judgment or order or the filing of any proof of claim in the winding-up of the Company for a liquidated sum in respect of amounts due hereunder (other than under Section 1.19(b) above) or under any such judgment or order. Any such deficiency as aforesaid shall be deemed to constitute a loss suffered by the Holders, the Trustee or the Co-Trustee, as the case may be, and no proof or evidence of any actual loss shall be required by the Company or the applicable liquidator. In the case of Section 1.19(b) above, the amount of such deficiency shall not be deemed to be reduced by any variation in rates of exchange occurring between the said final date and the date of any liquidating distribution.

(d) The term “**Rate(s) of Exchange**” shall mean the Bank of Canada noon rate for purchases on the relevant date of the Required Currency with the Judgment Currency, as reported by Telerate on screen 3194 (or such other means of reporting the Bank of Canada noon rate as may be agreed upon by each of the parties to this Indenture) and includes any premiums and costs of exchange payable.

Section 1.20 Calculations in Respect of the Securities. Except as otherwise expressly provided in this Indenture, the Company will be responsible for making all calculations called for in respect of the Securities. These calculations include, but are not limited to, determinations of the Closing Sale Price of the Common Shares, accrued interest payable on the Securities and the Conversion Rate of the Securities and any adjustments to the Conversion Rate, the Conversion Price or otherwise. The Company shall make all such calculations in good faith and, absent manifest error, the Company’s calculations shall be final and binding on the Holders. The Company shall provide a schedule of its calculations to each of the Trustee, the Co-Trustee and the Conversion Agent, and each of the Trustee, the Co-Trustee and the Conversion Agent is entitled to rely conclusively upon the accuracy of the Company’s calculations without independent verification. The Trustee and the Co-Trustee shall forward the Company’s calculations to any Holder upon the written request of such Holder.

## ARTICLE II

### THE SECURITIES

Section 2.01 Forms Generally. The Securities and the Trustee’s certificate of authentication shall be substantially in the respective forms set forth in Exhibit A hereto. The terms and provisions contained in the form of Security shall constitute, and are hereby expressly made, a part of this Indenture and to the extent applicable, the Company, the Trustee, the Co-Trustee and the Conversion Agent, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. Any of the Securities, including any Global Securities, may have such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification and such legends (including those set forth in Section 2.05) or endorsements placed thereon as may be required to comply with the rules of any securities exchange or Depositary therefor, the Internal Revenue Code of 1986, as amended, and the regulations thereunder, and the Tax Act, or as may, consistently herewith, be determined by the officers executing such Securities, as evidenced by their execution thereof.

The Securities shall be initially issued in the form of one or more permanent Global Securities in registered form in substantially the form set forth in Exhibit A hereto. The aggregate Principal Amount of the Global Securities may from time to time be increased or decreased by adjustments made on the records of the Trustee, as custodian for the Depositary, as hereinafter provided.

Section 2.02 [Reserved]

Section 2.03 [Reserved]

Section 2.04 [Reserved]

Section 2.05 Legends.

(a) Subject to Section 2.12, all Securities originally issued hereunder (and all Securities issued in exchange therefor or substitution thereof) shall bear the legend set forth below (the “**Private Placement Legend**”):

THIS SECURITY AND THE COMMON SHARES ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR ANY OTHER SECURITIES LAWS. BY ITS ACQUISITION HEREOF, THE HOLDER AGREES NOT TO OFFER, SELL OR OTHERWISE TRANSFER THIS SECURITY PRIOR TO THE DATE PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THERETO (THE “RESALE RESTRICTION TERMINATION DATE”), EXCEPT (A) TO BIOVAIL CORPORATION OR ANY SUBSIDIARY THEREOF, (B) OUTSIDE THE UNITED STATES IN ACCORDANCE WITH RULE 904 OF REGULATION S UNDER THE SECURITIES ACT, (C) PURSUANT TO RULE 144A UNDER THE SECURITIES ACT TO A PERSON THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER AS DEFINED IN RULE 144A THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A UNDER THE SECURITIES ACT, OR (D) PURSUANT TO ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE COMPANY’S AND THE TRUSTEE’S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (B) OR (D) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATIONS AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM. THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER THE RESALE REGISTRATION TERMINATION DATE. THIS SECURITY AND ANY RELATED DOCUMENTATION MAY BE AMENDED OR SUPPLEMENTED FROM TIME TO TIME TO MODIFY THE RESTRICTIONS ON AND PROCEDURES FOR REALES AND OTHER TRANSFERS OF THIS SECURITY TO REFLECT ANY CHANGE IN APPLICABLE LAW OR REGULATION (OR THE INTERPRETATION THEREOF) OR IN PRACTICES RELATING TO THE RESALE OR TRANSFER OF RESTRICTED SECURITIES GENERALLY. THE HOLDER OF THIS SECURITY SHALL BE DEEMED BY THE ACCEPTANCE OF THIS SECURITY TO HAVE AGREED TO ANY SUCH AMENDMENT OR SUPPLEMENT.



(b) Until October 13, 2009, all Securities originally issued hereunder (and all Securities issued in exchange therefor or substitution thereof) shall bear the legend set forth below (the “**Canadian Private Placement Legend**”):

UNLESS PERMITTED BY APPLICABLE SECURITIES LEGISLATION IN CANADA, THE HOLDER OF THIS SECURITY MAY NOT TRADE THIS SECURITY IN CANADA BEFORE OCTOBER 13, 2009.

(c) Each Global Security shall bear a legend in substantially the following form (the “**Global Security Legend**”):

THIS SECURITY IS HELD BY THE DEPOSITARY (AS DEFINED IN THE INDENTURE GOVERNING THIS SECURITY) OR ITS NOMINEE IN CUSTODY FOR THE BENEFIT OF THE BENEFICIAL OWNERS HEREOF, AND IS NOT TRANSFERABLE TO ANY PERSON UNDER ANY CIRCUMSTANCES EXCEPT THAT (I) THE TRUSTEE MAY MAKE SUCH NOTATIONS HEREON AS MAY BE REQUIRED PURSUANT TO ARTICLE II OF THE INDENTURE, (II) THIS SECURITY MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO ARTICLE II OF THE INDENTURE, (III) THIS SECURITY MAY BE DELIVERED TO THE TRUSTEE FOR CANCELLATION PURSUANT TO ARTICLE II OF THE INDENTURE AND (IV) THIS SECURITY MAY BE TRANSFERRED TO A SUCCESSOR DEPOSITARY WITH THE PRIOR WRITTEN CONSENT OF THE COMPANY.

Section 2.06 Title; Amount and Issue of Securities; Principal and Interest. The Securities shall be known and designated as the “5.375% Senior Convertible Notes due 2014” of the Company. The aggregate Principal Amount of Securities that may be authenticated and delivered under this Indenture is initially limited to \$350,000,000, except for Securities authenticated and delivered upon registration of, transfer of, or in exchange for, or in lieu of other Securities pursuant to Section 2.08, Section 2.09, Section 2.11, Section 2.13, Section 11.05, Section 12.04 and Section 13.02, *provided* that Additional Securities with the same terms and with the same CUSIP numbers as the Securities issued on the date of this Indenture may be issued in an unlimited aggregate principal amount from time to time thereafter pursuant to Section 2.08; *provided* that such Additional Securities must be part of the same issue as the Securities issued on the date of this Indenture for U.S. federal income tax purposes. The Principal Amount shall be payable on August 1, 2014, unless earlier converted, redeemed or purchased. The Securities and the Additional Securities, if any, will be treated as a single class for purposes of this Indenture.

The Securities shall bear interest at a rate of 5.375% per year. Interest on the Securities shall accrue from the Issue Date. Interest shall be payable semiannually in arrears on February 1 and August 1, beginning February 1, 2010. Interest (including any Additional Interest Amounts) on the Securities shall be computed on the basis of a 360-day year of twelve 30-day months. Each rate of interest which is calculated with reference to a period that is less than the actual number of days in the calendar year of calculation is, for the purposes of the

*Interest Act* (Canada), equivalent to the yearly rate of interest payable on the Securities multiplied by the actual number of days in the year and divided by 360. The amount of interest payable for any period shorter than a full quarterly period for which interest is computed will be computed on the basis of the actual number of days elapsed in the period.

Payments in respect of Securities represented by a Global Security (including principal and interest (including Additional Interest Amounts and Additional Amounts, if any)) will be made by wire transfer of immediately available funds to the accounts specified by the Depositary. The Company will pay principal of Physical Securities at the office or agency designated by the Company in The Borough of Manhattan, The City of New York. Interest (including Additional Interest Amounts and Additional Amounts, if any) on Physical Securities will be payable (i) to Holders having an aggregate Principal Amount of \$5,000,000 or less, by check mailed to the Holders of these Securities and (ii) to Holders having an aggregate Principal Amount of more than \$5,000,000, either by check mailed to each Holder or, upon application by a Holder to the Security Registrar not later than two days prior to the relevant Regular Record Date, by wire transfer in immediately available funds to that Holder's account within the United States, which application shall remain in effect until the Holder notifies the Security Registrar, in writing, to the contrary.

A Holder of any Security at 5:00 p.m., New York City time, on a Regular Record Date shall be entitled to receive interest (including Additional Interest Amounts or Additional Amounts, if any), on such Security on the corresponding Interest Payment Date. Holders of Securities at 5:00 p.m., New York City time, on a Regular Record Date will receive payment of interest (including Additional Interest Amounts or Additional Amounts, if any) payable on the corresponding Interest Payment Date notwithstanding the conversion of such Securities at any time after the close of business on such Regular Record Date. Securities surrendered for conversion during the period after 5:00 p.m., New York City time, on any Regular Record Date to 9:00 a.m., New York City time, on the immediately following Interest Payment Date must be accompanied by payment of an amount equal to the interest (including Additional Interest Amounts and Additional Amounts, if any) payable on the Securities so converted on the corresponding Interest Payment Date, subject to exceptions as set forth in Section 13.03(b). Except where Securities are surrendered for conversion and must be accompanied by payment as described in the immediately preceding sentence, no interest, Additional Interest Amounts or Additional Amounts, if any, thereon will be payable by the Company on any Interest Payment Date subsequent to the date of conversion, and delivery of the cash and Common Shares, if applicable, pursuant to Article XIII hereunder, together with any cash payment for any fractional shares, upon conversion will be deemed to satisfy the Company's obligation to pay the principal amount of the Securities and accrued and unpaid interest and Additional Interest Amounts or Additional Amounts, if any, to, but not including, the related Conversion Date.

Section 2.07 Denominations. The Securities shall be issuable only in registered form without coupons and in denominations of \$1,000 and any integral multiple of \$1,000 above that amount.

Section 2.08 Execution, Authentication, Delivery and Dating. The Securities shall be executed on behalf of the Company by any of its Chairman of the Board, its Chief Executive Officer, its Chief Operating Officer, its Chief Financial Officer, one of its Vice Presidents, its Secretary or one

of its Assistant Secretaries. The signature of any of these officers on the Securities may be manual or facsimile.

Securities bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Securities or did not hold such offices at the date of such Securities.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Securities. The Company Order shall specify the amount of Securities to be authenticated, and shall further specify the amount of such Securities to be issued as a Global Security or as Physical Securities. The Trustee, in accordance with such Company Order, shall authenticate and deliver such Securities as is in this Indenture provided and not otherwise.

Each Security shall be dated the date of its authentication.

No Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Security a certificate of authentication substantially in the form provided for in Exhibit A hereto executed by the Trustee by manual signature, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder.

Section 2.09 Temporary Securities. Pending the preparation of Physical Securities, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Securities which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the Physical Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities may determine, as evidenced by their execution of such Securities.

If temporary Securities are issued, the Company will cause Physical Securities to be prepared without unreasonable delay. After the preparation of Physical Securities, the temporary Securities shall be exchangeable for Physical Securities upon surrender of the temporary Securities at any office or agency of the Company designated pursuant to Section 10.02, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like Principal Amount of Physical Securities of authorized denominations. Until so exchanged the temporary Securities shall in all respects be entitled to the same benefits under this Indenture as Physical Securities.

Section 2.10 Paying Agent; Registrar. The Company shall maintain an office or agency where Securities may be presented for registration of transfer or for exchange (the “**Security Registrar**”) and an office or agency where Securities may be presented to the Paying Agent for payment. The Company shall cause each of the Registrar and the Paying Agent to maintain an office or agency in The Borough of Manhattan, The City of New York. The Security Registrar shall keep a

register of the Securities and of their transfer and exchange (the “**Security Register**”). The Company may have one or more co-registrars and one or more additional paying agents. The term “**Paying Agent**” includes any additional paying agent and the term “**Security Registrar**” includes any co-registrar.

The Company initially appoints the Trustee as the Paying Agent and the Security Registrar. The Company may, however, change the Paying Agent or Security Registrar without prior notice to the Holders, and the Company may act as the Paying Agent and Security Registrar.

Section 2.11 Transfer and Exchange of Securities Generally.

(a) Upon surrender for registration of transfer of any Security at an office or agency of the Company designated pursuant to Section 10.02 for such purpose, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of any authorized denominations and of a like aggregate Principal Amount and tenor, each such Security bearing such legends as may be required by Section 2.12 and Section 2.15 of this Indenture.

(b) All Securities issued upon any registration of transfer or exchange of Securities shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture as the Securities surrendered upon such registration of transfer or exchange.

(c) Subject to Section 2.12, every Security presented or surrendered for registration of transfer or for exchange shall (if so required by the Company, the Trustee or the Co-Trustee) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed, by the Holder thereof or his attorney duly authorized in writing.

(d) No service charge shall be made for any registration of transfer or exchange of Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Securities, other than exchanges pursuant to Section 2.09 and Section 9.06 not involving any transfer.

(e) The Company shall not be required to exchange or register a transfer of any Security (i) during the 15 day period immediately preceding the mailing of any Notice of Redemption of any Security, (ii) after any Notice of Redemption has been given to Holders, except where such Notice of Redemption provides that such Security is to be redeemed only in part, the Company shall be required to exchange or register a transfer of the portion thereof not to be redeemed, (iii) that has been surrendered for conversion or (iv) as to which a Fundamental Change Purchase Notice has been delivered and not withdrawn, except where such Fundamental Change Purchase Notice provides that such Security is to be purchased only in part, the Company shall be required to exchange or register a transfer of the portion thereof not to be purchased.

(f) Neither the Trustee, the Co-Trustee nor any of their respective agents shall (i)

have any duty to monitor compliance with or with respect to any federal or state or other securities or tax laws or (ii) have any duty to obtain documentation on any transfers or exchanges other than as specifically required hereunder.

Section 2.12 Special Transfer and Exchange Provisions.

(a) Transfer and Exchange of Beneficial Interests in the Global Securities. So long as the Global Securities remain outstanding and are held by or on behalf of the Depositary, transfers and exchanges of beneficial interests in the Global Securities shall be made in accordance with the provisions of this Section 2.12(a) and in accordance with the rules and procedures of the Depositary to the extent applicable (the “**Applicable Procedures**”).

(i) No restrictions shall apply with respect to the transfer or registration of transfer of (A) a beneficial interest in a Restricted Global Security to a transferee that takes delivery in the form of a beneficial interest in an Unrestricted Global Security or (B) a beneficial interest in an Unrestricted Global Security to a transferee that takes delivery in the form of a beneficial interest in an Unrestricted Global Security; *provided* that any transfer described in this clause (i) shall be made in accordance with the Applicable Procedures. Neither the Trustee nor the Co-Trustee shall be deemed to have knowledge of such transfers.

(ii) Any transfer or exchange of a beneficial interest in a Restricted Global Security to a transferee that will take delivery in the form of a beneficial interest in an Unrestricted Global Security shall be registered, subject to the Applicable Procedures, only in accordance with this clause (ii). Upon (A) receipt by the Security Registrar of (w) instructions given in accordance with the Applicable Procedures from the Depositary or its nominee on behalf of an owner of a beneficial interest in a Restricted Global Security to transfer such beneficial interest to a Person that will take delivery in the form of a beneficial interest in an Unrestricted Global Security or to exchange such beneficial interest for a beneficial interest in an Unrestricted Global Security, (x) a written order of the Depositary or its nominee given in accordance with the Applicable Procedures containing account and other information with respect to such transfer or exchange, (y) a certificate of the transferor of the beneficial interest in the Restricted Global Security substantially in the form of Exhibit B hereto, including the applicable certifications in item (2) thereof, and (z) if the Security Registrar so requests, an Opinion of Counsel in form reasonably acceptable to the Security Registrar to the effect that such transfer or exchange is in compliance with the Securities Act and, if such transfer or exchange is being effected prior to October 13, 2009, applicable Canadian Securities Laws, and (B) satisfaction of all other applicable conditions imposed by this Indenture and the Applicable Procedures, the Security Registrar shall (1) reflect in the Security Register a decrease in the principal amount of such Restricted Global Security and an increase in the principal amount of such Unrestricted Global Security, each such adjustment to be equal to the beneficial interest transferred pursuant to this clause (ii), and (2) instruct the Depositary to make the corresponding adjustment to its records and debit and credit the accounts of the appropriate Agent Members in accordance with the Applicable Procedures.

(iii) Any transfer or exchange of a beneficial interest in an Unrestricted Global Security to a transferee that will take delivery in the form of a beneficial interest in a Restricted Global Security shall be registered, subject to the Applicable Procedures, only in accordance with this clause (iii). Upon (A) receipt by the Security Registrar of (w) instructions given in accordance with the Applicable Procedures from the Depositary or its nominee on behalf of an owner of a beneficial interest in an Unrestricted Global Security to transfer such beneficial interest to a Person that will take delivery in the form of a beneficial interest in a Restricted Global Security or to exchange such beneficial interest for a beneficial interest in a Restricted Global Security, (x) a written order of the Depositary or its nominee given in accordance with the Applicable Procedures containing account and other information with respect to such transfer or exchange, and (y) a certificate of the transferor of the beneficial interest in the Unrestricted Global Security substantially in the form of Exhibit B hereto, including the applicable certifications in item (1) thereof, and (B) satisfaction of all other applicable conditions imposed by this Indenture and the Applicable Procedures, the Security Registrar shall (1) reflect in the Security Register a decrease in the principal amount of such Unrestricted Global Security and an increase in the principal amount of such Restricted Global Security, each such adjustment to be equal to the beneficial interest transferred pursuant to this clause (iii), and (2) instruct the Depositary to make the corresponding adjustment to its records and debit and credit the accounts of the appropriate Agent Members in accordance with the Applicable Procedures.

(b) Transfer and Exchange of Beneficial Interests in the Global Securities for Physical Securities. A holder of a beneficial interest in a Global Security may transfer such beneficial interest to a Person who takes delivery thereof in the form of a Physical Security and may exchange such beneficial interest for a Physical Security only upon the occurrence of any of the events set forth in clauses (A), (B) and (C) of Section 2.15(b) and satisfaction of the conditions set forth in this Section 2.12(b). Upon the occurrence of any such preceding event and receipt by the Security Registrar of the documentation referred to in the appropriate subparagraph of this Section 2.12(b), the Trustee shall cause the aggregate Principal Amount of the applicable Global Security to be reduced accordingly, and the Company shall execute and the Trustee shall authenticate and deliver to the Person designated in the instructions a Physical Security in the appropriate Principal Amount. Any Physical Security issued in exchange for a beneficial interest pursuant to this Section 2.12(b) shall be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest shall instruct the Security Registrar through instructions from the Depositary and the Agent Members. The foregoing requirements shall apply to all transfers and exchanges pursuant to this Section 2.12(b).

(i) A holder of a beneficial interest in a Restricted Global Security may transfer such beneficial interest to a Person who takes delivery thereof in the form of a Restricted Physical Security upon the receipt by the Security Registrar of a certificate from such holder substantially in the form of Exhibit B hereto, including the applicable certifications in item (1) thereof. Any Physical Security issued in exchange for a beneficial interest in a Restricted Global Security pursuant to this Section 2.12(b)(i) shall bear the Private Placement Legend and shall be subject to all restrictions on transfer contained therein.

(ii) A holder of a beneficial interest in a Restricted Global Security may transfer such beneficial interest to a Person who takes delivery thereof in the form of an Unrestricted Physical Security or may exchange such beneficial interest for Unrestricted Physical Securities upon the receipt by the Security Registrar of a certificate from such holder substantially in the form of Exhibit B hereto, including the applicable certifications in item (2) thereof, and, if the Security Registrar so requests, an Opinion of Counsel in form reasonably acceptable to the Security Registrar to the effect that such transfer or exchange is in compliance with the Securities Act and, if such transfer or exchange is being effected prior to October 13, 2009, applicable Canadian Securities Laws. Any Unrestricted Physical Securities issued in exchange for a beneficial interest in a Restricted Global Security pursuant to this Section 2.12(b)(ii) shall not bear the Private Placement Legend.

(iii) Other than the restrictions on transfer set forth in the Canadian Private Placement Legend, if applicable, no restrictions shall apply with respect to the transfer or exchange of a beneficial interest in an Unrestricted Global Security.

(c) Transfer and Exchange of Physical Securities for Physical Securities. Upon request by a Holder of Physical Securities and such Holder's compliance with the provisions of this Section 2.12(c), the Security Registrar shall register the transfer or exchange of Physical Securities. Prior to such registration of transfer or exchange, the requesting Holder shall present or surrender to the Security Registrar the Physical Securities duly endorsed or accompanied by a written instruction of transfer in form satisfactory to the Security Registrar duly executed by such Holder or by its attorney, duly authorized in writing. In addition, the requesting Holder shall provide any additional certifications, documents and information, as applicable, required pursuant to the following provisions of this Section 2.12(c).

(i) Any Restricted Physical Security may be transferred to a Person who takes delivery thereof in the form of a Restricted Physical Security if the Security Registrar receives a certificate substantially in the form of Exhibit B hereto, including the certifications in item (1) thereof.

(ii) Any Restricted Physical Security may be transferred to a Person who takes delivery thereof in the form of an Unrestricted Physical Security or exchanged for Unrestricted Physical Securities if the Security Registrar receives a certificate substantially in the form of Exhibit B hereto, including the applicable certifications in item (2) thereof, and, if the Security Registrar so requests, an Opinion of Counsel in form reasonably acceptable to the Security Registrar to the effect that such transfer or exchange is in compliance with the Securities Act and, if such transfer or exchange is being effected prior to October 13, 2009, applicable Canadian Securities Laws. Any Unrestricted Physical Security issued in exchange for a Restricted Physical Security pursuant to this Section 2.12(c)(ii) shall not bear the Private Placement Legend.

(iii) Other than the restrictions on transfer set forth in the Canadian Private Placement Legend, if applicable, no restrictions shall apply with respect to the transfer of an Unrestricted Physical Security.

(d) General. By its acceptance of any Security bearing the Private Placement Legend, the Canadian Private Placement Legend and/or the Global Security Legend, each Holder of such a Security acknowledges the restrictions on transfer of such Security set forth in this Indenture and in such legends and agrees that it will transfer such Security only as provided in this Indenture. The Security Registrar shall retain, in accordance with its customary procedures, copies of all letters, notices and other written communications received pursuant to this Section 2.12. The Company shall have the right to inspect and make copies of all such letters, notices or other written communications at any reasonable time upon the giving of reasonable written notice to the Security Registrar.

Section 2.13 Mutilated, Destroyed, Lost and Stolen Securities. If any mutilated Security is surrendered to the Trustee or the Co-Trustee, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Security of like tenor and Principal Amount and bearing a number not contemporaneously outstanding.

If there shall be delivered to the Company and the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Security and (ii) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a bona fide purchaser, the Company shall execute and the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Security, a new Security of like tenor and Principal Amount and bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Security, pay such Security.

Upon the issuance of any new Security under this Section 2.12, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Security issued pursuant to this Section in lieu of any destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities duly issued hereunder.

The provisions of this Section 2.12 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

Section 2.14 Persons Deemed Owners. Prior to due presentment of a Security for registration of transfer, the Company, the Trustee, the Co-Trustee and any agent of the Company, the Trustee or the Co-Trustee may treat the Person in whose name such Security is registered as the owner of such Security for the purpose of receiving payment of principal on such Security and for all other purposes whatsoever, whether or not such Security be overdue, and neither the Company, the Trustee,



the Co-Trustee nor any agent of the Company, the Trustee or the Co-Trustee shall be affected by notice to the contrary.

Section 2.15 Book-Entry Provisions for Global Securities.

(a) Any Global Securities shall (i) be registered in the name of the Depositary or the nominee of such Depositary, (ii) be deposited with the Trustee as custodian for the Depositary, at its Corporate Trust Office, and (iii) bear the Global Note Legend. Members of, or participants in, the Depositary (“**Agent Members**”) shall have no rights under this Indenture with respect to any Global Security held on their behalf by the Depositary, or the Trustee as its custodian, and the Depositary may be treated by the Company, the Trustee, the Co-Trustee and any agent of the Company, the Trustee or the Co-Trustee as the absolute owner of any Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee, the Co-Trustee or any agent of the Company, the Trustee or the Co-Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depositary or impair, as between the Depositary and the Agent Members, the operation of customary practices governing the exercise of the rights of any Holder.

(b) Transfers of the Global Securities shall be limited to transfers in whole, but not in part, to the Depositary, its successors or their respective nominees. Physical Securities shall be transferred to beneficial owners in exchange for their beneficial interests in the Global Securities only if (A) the Depositary has notified the Company (or in the case of clause (ii) below the Company becomes aware) that the Depositary (i) is unwilling or unable to continue as Depositary for such Global Security or (ii) has ceased to be a clearing agency registered under the Exchange Act when the Depositary is required to be so registered and, in both such cases, no successor Depositary shall have been appointed within 90 days of such notification or of the Company becoming aware of such event, as applicable (B) there shall have occurred and be continuing an Event of Default with respect to such Global Security and the Outstanding Securities shall have become due and payable pursuant to Section 5.02 and any Holder requests that Physical Securities be issued or (C) the Company has determined in its sole discretion that the Securities shall no longer be represented by Global Securities. Any such transfer or exchange of interests of beneficial owners in a Global Security, in whole or in part, for Physical Securities shall be in accordance with the rules and procedures of the Depositary and the provisions of Section 2.12.

(c) The Holder of the Global Securities may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Securities.

Section 2.16 Cancellation. The Company at any time may deliver to the Trustee or the Co-Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and may deliver to the Trustee or the Co-Trustee for cancellation any Securities previously authenticated hereunder which the Company has not issued and sold. The Trustee or the Co-Trustee shall cancel and dispose of all Securities surrendered for registration of transfer, exchange, payment, purchase, redemption, conversion (pursuant to Article XIII hereof) or cancellation in accordance with their customary practices. If the Company shall

acquire any of the Securities, such acquisition shall not operate as a redemption or satisfaction of the indebtedness represented by such Securities unless and until the same are delivered to the Trustee or the Co-Trustee for cancellation. The Company may not issue new Securities to replace Securities it has paid in full or delivered to the Trustee or the Co-Trustee for cancellation.

**Section 2.17 Defaulted Interest.** Any interest (including Additional Interest Amounts and Additional Amounts, if any) on any Security which is payable, but is not paid when the same becomes due and payable and such nonpayment continues for a period of 30 days, shall forthwith cease to be payable to the Holder on the Regular Record Date, and such defaulted interest and (to the extent lawful) interest on such defaulted interest at the rate set forth in Section 10.01 (such defaulted interest and interest thereon herein collectively called “**Defaulted Interest**”) shall be paid by the Company, at its election in each case, as provided in clause (a) or (b) below:

(a) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Securities (or their respective predecessor Securities) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee and the Co-Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Security and the date (not less than 30 days after such notice) of the proposed payment (the “**Special Interest Payment Date**”), and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this Section 2.16(a) provided. Thereupon the Trustee shall fix a record date (the “**Special Record Date**”) for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the Special Interest Payment Date and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date, and in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date and Special Interest Payment Date therefor to be given in the manner provided for in Section 12.02, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date and Special Interest Payment Date therefor having been so given, such Defaulted Interest shall be paid on the Special Interest Payment Date to the Persons in whose names the Securities (or their respective predecessor Securities) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to Section 2.16(b).

(b) The Company may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee.

Subject to the foregoing provisions of this Section 2.17, each Security delivered under this Indenture upon registration of, transfer of or in exchange for or in lieu of any other

Security shall carry the rights to interest (including Additional Interest Amounts and Additional Amounts, if any) accrued and unpaid, and to accrue, which were carried by such other Security.

Section 2.18 CUSIP Numbers. The Company, in issuing the Securities, may use “CUSIP” numbers (if then generally in use), and, if so, the Trustee and the Co-Trustee shall use “CUSIP” numbers in notices as a convenience to Holders; *provided* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice and that reliance may be placed only on the other identification numbers printed on the Securities, and any such notice shall not be affected by any defect in or omission of such numbers. The Company will promptly notify the Trustee and the Co-Trustee of any change in the “CUSIP” numbers.

Section 2.19 Ranking. The indebtedness of the Company arising under or in connection with this Indenture and every outstanding Security issued under this Indenture from time to time constitutes and will constitute a senior unsecured general obligation of the Company, ranking equally with other existing and future unsecured senior and unsubordinated Indebtedness of the Company and ranking senior in right of payment to any future Indebtedness of the Company that is expressly made subordinate to the Securities by the terms of such Indebtedness. For purposes of this Section 2.19 only, “**Indebtedness**” means, without duplication, the principal or face amount of (a) all obligations for borrowed money, (b) all obligations evidenced by debentures, notes or other similar instruments, (c) all obligations in respect of letters of credit or bankers acceptances or similar instruments (or reimbursement obligations with respect thereto), (d) all obligations to pay the deferred purchase price of property or services, (e) all obligations as lessee which are capitalized in accordance with generally accepted accounting principles and (f) all Indebtedness of others guaranteed by the Company or any of its Subsidiaries or for which the Company or any of its Subsidiaries is legally responsible or liable (whether by agreement to purchase indebtedness of, or to supply funds or to invest in, others).

Section 2.20 Sinking Fund. The Securities shall not have the benefit of a sinking fund.

### ARTICLE III

#### OPTIONAL REDEMPTION

Section 3.01 Company’s Right to Redeem; Notices to Trustee and Co-Trustee.

(a) At any time on or after August 2, 2012, the Company may redeem the Securities, in whole or from time to time in part, for cash at a Redemption Price equal to 100% of the Principal Amount being redeemed plus accrued and unpaid interest to, but excluding, the Redemption Date, if the Closing Sale Price of the Common Shares is equal to or greater than 130% of the Conversion Price then in effect for at least 20 Trading Days in the period of 30 consecutive Trading Days ending on the Trading Day prior to the date of mailing of the Notice of Redemption (such redemption, an “**Optional Redemption**”).

(b) If the Company elects to redeem Securities pursuant to an Optional Redemption, it shall notify the Trustee and the Co-Trustee in writing of the Redemption Date, the Principal Amount of Securities to be redeemed, the Conversion Price and the Redemption

Price payable on the Redemption Date. The Company shall give such notice to the Trustee and the Co-Trustee at least 30 days but no more than 60 days before the Redemption Date (unless shorter notice shall be satisfactory to the Trustee or Co-Trustee, as applicable).

(c) In connection with any Optional Redemption, the Company shall furnish to the Trustee and the Co-Trustee an Officers' Certificate stating that, in the opinion of the signers, all conditions precedent, if any, to the Optional Redemption have been complied with.

Section 3.02 Selection of Securities to be Redeemed. If, in the case of an Optional Redemption, fewer than all of the Outstanding Securities are to be redeemed, the Trustee (on behalf of the Trustee and Co-Trustee) shall select the Securities to be redeemed in Principal Amounts of \$1,000 or integral multiples thereof. The Trustee may select the Securities by lot, pro rata or by any other method the Trustee considers fair and appropriate or in any manner required by the Depositary.

If a portion of a Holder's Securities is selected for partial redemption and the Holder thereafter surrenders a portion of such Securities for conversion before termination of the conversion right with respect to the portion of the Security so selected for redemption, the portion of such Security surrendered for conversion shall be deemed (so far as may be), solely for purposes of determining the aggregate Principal Amount of Securities to be redeemed by the Company, to be the portion selected for redemption.

Securities which have been converted during a selection of Securities to be redeemed may be treated by the Trustee and the Co-Trustee as outstanding for the purpose of such selection. Nothing in this Section 3.02 shall affect the right of any Holder to convert any Security pursuant to Article XIII before the termination of the conversion right with respect thereto.

Section 3.03 Notice of Optional Redemption.

(a) At least 30 days but not more than 60 days before a Redemption Date in connection with an Optional Redemption, the Company shall provide a notice of redemption (a "**Notice of Optional Redemption**") to each Holder of Securities to be redeemed at such Holder's address kept by the Security Registrar.

(b) The Notice of Optional Redemption shall identify the Securities to be redeemed and shall state:

(i) the Redemption Date;

(ii) the Redemption Price;

(iii) the applicable Conversion Rate as of the Trading Day prior to the date of the mailing of the Notice of Optional Redemption;

(iv) the name and address of the Paying Agent and the Conversion Agent;

(v) that Securities called for redemption must be surrendered to the Paying Agent for cancellation to collect the Redemption Price;

(vi) that the Securities called for redemption may be converted at any time before 5:00 p.m., New York City time, on the second Business Day prior to the Redemption Date;

(vii) that Holders who wish to convert their Securities must satisfy the requirements set forth in Article XIII;

(viii) that, unless the Company defaults in making payment of the Redemption Price for the Securities (or portions thereof) called for redemption, any interest (including Additional Interest Amounts or Additional Amounts, if any) on Securities (or portions thereof) called for redemption will cease to accrue on and after the Redemption Date, and the only remaining right of the Holder will be to receive payment of the Redemption Price upon presentation and surrender to the Paying Agent of the Securities;

(ix) if fewer than all the outstanding Securities are to be redeemed, the certificate number (if such Securities are held other than in global form) and Principal Amounts of the particular Securities to be redeemed; and

(x) the CUSIP number or numbers for the Securities called for redemption.

(c) at the Company's request, the Trustee shall give the Notice of Optional Redemption in the Company's name and at the Company's expense; *provided, however*, that the Company makes such request at least five Business Days (unless a shorter period shall be satisfactory to the Trustee or the Co-Trustee, as applicable) prior to the date by which such Notice of Optional Redemption must be given to the Holders in accordance with this Section 3.03; *provided, further*, that the text of the Notice of Optional Redemption shall be prepared by the Company in consultation with the Trustee.

**Section 3.04 Effect of Notice of Optional Redemption.** Once a Notice of Optional Redemption is given, Securities called for redemption become due and payable on the Redemption Date and at the Redemption Price stated in such notice, except for Securities that are converted in accordance with the provisions of Article XIII. Upon surrender to the Paying Agent, such redeemed Securities shall be paid at the Redemption Price stated in the Notice of Optional Redemption. Failure to give notice or any defect in the notice to any Holder shall not affect the validity of the notice to any other Holder.

If a Redemption Date is after a Regular Record Date for the payment of interest but on or prior to the corresponding Interest Payment Date, then the interest payable on such Interest Payment Date will be paid to the Holder of record of such Security on the relevant Regular Record Date, and the amount paid to the Holder who presents the Security for redemption shall be 100% of the Principal Amount of such Security.

**Section 3.05 Deposit of Redemption Price.** Prior to 10:00 a.m., New York City time, on the applicable Redemption Date, the Company shall deposit with the Paying Agent an amount of cash (in immediately available funds if deposited on such Redemption Date) sufficient to pay the aggregate Redemption Price of all Securities (or portions thereof) to be redeemed on such Redemption Date, other than Securities or portions of Securities called for redemption which on or prior thereto have been delivered by the Company to the Trustee or the Co-Trustee for cancellation or have been

converted.

If, on such Redemption Date, the Paying Agent holds, in accordance with the terms of this Indenture, cash sufficient to pay the Redemption Price of any Securities for which a Notice of Optional Redemption has been given, then on and after such Redemption Date, such Securities will cease to be outstanding, and interest (including Additional Interest Amounts or Additional Amounts, if any) on such Securities will cease to accrue (whether or not book-entry transfer of such Securities is made and whether or not such Securities are delivered to the Paying Agent), and the rights of the Holders in respect thereof shall terminate (other than the right to receive the Redemption Price upon delivery of such Securities). Nothing herein shall preclude the withholding of any taxes required by law to be withheld or deducted.

Section 3.06 No Redemption Upon Acceleration. Notwithstanding the foregoing, the Company may not redeem the Securities if the Principal Amount of Securities has been accelerated, and such acceleration has not been rescinded on or prior to such Redemption Date (except in the case of an acceleration resulting from a Default by the Company in the payment of the Redemption Price with respect to such Securities).

Section 3.07 Securities Redeemed in Part. Any Security which is to be redeemed only in part shall be surrendered at the office of the Paying Agent and the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Security, without charge, a new Security or Securities, of any authorized denomination as requested by such Holder in aggregate Principal Amount equal to the unredeemed portion of the Security surrendered.

Section 3.08 Repayment to the Company. To the extent that the aggregate amount of cash deposited by the Company pursuant to the foregoing exceeds the aggregate Redemption Price of the Securities or portions thereof which the Company is redeeming as of the Redemption Date, then, promptly after the Redemption Date, the Paying Agent shall return any such excess to the Company. If such money is then held by the Company or an Affiliate of the Company in trust and is not required for such purpose, it shall be discharged from such trust.

ARTICLE IV

SATISFACTION AND DISCHARGE

Section 4.01 Satisfaction and Discharge of Indenture. This Indenture shall cease to be of further effect (except as to any surviving rights of registration of transfer or exchange of Securities herein expressly provided for), and the Trustee and Co-Trustee, on demand of and at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when

(a) either:

(i) all Securities theretofore authenticated and delivered (other than (A) Securities which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.13 and (B) Securities for whose payment money has theretofore been deposited with the Trustee or the Co-Trustee in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from

such trust as provided in Section 10.03) have been delivered to the Trustee or the Co-Trustee for cancellation; or

(ii) all such Securities not theretofore delivered to the Trustee or Co-Trustee for cancellation have become due and payable, and the Company has deposited or caused to be deposited with the Trustee or the Co-Trustee as trust funds in trust for this purpose an amount sufficient to pay and discharge the entire indebtedness evidenced by such Securities not theretofore delivered to the Trustee or the Co-Trustee for cancellation;

(b) the Company has paid or caused to be paid all other sums payable hereunder by the Company; and

(c) the Company has delivered to the Trustee and the Co-Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee and the Co-Trustee under Section 6.07 and, if money shall have been deposited with the Trustee and the Co-Trustee pursuant to Section 4.01(a)(ii), the obligations of the Trustee and the Co-Trustee under Section 4.02 and the last paragraph of Section 10.03 shall survive such satisfaction and discharge.

Section 4.02 Application of Trust Money. Subject to the provisions of the last paragraph of Section 10.03, all money deposited with the Trustee and the Co-Trustee pursuant to Section 4.01 shall be held in trust and applied by them, in accordance with the provisions of the Securities and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee and Co-Trustee may determine, to the Persons entitled thereto, of the principal and interest (including Additional Interest Amounts or Additional Amounts, if any), for whose payment such money has been deposited with the Trustee or the Co-Trustee.

## ARTICLE V

### REMEDIES

Section 5.01 Events of Default. "**Event of Default**," wherever used herein, means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) default in the payment of the Principal Amount, Redemption Price or Fundamental Change Purchase Price on any Security when it becomes due and payable;

(b) default in the payment of interest or Additional Interest Amounts or Additional Amounts, if any, upon any Security when such amounts become due and payable and continuance of such default for a period of 30 days;

(c) default in the performance of any covenant, agreement or condition of the Company in this Indenture or the Securities (other than a default specified in Sections 5.01(a) or 5.01 (b)), and continuance of such default for a period of 60 days after there has been given, by registered or certified mail, to the Company by the Trustee or the Co-Trustee, or to the Company, the Trustee and the Co-Trustee by the Holders of at least 25% in aggregate Principal Amount of the Outstanding Securities a written notice specifying such default and requiring it to be remedied and stating that such notice is a “**Notice of Default**” hereunder;

(d) failure by the Company to convert Securities into cash, Common Shares or a combination of cash and Common Shares, at the Company’s election, upon exercise of a Holder’s conversion right and such failure continues for five Business Days or more;

(e) default in the payment of any indebtedness (other than indebtedness that is non-recourse to the Company or its Subsidiaries) for borrowed money by the Company or any of its Subsidiaries (all or substantially all of the outstanding voting securities of which are owned, directly or indirectly, by the Company) in an outstanding principal amount in excess of \$25,000,000 (or the equivalent thereof in any other currency or currency unit) when such amounts become due at final maturity or upon acceleration, and such indebtedness is not discharged or such default in payment or acceleration is not cured, rescinded or annulled within 10 days after written notice, by registered or certified mail, to the Company by the Trustee or the Co-Trustee specifying such default and requiring it to be remedied and stating that such notice is a “Notice of Default” hereunder;

(f) the rendering of a final judgment or judgments (not subject to appeal and not covered by insurance) against the Company or any of its Subsidiaries in excess of \$25,000,000 (or the equivalent thereof in any other currency or currency unit) which remains unstayed, undischarged or unbonded for a period of 60 days;

(g) failure by the Company to give notice of a Fundamental Change as set forth in Section 12.01(b) or notice of certain transactions as set forth under Section 13.01(a)(iv);

(h) failure by the Company to comply with its obligations under Article VIII;

(i) the entry by a court having jurisdiction in the premises of (i) a decree or order for relief in respect of the Company or any of its Significant Subsidiaries of a voluntary case or proceeding under any applicable U.S. or Canadian federal, state or provincial bankruptcy, insolvency, reorganization or other similar law, (ii) a decree or order adjudging the Company or any of its Significant Subsidiaries as bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company or any of its Significant Subsidiaries under any applicable U.S. or Canadian federal, state or provincial law or (iii) a decree or order appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any of its Significant Subsidiaries or of any substantial part of its or their property, or ordering the winding up or liquidation of its or their affairs, and



the continuance of any such decree or order for relief or any such other appointment, decree or order unstayed and in effect for a period of 60 consecutive days; or

(j) the commencement by the Company or any of its Significant Subsidiaries of a voluntary case or proceeding under any applicable U.S. or Canadian federal, state or provincial bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by any of them to the entry of a decree or order for relief in respect of the Company or any of its Significant Subsidiaries in an involuntary case or proceeding under any applicable U.S. or Canadian federal, state or provincial bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it or any of them, or the filing by it or any of them of a petition or answer or consent seeking reorganization or relief under any applicable U.S. or Canadian federal, state or provincial law, or the consent by it or any of them to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any of its Significant Subsidiaries or of any substantial part of its or their property, or the making by it or any of them of an assignment for the benefit of creditors.

Section 5.02 Acceleration of Maturity; Rescission and Annulment.

(a) If an Event of Default (other than those specified in Section 5.01(i) and Section 5.01(j) with respect to the Company or any of its Significant Subsidiaries) occurs and is continuing, then and in every such case the Trustee and the Co-Trustee or the Holders of not less than 25% in aggregate Principal Amount of the Outstanding Securities may declare the Principal Amount plus accrued and unpaid interest, including Additional Interest Amounts or Additional Amounts, if any, on all the Outstanding Securities to be immediately due and payable, by a notice in writing to the Company (and to the Trustee and the Co-Trustee if given by Holders), and upon any such declaration such Principal Amount plus accrued but unpaid interest, including Additional Interest Amounts or Additional Amounts, if any, shall become immediately due and payable.

Notwithstanding the foregoing, in the case of an Event of Default specified in Section 5.01(i) and Section 5.01(j) with respect to the Company or any of its Significant Subsidiaries, the Principal Amount plus accrued but unpaid interest, including Additional Interest Amounts or Additional Amounts, if any, on all Outstanding Securities will *ipso facto* become due and payable without any declaration or other Act on the part of any Holder, the Trustee or the Co-Trustee.

(b) At any time after such a declaration of acceleration has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee or the Co-Trustee as hereinafter in this Article V provided, the Holders of a majority in aggregate Principal Amount of the Outstanding Securities, by written notice to the Company and the Trustee and the Co-Trustee, may rescind and annul such declaration and its consequences if:

(i) the Company has paid or deposited with the Trustee or the Co-Trustee a sum sufficient to pay:

(A) the Principal Amount plus accrued but unpaid interest, including Additional Interest Amounts or Additional Amounts, if any, or Redemption Price or Fundamental Change Purchase Price, as applicable, on any Securities which have become due otherwise than by such declaration of acceleration, and interest on any such amounts that are overdue at the rate of 1.00% per annum from the required payment date, and

(B) all sums paid or advanced by the Trustee or Co-Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee and the Co-Trustee, their respective agents and counsel, and any other amounts due the Trustee and the Co-Trustee under Section 6.07; and

(ii) all Events of Default, other than the non-payment of the Principal Amount plus accrued but unpaid interest, including Additional Interest Amounts or Additional Amounts, if any, on Securities which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 5.13.

No such rescission shall affect any subsequent default or impair any right consequent thereon.

Section 5.03 Other Remedies. If an Event of Default occurs and is continuing, the Trustee may, but shall not be obligated to, pursue any available remedy to collect the payment of the Principal Amount plus accrued but unpaid interest, including Additional Interest Amounts or Additional Amounts, if any, on the Securities or to enforce the performance of any provision of the Securities or this Indenture. The Trustee or the Co-Trustee may maintain a proceeding even if the Trustee or the Co-Trustee, as applicable, does not possess any of the Securities or does not produce any of the Securities in the proceeding. A delay or omission by the Trustee, the Co-Trustee or any Holder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of, or acquiescence in, the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative.

Section 5.04 Collection of Indebtedness and Suits for Enforcement by Trustee or Co-Trustee. The Company covenants that if:

(a) default is made in the payment of any interest, including Additional Interest Amounts, on any Security when such amounts become due and payable and such default continues for a period of 30 days, or

(b) default is made in the payment of the Principal Amount plus accrued but unpaid interest (including Additional Interest Amounts or Additional Amounts, if any) at the Stated Maturity thereof or in the payment of the Redemption Price or Fundamental Change Purchase Price in respect of any Security,

the Company will, upon demand of the Trustee or the Co-Trustee, pay to the Trustee or the Co-Trustee, for the benefit of the Holders of such Securities, the whole amount then due and payable on such Securities, and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, the Co-Trustee and their respective agents and

counsel.

Section 5.05 Trustee and Co-Trustee May File Proofs of Claim. In case of any judicial proceeding relative to the Company (or any other obligor upon the Securities), its property or its creditors, the Trustee and the Co-Trustee shall be entitled and empowered, by intervention in such proceeding or otherwise, to take any and all actions authorized under the Trust Indenture Act in order to have claims of the Holders, the Trustee and the Co-Trustee allowed in any such proceeding. In particular, the Trustee and the Co-Trustee shall be authorized to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and the Co-Trustee and, in the event that the Trustee and the Co-Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee and the Co-Trustee any amount due to them for the reasonable compensation, expenses, disbursements and advances of the Trustee, the Co-Trustee, their respective agents and counsel and any other amounts due the Trustee and Co-Trustee under Section 6.07.

No provision of this Indenture shall be deemed to authorize the Trustee or the Co-Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder thereof or to authorize the Trustee or the Co-trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 5.06 Application of Money Collected. Any money collected by the Trustee or the Co-Trustee pursuant to this Article V shall be applied in the following order, at the date or dates fixed by the Trustee and the Co-Trustee and, in case of the distribution of such money to Holders, upon presentation of the Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee and the Co-Trustee under Section 6.07;

SECOND: To the payment of the amounts then due and unpaid on the Securities for the Principal Amount, Redemption Price, Fundamental Change Purchase Price or interest, including Additional Interest Amounts or Additional Amounts, if any, as the case may be, in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities; and

THIRD: To the Company.

Section 5.07 Limitation on Suits. No Holder of any Security shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder (other than in the case of an Event of Default specified in Section 5.01(a) or Section 5.01(b)), unless:

(a) such Holder has previously given written notice to the Trustee and the Co-Trustee of a continuing Event of Default;

(b) the Holders of not less than 25% in aggregate Principal Amount of the Outstanding Securities shall have made written request to the Trustee and the Co-Trustee to institute proceedings in respect of such Event of Default in their own names as Trustee and Co-Trustee, respectively, hereunder;

(c) such Holder or Holders have offered to the Trustee and the Co-Trustee indemnity reasonably satisfactory to them against the costs, expenses and liabilities to be incurred in compliance with such request;

(d) the Trustee and the Co-Trustee for 60 days after their receipt of such notice, request and offer of indemnity have failed to institute any such proceeding; and

(e) no direction inconsistent with such written request (in the opinion of the Trustee and the Co-Trustee) has been given to the Trustee or the Co-Trustee during such 60-day period by the Holders of a majority in aggregate Principal Amount of the Outstanding Securities;

it being understood and intended that no one or more Holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Holders, or to obtain or to seek to obtain priority or preference over any other Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all the Holders.

Section 5.08 Unconditional Right of Holders to Receive Payment. Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of the Principal Amount, Redemption Price, Fundamental Change Purchase Price or interest, including Additional Interest Amounts or Additional Amounts, if any, in respect of the Securities held by such Holder, on or after the respective due dates expressed in the Securities or on or after any Redemption Date or Fundamental Change Purchase Date, as applicable, and to convert the Securities in accordance with Article XIII hereof, or to bring suit for the enforcement of any such payment on or after such respective dates or the right to convert, shall not be impaired or affected adversely without the consent of such Holder. For purposes of clarification, prior to the occurrence of a Fundamental Change, the provisions relating to the right to receive payment upon a Fundamental Change Purchase Date may be modified in the manner set forth in Section 9.02.

Section 5.09 Restoration of Rights and Remedies. If the Trustee, the Co-Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason or has been determined adversely to the Trustee, the Co-Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Company, the Trustee, the Co-Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee, the Co-Trustee and the Holders shall continue as though no such proceeding had been instituted.

Section 5.10 Rights and Remedies Cumulative. Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities in the last paragraph of Section 2.13, no right or remedy herein conferred upon or reserved to the Trustee, the Co-Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right

and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder or otherwise shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 5.11 Delay or Omission Not Waiver. No delay or omission of the Trustee, the Co-Trustee or of any Holder of any Security to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article V or by law to the Trustee, the Co-Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee, the Co-Trustee or by the Holders, as the case may be.

Section 5.12 Control by Holders. The Holders of a majority in aggregate Principal Amount of the Outstanding Securities shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee and the Co-Trustee or exercising any trust or power conferred on the Trustee and the Co-Trustee, *provided that*:

(a) such direction shall not be in conflict with any rule of law or with this Indenture; and

(b) the Trustee or the Co-Trustee may take any other action deemed proper by the Trustee or the Co-Trustee, respectively, which is not inconsistent with such direction.

Section 5.13 Waiver of Past Defaults. The Holders of not less than a majority in aggregate Principal Amount of the Outstanding Securities may on behalf of the Holders of all the Securities waive any past Default hereunder and its consequences, except a Default:

(a) described in Section 5.01(a) or Section 5.01(b); or

(b) in respect of a covenant or provision hereof which under Article IX cannot be modified or amended without the consent of the Holder of each Outstanding Security affected.

Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

Section 5.14 Undertaking for Costs. In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee or the Co-Trustee for any action taken or omitted by it as Trustee or Co-Trustee, respectively, in either case in respect of the Securities, a court may require any party litigant in such suit to file an undertaking to pay the costs of the suit, and the court may assess reasonable costs, including reasonable attorney's fees and expenses, against any party litigant in the suit having due regard to the merits and good faith of the claims or defenses made by the party litigant; but the provisions of this Section 5.14 shall not apply to any suit instituted by the Company, to any suit instituted by the Trustee or the Co-Trustee, to any suit instituted by any Holder or group of Holders holding in the aggregate more than 10% in Principal Amount of the Outstanding Securities or to any suit instituted by any Holder for the enforcement of the payment of the Principal Amount or accrued but unpaid interest, including Additional Interest Amounts or Additional Amounts,

if any, on any Security on or after the Stated Maturity of such Security or the Redemption Price or Fundamental Change Purchase Price.

Section 5.15 Waiver of Stay or Extension Laws. The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and covenants that it will not hinder, delay, or impede the execution of any power herein granted to the Trustee or the Co-Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

ARTICLE VI

THE TRUSTEE AND THE CO-TRUSTEE

Section 6.01 Certain Duties and Responsibilities. The duties and responsibilities of the Trustee shall be as provided by the Trust Indenture Act and as set forth herein. For purposes of this Article VI, unless expressly stated otherwise, provisions applicable to the Trustee shall be applicable to the Co-Trustee. In case an Event of Default with respect to the Securities has occurred (which has not been cured or waived), the Trustee shall exercise the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs. Notwithstanding the foregoing, no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers. Except during the continuance of an Event of Default, the Trustee need perform only those duties as are specifically set forth in this Indenture, and no duties, covenants or obligations of the Trustee shall be implied in this Indenture. Whether or not herein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of, or affording protection to, the Trustee shall be subject to the provisions of this Section 6.01.

Section 6.02 Notice of Defaults. The Trustee shall give the Holders notice of any Default hereunder within 90 days after the occurrence thereof or, if later, within 15 days after it is known to the Trustee, unless such Default shall have been cured or waived before the giving of such notice; *provided* that (except in the case of any Default in the payment of Principal Amount, interest, including Additional Interest Amounts or Additional Amounts, if any, on any of the Securities or the Redemption Price or Fundamental Change Purchase Price), the Trustee shall be protected in withholding such notice if and so long as a Responsible Officer of the Trustee in good faith determines that the withholding of such notice is in the interest of the Holders of Securities.

Section 6.03 Certain Rights of Trustee. Subject to the provisions of Section 6.01:

(a) the Trustee may conclusively rely and shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by

the proper party or parties;

(b) any written request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order and any resolution of the Board of Directors of the Company may be sufficiently evidenced by a Board Resolution;

(c) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officers' Certificate;

(d) the Trustee may consult with counsel of its selection and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(e) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee security or indemnity reasonably satisfactory to it against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit; and if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney, at the sole cost of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation;

(g) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any willful misconduct or gross negligence on the part of any agent or attorney appointed with due care by it hereunder;

(h) the Trustee shall not be charged with knowledge of any Default or Event of Default (other than a payment Default under Section 5.01(a) or Section 5.01(b)) with respect to the Securities unless a Responsible Officer of the Trustee shall have received written notice of such Default or Event of Default from the Company or any other obligor on such Securities or by any Holder of such Securities;

(i) the Trustee shall not be liable for any action taken, suffered or omitted by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture;

(j) the rights, disclaimers, privileges, protections, immunities and benefits given

to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee and The Bank of New York Mellon in each of its capacities hereunder (including as Conversion Agent), and each agent, custodian and other Person employed to act hereunder;

(k) the Trustee may request that the Company deliver an Officers' Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officers' Certificate may be signed by any person authorized to sign an Officers' Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded;

(l) in no event shall the Trustee be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action; and

(m) the Trustee, Co-Trustee and the Conversion Agent, respectively, shall not be liable and shall be held harmless with respect to information received from the Company, the Bid Solicitation Agent and any Holder and information received from other third parties that would be reasonable to rely upon.

Section 6.04 Not Responsible for Recitals. The recitals contained herein and in the Securities, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities. The Trustee shall not be accountable for the use or application by the Company of Securities or the proceeds thereof.

Section 6.05 May Hold Securities. The Trustee, any Paying Agent, any Security Registrar or any other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Securities and, subject to Section 6.08 and Section 6.13, may otherwise deal with the Company with the same rights it would have if it were not Trustee, Paying Agent, Security Registrar or such other agent.

Section 6.06 Money Held in Trust. Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by applicable law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed in writing with the Company.

Section 6.07 Compensation and Reimbursement. The Company agrees.

(a) to pay to the Trustee (which for purposes of this Section 6.07(a) shall include its officers, directors, employees and agents as well as the officers, directors, employees and agents of the Co-Trustee) from time to time such compensation for all services rendered by it hereunder as the Company and the Trustee shall from time to time agree in writing (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(b) except as otherwise expressly provided herein, to reimburse the Trustee upon



its request for all expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of its agents and in-house and outside counsel), except any such expense, disbursement or advance as may be attributable to its gross negligence or bad faith;

(c) to indemnify the Trustee, the Co-Trustee and The Bank of New York Mellon in any other role hereunder (including when acting as Conversion Agent) and any predecessor Trustee for, and to hold it harmless against, any loss, liability, claim, damage or expense including taxes (other than taxes based upon, measured by or determined by the income or capital of the Trustee) incurred without gross negligence, willful misconduct or bad faith on its part, arising out of or in connection with the acceptance or administration of this trust, including the reasonable costs and expenses of defending itself against any claim (whether assessed by the Company, by any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder; and

(d) the Trustee shall notify the Company promptly of any claim asserted against it. Failure by the Trustee to so notify the Company shall not relieve the Company of its obligations under this Section 6.07. The Company shall defend the claim, and the Trustee shall cooperate in the defense. The Trustee may at its option have separate counsel of its own choosing, and the Company shall pay the reasonable fees and expenses of such counsel. The Company need not pay for any settlement made without its written consent, which consent shall not be unreasonably withheld.

The obligations of the Company under this Section 6.07 shall survive the resignation or removal of the Trustee and the satisfaction and discharge of this Indenture. To secure the Company's payment obligations in this Section 6.07, the Trustee shall have a lien prior to the Securities on all money or property held or collected by the Trustee, except such money or property held in trust to pay principal and interest on the Securities. Such lien shall survive the resignation or removal of the Trustee and the satisfaction and discharge of this Indenture. When the Trustee incurs expenses or renders services after a Default or an Event of Default specified in Section 5.01(i) and Section 5.01(j) occurs, the expenses and the compensation for the services (including the fees and expenses of its agents and in-house and outside counsel) are intended to constitute expenses of administration under United States Code, Title 11 or any other similar foreign, federal or state law for the relief of debtors.

**Section 6.08 Disqualification; Conflicting Interests.** If the Trustee has or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture.

**Section 6.09 Corporate Trustee Required; Eligibility.** There shall at all times be a Trustee hereunder which shall be a Person that is eligible pursuant to the Trust Indenture Act to act as such and has a combined capital and surplus of at least \$50,000,000 and a Co-Trustee authorized to conduct business in Ontario and Canada. If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority, then for the purposes of this Section 6.09, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If

at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 6.09, it shall resign immediately in the manner and with the effect hereinafter specified in this Article VI.

Section 6.10 Resignation and Removal; Appointment of Successor.

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article VI shall become effective until the acceptance of appointment by the successor Trustee under Section 6.11.

(b) The Trustee may resign at any time by giving written notice thereof to the Company. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction at the expense of the Trustee for the appointment of a successor Trustee.

(c) The Trustee may be removed at any time by Act of the Holders of a majority in aggregate Principal Amount of the Outstanding Securities, delivered to the Trustee and to the Company. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within 30 days after the notice of removal, the Trustee being removed may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities.

(d) If at any time:

(i) the Trustee shall fail to comply with Section 6.08 after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Security for at least six months, or

(ii) the Trustee shall cease to be eligible under Section 6.09 and shall fail to resign after written request therefor by the Company or by any such Holder, or

(iii) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent, or

(iv) a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, (A) the Company by a Company Order may remove the Trustee or (B) subject to Section 5.14, any Holder who has been a bona fide Holder of a Security for at least six months may, on behalf of such Holder and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of the Trustee for any cause, the Company, by a Company Order, shall promptly appoint a successor Trustee. If no successor Trustee shall have been so appointed by the Company and accepted appointment in the manner hereinafter provided within 90 days following such resignation, removal, incapability or vacancy, any Holder who has been a

bona fide Holder of a Security for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(f) The Company shall give notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee to all Holders in the manner provided in Section 1.06. Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office.

(g) If a Trustee is removed with or without cause, all fees and expenses (including the fees and expenses of counsel) of the Trustee incurred in the administration of the trust or in the performance of the duties hereunder prior to such removal shall be paid to the Trustee.

Section 6.11 Acceptance of Appointment by Successor. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder. Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts.

No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Article VI.

Section 6.12 Merger, Conversion, Consolidation or Succession to Business. Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, *provided* such corporation shall be otherwise qualified and eligible under this Article VI, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Securities shall have been authenticated but not delivered by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities.

Section 6.13 Preferential Collection of Claims Against. If and when the Trustee shall be or become a creditor of the Company (or any other obligor upon the Securities), the Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of claims against the Company (or any such other obligor).

## ARTICLE VII

### REPORTS BY TRUSTEE

#### Section 7.01 Preservation of Information; Communications to Holders.

(a) The Trustee and the Co-Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustee and the Co-Trustee as provided in Section 10.08 and the names and addresses of Holders received by the Trustee in its capacity as Security Registrar. The Trustee and the Co-Trustee may destroy any list furnished to them as provided in Section 10.08 upon receipt of a new list so furnished.

(b) The rights of Holders to communicate with other Holders with respect to their rights under this Indenture or under the Securities and the corresponding rights and duties of the Trustee and the Co-Trustee shall be as provided by the Trust Indenture Act.

(c) Every Holder of Securities, by receiving and holding the same, agrees with the Company, the Trustee and the Co-Trustee that neither the Company, the Trustee nor the Co-Trustee nor any agent of any of them shall be held accountable by reason of any disclosure of information as to names and addresses of Holders made pursuant to the Trust Indenture Act.

#### Section 7.02 Reports by Trustee and Co-Trustee.

(a) The Trustee and the Co-Trustee shall transmit to Holders such reports concerning the Trustee and the Co-Trustee and their actions under this Indenture as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant thereto. Reports so required to be transmitted at stated intervals of not more than 12 months shall be transmitted no later than September 15 in each calendar year, commencing on September 15, 2009. Each such report shall be dated as of a date not more than 60 days prior to the date of transmission.

(b) A copy of each such report shall, at the time of such transmission to Holders, be filed by the Trustee or the Co-Trustee with each stock exchange upon which the Securities are listed, if any, with the Commission, if applicable, and with the Company. The Company shall notify the Trustee and the Co-Trustee promptly (and in any event within 10 days) whenever the Securities become listed on any stock exchange or of any delisting thereof.

## ARTICLE VIII

### CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

Section 8.01 Company May Consolidate, etc., Only on Certain Terms. The Company shall not, without the consent of any Holder of Securities, amalgamate, consolidate or combine with or merge with or into any other Person or sell, transfer or lease all or substantially all of its properties and assets, substantially as an entirety to another Person, unless:

- (a) the resulting, surviving or transferee Person (the “**Successor Company**”)

shall be a corporation, partnership, limited liability company or trust organized and existing under the laws of the United States of America, any State thereof, the District of Columbia or the laws of Canada or any province or territory thereunder, and the Successor Company (if not the Company) shall expressly assume, by supplemental indenture, executed and delivered to the Trustee and the Co-Trustee, in form reasonably satisfactory to the Trustee and the Co-Trustee, all the obligations of the Company under the Securities and this Indenture;

- and (b) immediately after giving effect to such transaction, no Default shall have occurred and be continuing;
- (c) the Company or the Successor Company shall have delivered to the Trustee and the Co-Trustee an Officers' Certificate and an Opinion of Counsel, each stating that (i) such amalgamation, consolidation, merger or transfer, and if a supplemental indenture is required in connection with such transaction, such supplemental indenture, comply with the provisions of this Indenture, including this Article VIII and Article IX, and (ii) the transaction will not result in the Successor Company being required to pay any Additional Amounts in respect of any payments in respect of the Securities in accordance with Section 10.10.

Section 8.02 Successor Substituted. The Successor Company will succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture, other than in the case of a lease of all or substantially all of the Company's consolidated assets.

ARTICLE IX

SUPPLEMENTAL INDENTURES

Section 9.01 Supplemental Indentures Without Consent Of Holders. Without the consent of any Holder, the Company, when authorized by a Board Resolution, and the Trustee and the Co-Trustee, at any time and from time to time, may amend, modify or supplement this Indenture or the Securities, in form satisfactory to the Trustee and the Co-Trustee, for any of the following purposes:

- (a) to evidence the succession of another Person to the Company and the assumption by any such successor of the covenants of the Company herein and in the Securities; or
- (b) to add to the covenants of the Company for the benefit of the Holders, or to surrender any right or power herein conferred upon the Company; or
- (c) to provide for a successor Trustee or successor Co-Trustee with respect to the Securities; or
- (d) to add any additional Events of Default with respect to the Securities; or
- (e) to cure any ambiguity or defect, to correct or supplement any provision herein which may be inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Indenture which shall not be inconsistent with the provisions of this Indenture; or

(f) to reduce the Conversion Price; *provided, however*, that such reduction in the Conversion Price is in accordance with the terms of this Indenture or shall not adversely affect the interests of the Holders of Securities (after taking into account tax and other consequences of such reduction) in any material respect; or

(g) to supplement any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the discharge of the Securities; *provided, however*, that such change or modification does not adversely affect the interests of the Holders of the Securities in any material respect; or

(h) to add to the covenants of the Company for the benefit of the Holders or to surrender any right or power herein conferred upon the Company; or

(i) to make any change that does not materially adversely affect the rights of any Holder; or

(j) to add or modify any other provisions herein with respect to matters or questions arising hereunder which the Company, the Trustee and the Co-Trustee may deem necessary or desirable and which would not reasonably be expected to adversely affect the interests of the Holders of Securities in any material respect; or

(k) to conform this Indenture or the Securities to the description thereof under the caption "Description of notes" in the Offering Memorandum; or

(l) to comply with any requirements of the Commission in connection with the qualification of this Indenture under the Trust Indenture Act or any applicable requirements of the *Canada Business Corporations Act*.

Section 9.02 Supplemental Indentures with Consent of Holders.

(a) With the consent of the Holders of not less than a majority in aggregate Principal Amount of the Outstanding Securities, by Act of said Holders delivered to the Company, the Trustee and the Co-Trustee, the Company, when authorized by a Board Resolution, and the Trustee and Co-Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders under this Indenture; *provided, however*, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security affected thereby:

(i) extend the Stated Maturity of any Security; or

(ii) reduce the Principal Amount of, or reduce the interest rate on, or extend the stated time for payment of interest on, any Security, excluding in each case Additional Interest Amounts and Additional Amounts if any, or

(iii) reduce the Redemption Price or Fundamental Change Purchase Price of any Security; or

(iv) after the occurrence of a Fundamental Change, make any change that adversely affects the right of Holders of the Securities to require the Company to purchase such Securities in accordance with the terms thereof and this Indenture; or

(v) make any change that impairs the right of Holders of Securities to convert any Security; or

(vi) change the currency of any payment amount of any Security from U.S. Dollars or Common Shares as provided herein; or

(vii) make any change that impairs the right of Holders to institute suit for payment of the Securities; or

(viii) reduce the percentage in aggregate Principal Amount of the Outstanding Securities, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver (of compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences) provided for in this Indenture; or

(ix) modify the obligation of the Company to maintain an agency in The City of New York as required under this Indenture; or

(x) change the ranking of the Securities in any manner that adversely affects the rights of Holders under this Indenture; or

(xi) modify any of the provisions of this Section 9.02 or Section 5.13, except to increase the percentage in aggregate Principal Amount of the Outstanding Securities, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver (of compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences) provided for in this Indenture, or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Security affected thereby.

(b) The Holders of not less than a majority in aggregate Principal Amount of the Outstanding Securities may, on behalf of the Holders of all of the Securities, waive any past default and its consequences under this Indenture, except a default (i) in the payment of the Principal Amount of or any interest, including Additional Interest Amounts and Additional Amounts, if any, on or with respect to the Securities or (ii) in respect of a covenant or provision that cannot be modified without the consent of the Holder of each Security affected thereby as set forth in Section 9.02(a).

It shall not be necessary for any Act of Holders under this Section 9.02 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

Section 9.03 Execution of Supplemental Indentures. In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article IX or the

modifications thereby of the trusts created by this Indenture, the Trustee and the Co-Trustee shall be provided with, and (subject to Section 6.01) shall be fully protected in relying upon, in addition to the documents required by Section 1.02, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture and such other conclusions as the Trustee and the Co-Trustee may require. Subject to the preceding sentence, the Trustee and the Co-Trustee shall sign such supplemental indenture if the same does not affect the Trustee's and the Co-Trustee's own rights, duties or immunities under this Indenture or otherwise or subject either of them to undue risk. The Trustee and the Co-Trustee may, but shall not be obligated to, enter into any such supplemental indenture which affects the Trustee's and the Co-Trustee's own rights, duties or immunities under this Indenture or otherwise.

Section 9.04 Effect of Supplemental Indentures. Upon the execution of any supplemental indenture under this Article IX, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

Section 9.05 Conformity with Trust Indenture Act. Every supplemental indenture executed pursuant to this Article IX shall conform to the requirements of the Trust Indenture Act and any applicable requirements of the *Canada Business Corporations Act*.

Section 9.06 Reference in Securities to Supplemental Indentures. Securities authenticated and delivered after the execution of any supplemental indenture pursuant to this Article IX shall bear a notation in a form approved by the Trustee and the Co-Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities so modified as to conform, in the opinion of the Trustee, the Co-Trustee and the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee and the Co-Trustee in exchange for Outstanding Securities.

## ARTICLE X

### COVENANTS

Section 10.01 Payments. The Company shall duly and punctually make all payments in respect of the Securities and this Indenture in accordance with the terms of the Securities and this Indenture. The Company shall, to the fullest extent permitted by law, pay interest on overdue payments of Principal Amount, plus accrued but unpaid interest, including Additional Interest Amounts or Additional Amounts, if any, Redemption Price and Fundamental Change Purchase Price at the rate of 1% per annum from the required payment date of such overdue payment.

Any payments made or due pursuant to this Indenture shall be considered paid on the applicable date due if by 10:00 a.m., New York City time, on such date the Paying Agent holds, in accordance with this Indenture, cash sufficient to pay all such amounts then due. Payment of the principal of and interest, including Additional Interest Amounts or Additional Amounts, if any, on the Securities shall be in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

Section 10.02 Maintenance of Office or Agency. The Company shall maintain in The



Borough of Manhattan, The City of New York, an office or agency where Securities may be presented or surrendered for payment, where Securities may be surrendered for registration of transfer, exchange, repurchase or conversion and where notices and demands pursuant to this Section 10.02 to or upon the Company in respect of the Securities and this Indenture may be served, which shall initially be the Corporate Trust Office of the Trustee. The Company shall give prompt written notice to the Trustee and the Co-Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee or the Co-Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Company hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

The Company may also from time to time designate one or more other offices or agencies (in or outside The Borough of Manhattan, The City of New York) where the Securities may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided, however*, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in The Borough of Manhattan, The City of New York, for such purposes. The Company shall give prompt written notice to the Trustee and the Co-Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

Section 10.03 Money for Security Payments to be Held in Trust. If the Company shall at any time act as its own Paying Agent, it shall, on or before each due date of any payment in respect of any of the Securities, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to make the payment so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided and shall promptly notify the Trustee and the Co-Trustee of its action or failure so to act.

Whenever the Company shall have one or more Paying Agents, it will, on or prior to each due date of any payment in respect of any Securities, deposit with any one or more Paying Agents a sum sufficient to pay such amount, such sum to be held as provided by the Trust Indenture Act, and (unless such Paying Agent is the Trustee or the Co-Trustee) the Company will promptly notify the Trustee and the Co-Trustee of its action or failure so to act.

The Company shall cause each Paying Agent other than the Trustee or the Co-Trustee to execute and deliver to the Trustee and the Co-Trustee an instrument in which such Paying Agent shall agree with the Trustee and the Co-Trustee, subject to the provisions of this Section 10.03, that such Paying Agent will (a) comply with the provisions of the Trust Indenture Act applicable to it as a Paying Agent and (b) during the continuance of any Default by the Company (or any other obligor upon the Securities) in the making of any payment in respect of the Securities, upon the written request of the Trustee or the Co-Trustee, forthwith pay to the Trustee or the Co-Trustee all sums held in trust by such Paying Agent as such.

The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee or the Co-Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee or the Co-Trustee, as applicable, upon

the same trusts as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee or the Co-Trustee, such Paying Agent shall be released from all further liability with respect to such money.

Any money deposited with the Trustee, the Co-Trustee or any Paying Agent, or then held by the Company, in trust for the making of payments in respect of any Security and remaining unclaimed for two years after such payment has become due shall be paid to the Company on Company Request, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee, the Co-Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; *provided, however*, that the Trustee, the Co-Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in a newspaper published in the English language, customarily published on each Business Day and of general circulation in The City of New York, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication, any unclaimed balance of such money then remaining shall be repaid to the Company.

Section 10.04 Statement by Officers as to Default. The Company shall deliver to the Trustee and the Co-Trustee, within 90 days after the end of each fiscal year of the Company ending after the date hereof, an Officers' Certificate, stating whether or not to the knowledge of the signers thereof the Company is in Default in the performance and observance of any of the terms, provisions and conditions of this Indenture (without regard to any period of grace or requirement of notice provided hereunder) and, if the Company shall be in Default, specifying all such Defaults and the nature and status thereof of which they may have knowledge.

The Company shall deliver to the Trustee and the Co-Trustee, as soon as possible and in any event within five days after the Company becomes aware of the occurrence of any Event of Default or an event which, with notice or the lapse of time or both, would constitute an Event of Default, an Officers' Certificate setting forth the details of such Event of Default or default and the action which the Company proposes to take with respect thereto.

Section 10.05 Existence. Subject to Article VIII hereof, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises; *provided, however*, that the Company shall not be required to preserve any such right or franchise if the Board of Directors of the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and that the loss thereof is not disadvantageous in any material respect to the Holders.

Section 10.06 Resale of Certain Securities. During the period beginning on the Issue Date and ending on the date that is one year from the Issue Date, the Company shall not resell any Securities which constitute "restricted securities" under Rule 144 that have been reacquired by the Company. The Trustee and the Co-Trustee shall have no responsibility in respect of the Company's performance of its agreement in the preceding sentence.

Section 10.07 Book-Entry System. If the Securities cease to trade in the Depository's

book-entry settlement system, the Company covenants and agrees that it shall use reasonable efforts to make such other book entry arrangements that it determines are reasonable for the Securities.

Section 10.08 Company to Furnish Trustee and Co-Trustee Names and Addresses of Holders. The Company will furnish or cause to be furnished to the Trustee and the Co-Trustee:

(a) semi-annually, not later than 10 days after each Regular Record Date, a list, in such form as the Trustee and the Co-Trustee may reasonably require, of the names and addresses of the Holders as of such Regular Record Date; and

(b) at such other times as the Trustee or the Co-Trustee may request in writing, within 30 days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished;

*provided, however,* that no such list need be furnished so long as the Trustee or the Co-Trustee is acting as Security Registrar.

Section 10.09 Reports by Company and Delivery of Certain Information. The Company shall file with the Trustee and the Co-Trustee, (A) such information, documents and other reports, and such summaries thereof, as the Company may be required to file or furnish pursuant to the Trust Indenture Act (at the times and in the manner provided in the Trust Indenture Act) and (B) within 15 days after the Company files or furnishes the same with the Commission, such information, documents and other reports, and such summaries thereof, as the Company may be required to file or furnish with the Commission pursuant to Section 13 or 15(d) of the Exchange Act; *provided* that (a) delivery of materials to the Trustee and the Co-Trustee by electronic means shall be deemed to be “filed” with the Trustee and the Co-Trustee for purposes of this Section 10.09; (b) so long as such filings by the Company are available on the Commission’s Electronic Data Gathering, Analysis and Retrieval system (EDGAR), the Ontario Securities Commission’s System for Electronic Document Analysis and Retrieval (SEDAR) or any other website maintained by the securities regulatory authorities in the United States or Canada, such materials shall be deemed to be “filed” with the Trustee and the Co-Trustee for purposes of this Section 10.09; and (c) the Company need not furnish to the Trustee or the Co-Trustee confidential portions of any information, documents or reports filed or furnished with the Commission, the Ontario Securities Commission or any other securities regulatory authority on a confidential basis. Notwithstanding the foregoing, it shall not be the responsibility of the Trustee or Co-Trustee to monitor postings of the Company on EDGAR, SEDAR or any other website referred to in this Section 10.09, it being understood that, due to the public availability of the information contained on such websites, any Person, including without limitation any Holder, may obtain such information directly from such website.

In the event that, while Securities remain Outstanding, the Company is no longer subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, the Company will continue to file with the Trustee and the Co-Trustee, within 15 days after the time periods required for the filing or furnishing of such forms by the Commission, (a) annual reports on Form 40-F or Form 20-F, as applicable, or any successor form, and (b) current reports on Form 6-K, or any successor form, which, regardless of applicable requirements shall, at a minimum, contain such

information required to be provided in quarterly reports under the laws of Canada or any province thereof to securityholders of a corporation with securities listed on the Toronto Stock Exchange, whether or not the Company has securities listed on such exchange; and such reports will be prepared in accordance with Canadian disclosure requirements.

Delivery of reports, information and documents to the Trustee and the Co-Trustee under this Section 10.09 is for informational purposes only, and the receipt by the Trustee and Co-Trustee of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee and the Co-Trustee are entitled to rely exclusively on Officers' Certificates).

If (a) the Securities and the Common Shares issuable upon conversion of the Securities are Outstanding and are "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Act, as applicable, and (b) the Company is not subject to Section 13 or 15(d) of the Exchange Act or exempt from such reporting requirements pursuant to Rule 12g3-2(b) thereunder, then the Company shall make available to any Holder, beneficial owner of such Common Shares or prospective purchaser of the Securities or such Common Shares designated by such Holder or beneficial owner, upon the request of such Holder, owner or prospective purchaser, at or prior to the time of resale by such Holder, the information required by Rule 144A(d)(4) under the Securities Act, *provided* that such information is necessary to permit such Holders or beneficial owners of Common Shares issuable upon conversion of the Securities, as applicable, to effect resales under Rule 144A.

**Section 10.10 Payment of Additional Amounts.** All payments made by or on behalf of the Company under or with respect to the Securities (including, without limitation, any Additional Interest Amount) will be made free and clear of, and without withholding or deduction for, or on account of, any present or future tax, duty, levy, impost, assessment or other governmental charge (including, without limitation, penalties, interest and other liabilities related thereto) imposed or levied by or on behalf of the Government of Canada or of any province or territory thereof or by any authority or agency therein or thereof having power to tax, including without limitation any taxes imposed under Part XIII of the Tax Act ("**Canadian Taxes**"), unless the Company is required by law or the interpretation or administration thereof, to withhold or deduct any amounts for, or on account of, Canadian Taxes. If the Company is so required to withhold or deduct any amount for, or on account of, Canadian Taxes from any payment made under or with respect to the Securities, the Company will make such withholding or deduction and pay as additional interest such additional amounts ("**Additional Amounts**") as may be necessary so that the net amount received by each Holder (other than an Excluded Holder) after such withholding or deduction (including any withholding or deduction required to be made in respect of any Additional Amounts) will not be less than the amount the Holder (other than an Excluded Holder) would have received if such Canadian Taxes had not been withheld or deducted and similar payment (the term "Additional Amounts" shall also include any such similar payments) will also be made by the Company to Holders (other than Excluded Holders) of Securities that are exempt from withholding but are required to pay Canadian Taxes directly on amounts otherwise subject to withholding; *provided, however*, that no Additional Amounts will be payable with respect to:

(a) a payment made to a Holder or former Holder of Securities (an “**Excluded Holder**”) in respect of the beneficial owner thereof:

(i) with which the Company does not deal at arm’s length (within the meaning of the Tax Act) at the time of making such payment; or

(ii) that is subject to such Canadian Taxes by reason of its failure to comply with any certification, identification, information, documentation or other reporting requirement if compliance is required by law, regulation, administrative practice or an applicable treaty as a precondition to exemption from, or a reduction in the rate of deduction or withholding of, such Canadian Taxes (*provided* that in the case of any imposition or change in any such certification, identification, information, documentation or other reporting requirement which applies generally to Holders of Securities who are not residents of Canada, at least 60 days prior to the effective date of any such imposition or change, the Company shall give written notice, in the manner provided in this Indenture, to the Trustee, the Co-Trustee and the Holders of the Securities then outstanding of such imposition or change, as the case may be, and provide the Trustee, the Co-Trustee and such Holders with such forms or documentation, if any, as may be required to comply with such certification, identification, information, documentation, or other reporting requirement); or

(iii) that is subject to such Canadian Taxes by reason of its carrying on a trade or business in Canada or any province or territory thereof, having a permanent establishment in any such jurisdiction, being organized under the laws of any such jurisdiction, being or being deemed to be resident in any such jurisdiction or otherwise being connected with any such jurisdiction otherwise than by the mere holding of such Securities or the receipt of payments or exercise of any enforcement rights, thereunder; or

(b) any estate, inheritance, gift, sales, excise, transfer, personal property or similar tax, assessment or governmental charge (“**Excluded Taxes**”).

The Company will (A) make such withholding or deduction for Canadian Taxes (other than Excluded Taxes in respect of payments made to a Holder (other than an Excluded Holder) under or with respect to the Securities) and (B) remit the full amount deducted or withheld to the relevant authority in accordance with applicable law.

The Company will furnish to the Trustee and the Co-Trustee, within 30 days after the date the payment of any Canadian Taxes is due pursuant to applicable law in respect of such Securities, certified copies of tax receipts evidencing such payment by the Company.

The Company will indemnify and hold harmless each Holder of any Securities (other than an Excluded Holder) from any Canadian Taxes (other than Excluded Taxes) in respect of which any Additional Amounts are payable by but not paid by the Company, including any Canadian Taxes (other than Excluded Taxes) levied or imposed on the Holder with respect to any indemnity payment.

Additional Amounts will be paid in cash semi-annually on the applicable February 1 or August 1, at Maturity, on any Redemption Date, on a Conversion Date or on any Fundamental Change Purchase Date.

Whenever in this Indenture there is mentioned, in any context, the payment of principal and interest or any other amount payable under, or with respect to, any Security, such mention shall be deemed to include mention of the payment of Additional Amounts provided for in this Section to the extent that, in such context, Additional Amounts are, were or would be payable in respect thereof.

Anything in this Indenture to the contrary notwithstanding, the covenants and provisions of this Section 10.10 shall survive any termination or discharge of this Indenture, and the repayment of all or any of the Securities, and shall remain in full force and effect.

Section 10.11 Additional Interest Amount. The Additional Interest Amounts shall be payable to Holders of the Securities (or, with respect to any Securities that have been previously converted, to the Holders of such converted Securities at the time of such conversion) if at any time during the six months to one year following the Issue Date, the Company fails to timely file any document or report that the Company is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act, as applicable; *provided* that the Company will have 14 calendar days (the “**Cure Period**”), in the aggregate, to cure all such missed filings. In the event the Company has not so cured a missed filing within the Cure Period, the Additional Interest Amount will be payable on the Interest Payment Date following the expiration of the Cure Period. In the event that the Company is required to pay Additional Interest Amounts to Holders, the Company will provide written notice in the form of an Officers’ Certificate (the “**Additional Interest Notice**”) to the Trustee and the Co-Trustee of its obligation to pay Additional Interest Amounts no later than 10 calendar days prior to the proposed Interest Payment Date for Additional Interest Amounts (or, in the event the expiration of the Cure Period occurs within 10 days prior to the proposed Interest Payment Date for Additional Amounts, promptly following expiration of the Cure Period), and the Additional Interest Notice shall set forth the amount of Additional Interest Amounts to be paid by the Company on such Interest Payment Date. Neither the Trustee nor the Co-Trustee shall at any time be under any duty or responsibility to any Holder to determine the Additional Interest Amounts, or with respect to the nature, extent or calculation of the amount of Additional Interest Amounts when made, or with respect to the method employed in such calculation of the Additional Interest Amounts.

Section 10.12 Information for IRS Filings. The Company shall provide to the Trustee and the Co-Trustee on a timely basis such information and documentation as the Trustee, the Co-Trustee or the Holders may require with respect to the Internal Revenue Service and the Holders.

Section 10.13 Further Instruments and Acts. Upon reasonable request of the Trustee or the Co-Trustee, or as otherwise necessary, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

## ARTICLE XI

### REDEMPTION

#### Section 11.01 Redemption for Tax Reasons; Notices to Trustee and Co-Trustee; Notice of Election.

(a) The Company may, at its option, redeem the Securities, in whole but not in part, at a Redemption Price equal to 100% of the Principal Amount of the Securities, plus accrued and unpaid interest (including Additional Interest Amounts or Additional Amounts, if any), to, but excluding, the Redemption Date, if the Company has become or would become obligated to pay to the Holders Additional Amounts (which are more than a *de minimis* amount) as determined by the Company as a result of any amendment or change occurring after June 3, 2009 in the laws or any regulations of Canada or any Canadian political subdivision or taxing authority, or any change occurring after June 3, 2009 onwards in an interpretation or application of such laws or regulations by any legislative body, court, governmental agency, taxing authority or regulatory authority (including the enactment of any legislation and the publication of any judicial decision or regulatory or administrative determination) (such redemption, a “**Tax Redemption**”); *provided*, the Company cannot avoid these obligations by taking reasonable measures available to it and that it delivers to the Trustee and the Co-Trustee an opinion of Canadian legal counsel specializing in taxation and an Officers’ Certificate attesting to such change and obligation to pay Additional Amounts. In such event, the Company will give the Trustee, the Co-Trustee and the Holders of the Securities notice of this redemption pursuant to Section 11.02.

(b) If the Company elects to redeem Securities pursuant to a Tax Redemption, it shall notify the Trustee and the Co-Trustee in writing of the Redemption Date and the Redemption Price payable on such Redemption Date. The Company shall give such notice to the Trustee and Co-Trustee at least 45 days but no more than 60 days before the Redemption Date (unless shorter notice shall be satisfactory to the Trustee or Co-Trustee, as applicable); *provided* that (a) in no event will the Company be obligated to give notice of redemption earlier than 60 days prior to the earliest date on or from which it would be obligated to pay any such Additional Amounts and (b) at the time the Company gives the notice, the circumstances creating its obligation to pay such Additional Amounts remain in effect.

(c) Upon receiving a Notice of Tax Redemption, each Holder who does not wish to have the Company redeem its Securities pursuant to this Section 11.01 can elect to (A) convert its Securities pursuant to Article XIII or (B) not have its Securities redeemed, *provided* that after such Redemption Date, such Holders shall be deemed to be Excluded Holders in respect of any payment of interest or principal with respect to the Securities after such Redemption Date and no Additional Amounts will be payable by the Company in respect of any such payment after such Redemption Date. Securities and portions of Securities that are to be redeemed are convertible by the Holder until 5:00 p.m., New York City time, on the Business Day immediately preceding the Redemption Date. All future payments will be subject to the deduction or withholding of any Canadian Taxes required by law to be deducted or withheld.

Where no such election is made, the Holder will have its Securities redeemed without any further action. If a Holder does not elect to convert its Securities pursuant to Article XIII but wishes to elect to not have its Securities redeemed pursuant to clause (B) of the preceding paragraph, such Holder must deliver to the Company (if the Company is acting as its own Paying Agent), or to a Paying Agent designated by the Company for such purpose in the

notice of redemption, a written Notice of Election upon Tax Redemption (the “**Notice of Election**”) on the back of the Securities, or any other form of written notice substantially similar to the Notice of Election, in each case, duly completed and signed, so as to be received by the Paying Agent no later than the Close of Business on a Business Day at least five Business Days prior to the Redemption Date.

A Holder may withdraw any Notice of Election by delivering to the Company (if the Company is acting as its own Paying Agent), or to a Paying Agent designated by the Company in the notice of redemption, a written notice of withdrawal prior to the Close of Business on the Business Day prior to the Redemption Date.

Section 11.02 Notice of Tax Redemption.

At least 30 days but not more than 60 days before a Redemption Date in connection with a Tax Redemption, the Company shall provide a notice of redemption to each Holder of Securities to be redeemed at such Holder’s address kept by the Security Registrar (a “**Notice of Tax Redemption**”); *provided* that (a) in no event will the Company be obligated to give any Notice of Tax Redemption earlier than 60 days prior to the earliest date on or from which it would be obligated to pay any such Additional Amounts and (b) at the time the Company gives the Notice of Tax Redemption, the circumstances creating its obligation to pay such Additional Amounts remain in effect.

The notice of redemption shall identify the Securities to be redeemed and shall state:

- (i) the Redemption Date;
- (ii) the Redemption Price;
- (iii) the then current Conversion Rate;
- (iv) the name and address of the Paying Agent and Conversion Agent;
- (v) that Securities called for redemption may be converted at any time prior to 5:00 p.m., New York City time, on the Business Day preceding the Redemption Date;
- (vi) that Holders who want to convert their Securities must satisfy the requirements set forth in Article XIII;
- (vii) that Securities called for redemption must be surrendered to the Paying Agent for cancellation to collect the Redemption Price;
- (viii) that, unless the Company defaults in making payment of such Redemption Price, any interest (including Additional Interest Amounts or Additional Amounts, if any) on Securities called for redemption will cease to accrue on and after the Redemption Date and the only remaining right of the Holder will be to receive payment of the Redemption Price upon presentation and surrender to the Paying Agent of the Securities;



- (ix) the CUSIP number(s) of the Securities;
- (x) that Holders may elect not to have their Securities redeemed or converted and the procedures for delivering a Notice of Election; and
- (xi) any other information the Company wants to present.

At the Company's request, the Trustee or the Co-Trustee shall give the Notice of Tax Redemption in the Company's name and at the Company's expense; *provided, however*, that the Company makes such request at least five Business Days (unless a shorter period shall be satisfactory to the Trustee or the Co-Trustee, as applicable) prior to the date by which such Notice of Tax Redemption must be given to Holders in accordance with this Section 11.02; *provided, further*, that the text of the Notice of Tax Redemption shall be prepared by the Company.

Section 11.03 Effect of Notice of Tax Redemption. Once Notice of Tax Redemption is given, Securities called for redemption become due and payable on the Redemption Date and at the Redemption Price stated in the notice, except for Securities which are converted in accordance with the terms of this Indenture. Upon surrender to the Paying Agent, such redeemed Securities shall be paid at the Redemption Price stated in the notice. Failure to give notice or any defect in the notice to any Holder shall not affect the validity of the notice to any other Holder.

If a Redemption Date is after a Regular Record Date for the payment of interest but on or prior to the corresponding Interest Payment Date, then the interest payable on such Interest Payment Date will be paid to the Holder of record of such Security on the relevant Regular Record Date, and the amount paid to the Holder who presents the Security for redemption shall be 100% of the Principal Amount of such Security.

Section 11.04 Deposit of Redemption Price. Prior to 10:00 a.m., New York City time on the Redemption Date, the Company shall deposit with the Paying Agent an amount of cash (in immediately available funds if deposited on the Redemption Date) sufficient to pay the aggregate Redemption Price of all Securities (or portions thereof) to be redeemed on the Redemption Date, other than Securities or portions of Securities called for redemption which on or prior thereto have been delivered by the Company to the Trustee or the Co-Trustee for cancellation or have been converted.

If, on the Redemption Date, the Paying Agent holds, in accordance with the terms of this Indenture, cash sufficient to pay the Redemption Price of any Securities for which Notice of Tax Redemption has been given, then on and after the applicable Redemption Date, such Securities will cease to be outstanding and interest (including Additional Interest Amounts or Additional Amounts, if any) on such Securities will cease to accrue (whether or not book-entry transfer of such Securities is made or whether or not such Securities are delivered to the Paying Agent), and the rights of the Holders in respect thereof shall terminate (other than the right to receive the Redemption Price upon delivery of such Securities). Nothing herein shall preclude the withholding of any taxes required by law to be withheld or deducted.

Section 11.05 Securities Redeemed in Part. Any Security which is to be redeemed only in part shall be surrendered at the office of the Paying Agent and the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Security, without charge, a new

Security or Securities, of any authorized denomination as requested by such Holder in aggregate Principal Amount equal to the unredeemed portion of the Security surrendered.

Section 11.06 Repayment to the Company. To the extent that the aggregate amount of cash deposited by the Company pursuant to Section 11.04 exceeds the aggregate Redemption Price of the Securities or portions thereof which the Company is redeeming as of the Redemption Date, then, promptly after the Redemption Date, the Paying Agent shall return any such excess to the Company. If such money is then held by the Company or an Affiliate of the Company in trust and is not required for such purpose, it shall be discharged from such trust.

Section 11.07 Other Repurchases. The Company may, from time to time, at its option (and nothing contained in this Indenture shall limit the Company's right to), repurchase the Securities in open market purchases or negotiated transactions, without any prior notice to any Holders, *provided* that in exercising its right under this Section 11.07, the Company complies with all applicable federal and state securities laws.

ARTICLE XII

OFFER TO PURCHASE UPON A FUNDAMENTAL CHANGE

Section 12.01 Offer to Purchase Upon a Fundamental Change.

(a) General. In the event of a Fundamental Change with respect to the Company at any time prior to August 1, 2014, the Company will be required to make an offer to purchase for cash (a "**Fundamental Change Purchase Offer**") on the Fundamental Change Purchase Date all outstanding Securities in integral multiples of \$1,000 Principal Amount at a price equal to the Principal Amount of the Securities to be purchased plus accrued but unpaid interest, including Additional Interest Amounts and Additional Amounts, if any (the "**Fundamental Change Purchase Price**"), up to but excluding the Fundamental Change Purchase Date, subject to satisfaction by or on behalf of any Holder of the requirements set forth in Section 12.01(c). The "**Fundamental Change Purchase Date**" shall be a date specified by the Company that is no later than the 30<sup>th</sup> calendar day following the date of the Fundamental Change Notice.

If the Fundamental Change Purchase Date is after a Regular Record Date but on or prior to the corresponding Interest Payment Date, however, then the interest payable on such date will be paid to the Holder of record of the Securities on the relevant Regular Record Date and the Fundamental Change Purchase Price payable to the Holder who presents the Securities for repurchase shall be 100% of the Principal Amount of such Securities.

The Company shall mail to the Trustee, the Co-Trustee and each Holder of the Securities at their addresses shown in the Security Register (and to beneficial owners of the Securities as may be required by applicable law) a notice (the "**Fundamental Change Notice**") of the occurrence of such Fundamental Change and the Fundamental Change Purchase Offer arising as a result thereof in accordance with Section 12.01(b).

A "**Fundamental Change**" shall be deemed to have occurred at the time after the Securities are originally issued that any of the following occurs:

(i) a “person” or “group” within the meaning of Section 13(d) of the Exchange Act, other than the Company, any Subsidiary of the Company or any employee benefit plan of the Company or any such Subsidiary, files a Schedule 13D, Schedule TO or any other schedule, form or report under the Exchange Act or applicable Canadian Securities Laws disclosing that such person or group has become the direct or indirect ultimate “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act or applicable Canadian Securities Laws, of Common Equity of the Company representing more than 50% of the voting power of the Company’s Common Equity entitled to vote generally in the election of directors, unless such beneficial ownership arises as a result of a revocable proxy delivered in response to a public proxy or consent solicitation made pursuant to the applicable rules and regulations under the Exchange Act or applicable Canadian Securities Laws; *provided* that no person or group shall be deemed to be the beneficial owner of any securities tendered pursuant to a tender or exchange offer made by or on behalf of such person or group until such tendered securities are accepted for purchase or exchange under such offer;

(ii) consummation of any share exchange, consolidation, amalgamation, merger, statutory arrangement or other similar combination involving the Company pursuant to which the Common Shares will be converted into cash, securities or other property or any sale, lease or other transfer in one transaction or a series of related transactions of all or substantially all of the consolidated assets of the Company and its Subsidiaries, taken as a whole, to any Person other than one of the Company’s wholly-owned Subsidiaries; *provided, however*, that a transaction where the holders of more than 50% of all classes of the Company’s Common Equity immediately prior to such transaction own, directly or indirectly, more than 50% of all classes of Common Equity of the continuing or surviving corporation or transferee or the parent thereof immediately after such event shall not be a Fundamental Change;

(iii) Continuing Directors cease to constitute at least a majority of the Company’s Board of Directors; or

(iv) the shareholders of the Company approve any plan or proposal for the liquidation or dissolution of the Company.

A Fundamental Change will not be deemed to have occurred, however, if at least 90% of the consideration, excluding cash payments for fractional shares, in the transaction or transactions otherwise constituting the Fundamental Change consists of common shares or American Depositary Shares that are traded or listed on, or immediately after the transaction or event will be traded or listed on a U.S. national securities exchange or the Toronto Stock Exchange.

(b) Notice of Fundamental Change. Within 30 calendar days after the occurrence of a Fundamental Change, the Company shall mail the Fundamental Change Notice by first-class mail to the Trustee, the Co-Trustee and each Holder of Securities at its address shown in the Security Register (and to beneficial owners as required by applicable law). The Fundamental Change Notice shall include a form of Fundamental Change purchase notice (the “**Fundamental Change Purchase Notice**”) to be completed by the Holder and shall state:

- (i) the events causing a Fundamental Change and the expected date of such Fundamental Change;
- (ii) that a Fundamental Change Purchase Offer is being made pursuant to Article XII and that all Securities validly tendered and not withdrawn will be purchased pursuant to the terms of such Article XII;
- (iii) the date by which the Fundamental Change Purchase Notice pursuant to this Section 12.01 must be delivered to the Paying Agent in order for a Holder to accept the Fundamental Change Purchase Offer;
- (iv) the Fundamental Change Purchase Date;
- (v) the Fundamental Change Purchase Price;
- (vi) the name and address of the Paying Agent and the Conversion Agent;
- (vii) the conversion rights, if any, of the Securities;
- (viii) the Conversion Rate for conversion of the Securities applicable on the Fundamental Change Purchase Date;
- (ix) (A) that Securities as to which a Fundamental Change Purchase Notice has been given may be converted pursuant to Article XIII hereof only if the Fundamental Change Purchase Notice has been withdrawn in accordance with the provisions of Section 12.02 and (B) the procedures for withdrawing a Fundamental Change Purchase Notice;
- (x) that Securities must be surrendered to the Paying Agent for cancellation to collect payment of the Fundamental Change Purchase Price;
- (xi) that the Fundamental Change Purchase Price for any Security as to which a Fundamental Change Purchase Notice has been duly given and not withdrawn will be paid promptly following the later of the Fundamental Change Purchase Date and the time of surrender of such Security as described in clause (x) of this Section 12.01;
- (xii) the procedures the Holder must follow to exercise rights under this Section 12.01;
- (xiii) the CUSIP number or numbers of the Securities; and
- (xiv) any other information the Company wants to present.

At the Company's request, the Trustee or the Co-Trustee shall give such Fundamental Change Company Notice in the Company's name and at the Company's expense; *provided, however*, that, in all cases, the text of such Fundamental Change Company Notice shall be prepared by the Company.

(c) Fundamental Change Purchase Notice. To accept the Fundamental Change Purchase Offer, a Holder of Securities must deliver to the Company (if the Company is acting as its own Paying Agent), or to a Paying Agent designated by the Company for such purpose in the Fundamental Change Notice and the Trustee and the Co-Trustee, at least two Business Days prior to the Fundamental Change Purchase Date, (i) written notice of acceptance of the Fundamental Change Purchase Offer in the form set forth in the Fundamental Change Purchase Notice or any other form of written notice substantially similar to the Fundamental Change Purchase Notice, in each case, duly completed and signed, with appropriate signature guarantee and (ii) such Securities that the Holder wishes to tender for purchase by the Company pursuant to the Fundamental Change Purchase Offer, together with the necessary endorsements for transfer to the Company on the back of the Securities.

Such notice shall state, among other things (A) that if certificated Securities have been issued, the certificate numbers (or, if the Securities are not certificated, the notice must comply with the Depositary's procedures), (B) the portion of the principal amount of Securities to be purchased, which must be in \$1,000 multiples, and (C) that the Securities are to be purchased by the Company pursuant to the applicable provisions of the Securities and the Indenture.

The delivery of such Security to the Paying Agent with, or at any time after delivery of, the Fundamental Change Purchase Notice (together with all necessary endorsements) at the offices of the Paying Agent shall be a condition to the receipt by the Holder of the Fundamental Change Purchase Price therefor; *provided, however*, that such purchase price shall be so paid pursuant to this Section 12.01 only if the Security so delivered to the Paying Agent shall conform in all respects to the description thereof set forth in the related Fundamental Change Purchase Notice.

The Company shall purchase from the Holder thereof, pursuant to this Section 12.01, a portion of a Security, so long as the Principal Amount of such portion is \$1,000 or an integral multiple thereof. Provisions of this Indenture that apply to the repurchase of all of a Security also apply to the repurchase of such portion of such Security.

Any purchase by the Company contemplated pursuant to the provisions of this Section 12.01 shall be consummated by the delivery of the Fundamental Change Purchase Price to be received by the Holder promptly following the later of the Fundamental Change Purchase Date and the time of delivery of the Security; *provided, however*, that if the Fundamental Change Purchase Notice is delivered after a date which is two Business Days prior to the Fundamental Change Purchase Date, such payment may be made as promptly after such Fundamental Change Purchase Date as is practicable.

Notwithstanding anything contained herein to the contrary, any Holder delivering to the Paying Agent the Fundamental Change Purchase Notice contemplated by this Section 12.01(c) shall have the right to withdraw such Fundamental Change Purchase Notice at any time prior to the close of business on the Fundamental Change Purchase Date by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 12.02.

The Paying Agent shall promptly notify the Company of the receipt by it of any Fundamental Change Purchase Notice or written notice of withdrawal thereof.

**Section 12.02 Effect of Fundamental Change Purchase Notice.** Upon receipt by the Paying Agent of the Fundamental Change Purchase Notice specified in Section 12.01(c), the Holder of the Security in respect of which such Fundamental Change Purchase Notice was given shall (unless such Fundamental Change Purchase Notice is withdrawn as specified in the following two paragraphs) thereafter be entitled to receive solely the Fundamental Change Purchase Price with respect to such Security. Such Fundamental Change Purchase Price shall be paid to such Holder, subject to receipt of funds and/or Securities by the Paying Agent, promptly following the later of (a) the Fundamental Change Purchase Date with respect to such Security (*provided*, the conditions in Section 12.01(c) have been satisfied) and (b) the time of book-entry transfer or delivery of such Security to the Paying Agent by the Holder thereof in the manner required by Section 12.01(c). Securities in respect of which a Fundamental Change Purchase Notice has been given by the Holder thereof may not be converted pursuant to Article XIII hereof on or after the date of the delivery of such Fundamental Change Purchase Notice unless such Fundamental Change Purchase Notice has first been validly withdrawn as specified in the following two paragraphs.

A Fundamental Change Purchase Notice may be withdrawn by means of a written notice of withdrawal delivered to the office of the Paying Agent in accordance with the procedures set forth in the Fundamental Change Company Notice at any time prior to the close of business on the Fundamental Change Purchase Date specifying:

(i) the Principal Amount of the Security with respect to which such notice of withdrawal is being submitted;

(ii) the certificate number, if any, of the Physical Security in respect of which such notice of withdrawal is being submitted (if the Security is a Global Security, the withdrawal notice must comply with the Applicable Procedures); and

(iii) the Principal Amount, if any, of such Security which remains subject to the original Fundamental Change Purchase Notice and which has been or will be delivered for repurchase by the Company.

There shall be no purchase of any Securities pursuant to Section 12.01 if there has occurred (prior to, on or after, as the case may be, the giving, by the Holders of such Securities, of the required Fundamental Change Purchase Notice) and is continuing an Event of Default (other than an Event of Default that is cured by the payment of the Fundamental Change Purchase Price with respect to such Securities). The Paying Agent will promptly return to the respective Holders any Securities (A) with respect to which a Fundamental Change Purchase Notice has been withdrawn in compliance with this Indenture, or (B) held by it during the continuance of an Event of Default (other than a default in the payment of the Fundamental Change Purchase Price with respect to such Securities) in which case, upon such return, the Fundamental Change Purchase Notice with respect thereto shall be deemed to have been withdrawn.

**Section 12.03 Deposit of Fundamental Change Purchase Price.** Prior to 10:00 a.m.,

New York City time, on the Business Day following the Fundamental Change Purchase Date, the Company shall deposit with the Paying Agent an amount of cash (in immediately available funds if deposited on such Business Day) sufficient to pay the aggregate Fundamental Change Purchase Price of all Securities (or portions thereof) to be redeemed on the Fundamental Change Purchase Date, other than Securities or portions of Securities called for redemption which on or prior thereto have been delivered by the Company to the Trustee or the Co-Trustee for cancellation or have been converted.

If, on the Business Day following the Fundamental Change Purchase Date, the Paying Agent holds, in accordance with the terms of this Indenture, cash sufficient to pay the Fundamental Change Purchase Price of any Securities for which a Fundamental Change Purchase Notice has been tendered and not withdrawn pursuant to Section 12.02, then, effective as of the Fundamental Change Purchase Date, such Securities will cease to be outstanding and interest (including Additional Interest Amounts or Additional Amounts, if any) on such Securities will cease to accrue (whether or not book-entry transfer of such Securities is made or whether or not such Securities are delivered to the Paying Agent), and the rights of the Holders in respect thereof shall terminate (other than the right to receive the Fundamental Change Purchase Price upon delivery of such Securities). Nothing herein shall preclude the withholding of any taxes required by law to be withheld or deducted.

Section 12.04 Security Purchased in Part. Any Security which is to be purchased only in part shall be surrendered at the office of the Paying Agent and the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Security, without charge, a new Security or Securities, of any authorized denomination as requested by such Holder in aggregate Principal Amount equal to, and in exchange for, the portion of the Principal Amount of the Security so surrendered which is not purchased.

Section 12.05 Covenant to Comply with Securities Laws upon Repurchase of Securities. In connection with any offer to repurchase Securities under Section 12.01 (*provided* that such offer or repurchase constitutes an “issuer tender offer” for purposes of Rule 13e-4 (which term, as used herein, includes any successor provision thereto) under the Exchange Act at the time of such offer or purchase), and subject to any exemptions under applicable law, the Company shall (a) comply with Rule 13e-4 and Rule 14e-1 (or any successor provision) under the Exchange Act, (b) file the related Schedule TO (or any successor schedule, form or report) under the Exchange Act, (c) otherwise comply with all U.S. federal and state securities laws so as to permit the rights and obligations under Section 12.02 to be exercised in the time and in the manner specified in Section 12.02 and (d) comply with any applicable Canadian Securities Laws which may then be applicable in the event of a fundamental change.

To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Article XII, the Company’s compliance with such laws and regulations including the extension of the payment or notice periods contemplated by this Article XII, shall not in and of itself cause a breach of their obligations under this Article XII.

Section 12.06 Repayment to the Company. To the extent that the aggregate amount of cash deposited by the Company pursuant to Section 12.03 exceeds the aggregate Fundamental Change Purchase Price of the Securities or portions thereof which the Company is obligated to purchase as of the Fundamental Change Purchase Date, then, promptly after the Fundamental Change Purchase Date,

the Paying Agent shall return any such excess to the Company. If such money is then held by the Company or an Affiliate of the Company in trust and is not required for such purpose, it shall be discharged from such trust.

## ARTICLE XIII

### CONVERSION

#### Section 13.01 Right to Convert.

(a) Subject to, and upon compliance with, the provisions of this Indenture, each Holder shall have the right, at such Holder's option, at any time following the Issue Date of the Securities hereunder through prior to the close of business on the Business Day immediately preceding the Stated Maturity (or such earlier Fundamental Change Purchase Date or Redemption Date as may be applicable) to convert the Principal Amount of any such Securities, or any portion of such Principal Amount which is in a denomination of \$1,000 or an integral multiple thereof, at the Conversion Rate then in effect, subject to prior repurchase or redemption of the Securities, under any of the following circumstances:

(i) *Conversion Upon Satisfaction of Market Price Condition.* A Holder may surrender all or a portion of its Securities for conversion during any fiscal quarter (and only during such fiscal quarter) commencing after June 30, 2009, and prior to 5:00 p.m., New York City time, on the Business Day immediately preceding the Stated Maturity, if the Closing Sale Price of the Common Shares is greater than or equal to 130% of the applicable Conversion Price then in effect for at least 20 Trading Days during the period of the 30 consecutive Trading Days ending on, and including, the last Trading Day of the preceding fiscal quarter.

(ii) *Conversion Upon Satisfaction of Trading Price Condition.* A Holder may surrender all or a portion of its Securities during the five Business Day period immediately following a five consecutive Trading Day period (the "**Measurement Period**") in which the Trading Price, as determined following a request by a Holder in accordance with the procedures described herein, for each Trading Day of such Measurement Period was less than 98% of the product of the Closing Sale Price of the Common Shares on such Trading Day and the applicable Conversion Rate in effect on such Trading Day. In connection with any potential conversion pursuant to this Section 13.01(a)(ii), the Bid Solicitation Agent shall have no obligation to determine the Trading Price unless the Company has requested such determination, and the Company shall have no obligation to request such determination unless a Holder has provided the Company with reasonable evidence that the Trading Price would be less than 98% of the product of the Closing Sale Price of the Common Shares and the applicable Conversion Rate. At such time as the Company has determined that a Holder has provided such evidence to the Company, the Company shall instruct the Bid Solicitation Agent to determine the Trading Price beginning on the next Trading Day and on each successive Trading Day until the Trading Price is greater than or equal to 98% of the product of the Closing Sale Price of the Common Shares and the applicable Conversion Rate. After receiving from a Holder any materials that purport to constitute such "reasonable evidence," the Company



shall promptly determine whether such material does constitute “reasonable evidence” for purposes of this clause (ii); *provided* that absent manifest error, the Company’s determination shall be binding and final. The Company shall not be obligated to give any instructions to the Bid Solicitation Agent until the Company has completed its determination, which it shall do promptly.

(iii) *Conversion Upon Notice of Redemption.* A Holder of may convert all or a portion of its Securities at any time prior to 5:00 p.m., New York City time, on the Business Day immediately preceding the Redemption Date, if such Security has been called for redemption pursuant to Article III or Article XI hereof, after which time the Holder’s right to convert the Securities will expire unless the Company defaults on the payment of the Redemption Price.

(iv) *Conversion Upon Specified Corporate Transactions.* If the Company becomes a party to a transaction in clause (b) of the definition of Fundamental Change (without giving effect to the last paragraph in Section 12.01(a)), the Company shall notify Holders at least 30 calendar days prior to the anticipated effective date for such transaction (or shall otherwise provide a Fundamental Change Chance Notice as provided in Section 12.01(b), if applicable). Upon receipt of such notice, a Holder may surrender its Securities for conversion at any time until 45 calendar days after the actual effective date of such transaction (or if such transaction also constitutes a Fundamental Change, the related Fundamental Change Purchase Date). In addition, a Holder may surrender all or a portion of its Securities for conversion if a Fundamental Change of the type described in clauses (a), (c) or (d) of the definition of Fundamental Change occurs. In such event, a Holder may surrender Securities for conversion at any time beginning on the actual effective date of such Fundamental Change until and including the date which is 30 calendar days after the actual effective date of such Fundamental Change or, if later, the Fundamental Change Purchase Date corresponding to such Fundamental Change. If the transaction also constitutes a Fundamental Change, the Company shall be required, subject to certain conditions, to offer to purchase for cash all of a Holder’s Securities in accordance with Article XII. Notwithstanding the foregoing, a Security in respect of which a Holder has delivered a Fundamental Change Purchase Notice may be converted only if such Fundamental Change Repurchase Notice is withdrawn in accordance with Article XII prior to the close of business on the Fundamental Change Purchase Date.

(v) *Conversion at Stated Maturity.* A Holder may surrender all or a portion of its Securities at any time during the period beginning 25 Trading Days before the Stated Maturity and until 5:00 p.m., New York City time, on the Business Day immediately preceding the Stated Maturity.

(b) In the event of the occurrence of any of the events in clauses (i), (ii) and (iv) of Section 13.02(a), the Company shall provide prompt written notice in the form of an Officers’ Certificate of such event to the Trustee, the Co-Trustee and the Conversion Agent.

#### Section 13.02 Conversion Procedure.

(a) Each Security shall be convertible at the office of the Conversion Agent.

(b) In order to exercise the conversion privilege with respect to any Securities in certificated form, the Holder of any such Securities to be converted, in whole or in part, shall:

(i) complete and manually sign the conversion notice provided on the back of the Security (the **“Conversion Notice”**) or facsimile of the Conversion Notice and deliver such Conversion Notice, which shall be irrevocable, to the Conversion Agent;

(ii) surrender the Security to the Conversion Agent;

(iii) furnish appropriate endorsements and transfer documents, if required;

(iv) pay any transfer or similar tax, if required pursuant to Section 13.07 or otherwise; and

(v) pay funds equal to interest, including Additional Interest Amounts and Additional Amounts, if any, payable on the next Interest Payment Date to which such Holder is not entitled.

The date on which the Holder satisfies all of the requirements set forth in clauses (i) through (v) above is the **“Conversion Date.”** Such Conversion Notice shall also state the name or names (with address or addresses) in which any certificate or certificates for Common Shares which shall be issuable on such conversion shall be issued. All such Securities surrendered for conversion shall, unless the Common Shares issuable on conversion are to be issued in the same name as the registration of such Securities, be duly endorsed by, or be accompanied by instruments of transfer in form satisfactory to the Company duly executed by, the Holder or its duly authorized attorney.

In order to exercise the conversion privilege with respect to any interest in Securities in global form, the Holder must complete the appropriate instruction form for conversion pursuant to the Depositary’s book-entry conversion program, furnish appropriate endorsements and transfer documents if required by the Company, the Trustee, the Co-Trustee or Conversion Agent, and pay the funds, if any, required to be paid under Section 13.02(b)(v) and any transfer or similar taxes required pursuant to Section 13.07 or otherwise.

(c) As promptly as practicable after the later of (i) the Conversion Date (but in no event later than five Business Days after the Conversion Date) or (ii) the date all the calculations necessary to make such payment and delivery have been made (but in no event later than as specified in Section 13.03), subject to compliance with any restrictions on transfer if Common Shares issuable on conversion are to be issued in a name other than that of the Holder (as if such transfer were a transfer of the Securities (or portion thereof) so converted), the Company shall issue and shall deliver to such Holder at the office of the Conversion Agent, a check or cash and a certificate or certificates for the number of full Common Shares issuable in accordance with the provisions of this Article XIII, if applicable. In case any Securities of a denomination greater than \$1,000 shall be surrendered for partial conversion, the Company shall execute and the Trustee shall authenticate and deliver to the Holder of the Securities so surrendered, without charge to him, new Securities in authorized denominations in an aggregate Principal Amount equal to the unconverted portion of the surrendered Securities.

Each conversion shall be deemed to have been effected as to any such Securities (or portion thereof) on the date on which the requirements set forth above in this Section 13.02 have been satisfied as to such Securities (or portion thereof), and the person in whose name any certificate or certificates for Common Shares shall be issuable upon such conversion shall be deemed to have become on said date the Holder of record of the Common Shares represented thereby; *provided, however*, that in case of any such surrender on any date when the stock transfer books of the Company shall be closed, the person or persons in whose name the certificate or certificates for such Common Shares are to be issued shall be deemed to have become the record holder thereof for all purposes on the next day on which such stock transfer books are open, but such conversion shall be at the Conversion Price in effect on the date upon which such Securities shall be surrendered.

(d) Upon the conversion of an interest in Global Securities, the Trustee or the Co-Trustee (or any other Conversion Agent appointed by the Company) shall make a notation on such Global Securities as to the reduction in the Principal Amount represented thereby. The Company shall notify the Trustee and the Co-Trustee in writing of any conversions of Securities effected through any Conversion Agent other than the Trustee or the Co-Trustee.

(e) Unless the Company shall provide otherwise, each share certificate representing Common Shares issued upon conversion of the Securities that contain the Private Placement Legend or the Canadian Private Placement Legend shall bear the applicable legends in substantially the form of Exhibit C hereto.

Section 13.03 Company to Deliver Common Shares, Cash or Combination Thereof.

(a) Upon conversion of a Security, the Company will have the right to elect to deliver cash or a combination of cash and Common Shares for the Securities surrendered as set forth below in lieu of delivering only Common Shares. The Trustee will initially act as Conversion Agent. A Holder may convert fewer than all of such Holder's Securities so long as the Securities converted are an integral multiple of \$1,000 principal amount.

The Company will give notice of its election to deliver part or all of the conversion consideration in cash to the Holder converting the Securities within two Business Days following the Company's receipt of the Holder's notice of conversion. To the extent such election differs from the most recent election previously provided to the Trustee, the Co-Trustee or the Conversion Agent, the Company shall also notify the Trustee, the Co-Trustee or the Conversion Agent, as applicable, of such election. The amount of cash to be delivered per Security will be equal to the number of Common Shares in respect of which the cash payment is being made multiplied by the average of the Daily VWAP prices of the Common Shares for the 20 trading days commencing one day after (i) the date of the Company's notice of election to deliver all or part of the conversion consideration in cash if it has not given a Redemption Notice, (ii) the conversion date, in the case of conversion following a Notice of Redemption by the Company specifying the Company's intention to deliver cash upon conversion for conversions following the Redemption Notice or (iii) the 22nd scheduled Trading Day prior to the Stated Maturity, in the case of conversion during the period beginning 25 Trading Days before the Stated Maturity.

If the Company elects to deliver cash in lieu of some or all of the Common Shares issuable upon conversion, it will make the payment, including delivery of the Common Shares, through the Conversion Agent, to Holders surrendering Securities no later than the 14th Business Day following the Conversion Date. Otherwise, the Company will deliver the Common Shares, together with any cash payment for fractional shares, as described below, through the Conversion Agent no later than the fifth business day following the Conversion Date.

The Company may not deliver cash in lieu of any Common Shares issuable upon a Conversion Date (other than in lieu of fractional shares) if there has occurred and is continuing an Event of Default under the Indenture, other than an Event of Default that is cured by the payment of the conversion consideration.

If the Company calls Securities for redemption, a Holder may convert the Securities only until 5:00 p.m., New York City time, on the Business Day immediately preceding the Redemption Date unless the Company fails to pay the Redemption Price. Subject to Section 13.02, if a Holder has submitted Securities for purchase upon a Fundamental Change, such Holder may convert such Securities only if such Holder withdraws the purchase election made by such Holder prior to conversion.

Upon conversion, a Holder will not receive any separate cash payment for accrued and unpaid interest and Additional Interest Amounts or Additional Amounts, if any, unless such conversion occurs between a Regular Record Date and the Interest Payment Date to which it relates. The Company will not issue fractional Common Shares upon conversion of Securities. Instead, the Company will pay cash in lieu of fractional shares based on the Closing Sale Price of the Common Shares on the Trading Day immediately prior to the Conversion Date.

The Company's delivery to the Holder of Common Shares, cash, or a combination of cash and Common Shares, as applicable, together with any cash payment for any fractional share, into which a Security is convertible, will be deemed to satisfy the Company's obligation to pay:

- (i) the principal amount of the Security; and
- (ii) accrued and unpaid interest and Additional Interest Amounts or Additional Amounts, if any, to, but not including, the Conversion Date.

Accrued and unpaid interest and Additional Interest Amounts or Additional Amounts, if any, to, but not including, the Conversion Date will be deemed to be paid in full rather than cancelled, extinguished or forfeited.

(b) Notwithstanding anything to the contrary in this Article XIII, if Securities are converted after 5:00 p.m., New York City time, on a Regular Record Date, Holders of such Securities at 5:00 p.m., New York City time, on such Regular Record Date will receive the interest and Additional Interest Amounts or Additional Amounts, if any, payable on such Securities on the corresponding Interest Payment Date notwithstanding the conversion. Securities surrendered for conversion during the period after 5:00 p.m., New York City time, on any Regular Record Date to 9:00 a.m., New York City time, on the immediately following Interest Payment Date must be accompanied by payment of an amount equal to the interest

- (including Additional Interest Amounts or Additional Amounts, if any) payable on the Securities so converted on such corresponding Interest Payment Date; *provided* that no such payment need be made:
- (i) if the Company has specified a Redemption Date that is after a Regular Record Date and on or prior to the corresponding Interest Payment Date;
  - (ii) if the Company has specified a Fundamental Change Purchase Date that is after a Regular Record Date and on or prior to the corresponding Interest Payment Date; or
  - (iii) to the extent of any overdue interest, if any overdue interest exists at the time of Conversion with respect to such Security.

If a Holder converts Securities, the Company will pay any documentary, stamp or similar issue or transfer tax due on the issue of any of its Common Shares upon the conversion, unless the tax is due because the Holder requests any shares to be issued in a name other than the Holder’s name, in which case the Holder will pay such tax.

(c) [Reserved.]

(d) The Company will not issue fractional Common Shares upon conversion of Securities. If multiple Securities shall be surrendered for conversion at one time by the same Holder, the number of full shares which shall be issuable upon conversion shall be computed on the basis of the aggregate Principal Amount of the Securities (or specified portions thereof to the extent permitted hereby) so surrendered. If any fractional Common Share would be issuable upon the conversion of any Securities, the Company shall make payment therefor in cash equal to the fraction of a Common Share otherwise issuable multiplied by the Current Market Price to the Holder of such Securities.

Section 13.04 Conversion Rate Adjustments. The Conversion Rate shall be adjusted from time to time by the Company as follows, except that the Company shall not make any adjustment to the Conversion Rate if Holders may participate, as a result of holding the Securities, in the transaction described below without having to convert their Securities.

(a) If the Company, at any time or from time to time while any of the Securities are outstanding, pays a dividend or makes a distribution in Common Shares to all holders of its outstanding Common Shares, or if the Company subdivides or combines its Common Shares, then the Conversion Rate will be adjusted based on the following formula:

$$CR' = CR_0 \times \frac{AC + (SP' \times OS')}{OS_0 \times SP'}$$

where,

- CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the Ex-Dividend Date of such dividend or distribution or the effective date of such subdivision or combination, as applicable
- CR' = the Conversion Rate in effect immediately after such Ex-Dividend Date or effective date, as applicable
- OS<sub>0</sub> = the number of Common Shares outstanding immediately prior to such Ex-Dividend Date or effective date, as applicable
- OS' = the number of Common Shares outstanding immediately prior to such Ex-Dividend Date or effective date, as applicable, after giving pro forma effect to such dividend, distribution, subdivision or combination

Such adjustment shall become effective immediately after 9:00 a.m., New York City time, on the Business Day following the Record Date for such dividend or distribution, or the date fixed for determination for such Common Share subdivision or combination. If any dividend or distribution of the type described in this Section 13.04(a) is declared but not so paid or made, the Conversion Rate shall again be adjusted to the Conversion Rate which would then be in effect if such dividend or distribution had not been declared.

(b) If the Company, at any time or from time to time while any of the Securities are outstanding, distributes to holders of all or substantially all of its outstanding Common Shares certain rights or warrants to purchase Common Shares at a price per Common Share less than the Closing Sale Price of the Common Shares on the Record Date for shareholders entitled to receive such rights and warrants, which rights or warrants are exercisable for not more than 60 days, the Conversion Rate shall be adjusted based on the following formula (*provided* that the Conversion Rate shall be readjusted to the extent that such rights or warrants are not exercised prior to their expiration):

$$CR' = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

- CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the Ex-Dividend Date of such distribution
- CR' = the Conversion Rate in effect immediately after such Ex-Dividend Date
- OS<sub>0</sub> = the number of Common Shares outstanding immediately after such Ex-Dividend Date



- X = the total number of Common Shares issuable pursuant to such rights or warrants
- Y = the number of Common Shares equal to the quotient of (a) the aggregate price payable to exercise all such rights or warrants and (b) the average of the Closing Sale Price of the Common Shares for the 10 consecutive Trading Days ending on the Trading Day immediately preceding the date of announcement for the issuance of such rights or warrants

Such adjustment shall become effective immediately after 9:00 a.m., New York City time, on the Business Day following the date of announcement of the issuance of such rights or warrants.

To the extent that Common Shares are not delivered pursuant to such rights or warrants, upon the expiration or termination of such rights or warrants, the Conversion Rate shall be readjusted to the Conversion Rate which would then be in effect had the adjustments made upon the issuance of such rights or warrants been made on the basis of the delivery of only the number of Common Shares actually delivered. In the event that such rights or warrants are not so issued, the Conversion Rate shall again be adjusted to be the Conversion Rate which would then be in effect if the date fixed for the determination of shareholders entitled to receive such rights or warrants had not been fixed. In determining whether any rights or warrants entitle the holders to subscribe for or purchase Common Shares at less than such Closing Sale Price, and in determining the aggregate offering price of such Common Shares, there shall be taken into account any consideration received for such rights or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined in good faith by the Board of Directors of the Company.

For the purposes of this Section 13.04(c), rights or warrants distributed by the Company to all holders of the Common Shares entitling them to subscribe for or purchase shares of the Company's Capital Stock (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events ("**Trigger Event**"): (i) are deemed to be transferred with such Common Shares; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of Common Shares, shall be deemed not to have been distributed for purposes of this Section 13.04(c) (and no adjustment to the Conversion Price under this Section 13.04(c) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights and warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 13.04(c). If any such right or warrant, including any such existing rights or warrants distributed prior to the date of this Indenture, are subject to events, upon the occurrence of which such rights or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and record date with respect to new rights or warrants with such rights (and a termination or expiration of the existing rights or warrants without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 13.04(c) was made, (A) in the case of any

such rights or warrants which shall all have been redeemed or purchased without exercise by any holders thereof, the Conversion Rate shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or purchase price received by a holder of Common Shares with respect to such rights or warrants (assuming such holder had retained such rights or warrants), made to all applicable holders of Common Shares as of the date of such redemption or repurchase, and (B) in the case of such rights or warrants which shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights and warrants had not been issued.

(c) If the Company, at any time or from time to time while the Securities are outstanding, distributes to holders of all or substantially of the Common Shares, Common Shares, evidences of indebtedness or assets or property, including securities, but excluding:

- (i) dividends or distributions referred to in Section 13.04(a);
- (ii) rights or warrants referred to in Section 13.04(c); and
- (iii) dividends or distributions paid exclusively in cash;

then the Conversion Rate shall be adjusted based on the following formula:

$$CR' = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where,

- CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the Ex-Dividend Date for such distribution
- CR' = the Conversion Rate in effect immediately after such Ex-Dividend Date
- SP<sub>0</sub> = the Current Market Price of the Common Shares on the Trading Day immediately preceding such Ex-Dividend Date
- FMV = the fair market value (as determined by the Board of Directors of the Company) of the Common Shares, evidences of indebtedness, assets or property distributed with respect to each outstanding Common Share on the Record Date for such distribution

Such adjustment shall become effective immediately prior to 9:00 a.m., New York City time, on the Business Day following the Record Date for such distribution. If the Board of Directors of the Company determines the fair market value of any distribution for



purposes of this Section 13.04(c) by reference to the actual or when issued trading market for any securities, it must in doing so consider the prices in such market over the same period used in computing the Current Market Price of the Common Shares.

To the extent that the Company has a rights plan in effect upon conversion of the Securities into Common Shares, a Holder shall receive, in addition to the Common Shares, the rights under the rights plan unless such rights are in respect of Ineligible Consideration or such rights have separated from the Common Shares at the time of conversion, in which case the Conversion Rate will be adjusted as if the Company distributed to all holders of Common Shares, Common Shares, evidences of indebtedness or assets or property as described in this Section 13.04(c), subject to readjustment in the event of the expiration, termination or redemption of such rights.

With respect to an adjustment pursuant to this Section 13.04(c) where there has been a payment of a dividend or other distribution on the Common Shares or common shares of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit (a “**Spin-Off**”), the Conversion Rate in effect immediately before 5:00 p.m., New York City time, on the effective date of the Spin-Off shall be increased based on the following formula in lieu of the formula above:

$$CR' = CR_0 \times \frac{FMV_0 + MP_0}{MP_0}$$

where,

- CR<sub>0</sub> = the Conversion Rate in effect immediately prior to 5:00 p.m., New York City time, on the effective date of the Spin-Off
- CR' = the Conversion Rate in effect immediately after the effective date of the Spin-Off
- FMV<sub>0</sub> = the average of the Closing Sale Prices of the Common Shares or similar equity interest distributed to holders of Common Shares applicable to one Common Share over the 10 consecutive Trading-Day period commencing on, and including, the effective date of the Spin-Off
- MP<sub>0</sub> = the average of the Closing Sale Prices of the Common Shares over the 10 consecutive Trading-Day period commencing on, and including, the effective date of the Spin-Off

The adjustment to the Conversion Rate under the preceding paragraph will occur on the 10th Trading Day from, and including, the effective date of the Spin-Off and shall be applied on a retroactive basis from, and including, the effective date of the Spin-Off; *provided* that in respect of any conversion occurring prior to the effective date of the Spin-Off with respect to which the settlement date would occur during the 10 Trading Days from, and including, the

effective date of any Spin-Off, references with respect to the Spin-Off to the 10 consecutive Trading-Day period shall be deemed replaced with such lesser number of Trading Days as have elapsed between the effective date of such Spin-Off and the settlement date in determining the applicable Conversion Rate; *provided, further*, that in respect of any conversion occurring prior the effective date of the Spin-Off with respect to which the settlement date would occur during the three Trading Days from, and including, the effective date of such Spin-Off, references to the 10 consecutive Trading-Day period shall be deemed replaced with a three consecutive Trading-Day period with such adjustment to the Conversion Rate being applied on a retroactive basis from, and including, the effective date of the Spin-Off.

(d) (i) If any regular, quarterly cash dividend or distribution made to all or substantially all holders of Common Shares is in excess of \$0.09 per Common Share (the “**Initial Dividend Threshold**”), the Conversion Rate shall be adjusted based on the following formula:

$$CR' = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where,

- CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the Ex-Dividend Date for such dividend or distribution
- CR' = the Conversion Rate in effect immediately after such Ex-Dividend Date
- SP<sub>0</sub> = the Current Market Price of the Common Shares on the Trading Day immediately preceding such Ex-Dividend Date
- C = the amount in cash per share the Company distributes to holders of Common Shares in excess of the Initial Dividend Threshold

The Initial Dividend Threshold is subject to adjustment in a manner inversely proportional to adjustments to the Conversion Rate; *provided*, that no adjustment will be made to the dividend threshold amount for any adjustment made to the Conversion Rate under this Section 13.04(d)(i) or Section 13.04(d)(ii).

(ii) If any cash dividend or distribution that is not a regular, quarterly cash dividend or distribution is made to all or substantially all holders of Common Shares, the Conversion Rate shall be adjusted based on the following formula:

$$CR' = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where,

- CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the Ex-Dividend Date for such dividend or distribution
- CR' = the Conversion Rate in effect immediately after such Ex-Dividend Date
- SP<sub>0</sub> = the Current Market Price of the Common Shares on the Trading Day immediately preceding such Ex-Dividend Date
- C = the amount in cash per share the Company distributes to holders of Common Shares

(e) If the Company or any of its Subsidiaries makes a payment in respect of a tender or exchange offer for the Common Shares, to the extent that the cash and value of any other consideration included in the payment per Common Share exceeds the Closing Sale Price of the Common Shares on the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer, the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{AC + (SP' \times OS')}{OS_0 \times SP'}$$

where,

- CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the effective date of the adjustment
- CR' = the Conversion Rate in effect immediately after the effective date of the adjustment
- AC = the fair market value (as determined by the Board of Directors) of the aggregate consideration paid or payable for shares accepted for purchase or exchange in such tender or exchange offer
- OS<sub>0</sub> = the number of Common Shares outstanding on the Trading Day immediately preceding the date such tender or exchange offer expires
- OS' = the number of Common Shares outstanding less any Common Shares accepted for purchase or exchange in the tender or exchange offer at the time such tender or exchange offer expires

SP' = the Current Market Price of the Common Shares on the Trading Day next succeeding the date such tender or exchange offer expires

The adjustment to the Conversion Rate under this Section 13.04(e) shall occur on the 10th Trading Day from, and including, the Trading Day next succeeding the date such tender or exchange offer expires and shall be applied on a retroactive basis from, and including, the Trading Day next succeeding the date such tender or exchange offer expires; *provided* that in respect of any conversion occurring prior to the date such tender or exchange offer expires with respect to which the settlement date would occur during the 10 Trading Days from, and including, the Trading Day next succeeding the date such tender or exchange offer expires, references with respect to the tender or exchange offer to the 10 consecutive Trading-Day period shall be deemed replaced with such lesser number of Trading Days as have elapsed between the Trading Day next succeeding the date such tender or exchange offer expires and the settlement date in determining the applicable Conversion Rate.

If the Company is obligated to repurchase shares pursuant to any such tender or exchange offer, but the Company is permanently prevented by applicable law from effecting any such purchases or all such purchases are rescinded, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such tender or exchange had not been made.

(f) For purposes of this Section 13.04, the following terms shall have the meaning indicated:

(i) “**Current Market Price**” on any date means the average of the Closing Sale Prices per Common Share for the 10 consecutive Trading Days ending on the date of determination.

(ii) “**fair market value**” shall mean the amount which a willing buyer would pay a willing seller in an arm’s length transaction.

(iii) “**Record Date**” shall mean, with respect to any dividend, distribution or other transaction or event in which the holders of Common Shares have the right to receive any cash, securities or other property or in which the Common Shares (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of shareholders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise).

(g) Notwithstanding the foregoing provisions of this Section 13.04, the applicable Conversion Rate need not be adjusted:

(i) upon the issuance of any Common Shares pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the securities of the Company and the investment of additional optional amounts in Common Shares under any plan;

(ii) upon the issuance of any Common Shares or options or rights to purchase Common Shares pursuant to any present or future employee, director or consultant benefit plan or program of, or assumed by, the Company or any of its Subsidiaries;

(iii) upon the issuance of any Common Shares pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in clause (ii) above and outstanding as of the Issue Date;

(iv) for a change in the par value of the Common Shares; or

(v) for accrued and unpaid interest (including Additional Interest Amounts and Additional Amounts, if any).

(h) Subject to subsection (i) below, the Company may make such increases in the Conversion Rate, in addition to any adjustments required by Section 13.04(a), Section 13.04(b), Section 13.04(c), Section 13.04(d) or Section 13.04(e) as the Company's Board of Directors considers to be advisable to avoid or diminish any income tax to holders of Common Shares or rights to purchase Common Shares resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes.

(i) To the extent permitted by applicable law and the continued listing requirements of the securities exchanges on which the Common Shares are then listed, the Company from time to time may increase the Conversion Rate by any amount for any period of time if the period is at least 20 days and the Company's Board of Directors shall have made a determination that such increase would be in the best interests of the Company, which determination shall be conclusive. Whenever the Conversion Rate is increased pursuant to the preceding sentence, the Company shall mail to Holders a notice of the increase at least 15 days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

(j) No adjustment in the Conversion Rate shall be required unless such adjustment would require an increase or decrease of at least 1% in such rate; *provided, however*, that any adjustments which by reason of this Section 13.04(j) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this Article XIII shall be made by the Company and shall be made to the nearest cent or to the nearest 1/10,000th of a share, as the case may be. No adjustment need be made for rights to purchase Common Shares pursuant to a Company plan for reinvestment of dividends or interest. To the extent the Securities become convertible into cash, assets, property or securities (other than Common Shares) of the Company, no adjustment need be made thereafter as to the cash, assets, property or such securities. Interest will not accrue on the cash.

(k) Whenever the Conversion Rate is adjusted as herein provided, the Company shall promptly file with the Trustee, the Co-Trustee and any Conversion Agent an Officers' Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Unless and until a Responsible Officer of each of the Trustee and the Co-Trustee shall have received such Officers' Certificate, neither the Trustee nor the Co-Trustee shall be deemed to have knowledge of any adjustment of the

Conversion Rate and may assume without inquiry that the last Conversion Rate of which each had knowledge is still in effect. Promptly after delivery of such certificate, the Company shall prepare a notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Rate to each Holder at such Holder's last address appearing on the Security Register, within 20 days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(l) In any case in which this Section 13.04 provides that an adjustment shall become effective immediately after a Record Date for an event, the Company may defer until the occurrence of such event (i) issuing to the Holder of any Securities converted after such Record Date and before the occurrence of such event the additional Common Shares issuable upon such conversion by reason of the adjustment required by such event over and above the Common Shares issuable upon such conversion before giving effect to such adjustment and (ii) paying to such Holder any amount in cash in lieu of any fraction pursuant to Section 13.03.

(m) For purposes of this Section 13.04, the number of Common Shares at any time outstanding shall not include Common Shares held in the treasury of the Company so long as the Company does not pay any dividend or make any distribution on Common Shares held in the treasury of the Company, but shall include Common Shares issuable in respect of scrip certificates issued in lieu of fractions of Common Shares.

(n) No adjustment to the Conversion Rate shall be made pursuant to this Section 13.04 if the Holders of the Securities may participate in the transaction that would otherwise give rise to an adjustment pursuant to this Section 13.04; subject to the prior written consent of the Toronto Stock Exchange.

(o) Whenever any provision of this Indenture requires a calculation of an average of Closing Sale Prices or Daily VWAP over a span of multiple days, the Company shall make appropriate adjustments (determined in good faith by the Board of Directors) to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the Ex-Dividend Date of the event occurs at any time during the period from which the average is to be calculated.

#### Section 13.05 Adjustments Upon Certain Fundamental Changes.

(a) If a Holder elects to convert Securities pursuant to Section 13.01(a)(iv) in connection with a transaction described therein and the transaction also constitutes a Fundamental Change, the Conversion Rate for such Securities shall be increased by an additional number of Common Shares (the "**Additional Shares**") as described below. Any conversion occurring at a time when the Securities would be convertible in light of the expected or actual occurrence of a Fundamental Change will be deemed to have occurred in connection with such Fundamental Change notwithstanding the fact that a Security may then be convertible because another condition to conversion has been satisfied.

(b) The number of Additional Shares will be determined by reference to the table attached as Schedule A hereto, based on the date on which the Fundamental Change occurs or

becomes effective (the “**Effective Date**”) and the price (the “**Share Price**”) paid per Common Share in the Fundamental Change. If the Fundamental Change is a transaction described in clause (ii) of the definition of Fundamental Change, and holders of Common Shares receive only cash in that Fundamental Change, the Share Price shall be the cash amount paid per Common Share. Otherwise, the Share Price shall be the average of the Closing Sale Prices of Common Shares over the five Trading-Day period ending on the Trading Day preceding the Effective Date of the Fundamental Change.

(c) The Share Prices set forth in the first row of the table in Schedule A hereto shall be adjusted as of any date on which the Conversion Rate of the Securities is otherwise adjusted. The adjusted Share Prices shall equal the Share Prices applicable immediately prior to such adjustment, multiplied by a fraction, the numerator of which is the Conversion Rate immediately prior to the adjustment giving rise to the Share Price adjustment and the denominator of which is the Conversion Rate as so adjusted. The number of Additional Shares will be adjusted in the same manner as the Conversion Rate as set forth in Section 13.04.

(d) The table in Schedule A hereto sets forth the hypothetical Share Price and the number of Additional Shares to be received per \$1,000 Principal Amount of Securities. The exact Share Prices and Effective Dates may not be set forth in the table in Schedule A, in which case:

(i) If the Share Price is between two Share Price amounts in the table or the Effective Date is between two Effective Dates in the table, the number of Additional Shares will be determined by a straight-line interpolation between the number of Additional Shares set forth for the higher and lower Share Price amounts and the two dates, as applicable, based on a 365-day year.

(ii) If the Share Price is greater than \$62.00 per Common Share (subject to adjustment), no Additional Shares will be issued upon conversion.

(iii) If the Share Price is less than \$11.83 per Common Share (subject to adjustment), no Additional Shares will be issued upon conversion.

Notwithstanding the foregoing, in no event will the total number of Common Shares issuable upon conversion exceed 84.5309 Common Shares per \$1,000 Principal Amount of Securities, subject to adjustments in the same manner as the Conversion Rate as set forth in Section 13.04.

(e) If the Company is a party to any reclassification of the Common Shares (other than changes resulting from a subdivision or combination) or a consolidation, amalgamation, merger, binding share exchange, statutory arrangement, sale or conveyance of all or substantially all of the Company’s consolidated assets to another person or entity or other similar combination involving the Company, in each case pursuant to which the Common Shares are convertible into Reference Property, then, pursuant to Section 13.06, at the effective time of such transaction, the Securities will be convertible only into the Reference Property, if applicable (provided such Reference Property is not Ineligible Consideration). If the Company is required to increase the Conversion Rate for Securities converted in connection with such Fundamental Change by

Additional Shares as a result of such Fundamental Change, Securities so surrendered for conversion shall be settled as follows:

(i) if the date on which the Securities are surrendered for conversion is prior to the third Trading Day immediately preceding the Effective Date of the Fundamental Change, the Company shall (A) deliver the amount of Common Shares, based on the Conversion Rate then in effect without regard to the number of Additional Shares to be added to the Conversion Rate as described above in this Section 13.05, on the third Trading Day immediately following the applicable Conversion Date; and (B) as soon as practicable following the Effective Date of the Fundamental Change, deliver an amount of Reference Property equal to the amount of Reference Property that would have been issuable in respect of the Additional Shares pursuant to such Fundamental Change; *provided*, such Reference Property is not Ineligible Consideration; and

(ii) if the date on which the Securities are surrendered for conversion is on or after the third Trading Day immediately preceding the Effective Date of the Fundamental Change, the Company shall deliver an amount of Reference Property equal to the amount of Reference Property that would have been issuable upon conversion of the Securities immediately after giving effect to the Fundamental Change based on the Conversion Rate as increased by the Additional Shares; *provided*, such Reference Property is not Ineligible Consideration.

(f) If a Holder converts Securities prior to the effective date of any Fundamental Change that would result in an adjustment to the Conversion Rate and the Fundamental Change does not occur, the Holder will not be entitled to any Additional Shares.

Section 13.06 Effect of Reclassification, Consolidation, Merger or Sale. If the Company is a party to any reclassification of the Common Shares (other than changes resulting from a subdivision or combination) or a consolidation, amalgamation, merger, binding share exchange, statutory arrangement, sale or conveyance of all or substantially all of the Company's consolidated assets to another person or entity or other similar combination involving the Company, in each case pursuant to which the Common Shares are converted into cash, securities or other property, then at the effective time of such transaction the Company or the successor or purchasing person, as the case may be, shall execute with the Trustee and the Co-Trustee a supplemental indenture (which shall comply with the Trust Indenture Act as in force at the date of execution of such supplemental indenture) providing that the Securities shall be convertible into the kind and amount of cash, securities or other property receivable upon such transaction by a Holder had such Holder converted its Securities immediately prior to such transaction solely for Common Shares (the "**Reference Property**"). If such transaction causes the Common Shares to be converted into the right to receive more than a single type of consideration (determined based in part upon any form of shareholder election), the Reference Property into which the Securities will be convertible shall be deemed to be the weighted average of the types and amounts of consideration received by the holders of Common Shares that affirmatively make such an election. If Holders would otherwise be entitled to receive, upon conversion of the Securities, any property (including cash) or securities that would not constitute "prescribed securities" for the purposes of clause 212(1)(b)(vii)(E) of the *Income Tax Act* (Canada) as it applied on December 31, 2007 (referred to herein as "**Ineligible Consideration**"), such Holders shall not be entitled to receive such Ineligible Consideration but the Company or the successor or acquirer, as the case may



be, shall have the right (at the sole option of the Company or the successor or acquirer, as the case may be) to deliver either such Ineligible Consideration or “prescribed securities” for the purposes of clause 212(1)(b)(vii)(E) of the *Income Tax Act* (Canada) as it applied on December 31, 2007 with a market value (as conclusively determined by the Company’s Board of Directors) equal to the market value of such Ineligible Consideration. Such supplemental indenture shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article XIII. If, in the case of any such reclassification, consolidation, amalgamation, merger, binding share exchange, statutory arrangement, sale or conveyance or other similar combination, the cash, securities or other property receivable thereupon by a holder of Common Shares includes cash, securities or other property of a corporation other than the successor or purchasing corporation, as the case may be, in such transaction, then such supplemental indenture shall also be executed by such other corporation and shall contain such additional provisions to protect the interests of the Holders as the Board of Directors of the Company shall reasonably consider necessary by reason of the foregoing.

The Company shall give notice to the Holders at least 30 days prior to the effective date of any transaction set forth in this Section 13.06 in writing and by release to a business newswire stating the consideration into which the Securities will be convertible after the effective date of such transaction. After such notice, the Company or the successor or acquirer, as the case may be, may not change the consideration to be delivered upon conversion of the Security except in accordance with any other provision of this Indenture.

The Company shall cause notice of the execution of such supplemental indenture to be mailed to each Holder, at the address of such Holder as it appears on the Security Register maintained by the Security Registrar, within 20 days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture. The above provisions of this Section 13.06 shall similarly apply to successive reclassifications, consolidations, amalgamations, mergers, binding share exchanges, statutory arrangements, sales or conveyances or other similar combinations. If this Section 13.06 applies to any event or occurrence, Section 13.04 shall not apply.

Section 13.07 Taxes on Shares Issued. Any issue of share certificates on conversions of Securities shall be made without charge to the converting Holder for any documentary, transfer, stamp or any similar tax in respect of the issue thereof, and the Company shall pay any and all documentary, stamp or similar issue or transfer taxes that may be payable in respect of the issue or delivery of Common Shares on conversion of Securities pursuant hereto. The Company shall not, however, be required to pay any such tax which may be payable in respect of any transfer involved in the issue and delivery of Common Shares in any name other than that of the Holder of any Securities converted, and the Company shall not be required to issue or deliver any such share certificate unless and until the person or persons requesting the issue thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

Section 13.08 Reservation of Shares; Shares to be Fully Paid; Compliance with Governmental Requirements; Listing of Common Shares. The Company shall provide, free from preemptive rights, out of its authorized but unissued shares or shares held in treasury, sufficient Common Shares to provide for the conversion of the Securities from time to time as such Securities are presented for conversion (assuming that, at the time of the computation of such number of shares

or Securities, all such Securities would be held by a single Holder).

Before taking any action that would cause an adjustment increasing the Conversion Rate to an amount that would cause the Conversion Price to be reduced below the then par value, if any, of the Common Shares issuable upon conversion of the Securities, the Company will take all corporate action which may, in the opinion of its counsel, be necessary in order that the Company may validly and legally issue Common Shares at such adjusted Conversion Price.

The Company covenants that all Common Shares that may be issued upon conversion of Securities shall be newly issued shares or treasury shares, shall be duly authorized, validly issued, fully paid and non-assessable and shall be free from preemptive rights and free from any lien or adverse claim.

The Company shall use its reasonable efforts to list or cause to have quoted any Common Shares to be issued upon conversion of Securities on each national Securities exchange or over-the-counter or other domestic market on which the Common Shares are then listed or quoted.

**Section 13.09 Responsibility of Conversion Agent, Trustee and Co-Trustee.** The Trustee, the Co-Trustee and The Bank of New York Mellon, as Conversion Agent, or any other Conversion Agent shall not at any time be under any duty or responsibility to any Holder to determine the Conversion Rate, any adjustment to the Conversion Rate, or whether any facts exist which may require any adjustment of the Conversion Rate, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. The Trustee, the Co-Trustee and The Bank of New York Mellon, as Conversion Agent, or any other Conversion Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any Common Shares, or of any securities, cash or property, which may at any time be issued or delivered upon the conversion of any Securities; and the Trustee, the Co-Trustee and The Bank of New York Mellon, as Conversion Agent, or any other Conversion Agent make no representations and shall be held harmless with respect thereto. Neither the Trustee, the Co-Trustee nor any Conversion Agent shall be responsible for any failure of the Company to issue, transfer or deliver any Common Shares or share certificates or other securities or property or cash upon the surrender of any Securities for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company contained in this Article XIII. Without limiting the generality of the foregoing, neither the Trustee, the Co-Trustee nor any Conversion Agent shall be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture entered into pursuant to Section 13.06 relating either to the kind or amount of cash, securities or property receivable by Holders upon the conversion of their Securities after any event referred to in such Section 13.06 or to any adjustment to be made with respect thereto, but, subject to the provisions of Section 6.01, may accept as conclusive evidence of the correctness of any such provisions, and shall be protected in relying upon, the Officers' Certificate (which the Company shall be obligated to file with the Trustee and the Co-Trustee prior to the execution of any such supplemental indenture) with respect thereto. Nothing herein shall require the Trustee, Co-Trustee or any Conversion Agent to monitor whether conditions exist under which a conversion can be done or a Fundamental Change is occurring.

Section 13.10 Notice to Holders Prior to Certain Actions. In case,

(a) the Company shall declare a dividend (or any other distribution) on its Common Shares that would require an adjustment in the Conversion Rate pursuant to Section 13.04; or

(b) the Company shall authorize the granting to the holders of all or substantially all of its Common Shares of rights or warrants to subscribe for or purchase any share of any class or any other rights or warrants; or

(c) of any reclassification or reorganization of the Common Shares of the Company (other than a subdivision or combination of its outstanding Common Shares, or a change in par value, or from par value to no par value, or from no par value to par value), or of any consolidation or merger to which the Company is a party and for which approval of any shareholders of the Company is required, or of the sale or transfer of all or substantially all of the assets of the Company or any of its Significant Subsidiaries; or

(d) of the voluntary or involuntary dissolution, liquidation or winding up of the Company or any of its Significant Subsidiaries;

then, in each case, the Company shall cause to be filed with the Trustee, the Co-Trustee and the Conversion Agent and to be mailed to each Holder of Securities at such Holder's address appearing on the Security Register, as promptly as practicable but in any event at least 15 days prior to the applicable date hereinafter specified, a notice stating (i) the date on which a record is to be taken for the purpose of such dividend, distribution or rights or warrants, or, if a record is not to be taken, the date as of which the holders of Common Shares of record to be entitled to such dividend, distribution or rights are to be determined, or (ii) the date on which such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up is expected to become effective or occur, and the date as of which it is expected that holders of Common Shares of record shall be entitled to exchange their Common Shares for securities or other property deliverable upon such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such dividend, distribution, reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up.

Section 13.11 Company Determination Final. Any determination that the Company or its Board of Directors must make pursuant to this Article XIII shall be conclusive if made in good faith and in accordance with the provisions of this Article XIII, absent manifest error, and set forth in a Board Resolution.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the day and year first above written.

BIOVAIL CORPORATION

By: /s/ Margaret Mulligan  
Name: Margaret Mulligan  
Title: Chief Financial Officer

THE BANK OF NEW YORK MELLON,  
as Trustee

By: /s/ Arlene Thelwell  
Name: Arlene Thelwell  
Title: Assistant Vice President

BNY TRUST COMPANY OF CANADA,  
as Co-Trustee

By: /s/ Angela Ikhimokpa  
Name: Angela Ikhimokpa  
Title: Authorized Signatory

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THE BANK OF NEW YORK MELLON,  
as Conversion Agent

By: /s/ Arlene Thelwell  
Name: Arlene Thelwell  
Title: Assistant Vice President

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The following table sets forth the hypothetical Share Price and the number of Additional Shares to be received per \$1,000 Principal Amount of Securities pursuant to Section 13.05 of this Indenture:

Share Price

| Effective date | \$11.83 | \$14.00 | \$18.00 | \$22.00 | \$26.00 | \$30.00 | \$34.00 | \$38.00 | \$42.00 | \$46.00 | \$50.00 | \$54.00 | \$58.00 | \$62.00 |
|----------------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|
| 6/10/2009      | 17.4429 | 13.4883 | 7.1732  | 4.2054  | 2.6671  | 1.8005  | 1.2749  | 0.9333  | 0.6983  | 0.5284  | 0.4006  | 0.3014  | 0.2227  | 0.1592  |
| 8/1/2010       | 17.4429 | 12.9779 | 6.1952  | 3.2193  | 1.8210  | 1.1182  | 0.7369  | 0.5126  | 0.3686  | 0.2690  | 0.1954  | 0.1385  | 0.0929  | 0.0557  |
| 8/1/2011       | 17.4429 | 12.0927 | 4.6660  | 1.7941  | 0.7569  | 0.3940  | 0.2569  | 0.1924  | 0.1527  | 0.1233  | 0.0995  | 0.0794  | 0.0622  | 0.0471  |
| 8/1/2012       | 17.4429 | 11.1382 | 2.3109  | 0.0000  | 0.0000  | 0.0000  | 0.0000  | 0.0000  | 0.0000  | 0.0000  | 0.0000  | 0.0000  | 0.0000  | 0.0000  |
| 8/1/2013       | 17.4429 | 9.6280  | 1.7182  | 0.0000  | 0.0000  | 0.0000  | 0.0000  | 0.0000  | 0.0000  | 0.0000  | 0.0000  | 0.0000  | 0.0000  | 0.0000  |
| 8/1/2014       | 17.4429 | 4.3406  | 0.0000  | 0.0000  | 0.0000  | 0.0000  | 0.0000  | 0.0000  | 0.0000  | 0.0000  | 0.0000  | 0.0000  | 0.0000  | 0.0000  |

[FORM OF GLOBAL NOTE]

[Insert Global Security Legend, if required pursuant to the Indenture]

[Insert Private Placement Legend, if required pursuant to the Indenture]

[Insert Canadian Private Placement Legend, if required pursuant to the Indenture]

BIOVAIL CORPORATION

5.375% Senior Convertible Notes due 2014

No. [•] CUSIP NO. 09067J AC3  
ISIN US09067JAC36 US\$[•]

Biovail Corporation, a corporation duly organized and validly existing under the laws of Canada (herein called the “**Company**”, which term includes any successor corporation under the Indenture referred to on the reverse hereof), for value received hereby promises to pay to [Cede & Co.], or registered assigns, the principal sum of [•] United States Dollars (\$•) [INCLUDE IF SECURITY IS A GLOBAL SECURITY — (which amount may from time to time be increased or decreased by adjustments made on the records of the Trustee, as custodian for the Depositary, in accordance with the rules and procedures of the Depositary)] on August 1, 2014.

Reference is made to the further provisions of this Security set forth on the reverse hereof, including, without limitation, provisions giving the Holder of this Security the right to convert this Security in certain circumstances and the ability and the obligation of the Company to make an offer to repurchase this Security upon certain events on the terms and subject to the limitations referred to on the reverse hereof and as are more fully specified in the Indenture. Such further provisions shall for all purposes have the same effect as though fully set forth at this place.

This Security shall be deemed to be a contract made under the laws of the State of New York, and for all purposes shall be construed in accordance with and governed by the laws of said State.

This Security shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been manually signed by the Trustee or a duly authorized authenticating agent under the Indenture.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

BIOVAIL CORPORATION

By: \_\_\_\_\_  
Authorized Signatory

Attest:

By: \_\_\_\_\_  
Authorized Signatory

TRUSTEE’S CERTIFICATE OF AUTHENTICATION

Dated: \_\_\_\_\_

THE BANK OF NEW YORK MELLON,  
as Trustee

By: \_\_\_\_\_  
Authorized Signatory



**BIOVAIL CORPORATION**

**5.375% Senior Convertible Notes due 2014**

This Security is one of a duly authorized issue of Securities of the Company, designated as its 5.375% Senior Convertible Notes due 2014 (herein called the “**Securities**”), all issued or to be issued under and pursuant to an Indenture dated as of June 10, 2009 (herein called the “**Indenture**”), between the Company and The Bank of New York Mellon (herein called the “**Trustee**”) and BNY Trust Company of Canada (herein called the “**Co-Trustee**”), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Company, the Trustee, the Co-Trustee and the Holders of the Securities. Terms used herein which are defined in the Indenture have the meanings assigned to them in the Indenture.

The indebtedness evidenced by the Securities is senior unsecured indebtedness of the Company and ranks equally with the Company’s other senior unsecured indebtedness.

(a) Interest. The Company will pay interest on the principal amount of this Security at the rate of 5.375% per annum. The Company will pay interest semiannually in arrears on February 1 and August 1 of each year, commencing on February 1, 2010.

Interest will be paid to the person in whose name a Security is registered at the close of business on or, as the case may be, immediately preceding the relevant Interest Payment Date. Interest (including any Additional Interest Amounts) on the Securities shall be computed on the basis of a 360-day year of twelve 30-day months. Each rate of interest which is calculated with reference to a period that is less than the actual number of days in the calendar year of calculation is, for the purposes of the *Interest Act* (Canada), equivalent to the yearly rate of interest payable on the Securities multiplied by the actual number of days in the year and divided by 360. The amount of interest payable for any period shorter than a full quarterly period for which interest is computed will be computed on the basis of the actual number of days elapsed in the period.

The Holder of this Security at 5:00 p.m., New York City time, on a Regular Record Date shall be entitled to receive interest (including Additional Interest Amounts and Additional Amounts, if any), on this Security on the corresponding Interest Payment Date. The Holder of this Security at 5:00 p.m., New York City time, on a Regular Record Date will receive payment of interest (including Additional Interest Amounts and Additional Amounts, if any) payable on the corresponding Interest Payment Date notwithstanding the conversion of this Security at any time after 5:00 p.m., New York City time, on such Regular Record Date. If this Security is surrendered for conversion during the period after 5:00 p.m., New York City time, on any Regular Record Date to 9:00 a.m., New York City time, on the immediately following Interest Payment Date, it must be accompanied by payment of an amount equal to the interest (including Additional Interest Amounts and Additional Amounts, if any) that the Holder is to receive on the Securities on the corresponding Interest Payment Date, subject to the exceptions set forth in Section 13.03(b) of the Indenture. Except where this Security is surrendered for

conversion and must be accompanied by payment as described above, no interest (including Additional Interest Amounts or Additional Amounts, if any) thereon will be payable by the Company on any Interest Payment Date subsequent to the date of conversion, and delivery of the cash and Common Shares, if applicable, pursuant to Article XIII of the Indenture, together with any cash payment for any fractional shares, upon conversion will be deemed to satisfy the Company's obligation to pay the principal amount of the Securities and accrued and unpaid interest (including Additional Interest Amounts or Additional Amounts, if any) to, but not including, the related Conversion Date.

(b) Method of Payment. By no later than 10:00 a.m., New York City time, on the date on which any principal of or interest (including Additional Interest Amounts or Additional Amounts, if any) on any Security is due and payable, the Company shall deposit with the Paying Agent money sufficient to pay such amount. The Company will pay principal and interest in money of the United States that at the time of payment is legal tender for payment of public and private debts. Payments in respect of Securities represented by a Global Security (including principal and interest (including Additional Interest Amounts and Additional Amounts, if any)) will be made by wire transfer of immediately available funds to the accounts specified by the Depositary. The Company will pay principal of Physical Securities at the office or agency designated by the Company in The Borough of Manhattan, The City of New York. Interest (including Additional Interest Amounts and Additional Amounts, if any) on Physical Securities will be payable (i) to Holders having an aggregate principal amount of \$5,000,000 or less, by check mailed to the Holders of these Securities and (ii) to Holders having an aggregate principal amount of more than \$5,000,000, either by check mailed to each Holder or, upon application by a Holder to the Security Registrar not later than two days prior to the relevant Regular Record Date, by wire transfer in immediately available funds to that Holder's account within the United States, which application shall remain in effect until the Holder notifies the Security Registrar, in writing, to the contrary.

(c) Additional Amounts. The Company shall pay to the Holders such Additional Amounts as may become payable under Section 10.10 of the Indenture.

(d) Redemption For Tax Reasons; Notice of Election by Holder. Subject to the terms of the Indenture, the Company may, at its option, redeem the Securities, in whole but not in part, for an amount equal to 100% of the Principal Amount of the Securities, plus accrued and unpaid interest (including Additional Interest Amounts or Additional Amounts, if any) to, but excluding, the Redemption Date (the "**Redemption Price**"), if the Company has become or would become obligated to pay to the Holders Additional Amounts (which are more than a *de minimis* amount) as a result of any amendment or change occurring after June 3, 2009 in the laws or any regulations of Canada or any Canadian political subdivision or taxing authority, or any change occurring after June 3, 2009 in the interpretation or application of any such laws or regulations by any legislative body, court, governmental agency, taxing authority or regulatory authority (including the enactment of any legislation and the publication of any judicial decision or regulatory or administrative determination); *provided*, the Company cannot avoid these obligations by taking reasonable measures available to it and that it delivers to the Trustee and the Co-Trustee an opinion of Canadian legal counsel specializing in taxation and an Officers' Certificate attesting to such change and obligation to pay Additional Amounts (such a redemption, referred to herein as a "**Tax Redemption**").

Upon receiving a Notice of Redemption with respect to a Tax Redemption, each Holder who does not wish to have the Company redeem its Securities pursuant to Article XI of the Indenture can elect to (i) convert its Securities pursuant to Article XIII of the Indenture or (ii) not have its Securities redeemed, provided that no Additional Amounts will be payable on any payment of interest or principal with respect to the Securities after such Redemption Date. All future payments will be subject to the deduction or withholding of any Canadian Taxes required by law to be deducted or withheld.

Where no such election is made, the Holder will have its Securities redeemed without any further action. If a Holder does not elect to convert its Securities pursuant to Article XIII of the Indenture but wishes to elect to not have its Securities redeemed, such Holder must deliver to the Paying Agent designated by the Company for such purpose in the Notice of Redemption, a written Notice of Election (the “**Notice of Election**”) in the form provided on the back of this Security (or a facsimile thereof), or any other form of written notice substantially similar to the Notice of Election, in each case, duly completed and signed, so as to be received by the Paying Agent no later than the close of business on the fifth Business Day prior to the Redemption Date.

A Holder may withdraw any Notice of Election by delivering to the Company (if the Company is acting as its own Paying Agent), or to a Paying Agent designated by the Company in the Notice of Redemption, a written notice of withdrawal prior to the close of business on the Business Day prior to the Redemption Date.

(e) Redemption at the Option of the Company. At any time on or after August 2, 2012, the Company may redeem the Securities, in whole or from time to time in part, for cash at a Redemption Price equal to 100% of the Principal Amount being redeemed plus accrued and unpaid interest to, but excluding, the Redemption Date, if the Closing Sale Price of the Common Shares is equal to or greater than 130% of the Conversion Price then in effect for at least 20 Trading Days in the period of 30 consecutive Trading Days ending on the Trading Day prior to the date of mailing of the Notice of Redemption (as defined below) (such a redemption, referred to herein as an “**Optional Redemption**”).

(f) Others Matters Relating to Redemption. Written notice of any Tax Redemption or Optional Redemption will be provided at least 30 days but not more than 60 days prior to the Redemption Date to each Holder of Securities to be redeemed; provided that, in the case of a Tax Redemption, (i) in no event will the Company be obligated to give notice of redemption earlier than 60 days prior to the earliest date on or from which it would be obligated to pay any Additional Amounts, and (ii) at the time the Company gives the notice, the circumstances creating its obligation to pay such Additional Amounts remain in effect.

If cash sufficient to pay the Redemption Price of all Securities (or portions thereof) to be redeemed on the Redemption Date is deposited with the Paying Agent on or before the Redemption Date and certain other conditions are satisfied, on and after such Redemption Date, such Securities (or portions thereof) will cease to be outstanding and interest (including Additional Interest Amounts or Additional Amounts, if any) on such Securities will cease to accrue (whether or not book-entry transfer of such Securities is made or whether or not such Securities are delivered to the Paying Agent).

If a Redemption Date is after a Regular Record Date for the payment of interest but on or prior to the corresponding Interest Payment Date, then the interest payable on such Interest Payment Date will be paid to the Holder of record of such Securities on the relevant Regular Record Date, and the amount paid to the Holder who presents the Securities for redemption shall be 100% of the Principal Amount of such Securities.

(g) Offer to Purchase By the Company upon a Fundamental Change. Subject to the terms and conditions of the Indenture, in the event of a Fundamental Change with respect to the Company at any time prior to August 1, 2014, the Company will be required to make an offer to purchase for cash (the “**Fundamental Change Purchase Offer**”) all outstanding Securities at a purchase price equal to the Principal Amount plus accrued but unpaid interest, including Additional Interest Amounts or Additional Amounts, if any (the “**Fundamental Change Purchase Price**”), up to, but excluding, the Fundamental Change Purchase Date. The “**Fundamental Change Purchase Date**” will be a date specified by the Company that is no later than the 30<sup>th</sup> calendar day following the date of the Fundamental Change Notice (as defined below).

Within 30 calendar days after the occurrence of a Fundamental Change with respect to the Company, the Company shall mail to the Trustee, the Co-Trustee and all Holders of the Securities at their addresses shown in the Security Register, and to beneficial owners of the Securities as may be required by applicable law, a notice (the “**Fundamental Change Notice**”) of the occurrence of such Fundamental Change and the Fundamental Change Purchase Offer arising as a result thereof.

To accept the Fundamental Change Purchase Offer, a Holder of Securities must deliver to the Paying Agent designated by the Company for such purpose in the Fundamental Change Purchase Notice, on or before the Business Day immediately preceding the Fundamental Change Purchase Date, (i) written notice of acceptance of the Fundamental Change Purchase Offer in the form set forth in the Fundamental Change Purchase Offer Acceptance Notice on the back of this Security (the “**Fundamental Change Purchase Notice**”), or any other form of written notice substantially similar to the Fundamental Change Purchase Notice, in each case, duly completed and signed, with appropriate signature guarantee, and (ii) such Securities that the Holder wishes to tender for purchase by the Company pursuant to the Fundamental Change Purchase Offer, together with the necessary endorsements for transfer to the Company.

Holders have the right to withdraw any Fundamental Change Purchase Notice by delivering to the Paying Agent a written notice of withdrawal in accordance with the provisions of the Indenture.

If the Fundamental Change Purchase Date is after a Regular Record Date but on or prior to the corresponding Interest Payment Date, then the interest payable on such date will be paid to the Holder of record of the Security on the relevant Regular Record Date and the Fundamental Change Purchase Price payable to the Holder who presents the Security for repurchase shall be 100% of the Principal Amount of such Security.

(h) Conversion. Subject to and in compliance with the provisions of the Indenture (including without limitation the conditions of conversion of this Security set forth in

Section 13.01 thereof), the Holder hereof has the right, at its option, to convert the Principal Amount hereof or any portion of such principal which is \$1,000 or an integral multiple thereof, into, subject to Section 13.02 of the Indenture, Common Shares at the initial conversion rate of 67.0880 Common Shares per \$1,000 Principal Amount of Securities (the “**Conversion Rate**”) (equivalent to a Conversion Price of \$14.91), subject to adjustment in certain events described in the Indenture. Upon conversion of a Security, the Company will have the right to elect to deliver cash or a combination of cash and Common Shares for the Securities surrendered instead of delivering only Common Shares (plus cash in lieu of fractional Common Shares), as set forth in the Indenture. No fractional shares will be issued upon any conversion, but an adjustment and payment in cash will be made, as provided in the Indenture, in respect of any fraction of a Common Share which would otherwise be issuable upon the surrender of any Securities for conversion. The Trustee will initially act as Conversion Agent. A Holder may convert fewer than all of such Holder’s Securities so long as the Securities converted are an integral multiple of \$1,000 Principal Amount.

(i) Amendment and Waiver. The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Securities under the Indenture at any time by the Company, the Trustee and the Co-Trustee with the consent of the Holders of not less than a majority in aggregate Principal Amount of the Outstanding Securities. The Indenture also contains provisions permitting the Holders of specified percentages in aggregate Principal Amount of the Outstanding Securities, on behalf of the Holders of all the Securities, to waive compliance by the Company with certain provisions of the Indenture and certain past Defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

(j) Defaults and Remedies. If an Event of Default shall occur and be continuing, the Principal Amount plus accrued but unpaid interest (including Additional Interest Amounts or Additional Amounts, if any) may be declared due and payable in the manner and with the effect provided in the Indenture.

As provided in and subject to the provisions of the Indenture, the Holder of this Security shall not have the right to institute any proceeding with respect to the Indenture or for the appointment of a receiver or trustee or for any other remedy thereunder, unless (i) such Holder shall have previously given the Trustee and the Co-Trustee written notice of a continuing Event of Default with respect to the Securities, (ii) the Holders of not less than 25% in aggregate Principal Amount of the Outstanding Securities shall have made written request to the Trustee and Co-Trustee to institute proceedings in respect of such Event of Default and offered the Trustee and Co-Trustee reasonable indemnity satisfactory to them, (iii) the Trustee and Co-Trustee shall not have received from the Holders of a majority in Principal Amount of Outstanding Securities a direction inconsistent (in their opinion) with such request, and (iv) the Trustee and the Co-Trustee shall have failed to institute any such proceeding for 60 days after receipt of such notice, request and offer of indemnity referred to above. The foregoing shall not apply to any suit instituted by the Holder of this Security for the enforcement of any Default in

the payment of the Redemption Price or Fundamental Change Purchase Price or payment of said principal hereof and interest (including Additional Interest Amounts, if any) hereon after the respective due dates expressed herein or for the enforcement of any conversion right.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the Principal Amount, Redemption Price or Fundamental Change Purchase Price of, and interest, including Additional Interest Amounts or Additional Amounts, if any, on, this Security at the times, place and rate, and in the coin, currency or shares, herein prescribed. Notwithstanding the foregoing, prior to the occurrence of a Fundamental Change, the Company may, with the consent of the holders of not less than a majority in aggregate Principal Amount of the Securities, amend the obligation of the Company to repurchase Securities upon a Fundamental Change.

(k) Transfers; Denomination Exchange. As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is registrable in the Security Register, upon surrender of this Security for registration of transfer at the office or agency of the Company in The City of New York, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by, the Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Securities, of authorized denominations and for the same aggregate Principal Amount, will be issued to the designated transferee or transferees.

The Securities are issuable only in registered form in denominations of \$1,000 and any integral multiple of \$1,000 above that amount, as provided in the Indenture and subject to certain limitations therein set forth. Securities are exchangeable for a like aggregate Principal Amount of Securities of a different authorized denomination, as requested by the Holder surrendering the same.

No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Prior to due presentment of this Security for registration of transfer, the Company, the Trustee, the Co-Trustee and any agent of the Company, the Trustee or the Co-Trustee may treat the Person in whose name this Security is registered as the owner hereof for all purposes, whether or not this Security be overdue, and neither the Company, the Trustee, the Co-Trustee nor any such agent shall be affected by notice to the contrary.

(l) No Recourse Against Others. No director, officer, employee, shareholder or Affiliate, as such, of the Company from time to time shall have any liability for any obligations of the Company under the Securities or the Indenture. Each Holder by accepting a Security waives and releases all such liability.

(m) Authentication. No Security shall be entitled to any benefit under the Indenture or be valid or obligatory for any purpose unless there appears on such Security a

certificate of authentication executed by the Trustee.

(n) Governing Law; Indenture to Control. This Security shall be governed by and construed in accordance with the laws of the State of New York.

In the case of any conflict between the provisions of this Security and the Indenture, the provisions of the Indenture shall control. All terms used in this Security that are defined in the Indenture shall have the meanings assigned to them in the Indenture.

**Biovail Corporation**  
**5.375% Senior Convertible Notes Due 2014**

CUSIP No.

**ASSIGNMENT FORM**

**Principal Amount Being Assigned: \$**

If you want to assign this Security, fill in the form below and have your signature guaranteed:

I or we assign and transfer this Security to:

(Print or type name, address and zip code and social security or tax ID number of assignee)

and irrevocably appoint \_\_\_\_\_ (“**agent**”) to transfer this Security on the books of the  
Company. The agent may substitute another to act for him.

Date: \_\_\_\_\_ Signed: \_\_\_\_\_

(Sign exactly as your name appears on the other side of this Security)

Signature Guarantee: \_\_\_\_\_

**Note:** Signatures must be guaranteed by an “eligible guarantor institution” meeting the requirements of the Security Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program (“**STAMP**”) or such other “signature guarantee program” as may be determined by the Security Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.



**Biovail Corporation**  
**5.375% Senior Convertible Notes due 2014**

CUSIP No.

**CONVERSION NOTICE**

**Principal Amount of this Security: \$**

If you want to convert this Security into Common Shares of the Company and, if applicable, cash or a combination of Common Shares and cash (at the Company’s election), check the box: ☐

To convert only part of this Security, state the Principal Amount to be converted (which must be \$1,000 or an integral multiple of \$1,000):

\$

Fill in the form below with the social security or tax ID no., name, address and zip code of the person to whom you want the Common Shares certificate(s) and Securities (if any) to be delivered:

\_\_\_\_\_  
(Insert social security or tax ID no.)

\_\_\_\_\_  
(Print or type name, address and zip code)

Date: \_\_\_\_\_ Signed: \_\_\_\_\_

(Sign exactly as your name appears on the other side of this Security, if applicable)

Signature Guarantee: \_\_\_\_\_

**Note:** Signatures must be guaranteed by an “eligible guarantor institution” meeting the requirements of the Security Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program (“**STAMP**”) or such other “signature guarantee program” as may be determined by the Security Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

If Physical Securities have been issued, the certificate numbers shall be stated in this notice.

Biovail Corporation

5.375% Senior Convertible Notes due 2014

CUSIP No.

FUNDAMENTAL CHANGE PURCHASE OFFER ACCEPTANCE NOTICE

Principal Amount of this Security: \$

If you elect to have this Security purchased by the Company pursuant to the applicable provisions of the Indenture, check the box: ☐

If you elect to have only part of this Security purchased by the Company, state the Principal Amount to be purchased (which must be \$1,000 or an integral multiple of \$1,000):

\$

The undersigned hereby accepts the Fundamental Change Purchase Offer pursuant to the applicable provisions of the Securities.

Date: \_\_\_\_\_ Signed: \_\_\_\_\_

(Sign exactly as your name appears on the other side of this Security, if applicable)

Signature Guarantee: \_\_\_\_\_

**Note:** Signatures must be guaranteed by an “eligible guarantor institution” meeting the requirements of the Security Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program (“**STAMP**”) or such other “signature guarantee program” as may be determined by the Security Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

If Physical Securities have been issued, the certificate numbers shall be stated in this notice.

**Biovail Corporation**  
**5.375% Senior Convertible Notes due 2014**

CUSIP No.

**NOTICE OF ELECTION UPON TAX REDEMPTION**

**Principal Amount of this Security: \$**

If you elect not to have this Security redeemed by the Company, check the box: ☐

If you elect to have only part of this Security redeemed by the Company, state the Principal Amount to be redeemed (which must be \$1,000 or an integral multiple of \$1,000):

\$

Date: \_\_\_\_\_ Signed: \_\_\_\_\_

(Sign exactly as your name appears on the other side of this Security)

Signature Guarantee: \_\_\_\_\_

**Note:** Signatures must be guaranteed by an “eligible guarantor institution” meeting the requirements of the Security Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program (“**STAMP**”) or such other “signature guarantee program” as may be determined by the Security Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

If Physical Securities have been issued, the certificate numbers shall be stated in this notice.

[FORM OF CERTIFICATE OF TRANSFER]

The Bank of New York Mellon  
101 Barclay Street  
Floor 4E  
New York, NY 10286  
Attention: Global Trust Services  
Fax: (212) 815-5802 or (212) 815-5366

Re: Biovail Corporation — 5.375% Senior Convertible Notes due 2014

Reference is hereby made to the Indenture, dated as of June 10, 2009 (the “**Indenture**”), between Biovail Corporation, a corporation duly organized and existing under the laws of Canada, as Issuer (the “**Company**”), and The Bank of New York Mellon, as Trustee, and BNY Trust Company of Canada, as Co-Trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

, (the “**Transferor**”) owns and proposes to exchange or transfer the Securities or interest in such Securities specified in Annex A hereto, in the principal amount of US\$ (the “**Transfer**”), to (the “**Transferee**”), as further specified in Annex A hereto. In connection with the Transfer, the Transferor hereby certifies that:

1. ☐ **Check if Transferee will take delivery of a beneficial interest in a Restricted Global Security or a Restricted Physical Security.** The Transfer is being effected pursuant to and in accordance with Rule 144A under the Securities Act of 1933, as amended (the “**Securities Act**”), and, accordingly, the Transferor hereby further certifies that the beneficial interest or Physical Security is being transferred to a Person that the Transferor reasonably believes is purchasing the beneficial interest or Physical Security for its own account, or for one or more accounts with respect to which such Person exercises sole investment discretion, and such Person and each such account is a “qualified institutional buyer” within the meaning of Rule 144A, in a transaction meeting the requirements of Rule 144A, and such Transfer is in compliance with any applicable blue sky securities laws of any applicable state of the United States. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Physical Security will be subject to the restrictions on transfer enumerated in the Private Placement Legend and in the Indenture.

2. ☐ **Check if Transferee will take delivery of a beneficial interest in an Unrestricted Global Security or an Unrestricted Physical Security.**

(a) ☐ **Check if Transfer is Pursuant to Regulation S.** The Transfer is being effected pursuant to and in accordance with Rule 904 under the Securities Act and the Transferor hereby further certifies that (i) the Transfer is not being made to a person in the United States and (x) at the time the buy order was originated, the Transferee was outside the United States or such Transferor and any Person acting on its behalf reasonably believed that the Transferee was outside the United States or (y) the transaction was executed in, on or through the facilities of a designated offshore securities market and neither such Transferor nor any Person acting on its behalf knows that the transaction was prearranged with a buyer in the United States, (ii) no directed selling efforts have been made in the United States in contravention of the requirements of Rule 904(a) of Regulation S under the Securities Act, and (iii) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Physical Security will not be subject to the restrictions on transfer enumerated in the Private Placement Legend and in the Indenture. The Transferee is in Canada ☐ Yes ☐ No.

(b) ☐ **Check if Transfer is pursuant to Rule 144.** (i) The Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any state of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Physical Security will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend and in the Indenture.

This certificate and the statements contained herein are made for your benefit and the benefit of the Company.

By: \_\_\_\_\_  
Name:  
Title:

Dated: \_\_\_\_\_

Signature guarantee\*: \_\_\_\_\_

\* \_\_\_\_\_ Participant is a recognized Signature guarantee Medallion Program (or other signature guarantor acceptable to the Security Registrar).

ANNEX A TO CERTIFICATE OF TRANSFER

1. The Transferor owns and proposes to transfer the following:

[CHECK ONE]

- (a) ☐ a beneficial interest in:
  - (i) ☐ a Restricted Global Security, or
  - (ii) ☐ an Unrestricted Global Security, or
- (b) ☐ a Restricted Physical Security
- (c) ☐ an Unrestricted Physical Security

2. After the Transfer the Transferee will hold:

[CHECK ONE]

- (a) ☐ a beneficial interest in:
  - (i) ☐ a Restricted Global Security, or
  - (ii) ☐ an Unrestricted Global Security, or
- (b) ☐ a Restricted Physical Security
- (c) ☐ an Unrestricted Physical Security

## [COMMON SHARE LEGENDS]

THE COMMON SHARES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE “**SECURITIES ACT**”), OR ANY STATE SECURITIES LAWS, AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. THE HOLDER HEREOF AGREES THAT UNTIL THE EXPIRATION OF THE HOLDING PERIOD APPLICABLE TO SALES OF THE SECURITY EVIDENCED HEREBY UNDER RULE 144(k) UNDER THE SECURITIES ACT (OR ANY SUCCESSOR PROVISION), (1) IT WILL NOT RESELL OR OTHERWISE TRANSFER THE COMMON SHARES EVIDENCED HEREBY EXCEPT (A) TO BIOVAIL CORPORATION OR TO ANY SUBSIDIARY THEREOF, (B) INSIDE THE UNITED STATES TO A “QUALIFIED INSTITUTIONAL BUYER” (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IN COMPLIANCE WITH RULE 144A, (C) OUTSIDE THE UNITED STATES IN COMPLIANCE WITH RULE 904 UNDER THE SECURITIES ACT, (D) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE), OR (E) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT (AND WHICH CONTINUES TO BE EFFECTIVE AT THE TIME OF SUCH TRANSFER); (2) PRIOR TO SUCH TRANSFER, IT WILL FURNISH TO CIBC MELLON TRUST COMPANY, AS STOCK TRANSFER AGENT (OR ANY SUCCESSOR STOCK TRANSFER AGENT, AS APPLICABLE), SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS IT MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND (3) IT WILL DELIVER TO EACH PERSON TO WHOM THE COMMON SHARES EVIDENCED HEREBY IS TRANSFERRED (OTHER THAN A TRANSFER PURSUANT TO CLAUSE 1(E) ABOVE) A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. AS USED HEREIN, THE TERM “UNITED STATES” HAS THE MEANING GIVEN TO IT BY REGULATION S UNDER THE SECURITIES ACT.

**[CANADIAN PRIVATE PLACEMENT LEGEND - INCLUDE IF SECURITY IS ISSUED BEFORE OCTOBER 13, 2009 — UNLESS PERMITTED BY APPLICABLE SECURITIES LEGISLATION IN CANADA, THE HOLDER OF THIS SECURITY MAY NOT TRADE THIS SECURITY IN CANADA BEFORE OCTOBER 13, 2009.]**

**Certain Sections of this Indenture relating to  
Sections 310 through 318 of the  
Trust Indenture Act of 1939:**

| Trust Indenture<br>Act Section | Indenture<br>Section |
|--------------------------------|----------------------|
| § 310 (a)(1)                   | 6.09                 |
| (a)(2)                         | 6.09                 |
| (a)(3)                         | Not Applicable       |
| (a)(4)                         | Not Applicable       |
| (b)                            | 6.08                 |
|                                | 6.10                 |
| § 311 (a)                      | 6.13                 |
| (b)                            | 6.13                 |
| § 312 (a)                      | 10.08                |
|                                | 7.01(a)              |
| (b)                            | 7.01(b)              |
| (c)                            | 7.01(c)              |
| § 313 (a)                      | 7.02(a)              |
| (b)                            | 7.02(a)              |
| (c)                            | 7.02(a)              |
| (d)                            | 7.02(b)              |
| § 314 (a)                      | 10.09                |
| (b)                            | Not Applicable       |
| (c)(1)                         | 1.02                 |
| (c)(2)                         | 1.02                 |
| (c)(3)                         | Not Applicable       |
| (d)                            | Not Applicable       |
| (e)                            | 1.02                 |
| § 315 (a)                      | 6.01                 |
| (b)                            | 6.02                 |
| (c)                            | 6.01                 |
| (d)                            | 6.01                 |
| (e)                            | 5.14                 |
| § 316 (a)(last sentence)       | 1.01                 |
| (a)(1)(A)                      | 5.12                 |
| (a)(1)(B)                      | 5.13                 |
| (a)(2)                         | Not Applicable       |
| (b)                            | 5.08                 |
| (c)                            | 1.04(c)              |
| § 317 (a)(1)                   | 5.03                 |
| (a)(2)                         | 5.05                 |
| (b)                            | 10.03                |
| § 318 (a)                      | 1.07                 |

Note: This reconciliation and tie shall not, for any purpose, be deemed to be a part of this Indenture.



[FORM OF GLOBAL NOTE]

[Insert Global Security Legend, if required pursuant to the Indenture]

[Insert Private Placement Legend, if required pursuant to the Indenture]

[Insert Canadian Private Placement Legend, if required pursuant to the Indenture]

BIOVAIL CORPORATION

5.375% Senior Convertible Notes due 2014

No. [●]

CUSIP NO. 09067J AC3  
ISIN US09067JAC36

US\$[●]

Biovail Corporation, a corporation duly organized and validly existing under the laws of Canada (herein called the “**Company**”, which term includes any successor corporation under the Indenture referred to on the reverse hereof), for value received hereby promises to pay to [Cede & Co.], or registered assigns, the principal sum of [●] United States Dollars (\$●) **[INCLUDE IF SECURITY IS A GLOBAL SECURITY]** — (which amount may from time to time be increased or decreased by adjustments made on the records of the Trustee, as custodian for the Depositary, in accordance with the rules and procedures of the Depositary)) on August 1, 2014.

Reference is made to the further provisions of this Security set forth on the reverse hereof, including, without limitation, provisions giving the Holder of this Security the right to convert this Security in certain circumstances and the ability and the obligation of the Company to make an offer to repurchase this Security upon certain events on the terms and subject to the limitations referred to on the reverse hereof and as are more fully specified in the Indenture. Such further provisions shall for all purposes have the same effect as though fully set forth at this place.

This Security shall be deemed to be a contract made under the laws of the State of New York, and for all purposes shall be construed in accordance with and governed by the laws of said State.

This Security shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been manually signed by the Trustee or a duly authorized authenticating agent under the Indenture.

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IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

BIOVAIL CORPORATION

By: \_\_\_\_\_  
Authorized Signatory

Attest:

By: \_\_\_\_\_  
Authorized Signatory

TRUSTEE’S CERTIFICATE OF AUTHENTICATION

Dated: \_\_\_\_\_

THE BANK OF NEW YORK MELLON,  
as Trustee

By: \_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_

**BIOVAIL CORPORATION**

**5.375% Senior Convertible Notes due 2014**

This Security is one of a duly authorized issue of Securities of the Company, designated as its 5.375% Senior Convertible Notes due 2014 (herein called the “**Securities**”), all issued or to be issued under and pursuant to an Indenture dated as of June 10, 2009 (herein called the “**Indenture**”), between the Company and The Bank of New York Mellon (herein called the “**Trustee**”) and BNY Trust Company of Canada (herein called the “**Co-Trustee**”), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Company, the Trustee, the Co-Trustee and the Holders of the Securities. Terms used herein which are defined in the Indenture have the meanings assigned to them in the Indenture.

The indebtedness evidenced by the Securities is senior unsecured indebtedness of the Company and ranks equally with the Company’s other senior unsecured indebtedness.

Interest. The Company will pay interest on the principal amount of this Security at the rate of 5.375% per annum. The Company will pay interest semiannually in arrears on February 1 and August 1 of each year, commencing on February 1, 2010.

Interest will be paid to the person in whose name a Security is registered at the close of business on or, as the case may be, immediately preceding the relevant Interest Payment Date. Interest (including any Additional Interest Amounts) on the Securities shall be computed on the basis of a 360-day year of twelve 30-day months. Each rate of interest which is calculated with reference to a period that is less than the actual number of days in the calendar year of calculation is, for the purposes of the *Interest Act* (Canada), equivalent to the yearly rate of interest payable on the Securities multiplied by the actual number of days in the year and divided by 360. The amount of interest payable for any period shorter than a full quarterly period for which interest is computed will be computed on the basis of the actual number of days elapsed in the period.

The Holder of this Security at 5:00 p.m., New York City time, on a Regular Record Date shall be entitled to receive interest (including Additional Interest Amounts and Additional Amounts, if any), on this Security on the corresponding Interest Payment Date. The Holder of this Security at 5:00 p.m., New York City time, on a Regular Record Date will receive payment of interest (including Additional Interest Amounts and Additional Amounts, if any) payable on the corresponding Interest Payment Date notwithstanding the conversion of this Security at any time after 5:00 p.m., New York City time, on such Regular Record Date. If this Security is surrendered for conversion during the period after 5:00 p.m., New York City time, on any Regular Record Date to 9:00 a.m., New York City time, on the immediately following Interest

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Payment Date, it must be accompanied by payment of an amount equal to the interest (including Additional Interest Amounts and Additional Amounts, if any) that the Holder is to receive on the Securities on the corresponding Interest Payment Date, subject to the exceptions set forth in Section 13.03(b) of the Indenture. Except where this Security is surrendered for conversion and must be accompanied by payment as described above, no interest (including Additional Interest Amounts or Additional Amounts, if any) thereon will be payable by the Company on any Interest Payment Date subsequent to the date of conversion, and delivery of the cash and Common Shares, if applicable, pursuant to Article XIII of the Indenture, together with any cash payment for any fractional shares, upon conversion will be deemed to satisfy the Company's obligation to pay the principal amount of the Securities and accrued and unpaid interest (including Additional Interest Amounts or Additional Amounts, if any) to, but not including, the related Conversion Date.

Method of Payment. By no later than 10:00 a.m., New York City time, on the date on which any principal of or interest (including Additional Interest Amounts or Additional Amounts, if any) on any Security is due and payable, the Company shall deposit with the Paying Agent money sufficient to pay such amount. The Company will pay principal and interest in money of the United States that at the time of payment is legal tender for payment of public and private debts. Payments in respect of Securities represented by a Global Security (including principal and interest (including Additional Interest Amounts and Additional Amounts, if any)) will be made by wire transfer of immediately available funds to the accounts specified by the Depositary. The Company will pay principal of Physical Securities at the office or agency designated by the Company in The Borough of Manhattan, The City of New York. Interest (including Additional Interest Amounts and Additional Amounts, if any) on Physical Securities will be payable (i) to Holders having an aggregate principal amount of \$5,000,000 or less, by check mailed to the Holders of these Securities and (ii) to Holders having an aggregate principal amount of more than \$5,000,000, either by check mailed to each Holder or, upon application by a Holder to the Security Registrar not later than two days prior to the relevant Regular Record Date, by wire transfer in immediately available funds to that Holder's account within the United States, which application shall remain in effect until the Holder notifies the Security Registrar, in writing, to the contrary.

Additional Amounts. The Company shall pay to the Holders such Additional Amounts as may become payable under Section 10.10 of the Indenture.

Redemption For Tax Reasons; Notice of Election by Holder. Subject to the terms of the Indenture, the Company may, at its option, redeem the Securities, in whole but not in part, for an amount equal to 100% of the Principal Amount of the Securities, plus accrued and unpaid interest (including Additional Interest Amounts or Additional Amounts, if any) to, but excluding, the Redemption Date (the "**Redemption Price**"), if the Company has become or would become obligated to pay to the Holders Additional Amounts (which are more than a *de minimis* amount) as a result of any amendment or change occurring after June 3, 2009 in the laws or any regulations of Canada or any Canadian political subdivision or taxing authority, or any change

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occurring after June 3, 2009 in the interpretation or application of any such laws or regulations by any legislative body, court, governmental agency, taxing authority or regulatory authority (including the enactment of any legislation and the publication of any judicial decision or regulatory or administrative determination); *provided*, the Company cannot avoid these obligations by taking reasonable measures available to it and that it delivers to the Trustee and the Co-Trustee an opinion of Canadian legal counsel specializing in taxation and an Officers' Certificate attesting to such change and obligation to pay Additional Amounts (such a redemption, referred to herein as a **"Tax Redemption"**).

Upon receiving a Notice of Redemption with respect to a Tax Redemption, each Holder who does not wish to have the Company redeem its Securities pursuant to Article XI of the Indenture can elect to (i) convert its Securities pursuant to Article XIII of the Indenture or (ii) not have its Securities redeemed, provided that no Additional Amounts will be payable on any payment of interest or principal with respect to the Securities after such Redemption Date. All future payments will be subject to the deduction or withholding of any Canadian Taxes required by law to be deducted or withheld.

Where no such election is made, the Holder will have its Securities redeemed without any further action. If a Holder does not elect to convert its Securities pursuant to Article XIII of the Indenture but wishes to elect to not have its Securities redeemed, such Holder must deliver to the Paying Agent designated by the Company for such purpose in the Notice of Redemption, a written Notice of Election (the **"Notice of Election"**) in the form provided on the back of this Security (or a facsimile thereof), or any other form of written notice substantially similar to the Notice of Election, in each case, duly completed and signed, so as to be received by the Paying Agent no later than the close of business on the fifth Business Day prior to the Redemption Date.

A Holder may withdraw any Notice of Election by delivering to the Company (if the Company is acting as its own Paying Agent), or to a Paying Agent designated by the Company in the Notice of Redemption, a written notice of withdrawal prior to the close of business on the Business Day prior to the Redemption Date.

Redemption at the Option of the Company. At any time on or after August 2, 2012, the Company may redeem the Securities, in whole or from time to time in part, for cash at a Redemption Price equal to 100% of the Principal Amount being redeemed plus accrued and unpaid interest to, but excluding, the Redemption Date, if the Closing Sale Price of the Common Shares is equal to or greater than 130% of the Conversion Price then in effect for at least 20 Trading Days in the period of 30 consecutive Trading Days ending on the Trading Day prior to the date of mailing of the Notice of Redemption (as defined below) (such a redemption, referred to herein as an **"Optional Redemption"**).

Others Matters Relating to Redemption. Written notice of any Tax Redemption or Optional Redemption will be provided at least 30 days but not more than 60 days prior to the Redemption Date to each Holder of Securities to be redeemed;

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provided that, in the case of a Tax Redemption, (i) in no event will the Company be obligated to give notice of redemption earlier than 60 days prior to the earliest date on or from which it would be obligated to pay any Additional Amounts, and (ii) at the time the Company gives the notice, the circumstances creating its obligation to pay such Additional Amounts remain in effect.

If cash sufficient to pay the Redemption Price of all Securities (or portions thereof) to be redeemed on the Redemption Date is deposited with the Paying Agent on or before the Redemption Date and certain other conditions are satisfied, on and after such Redemption Date, such Securities (or portions thereof) will cease to be outstanding and interest (including Additional Interest Amounts or Additional Amounts, if any) on such Securities will cease to accrue (whether or not book-entry transfer of such Securities is made or whether or not such Securities are delivered to the Paying Agent).

If a Redemption Date is after a Regular Record Date for the payment of interest but on or prior to the corresponding Interest Payment Date, then the interest payable on such Interest Payment Date will be paid to the Holder of record of such Securities on the relevant Regular Record Date, and the amount paid to the Holder who presents the Securities for redemption shall be 100% of the Principal Amount of such Securities.

Offer to Purchase By the Company upon a Fundamental Change. Subject to the terms and conditions of the Indenture, in the event of a Fundamental Change with respect to the Company at any time prior to August 1, 2014, the Company will be required to make an offer to purchase for cash (the “**Fundamental Change Purchase Offer**”) all outstanding Securities at a purchase price equal to the Principal Amount plus accrued but unpaid interest, including Additional Interest Amounts or Additional Amounts, if any (the “**Fundamental Change Purchase Price**”), up to, but excluding, the Fundamental Change Purchase Date. The “**Fundamental Change Purchase Date**” will be a date specified by the Company that is no later than the 30<sup>th</sup> calendar day following the date of the Fundamental Change Notice (as defined below).

Within 30 calendar days after the occurrence of a Fundamental Change with respect to the Company, the Company shall mail to the Trustee, the Co-Trustee and all Holders of the Securities at their addresses shown in the Security Register, and to beneficial owners of the Securities as may be required by applicable law, a notice (the “**Fundamental Change Notice**”) of the occurrence of such Fundamental Change and the Fundamental Change Purchase Offer arising as a result thereof.

To accept the Fundamental Change Purchase Offer, a Holder of Securities must deliver to the Paying Agent designated by the Company for such purpose in the Fundamental Change Purchase Notice, on or before the Business Day immediately preceding the Fundamental Change Purchase Date, (i) written notice of acceptance of the Fundamental Change Purchase Offer in the form set forth in the Fundamental Change Purchase Offer Acceptance Notice on the back of this Security (the “**Fundamental Change Purchase Notice**”), or any other form of written notice substantially similar to the Fundamental Change Purchase Notice, in each case, duly completed and signed, with

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appropriate signature guarantee, and (ii) such Securities that the Holder wishes to tender for purchase by the Company pursuant to the Fundamental Change Purchase Offer, together with the necessary endorsements for transfer to the Company.

Holders have the right to withdraw any Fundamental Change Purchase Notice by delivering to the Paying Agent a written notice of withdrawal in accordance with the provisions of the Indenture.

If the Fundamental Change Purchase Date is after a Regular Record Date but on or prior to the corresponding Interest Payment Date, then the interest payable on such date will be paid to the Holder of record of the Security on the relevant Regular Record Date and the Fundamental Change Purchase Price payable to the Holder who presents the Security for repurchase shall be 100% of the Principal Amount of such Security.

Conversion. Subject to and in compliance with the provisions of the Indenture (including without limitation the conditions of conversion of this Security set forth in Section 13.01 thereof), the Holder hereof has the right, at its option, to convert the Principal Amount hereof or any portion of such principal which is \$1,000 or an integral multiple thereof, into, subject to Section 13.02 of the Indenture, Common Shares at the initial conversion rate of 67.0880 Common Shares per \$1,000 Principal Amount of Securities (the “**Conversion Rate**”) (equivalent to a Conversion Price of \$14.91), subject to adjustment in certain events described in the Indenture. Upon conversion of a Security, the Company will have the right to elect to deliver cash or a combination of cash and Common Shares for the Securities surrendered instead of delivering only Common Shares (plus cash in lieu of fractional Common Shares), as set forth in the Indenture. No fractional shares will be issued upon any conversion, but an adjustment and payment in cash will be made, as provided in the Indenture, in respect of any fraction of a Common Share which would otherwise be issuable upon the surrender of any Securities for conversion. The Trustee will initially act as Conversion Agent. A Holder may convert fewer than all of such Holder’s Securities so long as the Securities converted are an integral multiple of \$1,000 Principal Amount.

Amendment and Waiver. The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Securities under the Indenture at any time by the Company, the Trustee and the Co-Trustee with the consent of the Holders of not less than a majority in aggregate Principal Amount of the Outstanding Securities. The Indenture also contains provisions permitting the Holders of specified percentages in aggregate Principal Amount of the Outstanding Securities, on behalf of the Holders of all the Securities, to waive compliance by the Company with certain provisions of the Indenture and certain past Defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

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Defaults and Remedies. If an Event of Default shall occur and be continuing, the Principal Amount plus accrued but unpaid interest (including Additional Interest Amounts or Additional Amounts, if any) may be declared due and payable in the manner and with the effect provided in the Indenture.

As provided in and subject to the provisions of the Indenture, the Holder of this Security shall not have the right to institute any proceeding with respect to the Indenture or for the appointment of a receiver or trustee or for any other remedy thereunder, unless (i) such Holder shall have previously given the Trustee and the Co-Trustee written notice of a continuing Event of Default with respect to the Securities, (ii) the Holders of not less than 25% in aggregate Principal Amount of the Outstanding Securities shall have made written request to the Trustee and Co-Trustee to institute proceedings in respect of such Event of Default and offered the Trustee and Co-Trustee reasonable indemnity satisfactory to them, (iii) the Trustee and Co-Trustee shall not have received from the Holders of a majority in Principal Amount of Outstanding Securities a direction inconsistent (in their opinion) with such request, and (iv) the Trustee and the Co-Trustee shall have failed to institute any such proceeding for 60 days after receipt of such notice, request and offer of indemnity referred to above. The foregoing shall not apply to any suit instituted by the Holder of this Security for the enforcement of any Default in the payment of the Redemption Price or Fundamental Change Purchase Price or payment of said principal hereof and interest (including Additional Interest Amounts, if any) hereon after the respective due dates expressed herein or for the enforcement of any conversion right.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the Principal Amount, Redemption Price or Fundamental Change Purchase Price of, and interest, including Additional Interest Amounts or Additional Amounts, if any, on, this Security at the times, place and rate, and in the coin, currency or shares, herein prescribed. Notwithstanding the foregoing, prior to the occurrence of a Fundamental Change, the Company may, with the consent of the holders of not less than a majority in aggregate Principal Amount of the Securities, amend the obligation of the Company to repurchase Securities upon a Fundamental Change.

Transfers; Denomination Exchange. As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is registrable in the Security Register, upon surrender of this Security for registration of transfer at the office or agency of the Company in The City of New York, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by, the Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Securities, of authorized denominations and for the same aggregate Principal Amount, will be issued to the designated transferee or transferees.

The Securities are issuable only in registered form in denominations of \$1,000 and any integral multiple of \$1,000 above that amount, as provided in the Indenture and subject to certain limitations therein set forth. Securities are exchangeable

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for a like aggregate Principal Amount of Securities of a different authorized denomination, as requested by the Holder surrendering the same.

No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Prior to due presentment of this Security for registration of transfer, the Company, the Trustee, the Co-Trustee and any agent of the Company, the Trustee or the Co-Trustee may treat the Person in whose name this Security is registered as the owner hereof for all purposes, whether or not this Security be overdue, and neither the Company, the Trustee, the Co-Trustee nor any such agent shall be affected by notice to the contrary.

No Recourse Against Others. No director, officer, employee, shareholder or Affiliate, as such, of the Company from time to time shall have any liability for any obligations of the Company under the Securities or the Indenture. Each Holder by accepting a Security waives and releases all such liability.

Authentication. No Security shall be entitled to any benefit under the Indenture or be valid or obligatory for any purpose unless there appears on such Security a certificate of authentication executed by the Trustee.

Governing Law; Indenture to Control. This Security shall be governed by and construed in accordance with the laws of the State of New York.

In the case of any conflict between the provisions of this Security and the Indenture, the provisions of the Indenture shall control. All terms used in this Security that are defined in the Indenture shall have the meanings assigned to them in the Indenture.

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CONFIDENTIAL TREATMENT REQUESTED:

*Portions of this Exhibit have been redacted pursuant to a request for confidential treatment under Rule 24b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended. Such redacted portions have been replaced with “{\*\*\*}” in this Exhibit. An unredacted version of this document has been filed separately with the Securities and Exchange Commission along with the request for confidential treatment.*

TRADEMARK LICENSE AGREEMENT

**THIS TRADEMARK LICENSE AGREEMENT** (this “Agreement”) is made and entered into as of the 14<sup>th</sup> day of May, 2009 (the “Effective Date”), by and between SMITHKLINE BEECHAM CORPORATION, a GlaxoSmithKline company, a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania (“GSK”), and BIOVAIL LABORATORIES INTERNATIONAL SRL, a Barbados society with restricted liability (“Biovail”).

RECITALS

**WHEREAS**, GSK and Biovail are parties to that certain Asset Purchase Agreement, dated as of May 5, 2009 (the “APA”), pursuant to which GSK sold and transferred to Biovail certain assets and liabilities relating to the Product in the Territory (as such terms are defined in the APA);

**WHEREAS**, GSK is the owner of the trademark WELLBUTRIN XL (the “Licensed Mark”), the corresponding goodwill, and United States Trademark Registration No. 2,826,347, as well as the Product Trade Dress; and

**WHEREAS**, Biovail desires to obtain a license from GSK, and GSK desires to grant a license to Biovail, to use the Licensed Mark and the Product Trade Dress, in connection with the advertising, promotion, manufacture, offer for sale, sale and distribution of the Product in the Territory.

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**NOW, THEREFORE**, for and in consideration of the premises and the covenants provided herein (including the above recitals that are hereby incorporated herein), and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. Definitions. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in the APA.
2. Grant of License. During the Term of this Agreement, and subject to the terms and conditions contained herein, GSK grants to Biovail, and Biovail hereby accepts, a nontransferable (except as permitted hereunder), sole and exclusive, royalty-free license (the “License”), to use the Licensed Mark and the Product Trade Dress in connection with the advertising, promotion, manufacture, offer for sale, sale and distribution of the Product solely in the Territory. Biovail consents and agrees that it shall only use the Licensed Mark in its entirety. The license granted hereunder shall be personal to Biovail. Biovail may not sublicense, in whole or in part, any of the rights granted hereunder without the prior written consent of GSK, which consent shall not be unreasonably conditioned, delayed or withheld. For the avoidance of doubt, without such consent from GSK, Biovail may nonetheless sublicense its rights under this Agreement to its Affiliates and distributors, but only as reasonably necessary to exercise the rights granted to Biovail hereunder. Any attempted assignment or sublicense by Biovail not permitted under this Agreement shall be void and of no force or effect and shall constitute a material breach of this Agreement.
3. Use of License Mark, Product Trade Dress. Biovail shall use and shall cause its permitted sublicensees to use the Licensed Mark and the Product Trade Dress only in association with the Product identified in the APA in the Territory. GSK shall not itself use, or license or otherwise permit any third party to use the Licensed Mark or the Product Trade Dress in the Territory during the term of this Agreement.

4. Quality Control.

- (a) Biovail agrees to use the Licensed Mark and the Product Trade Dress only in relation to the Product consistent with GSK's brand guidelines attached hereto as Exhibit 1 and to not intentionally use the Licensed Mark and the Product Trade Dress in any way that would diminish, tarnish, disparage, or damage the goodwill in and to the Licensed Mark and the Product Trade Dress. Biovail agrees to use the same level of due care to avoid diminishing, tarnishing, disparaging, or damaging the goodwill of the Licensed Mark and the Product Trade Dress as Biovail would use in connection with its own trademark and trade dress.
- (b) Upon reasonable advance written request, Biovail will deliver to GSK, samples of the Product and samples of packaging, advertising and collateral materials that bears the Licensed Mark and the Product Trade Dress for the inspection of GSK. If GSK reasonably determines that Biovail fails to maintain a consistent level of quality in accordance with the terms of this Agreement, then GSK may request that Biovail take reasonable steps to remedy any such deficiencies and Biovail shall promptly comply with such requests.
- (c) Biovail agrees not to authorize any third party to use the Licensed Mark or the Product Trade Dress other than as permitted under this Agreement. Biovail agrees not to use and shall cause its permitted sublicensees not to use any trade mark confusingly similar to the Licensed Mark or the Product Trade Dress.
- (d) Biovail and its permitted sublicensees shall comply with all applicable laws and regulations and obtain all appropriate government approvals pertaining to the sale, lease, distribution and advertising of Product bearing the Licensed Mark and/or the Product Trade Dress.
- (e) Biovail may not and agrees that neither it nor any of its permitted sublicensees will use the Licensed Mark outside the Territory.

5. Acknowledgment of Ownership Rights. Biovail hereby expressly acknowledges GSK's ownership of, and rights in, the Licensed Mark and the Product Trade Dress. During

the term of this Agreement, Biovail agrees that it will not (and will not assist or authorize any third party to) attack, dispute or contest the validity of GSK's ownership of the Licensed Mark and the Product Trade Dress. Biovail further agrees that, in the event it acquires any rights in the Licensed Mark or the Product Trade Dress in the United States or elsewhere in the world (except as provided under Section 6 of this Agreement and other rights granted by this Agreement), at GSK's request, Biovail shall assign all such rights to GSK, together with all goodwill associated with such rights.

6. Maintenance of Licensed Mark.

- (a) GSK shall not take any intentional steps to tarnish, disparage, damage and/or diminish the value of the Licensed Mark or the Product Trade Dress (or the goodwill associated with either of the foregoing) or frustrate or hinder Biovail's ability to exercise its rights under this Agreement.
- (b) GSK shall prepare, file, prosecute and maintain trademark applications and registrations at the United States Patent and Trademark Office for the Licensed Mark. All costs and expenses (including but not limited to attorneys' fees and expenses and official fees) of preparing, filing, prosecuting and maintaining the Licensed Mark shall be borne by GSK.
- (c) GSK shall not (i) abandon the Licensed Mark; (ii) abandon any application for the Licensed Mark; or (iii) permit any registration issuing therefrom to lapse, expire or be cancelled in the Territory without first notifying Biovail.
- (d) If GSK contemplates any of the events in Section 6(c), GSK will use commercially reasonable efforts to provide Biovail with as much prior written notice as is reasonably practicable under the circumstances, but no less than twenty (20) days prior written notice. Upon receipt of such notice, Biovail shall have the option (at its choice) to (A) continue the prosecution of such applications (and/or maintain such registrations) or pay any required fees in the name of GSK (or its designee) or (B) promptly receive an assignment of such Licensed Mark

and the Product Trade Dress from GSK (and all applications and registration for same, along with all associated goodwill). Biovail shall promptly notify GSK in writing of its election pursuant to the foregoing sentence. In the event that Biovail elects to receive an assignment of the Licensed Mark and the Product Trade Dress, GSK shall effect such assignment, at its sole cost, within thirty (30) days of receipt of Biovail's notice of its election. In such event, GSK agrees, for no additional consideration, to execute such further documents and to do such other acts as may be reasonably necessary and proper to vest full title in, to and under the Licensed Mark and/or the Product Trade Dress in Biovail, and/or may be necessary in the Territory for Biovail to obtain, maintain, renew, issue or enforce such trademark (and related applications and registrations) and trade dress. In the event of such assignment to Biovail, this Agreement shall expire; provided, however that Section 6(a) shall survive and GSK shall not (and shall not assist or authorize any third party to) attack, dispute or contest the validity of Biovail's ownership of the Licensed Mark and the Product Trade Dress.

7. Term and Termination.

- (a) Term. The term of this Agreement shall commence on the date hereof and shall continue until expiration pursuant to the last sentence of Section 6(d) above, unless terminated as set forth in subsection (b) or (c) below.
- (b) Termination for Non-Use of the Licensed Mark. In the event Biovail voluntarily ceases to use the Licensed Mark in the Territory, Biovail shall provide prompt written notice to GSK and upon receipt of such notice GSK may terminate this Agreement and the License granted hereunder on written notice to Biovail. In the event Biovail does not provide such written notice but have voluntarily ceased to

use the Licensed Mark in the Territory for a period of {\*\*\*}†, notice by Biovail shall be deemed to have been given and GSK may terminate this Agreement and the License granted hereunder on written notice to Biovail.

- (c) Termination by Biovail. Biovail may terminate this Agreement at any time on forty-five (45) days' written notice to GSK.
- (d) Effect of Termination. Upon the termination of this Agreement for any reason, all rights of Biovail to use the Licensed Mark and the Product Trade Dress shall cease. Further, Biovail shall take appropriate steps to ensure that all use of the Licensed Mark and the Product Trade Dress by Biovail shall cease; provided, however, that Biovail shall be permitted to use the Licensed Mark and the Product Trade Dress until the earlier of (i) the depletion of all Product and associated advertising materials, brochures and the like remaining in its possession (provided that Biovail will use its commercially reasonable efforts to promptly deplete such Products and materials in its possession), and (ii) ninety (90) days following the date on which it receives notice of the termination.

8. Infringement and Defense.

- (a) Third-Party Infringement. GSK and Biovail shall each provide the other with prompt notice of any infringement of the Licensed Mark or the Product Trade Dress by any third party in the Territory of which they become aware. Biovail, at its sole discretion, shall have the first option, {\*\*\*}†, to bring, prosecute and settle an enforcement action against such third party for infringement of the Licensed Mark or the Product Trade Dress in the Territory. GSK shall provide Biovail with any reasonably requested assistance in connection with such proceedings. Any

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† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

settlement or award of expenses, damages or judgments, whether direct or indirect, recovered through any proceedings brought by Biovail {\*\*\*}†.

- (b) Third-Party Claims. Any expenses, damages, or judgments (including attorney’s fees) in connection with claims alleging trademark infringement involving the use by Biovail of the Licensed Mark and the Product Trade Dress other than as permitted under this Agreement shall be the responsibility of GSK.
  - (c) Action by GSK. In the event Biovail determines not to prosecute a claim against a third party (as set forth in Section 8(a)), then GSK may elect, at {\*\*\*}†, to bring and prosecute an action against such a third party for infringement of the Licensed Mark and the Product Trade Dress in the Territory; provided, however, that GSK shall not settle or compromise any such claim or action, nor make any admission, that would have an adverse effect on Biovail’s rights hereunder, without the prior written consent of Biovail, which consent shall not be unreasonably withheld, conditioned or delayed. Any award of expenses, damages or judgments, whether direct or indirect, recovered through any proceedings brought by GSK {\*\*\*}†.
9. No Warranties. Except as specifically stated in the APA regarding the Licensed Mark and the Product Trade Dress, GSK makes no representation or warranty of any kind regarding the Licensed Mark or the Product Trade Dress or Biovail’s use thereof.
10. Indemnification. Each party (the “Indemnifying Party”) agrees to indemnify, defend, save and hold harmless, and hereby does indemnify, defend, save and hold harmless, the other party and its directors, officers, agents and employees (the “Indemnitees”) from and against any and all liabilities, claims, causes of actions, suits, damages and expenses (including reasonable attorneys’ fees) for which the Indemnitees or any Indemnatee may become liable or may incur or be compelled to pay in any action or claim, for or by

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† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.



reason of the Indemnifying Party's breach of its applicable obligations and agreements set forth in this Agreement.

11. Entire Agreement. This Agreement, together with the applicable provisions of the APA, constitute the entire agreement and understanding between the parties with respect to the subject matter hereof, and supersedes and cancels any and all previous agreements or understandings, whether written or oral, with respect to the subject matter. To the extent there are inconsistent provisions in this Agreement and the APA concerning Biovail's use of the Licensed Mark and/or the Product Trade Dress, this Agreement governs.
12. Governing Law; Venue. This Agreement shall be governed by and interpreted in accordance with the laws of the State of New York without reference to choice of law principles that would dictate the application of a law of another jurisdiction. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be commenced in the United States District Court for the Eastern District of New York; provided, however, that if a court proceeding is brought as a third party action as part of a proceeding in a different venue, either party may initiate such third party action against the other party in such venue.
13. No Agency or Partnership Between GSK and Biovail. Nothing in this Agreement or any of the transactions, obligations or relationships contemplated hereby shall, in and of itself, constitute GSK or Biovail as the agent, employee, franchisee, or legal representative for the other for any purpose whatsoever, nor shall any party to this Agreement hold itself out as such. This Agreement does not create and shall not be deemed to create a relationship of partners, joint venturers, associates franchisee/franchisor, or principal-and-agent between Biovail and GSK, and each of the parties acknowledges that each is acting as a principal hereunder.
14. Further Assurances. From time to time after the Effective Date, GSK and Biovail shall execute and deliver all such additional instruments, licenses and certificates and shall take all such other actions as Biovail or GSK, as the case may be, may reasonably

request in connection with the consummation of this Agreement and effecting the intent and purpose hereof.

- 15. Modifications. This Agreement may not be modified except by an instrument in writing, signed by an authorized representative of each party.
- 16. Succession and Assignment. Except as set forth in Section 2 of this Agreement, this Agreement may not be assigned, and the rights and obligations hereunder may not be licensed, sublicensed, subcontracted or delegated, without the prior written consent of GSK, which shall not be unreasonably withheld, delayed or conditioned.
- 17. Waiver. The waiver of any right to which a party is entitled under this Agreement shall not be effective unless in writing and signed by the party against whom the waiver is sought to be enforced, and shall not constitute a waiver of any subsequent right to which the party would otherwise be entitled.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, the parties have caused this Trademark License Agreement to be executed in their respective corporate names by their officers duly authorized thereto, all as of the Effective Date.

**SMITHKLINE BEECHAM CORPORATION D/B/A  
GLAXOSMITHKLINE**

**BIOVAIL LABORATORIES INTERNATIONAL SRL**

By: /s/ William J. Mosher

By: /s/ Michel Chouinard

Printed Name: William J. Mosher

Printed Name: Michel Chouinard

Title: Vice President & Secretary

Title: Chief Operating Officer

**Exhibit 1**

**TRADEMARK GUIDELINES FOR WELLBUTRIN XL®**

**A. GIVE PROPER NOTICE OF TRADEMARK RIGHTS**

1. Notice Symbols - A proper trademark notice should follow the mark. Use the “R-in-a-circle” symbol (®) in close proximity to the mark. Typically, the symbol is in superscript font immediately following the mark.

This should be followed on each page if the topic is different and as often as is practical.

2. Legal Notice: In any product packaging, advertising material or article, include the following:

WELLBUTRIN XL® is a federally registered trademark of SmithKline Beecham Corporation.

**B. USE TRADEMARKS AS ADJECTIVES, FOLLOWED BY THE COMMON DESCRIPTIVE NAME (NOUN) OF THE PRODUCT.**

Example:  
*Wellbutrin XL*® tablets

The word “brand,” after a mark and before the generic product name, further guards against improper use.

Examples:  
WELLBUTRIN XL® brand medication

**C. MAKE TRADEMARKS STAND OUT FROM SURROUNDING TEXT**

The trademark should always be used in a manner that will distinguish it from the surrounding text. Trademarks should be CAPITALIZED, underlined, *italicized*, placed

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in “quotation marks,” or depicted in boldface type, whenever they appear in printed or electronic media.

Example:  
WELLBUTRIN XL® antidepressant medication

**D. NEVER MAKE TRADEMARKS PLURAL OR POSSESSIVE**

Since a trademark is not a noun, it should never be used in the plural form. Instead pluralize the common nouns they describe.

Examples:  
Correct: Two Wellbutrin® tablets  
Incorrect: Two Wellbutrins

**E. “AFFIX” TRADEMARKS TO PACKAGING**

In order for trademark rights to be created and maintained, a mark must be “affixed” to a specific product so that consumers can see the mark when making their purchasing decisions. Trademarks are affixed by applying them directly to a product, to containers in which the product is packaged, or to tags or labels attached to the product. Trademarks also can appear in catalogs and online marketing if the marks are used prominently in association with a picture of the goods and if ordering information is also provided.

**F. DO NOT COMBINE THE WELLBUTRIN XL® TRADEMARK WITH OTHER MARKS**

The Trademark should stand on its own and should never be combined with or presented in close proximity to the trademark of any other company. Further, the Trademark should not be used in a manner that might create the impression it is owned by any company other than GSK or that it is related to another mark.

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**G. DO NOT USE A GSK TRADEMARK IN A MANNER INCONSISTENT WITH ITS BRAND IMAGE**

The Trademark represents a unique product identity and is an important symbol of GSK’s goodwill. Accordingly, all marketing and promotional materials should utilize the relevant Trademark in a manner consistent with the product image. NEVER use the Trademark in a manner that makes false or unsubstantiated claims, implies immoral or improper conduct or is otherwise disparaging to our company or its products. Further, take affirmative steps to only present the Trademark in a manner consistent with the product image.

**H FAITHFULLY REPRODUCE THE LOGO TO MATCH STANDARDS**

Logos must be used consistently, to present a recognizable visual image that consumers can rely on. Please ensure that all reproductions of any Logos are in correct proportion, of good resolution and, when colors are involved, include all of the correct colors as established by GSK’s Style Guide, which is attached.

**I** GSK hereby agrees and acknowledges that Biovail’s use of the Licensed Mark on the Product packaging (including, without limitation, the package inserts) in a manner consistent with GSK’s use as of the Effective Date of such Licensed Mark on the Product packaging (including, without limitation, the package inserts) will be deemed to comply with these Trademark Guidelines.

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CONFIDENTIAL TREATMENT REQUESTED:

*Portions of this Exhibit have been redacted pursuant to a request for confidential treatment under Rule 24b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended. Such redacted portions have been replaced with “{\*\*\*}” in this Exhibit. An unredacted version of this document has been filed separately with the Securities and Exchange Commission along with the request for confidential treatment.*

LICENSE AGREEMENT

by and between

GLAXOSMITHKLINE, PLC and SMITHKLINE BEECHAM CORPORATION (d/b/a GLAXOSMITHKLINE) (collectively, “GSK”) and

ANDRX PHARMACEUTICALS, LLC. (“Andrx”)

February 9, 2007 (the “Execution Date”)

WHEREAS, Andrx and GSK are currently parties to that certain pending case in the United States District Court for the Southern District of Florida, Miami Division, captioned *Andrx Pharmaceuticals, LLC. v GlaxoSmithKline, PLC and SmithKline Beecham Corporation d/b/a GlaxoSmithKline* (Case No: 05-23264-CIV-Graham/O’Sullivan), (the “District Court Case”) related to Andrx’s U.S. Patent No. 6,905,708 (the “Patent”) and GSK’s 150mg Wellbutrin XL® product; and

WHEREAS, pursuant to the certain Settlement Agreement between GSK and Andrx of even date herewith (the “Settlement Agreement”), Andrx and GSK wish to stipulate to the dismissal of the District Court Case with prejudice and settle all matters related to the District Court Case; and

WHEREAS, as part of the consideration for entering into the Settlement Agreement, Andrx is willing to grant GSK certain licenses under the Patent on certain terms set forth in this Agreement; and

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WHEREAS, GSK is willing to take such licenses from Andrx, pursuant to the terms set forth in this Agreement.

NOW THEREFORE, in consideration of the promises, representations, warranties, covenants, agreements, licenses and releases contained herein and in the Settlement Agreement, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound hereby, agree as follows:

1. All of the terms and conditions set forth in this Agreement shall be binding on the Parties. See Appendix A hereto for the definition of certain defined terms used in this Agreement. Capitalized terms used herein, but not otherwise defined herein, shall have the meaning given to them in the Settlement Agreement.
2. The Parties enter into this Agreement and the Settlement Agreement in an effort to avoid the risks of, and uncertainty associated with, further litigation and to limit associated fees, costs and expenses related to or arising from the District Court Case.
3. (a) Wellbutrin XL Product License. As of the Execution Date Andrx hereby grants to GSK: (i) an exclusive license, with the right to grant sublicenses (including, but not limited to, the right to grant sublicenses to GSK's Affiliates and the GSK Suppliers), under the Patent to make, have made, use, sell, have sold, offer for sale, and import the forms of Wellbutrin XL Products currently sold or marketed in the United States by GSK (or its Affiliates) as of the Execution Date; and (ii) a non-exclusive license, with the right to grant sublicenses (including, but not limited to, the right to grant sublicenses to GSK's Affiliates and the GSK Suppliers), under the Patent to make, have made, use, sell, have sold, offer for sale, and import forms of Wellbutrin XL Products in the United States not yet sold or marketed in the United States by GSK (or its Affiliates) as of the Execution Date. Andrx and GSK hereby agree and acknowledge the foregoing license grants to GSK are retroactive to the date the Patent was granted in the United States. GSK further agrees that it may only grant sublicenses hereunder to the extent it remains liable for payment of royalties on Net Sales of Wellbutrin XL Products by its sublicensees, such payment to be made by GSK to Andrx when due irrespective of whether GSK receives payment, if any, it is due from such sublicensee.



(b) Generic Equivalent Product License. As of the Execution Date, Andrx hereby grants to GSK a non-exclusive license (without the right to sublicense except that sublicenses are permitted as to GSK's Affiliates, the GSK Suppliers and, if applicable, GSK's Third Party distributors of Generic Equivalent Products and as permitted pursuant to Section 3(f)) under the Patent to make, have made, use, sell, have sold, offer for sale and import any Generic Equivalent Products in the United States. Except as is otherwise set forth in Section 3(f), GSK further agrees that it may only grant sublicenses hereunder to the extent it remains liable for payment of royalties on Net Sales of Generic Equivalent Products by its sublicensees, such payment to be made by GSK to Andrx when due irrespective of whether GSK receives payment, if any, it is due from such sublicensee.

(c) Generic Bupropion Product License. As of the Execution Date, Andrx hereby grants to GSK a non-exclusive license (without the right to sublicense, except that sublicenses are permitted, if applicable, to a GSK Affiliate, by a Biovail Third Party Licensee to its Affiliates and the Biovail Third Party Licensee's Suppliers, and as permitted pursuant to Section 3(f)) under the Patent to make, have made, use, sell, have sold, offer for sale and import a Biovail Third Party Licensee Bupropion Product in the United States.

(d) No Implied Rights. Nothing in this Agreement shall be deemed or implied to be, and the Parties disclaim all implied rights to, the grant by any of the Parties to the other Party of any right, title or interest in any product, intellectual property rights, any formulation technology or know-how, manufacturing technology or know-how, operating procedures, marketing materials or strategies, intangibles, material or proprietary rights of the other in all countries of the world, except as expressly set forth in this Agreement.

(e) No Rights to Enforce. No party hereunder other than Andrx shall have rights to enforce the Patent or to defend against a claim of invalidity or unenforceability of the Patent or defend against a claim of non-infringement of the Patent, even within the field under which it has exclusive rights (if applicable).

(f) Assignment to Biovail Assignee and Sublicense to Biovail Third Party Licensees. GSK shall have the right, in GSK's sole discretion and without Andrx's consent, to

assign to Biovail Laboratories SRL ("Biovail") (or an Affiliate of Biovail) (the "Biovail Assignee"), whether on a permanent or on a temporary basis, all or a part of the rights granted to GSK pursuant to Section 3(b) as to Generic Equivalent Products and/or the rights granted to GSK pursuant to Section 3(c) as to Biovail Third Party Licensee Bupropion Products (as applicable, the "Assigned License Rights").

(i) Assignment to Biovail Assignee. Any such assignment to a Biovail Assignee shall be documented in a written agreement wherein the Biovail Assignee agrees to assume such Assigned License Rights pursuant to the applicable provisions of this Agreement as if it were a party hereto in GSK's place and to abide by such applicable provisions and obligations of this agreement (including, without limitation, Andrx's right to seek recourse directly against the Biovail Assignee under Section 3(f)(v), the applicable Royalty provisions under Sections 4(b) and 4(d), termination provisions of Section 5(c), indemnification provisions of 6(c), and confidentiality provisions of Section 9). For clarity, the Biovail Assignee shall not have the right to further assign such rights to a third party other than to its Affiliates, to GSK (or its Affiliates), or pursuant to Section 7;

(ii) Sublicense to Biovail Third Party Licensee. The Biovail Assignee shall have the right, in the Biovail Assignee's sole discretion without Andrx's and GSK's consent, whether on a permanent or on a temporary basis, to sublicense pursuant to a written sublicense agreement all or part of such Assigned License Rights to a Third Party (a "Biovail Third Party Licensees"). In order to be effective, any such sublicense to a Biovail Third Party Licensee shall be documented in a written agreement either (a) wherein the Biovail Third Party Licensee agrees to accept such sublicense of the Assigned License Rights pursuant to the applicable provisions of this Agreement as if it were a party hereto in GSK's place and to abide by such applicable provisions and obligations of this agreement (including, without limitation, Andrx's right to seek recourse directly against the Biovail Third Party Licensees under Section 3(f)(v), the applicable Royalty provisions of Sections 4(c) and 4(d), termination provisions of Section 5(c), indemnification provisions of 6(c), and confidentiality provisions of Section 9) or (b) that is otherwise reasonably acceptable to both the Biovail Third Party Licensee and to Andrx in order to accomplish the foregoing intent. For clarity, the Biovail Third Party Sublicensees

shall not have the right to further sublicense such rights, other than to its Affiliates and to Biovail Third Party Licensee Suppliers;

(iii) The Biovail Assignee may, without Andrx’s consent, at any time re-assign the Assigned License Rights back to GSK and, upon GSK’s acceptance thereof, GSK shall re-assume the rights and obligations hereunder as a licensee of Andrx, provided the Biovail Assignee shall remain liable to Andrx for any breach of the provisions of this Agreement that it, directly or indirectly, caused while it was the assignee of the Assigned License Rights;

(iv) Andrx shall receive a written notice of any such assignment to a Biovail Assignee, any sublicense from a Biovail Assignee to a Biovail Third Party Licensee, or any re-assignment to GSK (as may be applicable) within ten (10) business days after the date of the effective date of such assignment, re-assignment or sublicense; and

(v) To the extent any rights are assigned to a Biovail Assignee or sublicensed to a Biovail Third Party Sublicensee, as provided herein, Andrx shall have the standing, right, and privity as a third-party beneficiary to enforce such applicable provisions of this Agreement against such Biovail Assignee or Biovail Third Party Licensee as if it were a party hereto. Notwithstanding anything to the contrary: (A) (1) GSK (and its Affiliates) shall have no obligations or liability to Andrx (or it Affiliates) or any Biovail Assignee with respect to the performance or nonperformance by a Biovail Assignee or a Biovail Third Party Licensee (as the case may be) of the applicable provisions of this Agreement (including, without limitation, the payment of any Royalties due to Andrx from a Biovail Assignee or a Biovail Third Party Licensee (as the case may be)), nor (2) shall any Biovail Assignee shall have any obligations or liability to Andrx (or it Affiliates) with respect to the performance or nonperformance by a Biovail Third Party Licensee of the applicable provisions of this Agreement (including, without limitation, the payment of any Royalties due to Andrx from a Biovail Third Party Licensee), nor (3) shall any Biovail Third Party Licensee have any obligations or liability to Andrx (or it Affiliates) with respect to the performance or nonperformance by GSK or a Biovail Assignee or any other Biovail Third Party Licensee (as the case may be) of the applicable provisions of this Agreement (including, without limitation, the payment of any Royalties due to Andrx from such

parties (as the case may be)); and (B) (1) any breach of the applicable provisions of this Agreement by a Biovail Assignee or a Biovail Third Party Licensee (as the case may be) shall not be deemed to be a breach of this Agreement by GSK and any resulting termination of the rights of such Biovail Assignee or a Biovail Third Party Licensee (as the case may be) under this Agreement shall have no effect whatsoever on the licenses and covenant not-to-sue that GSK has obtained from Andrx under this Agreement, and (2) any breach of the applicable provisions of this Agreement by a Biovail Third Party Licensee shall not be deemed to be a breach of this Agreement by a Biovail Assignee and any resulting termination of the rights of such Biovail Third Party Licensee under this Agreement shall have no effect whatsoever on the licenses and covenant not-to-sue that a Biovail Assignee have obtained from Andrx under this Agreement, and (3) any breach of the applicable provisions of this Agreement by GSK or a Biovail Assignee or a Biovail Third Party Licensee shall not be deemed to be a breach of this Agreement by another Biovail Third Party Licensee and any resulting termination of the rights of any such other parties under this Agreement shall have no effect whatsoever on the licenses and covenant not-to-sue that such Biovail Third Party Licensee have obtained from Andrx under this Agreement, provided that (x) each such Biovail Third Party Licensee seeking to maintain such rights following such termination does not materially breach its obligations to Andrx under such sublicense, and (y) Andrx shall have no obligations to such Biovail Third Party Licensee arising out of such sublicense over and above the obligations expressly set forth in this Agreement that flow to such Biovail Third Party Licensee as a result of such sublicense.

4. (a) Wellbutrin XL Product Royalty. As consideration for the license rights under the Patent granted to GSK by Andrx in Paragraph 3(a), GSK (or its Affiliate) shall remit to Andrx (or its Affiliate) the following:

(i) within five (5) business days following the Execution Date, the non-refundable, non-creditable license fee equal to Thirty-Five Million U.S. Dollars (\$35,000,000.00); and

(ii) a royalty equal to {\*\*\*}† of GSK’s Net Sales of Wellbutrin XL Products in the United States (the “Wellbutrin XL Product Royalty”) which occur on or after February 1, 2007. The Wellbutrin XL Product Royalty shall automatically terminate on the date the last claim covering Wellbutrin XL Products in the Patent expires, or is held to be invalid or otherwise unenforceable or is found not to cover Wellbutrin XL Products for whatever reason, by a court or other legal or administrative tribunal from which no appeal is or can be taken (other than a petition for a writ of certiorari to the Supreme Court). For the avoidance of doubt, an arbitration panel shall not be considered a legal or administrative tribunal.

(b) Generic Equivalent Product Royalty. As consideration for the license rights under the Patent granted to GSK by Andrx in Paragraph 3(b), GSK (or its Affiliate) shall remit to Andrx (or its Affiliate) a royalty equal to {\*\*\*}† of GSK’s Net Sales of Generic Equivalent Products in the United States (the “Generic Equivalent Product Royalty”). The Generic Equivalent Product Royalty shall automatically become effective as of the Execution Date, and shall automatically terminate on the date the last claim covering Generic Equivalent Products in the Patent expires or is held to be invalid or otherwise unenforceable or is found not to cover Generic Equivalent Products for whatever reason by a court or other legal or administrative tribunal from which no appeal is or can be taken (other than a petition for a writ of certiorari to the Supreme Court). For the avoidance of doubt, an arbitration panel shall not be considered a legal or administrative tribunal. To the extent GSK assigns its rights to the Biovail Assignees (or any sublicense to a Biovail Third Party Sublicensee) pursuant to Section 3(f), the Biovail Assignees (or such Biovail Third Party Sublicensee) shall be responsible for paying such royalty directly to Andrx based on the Net Sales of the Biovail Assignees (or such Biovail Third Party Sublicensee), and GSK shall have no liability in connection therewith.

(c) Biovail Third Party Licensee Bupropion Product Royalty. As consideration for the license rights under the Patent granted by Andrx in Paragraph 3(c), the Biovail Third Party Licensee shall remit to Andrx (or its Affiliate) a royalty equal to {\*\*\*}† of Net Sales of Biovail Third Party Licensee Bupropion Product in the United States (the “Biovail

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Third Party Licensee Bupropion Product Royalty”). The Biovail Third Party Licensee Bupropion Product Royalty shall automatically become effective as of the effective date of the sublicense to the Assigned License Rights hereunder to the Biovail Third Party Licensee, shall be solely owed and payable by the Biovail Third Party Licensee (and not GSK), and shall automatically terminate on the date the last claim covering Biovail Third Party Licensee Bupropion Products in the Patent expires or is held to be invalid or otherwise unenforceable or is found not to cover Biovail Third Party Licensee Bupropion Products for whatever reason by a court or other legal or administrative tribunal from which no appeal is or can be taken (other than a petition for a writ of certiorari to the Supreme Court). For the avoidance of doubt, an arbitration panel shall not be considered a legal or administrative tribunal.

(d) General Payment Provisions.

(i) Any payment due Andrx (or its Affiliate) from GSK (or its Affiliate) that is past due under this Agreement shall bear interest at a rate equal to the lesser of (i) {\*\*\*}†, or (ii) the maximum rate permitted by applicable law, calculated based on the number of days that the payment is delinquent. GSK (or its Affiliate) shall make all payments to Andrx (or its Affiliate) in United States dollars by electronic transfer to an account designated by Andrx, or by such other means as may be agreed in advance by both Parties.

(ii) Andrx (or its Affiliates) shall be responsible for and shall pay all taxes payable on any Royalties or other payments made by GSK (or its Affiliate) to Andrx (or its Affiliate) hereunder. GSK (or its Affiliate) shall have the right to withhold taxes in the event that the United States Internal Revenue Service or another revenue authority of a State or Territory of the United States requires the withholding of taxes on amounts paid hereunder to Andrx (or its Affiliate), provided that GSK shall pay over any amounts so withheld to such authority promptly when due. Any tax paid or required to be withheld by GSK (or its Affiliate) on account of Royalty or other payments payable to Andrx (or its Affiliate) under this Agreement shall be deducted from the amount of the Royalties or other payments due Andrx (or its Affiliate). GSK

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(or its Affiliate) shall secure and promptly send to Andrx (or its Affiliate) proof of such taxes withheld and paid by GSK (or its Affiliate) for the benefit of Andrx (or its Affiliate). Each Party agrees to cooperate with the other Party in claiming exemptions from such deductions or withholdings under any agreement or treaty from time to time in effect.

(iii) GSK shall keep reasonable written records and shall cause its Affiliates and sublicensees, as applicable, to keep reasonable written records, of all Net Sales of Wellbutrin XL Products and Generic Equivalent Products to the extent commercially reasonably possible. All such applicable records shall be maintained by GSK, and GSK, shall cause its Affiliates and sublicensees, as applicable, to maintain, for the period required by applicable law or a period of five (5) years from the date of the record’s creation, whichever is longer.

(iv) Within thirty (30) days after the end of each Calendar Quarter in which a sale of Wellbutrin XL Products or Generic Equivalent Products has been made in the United States, GSK shall submit to Andrx a written report (the “Royalty Report”) containing the following information regarding such preceding Calendar Quarter: an itemized accounting and calculation of the total Net Sales of Wellbutrin XL Products or Generic Equivalent Products sold during such preceding Calendar Quarter in the United States pursuant to this Agreement and the amount of any Royalty due Andrx on such Net Sales, such report to include information in sufficient detail as is reasonably necessary for Andrx to confirm the accuracy of the amount of the Royalty due Andrx, if any, during such preceding Calendar Quarter. Concurrent with the submission of a Royalty Report to Andrx, GSK (or its Affiliate) shall remit payment to Andrx (or its Affiliate) of all Royalties due to Andrx for such preceding Calendar Quarter in the United States. The content of all Royalty Reports shall be GSK confidential information.

(v) Upon the written request of Andrx (but not more frequently than once per calendar year), Andrx shall have the right, within sixty (60) days after receipt of written confirmation that the Auditor is satisfactory to GSK (as set forth below), during the term of this Agreement and for six months (6) months thereafter, to have an independent certified public accountant, satisfactory to GSK in GSK’s reasonable discretion, (the “Auditor”) inspect GSK’s records and the records of GSK’s Affiliates and sublicensees, as applicable, with respect to the

transactions contemplated by this Agreement for the preceding year (or, if Andrx did not exercise its audit rights the prior year, for the preceding two years) during the term (but not more than one time for any period) for the sole purpose of determining the accuracy of the Royalty payments made to Andrx (or its Affiliate) under this Agreement. GSK shall permit, and shall cause its Affiliates and sublicensees, as applicable, to permit, the Auditor to have reasonable confidential access, during normal business hours and upon having given reasonable prior notice, to such records of GSK and its Affiliates and sublicensees as may be necessary to verify GSK's compliance with the Royalty payments due hereunder for the preceding year. The Auditor shall reach its conclusion as quickly as possible but in no event more than a period of thirty (30) days following the inspection, and notify the Parties only of its conclusions as to whether GSK is in compliance with its Royalty obligations and the amount of any underpayment or overpayment, and such report and the conclusions contained therein shall be final and binding on the Parties and shall be GSK Confidential Information. Under no circumstances shall the Auditor report to Andrx the wholesale prices at which GSK sold the Wellbutrin XL Products and Generic Equivalent Products. In the event the Auditor concludes that there was an underpayment of the Royalties to Andrx, the underpayment shall be paid by GSK within thirty (30) days after the date GSK receives such Auditor's written report. In the event the Auditor concludes that there was an overpayment of the Royalties to Andrx, the overpayment shall be credited toward future Royalty payments to be paid by GSK to Andrx under this Agreement; provided, however, that in the event no further Royalty payments shall become due under this Agreement, said overpayment shall be paid by Andrx to GSK within thirty (30) days after the date Andrx receives such Auditor's written report. If the underpayment of the Royalties is greater than five percent (5%) of the Royalties determined by the Auditor to be payable to Andrx, the reasonable fees and expenses charged by the Auditor shall be paid by GSK, otherwise Andrx shall pay the reasonable fees and expenses charged by such Auditor. The Auditor shall report to Andrx only its conclusions as to whether GSK is in compliance with the Royalty obligations and the amount of any underpayment or overpayment. The Auditor inspecting records of GSK shall execute a written confidentiality agreement reasonably satisfactory to GSK.

5. (a) This Agreement shall become effective as of the Execution Date and the term hereof shall (unless terminated earlier pursuant to Section 5(c)) expire on the date the last of



the Royalty obligations hereunder terminates. The following provisions of this Agreement shall survive the termination or expiration of this Agreement:

- (i) Section 4(a)(i);
- (ii) Sections 4(d)(i)-(iv) (to the extent sales were made during the term), and Section 4(d)(v) (for the six month period set forth therein);
- (iii) Section 6(c) (except if this Agreement is terminated by Andrx for OSK's material breach pursuant to Section 5(c));
- (iv) Section 9 (for the applicable period set forth therein); and
- (v) Section 15.

Any assigned rights or sublicenses pursuant to Section 3(f) also shall survive termination of this Agreement until such assigned rights or sublicenses are terminated or expire as between Andrx and the Biovail Assignees and/or the Biovail Third Party Licensee, as may be applicable. Similarly, this Agreement shall survive and shall not be affected by any termination of any such assigned rights or sublicenses.

(b) All license rights and licenses granted under or pursuant to this Agreement by Andrx to GSK are, and shall otherwise be deemed to be, for purposes of Section 365(n) of the U.S. Bankruptcy Code, licenses of rights to "intellectual property" as defined under Section 101(52) of the U.S. Bankruptcy Code. Andrx agrees that GSK as a licensee of such rights under this Agreement, shall retain and may fully exercise all of its rights and elections under Section 365(n) of the U.S. Bankruptcy Code.

(c) This Agreement may be terminated by Andrx: if (i) GSK is in breach of any material provision of this Agreement that is not cured within thirty (30) days after notice by Andrx to GSK of such breach, provided the notice of termination is given within six (6) months of the discovery by Andrx of the breach and prior to correction of the breach; or (ii) immediately if GSK, or an Affiliate of GSK, or a GSK sublicensee under the rights in this Agreement, voluntarily challenges the validity or enforceability of any claim of the Patent other than in

connection with a claim brought by Andrx or asserts that the manufacture, use, sale, offer for sale, or importation of a Wellbutrin XL Product or Generic Equivalent Product in the United States does not infringe any claim of the Patent. In the event a Biovail Assignee or a Biovail Third Party Licensee (as applicable) voluntarily challenges the validity or enforceability of any claim of the Patent other than in connection with a claim brought by Andrx or asserts that the manufacture, use, sale, offer for sale, or importation of a Generic Equivalent Product or Biovail Third Party Licensee Bupropion Product (as applicable) in the United States does not infringe any claim of the Patent, Andrx shall have the right to immediately terminate such Biovail Assignee's or Biovail Third Party Licensee's (as applicable) rights to the Assigned License Rights and such Assigned License Right shall automatically revert to GSK. This Agreement may be terminated by GSK if Andrx is in breach of any material provision of this Agreement that is not cured within thirty (30) days after notice by GSK to Andrx of such breach, provided the notice of termination is given within six (6) months of the discovery by GSK of the breach and prior to correction of the breach.

6. (a) Each Party represents and warrants to the other that (i) it has the requisite corporate authority to enter into this Agreement, (ii) this Agreement does not and will not conflict with any other agreements to which it or any of its Affiliates is or may be a party or that would impede the diligent and complete fulfillment of its obligations hereunder, (iii) except as expressly set forth in the Settlement Agreement, to the extent that any approval or authorization is necessary for its valid and lawful execution, delivery and performance of this Agreement, such approval or authorization has been obtained, and (iv) this Agreement is a binding obligation of it and its Affiliates, enforceable in accordance with its terms, subject, as to enforcement of remedies, to applicable bankruptcy, insolvency, moratorium, reorganization and similar laws affecting creditors' rights generally, and to general equitable principles. This Agreement may be amended or supplemented at any time by mutual agreement of the Parties, provided that any such amendment or supplement must be in a writing explicitly referring hereto, signed by both Parties hereto, and approved by all necessary corporate action.

(b) Andrx warrants and represents that it owns the entire right, title and interest in the Patent, or otherwise has the right to grant the license rights outlined in Section 3.

(c) Andrx (and on behalf of Andrx's Affiliates, licensees, successors and assigns) hereby grants GSK (and its Affiliates, assigns, suppliers, distributors, and sublicensees) a covenant not-to-sue and freedom from suit, and Andrx (and its Affiliates) shall not support or encourage any Third Party in suing GSK (and its Affiliates, assigns, suppliers, distributors, sublicensees), (i) that any patents (or patents resulting from patent applications) owned or controlled by Andrx (or its Affiliates) throughout the world, now or in the future, is infringed by any non-generic prescription once-daily product containing bupropion hydrochloride (including the sale, offer for sale, manufacture, use or importation thereof), but only as to such products sold or marketed as of the Execution Date, (ii) that the Patent is infringed by any non-generic prescription once-daily product containing bupropion hydrochloride (including the sale, offer for sale, manufacture, use or importation thereof), (iii) effective as of or after the Execution Date, that any patents (or patents resulting from patent applications) owned or controlled by Andrx (or its Affiliates) throughout the world, now or in the future, is infringed by any generic prescription once-daily product containing bupropion hydrochloride (including the sale, offer for sale, manufacture, use or importation thereof), but only as to such products that are generic equivalents of products sold or marketed as of the Execution Date (including, without limitation, Generic Equivalent Products), and (iv) effective as of or after the Execution Date, that the Patent is infringed by any generic prescription once-daily product containing bupropion hydrochloride, including, without limitation, Biovail Third Party Licensee Bupropion Products, (including the sale, offer for sale, manufacture, use or importation thereof). Andrx (and its Affiliates) shall not threaten nor bring any claims under any such patents in contravention of the foregoing. Andrx shall impose the foregoing covenant not-to-sue on any Third Party to which Andrx or any of its Affiliates may assign, license, sublicense or otherwise transfer any rights to such patents.

(d) Limitation of Warranty. EXCEPT AS EXPRESSLY STATED IN THIS SECTION NEITHER PARTY MAKES ANY OTHER REPRESENTATION OR WARRANTY, AND EACH PARTY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, WITH RESPECT TO ANY PRODUCT, MATERIALS, INFORMATION, SERVICES OR LICENSES PROVIDED TO THE OTHER

PARTY PURSUANT TO THIS AGREEMENT. WITHOUT LIMITATION TO THE FOREGOING, NOTHING IN THIS AGREEMENT IS OR SHALL BE CONSTRUED AS:

- claim of the Patent; (i) a warranty or representation by Andrx as to the validity, enforceability or scope of any
- (ii) a warranty or representation by Andrx that anything made used or sold, or otherwise disposed of under any license or other right granted in this Agreement is or will be free from infringement of any rights or other intellectual property right of any Third Party;
- of the Patent; or (iii) an obligation to bring or prosecute actions or suits against Third Parties for infringement
- (iv) granting by implication, estoppel, or otherwise any licenses or rights under patents or other rights of Andrx or Third Parties, regardless of whether such patents or other rights are dominant or subordinate to the Patent, except as expressly set forth herein (including, but not limited to, Sections 3 and 6(c) hereof).
- (e) GSK, on behalf of itself, its Affiliates and sublicensees, agrees to defend, indemnify, protect, and hold harmless Andrx and Andrx’s customers, Affiliates, employees, agents, servants, and representatives (each an “Andrx Party”) from and against any and all claims, damages, losses, liabilities, and expenses, including reasonable attorney’s fees and costs, of whatever nature, to the extent that such result from or arise in connection with a claim, suit or other proceeding made or brought by a Third Party against Andrx or an Andrx Party based on, resulting from, or arising in connection with arising out of or relating to: (i) any product liability claim resulting from GSK’s (or its Affiliate’s or its sublicensees’) sale of Wellbutrin XL Products or Generic Equivalent Products sold by or on behalf of GSK in the United States, or (ii) any claim that GSK’s Wellbutrin XL Products or Generic Equivalent Products sold by or on behalf of GSK infringes intellectual property rights owned or controlled by such Third Party in the United States. The foregoing right of indemnity is premised upon Andrx not breaching any representation, warranty, covenant or other obligation of Andrx contained in this Agreement or

the Settlement Agreement that form the basis or proximate cause of the indemnity claim or otherwise materially affect GSK's potential defense or liability relating thereto, and providing GSK any reasonable, sufficient and timely notice available of such Third Party claim such that GSK's ability to defend such claim is not prejudiced. GSK shall have the right to assume and control the defense of any claim for indemnification under this Section and Andrx shall cooperate in connection therewith. GSK shall maintain adequate insurance (or self-insurance) to cover such potential claims against Andrx and in accordance with industry standards.

7. Except as expressly set forth herein (including, without limitation, Section 3(f), this Agreement and the rights herein shall not be assigned or otherwise transferred without the written consent of both Parties, such written consent not to be unreasonably withheld or delayed; provided, however, that the prior written consent of the other Party shall not be required for a Party to assign any of its rights (including the licenses and covenant not-to-sue granted hereunder), or delegate or subcontract the performance of any of its obligations hereunder to an Affiliate or pursuant to a sale of all or substantially all of the assets of the portion of the Party's business to which this Agreement relates, merger, consolidation, reorganization or other similar transaction. Each Party represents and warrants that it has not sold or conveyed or otherwise transferred or granted any right, claim, demand or cause of action related to the District Court Case that it has or had against the other Party. Each Party hereto agrees to execute, acknowledge and deliver such further instruments and do all such further acts as may be necessary or appropriate to carry out the purposes and intent of this Agreement.

8. This Agreement is the product of negotiation and preparation by the Parties and their respective attorneys, and the Parties, therefore, expressly acknowledge and agree that this Agreement shall be deemed jointly prepared and drafted by all of the Parties and their attorneys, and shall be construed accordingly. The Parties further represent and warrant that each was represented by competent outside counsel in the course of negotiating and preparing this Agreement. Mistakes of fact or law shall not constitute grounds for modification, avoidance or rescission of this Agreement.

9. The confidentiality provisions of Paragraph 11 of the Settlement Agreement shall govern this Agreement.

10. GSK and Andrx shall each bear their own costs and legal fees associated with the negotiation and preparation of this Agreement.

11. This Agreement shall be governed by and construed in accordance with the laws of the State of New York (without regard to its choice of law principles). Nothing in this Agreement shall prevent the Parties from asserting or pursuing any claim to enforce the terms of this Agreement. All Parties consent to the exclusive personal jurisdiction and venue in The United States District Court For The Southern District of New York, (or, should there be no subject matter jurisdiction, then another Federal court of competent jurisdiction in New York), which shall be deemed the appropriate forum to hear the dispute for purposes of enforcing this Agreement.

12. This Agreement may be signed by the Parties in separate counterparts, each of which when so executed shall be deemed an original, and all of which when taken together shall constitute the original Agreement. The Parties agree to accept facsimile copies of the executed Agreement from one another as an original of same.

13. None of the provisions of this Agreement shall be for the benefit of or enforceable by any Third Party.

14. The waiver by either Party of a breach or a default of any provision of this Agreement by the other Party shall not be construed as a waiver of any succeeding breach of the same or any other provision, nor shall any delay or omission on the part of the other Party to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any right, power or privilege by such Party.

15. Publicity. Any announcements or publicity regarding the existence of this Agreement or any terms or subject matter of this Agreement by either Andrx and/or GSK will be agreed to by Andrx and GSK in writing in advance of any such announcement or publicity. The Party preparing any such announcement, publicity or press release will provide the other Party

with a draft thereof reasonably in advance of disclosure so as to permit the other Party to review and comment on such announcement, publicity or press release, unless Applicable Law otherwise requires immediate public disclosure. The foregoing notwithstanding, the Parties will agree on a press release to announce the execution of this Agreement, together with a corresponding question/answer outline for use in responding to inquiries about this Agreement. Thereafter, Andrx and GSK may each disclose to Third Parties the information contained in such press release and question/answer outline without the need for further approval by the other Party. Each of the Parties may, if required by applicable law or governmental regulation, disclose the existence and such terms as are required of this Agreement pursuant to the provisions of Paragraph 11 of the Settlement Agreement. Each Party agrees that it will co-operate fully with the other with respect to all disclosures regarding this Agreement to the Securities Exchange Commission and any other governmental or regulatory agencies, including requests for confidential treatment of proprietary information of either Party included in any such disclosure.

16. Further Documents. Each Party hereto agrees to execute such further documents or agreements, and do all such other commercially reasonable acts, as may be reasonably necessary or desirable to effect the purpose of this Agreement and carry out its provisions.

17. Severability. If any provision of this Agreement is or becomes invalid or is ruled invalid by any court of competent jurisdiction or is deemed unenforceable, such provision shall be considered severed from this Agreement, and it is the intention of the Parties that the remainder of the Agreement will not be affected. The Parties shall make a good faith effort to replace any such invalid or unenforceable provision with a valid and enforceable one such that the objectives contemplated by the Parties when entering this Agreement may be realized.

18. Captions/Headings. The article and section captions or headings in this Agreement have been inserted as a matter of convenience and are not part of this Agreement.

19. Independent Relationship. Nothing herein contained shall be deemed to create an employment, agency, joint venture or partnership relationship between the Parties hereto or any of their agents or employees, or any other legal arrangement that would impose liability upon one Party for the act or failure to act of the other Party. Neither Party shall have any power to

enter into any contracts or commitments or to incur any liabilities in the name of, or on behalf of, the other or to bind the other Party in any respect whatsoever. All activities undertaken by and hereunder shall be those of an independent contractor.

20. Entire Agreement. This Agreement, together with the Settlement Agreement, contains the entire agreement between the Parties related to the subject matter hereof, and this Agreement cannot be amended, varied or abridged in any manner except by amendment in writing duly signed by the Parties. This Agreement supersedes and replaces any existing agreement, arrangements or discussions between the Parties relating to the subject matter hereof, whether oral or written.

21. Notices required or permitted under this Agreement shall be in writing and sent by prepaid registered or certified air mail or by overnight express mail (e.g., FedEx), or by telefacsimile confirmed by prepaid registered or certified air mail letter or by overnight express mail (e.g., FedEx) (failure of such confirmation shall not affect the validity of such notice by telefacsimile to the extent the receipt of such notice is confirmed by the act of the receiving Party (e.g., a telefacsimile of the receiving Party submitting its receipt of such notice)), and shall be deemed to have been properly served to the addressee upon receipt of such written communication, to the following addresses of the Parties:

If to Andrx:

Andrx Pharmaceuticals LLC  
c/o Watson Pharmaceuticals, Inc.  
Attention: Legal Department  
311 Bonnie Circle  
Corona, CA 92880  
Facsimile: (951) 493-5821

If to GSK:

SmithKline Beecham Corporation (d/b/a GlaxoSmithKline)  
One Franklin Plaza (Mail Code FP 2230)  
P.O. Box 7929  
Philadelphia, Pennsylvania 19101, USA  
Attention: President, U.S. Pharmaceuticals  
Fax: +1-215-751-3729



and:

SmithKline Beecham Corporation (d/b/a GlaxoSmithKline)  
One Franklin Plaza (Mail Code FP 2230)  
P.O. Box 7929  
Philadelphia, Pennsylvania 19101, USA  
Attention: Corporate Law — U.S.  
Vice President and Associate General Counsel,  
Worldwide Business Development Transactions Team

Facsimile: (215) 751-3935

[Signatures Appear on the Following Page]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Execution Date.

SMITHKLINE BEECHAM CORPORATION

By: /s/ Donald F. Parman  
Name: Donald F. Parman  
Title: Vice President & Secretary

GLAXOSMITHKLINE, PLC

By: /s/ Simon Bicknell  
Name: Simon Bicknell  
Title: Company Secretary

ANDRX PHARMACEUTICALS, LLC.

By: /s/ Allen Chao  
Name: Allen Chao  
Title: Chairman, Chief Executive Officer & President

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**APPENDIX A**  
**Certain Definitions**

As used in this Agreement, the following terms, whether used in the singular or plural, shall have the following meanings:

“A Rated” shall mean the product in question has been assigned an “A” rating signifying that the FDA has classified the product as “therapeutically equivalent” to the particular product in question, applying the definition of “therapeutically equivalent” set forth in the preface to the current edition of the then current FDA publication “Approved Drug Products With Therapeutic Equivalence Evaluations” (the “Orange Book”).

“Affiliate” shall mean any Person which controls, is controlled by, or is under common control with the applicable Person. For purposes of this definition, “control” shall mean: (a) in the case of corporate entities, direct or indirect ownership of greater than fifty percent (50%) of the stock or shares entitled to vote for the election of directors, or otherwise having the power to control or direct the affairs of such Person; and (b) in the case of non-corporate entities, direct or indirect ownership of greater than 50% of the equity interest or the power to direct the management and policies of such noncorporate entities.

“Agreement” shall mean this License Agreement.

“Biovail Third Party Licensee Bupropion Product” shall mean (1) any prescription once-daily bupropion hydrochloride product in the 150mg strength for human use that has received Final Approval from the FDA pursuant to an ANDA and is A Rated to the applicable 150mg strength of GSK’s Wellbutrin XL® (bupropion hydrochloride) product approved under GSK’s NDA No. 02-1515 and that is distributed by the Biovail Third Party Licensee in the United States; or (2) any unbranded prescription once-daily product containing bupropion hydrochloride in the 150mg strength for human use that is supplied to, and distributed by, Biovail Third Party Licensee under a GSK owned or controlled NDA for sale in the United States by the Biovail Third Party Licensee as a generic equivalent to the 150mg strength of GSK’s Wellbutrin XL® (bupropion hydrochloride) product approved under GSK’s NDA No. 02-1515.

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“Biovail Third Party Licensee’s Suppliers” shall mean, collectively any Third Party that manufactures for, or supplies to, the Biovail Third Party Licensee the Biovail Third Party Licensee Bupropion Product.

“Calendar Quarter” shall mean each of the three (3) month periods during a calendar year starting on each of the first of January, April, July and October.

“FDA” shall mean the U.S. Food and Drug Administration, or any successor agency thereto.

“Final Approval” shall mean final approval (not including any tentative approval) required from the FDA to enable the marketing and sale of a pharmaceutical product in the United States.

“Generic Equivalent Product” shall mean any unbranded prescription 150mg once-daily product containing bupropion hydrochloride for human use that is supplied or manufactured by or for GSK or its Affiliates under a GSK owned or controlled NDA for sale in the United States by or on behalf of GSK (or a Biovail Assignee, if applicable) as a generic equivalent to the 150mg strength of GSK’s Wellbutrin XL® Product. For the avoidance of doubt, Generic Equivalent shall not include (i) any product marketed and sold under GSK’s Wellbutrin XL® trademark (or any other trademark owned or controlled by GSK), or (ii) any Biovail Third Party Licensee Bupropion Product.

“GSK Suppliers” shall mean, collectively any Third Party that manufactures for, or supplies to, GSK (or its Affiliates) the Wellbutrin XL Product, or the Generic Equivalent Product (as applicable) for sale by GSK (or its Affiliates).

“NDA” shall mean a New Drug Application (or supplement thereto) as defined in the U.S. Federal Food, Drug, and Cosmetic Act and all applicable regulations promulgated thereunder.

“Net Sales” shall mean the aggregate gross sales amount invoiced by GSK (or its Affiliates) and its or their sublicensees for Wellbutrin XL Products, Biovail Third Party Licensee

Bupropion Product or Generic Equivalent Products (as may be applicable, “Product”) to wholesalers and customers (for purposes of this definition, collectively, “customer”) in the United States less the following deductions:

- (a) transportation charges, including insurance, for transporting Product;
- (b) sales and excise taxes and duties paid or allowed by the GSK and any other governmental charges imposed upon production, importation, use or sale of Product;
- (c) trade, quantity and cash discounts allowed on Product;
- (d) allowances or credits to customers on account of rejection or return of Product or on account of retroactive price reductions affecting Product; and
- (e) Product rebates, including those granted to Medicaid, and Product charge backs including those granted to managed care entities and pharmaceutical benefit management service entities;

all of the above without duplication and determined in accordance with GSK’s, its Affiliates’ and their permitted sublicensees’ books and records, which books and records will be maintain in accordance with GAAP. GSK, its Affiliates and their permitted sublicensees will not deduct any marketing, promotional, advertising or distribution expenses of any kind to determine Net Sales. Any sales between GSK, its Affiliates and its or their sublicensees shall be excluded from the computation of Net Sales and no amounts shall be payable on such sales.

“Person” shall mean any natural person, corporation, unincorporated organization, partnership, association, joint stock company, joint venture, limited liability company, trust or government, or any agency or political subdivision of any government, or any other entity.

“Prime Rate” shall mean the rate of interest that Citibank N.A. lists as its prime lending rate on the last day of the applicable Calendar Quarter, or if such rate is not available, the prime

lending rate listed in the New York City, USA version of The Wall Street Journal on the last day of the applicable Calendar Quarter.

“Royalty” shall mean individually or collectively, as applicable, the Wellbutrin XL Product Royalty, the Biovail Third Party Licensee Bupropion Product Royalty and the Generic Equivalent Product Royalty.

“Third Party” shall mean any Person other than Andrx or GSK, or an Affiliate of any of them.

“United States” shall mean the United States of America (including the Commonwealth of Puerto Rico) its possessions and territories, and U.S. military or U.S. government installations that are under the purview of the FDA.

“Wellbutrin XL Product” shall mean any prescription 150 mg once-daily product containing bupropion hydrochloride for human use that is supplied or manufactured by or for GSK (or its Affiliates) for sale by GSK (or its Affiliates) in the United States under the Wellbutrin XL® trademark or any other trademark owned or controlled by GSK (or its Affiliates). For the avoidance of doubt, “Wellbutrin XL Product” does not include Generic Equivalent Products or Biovail Third Party Licensee Bupropion Products.

Andrx and GSK are sometimes collectively referred to in this Agreement as the “Parties” and separately as a “Party.”

The word “including” or any variation thereof means “including without limitation” or any variation thereof and shall not be construed to limit any general statement which it follows to the specific or similar items or matters immediately following it.

CONFIDENTIAL TREATMENT REQUESTED:

*Portions of this Exhibit have been redacted pursuant to a request for confidential treatment under Rule 24b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended. Such redacted portions have been replaced with “{\*\*\*}” in this Exhibit. An unredacted version of this document has been filed separately with the Securities and Exchange Commission along with the request for confidential treatment.*

DISTRIBUTION RIGHTS AGREEMENT

This AMENDED AND RESTATED DISTRIBUTION RIGHTS AGREEMENT (this “Agreement”) is made this day of January, 2004, to be effective as of October 26, 2001 (“Original Agreement Effective Date”), by and among SmithKline Beecham Corporation, a GlaxoSmithKline company, a corporation duly organized and existing under the applicable laws of the Commonwealth of Pennsylvania having a principal place of business at One Franklin Plaza, Philadelphia, PA 19101 (“GSK”) and Biovail Laboratories Incorporated, a Barbados corporation incorporated under the International Business Companies Act, 1991-24, having a principal place of business at Chelston Park, Building 2, Collymore Rock, St. Michael BH1, Barbados, West Indies (“Biovail”).

RECITALS

WHEREAS, GSK markets prescription pharmaceutical products sold under the Zovirax® (acyclovir) brand in various formulations, presentations and strengths; and

WHEREAS, the parties entered into a Distribution Rights Agreement (the “Original Agreement”) dated October 26, 2001, pursuant to which GSK granted to Biovail the exclusive right to distribute, market, promote, detail, advertise and sell the Products (as hereinafter defined) as GSK’s exclusive distributor of the Products in the Territory (as hereinafter defined), and to utilize GSK’s Trademarks (as defined herein below) to identify the Products in connection with the distribution, marketing, promotion, advertisement and sale of the Products in the Territory as described herein and Biovail agreed to purchase from GSK, and GSK agreed to supply to Biovail, Biovail’s entire requirements of the Products, for distribution in the Territory for the Term (as hereinafter defined);

WHEREAS, the parties now desire to amend the provisions of the Original Agreement and to redefine their respective rights and obligations under the Memorandum of Understandings made effective on October 1, 2002 and April 1, 2003 and the Original Agreement by means of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and legal sufficiency of which are mutually acknowledged, GSK and Biovail hereby agree as follows:

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## ARTICLE 1.

### DEFINED TERMS

1.01 Defined Terms. The following terms, whether used in the singular or plural, shall have the meanings assigned to them below for purposes of this Agreement:

“Actual Shipment Quantity” shall have the meaning set forth in Section 5.04(d).

“Additional Rights Payment” shall have the meaning set forth in Section 5.01(b).

“Additional Rights Lump Sum Payment” shall have the meaning set forth in Section 5.01(b)(iii).

“Additional Rights Payment Cash Flow” shall mean the series of future cash payments at specific points in time as would be required for the full payment and satisfaction of the aggregate total dollar amount of the Fixed Adjustments.

“Adjustment Amount” shall mean the difference between:

- (i) the aggregate value of Product purchased by Biovail between October 1, 2002 and September 30, 2003, calculated by multiplying the actual quantities of such Product, by the prices specified in Section 5.06(a) and (b) for such purchases; minus
- (ii) the aggregate value of Product purchased by Biovail between October 1, 2002 and September 30, 2003, calculated by multiplying the actual quantities of such Product so purchased by the Reduced Zovirax® Price for such purchases.

“Adverse Event” shall mean any adverse event associated with the use of the Product in humans, whether or not considered drug-related, including (i) an adverse event occurring in the course of the use of the Product in professional practice, (ii) an adverse event occurring from Product overdose (whether accidental or intentional), (iii) adverse events occurring from Product abuse, or from Product withdrawal and (iv) any failure of pharmacological action, or such other definition as may from time to time be set forth in 21 C.F.R. Part 314.80.

“Affiliate” shall mean any corporation or non-corporate entity that controls, is controlled by, or is under common control with a Party. A corporation or non-corporate entity shall be regarded as in control of another corporation if (a) it owns or directly or indirectly controls at least fifty percent (50%) of the voting stock of the other corporation or, (b) in the absence of the ownership of at least fifty percent (50%) of the voting stock of a corporation or in the case of a non-corporate entity, has the power to direct or cause the direction of the management and policies of such corporation or non-corporate entity, as applicable.

“Aggregate Unit Purchase Price” shall have the meaning set forth in 5.08(a).



“Agreement” shall mean this agreement, together with all appendices, exhibits and schedules attached hereto, as the same may be amended or supplemented in accordance with this Agreement.

“ANDA” shall mean an Abbreviated New Drug Application for a Product, requesting permission to place a drug on the market in accordance with 21 C.F.R. Part 314 Subpart C, and all supplements filed pursuant to the requirements of the FDA, including all documents, data and other information concerning a Product which are necessary for FDA approval to market a Product in the Territory.

“Annual Minimum Purchase Requirement” shall have the meaning set forth in Section 5.02(c).

“Applicable Laws” shall mean all applicable laws, ordinances, rules, regulations and guidances applicable to this Agreement or the activities contemplated hereunder, including without limitation the Federal Food, Drug and Cosmetic Act and applicable regulations, FDA-issued guidances, federal and state anti-kickback laws, privacy laws, consumer protection statutes, laws relating to sample accountability, and any requirements under any Product Registration applicable to the Products in the Territory.

“Bupropion Product” shall mean “The Product”, as such term is defined in the Development Agreement.

“Business Day” shall mean a day of the year in which banks are not required or authorized to close in Charlotte, North Carolina.

“Calendar Quarter” shall mean a period of three (3) consecutive calendar months during the Term of this Agreement ending on either March 31, June 30, September 30 or December 31.

“Calendar Year” shall mean a period of twelve (12) consecutive months commencing on January 1 and ending December 31.

“Commercially Reasonable Efforts” of a Party shall mean those efforts consistent with the exercise of prudent scientific and/or business judgment as applied to commercialization efforts for products of similar scientific and commercial potential within relevant product lines of such Party.

“Confidential Information” shall have the meaning set forth in Section 11.01(a).

“Confidentiality Agreement” shall have the meaning set forth in Section 11.01(b).

“DDMAC” shall mean FDA’s Division of Drug Marketing, Advertising and Communications.

“Delivery Date” shall have the meaning set forth in Section 5.04(b).

“Developed Cream Trade Product” shall mean a 5 gram presentation of Zovirax® Cream intended for marketing and sale in the Territory.

“Development Agreement” shall mean that certain Product Development, License and Copromotion Agreement by and between GSK and Biovail, of even date herewith.

“Development Work” shall mean any and all analytical testing, stability testing and regulatory support necessary to generate sufficient stability data for Sample Products and prepare a supplement that complies with FDA requirements and guidelines governing submissions to FDA.

“Distribution Rights Payment” shall have the meaning set forth in Section 5.01(a).

“Distributorship Commencement Date” except as otherwise provided hereinbelow, shall mean the date upon which Biovail’s rights as exclusive distributor of the Products shall commence, which date shall be January 1, 2002.

“Effective Date” shall mean the date first set forth above.

“Existing Inventory” shall mean GSK’s entire finished goods inventory of Products in the Territory as of December 15, 2001.

“Extension Period” shall mean the period commencing on January 1, 2012 and ending at 11:59 pm, PST, December 31, 2021.

“Federal Programs” shall have the meaning set forth in Section 3.12.

“FDA” shall mean the United States Food and Drug Administration, or any successor agency of the United States.

“Firm Zone” shall mean any period of time in respect of which there is a firm commitment by Biovail to purchase Product pursuant to Sections 5.03 or 5.04.

“Fixed Annual Minimum Purchase Requirement” shall have the meaning set forth in Section 5.02(c)(i).

“Generic Entry” shall mean, with respect to a Product, the first point in time during the Term, subsequent to a generic form of said Product being made commercially available by a Third Party in the Territory, at which the total number of prescriptions filled for the Product falls below {\*\*\*}† of the Market Share (as defined hereinbelow) for that Product in each of three (3) consecutive calendar months.

“Good Manufacturing Practices” shall mean all current good manufacturing practices as defined under 21 U.S.C. § 351(a)(2)(B) and the FDA regulations promulgated thereunder, applicable to the Product, as in effect from time to time.

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† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

“Governmental Authority” shall mean any Federal, state, local or foreign governmental authority, agency or other body.

“Gross Sales” shall mean the gross amount invoiced by a Party, ex-factory, for Products shipped and delivered to said Party’s customers.

“GSK Entities” shall mean GSK and those Affiliates of GSK that manufacture either of the Products for sale in the Territory, or distribute, sell, or market either of the Products in the Territory.

“IND” shall mean an Investigational New Drug application filed with the FDA for any Product requesting permission to perform human clinical studies in accordance with 21 C.F.R. Part 312, as the same may be amended or supplemented from time to time hereafter.

“Invoiced Amount” shall mean the aggregate invoiced purchase price payable by Biovail for all Products included in any shipment of Products to Biovail by GSK.

“Manufacturing Documentation” shall mean , with respect to the Product, any and all current validation reports, any current formulation’s manufacturing instructions, and current batch record templates, and which are specific to or otherwise used in the Secondary Manufacture of the finished form of the Products. For avoidance of doubt, it is understood and agreed that the term “Manufacturing Documentation” shall only apply to such documents as are used in, or which relate to, the finished goods manufacturing process, and shall not in any case apply to the Primary Manufacturing process or to the synthesis of any of the active drug substance in any of the Products.

“Market Share” shall mean , with respect to a Product, the aggregate total number of prescriptions filled for said Product and any generic versions of said Product made available in finished goods form in the Territory by a Third Party.

“Maximum Returns Credit Amount” shall have the meaning set forth in Section 6.05(b).

“Monthly Product Supply Schedule” shall have the meaning set forth in Section 5.03(a).

“NDA” shall mean a New Drug Application for any product, requesting permission to place a drug on the market in accordance with 21 C.F.R. Part 314, and all supplements filed pursuant to the requirements of the FDA, including all documents, data and other information concerning a product which are necessary for FDA approval to market a product in the Territory.

“NDC” shall mean National Drug Code.

“Net Wholesale Price” shall mean the gross list price published by Biovail, ex-factory, to its wholesale customers for a Product.

“New Products” shall mean the Developed Cream Trade Product and the Zovirax® Cream Sample Products.

“NOV” shall mean an FDA Notice of Violation or “untitled” letter.

“Order Quantities” shall have the meaning set forth in Section 5.05.

“Party” shall mean GSK or Biovail and, when used in the plural, shall mean GSK and Biovail.

“Patent” shall mean the Mac-P formulation patent for Zovirax® Cream, United States Patent #4,963,555.

“Person” shall mean any natural person, corporation, firm, business trust, joint venture, association, organization, company, partnership, limited liability company, or other business entity, or any government or any agency or political subdivision thereof.

“Phase IV Clinical Study” shall mean the NDA post-approval clinical study to be conducted by GSK, as required by FDA, for Zovirax® Cream in pediatric patients ages six (6) through twelve (12).

“Primary Manufacture” or Primary Manufacturing” shall mean the process used in the manufacture of an active drug substance (including, but not limited to, the synthesis thereof), the result or product of which will be used in Secondary Manufacturing of a pharmaceutical product.

“Product” shall mean Zovirax® Ointment or Zovirax® Cream; “Products” shall mean Zovirax® Ointment and Zovirax® Cream; each in the presentations and formulations in finished product form, as described on Exhibit 1.01A, or as developed by GSK under the terms of this Agreement.

“Product Registrations” shall mean the approvals or registrations for a Product which have been received by GSK in the Territory, including without limitation each IND, Drug Master File (DMF), NDA and ANDA for the Product, as applicable.

“Promotional Spend Requirement” shall have the meaning set forth in Section 3.14.

“Promotional Support” shall mean personal field selling of Products to healthcare professionals, Product advertising directed to healthcare professionals and to consumers directly, educational programs for healthcare professionals and sales training for sales representatives and managers, and all of the activities identified in Section 3.02(d) and shall expressly exclude; (i) general and administrative expenses attributable to the foregoing and (ii) expenses incurred in the sampling of the Products.

“Purchase Order” shall have the meaning set forth in Section 5.03(a).

“Purchase Price” shall have the meaning set forth in Section 5.08(a).

“Recall” shall have the meaning set forth in Section 6.06.

“Reduced Zovirax® Price” shall mean , for each Zovirax® Product, is {\*\*\*}† of that Product’s Net Wholesale Price.

“Sachet Sample” shall mean the 0.9 gram presentation of Zovirax® Ointment or the 0.9 gram presentation of Zovirax® Cream, not intended or approved for commercial sale, but intended and approved for use exclusively in the detailing and promotion of the Product.

“Sachet Sample Availability Date” shall mean the date upon which the Sachet Sample for Zovirax® Cream or Zovirax® Ointment, as appropriate, becomes commercially available for shipment to Biovail.

“Sample Products” shall mean the Sachet Samples and the Tube Samples.

“Secondary Manufacture” or “Secondary Manufacturing” shall mean the manufacturing and packaging process used in formulating the active drug substance and all excipients into a final dosage form of a pharmaceutical product.

“Serious Adverse Event” shall mean an Adverse Event that is fatal, life-threatening, persistently or significantly disabling or incapacitating, results in new or prolonged in-patient hospitalization, or is a congenital anomaly, or such other definition as may be provided from time to time in 21 C.F.R. Part 312.32(a). As permitted under 21 C.F.R. Part 312.32(a), important medical events that may not result in death, be life-threatening or require hospitalization may be considered Serious Adverse Events when, based upon appropriate medical judgment, they may jeopardize the patient or subject and may require medical or surgical intervention to prevent one of the outcomes listed in this definition.

“Supplemental Allowance Payment” shall mean each payment of eleven million, two hundred and fifty thousand U.S. dollars (US \$11,250,000) to be made by Biovail to GSK on the March 31 of each of the Calendar Years of 2004, 2005, 2006 and 2007, respectively, pursuant to Section 5.01(e)).

“Term” or “Term of this Agreement” shall mean the period, which commenced on the Original Agreement Effective Date and ends on expiry of the Extension Period, unless sooner terminated as provided herein.

“Territory” shall mean the United States of America and Puerto Rico, but excluding all other United States territories and possessions.

“Third Party” shall mean any Person who or which is neither a Party nor an Affiliate of a Party.

“To The Knowledge Of” a specified entity or any similar term shall mean to the actual knowledge of the officers of the specified entity having operating responsibility for the business of such entity.

† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

“Trademarks” shall mean the trademarks registered by GSK or its Affiliates for the marketing of the Product in all or any part of the Territory, as more fully set forth on Exhibit 1.01 B attached hereto. For sake of clarity and avoidance of doubt, the Trademarks do not include any of the names (or variants thereof) of Glaxo Wellcome Inc., Glaxo Wellcome plc, SmithKline Beecham Corporation, Glaxo SmithKline or any of their respective Affiliates, or any marks customarily associated with such names.

“Tube Sample” shall mean either the 1.5 gram tube presentation of Zovirax® Ointment or the 0.8 gram tube presentation of Zovirax® Cream not intended or approved for commercial sale, but intended and approved for use exclusively in the detailing and promotion of the Product

“Variable Additional Rights Payment” shall have the meaning set forth in Section 5.01(b)(ii).

“Variable Annual Minimum Purchase Requirement” and “Variable Annual Minimum Purchase Requirements” shall have the meaning set forth in Section 5.02(c)(ii).

“Wellbutrin® XL” shall mean any once daily formulation of bupropion hydrochloride.

“Zovirax® Cream” shall mean 5% acyclovir in a prescription modified aqueous cream formulation.

“Zovirax® Cream NDA” shall have the meaning set forth in Section 4.05.

“Zovirax® Cream Sample Product” shall mean the Sachet Sample of Zovirax® Cream and the Tube Sample of Zovirax® Cream.

“Zovirax® Ointment” shall mean 5% acyclovir in a prescription ointment formulation.

“Zovirax® Price Allowance” shall mean the sum of:

- (i) {\*\*\*}† plus
- (ii) the amount of each Supplemental Allowance Payment made by Biovail to GSK; minus
- (iii) the aggregate value of Product purchased by Biovail at the {\*\*\*}† calculated by multiplying the actual quantities of such Product so purchased by the {\*\*\*}† for such purchases.

1.02 Terms Generally. All references herein to Articles, Sections, paragraphs, clauses, Exhibits and Schedules shall be deemed references to Articles, Sections, paragraphs and clauses of this Agreement and Exhibits and Schedules to this Agreement unless the context shall otherwise require.

† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

## ARTICLE 2.

### APPOINTMENT OF DISTRIBUTOR; RIGHTS AND LIMITATIONS

#### 2.01 Grant of Exclusive Rx Distribution Rights.

(a) Subject to the terms and conditions of this Agreement, GSK appoints Biovail as GSK's exclusive distributor of the Products as prescription drugs in the Territory, and in connection therewith, grants to Biovail the exclusive right to market, promote, advertise, detail, sell and distribute the Products as prescription drugs in the Territory. The appointment made in the preceding sentence shall commence as of the Distributorship Commencement Date and shall continue until the expiration or termination of the Term and, unless otherwise renewed in accordance with the terms hereinbelow, shall not survive past the termination or expiration of the Term. The foregoing notwithstanding, the Parties hereby acknowledge and agree that with respect to Zovirax® Cream only, the distributorship rights granted to Biovail under this Section 2.01(a) shall not be effective until the effective date of approval of the Zovirax® Cream NDA by the FDA.

(b) GSK shall retain the right to ship the Products through its distribution channels in the Territory if such shipment is solely in connection with providing Products to GSK Affiliates for sale outside the Territory.

(c) Biovail may assign, sub-license, sub-contract or delegate to any Biovail Affiliate all or part of the rights and obligations of Biovail under this Agreement but no such assignment, sub-licensing, sub-contracting or delegation shall relieve Biovail of its liabilities or obligations to GSK under this Agreement. GSK acknowledges that the promotional, marketing and, selling activities that Biovail is obligated and/or authorized to perform in the Territory shall be performed by an Affiliate of Biovail in strict compliance with the terms of this Agreement. Biovail expressly acknowledges and agrees that Biovail shall remain fully and unconditionally obligated and responsible for the full and complete performance of all Biovail obligations under the terms and conditions of this Agreement.

2.02 Territorial Limitation. Biovail shall restrict its marketing, promotion, advertising, selling, detailing and distribution of the Products solely to the prescription drug market in the Territory, and Biovail shall not sell or distribute the Products outside the Territory, and, other than sales of Products to the United States government for subsequent resale on United States military bases abroad, Biovail shall not knowingly sell Products, directly or indirectly to any Third Party in the Territory for resale outside the Territory.

2.03 Restriction on Sub-Distributors. Without the prior written consent of GSK, Biovail shall not grant to any Third Party any rights to market, promote, advertise, or distribute the Product, and shall not enter into any agreement or arrangement with any Third Party with respect to promoting or co-promoting the Product. The foregoing notwithstanding, for the Calendar Years 2002 through 2004 Biovail may employ the services of a Third Party in the detailing of the Products to healthcare professionals in the Territory, so long as any sales representative deployed by such Third Party for Biovail for such purpose shall at such time only detail Biovail products and the Products to healthcare professionals in the Territory. Nothing in

the foregoing restricts the ability of Biovail to enter into any agreements for the receiving, warehousing and shipping of the Products for Biovail, or under which agreements a Third Party will accept orders, generate invoices and collect and manage receivables with respect to Biovail's sales of the Products and Biovail's use of any Third Party in compliance with this Agreement for such functions is not a violation of the terms of this Agreement.

2.04 Approval of Reliant. Notwithstanding the provisions of Section 2.03 GSK hereby consents to the granting by Biovail of co-promotion rights to Reliant Pharmaceuticals, LLC a limited liability company with offices at 110 Allen Road, Liberty Corner, NJ 07938 ("Reliant") pursuant to Section 2.03 of the Distribution Agreement, provided that:

(a) The consent granted in this section is limited to Reliant only.

(b) The consent granted in this Section shall become effective upon February , 2003 and shall remain in effect for a period of one (1) Calendar Year, and may be renewed for additional one (1) year periods by mutual written agreement of the Parties.

(c) Biovail acknowledges and agrees that despite GSK's consent granted in Section 1 above, Biovail remains obligated to perform all terms, obligations, covenants and agreement ascribed to it in the Distribution Agreement.

(d) Biovail acknowledges and agrees that its indemnification obligations provided in Section 9.02 of the Distribution Agreement will be expanded to also include any GSK Claim that arises out of, or is the result of, any act or omission by Reliant in connection with the Product.

2.05 Reservation of OTC Rights. Notwithstanding anything in this Agreement to the contrary, the Parties acknowledge and agree that no rights are conveyed to Biovail under this Agreement with respect to distributing, marketing, selling or promoting either of the Products as non-prescription drugs in the over-the-counter market during the Term of this Agreement, and Biovail further agrees that neither it nor any of its Affiliates shall engage in any marketing, promotion, advertisement, sale or distribution of any Product in the non-prescription over-the-counter market during the term of this Agreement.

2.06 Compliance with Product Registration; Resale in Same Packaging. Biovail shall not at any time do, cause to be done or permit any act on its part, or that of its employees or agents, inconsistent with the Product Registration for any Product in the Territory. In the event that any filings are required to be made with, or approvals required to be obtained from, applicable regulatory authorities in order to sell a Product to Biovail or for Biovail to initiate distribution, marketing, sale or promotion of a Product in the Territory, the Parties shall cooperate fully to ensure that such filings and approvals are obtained or made as expeditiously as reasonably practicable. Except as otherwise set forth in Section 3.03(e) Biovail shall not alter in any manner any Product or its packaging as sold to it by GSK hereunder and shall resell the Product without alteration in the form sold to it by GSK.

2.07 No Ownership Rights Conveyed on Effective Date. Except for Biovail's right to use the Trademarks pursuant to Section 3.03 hereof, no right or license under any Trademark, or under any patent rights or know-how owned or controlled by GSK or any of its Affiliates to



make or have made any Product is granted to Biovail under this Agreement. Without limiting the foregoing, the Parties acknowledge and agree that nothing in this Agreement shall grant to Biovail any right or interest in any new Product, dosage forms, or other presentations at any time derived or developed by GSK in connection with the Product.

2.08 No Restriction on GSK Business. Nothing in this Agreement is intended to limit or restrict GSK or its Affiliates in any way, expressly or implicitly, from distributing, marketing, selling or promoting any topical product containing an active drug substance other than acyclovir that is competitive with either of the Products, provided that GSK notifies Biovail of the launch of any such competing product, and does not identify said competing product by any trademark substantially similar to or easily confused with the Trademarks. Further, nothing in this Agreement is intended to limit or restrict GSK or its Affiliates in any way, expressly or implicitly, from developing or manufacturing any product that is competitive with either of the Products, including without limitation any product containing any of the chemical compounds present in either of the Products for commercial sale as an over-the-counter product. The foregoing notwithstanding, during the Term of this Agreement GSK will not make available in the Territory any non-prescription over-the-counter versions of a Product prior to there being made commercially available by Third Parties for delivery in the Territory two (2) generic forms of said Product in finished goods form.

2.09 Development Rights and Obligations. Biovail acknowledges and agrees that nothing in this Agreement shall grant to Biovail any right or interest in any new formulations, indications, dosages, forms of administration or other presentations of the Products, and Biovail further acknowledges that the distribution rights granted herein relate only to the Products set forth on Exhibit 1.01A.

2.10 No Restriction on Biovail Business. Nothing in this Agreement is intended to limit or restrict Biovail or its Affiliates in any way, expressly or implicitly, from distributing, marketing, selling or promoting during the Term any product containing an active drug substance other than acyclovir that is competitive with the Product. Further, nothing in this Agreement is intended to limit or restrict Biovail or its Affiliates in any way, expressly or implicitly, from developing during the Term of this Agreement any product that is competitive with the Products, including without limitation any product containing any of the chemical compounds present in the Products, for commercial sale following expiration of the Term. If during the Term of this Agreement either party or an Affiliate of either Party shall make, manufacture, sell or supply a generic version of a Product in the Territory then such Party shall, for the balance of the Term of this Agreement pay to the other party {\*\*\*}† of all compensation received by said party for such generic version of the Product.

† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

ARTICLE 3.

BIOVAIL RESPONSABILITES

- 3.01      Distribution Diligence.
- (a)      In fulfillment of its obligations under this Agreement, during the Term Biovail shall:
- (i)      maintain and provide at its expense suitable storage and handling in accordance with the labeling of each Product, and other appropriate facilities and services in compliance with Good Manufacturing Practices, as needed for the storage and continuous sale and distribution of the Products and Sample Product within the Territory;
  - (ii)     maintain levels of inventory of each Product no greater than is reasonable and consistent with customary industry practice and Biovail’s historical sales patterns of the products to its customers;
  - (iii)    provide, at its expense, an adequate Product traceability system reasonably satisfactory to GSK;
  - (iv)    ensure that all sales force personnel only promote the Products in manner that is consistent with the Product’s applicable Product Registration and labeling and that is permitted by Applicable Laws. If Biovail becomes aware of any such activity in contravention of the immediately foregoing standards, Biovail shall take prompt affirmative action to ensure that such activity shall cease, and take addition remedial action to advise its sales personnel concerning the activities described in this subsection;
  - (v)    use Commercially Reasonable Efforts not to take any action which constitutes a violation of Applicable Laws or breach of this Agreement and would have a material adverse impact on:
    - (a)      the commercialization of the Products in the Territory; or
    - (b)      the then existing business of GSK, its Affiliates and licensees with respect to the Products outside of the Territory;
  - (vi)    obtain, as soon as reasonably practicable following the Effective Date, at Biovail’s sole and exclusive expense, any and all requisite NDCs in Biovail’s name for the Products, and obtain any and all governmental approvals as are required for Biovail to fulfill its obligations hereunder, and in conjunction with Biovail, GSK shall cause the NDC number obtained by Biovail to appear on all Products (other than Products consisting of current inventory of finished goods) sold by GSK to Biovail as soon as reasonably practicable;

- (vii) maintain the availability of the current package inserts with respect to the Products on any website maintained by Biovail or its Affiliates, and at such other locations where Biovail or its Affiliates make information regarding the Product available;
- (viii) sell, market, detail, promote, advertise and distribute the Products in a manner that will not have a material adverse effect on the Products;

3.02 Promotional Materials and Activities.

(a) Subject to the provisions of Section 3.02(b) below, Biovail shall be solely responsible, at its sole expense and under its sole control for conducting all promotional activities and for designing, preparing and distributing all materials, advertisements and activities used in the promotion, advertising and marketing of the Products within the Territory. Biovail shall ensure that all materials, advertisements and promotional activities comply with, and Biovail shall be solely responsible and liable for any failure of such materials and activities to comply with, the applicable labeling and Product Registration for a given Product and with Applicable Laws and regulations, notwithstanding any prior review or approval of such materials or activities by GSK and notwithstanding that such materials or activities may have been previously reviewed, used or conducted by GSK. Biovail shall be solely responsible for fulfilling regulatory requirements pertaining to its promotional materials and activities, including, without limitation, sole responsibility for submitting to FDA all promotional and advertising materials prepared by or for Biovail at the time of initial dissemination, by way of a Form FDA-2253, consistent with 21 C.F.R. Part 314.81. To this effect, GSK shall, upon the Effective Date, or as soon thereafter as is reasonably practicable, place a letter on file with DDMAC with respect to the Products advising DDMAC that Biovail shall be the sole marketer and promoter of the Products and requesting that DDMAC address regulatory inquiries and concerns regarding Biovail's promotional activities solely with Biovail. Biovail shall promptly, but in no event less than twenty-four (24) hours provide a copy to GSK of any correspondence from a government agency including, but not limited to, the FDA, reflecting any purported legal or regulatory violations or legal or regulatory action being considered or taken by such government agency, including without limitation, copies of FDA NOV's and Warning Letters. Unless otherwise required, Biovail shall not provide GSK with copies of any promotional materials or advertising or notify GSK of any promotional activities unless pursuant to a written request by GSK. Biovail shall absorb and be solely responsible for any and all lost profits, lost revenues, damages, losses, expenses and costs incurred by Biovail, its Affiliates, and any contract sales organization ("CSO") retained by Biovail pursuant to the terms of this Agreement, arising from the failure of any promotional materials or advertising used, or activities conducted by, Biovail to comply with the applicable labeling, the Product Registrations and/or with Applicable Laws. Without limiting the rights GSK may have under the indemnification provisions of this Agreement, Biovail shall promptly reimburse GSK and its Affiliates for any and all damages, losses, expenses and costs suffered or incurred by GSK and its Affiliates arising from (i) the failure of any promotional materials or advertising used or activities conducted by Biovail to comply with the applicable labeling, the applicable Product Registrations, Applicable Laws, and/or any comments, guidance or direction given by FDA or DDMAC in the Pre-Clearance Process pursuant to Section 3.02(b)(ii) or (ii) the failure of Biovail or its representatives or any CSO selected pursuant to the

terms of this Agreement to promote the Products in compliance with the applicable labeling, the applicable Product Registrations and/or with Applicable Laws. For purposes of the preceding sentence, it is understood and agreed that the losses, expenses and costs incurred by GSK shall include, without limitation, the losses, expenses and costs incurred by GSK to mitigate or limit the effect or impact of (i) or (ii) above, on GSK and its Affiliates products or corporate image (including, but not limited to, the costs of any remedial action undertaken by GSK to communicate with physicians or customers (including, but not limited to so-called “dear doctor letters”).

(b)

- (i) If Biovail (or GSK) shall receive a Warning Letter from FDA which relates to marketing, promotion, advertisement, sale or distribution of the Products after the Distributorship Commencement Date, or Biovail (or GSK) shall receive two (2) NOV's from the FDA which relate to marketing, promotion, advertisement, sale or distribution of the Products after the Distributorship Commencement Date, GSK shall have the right to call, and Biovail shall participate/or attend at their own expense, a meeting of Biovail (which shall include senior level marketing and sales management of Biovail) and GSK, to be held in Research Triangle Park, N.C. The purpose of such meeting shall be to discuss the promotional pieces or practices which led to the issuance of the Warning Letter or the NOV's, as the case may be, and to discuss appropriate corrective or remedial measures to Biovail's promotional review process. Subsequent to any such meeting or in lieu of such meeting (if such meeting is not held as a result of the mutual agreement of the Parties or as a result of Biovail's failure or refusal to attend), GSK may, in its sole and absolute discretion, at any time after the issuance of a Warning Letter or a second NOV from FDA related to the Products after the Distributorship Commencement Date, decide to invoke the promotional review procedures set forth in Section 3.02(b)(ii) below by sending written notice thereof to Biovail (hereinafter, a “Promotional Review Notice”).
- (ii) In the event that GSK sends a Promotional Review Notice to Biovail, Biovail shall comply with the procedures set forth in this Section 3.02(b)(ii). Biovail shall ensure that all marketing and advertising materials and activities comply with the applicable labeling and the applicable Product Registration for a given Product and with Applicable Laws, including, without limitation, addressing any concerns which were the subject of such FDA letter(s). For a period of twelve (12) months after the Promotional Review Notice (the “Pre-Clearance Period”), Biovail shall submit all of the following for review and approval by DDMAC (the “Pre-Clearance Process”) prior to use or dissemination; any and all marketing, advertising, promotional and related materials and activities (including, without limitation, detail aids, letters, brochures, reprints and other printed materials shown to or left with healthcare providers, letters,

brochures and other printed materials intended for consumers, website content, materials for use in promotional programs, and any print, television, radio, and other media advertising materials intended for healthcare providers or consumers), labeling, press materials, updates and corrections to the Physicians Desk Reference with respect to the Products, speaker training materials (including slides and slide kits), sales training materials and other materials and communications originating from home offices, regional offices, local offices or hub offices and sent to the sales force regarding promotional messages or strategies for the Products. Biovail shall not use any materials or make any claims in advertising, promoting or selling the Products which have not gone through the Pre-Clearance Process and received specific and entire written approval by DDMAC; provided, however, that in the case of materials not accepted for review by DDMAC, Biovail shall ensure that all such materials and the claims and promotional messages therein; (a) are consistent with the materials and claims that have gone through the Pre-Clearance Process and received written approval by DDMAC and (b) comply with all comments, direction and guidance given by DDMAC during the Pre-Clearance Period. Biovail shall ensure that all promotional programs and activities of all sales representatives promoting the Products comply with any and all comments, direction or guidance given by DDMAC during the Pre-Clearance Period. Upon expiration of the Pre-Clearance Period, Biovail shall continue to promote, detail, sell and advertise the Products in a manner consistent with, and in full compliance with, all comments, directions and guidance received from DDMAC. Biovail shall be solely responsible for submitting all promotional and advertising materials prepared by or for it to the FDA by way of a Form 2253 or otherwise. GSK shall have the right to immediately terminate this Agreement if; (i) Biovail shall fail to fully comply with the requirements of this Section 3.02(b)(ii) or (iii) FDA issues a Warning Letter or NOV with respect to a Product at any time during or after the Pre-Clearance Period.

(c) Biovail and GSK acknowledge that GSK has never promoted Zovirax® Cream in the Territory, and the Parties further acknowledge that GSK is not currently actively promoting Zovirax® Ointment in the Territory and has not done so for several years. Thus, GSK does not have current materials designed for advertising or promoting the Products in the Territory. GSK shall provide Biovail with copies of any advertising, promotional or training materials in its possession and previously used by GSK relating to the Products, and shall permit Biovail, subject to compliance by Biovail with Applicable Laws, to update, adapt and use such materials in the Territory in developing new promotional materials (subject to any copyrights or other rights reserved to GSK, its Affiliates and to Third Parties in such materials). GSK reserves and retains title and all rights, including copyright rights, in and to all written, visual and electronic works and other materials (including without limitation training materials, promotion materials, brochures and other detail literature) provided by it to Biovail under this Agreement. Subject to the foregoing, Biovail is granted the nonexclusive right under this Section to use, copy, modify, and distribute such materials only for the purposes of this Agreement and in furtherance of the

rights granted to Biovail hereunder, for the applicable Term for a given Product to which such works and materials relate. Biovail shall ensure that all copyright notices and this permission notice appear on all copies of the written materials provided by GSK and all adaptations and derivative works thereof. Any and all new promotional material developed by Biovail, including that which adapts or utilizes materials supplied to Biovail by GSK, shall be filed with FDA at the time of initial dissemination via Form FDA-2253.

(d) Biovail shall have strategic responsibility and sole authority and responsibility, at its sole expense, for conducting independent and non-independent symposia, speaker training and engagement programs, advisory board meetings and other consulting arrangements, scientific exhibits and other types of scientific exchange, and other such events or programs as needed with respect to the Products within the Territory; provided, however, that any and all such events and programs must comply in all respects with Applicable Laws and relevant FDA policies, including without limitation, the FDA's Guidance on Industry-Supported Educational and Scientific Activities.

3.03 Use of Trademarks; Trade Dress. During the Term of this Agreement, and subject to the terms and conditions of this Agreement:

(a) Biovail shall use the Trademarks, on a royalty-free basis, to promote, market, sell and distribute the Products within the Territory. Biovail shall not identify the Products by any designation other than the Trademarks for the Products. With respect to all Products which bears Biovail's NDC codes as provided in Sections 3.01(b)(iv) and 4.02(d), Biovail shall be identified as the distributor of such Products on the Product label as the same may be required and specified under Applicable Law, or if Applicable Law does not specify how the distributor shall be indicated on a Product's label, then as determined (including without limitation as to size and placement) by GSK in consultation with Biovail. The use of the Trademarks by Biovail shall be expressly subject to subparagraph (c) below.

(b) Biovail shall permit duly authorized representatives of GSK to inspect, on the premises of Biovail or its subcontractors and agents, at reasonable times during normal business hours and upon not less than ten (10) days prior written notice, Product inventory, Biovail's quality control records, and Biovail's facilities used in or relating to the storage, distribution or sale of the Products to ensure compliance with quality control standards and with applicable terms of this Agreement pertaining to the use of the Trademarks.

(c) Whenever Biovail uses the Trademarks in advertising or in any other manner in connection with the Products, Biovail shall clearly indicate that the Trademarks are owned by the GlaxoSmithKline group of companies. When using the Trademarks under this Agreement, Biovail shall comply with all Applicable Laws pertaining to the Trademarks in force at any time in the Territory. During the Term of this Agreement, Biovail shall provide GSK with copies of such foregoing material on a periodic basis, as requested by GSK, for approval of the use of the Trademarks by Biovail. Biovail shall promptly take any and all actions directed by GSK with respect to maintaining the value of the Trademarks and to assure compliance with the provisions of this Section 3.03.

(d) Biovail acknowledges and agrees that GSK and or its Affiliates, is, and will remain the owner of the Trademarks. Biovail shall not at any time do, cause to be done, or permit any of its employees, agents, contractors and subcontractors to commit any act inconsistent with, contesting or in any way impairing, or tending to impair, such ownership. Biovail agrees that all use of the Trademarks by Biovail shall inure to the benefit of and be on behalf of GSK and/or its Affiliates. Biovail acknowledges that nothing in this Agreement shall give Biovail any right, title or interest in the Trademarks other than the right to use the Trademarks within the Territory in accordance with this Agreement. Biovail agrees that it will not challenge GSK's or its Affiliates' title to, or ownership of, the Trademarks, or attack or contest the validity of the Trademarks. All goodwill accruing to the Trademarks as a result of the use of the Trademarks in the performance of this Agreement shall belong solely to GSK and/or its Affiliates. In the event that Biovail acquires any rights in the Trademarks in connection with Biovail's activities pursuant to this Agreement, Biovail shall assign, and hereby does assign, to GSK and/or its Affiliates all such rights, including any related goodwill.

(e) Until such time as the Bupropion Product shall be launched in the Territory, the trade dress of the Products will remain unchanged, with the exception of the appearance of Biovail's NDC number and labeler code and Biovail's name, address and telephone number as distributor, on Product packaging, provided that the foregoing shall not be included on Product packaging until such time as GSK has fully exhausted all packaging and components in GSK's inventory on the Distributorship Commencement Date. Subsequent to the launch of the Bupropion Product in the Territory, Biovail may elect to use its own trade dress with respect to the Product; provided, however, that GSK shall at all times have the rights of review and final approval of Biovail trade dress for the purposes of trademark integrity. Except to the extent required by Applicable Laws or Governmental Authority, Biovail may make no more than an aggregate total of two (2) changes per Calendar Year to the trade dress of the Products which changes shall be limited to changes in color, graphics and text of Product packaging.

3.04 Trademark Infringement by Third Parties. If either Party becomes aware that a Third Party is infringing any Trademark used in connection with the Product, such Party shall give written notice to the other Party describing in detail the nature of such infringement. GSK and its Affiliates shall have the sole right, but not the obligation, to enforce any such Trademarks against such Third Party infringer to the extent deemed necessary or appropriate by GSK or its Affiliates, in their reasonable discretion, and to settle or compromise any such possible infringement by taking such action as GSK or its Affiliates may determine in their sole and absolute discretion; provided, however, that GSK shall not settle any such potential infringement in a manner that materially adversely affects the rights granted to Biovail hereunder, except with Biovail's prior written consent (which consent shall not be unreasonably withheld). Biovail shall provide GSK all reasonable assistance (including, without limitation, making documents and records available for review and copying, and making persons within its control available for pertinent testimony), at GSK's expense, in such enforcement.

#### 3.05 Administrative Functions; Third Party Contracts.

(a) Effective as of the Distributorship Commencement Date, GSK will, on behalf of Biovail, as provided in this Section 3.06 and Section 6.05 at GSK's own expense, process, administer and provide reasonable support: (i) with respect to rebates arising solely with respect

to the Products dispensed for Medicaid bearing GSK's NDCs, and (ii) until December 31, 2002 with respect to returns of Products bearing GSK's NDCs. Any and all payments due and owing from Biovail to GSK under this Section 3.05(a) shall be payable by Biovail by not later than forty-five (45) days after Biovail's receipt of a detailed invoice therefor, and shall be made in accordance with the terms of Article 7 hereinbelow. GSK's processing of rebates and return credits attributable to the Product on Biovail's behalf shall conform to GSK's administrative processes and systems currently applicable to GSK's processing of rebates and return credits on its own account.

Effective on the Distributorship Commencement Date, and effective at all times thereafter during the Term of this Agreement, GSK shall have no responsibility for the administration of, or other subsequent support for, chargebacks, rebates, administrative service fees and other operational activities with respect to the Products, except as otherwise provided in Sections 3.06 and 6.05.

(b) Commencing as of 12:01 am. on December 25, 2001, and continuing thereafter until the earlier of the termination or expiration of this Agreement, GSK shall not accept orders for the Product within the Territory from wholesalers or other direct purchasers, and will inform such current and potential direct-purchase customers for the Product that the Product must be ordered from Biovail, using such ordering information and requirements as Biovail may specify.

(c) GSK shall use its best efforts to notify all Third Party contract customers and all appropriate government agencies of the foregoing arrangement.

(d) The parties acknowledge that it is Biovail's intention to enter into, administer and be bound by its own Third Party contracts on such terms as Biovail shall negotiate with Third Party customers.

3.06 Rebates for Products. GSK shall be responsible for processing all Medicaid rebates for Products bearing GSK's NDCs through December 31, 2002. The foregoing notwithstanding, Biovail shall reimburse GSK for all rebates GSK pays on Biovail's behalf for product dispensed on or after the Distributorship Commencement Date for purposes of rebates for outpatient Medicaid utilization, such date of dispensing shall be deemed to be the date as submitted by the respective states or the District of Columbia.

Any and all payments due and owing under this Section 3.06 shall be paid in accordance with the terms of Article 7 by not later than forty-five (45) days following Biovail's receipt of GSK's invoice therefor, which invoice shall include reasonable supporting documentation and shall specify: (i) each rebate program to which the rebate is paid, (ii) the period covered by the payment, and (iii) the specific amount of the rebate paid to any such program. Biovail may, from time to time upon reasonable notice and request to GSK, audit rebates charged to it by GSK, and GSK shall reasonably cooperate with any such audit or inquiry by Biovail with respect to the amount or validity of any rebate, subject to any confidentiality obligations to which GSK is subjected. The foregoing provisions notwithstanding, Biovail shall at all times have sole and exclusive responsibility for the processing and payment of any and all rebates arising from or with respect to Product bearing Biovail's NDC numbers.



3.07 Medicaid Information. With respect to any Product sold by Biovail after the Distributorship Commencement Date which bears an NDC number of GSK or any of its Affiliates, Biovail will deliver to GSK, within fifteen (15) days after the end of each Calendar Quarter, the following information: (a) the “best price” (as defined under the Social Security Act, 42 U.S.C. §1396r-8(c)(1)(C) for each Product identified by NDC number, and (b) the “average manufacturer price” (as defined under the Social Security Act, 42 U.S.C. §1396r-8(k)(1)) and the number of sales units and dollars for each Product, each identified by NDC number. Biovail agrees to provide to GSK any additional data or other information regarding sales or pricing of the Product by Biovail which GSK requests as necessary for the calculation of the rebates contemplated in Section 3.06 above. Biovail agrees that GSK may use all information described in this Section 3.07 in GSK’s reporting to the Health Care Financing Administration. GSK shall provide to Biovail the base date average manufacturer price and any assumptions with respect to the calculation thereof for the Products.

3.08 Shipping and Distribution Obligations. From and after the Distributorship Commencement Date, Biovail shall have the sole and exclusive responsibility, at its sole cost and expense, for (i) shipping and distribution of the Products to its customers, (ii) warehousing of Products, (iii) invoicing and billing of purchasers of the Products, (iv) order confirmation (if any) in accordance with Biovail’s customary practices, and (v) the collection of receivables resulting from sales of the Products. Biovail agrees and confirms that no Product will be shipped, sold, distributed or released prior to receipt of a certificate of analysis for said Product as required under Section 6.02 hereinbelow.

3.09 Pricing. From and after the Distributorship Commencement Date, Biovail shall have the sole authority to determine the prices of Products sold by it during the Term and to establish its own pricing policy for the Products within the Territory, including price increases or decreases and the timing thereof as determined by Biovail. Biovail will provide not less than five (5) days notice of any such price changes.

3.10 Puerto Rico Sales Information. From and after the Distributorship Commencement Date, Biovail shall by the twentieth (20<sup>th</sup>) day of each Calendar Month provide to GSK the total units sold and Gross Sales of each Product to Biovail’s customers in Puerto Rico during the immediately preceding Calendar Month.

3.11 Sample Accountability. Biovail shall cause, and shall maintain written procedures to ensure that, all of its sales representatives (and those of any CSO utilized by Biovail) comply with all Applicable Laws relating to the distribution of, and accountability for, Sample Products, including but not limited to the Prescription Drug Marketing Act (“PDMA”). Biovail shall notify GSK within forty-eight (48) hours of learning of any instances of theft or significant loss, or upon Biovail having reason to believe there has been a diversion or falsification of a sample record, or other instances of non-compliance with the PDMA and Applicable Laws regarding Sample Products. Any and all records, reports or other documentation with respect to Sample Products generated from compliance reports, sample accountability cards and the like produced by Biovail shall be maintained by Biovail for a period of not less than three (3) years. Biovail agrees to fully cooperate with GSK in the production and delivery of any such documentation as may be requested or required by FDA and/or any other Governmental Authority.

3.12 Federal Government Pricing Programs. Promptly after the Distributorship Commencement Date, GSK shall notify the Health Care Financing Administration, the United States Department of Defense, the Office of Drug Pricing and the Veteran’s Affairs National Acquisition Center (the foregoing being hereinafter collectively referred to as the “Federal Programs”) of Biovail’s distribution rights with respect to the Products, and that as of the Distributorship Commencement Date that GSK will no longer support or sell the Products under any contracts in place with said Federal Programs. Biovail shall establish its own contractual relationships with the Federal Programs as soon as commercially reasonable.

3.13 Sales Force.

(a) Biovail shall be solely responsible for the costs and expenses of establishing and maintaining its sales force and marketing functions for the Products, and for conducting its other activities under this Agreement, and, subject to the foregoing, shall have sole authority to control its sales force and direct the activities of its sales force.

(b) All members of Biovail’s sales force (including management and representatives), and CSO sales force personnel, if any, shall complete a Product-related training program conducted by Biovail at its cost and expense. In connection with Biovail’s Product-related training program, GSK shall, to the extent available and in GSK’s possession provide Biovail with copies of any training materials previously used in training sales representatives in the Territory on Zovirax® Ointment, to the extent such materials are existing and available. Biovail shall have the sole responsibility for updating any such materials and for preparing additional and new materials for the Products for sales training purposes as needed. Ongoing training of Biovail’s sales representatives and other personnel shall be the responsibility of Biovail at its cost and expense. The contents of any training provided by Biovail that relates to the Products shall be developed and coordinated by Biovail, and Biovail shall be solely responsible for training its sales force (including management and sales representatives) and CSO sales force personnel, if any, with regard to Applicable Laws and directing such sales force and sales force personnel to be compliant with Applicable Laws, regardless or whether Biovail utilized GSK provided materials for training.

3.14 Promotional Spend Requirement. In each Calendar Year during the Term of this Agreement, Biovail shall, commit, allocate and spend, at a minimum funds in the amounts set forth below for Promotional Support for each Product (each a “Promotional Spend Requirement, collectively the “Promotional Spend Requirements”):

- (i) Calendar Years {\*\*\*}† — {\*\*\*}† of Gross Sales of each Product during the immediately preceding Calendar Year;
- (ii) Calendar Years {\*\*\*}† — {\*\*\*}† of Gross Sales of each Product during the immediately preceding Calendar Year; and

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- (iii) Calendar Years {\*\*\*}† — {\*\*\*}† of Gross Sales of each Product during the immediately preceding Calendar Year.

In the event of Generic Entry with respect to a Product, the Promotional Spend Requirement for that Product for the period of {\*\*\*}† calendar months following the date of Generic Entry shall be {\*\*\*}† of the then applicable percentage rates set forth immediately above, and, upon expiration of said {\*\*\*}† month period, shall thereafter be zero.

In each Calendar Year, Biovail shall allocate not less than {\*\*\*}† of the applicable Promotional Spend Requirement to personal field selling activities for the Products in the Territory.

#### **ARTICLE 4.**

##### **GSK RESPONSIBILITIES**

4.01 Supply of Product. In order to ensure the quality of the Products to be sold by Biovail under the Trademarks, Biovail shall purchase exclusively from GSK, and GSK shall supply to Biovail, pursuant to Articles 5 and 6 hereof, and subject to the other terms and conditions as set forth in this Agreement, Biovail's entire requirements of the Products for marketing, sale and distribution by Biovail in the Territory during the Term. It is expressly acknowledged and agreed by Biovail that GSK's obligation to supply Zovirax® Cream under this Section 4.01 shall not become effective until sixty (60) days following FDA's approval of Zovirax® Cream NDA.

##### 4.02 Retention of Product Registrations.

(a) GSK shall retain all rights, title and interests in and to the Product Registrations for the Products in the Territory. GSK shall provide to Biovail, within thirty (30) days after the Effective Date, the clinical section of the NDA for Zovirax® Ointment, and the clinical section of the Zovirax® Cream NDA by March 30, 2002. GSK shall also provide to Biovail the results of any clinical studies conducted with respect to any Product after approval of the Product's NDA.

(b) GSK shall have sole responsibility for maintaining, and shall maintain, the Product Registrations in the Territory at its expense, including without limitation filing IND and NDA Annual Reports, as applicable. GSK shall inform Biovail on a timely basis as to any developments that would have a material adverse effect on a Product Registration. Biovail shall cooperate with GSK with respect to obtaining and/or maintaining the Product Registrations, and shall execute, acknowledge and deliver such further instruments at GSK's request and expense, and do all such other acts, as promptly as possible, which may be necessary or appropriate to maintain the Product Registrations in the Territory. Biovail shall, provide to GSK all information that Biovail has from time to time during the Term that GSK does not have and requests from

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Biovail that is reasonably necessary and relevant to GSK's obligations hereunder to fulfill such Product Registration maintenance requirements (including, but not limited to, providing sales distribution information concerning the Product). GSK shall have the final decision-making authority in every case on whether and how to supplement, amend or otherwise alter the Product Registrations and with respect to any other issues in connection with such Product Registrations and on whether and how to communicate with the FDA and other applicable governmental agencies or authorities in connection with such Product Registrations, but shall not take any steps to supplement, amend or otherwise alter the Product Registrations that would have a material adverse impact on Biovail's ability to market the Products, without the written consent of Biovail, which consent shall not be unreasonably withheld.

(c) GSK and Biovail (and, to the extent possible and/or permissible, such of their respective contractors and/or subcontractors providing services with respect to the Products) shall each make their respective facilities available at reasonable times during business hours for inspection by representatives of governmental agencies. GSK and Biovail each shall notify the other within twenty-four (24) hours (or, if such twenty-four (24) hour period ends on a non-Business Day, then prior to Noon on the next following Business Day) of receipt of, and provide a copy of, any notice of any FDA, or other governmental agency, inspection, investigation or other inquiry, or other material governmental notice or communication, relating to the sale, marketing, promotion, manufacture, distribution, or use of the Products within the Territory. Biovail and GSK shall cooperate with each other during any such inspection, investigation or other inquiry. Biovail and GSK shall discuss any response to observations or notifications received in connection with any such inspection, investigation or other inquiry and each shall give the other an opportunity to comment upon any proposed response before it is made; provided, however, that Biovail shall be solely responsible for responding to regulatory inquiry and actions from government agencies relating to promotional materials and activities as contemplated by Section 3.02, and, provided further that GSK will not be required to discuss with Biovail any material issues specific to the manufacture of the Products, except those related specifically to such inquiry, (but only to the extent that no GSK trade secrets, intellectual property or manufacturing know-how shall be divulged or compromised), or to obtain the consent or agreement of Biovail with respect to issues related thereto. In the event of disagreement concerning the form or content of such response, however, GSK shall be responsible for deciding the appropriate form and content of any response with respect to any of its cited activities and Biovail alone shall be responsible for deciding the appropriate form and content of any response with respect to any of its cited activities. Biovail will provide GSK with copies of all correspondence received by it from, or filed by it with, any federal, state or local regulatory authority to the extent pertaining to the Products or its distribution, promotion, advertising, marketing, or sale of the Product in the Territory; provided, however, that Biovail shall not provide copies of promotional materials or Product advertising for the Product, unless requested in writing by GSK or required under Section 3.02 (d).

(d) GSK shall control all package inserts and labeling (and any changes or supplements thereto) for the Product, and shall have the responsibility at its expense for securing any approvals required by FDA to any such changes or supplements thereto except to the extent such changes or supplements shall be requested by Biovail. Any such requested changes by Biovail shall be submitted in writing to GSK through the GSK change control process, and shall

require a lead-time of not less than four (4) calendar months and the consent and approval of GSK. Any such changes requested by Biovail and consented to by GSK shall be made at the sole and exclusive cost and expense of Biovail, which shall include the cost of any inventory of Product or components rendered obsolete by such changes, and the expenses of disposing of same. Biovail shall not at any time do, cause to be done or permit, any act by Biovail, its employees, agents, contractors or subcontractors, inconsistent with the then existing package inserts and labeling for any Product in the Territory. In the event that any filings are required to be made with or approvals required to be obtained from applicable regulatory authorities in order to change or supplement the package inserts and labeling, GSK shall have the sole right and discretion on how to effect such changes, which, unless the result of changes requested by Biovail, shall be made at GSK's expense. GSK shall consult with Biovail with respect to any such changes or supplements to the label for any Product, and Biovail shall cooperate fully with GSK with respect to any actions or decisions taken or made by GSK with respect thereto.

4.03 Prosecution and Maintenance of Trademarks and Patents. During the Term of this Agreement:

(a) GSK shall register and maintain, or cause to be registered and maintained, at its cost and expense, the Trademarks in the Territory during the Term. If Biovail learns of any unauthorized use of the Trademarks by others in the Territory, Biovail agrees to promptly notify GSK of such unauthorized use in accordance with Section 3.04.

(b) Notwithstanding any other provision of this Agreement to the contrary, GSK and its Affiliates shall have the sole right, but not the obligation, in their reasonable discretion and at their expense, to prosecute, maintain, enforce, defend or abandon any patent rights and know-how owned or controlled by GSK in the Territory with respect to the composition, manufacture, formulation and use of the Products. GSK shall not abandon any patent right or know-how owned or controlled by GSK with respect to the Product in the Territory without giving sixty (60) days prior written notice to Biovail and permitting Biovail at its sole and exclusive expense to take reasonable and customary actions to maintain or preserve such patent right or know-how. In the event that GSK shall, in its discretion, elect not to defend any patent rights with respect to a Product controlled by GSK in the Territory, GSK shall provide timely notice of such election to Biovail and give Biovail the opportunity to defend said Product patents at Biovail's sole and exclusive expense, and GSK will provide reasonable cooperation and assistance to Biovail in such defense.

(c) Notwithstanding any provision of this Agreement to the contrary, GSK shall have the sole right, but not the obligation, at its sole discretion and expense, to maintain and enforce any contract entered into by GSK covering the supply of any compounds, intermediates, biomaterials, packaging components, containers and other materials used in the manufacture of the Products, provided that GSK's election as to such enforcement or non-enforcement shall not materially compromise GSK's ability to fulfill its supply obligations hereunder.

4.04 No Obligation to Develop New Formulations. Excluding Sample Products, and subject to the obligations of GSK to develop New Products under Section 5.14, GSK shall have no obligation, express or implied, to develop new, different or additional formulations, presentations, dosages, forms of administration, or preparations for the Products.

4.05      Zovirax® Cream NDA Filing; Subsequent Support. No later than sixty (60) days after the Distributorship Commencement Date GSK shall submit to FDA a letter requesting the reinstatement of the previously filed, and subsequently withdrawn, NDA for prescription sales of Zovirax® Cream in the Territory (the “Zovirax® Cream NDA”). GSK shall use Commercially Reasonable Efforts to secure approval of the Zovirax® Cream NDA and will provide Biovail with status reports of significant events with respect thereto. GSK shall have the sole responsibility for, and control over the content of, any communications with FDA, and additional regulatory filings, needed to support the Zovirax® Cream NDA Biovail hereby expressly acknowledges and agrees that except for the Phase IV Clinical Study, Biovail shall be solely responsible for any and all costs of any new or further studies, of any kind, required to obtain FDA approval of the Zovirax® Cream NDA. Any fee required under 21 U.S.C. §379h(a)(1) shall be borne and paid by GSK.

4.06      Phase IV Clinical Study. Upon approval of the Zovirax® Cream NDA, GSK shall conduct, at its expense, the Phase IV Study, and shall as promptly as practicable, review and analyze the results of said study. GSK shall provide a copy of the study, and its results as soon as reasonably practicable.

4.07      Continuation of Customary Practices. For the period beginning on the Effective Date and ending on December 24, 2001, GSK will continue with its customary business practices with respect to Zovirax® Ointment; provided, however that any and all decisions with respect to Zovirax® Ointment shall rest solely with GSK, and nothing herein shall be construed to grant to Biovail any rights of review or approval with respect to the business practices or decisions of GSK. From the Effective Date through December 24, 2001 GSK shall not offer sales incentives for the Products to its customers or undertake any affirmative action resulting in speculative purchasing of the Products by wholesalers.

**ARTICLE 5.**

**PURCHASE AND SALE OF PRODUCTS AND DISTRIBUTION RIGHTS PAYMENT**

5.01      Distribution Rights Payment; Additional Rights Payment; Supplemental Allowance Payment; Extension Period.

(a)      Distribution Rights Payment - For and in consideration of the rights granted by GSK to Biovail under this Agreement, and as an unconditional and non-refundable (in whole or in part) payment, Biovail shall, on January 2, 2002, pay to GSK a lump sum payment in the amount of One Hundred Thirty-Three Million U.S. Dollars (U.S.\$133,000,000.00) (the “Distribution Rights Payment”). The Distribution Rights Payment shall be paid in United States currency in immediately available funds in accordance with the terms of Section 7.01 hereinbelow.

(b)      Extension of Term - In consideration for extending the Original Agreement through the Extension Period, Biovail shall pay to GSK the sum of forty million U.S. dollars (US \$40,000,000), on or before March 31, 2003. Once paid, such amount shall not be refundable for any reason.

(c) Additional Rights Payment and Additional Rights Lump Sum Payment— If during the Term of this Agreement the Development Agreement shall be terminated by either Party for any reason whatsoever, then, as an additional payment to the Distribution Rights Payment set out in Section 5.01(a), Biovail shall make the following payments to GSK:

- (i) For each of Calendar years 2002 through 2006, Biovail shall pay to GSK an additional amount of Twenty-Two Million U.S. Dollars (U.S.\$22,000,000.00) per year (each an “Additional Rights Payment”, collectively, the “Additional Rights Payments”), provided, however, that the aggregate cumulative total of all Additional Rights Payments shall not exceed {\*\*\*}†. In the event of termination of the Development Agreement by GSK only, the Additional Rights Payment for the Calendar Year in which such termination occurs shall be pro-rated to the effective date of termination. There will be no such proration if the Development Agreement is terminated by Biovail. If Biovail does not prepay all Additional Rights Payments as specified in 5.01(b)(iii) below, then the first Additional Rights Payment shall be paid by not later than forty-five (45) days following the effective date of termination of the Development Agreement. Thereafter, each Additional Rights Payment shall be paid on the first Business Day of each succeeding Calendar Year for which such a payment shall be due.
- (ii) For each of the Calendar Years 2007 through 2011, Biovail shall pay to GSK an additional payment in an amount equal to {\*\*\*}† of Biovail’s aggregate Gross Sales of the Products during the immediately preceding Calendar Year (each a “Variable Additional Rights Payment”, collectively, the “Variable Additional Rights Payments”). Such payment shall be made to GSK by not later than forty-five (45) days from December 31 of the Calendar Year for which such Variable Additional Rights Payment is due. The foregoing notwithstanding, commencing with the first full Calendar Year subsequent to the point in time at which a Generic Entry shall have occurred with respect to a Product, and continuing thereafter for the balance of the Term, no Variable Additional Rights Payments shall be paid by Biovail with respect to Biovail’s Gross Sales of that Product.
- (iii) In the event of termination of the Development Agreement and a consequent obligation of Biovail to make the Additional Rights Payments Amounts as described in Section 5.02(b)(i), Biovail may, at its option, within forty-five (45) days after the effective date of termination of the Development Agreement, pay and deliver to GSK, an unconditional, nonrefundable (in whole or in part) lump sum payment in the dollar amount

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equal to the Additional Rights Payment Cash Flow, discounted at a rate of {\*\*\*}† (the “Additional Rights Lump Sum Payment”).

(d) Effect of Generic Entry on Additional Rights Payments — In the event of Generic Entry with respect to a Product, the Additional Rights Payments (only if Biovail shall not have made the Additional Rights Lump Sum Payment permitted under Section 5.01(b)(ii) above) shall be adjusted as follows:

- (i) If Generic Entry with respect to Zovirax® Ointment shall occur prior to January 1, 2005, then the Additional Rights Payment Amounts for the Calendar Years 2002, 2003 and 2004, only, shall be as set forth on Exhibit 5.01(c)(i) attached hereto. Biovail expressly acknowledges and agrees that there will be no changes to the Additional Rights Payment Amounts for the Calendar Years 2005 and 2006 if Generic Entry with respect to Zovirax® Ointment occurs on or after January 1, 2005.
- (ii) In the event that the Zovirax® Cream NDA is not approved before July 1, 2003 and there shall have occurred Generic Entry with respect to Zovirax® Ointment, then the Additional Rights Payment Amounts for the Calendar Years 2003 through 2006 shall be as set forth on Exhibit 5.01(c)(ii) attached hereto.

(e) On March 31 of each of the Calendar Years of 2004, 2005, 2006 and 2007, respectively, Biovail shall pay to GSK the Supplemental Allowance Payment. Each Supplemental Allowance Payment paid to GSK by Biovail shall not be refundable for any reason.

(f) In the event that regulatory approval of Wellbutrin® XL is not granted by the FDA in the USA on or before December 31, 2003, the Additional Rights Payment specified in Section 5.01(b)(1) for the Calendar Year 2004 (twenty-two million U.S. dollars (US \$22,000,000)) shall be increased by the Adjustment Amount, and the aggregate cumulative total of all Additional Rights Payments shall correspondingly be increased by the Adjustment Amount.

#### 5.02 Purchase of Product; Annual Minimum Purchase Requirements.

(a) Purchase of Product — Subject to the terms and conditions of this Agreement, GSK agrees to supply and sell to Biovail, and Biovail shall purchase from GSK, Biovail’s entire requirements of the Products during the Term of this Agreement at the applicable transfer prices specified in Section 5.06 and, in the case of Sample Products, Section 5.13.

(b) Minimum Purchase Requirements — Except as otherwise provided in Section 5.02(c) hereinbelow there will be no minimum purchase requirements under this Agreement.

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(c) Annual Minimum Purchase Requirement — If during the Term of this Agreement the Development Agreement shall be terminated by either Party for any reason whatsoever, then Biovail shall in each Calendar Year during the balance of the Term purchase Products from GSK in the aggregate total dollar amounts as follows (each an “Annual Minimum Purchase Requirement”, collectively the “Annual Minimum Purchase Requirements”):

- (i) Fixed Annual Minimum Purchase Requirement — For each of Calendar Years {\*\*\*}†, the Annual Minimum Purchase Requirement shall be {\*\*\*}† per year (each a “Fixed Annual Minimum Purchase Requirement”, collectively, the “Fixed Annual Minimum Purchase Requirements”) which shall be made at the transfer prices specified in Section 5.06; provided, however that in no event shall such requirement take effect before {\*\*\*}†. In the event of termination of the Development Agreement by GSK only, the Fixed Annual Minimum Purchase Requirement for the Calendar Year in which such termination occurs shall be pro-rated to the effective date of termination. There will be no such proration if the Development Agreement is terminated by Biovail.
- (ii) Variable Annual Minimum Purchase Requirement — For each of the Calendar Years {\*\*\*}†, the Annual Minimum Purchase Requirement shall be {\*\*\*}† of Biovail’s aggregate Gross Sales of the Products during the immediately preceding Calendar Year (each a “Variable Annual Minimum Purchase Requirement”, collectively, the “Variable Annual Minimum Purchase Requirements”). The purchase price to be paid by Biovail for such Products shall be {\*\*\*}† of the Product’s Net Wholesale Price charged by Biovail as of the issue date of GSK’s invoice to Biovail for the Products.

(d) Effect of Generic Entry on Annual Minimum Purchase Requirements — In the event of Generic Entry with respect to one or both of the Products, the Fixed Annual Minimum Purchase Requirement and the Variable Annual Minimum Purchase Requirement (for the Calendar Years {\*\*\*}† only) shall be adjusted as follows:

- (i) If Generic Entry with respect to Zovirax® Ointment shall occur prior to January 1, {\*\*\*}†, then the Fixed Annual Minimum Purchase Requirements for the Calendar Years {\*\*\*}†, only, shall be as set forth on Exhibit 5.02(e)(i) attached hereto. Biovail expressly acknowledges and agrees that there will be no changes to the Fixed Annual Minimum Purchase Requirements for the Calendar Years {\*\*\*}† if Generic Entry with respect to Zovirax® Ointment occurs on or after January 1, {\*\*\*}†.
- (ii) In the event that the Zovirax® Cream NDA is not approved before July 1, 2003 and there shall have occurred Generic Entry with respect to

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Zovirax® Ointment, then the Fixed Annual Minimum Purchase Requirements for the Calendar Years {\*\*\*}† shall be as set forth on Exhibit 5.02(e)(ii) attached hereto.

- (iii) In the event of Generic Entry with respect to a Product on or after January 1, {\*\*\*}†, the Variable Annual Minimum Purchase Requirement for the Calendar Year in which such Generic Entry occurs shall be determined in accordance with the following formula;

Variable Annual Minimum Purchase Requirement = A-G Where:

A = The Variable Annual Minimum Purchase Requirement then applicable for the Calendar Year in which Generic Entry with respect to a Product occurs; and

G = {\*\*\*}† (the result of which operation shall, for purposes of this Section 5.02(e)(iii) be referred to as the “Generic Impact”); and

B = The immediately preceding Calendar Year’s Gross Sales for the Product with respect to which Generic Entry has occurred; and

C = The immediately preceding Calendar Year’s total aggregate Gross Sales for both Products; and

X = The numbers of months of generic competition in the applicable Calendar Year; and

Y=12.

In the event that Generic Entry shall occur with respect to both Products in the same Calendar Year on or after January 1, {\*\*\*}†, the applicable Variable Annual Minimum Purchase Requirement for the Calendar Year in which such dual Generic Entry shall occur shall be reduced by an amount equal to the sum of the Generic Impact for Zovirax® Ointment plus the Generic Impact for Zovirax® Cream.

For each of the Calendar Years remaining in the Term subsequent to a Generic Entry as discussed in this Section 5.02(e)(iii), the Variable Annual Minimum Purchase Requirement shall be {\*\*\*}† of the immediately preceding Calendar Year’s Gross Sales of the Product not subject to generic competition. No Variable Annual Minimum Purchase Requirement will be in effect for any full Calendar Year following Generic Entry with respect to both Products.

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### 5.03 Product Supply Schedule; Purchase Orders.

(a) On or prior to the twentieth (20th) day of each calendar month following the Distributorship Commencement Date, Biovail shall deliver to GSK a new rolling {\*\*\*}† month Product supply forecast signed by an authorized Biovail representative indicating approval of such Monthly Product Supply Schedule (each a “Monthly Product Supply Schedule”) setting forth the quantities of Product to be supplied by GSK to Biovail, on a monthly basis, for the following {\*\*\*}† calendar months, or, if shorter, for the remainder of the Term. The quantities covered by the first {\*\*\*}† calendar months of each such Monthly Product Supply Schedule shall constitute a commitment by Biovail to purchase those quantities set forth in such months and such Monthly Product Supply Schedule shall be accompanied by a valid purchase order (“Purchase Order”) for the quantities covered by the third month of that first {\*\*\*}†. The forecast for any month other than the first {\*\*\*}† months shall constitute Biovail’s good faith forecasts of Product orders for those months and may be varied only within the limits set out in Sections 5.03 and 5.04. The forecast for any of months {\*\*\*}† through {\*\*\*}† identified in each Monthly Product Supply Schedule cannot differ in the aggregate by greater than {\*\*\*}† from the forecast for the same calendar month when that month was the {\*\*\*}† in the Monthly Product Supply Schedule delivered by Biovail, and the forecast for any of months {\*\*\*}† in each such Monthly Product Supply Schedule cannot differ by greater than {\*\*\*}† from the forecast for that calendar month when that month was the {\*\*\*}† calendar month in the Monthly Product Supply Schedule delivered by Biovail.

(b) GSK has the express right to review each Monthly Product Supply Schedule and to approve or reject the requested volumes for months {\*\*\*}† of each Monthly Product Supply Schedule, and in the event in GSK’s determination it cannot fulfill the Product volumes requested by Biovail in a Monthly Product Supply Schedule, GSK shall provide to Biovail an estimate of the volume of each Product GSK can deliver based on GSK’s then current capacities which estimates shall be the basis for determining a mutually acceptable forecast quantity for each Product for such {\*\*\*}† month period, which for each Product shall in no event be less {\*\*\*}† times the average monthly forecast quantity for each Product for months {\*\*\*}† of said Monthly Product Supply Schedule for such {\*\*\*}† month period.

(c) Biovail shall, for forty-five (45) days following the date of Generic Entry, have the right to submit one (1) Monthly Product Supply Schedule in substitution of the then operative Monthly Product Supply Schedule as of the date of Generic Entry, in which changes in the forecast quantities of the Product impacted by Generic Entry, only, for months {\*\*\*}† may exceed the permitted variance percentages set forth in Section 5.03(a).

### 5.04 Additional Supply Schedule and Purchase Order Terms.

(a) Each Purchase Order (which shall be separate Purchase Orders for trade Product and Sample Products), shall specify the date of delivery to Biovail (the “Delivery Date”) and shall be issued at least ninety (90) days before the Delivery Date. In the event that Biovail submits a Purchase Order which exceeds the quantity of Product specified for the corresponding period as set forth in the applicable Monthly Product Supply Schedule or which changes the

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Delivery Date specified on a previously submitted Purchase Order for the same period, GSK shall have no obligation to supply to Biovail the amount of any such excess or to allow any such change in Delivery Date.

(b) In the event that Biovail fails to deliver to GSK a Monthly Product Supply Schedule, or any Purchase Orders related thereto, on or prior to the end of a calendar month as required in Section 5.03(a) above, the forecast quantities and the terms, including Delivery Date, applicable thereto, for the next applicable calendar month as set forth for such calendar month in the immediately preceding applicable Monthly Product Supply Schedule delivered to GSK by Biovail shall apply.

(c) Quantities of Products actually shipped by GSK may vary from the quantities specified in a Purchase Order by up to {\*\*\*}† and still be deemed to be in compliance with such Purchase Order; provided, however, that Biovail shall only be invoiced for the quantities that GSK actually ships to Biovail (the “Actual Shipment Quantity”).

5.05 Order Quantities. All Product must be ordered in the minimum quantity, or in the minimum quantity plus whole multiples of the incremental order amounts, as set forth on Exhibit 5.05 attached hereto (the “Order Quantities”) and no partial Order Quantities may be ordered by Biovail. Any partial Order Quantities shall be rounded down to the nearest whole Order Quantity. Each Monthly Product Supply Schedule and all Purchase Orders related thereto, shall be stated in Order Quantities when specifying quantities of Product. With respect to order quantities for Zovirax® Ointment three (3) gram tubes and Zovirax® Cream two (2) gram tubes , Biovail shall have the option of a single split of a batch order into two (2) separate shipments, each in such quantity as Biovail may elect, with the first shipment to be delivered by the Delivery Date stated on the Purchase Order therefor, and the second shipment to be delivered and accepted by not later than one hundred twenty (120) days from the Delivery Date of the first shipment.

5.06 Prices for Products.

(a) Zovirax® Ointment Prices

- (i) Calendar Years 2002-2005 — for each of the Calendar Years 2002 through 2005, the purchase prices to be paid by Biovail for Zovirax® Ointment shall be {\*\*\*}† of the Product’s Net Wholesale Price charged by Biovail as of the issue date of GSK’s invoice to Biovail for the Product.
- (ii) Calendar Years 2006-2009 — for each of Calendar Years 2006 through 2009, the purchase prices to be paid by Biovail for Zovirax® Ointment shall be {\*\*\*}† of the Net Wholesale Price charged for the Product by Biovail as of the issue date of GSK’s invoice therefor.

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- (iii) Calendar Years 2010-2011 — For each of the Calendar Years 2010 and 2011, the purchase price to be paid by Biovail for Zovirax® Ointment shall be {\*\*\*}† of the Net Wholesale Price charged for the Product by Biovail as of the issue date of GSK's invoice to Biovail therefor.

Notwithstanding the foregoing, in no event shall the Net Wholesale Price charged by Biovail for Zovirax® Ointment be less than {\*\*\*}† of the prices for the Product set forth on Exhibit 7.02 attached hereto.

(b) Zovirax® Cream Prices

- (i) Calendar Years 2002-2005 — For each of the Calendar Years 2002 through 2005 (as applicable based upon the date of FDA approval of the Zovirax® Cream NDA), the purchase prices to be paid by Biovail for Zovirax® Cream shall be {\*\*\*}† of the Product's Net Wholesale Price charged by Biovail as of the issue date of GSK's invoice to Biovail for the Product.
- (ii) Calendar Years 2006-2009 — For each of the Calendar Years 2006 through 2009 (as applicable based upon the date of FDA approval of the Zovirax® Cream NDA), the purchase prices to be paid by Biovail for Zovirax® Cream shall be {\*\*\*}† of the Product's Net Wholesale Price charged by Biovail as of the issue date of GSK's invoice to Biovail therefor.
- (iii) Calendar Years 2010-2011 — For each of the Calendar Years 2010 and 2011, the purchase price to be paid by Biovail for Zovirax® Cream shall be {\*\*\*}† of the Net Wholesale Price charged by Biovail for the Product as of the issue date of GSK's invoice to Biovail for the Product.

The foregoing notwithstanding, in no event shall the Net Wholesale Price charged by Biovail, calculated on a per-gram basis, for Zovirax® Cream be less than {\*\*\*}† of the per-gram price for the three (3) gram presentation of Zovirax® Ointment (GSK NDC #00173-099341) set forth on Exhibit 7.02 attached hereto.

(c) Limited Price Reductions - Zovirax® Price Allowance. Notwithstanding the purchase prices set forth in Section 5.06(a) and (b), the purchase prices to be paid by Biovail for each of the Products during a limited period of time commencing on October 1, 2002, and continuing for so long as the Zovirax® Price Allowance is greater than {\*\*\*}† shall be the Reduced Zovirax® Price for that Product. When the Zovirax® Price Allowance has been reduced to an amount equal to or less than {\*\*\*}†, the purchase prices for each of the Products shall revert back to the purchase prices specified in Sections 5.06(a) and (b);

(d) Impact of Regulatory Events. In the event that regulatory approval of Wellbutrin® XL is not granted by the FDA in the USA on or before September 30, 2003, and notwithstanding the amount of the Zovirax® Price Allowance, the purchase prices for each of the

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Products shall immediately revert back to the purchase prices specified in Sections 5.06(a) and (b); provided, however, that in the event that regulatory approval of Wellbutrin® XL is granted by the FDA in the USA after September 30, 2003, but before December 31, 2003, then the purchase prices for each of the Products ordered and shipped after the date of such approval shall be the Reduced Zovirax® Price for that Product, subject to the provisions of Section 5.06(c). For the avoidance of doubt, any Product purchased at the Reduced Zovirax® Price following the grant of such regulatory approval will reduce the amount of the Zovirax® Price Allowance (as defined above).

(e) Speculative Buying - Increase in Biovail Prices. With respect to any Product for which the transfer price charged by GSK to Biovail is determined as a percentage of Net Wholesale Price charged by Biovail for such Product, if the quantity of Product in a valid Purchase Order received by GSK within thirty (30) days prior to an increase of the Net Wholesale Price charged by Biovail for such Product exceeds the prior {\*\*\*}† calendar months’ average order quantities for such Product by an excess of {\*\*\*}†, then the order will be invoiced to Biovail based upon the newly increased Net Wholesale Price charged by Biovail.

(f) Speculative Buying - increase in Transfer Prices — With respect to any Product for which the transfer price charged by GSK to Biovail is determined as a percentage of the Net Wholesale Price charged by Biovail for such Product, if the quantity of Product in valid Purchase Orders received by GSK within ninety (90) days prior to an increase of the transfer price charged by GSK to Biovail for such Product exceeds the prior {\*\*\*}† calendar quarters’ average quarterly order quantities for such Product by an excess of {\*\*\*}†, then the order will be invoiced to Biovail based upon the new transfer price.

5.07 Delivery. GSK shall deliver all Products to Biovail F.O.B. GSK’s manufacturing facilities (or those of its Affiliates or its subcontractors, if any), freight collect, during normal business hours. The quantities of Product for each calendar month set forth in the Quarterly Product Supply Schedules shall be delivered within fifteen (15) days of the Delivery Date set forth in the Purchase Order applicable to such quantities and GSK shall provide notice to Biovail of any such change in the Delivery Date. Notwithstanding anything herein to the contrary, in the event delivery within the times specified above is not possible due to normal constraints associated with manufacturing, scheduling, or delivery of the Product, GSK may request (in writing or by electronic mail) an alternate Delivery Date and Biovail shall not unreasonably withhold its consent to such alternate Delivery Date (which consent shall be in writing or by electronic mail).

5.08 Invoicing; Payment.

(a) All Product manufactured under this Agreement shall be invoiced by GSK to Biovail upon domestic shipment thereof. Each such invoice shall state (i) Biovail’s then effective per-unit purchase price for Products included in the applicable shipment (the “Per-Unit Purchase Price”); (ii) the Actual Shipment Quantity of Products included in the applicable shipment; (iii)

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Biovail's aggregate purchase price for each Products included in the applicable shipment (the "Aggregate Unit Purchase Price"), which shall be calculated by multiplying the Per-Unit Purchase Price for such Products by the Actual Shipment Quantity of such Products included in the applicable shipment; and (iv) Biovail's aggregate purchase price for all Products included in the applicable shipment (the "Purchase Price"), which shall be calculated by adding all Aggregate Unit Purchase Prices for Products included in the applicable shipment. Biovail shall be responsible, for all freight and insurance, any and all customs fees, duties, value-added taxes or levies imposed with respect to the shipment and importation of the Products, and all sales, use, excise and other taxes imposed or levied by any United States federal, state, or local governmental authority (the actual amount of which shall be included in the applicable invoice and paid by Biovail) with respect to the purchase of the Products. In the event GSK initially pays any such taxes applicable to the purchase of the Products, such amounts paid by GSK shall be invoiced by GSK to Biovail and shall be paid by Biovail in accordance with Section 5.08(b).

(b) Payments for the amounts due and owing as set forth in Section 5.08(a) shall be due and payable to GSK on or before the forty-fifth (45th) day after the date of such invoice, in accordance with Section 7.01. In the event that any such payment is not received by GSK on or before the forty-fifth (45th) day following the date of the related invoice, the unpaid portion of such payment shall accrue interest at the rate specified for late payments in Section 7.03 until such unpaid portion is paid to GSK in full, and Biovail shall be responsible for reasonable attorneys' fees and expenses incurred by GSK in connection with the collection thereof; provided, however, that in the event that two (2) or more consecutive payments are not received by the due dates for such payments, GSK shall have the right to require payment in advance for all future orders of Products beginning with the payment next due immediately following the second (2nd) of such consecutive late payments. Under no circumstances shall Biovail make any payment deductions from any invoice amounts due to GSK unless a credit memorandum from GSK authorizing such deduction has been issued by GSK to Biovail.

5.09 Subcontracts. GSK may subcontract all or any part of the manufacturing process of the Products without the consent of Biovail and in such event GSK will give Biovail written notice that it intends to enter into such subcontract, and no such subcontract shall release GSK of any of its obligations hereunder. Biovail acknowledges that GSK is currently subcontracting part or all of the manufacturing process of the Products to certain of its Affiliates and subcontractors. GSK will provide Biovail with notice of such contracting.

5.10 Forms. In ordering and delivering the Products, as the case may be, Biovail and GSK may use their respective standard forms, provided that nothing in those forms shall be construed to modify or amend the terms and conditions of this Agreement, and, in the case of any conflict herewith, the terms and conditions of this Agreement shall control.

5.11 Quantitative Deficiencies. Biovail shall notify GSK in writing of any claim relating to quantitative deficiencies in any shipment of Products which Biovail considers to have been caused prior to shipment hereunder within fifteen (15) days following receipt of any such shipment. Any claim for a quantitative deficiency which is not made within such fifteen (15) days shall be deemed to have been waived by Biovail, and Biovail shall be obligated to make payment for such Product in accordance with Sections 5.07 and 5.09 above. In the event Biovail determines there is a quantitative deficiency from the applicable shipping documentation, the

parties shall investigate such deficiency and, if the parties agree that such deficiency occurred prior to shipment, the Actual Shipment Quantity shall be adjusted to reflect the parties' agreement; provided, however, that GSK shall have the option of rectifying any such deficiency that occurred prior to shipment by promptly shipping the appropriate quantities of Product, as the case may be, to Biovail, in which case the Actual Shipment Quantity shall be readjusted to include such shipment. Biovail's exclusive remedy for any quantitative deficiencies shall be to pay only for actual quantities shipped or, at GSK's option, receive the appropriate quantities, as provided herein.

5.12      **Delivery of Existing Inventory.** In order to facilitate Biovail's staging of Product inventory in anticipation of the commencement of its distributorship rights hereunder, on or prior to December 17, 2001, GSK shall deliver approximately {\*\*\*}† of the total Existing Inventory to Biovail, F.O.B. GSK's distribution center, freight collect. Biovail shall segregate, or shall cause its warehousing services provider to segregate, the initial shipment of Existing Inventory from any and all other goods or products warehoused by Biovail or such warehousing services provider, and will hold, or cause to be held, the initial shipment of Existing Inventory in quarantine until the Distributorship Commencement Date. Biovail expressly acknowledges and agrees that GSK retains full legal title to the initial shipment of Existing Inventory until the Distributorship Commencement, and that until the Distributorship Commencement Date GSK shall for accounting purposes treat the Existing Inventory as consignment inventory in the possession of a distribution services provider. As such, Biovail will not formally record its receipt of the initial shipment of Existing Inventory into its books and inventory records prior to GSK's issuance of invoices for the Existing Inventory. Notwithstanding GSK's retention of legal title to the Existing Inventory, in consideration of GSK's delivery of the Existing Inventory in advance of the Distributorship Commencement Date, Biovail hereby undertakes and accepts all risk of loss with respect to the initial shipment of Existing Inventory upon delivery to Biovail, and further agrees to indemnify GSK for any loss or damage GSK may incur as a result of theft of, or casualty to, the initial shipment of Existing Inventory. The remaining balance of the Existing Inventory shall be delivered to Biovail F.O.B. GSK's manufacturing facilities (or those of its Affiliates or subcontractors, if any), freight collect on or about January 7, 2002. Payment for Biovail's purchase of the Existing Inventory shall be made in accordance with Article 7. All Existing Inventory delivered to Biovail shall have an expiration of not less than {\*\*\*}† from the date of delivery by GSK.

5.13      **Sample Products.**

(a)      Subject to the terms and conditions of, and during the entire Term of, this Agreement, GSK agrees to supply and sell to Biovail, and Biovail agrees to purchase from GSK, Sample Products at the Sample Product prices set forth on in Section 5.13(b) below, which prices will not be subject to any discounts or price concessions or adjustments. With the exception of any pricing discounts applicable to the Products, the shipping terms, forecasting requirements, quality requirements, payment and other terms with respect to the Sample Products shall be as provided in Sections 5.03, 5.04, 5.05, 5.07, 5.08, 5.10 and 5.11 for Products ordered for sale in the trade. It is expressly acknowledged and agreed by Biovail that Biovail's purchases of Sample Products shall not be counted towards Biovail's satisfaction of the Annual Minimum Purchase Requirement for any Calendar Year during the Term of this Agreement, nor shall any payment

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due and owing from Biovail for Sample Product be offset against, or deducted from, any Annual Credit. With the exception of Sample Product damaged prior to or at the time of delivery to Biovail, or which falls to meet the requirements of Section 6.01, GSK will neither accept, nor issue any credit or refund for, any Sample Products returned by Biovail. Biovail acknowledges that GSK has not sampled Zovirax® Ointment since 1996 and that Sample Product for Zovirax® Ointment will not be available until completion of development, stability testing and approval of Sample Product for Zovirax® Ointment. GSK will fund all regulatory filing and development costs in connection with obtaining FDA approvals required for Sample Product for Zovirax® Ointment. GSK shall commence and complete the development, testing and application for approval of Sample Products as soon as reasonably practicable after the Distributorship Commencement Date.

(b) Upon the Sachet Sample Availability Date for Zovirax® Cream or Zovirax® Ointment, as appropriate, and thereafter, the purchase price for the Sachet Sample, as appropriate, shall be {\*\*\*}† per Sachet Sample unit {\*\*\*}†, subject to an annual increase in March of every Calendar Year of {\*\*\*}† of the then current purchase price, rounded to the nearest whole cent. By way of example, the price effective March 31, 2004 will be {\*\*\*}† and the price effective March 31, 2005 will be {\*\*\*}†, etc

(c) From October 1, 2002 until the Sachet Sample Availability Date for ointment or cream, as appropriate, the purchase price for the Tube Sample of each of Zovirax® Ointment and Zovirax® Cream shall be {\*\*\*}† per tube unit {\*\*\*}†.

5.14 Development of New Products. The provisions of this Section 5.14 shall be effective April 1, 2003.

(a) Collaboration. GSK and Biovail shall work collaboratively in the development, supply, and distribution of the New Products. GSK agrees to complete any development work in accordance with Milestone Tables attached to this Agreement as Exhibit 5.14, as those Milestone Tables may be amended from time to time in accordance with the terms of this Agreement.

(b) Development of Developed Cream Trade Product, Zovirax® Cream Sachet Sample, and Zovirax® Cream Tube Sample. GSK shall use Commercially Reasonable Efforts to develop the Developed Cream Trade Product for marketing and sale in the Territory. GSK shall use commercially reasonable efforts to develop the Zovirax® Cream Sample Products for use in the Territory exclusively for promotional purposes as physician samples. GSK shall produce validation batches, conduct stability studies, and prepare information necessary for the initial submission to the FDA of the respective filings for each of the New Products. GSK will use commercially reasonable efforts to obtain FDA approval of the New Products, but does not guarantee such approval.

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(c) Payment Terms for the Development of the Developed Cream Trade Product, the Zovirax® Cream Sachet Sample, and the Zovirax® Cream Tube Sample. Biovail shall pay GSK the following for the development work described herein:

(i) Development Costs

- Developed Cream Trade Product {\*\*\*}†
- Zovirax® Cream Sachet Sample {\*\*\*}†
- Zovirax® Cream Tube Sample {\*\*\*}†
- Total {\*\*\*}†

The development total cost represents the total amount due to GSK related to the development work conducted by GSK as expressly outlined in this Agreement. Any costs related to regulatory filing fees or additional work beyond the scope of this Agreement are in addition to this total and shall be subject to additional terms and conditions.

(ii) Milestone Payments for each New Product

- Milestone 1 - {\*\*\*}† of total due for a New Product upon project start-up for that New Product.
- Milestone 2 - {\*\*\*}† of total due for a New Product upon the successful production of the first validation batch of the New Product.
- Milestone 3 - {\*\*\*}† of total due for a New Product upon the FDA’s acceptance for filing of the respective SNDA for that New Product.

(iii) Documentation of Completion of Milestones. GSK shall provide written documentation as described below, to Biovail evidencing the completion of Milestones 2 and 3 for each New Product. For Milestone 2, GSK shall provide a certificate of analysis indicating that the first validation batch of the New Product meets all current New Product specifications as contained in the SNDA for the New Product, and for Milestone 3, GSK shall provide the FDA approval letter (redacted to protect GSK Confidential Information).

(iv) Payment Terms. Payment for the development costs due from Biovail to GSK herein shall be due and payable upon the receipt by Biovail of GSK’s invoice to Biovail and the documentation for that New Product as described above, if requested by Biovail.

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(d) Milestone Tables. The timelines for the development work described hereunder for the New Products, and the timelines for development work performed under the terms of the Original Agreement related to the development of Zovirax® Cream 2 gram trade product and Zovirax® Ointment Sachet Sample (“Milestone Tables”) are attached as Exhibit 5.14 hereto and incorporated herein. Biovail acknowledges that GSK’s ability to meet the delivery dates set forth in the Milestone Tables is conditioned upon a number of assumptions, as outlined in the Milestone Tables. In the event the assumptions change, the Milestone Tables will be revised to reflect the new delivery dates and the revisions shall be acknowledged in writing by GSK and Biovail. In the event of a delay due to a change in the assumptions, GSK shall use its Commercially Reasonable Efforts to minimize the impact on the delivery schedule.

5.15 Risk Manufacturing.

(a) Biovail acknowledges that the Milestone Tables are based upon the assumption that GSK will begin production of the New Products, the Zovirax® Cream 2 gram trade product and the Sachet Sample of Zovirax® Ointment (collectively “Zovirax® Products”) prior to FDA approval of the respective SNDA’s and; accordingly, GSK is manufacturing the Zovirax® Products at risk.

(b) Biovail Discretion. Biovail shall have the right to direct GSK in writing not to manufacture any one or more of the Products at risk. In such event, GSK shall adjust the Milestone Tables only to the extent necessary to reflect any additional time required to meet the respective launch date, and Biovail will provide written acknowledgement of such adjustment.

(c) Costs Related to Risk Manufacturing. Biovail shall be responsible for any losses associated with any of the Zovirax® Products manufactured at risk that are not commercially viable, except to the extent such losses are due to GSK’s failure to manufacture that Zovirax® Product according to current good manufacturing practices. Notwithstanding the foregoing, Biovail agrees to be responsible for any such losses due to an FDA change of specifications related to the graphics for that Zovirax® Product.

5.16 Completion of GSK’s Obligation to Develop Sample Presentations. Notwithstanding Sections 4.04, 5.13 and 5.14, Biovail hereby acknowledges that GSK’s obligation to develop the Sample Products shall have been fulfilled upon GSK’s completion of the development of the Sachet Sample of Zovirax® Ointment and the Sachet Sample of Zovirax® Cream. Biovail acknowledges that, other than the Zovirax® Cream Sample Products and the Sachet Sample of Zovirax® Ointment, GSK shall have no further obligation to develop any other presentations of the Products for use as physician samples for Biovail, except upon the written agreement of GSK and Biovail.

5.17 Discontinuance of Sample Products. From and after the dates that Sachet Sample of Zovirax® Ointment and the Sachet Sample of Zovirax® Cream have received regulatory approval are available for shipment to Biovail and for distribution in the Territory, respectively, GSK shall have no obligation to provide to Biovail any Sample Products other than the Sachet Samples, except that GSK shall be required to fill all orders in the then current Firm Zone for Sample Products delivered pursuant to Section 5.04(b) for the other Sample Products, unless

otherwise agreed to by GSK and Biovail in writing, and GSK may discontinue, at its sole discretion, the production of any other Sample Products.

5.18      **DISCLAIMER OF WARRANTIES.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THERE ARE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE OR GIVEN BY EITHER PARTY HEREUNDER, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE OF ANY PRODUCT.

**ARTICLE 6.**

MANUFACTURE OF PRODUCT;  
ADVERSE REACTION REPORTING AND PRODUCT COMPLAINTS;  
MEDICAL INFORMATION SERVICES;  
PRODUCT RETURNS;  
COMPLIANCE WITH APPLICABLE LAW; COMPLIANCE AUDITS

6.01      **Manufacture of Product.** GSK shall cause the Products to be manufactured in accordance with Good Manufacturing Practices, except for such non-material noncompliance which exists on the date of this Agreement and which does not preclude the release and marketing of the Products in accordance with Applicable Laws in the Territory. All Products shipped to Biovail for sale to the trade shall have product dating of not less than eighteen (18) months. GSK shall provide timely prior written notice of proposed material changes with respect to the manufacture of Product, of which GSK shall have been notified and which would adversely impact GSK’s ability to meet its supply obligations hereunder.

6.02      **Certificate of Analysis.** GSK shall cause to be provided to Biovail a certificate of analysis for each shipment of Products indicating that each lot of Product in said shipment meets all current Product specifications as contained in the NDA for the Product.

6.03      **Rejection of Product; Biovail Remedies.**

(a)      Biovail shall notify GSK in writing of any rejection of shipment of any Product within fifteen (15) days after delivery of such Product to Biovail and shall set forth in such written notification the reason for such rejection, including any inspection results. Failure to so notify GSK of, or to identify the basis under this Agreement for, rejection of any Product within such rejection period shall constitute acceptance of such Product and, thereafter, Biovail shall be obligated to make payment for such Product in accordance with Sections 5.07 and 5.09 above. If the Parties disagree as to whether any Product conforms with applicable labeling or the Product Registration for the Product, then samples and/or batch records, as appropriate, from the batch which is in dispute shall promptly be provided by both parties as required and submitted for testing and evaluation to an independent Third Party as shall be agreed to in writing by both Parties. The determination of such Third Party as to whether the Product conforms to applicable labeling or the Product Registration for the Product will be final and binding. Except as provided in Section 6.03(b) below, the cost of the testing and evaluation by the Third Party shall be borne by Biovail if the Third Party determines that the Product conforms with applicable labeling or

the Product Registration for the Product, and by GSK if the Third Party determines that it does not.

(b) If, pursuant to Section 6.03(a) above, any Product is found not to conform with the labeling or the Product Registration for the Product as a result of a cause occurring prior to placement thereof with the carrier, and Biovail either returns such non-conforming Product to GSK, or following receipt of GSK's prior written authorization to destroy such rejected Product, in accordance with Applicable Laws, GSK shall reimburse Biovail for all reasonable costs and expenses in connection therewith and, at GSK's option, GSK shall, (i) credit Biovail for the Invoiced Amount paid by Biovail to GSK for such rejected Product, or (ii) replace such rejected Product as promptly as reasonably practicable, but in no event later than forty-five (45) days following receipt of written notice of such rejection, at no additional cost to Biovail. Biovail's exclusive remedy for any non-conforming Product shall be to receive a credit or replacement of Product as provided herein.

6.04 Medical Information Services. Commencing as of 12:01 a.m. EST on January 2, 2002, Biovail shall assume, and shall, at its expense, have sole and exclusive responsibility for, all medical information services for the Product. In fulfillment of its obligations under this Section 6.04, Biovail shall develop and implement written procedures for the administration of, and response to, all medical inquiries concerning the Products received from consumers, physicians, pharmacists and other health care professionals. GSK shall provide to Biovail photocopies of any applicable medical letters or electronic copies of same. Any use or modification of any medical information letters database, or any other related material, provided by GSK at the request of Biovail shall be the sole and exclusive liability of Biovail.

6.05 Product Returns.

(a) For the period from the Distributorship Commencement Date through December 31, 2002, GSK will, at its sole cost and expense, process and issue credits (or render payment in such other form as GSK may in its sole discretion determine) for all returned Products bearing GSK's NDC numbers. Such handling of returned Product by GSK, and the issuance of any credits or other form of reimbursement in connection therewith, shall be in accordance with GSK's then current returned goods policy. GSK will deliver to Biovail, at Biovail's sole cost and expense, any returned Product received by GSK which bears the Biovail Product NDCs. The foregoing notwithstanding, Biovail will process, and be solely responsible and liable for reimbursements with respect to, Product returns arising with respect to, or resulting from, shipping errors, damage in transit and shortages relating to Biovail sales of Product after the Distributorship Commencement Date.

(b) Biovail agrees and acknowledges that GSK's maximum liability for credits or other reimbursement for returned Product under this Section 6.05 shall be {\*\*\*}† (the "Maximum Returns Credit Amount"). For purposes of this Section 6.05, the dollar value of returned Product processed by GSK, and the amount of any credit or other reimbursement issued

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therefor by GSK, shall be determined in accordance with GSK's then current returned goods policy.

(c) Upon GSK's issuance of credits or other reimbursement for returned Product bearing GSK's NDCs, in an aggregate dollar amount equal to the Maximum Returns Credit Amount, any such credits or other reimbursement issued thereafter by GSK shall be the exclusive liability and obligation of Biovail, for which Biovail will be invoiced by GSK on a monthly basis according to the provisions of Articles 5 and 7. Each such invoice shall set forth the number of units processed for each GSK Product NDC, together with such other information as shall be necessary to support the invoice. Biovail shall, within thirty (30) days of its receipt of an invoice, pay to GSK the full invoiced amount, in accordance with the terms of Articles 5 and 7 hereinbelow.

(d) Effective as of January 1, 2003, Biovail shall be solely and exclusively responsible for processing any and all returned Product (including all returned Product bearing GSK's NDCs), and for the issuance of any and all credits or other reimbursement therefor. Any and all returned Product bearing GSK's NDCs received by GSK after December 31, 2002 will be destroyed by GSK, and GSK will, after such destruction, forward to Biovail any accompanying documentation to determine any appropriate credit. Except as otherwise provided herein, Biovail and GSK will not bill one another for costs incurred in processing returned Product GSK and Biovail will use Commercially Reasonable Efforts in requesting that customers direct all Product returns after December 31, 2002 to Biovail.

6.06 Product Recall. If either Biovail or GSK obtains information that any Product or any portion thereof is alleged or proven not to conform with the labeling or the Product Registration for such Product in the Territory, such Party shall notify the other Party immediately and shall disclose to the other Party all material facts relative exclusively to the Product recall, however, that no disclosure of information will be required where any trade secrets, proprietary information, intellectual property or know-how of a Party would be disclosed, divulged, or in any way compromised. Both Parties shall cooperate fully regarding the investigation and disposition of any such matter. GSK and Biovail shall each maintain such traceability records as are sufficient and as may be necessary to permit a recall or field correction of any Product. Each Party shall give telephonic notice (to be subsequently confirmed in writing) to the other within twenty-four (24) hours of learning that (a) any applicable regulatory authority in the Territory has issued a request, directive or order that a Product be recalled, or (b) a court of competent jurisdiction has ordered such a recall, or (c) GSK determines after consultation with Biovail that any Product already in interstate commerce in the Territory presents a risk of injury or gross deception, or is otherwise defective, and that recall of such Product is appropriate (a "Recall"). GSK shall have sole responsibility for determining all corrective action to be taken and for implementing any Recall. Biovail will provide full cooperation and assistance to GSK in connection therewith as may be requested by GSK. GSK shall be responsible for all expenses of effecting any such Recall (including any reasonable out-of-pocket expenses incurred by Biovail in connection with such cooperation), except to the extent such Recall is attributable to any negligence or act or omission on the part of Biovail, its employees, agents, contractors or subcontractors, or any material breach by Biovail of its obligations under this Agreement or any other agreement then in force and effect between Biovail and GSK, in which event Biovail will

reimburse GSK for its reasonable costs and expenses incurred that are so attributable to such act or omission Biovail.

6.07 Complaints.

(a) Biovail shall maintain complaint files for Product in accordance with Good Manufacturing Practices.

(b) GSK and Biovail shall promptly provide to the other copies of any complaints received by GSK with respect to the Product. Biovail shall have responsibility for responding to all such complaints, and for promptly providing GSK with a copy of any responses to complaints, including, without limitation, competitor complaints regarding Biovail's promotional activities. GSK shall provide Biovail with such assistance as is reasonably required for that purpose. The foregoing notwithstanding, GSK expressly reserves the right, at its election, to respond to, and/or consult on any response to, any complaint which raises a safety issue with respect to the Product. GSK shall have responsibility for reporting any complaints relating to the Product to the FDA and any other Governmental Authority, including, but not limited to, complaints relating to the manufacture of the Product as well as adverse drug experience reports.

6.08 Additional Covenants of Biovail. Biovail shall (a) not give any Third Party purchaser of the Products any guarantee or warranty on behalf of GSK, (b) enter into all sale contracts for the Products as a principal, (c) follow up and investigate customer and tampering complaints related to the Products, and keep GSK informed, as appropriate, as to the nature, status and resolution of such complaints on a timely and regular basis and provide sufficient information to GSK to investigate such complaints, and (d) upon receipt by Biovail of the Products, handle, use and store pending use, the Products in compliance with Good Manufacturing Practices, Applicable Laws, rules and regulations.

6.09 Adverse Events. With respect to the Products, Biovail agrees to notify GSK concerning reported Serious Adverse Events and Adverse Events within the respective time periods and in accordance with the procedures set forth on Exhibit 6.09. In accordance with Exhibit 6.09, GSK will provide to Biovail copies of all periodic reports and periodic safety update reports submitted to FDA at the time of regulatory submission. Biovail acknowledges and agrees that GSK shall have all rights to access and utilize all information with respect to Serious Adverse Events and Adverse Events reported to Biovail with respect to the Products during the term of this Agreement.

6.10 Compliance with Applicable Law. Each Party shall maintain in full force and effect all necessary licenses, permits and other authorizations required by Applicable Law to carry out its duties and obligations under this Agreement. Each Party shall comply with all Applicable Laws, provided, that Biovail shall be solely responsible for compliance with those Applicable Laws pertaining to the activities conducted by it hereunder (including, without limitation, those Applicable Laws that apply to documentation and records retention pertaining to the distribution and use of Product within the Territory). Biovail shall store and distribute the Products and trade forms in compliance with all Applicable Laws. Each Party will cooperate with the other to provide such letters, documentation and other information on a timely basis as the other Party may reasonably require to fulfill its reporting and other obligations under

Applicable Laws to applicable regulatory authorities. Except for such amounts as are expressly required to be paid by a Party to the other under this Agreement, each Party shall be solely responsible for any costs incurred by it to comply with its obligations under Applicable Laws.

6.11 Reasonable Cooperation. GSK and Biovail each shall take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or proper to make effective the transactions contemplated by this Agreement, including such actions as may be reasonably necessary to obtain approvals and consents of Governmental Authorities and other Persons (including, without limitation, all NDA notifications to the FDA identifying Biovail as a distributor of the Products).

6.12 Compliance Audits.

(a) From time to time as GSK may elect during the Term (but no more than once each Calendar Year), during normal business hours and upon reasonable notice from GSK (but not less than 10 days notice), Biovail shall permit, and shall cause its subcontractors (as provide services with respect to the Product) to permit, duly authorized representatives of GSK to review and inspect the premises, facilities, Product inventories, records and documentation maintained by Biovail and its subcontractors for the purpose of determining compliance by Biovail with its obligations under this Agreement.

(b) From time to time as Biovail may elect during the Term (but no more than once each Calendar Year), during normal business hours and upon reasonable advance notice from Biovail (but not less than ten (10) days notice), GSK shall permit and, to the extent possible, cause such of its subcontractors as shall provide services with respect to the Products to permit authorized representatives of Biovail to inspect, on the premises of GSK or its relevant subcontractors each manufacturing facility for the Products and on the premises of GSK where such records and inventory are kept, Product inventory, Manufacturing Documentation and GSK’s quality control records relating to the storage of the Products to ensure compliance with Good Manufacturing Practices, quality control standards and the packaging and labeling for the Products, and with applicable terms of this Agreement pertaining to the use of the Trademarks; provided, however, that except as otherwise provided herein, nothing in the foregoing shall allow or be construed to allow Biovail to have access to any confidential manufacturing know-how or trade secrets of GSK or any records containing or pertaining to same. If GSK can not require a subcontractor to submit to such inspection by Biovail, GSK shall conduct any such inspections on Biovail’s behalf, and will report any results of such inspection to Biovail within sixty (60) days of completing the inspection.

ARTICLE 7.

PAYMENTS

7.01 Manner of Payment. All payments to be made by Biovail to GSK pursuant to this Agreement shall be by wire transfer to the designated account of GSK in accordance with the following wire instructions, or such other account and instructions as may from time to time be designated in writing by an officer of GSK:



Bank: {\*\*\*}†  
Routing Number: {\*\*\*}†  
Account Number: {\*\*\*}†

7.02 Payment for Purchase of Existing Inventory. Biovail shall purchase the Existing Inventory from GSK at a per-unit Product price that is {\*\*\*}† of GSK’s Net Wholesale Price for the Product as of December 1, 2001 set forth on Exhibit 7.02 in accordance with the terms of Article 5 above. By not later than January 7, 2002, GSK shall deliver to Biovail a detailed invoice setting forth all Product contained in the Existing Inventory by NDC, the Product Prices payable therefor, and stating the total aggregate purchase price due and owing.

7.03 Late Payments. In the event that any payment due under this Agreement is not made when due, said payment shall accrue interest from the date due at a rate of ten percent (10%) per annum. The payment of such interest shall not limit GSK from exercising any other rights it may have as a consequence of the delinquency of any Payment.

ARTICLE 8.

REPRESENTATIONS AND WARRANTIES

8.01 Representations and Warranties of Both Parties. Each Party hereby represents and warrants to the other Party that, as of the Effective Date:

(a) Good Standing. Such Party is duly organized, validly existing and in good standing under the Applicable Laws of the state, country or jurisdiction of its incorporation, is duly qualified to transact the business in which it is engaged in each jurisdiction where failure to be so qualified would have a material adverse effect upon its business as currently conducted, and has full corporate power and authority to enter into this Agreement and to carry out the provisions of this Agreement.

(b) Power and Authority. Such Party has the requisite power and authority and the legal right to enter into this Agreement, and to perform its obligations hereunder, and has taken all necessary corporate action on its part to authorize the execution and delivery of the Agreement and the performance of its obligations hereunder. All persons who have executed this Agreement on behalf of such Party, or who will execute on behalf of such Party any agreement or instrument contemplated hereby, have been duly authorized to do so by all necessary corporate action.

(c) Binding Obligation. This Agreement has been duly executed and delivered on behalf of the Party and (assuming the due execution and delivery hereof by the other Party) such agreement is a legal and valid obligation binding upon it and is enforceable in accordance with its terms, except that:

† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

- (i) such enforcement may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar Applicable Laws now or hereafter in effect relating to creditors rights generally, and
- (ii) such enforcement may be limited by equitable principles and Applicable Law.

8.02 Representations and Warranties of GSK. GSK hereby represents and warrants to Biovail that:

(a) No Violation of Instruments or Contracts. The execution and the delivery of this Agreement and GSK's consummation of the transactions contemplated hereby will not:

- (i) violate the Certificate of Incorporation or By-Laws of any of the GSK Entities;
- (ii) To The Knowledge Of GSK, materially conflict with or result in a material breach of any of the material terms, conditions or provisions of, or constitute an express event of default under, any material instrument, agreement, mortgage, judgment, order, award, or decree specifically relating to the manufacturing, distribution or sale of the Product to which any GSK Entity is a party or by which it is bound and which would have a material adverse effect upon the distribution or sale of the Product as currently conducted by such GSK Entity, or
- (iii) To The Knowledge Of GSK, require the affirmative approval, consent, authorization or other order or action of any court, Governmental Authority or regulatory body or of any creditor of any of the GSK Entities, or
- (iv) To The Knowledge Of GSK, conflict with or result in a violation of Applicable Laws.

(b) Compliance with Applicable Law. Each GSK Entity is in compliance with all requirements of Applicable Law within the Territory, except to the extent that any noncompliance would not have a material adverse effect on the conduct of the manufacture, distribution or sale of the Products as currently conducted by such GSK Entity and would not materially and adversely affect GSK's ability to perform its obligations under this Agreement.

(c) Litigation and Claims. There is no litigation, arbitration, claim, governmental or other proceeding (formal or informal), or, To The Knowledge of GSK, governmental investigation pending or threatened in writing within the Territory relating to the Products (it being understood that this sentence does not relate in any way to the subject matter of Section 8.02(e) of this Agreement), which, if adversely determined, would have a material adverse effect upon GSK's ability to perform its obligations under this Agreement. GSK and its Affiliates are not in violation of, or in default with respect to, any Applicable Law, rule, regulation, order, judgment or decree, which violation or default would have a material adverse effect upon GSK's

ability to perform its obligations under this Agreement; nor is GSK or any of its Affiliates required to take any action outside of the ordinary course of business in order to avoid such violation or default.

(d) Regulatory Filings. GSK is the lawful holder of all rights under each of the NDA. GSK has complied in all material respects with all Applicable Laws and regulations in connection with the preparation and submission to the FDA of the NDA for Zovirax® Cream, and the NDA has been approved by the FDA.

(e) Trademarks.

- (i) BW USA, a wholly-owned subsidiary of GSK, is the owner or exclusive licensee of the Trademarks in the Territory and such Trademarks are all the issued and registered trademarks for the Product in the Territory.
- (ii) The Trademarks are in full force and effect and have been maintained to date in the Territory.
- (iii) To The Knowledge GSK, none of the Trademarks infringes upon any trademark or other proprietary rights of any other Third Party in the Territory. There is no action, suit or proceeding pending or, To The Knowledge of GSK, that has been threatened in writing by any Third Party in the Territory against GSK or its Affiliates, which if adversely determined, would have a material adverse effect upon the ability of GSK or its Affiliates to use the Trademarks in connection with the marketing or sale of the Products in the Territory as currently conducted by GSK.

(f) Patents.

- (i) GSK makes no representations or warranties that the claims of the patents of GSK are valid and/or enforceable or will be held valid and enforceable in the Territory. Further, GSK makes no representations or warranties that Biovail's exercise of its rights under the Agreement will not infringe the patent rights of Third Parties.
- (ii) GSK represents and warrants that To The Knowledge of GSK, as of the Effective Date, there is no action, suit, proceeding, alternative dispute resolution, mediation or investigation pending against GSK relating to GSK's patents for the Products in the Territory. GSK further represents and warrants that To The Knowledge of GSK, as of the Effective Date, GSK has not received notice of any material claim or counterclaim that GSK infringes or violates any patent rights of Third Parties in the Territory, or that any of GSK's patents are invalid and/or unenforceable in the Territory.

8.03 Representations and Warranties of Biovail. Biovail hereby represents and warrants to GSK that:

- (a) No Violation of Instruments or Contracts. The execution and the delivery of this Agreement and the consummation of the transactions contemplated hereby by Biovail will not:
- (i) violate the Certificate of Incorporation or By-Laws of Biovail;
  - (ii) To The Knowledge Of Biovail, materially conflict with or result in a material breach of any of the material terms, conditions or provisions of, or constitute an express event of default under, any material instrument, agreement, mortgage, judgment, order, award, or decree to which Biovail is a party or by which it is bound and that would have a material adverse effect upon the ability of either Biovail to perform its respective obligations under this Agreement; or
  - (iii) To The Knowledge Of Biovail, require the affirmative approval, consent, authorization or other order or action of any court, governmental authority or regulatory body or of any creditor of Biovail or any of their respective Affiliates.
  - (iv) To the Knowledge of Biovail, conflict with or result in a violation of Applicable Laws.
- (b) Compliance with Applicable Law. Biovail, its Affiliates and the Designated Biovail Affiliate are in compliance with all requirements of Applicable Law within the Territory, except to the extent that any noncompliance would not have a material adverse affect upon its ability to perform its obligations under this Agreement.
- (c) Litigation and Claims. There is no litigation, arbitration, claim, governmental or other proceeding (formal or informal), or, To The Knowledge of Biovail, governmental investigation pending or threatened in writing within the Territory against Biovail or any of its Affiliates where an adverse outcome would have a material adverse affect upon Biovail’s ability to perform its obligations under this Agreement. Biovail and its Affiliates are not in violation of, or in default with respect to, any Applicable Law, rule, regulation, order, judgment, or decree, which violation or default would have a material adverse effect upon Biovail’s ability to perform its obligations under this Agreement; nor is Biovail or any of its Affiliates required to take any action outside of the ordinary course of business in order to avoid such violation or default.

8.04 No Reliance by Third Parties. The representations and warranties of a Party set forth in this Agreement are intended for the sole and exclusive benefit of the other Party hereto, and may not be relied upon by any Third Party.

**ARTICLE 9.**

INDEMNIFICATION AND INSURANCE

9.01 GSK Indemnity. GSK shall indemnify and hold Biovail, its Affiliates, and its and their employees, agents, officers, and directors (individually and/or collectively referred to herein as an “Biovail Party”) harmless from and against any and all losses, liabilities, damages

(exclusive of special or consequential losses or damages), fees (including, until such time as GSK has notified Biovail in writing that it will assume control of a given Biovail Claim (as defined below), reasonable attorneys fees and costs of litigation pertaining to such Biovail Claim), and expenses paid or payable by an Biovail Party to a Third Party that result from or arise in connection with a claim, suit or other proceeding made or brought by such Third Party against an Biovail Party (a “Biovail Claim”) based on;

- (i) the breach of any obligation, covenant, agreement, representation or warranty of GSK contained in this Agreement, or
- (ii) any Third Party litigation, arbitration, claim, governmental or other proceeding (formal or informal) or investigation arising out of or based upon the distribution, marketing, advertisement, promotion or sale of the Products by GSK prior to the Distributorship Commencement Date, or
- (iii) infringement of a Third Party’s patents, trademarks or service marks by reason of Biovail’s purchase of a Product under this Agreement which was manufactured by or for GSK and the Product’s sale by Biovail under the Patents, Trademarks or service marks for the Product in accordance with the provisions of this Agreement; or
- (iv) Third Party litigation, arbitration, claims, governmental or other proceeding (formal or informal) or investigation arising out of or based upon the manufacture of the Products by GSK or its Affiliates, and any use of any Product, whether prior to or after, the Distributorship Commencement Date;

provided, however, that GSK shall not be obligated to indemnify a Biovail Party under (i), (ii), (iii) or (iv) above for any loss, liability, damages, fees or expenses incurred by such Biovail Party to the extent arising out of or attributable to (a) a breach by Biovail of any obligation, covenant, agreement, representation or warranty of Biovail contained in this Agreement, or (b) any act or omission by Biovail or a Biovail Party which renders a Product defective and unreasonably dangerous or which constitutes negligence, recklessness, gross negligence, or willful misconduct on the part of Biovail or a Biovail Party, or (c) any overpromotion of a Product or dilution of a Product’s labeling or warnings by Biovail or a Biovail Party.

9.02 Biovail Indemnity. Biovail shall indemnify and hold GSK, its Affiliates, and its and their employees, agents, officers, and directors (individually and/or collectively referred to hereinafter as a “GSK Party”) harmless from and against any and all losses, liabilities, damages (exclusive of consequential or special losses or damages), fees (including, attorneys fees and costs of litigation pertaining to a GSK Claim (as defined below)), and expenses paid or payable by a GSK Party to a Third Party that result from or arise in connection with a claim, suit or other proceeding made or brought by a Third Party against a GSK Party (a “GSK Claim”) based on, resulting from, or arising in connection with,

- (i) the breach of any obligation, covenant, agreement, representation or warranty of Biovail, its Affiliates or the Designated Biovail Affiliate contained in this Agreement;
- (ii) any Third Party litigation, arbitration, claim, governmental or other proceeding (formal or informal) or investigation arising out of or based upon the, distribution, marketing promotion, detailing or sale of a Product by Biovail or the Designated Biovail Affiliate;
- (iii) infringement of a Third Party's trademarks by reason of the use of "Biovail", or any variant thereof, on the labeling for a Product or in any materials used in promoting, detailing or advertising a Product; or
- (iv) any act or omission rendering a Product defective and unreasonably dangerous or constituting negligence, recklessness, gross negligence or willful misconduct on the part of Biovail, the Designated Biovail Affiliate or any other Biovail Party; any failure of promotional materials developed by Biovail or the Designated Biovail Affiliate to comply with applicable labeling and Product Registrations and with applicable law and regulations; as well as any overpromotion of a Product or dilution of a Product's labeling or warnings by Biovail, the Designated Biovail Party or any other Biovail Party;

provided, however, that Biovail shall not be obligated to indemnify a GSK Party for any loss, liability, damages, fees or expenses incurred by such GSK Party to the extent arising out of, or attributable to, (a) a breach of any obligation, covenant, agreement, representation or warranty of GSK contained in this Agreement, (b) any act or omission by GSK or a GSK Party rendering a Product defective or unreasonably dangerous or constituting negligence, recklessness, gross negligence, or willful misconduct on the part of GSK or a GSK Party, including any failure by GSK to comply with relevant FDA and other applicable regulations or any negligent failure by GSK to supply relevant information about a Product to Biovail.

9.03 Control of Proceedings. Each indemnified Party shall:

(a) give the indemnifying Party written notice of any GSK Claim or Biovail Claim, as the case may be for purposes of this Section 9.03, (a GSK Claim or Biovail Claim being referred to as a "Claim") or any potential Claim promptly after the indemnified Party receives notice of any such Claim or potential Claim. The Indemnifying Party shall notify the indemnified Party of its intentions as to defense of the Claim or potential Claim in writing promptly after receipt of notice of the Claim. Notices under this subsection 9.03(a) shall be provided in accordance with Section 13.13 below, with a copy by overnight courier or facsimile to: in the case of GSK: Carol Ashe, Vice President and General Counsel, Worldwide Business Development Transactions, R & D Legal Operations, GSK, Five Moore Drive, Research Triangle Park, NC 27709; in the case of Biovail to: Ken Cancellara, Senior VP and General Counsel, Biovail Corporation, 2488 Dunwin Drive, Mississauga, Ontario, L5L 1J9; and

(b) allow the indemnifying Party to assume exclusive control of the defense and settlement (including all decisions relating to litigation, defense and appeal) of any such Claim (so long as it has confirmed its indemnification obligation responsibility to such indemnified Party under this Section 9.03(a) with respect to a given Claim); provided, however, that the indemnifying Party may not settle such Claim in any manner that would require payment by the indemnified Party, or would materially adversely affect the rights granted to the indemnified Party hereunder, or would materially conflict with the terms of this Agreement, without first obtaining the indemnified Party's prior written consent, which consent shall not be unreasonably withheld; and

(c) reasonably cooperate with the indemnifying Party in its defense of the Claim (including, without limitation, making documents and records available for review and copying and making persons within its control available for pertinent testimony). If the indemnifying Party assumes defense of the Claim, an indemnified Party may participate in, but not control, the defense of such Claim using attorneys of its choice and at its sole cost and expense. An indemnifying Party shall have no obligation or liability under this Article 9 as to any Claim for which settlement or compromise of such claim or an offer of settlement or compromise of such Claim is made by an indemnified Party without the prior written consent of the indemnifying Party, which consent shall not be unreasonably withheld. If an indemnifying Party notifies the indemnified Party in writing that it will not defend the indemnified Party against such a Claim asserted against the indemnifying Party, or if the indemnifying Party assumes the defense of the Claim in accordance with Section 9.03(a) yet fails to defend or take other reasonable, timely action, in response to such Claim asserted against the indemnified Party, the indemnified Party shall have the right to defend or take other reasonable action to defend its interests in such proceedings, and shall have the right to litigate, settle or otherwise dispose of any such Claim; provided, however, that no Party shall have the right to settle a Claim in a manner that would adversely affect the rights granted to the other Party hereunder, or would materially conflict with this Agreement, or would require a payment by the Party, without the prior written consent of the Party entitled to control the defense of such Claim.

#### 9.04 Limitation of Liability.

(a) EXCEPT AS OTHERWISE SET FORTH IN SECTION 9.04(C), IN NO EVENT SHALL EITHER GSK OR BIOVAIL BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL OR INDIRECT DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY DAMAGES ARISING FROM THE LOSS OF BUSINESS, DATA, PROFITS OR GOODWILL OR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY) INCURRED OR SUFFERED BY THE OTHER PARTY WITH RESPECT TO EITHER PARTY'S PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT, OR FOR ANY OTHER REASON, EVEN IF APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES.

(b) The limitation of liability expressed in Section 9.04(a) above shall not affect or otherwise limit the obligation of each Party hereunder to indemnify each other (in accordance with the provisions of Section 9.01, 9.02 and 9.03 as applicable) for claims which are brought by Third Parties.

(c) Section 9.04(a) above notwithstanding, in the event that GSK fails to supply Products to Biovail within the timeframes specified in Article 5, Biovail may recover from GSK any consequential damages reasonably and proximately resulting from such failure-to-supply, subject to the following limitations and conditions: (i) GSK shall have no liability to Biovail for any such failure-to-supply arising from or caused by a Force Majeure event as provided in Article 10; (ii) the aggregate total amount of consequential damages for which GSK may be liable is limited to {\*\*\*}†, regardless of whether losses giving rise to consequential damages are incurred on one or many occasions and regardless of whether the losses that would give rise to consequential damages reasonably and proximately suffered by Biovail as a result of such failure-to-supply exceed the limit of {\*\*\*}†, (iii) once GSK has paid Biovail the total aggregate sum of {\*\*\*}†, in consequential damages for failure-to-supply, it shall have no further liability of any kind to Biovail for consequential damages; and (iv) GSK shall have no liability to Biovail for any consequential damages that could have been avoided, reduced or mitigated by the reasonable efforts or actions of Biovail.

9.05 Insurance. Biovail shall maintain at all times during the Term, and thereafter for ten (10) years, comprehensive general liability insurance, with endorsements for contractual liability and product liability with coverage limits of not less than {\*\*\*}† per occurrence or claim, and an annual aggregate limit of liability of {\*\*\*}†. Notwithstanding the foregoing, within sixty (60) days after the Effective Date, Biovail shall commence and complete a good faith review, in conjunction with Biovail’s insurance brokers and risk management consultants, of Biovail’s total insurance needs in light of Biovail’s current and prospective business activities including, without limitation, product liability coverage, business interruption insurance, and advertiser’s liability insurance to ensure that such coverage is reasonable and customary in the United States pharmaceutical industry for companies of comparable size, activities and product portfolio. Biovail shall present such review to GSK together with Biovail’s plans to update its insurance coverages. Prior to the Effective Date (and thereafter upon each anniversary thereof), Biovail shall furnish to GSK a certificate of insurance evidencing such coverage as of the Effective Date (and each anniversary thereof) and upon request by GSK at any time hereafter. Each such certificate of insurance shall include a provision whereby sixty (60) days’ written notice must be received by GSK prior to any material coverage modification or cancellation by either Biovail or the insurer. In addition to the foregoing, Biovail shall obtain and maintain property insurance on all Products and Sample Products delivered to Biovail and/or its agents, and shall provide GSK with certificates of such coverage, which certificates shall include a provision whereby sixty (60) days written notice must be received by GSK prior to any material coverage modification, or any cancellation, by either Biovail or the insurer.

**ARTICLE 10.**

**FORCE MAJEURE**

10.01 Force Majeure. Any delays in performance by any Party under this Agreement, other than the payment of money, shall not be considered a breach of this Agreement if, and to

† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.



the extent, caused by occurrences beyond the reasonable control of the Party affected, including but not limited to acts of God, embargoes, governmental restrictions, materials shortages or failure of any supplier (where such shortage or failure is attributable to a supplier's breach of its agreement with GSK or with a Third Party subcontractor or to an event of force majeure suffered by such supplier), fire, flood, explosion, earthquake, hurricanes, storms, tornadoes, riots, wars, civil disorder, failure of public utilities or common carriers, labor disturbances, rebellion or sabotage. The Party suffering such occurrence shall immediately notify the other Party of such inability and of the period for which such inability is expected to continue, and any time for performance hereunder shall be extended by the actual time of delay caused by the occurrence; provided, however, that the Party suffering such occurrence uses Commercially Reasonable Efforts to mitigate any damages incurred by the other Party. The Party giving such notice shall thereupon be excused from such of its obligations under this Agreement as it is thereby disabled from performing, and shall have no liability for such non-performance, for so long as it is so disabled and for the 30 days thereafter following the cessation of such performance disability.

**ARTICLE 11.**

**CONFIDENTIALITY 11.01**

**11.01 Confidentiality.**

(a) No Party shall disclose, or permit any of its Affiliates to disclose, any Confidential Information (as defined below) to any Third Party, except, in the case of a disclosure by GSK or any of its Affiliates, with the prior written consent of Biovail, or, in the case of a disclosure by Biovail or any of its Affiliates, with the prior written consent of GSK. No Party shall use any Confidential Information for any purposes other than the purposes for which such information was disclosed or obtained. Each Party may disclose Confidential Information to its employees, representatives, consultants, professional advisors and agents who require access to such information in performing activities consistent with the purposes for which such information was disclosed or obtained provided that each Party shall be fully responsible for any breach of this Article 11 by its employees, representatives, consultants, professional advisors or agents. All Confidential Information shall be held in strict confidence by each Party and shall be protected with the same standard of care that such Party uses in protecting its own confidential information of a similar nature, but in no event shall such Party use less than a reasonable standard of care. For purposes of this Agreement, "Confidential Information" shall mean any and all information (i) regarding the terms of this Agreement or (ii) disclosed to or obtained by a Party pursuant to or in connection with the negotiation, execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby. This Article 11 shall not apply to any Confidential Information (1) to the extent that the Confidential Information is publicly available or generally known other than by breach of the provisions of this Agreement or is lawfully disclosed by a Third Party which Third Party is not in breach of an obligation of confidentiality or otherwise prohibited from disclosing such Confidential Information; (2) to the extent disclosure is necessary to comply with the requirements of the United States Securities and Exchange Commission, the London Stock Exchange Limited, or any other Governmental Authority, in which event the Party making such disclosure shall notify the other Party as promptly as practicable (and, if possible, prior to making such disclosure), shall consult with the

other Party so as to minimize the necessity of disclosure and shall seek confidential treatment of such information by the relevant Governmental Authority, including without limitation the United States Securities and Exchange Commission or the London Stock Exchange Limited; (3) disclosed by GSK to a Third Party subcontractor to the extent of, and pursuant to, an effective confidentiality agreement with such Third Party subcontractor which agreement contains confidentiality provisions substantially similar to those contained herein, or (4) disclosure of which is reasonably necessary in connection with (and strictly limited to) enforcement of such Party's rights hereunder. The provisions of this Article 11 shall survive the expiration or termination of this Agreement and shall expire on the date ten (10) years from the date hereof.

(b) The confidentiality obligations set forth in this Article 11 shall supersede the Confidential Disclosure Agreement between the Parties, in existence as of the Effective Date ("Confidentiality Agreement"), shall govern any and all information disclosed by either Party to the other pursuant thereto, and shall be retroactively effective to the date of such Confidential Disclosure Agreement.

11.02 Use of Information. Each Party shall use, and cause each of its Affiliates to use, any Confidential Information obtained by it from the other Party or their respective Affiliates, pursuant to this Agreement or otherwise, solely in connection with the transactions contemplated hereby.

11.03 Relief. Each Party shall be entitled, in addition to any other right or remedy it may have, at Applicable Law or in equity, to an injunction, without the posting of any bond or other security, enjoining or restraining any other Party from any violation or threatened violation of this Article 11.

**ARTICLE 12.**

**TERMINATION**

12.01 Term. This Agreement shall become effective as of the Effective Date and, unless sooner terminated as provided herein, shall expire at 11:59 p.m. PST on December 31, 2021.

12.02 Breach. Failure by either Party to comply with any of the material obligations contained in this Agreement shall constitute an event of default under this Agreement, and shall entitle the other Party, if it is not in material default hereunder and subject to any cure provisions provided hereinbelow, to give written notice specifying the nature of the default and to exercise the rights of termination provided hereinbelow. If such default is with respect to (i) any payment required to be made by Biovail pursuant to Articles 5 or 7 and is not cured within ten (10) Business Days after receipt of such notice, or (ii) is with respect to any other obligation of either Party and is not cured within ninety (90) days after the receipt of such notice (or, if such default cannot be cured within such 90-day period, if the Party in default does not, commence and diligently continue substantive actions to cure such default and thereafter effect full cure of such default within one hundred twenty (120) days after receipt of the foregoing notice of default), the notifying Party shall be entitled, without prejudice to any of its other rights conferred on it by this Agreement and in addition to any other remedies available to it by Applicable Law or in

equity, to terminate this Agreement by giving written notice, said termination to take effect immediately upon delivery of such notice.

12.03     Insolvency or Bankruptcy. In the event that a Party shall (i) commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order of relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts; or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for any substantial part of its assets, or the Party shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against a Party any case, proceeding or other action of a nature referred to in clause (i) above that (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of one hundred and twenty (120) days; or (iii) there shall be commenced against the Party any case, proceeding or other action seeking issuance of a warrant of attachment, execution, restraint or similar process against all or any substantial part of its assets that results in the entry of an order for any such relief that shall not have been vacated, discharged, or stayed or bonded pending appeal, within one hundred and twenty (120) days from the entry thereof; or (iv) the Party shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clauses (i), (ii), or (iii) above; or (v) the Party shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; then, (A) upon the occurrence of the events described in clauses (i) or (ii), above, in addition to any other remedies available to the other Party by Applicable Law or in equity, this Agreement immediately shall terminate and all amounts owing under this Agreement shall immediately become due and payable, and (B) upon the occurrence of the events described in clauses (iii), (iv), or (v) above, in addition to any other remedies available to the other Party by Applicable Law or in equity, the other Party may terminate this Agreement, in whole or in part as the terminating Party may determine, by giving written notice, which shall be effective immediately upon delivery of such notice.

12.04     Other Termination Situations.

- (a)     GSK may (without prejudice to any of its other rights conferred on it by this Agreement or by Applicable Law) terminate this Agreement effective immediately by giving written notice to such effect to Biovail in the event that
- (i)     Biovail engages in illegal activities or illegal conduct which materially and adversely damages the market or potential market for the Product; or
  - (ii)    GSK withdraws Product from the U.S. market for safety reasons in connection with a withdrawal of Product from its markets worldwide generally for such reasons (in which event the termination shall be limited to such Product only) which withdrawal continues uninterrupted for a period in excess of twelve (12) consecutive calendar months.

(b) If Biovail shall, at any time subsequent to the provisions of Section 3.02(b)(ii) becoming operative, fail to submit the enumerated items and materials to DDMAC for its pre-clearance review and approval or otherwise fail to meet its obligations under Section 3.02(b)(ii), or if Biovail shall receive a Warning Letter or NOV during or after the Pre-Clearance Period, GSK may (without prejudice to any of its other rights conferred on it herein or by Applicable Laws) terminate this Agreement by written notice to Biovail, with said termination to be immediately effective.

(c) If GSK is unable to supply at least {\*\*\*}† of the amount of Products required to fulfill Purchase Orders, delivered against accepted forecasts of Biovail’s requirements of Products, for a period in excess of ninety (90) consecutive days, Biovail may terminate this Agreement upon thirty (30) days written notice. If GSK’s failure to supply is the result of a force majeure event as specified in Article 10, no further liability shall attach or accrue to either Party upon termination of this Agreement pursuant to this Section 12.05(c).

12.05 Effect of Termination.

- (a) Upon expiration of this Agreement or upon termination of this Agreement by either Party Biovail shall promptly:
- (i) return to GSK all relevant records, materials or confidential information relating to the Product in its (or any Affiliates or contractors’) possession or control;
  - (ii) cease all marketing, sale, promotion, advertising, and distribution of the Product, and
  - (iii) discontinue use of the Trademarks, destroy all advertising or other printed materials bearing the Trademarks, and Biovail’s right to use the Trademarks for the Product in the Territory shall terminate.
- (b) Any acceptance by GSK of any order from Biovail on the sale of any Product by GSK to Biovail after the expiration or termination of this Agreement shall not be construed as a renewal or extension of this Agreement or as a waiver of termination thereof.
- (c) Upon termination of this Agreement by either Party prior to the expiration of the Term, all rights granted to Biovail under Article 2 hereof with respect to the Product shall terminate and revert solely in GSK.
- (d) Upon termination of this Agreement by GSK under Sections 12.02, 12.03 or 12.04(a)(i) above GSK may, in its sole discretion, elect to repurchase Products from Biovail, in such quantity as GSK shall determine, up to an aggregate dollar amount equal to two (2) months of Product inventory (as determined based upon Biovail’s aggregate monthly purchases of Products from GSK for the immediately preceding twelve (12) calendar months). All Product so

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repurchased by GSK shall be sold to GSK at the per-unit purchase price originally paid for such Product by Biovail to GSK. In making any repurchase of Products, GSK shall have the right to select which units of Product shall be repurchased from Biovail's Product inventory. The remaining balance of Product inventory not selected for repurchase by GSK may thereafter be sold for a period of ninety (90) days following the completion of GSK's selection process at a price per unit that is not less than {\*\*\*}† of the Net Wholesale Price charged by Biovail for such Products as of the date of Termination of the Development Agreement. Upon the expiration of said 90-day period any Product remaining in Biovail's inventory shall be destroyed.

(e) Upon termination of this Agreement by Biovail under Sections 12.02 and 12.03, GSK shall repurchase from Biovail's entire inventory of unexpired Products then on hand, at the per-unit prices paid by Biovail for such Product.

(f) Biovail expressly acknowledges that each of the Distribution Rights Payment and the Additional Rights Payments are unconditional and non-refundable (in whole or in part) and further, expressly agrees that in the event of termination of this Agreement, for any reason whatsoever, there will be no return or refund by GSK of any portion of the Distribution Rights Payment or the Additional Rights Payments.

12.06 Accrued Rights; Surviving Obligations.

(a) Termination, relinquishment or expiration of this Agreement for any reason shall be without prejudice to any rights, which shall have accrued to the benefit of either Party prior to such termination, relinquishment or expiration. Such termination, relinquishment or expiration shall not relieve either Party from obligations, which are expressly indicated to survive termination or expiration of this Agreement.

(b) All of the Parties' rights and obligations under Articles 9 and 11 and Sections 5.01(a) and 12.05 shall survive expiration or termination of this Agreement.

ARTICLE 13.

MISCELLANEOUS PROVISIONS

13.01 Assignment. Neither Party shall assign or otherwise transfer this Agreement or any interest herein or right hereunder without the prior written consent of the other Party, and any such purported assignment, transfer or attempt to assign or transfer any interest herein or right hereunder shall be void and of no effect; except that each Party, unless otherwise prohibited by this Agreement may assign its rights and obligations hereunder to an Affiliate without the prior consent of the other Party (although, in such event, the assigning Party shall remain primarily responsible for all of its obligations and agreements set forth herein, notwithstanding such assignment). In addition, GSK may assign its rights and obligations to a successor (whether by merger, consolidation, reorganization or other similar event) of GSK's business or to a

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purchaser of all or substantially all of its business assets. Furthermore, Biovail may assign its rights and obligations to a successor (whether by merger, consolidation, reorganization or other similar event) of Biovail's business or to a purchaser of all or substantially all of its business assets provided Biovail has first obtained GSK's consent which shall be withheld only in the event that GSK determines, using its reasonable business discretion, that such successor is not capable of fulfilling Biovail's obligations under this Agreement with respect to the distribution of the Products as prescription drugs in the Territory.

13.02 Non-Waiver. Any failure on the part of a Party to enforce at any time, or for any period of time, any of the provisions of this Agreement shall not be deemed or construed to be a waiver of such provisions or of any right of such Party thereafter to enforce each and every such provision on any succeeding occasion or breach thereof.

13.03 Dispute Resolution; Venue.

(a) In the event of any dispute, controversy or claim arising out of or relating to this Agreement (hereinafter collectively referred to as a "Dispute"), the Parties shall attempt to settle any such dispute, in good faith, by the Dispute to appropriate senior management representatives of each Party in an effort to effect a mutually acceptable resolution thereof. In the event no mutually acceptable resolution of such Dispute is achieved in accordance with this Section 13.03(a) within a reasonable period of time, any dispute, controversy or claim that arises under, out of, or in connection with, or relating to this Agreement, or any breach, termination or alleged invalidity of this Agreement, shall be resolved by the courts of law of the State of New York.

(b) Venue. Any court proceeding instituted by one Party against the other with respect to this Agreement shall be commenced in the United States District Court for the Eastern District of New York; provided, however, that if a court proceeding is brought as a Third Party action as part of a proceeding pending in a different venue, either Party may initiate such Third Party action against the other Party in such venue.

13.04 Entirety of Agreement; Amendments.

(a) This Agreement, the Exhibits attached hereto, and any related agreements where herein referenced, contain the entire understanding of the Parties with respect to the subject matter hereof and thereof and supersede all previous and contemporaneous verbal and written agreements, representations and warranties with respect to such subject matter. This Agreement shall not be strictly construed against either Party hereto.

(b) This Agreement may be waived, amended, supplemented or modified only by a written agreement executed by each of the parties hereto.

13.05 Public Announcements. The form and content of any public announcement to be made by one Party regarding this Agreement, or the terms hereof, shall be subject to the prior written consent of the other Party (which consent may not be unreasonably withheld), except as may be required by Applicable Law (including, without limitation, disclosure requirements of the SEC, NASDAQ, or any other stock exchange) in which event the other Party shall use

Commercially Reasonable Efforts to give the other Party reasonable advance notice and reasonable opportunity to review any such disclosure.

13.06 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of New York, without regard to its conflicts of laws principles.

13.07 Relationship of the Parties. In making and performing this Agreement, the Parties are acting, and intend to be treated, as independent entities and nothing contained in this Agreement shall be construed or implied to create an agency, partnership, joint venture, or employer and employee relationship between GSK and Biovail. Except as otherwise provided herein, neither Party may make any representation, warranty or commitment, whether express or implied, on behalf of or incur any charges or expenses for or in the name of the other Party. No Party shall be liable for the act of any other Party unless such act is expressly authorized in writing by both Parties hereto.

13.08 Counterparts. This Agreement shall become binding when any one or more counterparts hereof, individually or taken together, shall bear the signatures of each of the Parties hereto. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original as against the Party whose signature appears thereon, but all of which taken together shall constitute but one and the same instrument.

13.09 Severability. If any part of this Agreement is declared invalid by any legally governing authority having jurisdiction over either Party, then such declaration shall not affect the remainder of the Agreement and the Parties shall revise the invalidated part in a manner that will render such provision valid without impairing the Parties' original intent.

13.10 Cumulative Rights. Except as herein expressly provided, the rights, powers and remedies hereunder shall be in addition to, and not in limitation of, all rights, powers and remedies provided at Applicable Law or in equity, or under any other agreement between the Parties, and all of such rights, powers and remedies shall be cumulative, and may be exercised successively or cumulatively.

13.11 No Other Rights. No rights or licenses in or to either Party's patent rights, know-how, copyrights or trademarks are granted by a Party to the other, or shall be created or implied hereunder, except those licenses and rights that are expressly granted in this Agreement.

13.12 Expenses. Except as may be otherwise provided herein, GSK and Biovail shall each bear their own direct and indirect expenses incurred in connection with the negotiation and preparation of this Agreement and any related agreements and, except as set forth in this Agreement or any related agreements, the performance of the obligations contemplated hereby and thereby

13.13 Notices. Unless otherwise explicitly set forth herein, any notice required or permitted to be given hereunder shall be in writing and shall be delivered personally by hand, or sent by reputable overnight courier, signature required upon delivery, to the addresses of each Party set forth below or to such other address or addresses as shall be designated in writing in the

same manner: (a) If to GSK: David Stout, President — U.S. Pharmaceuticals, Five Moore Drive, Research Triangle Park, NC 27709, with a copy to Carol Ashe, Vice President and General Counsel, Worldwide Business Development Transactions, R & D Legal Operations, 2301 Renaissance Blvd, King of Prussia, PA, 19406; (b) If to Biovail: Biovail Laboratories Incorporated, Chelston Park, Building 2, Collymore Rock, St. Michael BH1, Barbados, West Indies, Attention: Eugene Melnyk, President with a copy to Biovail Corporation, 7150 Mississauga Road, Mississauga, Ontario L5N 8M5, Attention: Chief Legal Officer. All notices shall be deemed given when received by the addressee.

13.14 Relief From Marketing Obligations. In the event that GSK shall be unable to supply a Product to Biovail for a period of three (3) consecutive calendar months, and Biovail shall deplete its inventory of such Product for sale to the trade, then Biovail may, until such time as GSK resumes shipment of the Product, temporarily suspend its marketing and promotion of the Product. Such temporary suspension shall not be deemed to be a breach of this Agreement. Immediately upon GSK’s resumption of shipments of the Product, Biovail shall resume marketing and promotion of the Product.

13.15 No Benefits Obligations. Each of Biovail and GSK acknowledges and agrees that the other Party is not, and shall not be, responsible to the other Party, its employees, agents or representatives, or to any governmental entity for any compensation or benefits (including without limitation, vacation and holiday remuneration, health care coverage or insurance, life insurance, pension or profit-sharing benefits and disability benefits), pay-roll related taxes or withholdings, or any governmental charges or benefits (including, without limitation, unemployment and disability insurance contributions or benefits and worker’s compensation contributions and benefits) that may be payable to, imposed upon, or be related to the performance of this Agreement by such Party’s employees, agents, contractors or representatives. Each Party acknowledges and agrees that any such individual employees, agents, representatives, contractors or other persons used by such Party to perform its obligations under this Agreement are not employees of the other Party or any of its Affiliates, and that such Persons are not eligible to participate in any “employee benefits plans”, as such term is defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended, that are sponsored by the other Party or any of its Affiliates.

13.16 Audit Rights. Biovail shall, for a period of three (3) years from the end of each Calendar Year during the Term, maintain complete and accurate records of sales, pricing and all other information necessary for GSK to accurately calculate Gross Sales of Products, Net Wholesale Prices charged for Products and satisfaction of Promotional Spend Requirements. GSK shall, upon reasonable advanced written notice, have the right through its employees or an independent, certified public accountant to audit such records at the place or places of business where such records are customarily kept in order to verify the accuracy of the foregoing items. GSK shall bear the full costs of any such audit unless such audit discloses a variance of more than five percent (5%) from the amounts of any Variable Adjustment, Fixed Adjustment or Promotional Spend Requirement calculated in accordance with the terms of this Agreement, in which event, Biovail shall bear the full cost of such audit.

13.17 Condition Precedent. The consummation of the transaction contemplated herein, and rights and obligations of the Parties hereunder, are expressly subject to, and contingent upon,



the execution of the Development Agreement by the Parties and the Parties obtaining any and all required Governmental Authority approvals for the consummation of the transactions contemplated by the Development Agreement, including, without limitation, any and all approvals required under the Hart-Scott-Rodino Antitrust Improvements Act.

13.18 No Reliance. The Parties expressly acknowledge and agree that each Party has full, complete and clear understanding of; (i) the transactions contemplated by this Agreement; (ii) its rights, obligations and liabilities under this Agreement and (iii) all issues and risks associated with the transactions contemplated herein, as uncovered in the course of its due diligence. The Parties further acknowledge and agree that each Party has made a fully informed decision to proceed with the execution of this Agreement and the consummation of the transactions contemplated herein. Each of the Parties further acknowledges and agrees that it is entering into this Agreement in reliance solely and exclusively upon its own due diligence, analysis, forecasts and conclusions, and upon the analysis and opinions of its own outside consultants and advisers (including, without limitation, auditors, accountants and legal counsel), and not as a result of any forecasts, analysis or opinions of the other Party.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed in multiple counterparts by its duly authorized representative.

SEPARATE SIGNATURE PAGES FOLLOW

(Stamped)

Separate Signature Page  
to  
Distribution Rights Agreement  
by and among  
SmithKline Beecham Corporation and  
Biovail Laboratories Incorporated  
Dated

SMITHKLINE BEECHAM CORPORATION

By: /s/ Donald F. Parman  
Name: Donald F. Parman  
Title: Vice President & Secretary

BIOVAIL LABORATORIES INCORPORATED

By: /s/ Eugene Melnyk  
Name: Eugene Melnyk  
Title: President

INDEX OF EXHIBITS

|         |             |                                                                                                                    |
|---------|-------------|--------------------------------------------------------------------------------------------------------------------|
| EXHIBIT | 1.01A       | Product                                                                                                            |
| EXHIBIT | 1.01 B      | Intellectual Property and Trademarks                                                                               |
| EXHIBIT | 5.01(c)(i)  | Additional Rights Payments Upon Generic Entry                                                                      |
| EXHIBIT | 5.01(c)(ii) | Additional Rights Payments Following Generic Entry                                                                 |
| EXHIBIT | 5.02(e)(i)  | Annual Minimum Purchase Requirements                                                                               |
| EXHIBIT | 5.02(e)(ii) | Annual Minimum Purchase Requirements (if Zovirax <input type="checkbox"/> Cream NDA not approved by June 30, 2003) |
| EXHIBIT | 5.05        | Order Quantities                                                                                                   |
| EXHIBIT | 5.14        | Milestone Tables                                                                                                   |
| EXHIBIT | 6.09        | Adverse Events                                                                                                     |
| EXHIBIT | 7.02        | Product Net Wholesale Prices (as of 12/31/01)                                                                      |

Exhibit 1.01A

Zovirax Distribution Agreement

| Product                      |            |              |
|------------------------------|------------|--------------|
| Trade Product (tubes)        | GSK NDC    | Pkg Size     |
| Zovirax Ointment 3G          | 0173099341 | discontinued |
| Zovirax Ointment 15G         | 0173099394 | 1 tube       |
| Zovirax Cream 2G             | 0173070001 | 1 tube       |
| Zovirax Cream 5G             | 0173010053 | 1 tube       |
| Sample Product               | GSK NDC    | Pkg Size     |
| Zovirax Ointment 1.5G Tube   | 0173099321 | discontinued |
| Zovirax Ointment 0.9G Sachet | 0173099320 | 10 Sachets   |
| Zovirax Cream 0.8G Tube      | 0173059941 | discontinued |
| Zovirax Cream 0.9G Sachet    | 0173070020 | 10 Sachets   |

Exhibit 1.01 B

Zovirax Distribution Agreement

Intellectual Property

Trademarks

ZOVIRAX PRESCRIPTION OINTMENT AND CREAM U.S. MARKS

| Mark:              | Reg.: No. | Reg. Date         | Status     | Current Owner |
|--------------------|-----------|-------------------|------------|---------------|
| ZOVIRAX            | 1,141,502 | November 18, 1980 | Renewed    | BW USA Inc.   |
| ZOVIRAX 200        | 2,046,330 | March 18, 1997    | Registered | BW USA Inc.   |
| ZOVIRAX (Stylized) | 2,223,200 | February 9, 1999  | Registered | BW USA Inc.   |

Patents in Effect

| Patent No. | Expiry        |
|------------|---------------|
| 4,963,555  | Oct. 16, 2007 |



Exhibit 5.01(c)(i)

Zovirax Distribution Agreement  
Additional Rights Payments (millions of dollars)  
when Generic Entry for Ointment  
precedes January 1, 2005

|                                    | Additional<br>Rights<br>Payment (\$millions) |        |        |
|------------------------------------|----------------------------------------------|--------|--------|
|                                    | Calendar                                     |        |        |
|                                    | Year                                         |        |        |
|                                    | 2002                                         | 2003   | 2004   |
| Year of Generic Entry for Ointment |                                              |        |        |
| 2002                               | {***}†                                       | {***}† | {***}† |
| 2003                               |                                              | {***}† | {***}† |
| 2004                               |                                              |        | {***}† |

† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

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Zovirax Distribution Agreement

New Additional Rights Payments (millions of dollars)  
beginning with Calendar Year 2003

- 1. Zovirax Cream has not received Product Registration on or before June 30, 2003
- 2. Generic Entry with respect to Zovirax Ointment has occurred

|                              | Additional Rights Payment (\$millions) |        |        |        |
|------------------------------|----------------------------------------|--------|--------|--------|
|                              | Calendar Year                          |        |        |        |
|                              | 2003                                   | 2004   | 2005   | 2006   |
| Date of Zovirax Cream Launch |                                        |        |        |        |
| After 6/30/03                | {***}†                                 | {***}† | {***}† | {***}† |
| After 6/30/04                |                                        | {***}† | {***}† | {***}† |
| After 6/30/05                |                                        |        | {***}† | {***}† |
| After 6/30/06                |                                        |        |        | {***}† |

† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.



Exhibit 5.02 (e)(i)

Zovirax Distribution Agreement

Fixed Annual Minimum Purchase Requirement (millions of dollars)  
when Generic Entry for Ointment  
precedes January 1, 2005

{\*\*\*}†

† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

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Exhibit 5.02 (e)(ii)

Zovirax Distribution Agreement

Fixed Annual Minimum Purchase Requirement (millions of dollars)  
beginning with Calendar Year 2003

- 1. Zovirax Cream has not received Product Registration on or before June 30, 2003
- 2. Generic Entry with respect to Zovirax Ointment has occurred

{\*\*\*}†

† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

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Exhibit 5.05

Zovirax Distribution Agreement

Batch Order Quantities

| Zovirax Ointment       | Minimum Order Quantity |
|------------------------|------------------------|
| 3 gram Tube            | {***}†                 |
| 15 gram Tube           | {***}†                 |
| 1.5 gram Tube Sample   | {***}†                 |
| 0.9 gram Sachet Sample | {***}†                 |
| Zovirax Cream          | Minimum Order Quantity |
| 2 gram Tube            | {***}†                 |
| 5 gram Tube            | {***}†                 |
| 0.8 gram Tube Sample   | {***}†                 |
| 0.9 gram Sachet Sample | {***}†                 |

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Exhibit 5.14

Projected Milestones for Launch  
Zovirax Ointment - .9g Sachet

|                                                                                      |             |
|--------------------------------------------------------------------------------------|-------------|
| REGULATORY                                                                           |             |
| • Submit printed labeling to FDA                                                     | 6 Mar 03    |
| • 30 days elapsed labeling review                                                    | 6 Apr 03    |
| • Submit CBE-30 with 1 batch release data                                            | 6 Apr 03    |
| • Submit release data from 2 additional batches                                      | 30 Apr 03   |
| • 30 days elapsed on CBE-30                                                          | 6 May 03    |
| MANUFACTURING                                                                        |             |
| • Primary installation of sachet filling equipment                                   | Complete    |
| • Equipment qualification and line trials                                            | Complete    |
| • Manufacture/filling of pilot batch to provide first batch release data with CBE-30 | Complete    |
| • Manufacture two validation/commercial batches                                      | 3-5 Mar 03  |
| PRIMARY PACKAGING (FILLING)                                                          |             |
| • Receive / release sachet material                                                  | 28 Feb 03   |
| • Fill two validation/commercial batches (yield ~205,000 sachets each)               | 4-6 Mar 03  |
| • QA release data on two batches available                                           | 27 Mar 03   |
| • Validation documentation completed                                                 | 3 Apr 03    |
| SECONDARY PACKAGING                                                                  |             |
| • Receive / release (conditional) printed folders and trays                          | 31 Mar 03   |
| • Pack batch #1 (yield ~20,500 units)                                                | 1-14 Apr 03 |
| SHIPMENT                                                                             |             |
| • Final release of batch #1 for shipment                                             | 21 May 03   |
| • Ship date to DDN (Biovail)                                                         | 26 May 03   |

Assumptions:

- No further stability issues arise.
- FDA reviews proposed labeling within 4 weeks and makes no changes.
- Vendors of printed components deliver on promise dates.
- No significant manufacturing, filling, or analytical testing issues arise during the validation process.
- FDA has no objections to the CBE-30 filing.
- DMF for Vin Plastics is acceptable to the FDA.

Planned at risk:

- Purchase printed foil, folders, and trays
  - Fill two batches of ointment sachets
  - Package one batch of ointment sachets
-

Projected Milestones for Launch  
Zovirax Cream - 2g Trade and .8g Samples

MANUFACTURING

- Receive / release (conditional) raw materials for manufacture 20-Feb-03
- Experimental batch and line trials 21-Feb – 3-Mar-03
- Manufacture validation/commercial batch #1 10-Mar-03
- Manufacture validation/commercial batches #2 and #3 (needed for validation of manufacturing process) 11 – 12-Mar-03

PRIMARY PACKAGING (FILLING)

- Receive / release (conditional) 2g/.8g tubes 7-Mar-03
- Fill batch #1 - 2g tubes (yield ~198,000) 13 – 14-Mar-03
- Receive/IQ/OQ .8g change parts 14 Mar 03
- Fill batch #2 - .8g tubes (yield ~470,000) 15 – 20-Mar-03

SECONDARY PACKAGING

- Receive / release 2g/.8g cartons, cases, PI's 29-Mar-03
- Pack partial batch #1 – 50,000 2g tubes 2 – 7-Apr-03
- Pack partial batch #2 – 200,000 .8g tubes 8 - 24-Apr

SHIPMENT

- Final QA release of 2g product (50,000 units) 18-Apr-03
- Ex-factory date – 2g 23-Apr-03
- Final QA release of .8g product (200,000) 1 May 03
- Ex-factory date – .8g 6 May 03

Assumptions:

- Vendors of tubes, cartons, trays, cases and PI's deliver on promise dates.
- Components and product used with QA “conditional release” are ultimately found to be within specification.
- All batches are filled within validated bulk hold time.
- No significant manufacturing, filling, or analytical testing issues arise during the validation process.

Planned at risk:

- Filling two batches before stability results known
-

Projected Milestones for Launch  
Zovirax Cream - 5g Trade

|                                                                |                    |
|----------------------------------------------------------------|--------------------|
| STABILITY BATCHES                                              |                    |
| • Receive / Release blank tubes                                | 25-Feb-03          |
| • Manufacture and fill 500 tubes from pilot scale (50kg) batch | 26-Feb - 6-Mar-03  |
| • Put batch up on stability — Time zero                        | 12-Mar-03          |
| VALIDATION / COMMERCIAL BATCH                                  |                    |
| • Approve artwork for 16mm tube                                | 28-Mar-03          |
| • Receive / release (conditional) printed tubes                | 20-May-03          |
| • Manufacture validation/commercial batch                      | 21-May-03          |
| • Primary packaging (filling)                                  | 6 – 8-May-03       |
| • Receive / release printed components                         | 2-May-03           |
| • Secondary packaging                                          | 30-May – 11-Jun-03 |
| CBE-0                                                          |                    |
| • Submit printed labeling to FDA                               | 31-Mar-03          |
| • 30 days elapsed labeling review                              | 30-Apr-03          |
| • 3-month pull date — stability batch                          | 13-Jun-03          |
| • Complete QA testing                                          | 27-Jun-03          |
| • Submit CBE-0 to FDA                                          | 8-Jul-03           |
| SHIPMENT                                                       |                    |
| • Final QA release of 5g product                               | 10-Jul-03          |
| • Ex-factory date                                              | 16-Jul-03          |

Assumptions:

- 4g/single fold tubes have no stability failures and are acceptable to the FDA
- New specifications and artwork for 16mm tubes can be turned around in time for the tube vendor’s next 16mm production run.
- FDA reviews proposed labeling within 4 weeks and makes no changes.
- Vendors of printed components deliver on their promise dates.
- No significant manufacturing, filling, or analytical testing issues arise during the validation process.

Planned at risk:

- Purchase printed tubes and cartons
  - Fill one batch before stability results known
  - Package one batch before filled intermediate is released
-

Projected Milestones for Launch  
Zovirax Cream — .9g Sample Sachet

|                                                           |                    |
|-----------------------------------------------------------|--------------------|
| STABILITY BATCH                                           |                    |
| • Pull 50kq from first 2g/.8g validation/commercial batch | 10-Mar-03          |
| • Fill 1500 sachets                                       | 21-Mar-03          |
| • Put batches up on stability — Time zero                 | 28-Mar-03          |
| VALIDATION / COMMERCIAL BATCH                             |                    |
| • Receive / release printed foil,                         | 17-Apr-03          |
| • Manufacture validation/commercial batch                 | 5-May-03           |
| • Primary packaging (filling)                             | 6 - 8-May-03       |
| • Receive / release printed components                    | 16-Apr-03          |
| • Secondary packaging                                     | 30-May – 12-Jun-03 |
| CBE-30                                                    |                    |
| • Submit printed labeling to FDA                          | 31-Mar-03          |
| • 30 days elapsed labeling review                         | 30-Apr-03          |
| • 3-month pull date — stability batch                     | 1-Jul-03           |
| • Complete QA testing                                     | 9-Jul-03           |
| • Submit CBE-30 to FDA                                    | 18-Jul-03          |
| • 30 days elapsed on CBE-3                                | 18-Aug-03          |
| SHIPMENT                                                  |                    |
| • Final QA release of product                             | 20-Aug-03          |
| • Ex-factory date                                         | 25-Aug-03          |

Assumptions:

- Newly designed filling nozzle performs well with cream product.
- There are no stability failures.
- FDA reviews proposed labeling within 4 weeks and makes no changes.
- Vendors of printed components deliver on their promise dates.
- No significant manufacturing, filling, or analytical testing issues arise during the validation process.
- FDA has no objections to the CBE-30 filing.

Planned at risk:

- Purchase printed foil, folders, and trays
  - Fill two batches of ointment sachets
  - Package one batch of ointment sachets
-

Adverse Events

Between  
Biovail Pharmaceuticals, Inc. (Biovail)  
(as a designate for Biovail Laboratories Incorporated)  
and  
GlaxoSmithKline (GSK)  
for  
the following products:

Zovirax ®(Acyclovir) Cream, 0.05%  
Zovirax ©(Acyclovir) Ointment, 0.05%

I. Introduction

GSK will retain the NDA and complete regulatory responsibilities for the above products as specified in the Code of Federal Regulations (CFR). These regulatory responsibilities include submitting adverse event reports to the FDA as described under CFR 314.80 (c), which includes 15-day reports for serious adverse events, and filing a periodic drug experience report on an annual basis. GSK will continue submitting all other postmarketing reports as described under CFR 314.81 including field alerts and annual reports.

2. Definitions

Serious Adverse Event: Any event which: (a) is fatal, (b) is life-threatening, (c) is disabling or incapacitating, (d) requires or prolongs in-patient hospitalization, (e) is a congenital anomaly or (f) is any event which, though not included in (a) through (e) above, may jeopardise the patient or may require intervention to prevent one of the outcomes listed above.

Spontaneous Report: A spontaneous report concerns an individual patient who has experienced an adverse event in the course of routine clinical practice with the use of a marketed product (i.e., not a patient enrolled in a clinical trial) . The report is unsolicited.

Spontaneous reports include reports from any source (e.g., health professional, consumer, patient, lawyer, company sales representative, relative, etc.) regardless of how well documented. This includes all reports, not just those that meet the definition of serious. A causal relationship does not need to be established.

3. Compliance

Obligations under this Safety Data Exchange will be performed in accordance with all applicable federal, state and local laws and regulations including, but not limited to, the US Federal Food Drug and Cosmetic Act.

---

4. Exchange of Safety Data

4.1 Clock Start Date

Biovail will forward reports of adverse events and pregnancy exposures to GSK according to the following timelines. The clock start date for reporting to GSK begins immediately when any employee or agent of Biovail first receives or is notified of an adverse event or pregnancy report.

4.2 Timelines for Forwarding Spontaneous Reports from Any Source

4.2.1 Procedure During Working Hours

- During Biovail working hours 8:30 AM until 5:00 PM, Biovail will transfer all Zovirax product-related calls to a central phone number within Biovail, staffed by a trained medically-qualified Biovail employee (i.e., this phone number will not be answered by voice mail during working hours).
- If an adverse event is involved, Biovail will complete a GSK-designed phone form. (See Appendix A) Any necessary follow-up calls to complete this form will be the responsibility of Biovail.
- If the call involves a serious adverse event, the report will be sent by fax to GSK at 919-483-5404 within one business day of receipt by Biovail. Non-serious reports will be forwarded by fax to GSK within five business days
- GSK will train the Biovail staff that will be managing the Zovirax product calls, to ensure that they have basic knowledge of adverse events and AE-related procedures.

4.2.2 Procedure After Hours

After the Biovail telephone switchboard closes, 5:00 PM on Monday-Friday and all day Saturday and Sunday), instructions on the main number should instruct callers how they may reach an appropriate Biovail person to report their adverse event Biovail will insure that a mechanism is in place to handle after-hour emergency phone calls regarding adverse events involving the Zovirax products. Serious reports received by Biovail after normal business hours will be sent by fax to GSK at 919-483-5404 within one business day of receipt by Biovail. Non-serious reports received by Biovail after normal business hours will be forwarded by fax to GSK within five business days.

4.2.3 Written Reports

Biovail will send a copy of any written correspondence describing an AE to GSK (including the envelope in which the correspondence was received). These reports will be sent by fax (919-483-5404) within one working day of receipt. Biovail will retain the original written correspondence in accord with existing Biovail retention policies.

---



4.2.4 Reports Received via Biovail Field Staff

Biovail will employ sales representatives or other field staff who may learn of AEs during the course of their interactions with practicing health care professionals. These AEs must be reported by telephone to Biovail immediately in order to ensure the reporting obligation outlined in Section 4.2.1 is met. Biovail will ensure that all field staff are aware of and are trained on this policy.

4.2.5 Literature Reports

GSK will scan scientific/medical literature for AE’s with the Zovirax products. However, if Biovail becomes aware of any publication from the scientific literature in which any of the Zovirax products is a suspect drug, Biovail will forward that publication to GSK by fax within one business day.

5 Follow-Up

GSK is responsible for appropriate follow-up of AE’s reports.

6 Data Dissemination

- GSK shall hold and maintain a Zovirax products database of AE’s.
- GSK shall compile and maintain the Periodic Reports [or Periodic Safety Update Reports (PSURs) when applicable] for the Zovirax products and will provide Biovail with a copy of each of the Periodic Reports (or PSUR) at the time of regulatory submission.
- Biovail will inform GSK of any regulatory inquiries involving safety issues with any of the Zovirax products as soon as possible.

7 Key Contacts

GSK:

Procedural inquiries should be sent to:

Sandra Bettenhausen, RPh, MBA  
Director, Quality Management Group, RTP  
Global Clinical Safety and Pharmacovigilance  
(919) 483-5069

Biovail Pharmaceuticals, Inc.

All Correspondence and Inquiries shall be sent to:

Ben Sarafpour  
Senior Director, Medical Affairs  
908-927-1851

---

The responsible contacts for surveillance are:

GSK

Sandra Bettenhausen, RPh, MBA  
Director, Case Management Group, RTP  
919-483-5069

Karen Dillinger, RN, BSN  
Director, Spontaneous Reports Group  
919-483-5065

Biovail Pharmaceuticals

Ben Sarafpour  
Senior Director, Medical Affairs  
908-927-1851

8           Reviews and Revisions

This agreement will be reviewed every two years and revised as necessary by agreement between the companies.



Appendix A

GSK/Biovail AE Telephone Memo

To: North American Product Surveillance (NAPS)

From(Name): Phone Extension

Date: Time:

Subject: Zovirax AE

PRODUCT INFORMATION

|                      |            |           |  |
|----------------------|------------|-----------|--|
| Product/Formulation: |            |           |  |
|                      |            |           |  |
| Indication:          |            |           |  |
| Dosage:              |            |           |  |
| Start Date:          | Stop Date: | Duration: |  |

SALES REPRESENTATIVE

|                                                          |                                                  |                   |                                               |
|----------------------------------------------------------|--------------------------------------------------|-------------------|-----------------------------------------------|
| Sales Representative Name:                               | Voice Com Number:                                | Territory Number: | Date Sales Rep Was Notified of Adverse Event: |
|                                                          |                                                  |                   |                                               |
| Did Sales Rep ask HCP to complete AE Report Form?        | Sales Rep Comment (Description of potential AE): |                   |                                               |
| <input type="checkbox"/> Yes <input type="checkbox"/> No |                                                  |                   |                                               |

HCP OR CONSUMER (Include HCP Qualification--e.g. MD, RPh, etc.)

|                                                   |                                                          |                |  |                          |
|---------------------------------------------------|----------------------------------------------------------|----------------|--|--------------------------|
| Name:                                             | Address:                                                 |                |  | Phone:                   |
|                                                   |                                                          |                |  |                          |
| Did the consumer consult an HCP regarding the AE? | <input type="checkbox"/> Yes <input type="checkbox"/> No | Date of Onset: |  |                          |
| Comment (Description of potential AE):            |                                                          |                |  | <input type="checkbox"/> |
|                                                   |                                                          |                |  |                          |

Please note if any of the following criteria apply to this report: death, hospitalization, life-threatening, persistent or significant disability/incapacity, congenital anomaly/birth defect.

OTHER INFORMATION

|      |      |                                                                                           |                                                                                           |                                                                                                                                          |
|------|------|-------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------|
| Age: | Sex: | Inpatient Hospitalization?                                                                | Drug Discontinued?                                                                        | Outcome:                                                                                                                                 |
|      |      | <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown | <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown | <input type="checkbox"/> Resolved <input type="checkbox"/> Unresolved <input type="checkbox"/> Improved <input type="checkbox"/> Unknown |

Zovirax Distribution Agreement

| Product               | Current GS NDC | Prices |
|-----------------------|----------------|--------|
| Zovirax Ointment 3gm  | 00173-099341   | {***}† |
| Zovirax Ointment 15gm | 00173-099394   | {***}† |

† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

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AMENDMENT TO AGREEMENT

This AMENDMENT TO AGREEMENT is made effective as of this 1<sup>st</sup> day of May, 2005, by and between Biovail Laboratories International SRL, a Barbados International Society with Restricted Liability having a principal place of business at Chelston Park, Building 2, Collymore Rock, St. Michael, BH1, Barbados, W.I. (“Biovail”), and SmithKline Beecham Corporation, a GlaxoSmithKline company, a corporation duly organized and existing under the applicable laws of the Commonwealth of Pennsylvania having a principal place of business at One Franklin Plaza, Philadelphia, PA 19101 (“GSK”).

WHEREAS, the parties are parties to an Amended and Restated Distribution Rights Agreement (the “Agreement”) effective as of October 26, 2001; and

WHEREAS, the parties now desire to amend the Agreement,

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, GSK and Biovail agree as follows:

- 1. Effective as of the date set forth above, the definition of “Territory” set forth in Article 1 of the Agreement is hereby amended to add the United States Virgin Islands.
- 2. All other terms of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment to Agreement the day and year first above written.

SMITHKLINE BEECHAM CORPORATION

BIOVAIL LABORATORIES INTERNATIONAL SRL

By: /s/ Donald F. Parman  
Title: Vice President & Secretary

By: /s/ John A.R. McCleery  
Title: Vice President, General Manager

**CONFIDENTIAL TREATMENT REQUESTED:**

*Portions of this Exhibit have been redacted pursuant to a request for confidential treatment under Rule 24b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended. Such redacted portions have been replaced with “{\*\*\*}” in this Exhibit. An unredacted version of this document has been filed separately with the Securities and Exchange Commission along with the request for confidential treatment.*

**SECOND AMENDMENT**

**TO THE**

**AMENDED AND RESTATED DISTRIBUTION RIGHTS AGREEMENT**

This SECOND AMENDMENT TO AMENDED AND RESTATED DISTRIBUTION RIGHTS AGREEMENT (the “Second Amendment”) is made effective as of this 12 day of October, 2005, by and between Biovail Laboratories International SRL, a Barbados International Society with Restricted Liability and having a principal place of business at Chelston Park, Building 2, Collymore Rock, St. Michael, BH1, Barbados, WI (“Biovail”), and SmithKline Beecham Corporation, a GlaxoSmithKline company, a corporation duly organized and existing under the applicable laws of the Commonwealth of Pennsylvania and having a principal place of business at One Franklin Plaza, Philadelphia, PA 19101 (“GSK”). Biovail and GSK are collectively referred to in this Second Amendment as the “Parties” and individually as a “Party.”

WHEREAS, Biovail and GSK are parties to an Amended and Restated Distribution Rights Agreement, effective as of October 26, 2001, as amended (the “Agreement”); and

WHEREAS, pursuant to Section 2.01(c) Biovail has contracted with its Affiliate, Biovail Pharmaceuticals, Inc., (“BPI”) to be responsible for promotion, marketing and selling of the Products in the Territory; and

WHEREAS, the pursuant to Section 2.03 of the Agreement, neither Biovail nor BPI may, without GSK’s prior written consent, engage any Third Party to market, promote, advertise, or distribute the Product; and

WHEREAS, BPI desires to engage MedPointe Healthcare, Inc., a corporation duly organized and existing under the applicable laws of the State of Delaware and having a principal place of business at 265 Davidson Avenue, Somerset, NJ 08873 (“MedPointe”), to co-promote the Product as set forth in this Second Amendment; and

WHEREAS, Biovail and GSK mutually desire to amend the terms of the Agreement to allow BPI to engage MedPointe as provided in this Second Amendment.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, GSK and Biovail agree as follows:

---

1. Section 2.04 of the Agreement is hereby deleted in its entirety and replaced with the following:

**“2.04 Approval of MedPointe.**

(a) Notwithstanding the provisions of Section 2.03 and subject to the terms and conditions of this Section 2.04, GSK hereby consents to the engagement by BPI of MedPointe Healthcare, Inc. to perform certain promotional activities with respect to the Products.

(b) The consent granted by GSK as provided in Section 2.04(a) above is limited to MedPointe only and only for the co-promotion activities set forth in Section 2.04(c). Further, the consent granted by GSK to Biovail as provided in Section 2.04(a) will become effective upon October 1, 2005, and will remain in effect for the immediately succeeding consecutive three (3) year period (the “MedPointe Term”), which MedPointe Term may be extended for additional consecutive twelve (12) month periods by mutual written agreement of the Parties.

(c) Biovail acknowledges and agrees that BPI will enter into a written agreement with MedPointe to engage MedPointe to perform promotional services with respect to the Products (the “MedPointe Detailing Services Agreement”). The term of the MedPointe Detailing Services Agreement will not exceed the duration of the MedPointe Term and the MedPointe Detailing Services Agreement will immediately terminate upon termination of this Agreement. The MedPointe Detailing Services Agreement will provide that MedPointe’s activities will consist of providing annually approximately {\*\*\*}† details of the Products and distributing Sample Product. Biovail represents and warrants that (i) the MedPointe Detailing Services Agreement will obligate MedPointe to comply with all obligations of Biovail under this Agreement (including without limitation, Biovail’s obligations under Article 3 and Biovail’s confidentiality obligations) in the performance of MedPointe’s obligations under the MedPointe Detailing Services Agreement; (ii) the terms and conditions of the MedPointe Detailing Services Agreement will be consistent with, and no less restrictive than, the terms and conditions of this Agreement, and (iii) Biovail will provide to GSK a copy of the MedPointe Detailing Services Agreement within ten (10) Business Days after execution thereof.

(d) Biovail represents and warrants that MedPointe is not an Ineligible Person. Biovail agrees that the MedPointe Detailing Services Agreement will immediately terminate in the event that MedPointe should become an Ineligible Person at any time during the MedPointe Term. Biovail represents and warrants that the MedPointe Detailing Services Agreement will obligate MedPointe not to hire or otherwise engage any Ineligible Person to co-promote the Product and/or distribute the Sample Product as provided in the MedPointe Detailing Services Agreement. For the purposes of this Section 2.04(d), the term “Ineligible Person” means any Person who is currently

---

† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

excluded, debarred, suspended or otherwise ineligible to participate in the Federal health care programs or in Federal procurement or nonprocurement programs, or has been convicted of a criminal offense that falls within the ambit of 42 U.S.C. 1320a-7(a), but has not yet been excluded, debarred, suspended or otherwise declared ineligible.

(e) Biovail acknowledges and agrees that despite GSK's consent granted in Section 2.04 above to the engagement of MedPointe as provided herein, Biovail remains obligated to perform all terms, obligations, covenants and agreement ascribed to it in this Agreement.

(f) Biovail acknowledges and agrees that for the purposes of this Agreement, MedPointe will be deemed to be an agent of BPI and will also be regarded as a CSO. Biovail acknowledges and agrees that its indemnification obligations provided in Section 9.02 of this Agreement will also include any GSK Claim that arises out of, or is the result of, any act or omission by MedPointe (as a CSO).

(g) Biovail will indemnify and hold harmless each GSK Party (as defined in Section 9.02) from and against any and all losses, liabilities, damages (exclusive of consequential or special losses or damages), fees (including, attorneys fees and costs of litigation), and expenses paid or payable by a GSK Party that result from or arise in connection with a claim, suit or other proceeding made or brought against a GSK Party (i) based on, resulting from, or arising in connection with any act or omission of any party under the MedPointe Detailing Services Agreement; and/or (ii) arising by or on behalf of MedPointe and/or any of MedPointe's affiliates, employees, agents, officers, and directors."

2. The term "Designated Biovail Affiliate" will be deleted throughout the Agreement and replaced in all instances with "a CSO", including, without limitation, in Section 9.02.

3. The term "CSO" will be added as a new definition in Section 1.01 between the definitions of "Confidentiality Agreement" and "DDMAC." The definition of "CSO" will be as follows:

"CSO" means a Third Party contract sales organization which is engaged in the business of promoting prescription drug products and which may only be engaged by Biovail or BPI as provided in Section 2.04.

4. Section 12.06(b) of the Agreement will be deleted in its entirety and replaced with the following:

"(b) All of the Parties' rights and obligations under Articles 9 and 11 and Sections 2.04(f), 2.04(g), 5.01(a), and 12.05 shall survive expiration or termination of this Agreement."

5. All capitalized terms not otherwise defined in this Second Amendment will have the meanings ascribed to them in the Agreement.

6. Except as otherwise amended by the terms of this Second Amendment, the provisions of the Agreement are unchanged, remain in full force and effect and are hereby ratified and confirmed except that each reference to the “Agreement” or words of like import in the Agreement will mean and be a reference to the Agreement as amended by this Second Amendment.

7. This Second Amendment will be construed, and the respective rights of the Parties determined, according to the substantive law of the State of New York notwithstanding the provisions governing conflict of laws under such New York law to the contrary.

8. This Second Amendment may be executed in any number of counterparts, each of which will be deemed an original but all of which together will constitute one and the same document.

**IN WITNESS WHEREOF**, the Parties have executed this Second Amendment to the Amended and Restated Distribution Agreement the day and year first above written.

**SMITHKLINE BEECHAM CORPORATION D/B/A  
GLAXOSMITHKLINE**

By: /s/ Donald F. Parman  
Name: Donald F. Parman  
Title: Vice President & Secretary

**BIOVAIL LABORATORIES INTERNATIONAL SRL**

By: /s/ Arlene Fong  
Name: Arlene Fong  
Title: Manager & Secretary

**CONFIDENTIAL TREATMENT REQUESTED:**

*Portions of this Exhibit have been redacted pursuant to a request for confidential treatment under Rule 24b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended. Such redacted portions have been replaced with “{\*\*\*}” in this Exhibit. An unredacted version of this document has been filed separately with the Securities and Exchange Commission along with the request for confidential treatment.*

**THIRD AMENDMENT  
TO THE  
AMENDED AND RESTATED DISTRIBUTION RIGHTS AGREEMENT**

This THIRD AMENDMENT TO AMENDED AND RESTATED DISTRIBUTION RIGHTS AGREEMENT (the “Third Amendment”) is made effective as of this 18th day of December, 2006, by and between Biovail Laboratories International SRL, a Barbados International Society with Restricted Liability and having a principal place of business at Chelston Park, Building 2, Collymore Rock, St. Michael, BH1, Barbados, W.I. (“Biovail”), and SmithKline Beecham Corporation, a GlaxoSmithKline company, a corporation duly organized and existing under the applicable laws of the Commonwealth of Pennsylvania and having a principal place of business at One Franklin Plaza, Philadelphia, PA 19101 (“GSK”). Biovail and GSK are collectively referred to in this Third Amendment as the “Parties” and individually as a “Party.”

WHEREAS, Biovail and GSK are parties to an Amended and Restated Distribution Rights Agreement, effective as of October 26, 2001, as amended by the First Amendment to the Amended and Restated Distribution Rights Agreement effective as of May 1, 2005 and the Second Amendment to the Amended and Restated Distribution Rights Agreement effective as of October 12, 2005 (the “Agreement”); and

WHEREAS, pursuant to Section 2.01(c) Biovail has contracted with its Affiliate, Biovail Pharmaceuticals, Inc., (“BPI”) to be responsible for promotion, marketing and selling of the Products in the Territory; and

WHEREAS, the pursuant to Section 2.03 of the Agreement, neither Biovail nor BPI may, without GSK’s prior written consent, grant to any Third Party any rights to market, promote, advertise, or distribute the Product; and

WHEREAS, BPI desires to retain to Sciele Pharma, Inc., a corporation duly organized and existing under the applicable laws of the State of Delaware and having a principal place of business at Suite 1800, Five Concourse Parkway, Atlanta, Georgia 30328 and its wholly owned subsidiaries listed on Schedule “A” attached hereto (collectively, “Sciele”), to provide to co-promotion and other services in respect of the Products as set forth in this Third Amendment; and

WHEREAS, Biovail and GSK mutually desire to amend the terms of the Agreement relating to Biovail’s engagement of Sciele as provided in this Third Amendment.

---

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, GSK and Biovail agree as follows:

1. Section 2.04 of the Agreement is hereby deleted in its entirety and replaced with the following:

**“2.04 Approval of Sciele.**

(a) Notwithstanding the provisions of Section 2.03 and subject to the terms and conditions of this Section 2.04, GSK hereby consents to the engagement by BPI of Sciele to perform certain promotional activities with respect to the Products.

(b) The consent granted by GSK to BPI as provided in Section 2.04(a) above is limited to Sciele only and only for the co-promotion activities set forth in Section 2.04(c). For clarity, the consent granted by GSK as provided herein will not apply to any successor (whether by merger, consolidation, reorganization or other similar event) of Sciele’s business or to a purchaser of all or substantially all of Sciele’s business assets (a “Change of Control”) unless such successor has been approved by GSK. Further, the consent granted by GSK to Biovail as provided in Section 2.04(a) will become effective on January 1, 2007, and will extend until the earlier of (i) the expiration or earlier termination of this Agreement, (ii) the expiration or earlier termination of the Sciele Promotional Services Agreement, or (iii) the effective date of a Change of Control if GSK has not approved such Change of Control (the “Sciele Term”).

(c) Biovail acknowledges and agrees that BPI will enter into a written agreement with Sciele to engage Sciele to perform promotional services with respect to the Products (the “Sciele Promotional Services Agreement”). The term of the Sciele Promotional Services Agreement will not extend beyond the Term of this Agreement. Further, the Sciele Promotional Services Agreement will immediately terminate upon the expiration or earlier termination of this Agreement. The Sciele Promotional Services Agreement will provide that Sciele’s activities will consist of marketing, promoting, advertising and detailing Products in the Territory as directed by BPI. Further, BPI and Sciele will jointly develop and approve marketing plans and pricing for Products in the Territory. Biovail represents and warrants that (i) the Sciele Promotional Services Agreement will obligate Sciele to comply with those obligations of Biovail under this Agreement (including without limitation, Biovail’s obligations under Article 3, Biovail’s obligation to comply with the Pre-Clearance Process, which was initiated by GSK in a letter to Biovail dated October 26, 2006 and further clarified by GSK in a letter to Robert W. Ashworth, Ph.D. dated November 27, 2006, and Biovail’s confidentiality obligations) related to the provision of advertising, marketing and promotional services and detailing the Products in the Territory in the performance of Sciele’s obligations under the Sciele Promotional Services Agreement, (provided that Biovail shall continue to file any required Form 2253 filings with DDMAC in respect of promotional materials for the Products); and (ii) the terms and conditions of the Sciele Promotional Services Agreement will be in compliance with Applicable Law and will be consistent with, and no less restrictive than, the terms and conditions of this Agreement. In accordance with



the confidentiality provisions of this Agreement, GSK hereby consents to Biovail providing Sciele with a copy of the Agreement, subject to Sciele's commitment to maintain such confidentiality in accordance with Article 11 of this Agreement.

(d) Biovail represents and warrants that Sciele is not an Ineligible Person. Biovail agrees that the Sciele Promotional Services Agreement will immediately terminate in the event that Sciele should become an Ineligible Person at any time during the Sciele Term. Biovail represents and warrants that the Sciele Promotional Services Agreement will obligate Sciele not to hire or otherwise engage any Ineligible Person to co-promote the Product and/or distribute the Sample Product as provided in the Sciele Promotional Services Agreement. For the purposes of this Section 2.04(d), the term "Ineligible Person" means any Person who is currently excluded, debarred, suspended or otherwise ineligible to participate in the Federal health care programs or in Federal procurement or nonprocurement programs, or has been convicted of a criminal offense that falls within the ambit of 42 U.S.C. 1320a-7(a), but has not yet been excluded, debarred, suspended or otherwise declared ineligible.

(e) Biovail acknowledges and agrees that despite GSK's consent granted in Section 2.04 above to BPI's engagement of Sciele as provided herein, Biovail remains obligated to perform all terms, obligations, covenants and agreements ascribed to it in this Agreement.

(f) Biovail acknowledges and agrees that for the purposes of this Agreement, Sciele will be deemed to be an agent of BPI and will also be regarded as a CSO. Biovail acknowledges and agrees that its indemnification obligations provided in Section 9.02 of this Agreement will also include any GSK Claim that arises out of, or is the result of any act or omission by Sciele (as a CSO).

(g) Biovail will indemnify and hold harmless each GSK Party (as defined in Section 9.02) from and against any and all losses, liabilities, damages (exclusive of consequential or special losses or damages), fees (including, attorneys fees and costs of litigation), and expenses paid or payable by a GSK Party that result from or arise in connection with a claim, suit or other proceeding made or brought against a GSK Party (i) based on, resulting from, or arising in connection with any act or omission of any party under the Sciele Promotional Services Agreement; and/or (ii) arising by or on behalf of Sciele and/or any of Sciele's affiliates, employees, agents, officers, and directors."

2. Section 3.14 of the Agreement is hereby deleted in its entirety and replaced with the following:

**"3.14 Promotional Spend Requirement.** In each Calendar Year during the Term of this Agreement, Biovail shall, commit, allocate and spend, at a minimum funds in the amounts set forth below for Promotional Support of the Products as specified below (each a "Promotional Spend Requirement", collectively the "Promotional Spend Requirements"):

- (i) Calendar Years {\*\*\*}† — {\*\*\*}† of Gross Sales of each Product during the immediately preceding Calendar Year;
- (ii) Calendar Years {\*\*\*}† — {\*\*\*}† of Gross Sales of each Product during the immediately preceding Calendar Year;
- (iii) Calendar Years {\*\*\*}† — {\*\*\*}† of Gross Sales of each Product during the immediately preceding Calendar Year; and
- (iv) Calendar Years {\*\*\*}† — {\*\*\*}† of Gross Sales of Zovirax® Cream during the immediately preceding Calendar Year.

For clarity, and without limiting the foregoing, Biovail shall have no obligation to commit promotional spending in respect of the Zovirax® Ointment Product after the end of {\*\*\*}†, and the Promotional Spend Requirement set forth in item (iv) above shall be in respect of the Zovirax® Cream only.

In the event of Generic Entry with respect to a Product, the Promotional Spend Requirement for that Product for the period of {\*\*\*}† calendar months following the date of Generic Entry shall be {\*\*\*}† of the then applicable percentage rates set forth immediately above, and upon expiration of said {\*\*\*}† month period, shall thereafter be zero.

In each Calendar Year, Biovail shall allocate not less than {\*\*\*}† of the applicable Promotional Spend Requirement to personal field selling activities for the relevant Products in the Territory.

3. Section 5.06(a)(iii) of the Agreement is hereby deleted in its entirety and replaced with the following:

“(iii) Calendar Years 2010-2021— For each of the Calendar Years 2010 through 2021, the purchase price to be paid by Biovail for Zovirax® Ointment shall be {\*\*\*}† of the Net Wholesale Price charged for the Product by Biovail as of the issue date of GSK’s invoice to Biovail therefor.”

4. Section 5.06(b)(iii) of the Agreement is hereby deleted in its entirety and replaced with the following:

“(iii) Calendar Years 2010-2021— For each of the Calendar Years 2010 through 2021, the purchase price to be paid by Biovail for Zovirax® Cream shall be {\*\*\*}† of the Net Wholesale Price charged by Biovail for the Product as of the issue date of GSK’s invoice to Biovail for the Product.”

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† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

5. All capitalized terms not otherwise defined in this Third Amendment will have the meanings ascribed to them in the Agreement.

6. Except as otherwise amended by the terms of this Third Amendment, the provisions of the Agreement are unchanged, remain in full force and effect and are hereby ratified and confirmed except that each reference to the “Agreement” or words of like import in the Agreement will mean and be a reference to the Agreement as amended by this Third Amendment.

7. This Third Amendment will be construed, and the respective rights of the Parties determined, according to the substantive law of the State of New York notwithstanding the provisions governing conflict of laws under such New York law to the contrary.

8. This Third Amendment may be executed in any number of counterparts, each of which will be deemed an original but all of which together will constitute one and the same document.

*[The remainder of this page is intentionally left blank]*

Schedule “A”

Sciele Pharma Sales, Inc.

IN WITNESS WHEREOF, the Parties have executed this Third Amendment to the Amended and Restated Distribution Agreement the day and year first above written.

SMITHKLINE BEECHAM CORPORATION  
D/B/A GLAXOSMITHKLINE

By: /s/ Donald F. Parman  
Name: Donald F. Parman  
Title: Vice President and Secretary

BIOVAIL LABORATORIES:  
INTERNATIONAL SRL

By: /s/ Michel Chouinard  
Name: Michel Chouinard  
Title: Chief Operating Officer

**FOURTH AMENDMENT  
TO THE  
AMENDED AND RESTATED DISTRIBUTION RIGHTS AGREEMENT**

This FOURTH AMENDMENT TO AMENDED AND RESTATED DISTRIBUTION RIGHTS AGREEMENT (the “Fourth Amendment”) is made effective as of this 21st day of November, 2008, by and between Biovail Laboratories International SRL, a Barbados International Society with Restricted Liability and having a principal place of business at Welches, Christ Church, Barbados, West Indies (“Biovail”), and SmithKline Beecham Corporation, a GlaxoSmithKline company, a corporation duly organized and existing under the applicable laws of the Commonwealth of Pennsylvania and having a principal place of business at One Franklin Plaza, Philadelphia, PA 19101 (“GSK”). Biovail and GSK are collectively referred to in this Fourth Amendment as the “Parties” and individually as a “Party.”

WHEREAS, Biovail and GSK are parties to an Amended and Restated Distribution Rights Agreement, effective as of October 26, 2001, as amended by the First Amendment to the Amended and Restated Distribution Rights Agreement effective as of May 1, 2005, the Second Amendment to the Amended and Restated Distribution Rights Agreement effective as of October 12, 2005 and the Third Amendment to the Amended and Restated Distribution Rights Agreement effective as of December 18, 2006 (the “Third Amendment”) (collectively, the “Agreement”); and

WHEREAS, pursuant to Section 2.01(c) Biovail has contracted with its Affiliate, Biovail Pharmaceuticals, Inc. (now BTA Pharmaceuticals, Inc.) (“BTA”), to be responsible for promotion, marketing and selling of the Products in the Territory; and

WHEREAS, pursuant to Section 2.03 of the Agreement, neither Biovail nor BTA may, without GSK’s prior written consent, grant to any Third Party any rights to market, promote, advertise, or distribute the Product; and

WHEREAS, pursuant to the Third Amendment, GSK consented to the engagement by Biovail Pharmaceuticals, Inc. of Sciele Pharma, Inc. (“Sciele”) to perform certain promotional activities with respect to the Products;

WHEREAS BTA recently terminated the engagement of Sciele;

WHEREAS, BTA desires to retain to Publicis Selling Solutions, Inc., a contract sales organization duly organized and existing under the applicable laws of the State of New Jersey and having a principal place of business at 2000 Lenox Drive, Suite 100, Lawrenceville, New Jersey 08648 (“PSS”), to provide promotion and other services in respect of the Products as set forth in this Fourth Amendment; and

WHEREAS, Biovail and GSK mutually desire to amend the terms of the Agreement relating to Biovail’s engagement of PSS as provided in this Fourth Amendment.

---

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, GSK and Biovail agree as follows:

1. Section 2.04 of the Agreement is hereby deleted in its entirety and replaced with the following:

**“2.04 Approval of PSS.**

(a) Notwithstanding the provisions of Section 2.03 and subject to the terms and conditions of this Section 2.04, GSK hereby consents to the engagement by BTA of PSS to perform certain promotional activities with respect to the Products.

(b) The consent granted by GSK to BTA as provided in Section 2.04(a) above is limited to PSS only and only for the promotion activities set forth in Section 2.04(c). For clarity, the consent granted by GSK as provided herein will not apply to any successor (whether by merger, consolidation, reorganization or other similar event) of PSS's business or to a purchaser of all or substantially all of PSS's business assets (a "Change of Control") unless such successor has been approved by GSK. Further, the consent granted by GSK to Biovail as provided in Section 2.04(a) will become effective on November 21, 2008, and will extend until the earlier of (i) the expiration or earlier termination of this Agreement, (ii) the expiration or earlier termination of the PSS Professional Detailing Services Agreement (as defined below), or (iii) the effective date of a Change of Control if GSK has not approved such Change of Control (the "PSS Term").

(c) Biovail acknowledges and agrees that BTA will enter into a written agreement with PSS to engage PSS to perform promotional services with respect to the Products (the "PSS Professional Detailing Services Agreement"). The term of the PSS Professional Detailing Services Agreement will not extend beyond the Term of this Agreement. Further, the PSS Professional Detailing Services Agreement will immediately terminate upon the expiration or earlier termination of this Agreement. The PSS Professional Detailing Services Agreement will provide that PSS's activities will consist of promoting and detailing Products in the Territory as directed by BTA. Biovail represents and warrants that (i) the PSS Professional Detailing Services Agreement will obligate PSS to comply with those obligations of Biovail under this Agreement (including without limitation, Biovail's obligations under Article 3, Biovail's obligation to comply with the Pre-Clearance Process, which was initiated by GSK in a letter to Biovail dated October 26, 2006 and further clarified by GSK in a letter to Robert W. Ashworth, Ph.D. dated November 27, 2006, and Biovail's confidentiality obligations) related to the provision promotional services and detailing the Products in the Territory in the performance of PSS's obligations under the PSS Professional Detailing Services Agreement, (provided that Biovail shall continue to file any required Form 2253 filings with DDMAC in respect of promotional materials for the Products); and (ii) the terms and conditions of the PSS Professional Detailing Services Agreement will be in compliance with Applicable Law and will be consistent with, and no less restrictive than, the terms and conditions of this Agreement. In accordance with the confidentiality provisions of this Agreement, GSK hereby consents to Biovail providing PSS with a copy of the Agreement, subject to PSS's commitment to maintain such confidentiality in accordance with Article 11 of this Agreement.

(d) Biovail represents and warrants that PSS is not an Ineligible Person. Biovail agrees that the PSS Professional Detailing Services Agreement will immediately terminate in the event that PSS should become an Ineligible Person at any time during the PSS Term. Biovail represents and warrants that the PSS Professional Detailing Services Agreement will obligate PSS not to hire or otherwise engage any Ineligible Person to co-promote the Product and/or distribute the Sample Product as provided in the PSS Professional Detailing Services Agreement. For the purposes of this Section 2.04(d), the term “Ineligible Person” means any Person who is currently excluded, debarred, suspended or otherwise ineligible to participate in the Federal health care programs or in Federal procurement or nonprocurement programs, or has been convicted of a criminal offense that falls within the ambit of 42 U.S.C. 1320a-7(a), but has not yet been excluded, debarred, suspended or otherwise declared ineligible.

(e) Biovail acknowledges and agrees that despite GSK’s consent granted in Section 2.04 above to BTA’s engagement of PSS as provided herein, Biovail remains obligated to perform all terms, obligations, covenants and agreements ascribed to it in this Agreement.

(f) Biovail acknowledges and agrees that for the purposes of this Agreement, PSS will be deemed to be an agent of BTA and will also be regarded as a contract sale organization (CSO). Biovail acknowledges and agrees that its indemnification obligations provided in Section 9.02 of this Agreement will also include any GSK Claim that arises out of, or is the result of, any act or omission by PSS (as a CSO).

(g) Biovail will indemnify and hold harmless each GSK Party (as defined in Section 9.02) from and against any and all losses, liabilities, damages (exclusive of consequential or special losses or damages), fees (including, attorneys fees and costs of litigation), and expenses paid or payable by a GSK Party that result from or arise in connection with a claim, suit or other proceeding made or brought against a GSK Party (i) based on, resulting from, or arising in connection with any act or omission of any party under the PSS Professional Detailing Services Agreement; and/or (ii) arising by or on behalf of PSS and/or any of PSS’s affiliates, employees, agents, officers, and directors.”

2. All capitalized terms not otherwise defined in this Fourth Amendment will have the meanings ascribed to them in the Agreement.

3. Except as otherwise amended by the terms of this Fourth Amendment, the provisions of the Agreement are unchanged, remain in full force and effect and are hereby ratified and confirmed except that each reference to the “Agreement” or words of like import in the Agreement will mean and be a reference to the Agreement as amended by this Fourth Amendment.

4. This Fourth Amendment will be construed, and the respective rights of the Parties determined, according to the substantive law of the State of New York notwithstanding the provisions governing conflict of laws under such New York law to the contrary.



5. This Fourth Amendment may be executed in any number of counterparts, each of which will be deemed an original but all of which together will constitute one and the same document.

*[The remainder of this page is intentionally left blank]*

IN WITNESS WHEREOF, the Parties have executed this Fourth Amendment to the Amended and Restated Distribution Agreement the day and year first above written.

**SMITHKLINE BEECHAM CORPORATION  
D/B/A GLAXOSMITHKLINE**

By: /s/ Carol G. Ashe  
Name: Carol G. Ashe  
Title: Company Secretary

**BIOVAIL LABORATORIES  
INTERNATIONAL SRL**

By: /s/ Jean-Luc Martre  
Name: Jean-Luc Martre  
Title: VP Commercial Operations

Biovail Laboratories International SRL  
Welches, Christ Church  
Barbados, West Indies BB17154

May 14, 2009

SmithKline Beecham Corporation  
5 Moore Drive  
Research Triangle Park, NC 27709

**Re: Fifth Amendment to the Distribution Rights Agreement**

Dear Sir/Madam:

This letter (the “Fifth Amendment”), to be effective as of the date set forth above, is in reference to that certain Amended and Restated Distribution Rights Agreement, effective as of October 26, 2001, as amended by the First Amendment to the Amended and Restated Distribution Rights Agreement, effective as of May 1, 2005, the Second Amendment to the Amended and Restated Distribution Rights Agreement, effective as of October 12, 2005, the Third Amendment to the Amended and Restated Distribution Rights Agreement, effective as of December 18, 2006, and the Fourth Amendment to the Amended and Restated Distribution Rights Agreement, effective as of November 21, 2008 (collectively, the “Zovirax Agreement”), between Biovail Laboratories International SRL (“Biovail”) and SmithKline Beecham Corporation (“GSK”). Capitalized terms used herein but not otherwise defined shall have the meanings set forth in the Zovirax Agreement.

WHEREAS, Biovail and GSK have entered into that certain Asset Purchase Agreement (“Asset Purchase Agreement”), dated May 5, 2009, whereby Biovail purchased certain assets of GSK related to Wellbutrin XL® in the United States.

NOW, THEREFORE, in consideration of Biovail entering into the Asset Purchase Agreement and other good and valuable consideration, the receipt and legal sufficiency of which are mutually acknowledged, Biovail and GSK hereby agree to amend the Zovirax Agreement as follows:

1. Amendments to the Zovirax Agreement.
    - (a) Sections 5.01(c), 5.01(d), 5.01(f), 5.02(c) and 5.02(d) of the Zovirax Agreement are hereby deleted in their entirety and shall have no further force or effect.
    - (b) Section 5.02(b) of the Zovirax Agreement is hereby amended and restated in its entirety as follows:

“(b) Minimum Purchase Requirements — There will be no minimum purchase requirements under this Agreement.”
    - (c) The following definitions of the Zovirax Agreement are hereby deleted in their entirety:
-

“Additional Rights Lump Sum Payment”  
“Additional Rights Payment”  
“Annual Minimum Purchase Requirements”  
“Fixed Annual Minimum Purchase Requirement”  
“Variable Additional Rights Payment”  
“Variable Annual Minimum Purchase Requirement”

2. Miscellaneous.

- (a) Amendment. This Fifth Amendment may not be amended, terminated, waived or altered except by written instrument executed by Biovail and GSK, nor shall any waiver be effective against any party unless in writing and executed by such party.
- (b) Full Force and Effect. Except as expressly amended by this Fifth Amendment, all terms and conditions of the Zovirax Agreement shall remain in full force and effect except that each reference to the “Agreement” or words of like import in the Agreement will mean and be a reference to the Agreement as amended by this Fifth Amendment.
- (c) Governing Law. This Fifth Amendment shall be governed by and construed in accordance with the laws of the State of New York, without regard to its conflicts of laws principles.
- (d) Conflict. In all events, the terms and provisions of this Fifth Amendment shall be enforceable notwithstanding any conflicting term or provision set forth in the Zovirax Agreement. In the event of any conflict between any term or provision of this Fifth Amendment and any term or provision set forth in the Zovirax Agreement, such term or provision of this Fifth Amendment shall prevail over such term or provision set forth in the Zovirax Agreement.
- (e) Counterparts. This Fifth Amendment may be executed in counterparts and by facsimile, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- (f) No Agency. Nothing contained in this Fifth Amendment shall be deemed to imply or constitute either party as the agent or representative of the other party, or both parties as joint venturers or partners for any purpose.
- (g) Validity. If a court of competent jurisdiction holds any provision hereof invalid or unenforceable, such invalidity shall not affect the validity or operation of any other provision and such invalid provision shall be deemed to be severed from this Fifth Amendment.

[NO FURTHER TEXT ON THIS PAGE]

Please indicate your acceptance of the terms of this Fifth Amendment to the Amended and Restated Distribution Rights Agreement by returning a signed copy to the undersigned.

**BIOVAIL LABORATORIES INTERNATIONAL SRL**

By: /s/ Michel Chouinard  
Name: Michel Chouinard  
Title: Chief Operating Officer

**ACCEPTED AND AGREED BY:**

**SMITHKLINE BEECHAM CORPORATION**

By: /s/ William J. Mosher  
Name: William J. Mosher  
Title: Vice President & Secretary  
Date:

Signature Page to Fifth Amendment to the Distribution Rights Agreement

SIXTH AMENDMENT  
TO THE  
AMENDED AND RESTATED DISTRIBUTION RIGHTS AGREEMENT

THIS SIXTH AMENDMENT TO THE AMENDED AND RESTATED DISTRIBUTION RIGHTS AGREEMENT (the “Sixth Amendment”) is made effective as of this 16<sup>th</sup> day of September, 2009 by and between Biovail Laboratories International SRL, a Barbados International Society with Restricted Liability and having a principal place of business at Welches, Christ Church, BB17154, Barbados, West Indies (“Biovail”) and SmithKline Beecham Corporation, a GlaxoSmithKline company, a corporation duly organized and existing under the applicable laws of the Commonwealth of Pennsylvania having a principal place of business at One Franklin Plaza, Philadelphia, PA 19102 (“GSK”). GSK and Biovail are collectively referred to in this Sixth Amendment as “Parties” and individually as a “Party”.

WHEREAS, GSK and Biovail are parties to an Amended and Restated Distribution Rights Agreement, effective as of October 26, 2001, as amended on May 1, 2005, October 12, 2005, December 18, 2006, November 21, 2008 and May 14, 2009 (collectively, the “Agreement”);

WHEREAS, the Parties desire to amend the Agreement to allow for Biovail or its Affiliate to market, promote, advertise, detail, sell and distribute a 30 gram tube size of Zovirax Ointment in the Territory in accordance with the terms of the Agreement.

NOW THEREFORE, in consideration of the promises, representations, warranties, covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound hereby, agree to amend the Agreement as follows:

1. The following shall be added as the last entry under the list of “Trade Product (tubes)” set forth in Exhibit 1.01A:  
  
“Zovirax Ointment 30G    **[NDC # to be provided]**    I tube”
  2. The reference to “30 gram Tube” shall be added as the last entry under the heading “Zovirax Ointment” set forth in Exhibit 5.05 and the corresponding order quantity amount of “15,250” shall be added as the last entry under the corresponding heading “Minimum Order Quantity” in Exhibit 5.05.”
  3. For clarity, the purchase price to be paid by Biovail for the 30 gram tube of Zovirax Ointment will be as set forth in Sections 5.06(a)(ii) and 5.06(a)(iii) of the Agreement, as applicable.
  4. All capitalized terms not otherwise defined in this Sixth Amendment will have meanings ascribed to them in the Agreement.
  5. Except as otherwise amended by the terms of this Sixth Amendment, the provisions of the Agreement are unchanged, remain in full force and effect and
-

are hereby ratified and confirmed except that each reference to “Agreement” or words of like import in the Agreement will mean and be a reference to the Agreement as amended by this Sixth Amendment.

6. In all events, the terms and provisions of this Sixth Amendment shall be enforceable notwithstanding any conflicting term or provision set forth in the Agreement. In the event of any conflict between any term or provision of this Sixth Amendment and any term or provision set forth in the Agreement, such term or provision of this Sixth Amendment shall prevail over such term or provision set forth in the Agreement.
7. This Sixth Amendment will be construed, and the respective rights of the Parties determined, according to the substantive law of New York notwithstanding the provisions governing conflict of laws under such New York law to the contrary.
8. This Sixth Amendment may be executed in any number of counterparts, each of which will be deemed an original but all of which together will constitute one and the same document.
9. Nothing contained in this Sixth Amendment shall be deemed to imply or constitute either party as the agent or representative of the other party, or both parties as joint venturers or partners for any purpose.
10. If a court of competent jurisdiction holds any provision hereof invalid or unenforceable, such invalidity shall not affect the validity or operation of any other provision and such invalid provision shall be deemed to be severed from this Sixth Amendment.

[signatures follow]

**IN WITNESS WHEREOF**, the Parties have executed this Sixth Amendment to the Amended and Restated Distribution Agreement on the day and year first above written.

SMITHKLINE BEECHAM CORPORATION  
d/b/a GLAXOSMITHKLINE

BIOVAIL LABORATORIES  
INTERNATIONAL SRL

By: /s/ Justin T. Huang

By: /s/ Jean-Luc Martre

Name: Justin t. Huang

Name: Jean-Luc Martre

Title: Assistant Secretary

Title: VP Commercial Operations



**SEVENTH AMENDMENT  
TO THE  
AMENDED AND RESTATED DISTRIBUTION RIGHTS AGREEMENT**

THIS SEVENTH AMENDMENT TO AMENDED AND RESTATED DISTRIBUTION RIGHTS AGREEMENT (the “Seventh Amendment”) is made effective as of this       day of November, 2009 by and between Biovail Laboratories International SRL, a Barbados International Society with Restricted Liability and having a principal place of business at Welches, Christ Church, Barbados, BB17154, West Indies (“Biovail”) and SmithKline Beecham Corporation, a GlaxoSmithKline company, a corporation duly organized and existing under the applicable laws of the Commonwealth of Pennsylvania having a principal place of business at One Franklin Plaza, Philadelphia, PA 19102 (“GSK”). GSK and Biovail are collectively referred to in this Seventh Amendment as “Parties” and individually as a “Party”.

WHEREAS, GSK and Biovail are parties to an Amended and Restated Distribution Rights Agreement, effective as of October 26, 2001, as amended on March 1, 2005, October 12, 2005, December 18, 2006, November 21, 2008, May 14, 2009 and September 16, 2009 (collectively, the “Agreement”);

WHEREAS, Exhibit 6.09 to the Agreement sets forth the procedures pursuant to which the Parties will exchange adverse event information;

WHEREAS, the Parties desire to amend Exhibit 6.09 to the Agreement as set forth in this Seventh Amendment.

NOW THEREFORE, in consideration of the promises, representations, warranties, covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound hereby, agree to amend the Agreement as follows:

1. Exhibit 6.09 to the Agreement is hereby deleted in its entirety and replaced by Attachment 1 to this Seventh Amendment in its place.
  2. All capitalized terms not otherwise defined in this Seventh Amendment will have meanings ascribed to them in the Agreement.
  3. Except as expressly amended by the terms of this Seventh Amendment, the provisions of the Agreement are unchanged, remain in full force and effect and are hereby ratified and confirmed except that each reference to “Agreement” or words of like import in the Agreement will mean and be a reference to the Agreement as amended by this Seventh Amendment.
  4. In all events, the terms and provisions of this Seventh Amendment shall be enforceable notwithstanding any conflicting term or provision set forth in the Agreement. In the event of any conflict between any term or provision of this Seventh Amendment and any term or provision set forth in the Agreement, such term or provision of this Seventh Amendment shall prevail over such term or provision set forth in the Agreement.
  5. This Seventh Amendment will be construed, and the respective rights of the Parties determined, according to the substantive law of New York notwithstanding the provisions governing conflict of laws under such New York law to the contrary.
  6. This Seventh Amendment may be executed in any number of counterparts, each of which will be deemed an original but all of which together will constitute one and the same document.
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7. Nothing contained in this Seventh Amendment shall be deemed to imply or constitute either party as the agent or representative of the other party, or both parties as joint venturers or partners for any purpose.
8. If a court of competent jurisdiction holds any provision hereof invalid or unenforceable, such invalidity shall not affect the validity or operation of any other provision and such invalid provision shall be deemed to be severed from this Seventh Amendment.

*[signatures follow]*

IN WITNESS WHEREOF, the Parties have executed this Seventh Amendment to the Agreement on the date first above written.

SMITHKLINE BEECHAM CORPORATION d/b/a  
GLAXOSMITHKLINE

BIOVAIL LABORATORIES  
INTERNATIONAL SRL

By: /s/ Ed Pattishall  
Name: Ed Pattishall  
Title: VP Clinical Safety

By: /s/ Jean-Luc Martre  
Name: Jean-Luc Martre  
Title: VP Commercial Operations

EXHIBIT 6.09

Safety Data Exchange Schedule  
Between  
Biovail Laboratories International SRL (Biovail)  
and  
SmithKline Beecham Corporation (GSK)  
for  
the following products:

Zovirax® (Acyclovir) Cream, 0.05%  
Zovirax® (Acyclovir) Ointment, 0.05%

- 1.1 Definitions: Except as otherwise set forth in this Section 1.1, all capitalized terms used herein will have the meanings given to them in Amended and Restated Distribution Rights Agreement, as amended.

1.1.1 Confidential Information

Any non-public information furnished by one Party (the “Disclosing Party”) to the other Party (the “Receiving Party”) in connection with these terms or generated pursuant to these terms that is, or which the Disclosing Party designates or would reasonably regard as being confidential.

1.1.2 Day

A calendar day.

1.1.3 Marketing Authorisation

Such authorisation(s) granted by the relevant regulatory authorities which are necessary to market the Medicinal Product in the Territory.

1.1.4 Medicinal Product

Those medicinal products listed below with their respective generic names or compound numbers:

Zovirax® Ointment or Zovirax® Cream; each in the presentations and formulations in finished product form, as described below, or as developed by GSK under the terms of the Agreement.

| Trade Product        | GSK NDC    | Pkg Size |
|----------------------|------------|----------|
| Zovirax Ointment 3G  | 0173099341 | 1 tube   |
| Zovirax Ointment 15G | 0173099394 | 1 tube   |
| Zovirax Cream 2G     | TBA*       | 1 tube   |

\* To be assigned upon approval of the Zovirax Cream NDA

1.1.5 Pregnancy Report

A report of pregnancy in a patient to whom a Medicinal Product has been administered or a report of a pregnancy where the father is a patient or trial subject to whom a Medicinal Product has been administered.

1.1.6 Receipt

The point at which Biovail (including any member of the personnel of Biovail becomes aware of a report of an Adverse Event or a Pregnancy Report. For the purposes of this definition, “personnel” includes those persons employed by Biovail or persons engaged by Biovail for the provision of services.

2. Responsibilities and Exchange of Adverse Events and Pregnancy Reports

- 2.1 Biovail shall provide GSK with all information regarding Adverse Events and Pregnancy Reports which it receives arising from any source, in the form in which it is received, within two (2) Days (or four (4) Days in the event the time period would expire during a weekend or public holiday) of Receipt via secure mail (as outlined in Section 3).

- 2.1.1 Procedure During Working Hours: During Biovail working hours (defined as 9:00 AM until 5:00 PM Eastern Time), Biovail will transfer all Medicinal Product-related calls to a central phone number within Biovail, staffed by a trained medically-qualified Biovail employee.
- 2.1.2 Procedure After Working Hours: After the Biovail telephone switchboard closes (5:00 PM Eastern Time on Monday-Friday and all day Saturday and Sunday), instructions on the main number will ask that callers leave a message regarding adverse events and the call will be returned the following business day.
- 2.2 GSK will scan scientific/medical literature for Adverse Events with the Medicinal Products. However, if Biovail becomes aware of any publication from the scientific literature in which any of the Medicinal Products is a suspect drug, Biovail will forward that publication to GSK by fax within the timeframes specified in Section 2.1.
- 2.3 Biovail will forward a copy of any written correspondence describing an Adverse Event or Pregnancy Report to GSK (including the envelope in which the correspondence was received) within the timeframes specified in Section 2.1. Biovail will retain the original written correspondence in accord with existing Biovail retention policies.
- 2.4 Biovail will train their staff who will be managing reports regarding Medicinal Product calls, to ensure they have basic knowledge of Adverse Events and Pregnancy Reports and Adverse Event-related procedures.
- 2.5 Biovail will employ sales representatives or other field staff who may learn of Adverse Events or pregnancies during the course of their interactions with practicing health care professionals. These Adverse Events and pregnancies must be reported by telephone to Biovail immediately in order to ensure the reporting obligation outlined in this Section is met. Biovail will ensure that all field staff are aware and are trained on this policy.

**3. *Secure email exchange***

- 3.1 Biovail shall ensure that to the extent any Confidential Information is provided by email, that those emails and any attachments sent to GSK are encrypted.
- 3.2 The Parties have agreed that email encryption will be used to secure the exchange of electronic information.

**4. *Tracking Adverse Events and Pregnancy Reports***

- 4.1 Biovail will ensure that each Adverse Event and Pregnancy Report from any source that is provided by Biovail (including follow up data) to GSK in accordance with these terms shall bear:

- 4.1.1 the date of its Receipt by Biovail,
- 4.1.2 a unique reference number assigned by Biovail, and
- 4.1.3 a description of the original source of the Adverse Event or Pregnancy Report (whether healthcare professional, consumer, regulatory authority, literature or otherwise).
- 4.2 Biovail shall conduct appropriate routine checks to confirm that the Adverse Events and Pregnancy Reports that it sends to GSK have been received.
- 4.3 If the confirmation envisaged in Section 2 cannot be obtained Biovail shall immediately re-send the Adverse Event or Pregnancy Report and take reasonable steps to ensure the same does not occur again.
- 4.4 GSK shall hold and maintain a database of Adverse Events and Pregnancy Reports relating to the Medicinal Products.
- 4.5 GSK shall compile and maintain the Periodic Reports (or Periodic Safety Update Reports (PSURs) when applicable) for the Medicinal Products and will provide Biovail with data comparable to a Periodic Report at the time of regulatory submission.

**5. *Follow up of Adverse Events and Pregnancy Reports***

Biovail shall notify GSK of any follow up information about Adverse Events and Pregnancy Reports exchanged under Section 2 which it receives and/or of which it becomes aware in respect of the Medicinal Products to which it has rights in the Territory. Such notification shall be made in the same timelines set out in Section 2 above. GSK is responsible for appropriate follow-up of Adverse Events and Pregnancy Reports it receives.

**6. *Regulatory Authority and other Enquiries***

- 6.1 Biovail shall notify GSK forthwith of the receipt of an enquiry from, or the notification of an issue by, a regulatory authority, a healthcare professional or a consumer relating to the Medicinal Products that is directed to it concerning any safety issue. In each case, Biovail shall provide GSK with all available information it has regarding the enquiry/issue.
- 6.2 Responses to any such queries received by Biovail will be prepared by GSK and provided by GSK to the enquiring regulatory authority within any actual or implied timeframe set by the enquiring regulatory authority for the receipt of a response, and to any healthcare professional or consumer as soon as is reasonably practicable.

**7. *Audits/Adverse findings by Regulatory Authorities***

Provided such audits are requested at reasonable and objectively justifiable times/intervals and that the scope of such audits is reasonable having regard to their intended purpose, GSK

(“Auditor”) shall be entitled to conduct audits to assess Biovail’s (“Auditee”) compliance with the terms of this Agreement. Provided the Auditor has given Auditee no less than fourteen (14) Days’ prior written notice of its intent to audit, Auditee shall ensure that Auditor may enter onto the premises at which relevant functions are conducted by it or on its behalf in order that the Auditor may conduct a full and proper audit through the inspection of relevant documentation, compliance metrics, systems and personnel interviews.

Auditee shall afford Auditor all reasonable co-operation in the conduct of audits under Section 7.1.

**8.        *Obligations Surviving Termination of this Agreement***

- 8.1        Provided the requesting Party shall cover the assisting Party’s reasonable costs of cooperating, the assisting Party shall not unreasonably withhold, refuse or delay a request for assistance in respect of litigation, arbitration or other means of dispute resolution, or in respect of a request for information from a regulatory authority or to secure compliance with a law or regulation.
- 8.2        Each Party shall provide the other with appropriate follow-up data in respect of information provided under this Exhibit 6.09.

**9.        *Key Contacts***

Notices required under this Exhibit 6.09 shall be provided to the personnel listed in Appendix A to this Exhibit 6.09.

**10.      *Reviews and Revisions***

This Exhibit 6.09 will be reviewed every two years and revised as necessary by agreement between the Parties.



Appendix A

Key Contacts

For *GlaxoSmithKline*

|                                                                                                                                       |                            |                                                                                                                                                                                                                                           |
|---------------------------------------------------------------------------------------------------------------------------------------|----------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Receiving Adverse Event and Pregnancy Reports and notification of regulatory authority or other inquiries regarding any safety issues | U.S. Case Management Group | e-mail: US-SDE-reports@gsk.com<br>AND cc: us.naps@gsk.com<br>Fax: 919-483-5404<br>Global Clinical Safety and Pharmacovigilance<br>GlaxoSmithKline R&D<br>Five Moore Drive<br>Mail Code: 5.4376.4C<br>Research Triangle Park, NC27709-3398 |
| General pharmacovigilance agreement questions                                                                                         | Desma Altobelli            | Global Clinical Safety and Pharmacovigilance<br>GlaxoSmithKline R&D<br>Five Moore Drive<br>Mail Code: 5.4384B<br>Research Triangle Park, NC27709-3398<br>Tel: 919-483-6373<br>Fax: 919-483-5404                                           |

For *Biovail*

| Forwarding Adverse Event and Pregnancy Reports | Name                                                                           | Address and tel/fax numbers:<br>E-mail address                                                                                                                                           |
|------------------------------------------------|--------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                | Primary:<br>Christopher Chin, PharmD<br>Associate Director,<br>Medical Affairs | Biovail Technologies, LTD<br>700 Route 202/206 North<br>Bridgewater, NJ 08807<br>Tel: (908) 927-1869<br>Fax: (908) 927-1469<br>christopher.chin@biovail.com<br>Biovail Technologies, LTD |
|                                                | Secondary:<br>Susan Wnorowski,<br>PharmD<br>Manager, Medical Affairs           | 700 Route 202/206 North<br>Bridgewater, NJ 08807<br>Tel: (908) 927-1867<br>Fax: (908) 927-1467<br>susan.wnorowski@biovail.com                                                            |

**CONFIDENTIAL TREATMENT REQUESTED:**

*Portions of this Exhibit have been redacted pursuant to a request for confidential treatment under Rule 24b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended. Such redacted portions have been replaced with “{\*\*\*}” in this Exhibit. An unredacted version of this document has been filed separately with the Securities and Exchange Commission along with the request for confidential treatment.*

**SUPPLY AGREEMENT**

between

**PLANTEX USA, INC.**  
Two University Plaza, Suite 305, Hackensack, NJ 07601  
 (“**Plantex**”)

and

**BIOVAIL LABORATORIES INCORPORATED**  
Chelston Park, Building 2, Collymore Rock, St. Michael, Barbados, West Indies  
 (“**Biovail**”)

WHEREAS, Plantex and Biovail desire to provide for the purchase and supply of the active pharmaceutical ingredient, diltiazem hydrochloride, upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements set forth in this Agreement, and other good and valuable consideration the adequacy and sufficiency of which is acknowledged, the Parties, intending to be legally bound, agree as follows:

**1. INTERPRETATION AND CERTAIN DEFINITIONS**

- 1.1 The preamble to this Agreement forms an integral part hereof.
  - 1.2 Section headings in this Agreement are intended solely for convenience of reference and shall be given, no effect in the interpretation of this Agreement.
  - 1.3 All annexes to this Agreement, signed by both Parties, whether attached at the time of signature hereof or at any time thereafter, shall be construed as an integral part of this Agreement.
  - 1.4 For purposes of this Agreement, the following words and phrases shall bear the respective meanings assigned to them below (and cognate expressions shall bear corresponding meanings):
    - 1.4.1 “**API**” — shall mean the active pharmaceutical ingredient diltiazem hydrochloride.
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- 1.4.2        **“Action”** — shall mean any suit, action, investigation (governmental or otherwise), claim or proceeding initiated or filed against a Party which results in or could result in a Loss or Losses for which indemnification is required by an Indemnifying Party pursuant to Article 10 herein.
- 1.4.3        **“Affiliates”** — shall mean, with respect to any Party, any Person that is controlled by, controls, or is under common control with, that Party, but for greater certainty, Ethypharm S.A, shall not be an Affiliate of Biovail for any purpose of this Agreement. For this purpose, **“control”** of a corporation or other business entity shall mean direct or indirect beneficial ownership of more than fifty percent (50%) of the voting interest in, or more than fifty percent (50%) in the equity of, or the right to appoint more than fifty percent (50%) of the directors or management of, such corporation or other business entity.
- 1.4.4        **“Agreement”** — means this Agreement as it is hereafter amended from time to time in the mutual written agreement of the Parties.
- 1.4.5        **“cGMP”** — means current good manufacturing practices in accordance with the rules and regulations promulgated by the FDA.
- 1.4.6        **“DMF”** — means the applicable drug master file covering the analysis and manufacture of the API, including, without limitation, analytical methods, stability and pharmaceutical data, impurities, and manufacturing processes with respect to the API.
- 1.4.7        **“Effective Date”** — means October 1, 2004.
- 1.4.8        **“FDA”** — means the United States Food and Drug Administration and all agencies under its direct control or any successor organization.
- 1.4.9        **“Finished Product(s)”** — means finished pharmaceutical product(s) in any and all strengths and dosage forms manufactured by or on behalf of Biovail, any of its Affiliates or contract manufacturers with the API, other than Cardizem CD as manufactured by or for Biovail and Marketed under the brand name Cardizem CD in the Territory.
- 1.4.10       **“Indemnified Party”** — means the Party to this Agreement entitled to be indemnified by the Indemnifying Party against a Loss or Losses pursuant to Section 10 below.
- 1.4.11       **“Indemnifying Party”** — means the Party obligated to indemnify the indemnified Party against a Loss or Losses pursuant to Section 10 below.
- 1.4.12       **“Loss”** — means any liability, loss, cost, damage or expense, including, without limitation, reasonable attorneys’ fees and expenses.
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- 1.4.13        “**Manufacture**” and “**manufacturing**” — mean, along with other forms of the word, the manufacturing, handling, packaging, storage and/or disposal of the API or any Finished Products, as the case may be, and the raw materials and components used in connection with the preparation thereof.
- 1.4.14        “**Market Price**” — means an average of two (2) bona-fide prices in U.S. Dollars/kg to sell API to Biovail for use in its Finished Product, as presented to Biovail in a firm written quotation from third parties, which API is the subject of a currently qualified DMF referenced in an approved ANDA; provided, however, that the Market Price for all quantities of API ordered by Biovail from October 1, 2004 through December 31, 2005 shall be deemed to be {\*\*\*}†.
- 1.4.15        “**Party**” or “**Parties**” — mean and include Plantex and Biovail, or each of them individually, as opposed to a “third party,” which is not a party to this Agreement.
- 1.4.16        “**Person**” — means any individual, partnership, association, corporation, trust or legal person or entity.
- 1.4.17        “**Regulatory Authorities**” — mean any and all bodies and organizations, including, without limitation, the FDA, which regulate the manufacture, importation, distribution, use and sale of API and/or the Finished Products.
- 1.4.18        “**Specifications**” — means the specifications for the API contained in Schedule I attached hereto.
- 1.4.19        “**Term**” — shall mean the duration of this Agreement starting on the Effective Date and continuing until December 31,2009, unless terminated prior to such expiration date pursuant to this Agreement.
- 1.4.20        “**Territory**” — means Canada and the United States of America.

2.        **PURCHASE AND SUPPLY OF API**

- 2.1        From the Effective Date through December 31, 2005, Biovail shall purchase, or cause its Affiliates to purchase, from Plantex, and Plantex shall sell to Biovail or such Affiliates, a minimum quantity of {\*\*\*}† of API. Plantex shall store all such API purchased by Biovail or its Affiliates under cGMP conditions in the USA or in Israel, for delivery to Biovail in accordance with Biovail’s directions. Thereafter, for the period commencing on the later of January 1, 2006 and the date upon which Biovail has used up its then existing inventories of API, through

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the end of the Term, Biovail shall purchase, or cause its Affiliates to purchase, from Plantex, and Plantex shall sell to Biovail or such Affiliates, {\*\*\*}† of the API required by Biovail, and its Affiliates in connection with the manufacture or marketing of Finished Products for sale in the Territory.

- 2.2 The purchase price payable for the API hereunder shall be the applicable Market Price. Commencing on October 1, 2005 and on October 1st of each successive twelve (12) month period thereafter, the Parties shall agree in good faith upon the Market Price for the following calendar year. If the Parties are unable to mutually agree upon the Market Price for any calendar year, the Market Price shall remain at the Market Price for the prior calendar year. Plantex will issue invoices upon shipment of API. Invoices will be due and payable forty-five (45) days of the invoice date. All dollar amounts herein refer to U.S. currency. Amounts not paid when due shall accrue interest calculated at the rate of {\*\*\*}† plus the U.S. prime rate (but in no event greater than the maximum rate permitted by law) in effect on the date that the payment should have been made, as published in The Wall Street Journal, Eastern U.S. Edition, calculated on a daily basis. No deductions of any kind from any payment becoming due to Plantex may be made in the absence of an official credit memorandum from Plantex authorizing the deduction, which Plantex shall promptly issue when Biovail is entitled to the deduction in accordance with this Agreement.
- 2.3 Within {\*\*\*}† of the date hereof, and, thereafter, by the fifteenth (15th) day of each successive calendar month, Biovail shall provide Plantex with a good faith, {\*\*\*}† rolling forecast of its requirements of API by month. The first {\*\*\*}† of each {\*\*\*}† rolling forecast will constitute a firm purchase order (“Firm Purchase Order”) for the API indicated for those months. Plantex shall confirm to Biovail within {\*\*\*}† of its receipt of each such forecast that Plantex has the capacity to provide the quantities of API set out in that forecast. Plantex shall supply (a) the quantities set forth on each Firm Purchase Order and (b) those additional amounts that may be ordered in excess of the forecasted amounts constituting Firm Purchase Orders hereunder, provided that Plantex confirms and accepts orders for those additional amounts in writing within {\*\*\*}† of Plantex’s receipt thereof. The Firm Purchase Orders for each of the first {\*\*\*}† of each forecast may not be for an amount less than {\*\*\*}† or greater than {\*\*\*}† of the immediately preceding forecast for each such {\*\*\*}†; provided, however, that Plantex shall use commercially reasonable efforts to fill any Firm Purchase Order to the extent of quantities exceeding {\*\*\*}† of the immediately preceding forecast.
- 2.4 If any term or condition contained in any purchase order is inconsistent with this Agreement then the terms and conditions provided in this Agreement will control. No additional term or condition set forth in any purchase order will be binding upon Plantex unless agreed to in writing by Plantex.

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- 2.5 During any period during this Agreement in which Plantex, for any reason, including, without limitation, force majeure as defined in Section 12 hereof, either fails to confirm to Biovail that it has the capacity to provide the quantities of API set out in a forecast delivered pursuant to Section 2.3, or fails to supply the requisite quantities of API within sixty (60) days after the date of delivery specified by Biovail in any Firm Purchase Order or any other purchase order accepted and confirmed in writing by Plantex, then Biovail may, as its sole remedy, obtain any such quantities set out in any such forecast or purchase order through an alternate supplier. Any such cover purchases shall be credited against Biovail's purchase requirements set forth in Section 2.1. In the event Plantex regains its ability to resume supplying hereunder, Biovail's right to cover shall terminate immediately upon the delivery by Plantex to Biovail of written notice thereof, provided, however, that Biovail may accept and use any API ordered by Biovail from an alternate supplier before the date of such notice.
- 2.6 Biovail, its Affiliates and any of their contract manufacturers shall use the API only for the manufacture of Finished Products for sale in the Territory. Biovail, its Affiliates and any of their contract manufacturers are prohibited from reselling or otherwise transferring all or any portion of API not used in the manufacture of Finished Products for sale in the Territory to any other Person.
- 2.7 Plantex or its Affiliate shall maintain with the FDA a valid DMF for the API that is in full compliance with applicable FDA requirements. Provided that all representations and warranties of Biovail shall remain true and all covenants and undertakings of Biovail are being fully complied with, Biovail shall have the right to reference the DMF in its drug applications for any Finished Product. All API will be manufactured in accordance with cGMP and conform to the Specifications.
- 2.8 Biovail shall keep and maintain complete and accurate records and books of account in sufficient detail and form so as to enable Plantex to verify compliance by Biovail of its purchase requirement obligations in accordance with Section 2.1 hereof. Biovail shall permit those records and books of account to be examined by independent certified public accountant of selected by Plantex, no more than once each calendar year (unless during any calendar year a misstatement is discovered in an audit, in which event an additional audit may be conducted during such calendar year), and only to the extent necessary for Plantex to verify the information required by this Section 2.8. Said independent certified public accountant shall treat as confidential and shall not disclose to Plantex any information from Biovail except for information which must be given to that party pursuant to any provision of this Agreement. This examination must be during normal business hours, upon not less than twenty (20) days' prior written notice, and at the expense of Plantex; provided, however, that if the examination establishes that Biovail failed to comply with the purchase obligations set forth in Section 2.1 hereof, Biovail shall be responsible for the reasonable expenses of such examination. All amounts determined to be due that were not paid must be paid upon demand, with interest calculated thereon from the date that the payment
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should have been made, such interest calculated at the rate of {\*\*\*}† plus the U.S. prime rate (but in no event greater than the maximum rate permitted by law) in effect on the date that the payment should have been made, as published in The Wall Street Journal, Eastern U.S. Edition, calculated on a daily basis. The books and records subject hereof will be deemed Confidential Information and subject to the provisions of Section 13 of this Agreement. The right to audit under this Section 2.8 shall survive termination of this Agreement for a period of two (2) years.

**3. RIGHT OF FIRST OFFER**

From and after the Effective Date, with respect to any finished dose pharmaceutical product that Biovail has under current development or that it elects to develop during the Term, Biovail shall grant Plantex the first opportunity to act as the primary active pharmaceutical ingredient supplier for such product(s) in and for the Territory.

**4. DELIVERY; RISK OF LOSS**

Unless agreed otherwise in writing by the Parties, API will be delivered CIP (per Incoterms 2000) San Juan, Puerto Rico or such other port as may be directed from time to time by Biovail. All deliveries from Plantex will be made on or before the delivery date specified on each Firm Purchase Order or the additional purchase orders accepted and confirmed in writing by Plantex.

**5. PRODUCT WARRANTIES; ACCEPTANCE AND CLAIMS**

- 5.1 Plantex represents and warrants that at the time of sale and shipment of API by Plantex hereunder, that such API (a) will conform to the Specifications and (b) will have been manufactured, stored and packaged for shipment in accordance with cGMP in effect at the time thereof. THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- 5.2 Biovail shall have the right to reject all or part of any shipment of API it orders and receives from Plantex on the ground that it fails to conform with the warranty contained in Section 5.1 herein, provided that (a) Biovail delivers written notice to Plantex within thirty (30) days from the date of receipt of such shipment and (b) Plantex confirms such nonconformance in writing within thirty (30) days after receipt of Biovail's notice. In the event of the foregoing, Biovail may return the nonconforming API in accordance with Section 5.3; otherwise, all shipments of API shall be deemed accepted by Biovail. If a dispute arises as to whether the API conforms to Specifications, which dispute is not resolved within thirty (30) days

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of the delivery by Biovail of the notice of nonconformance, then the matter (along with related samples, batch records or other evidence, as appropriate) shall be submitted to an independent testing laboratory agreed to by each of Biovail and Plantex. The determination of the independent testing laboratory will be binding upon the Parties. If it is determined that the nonconformance is due to damage to API (x) caused by Biovail or its agents or (y) that occurs subsequent to delivery of the API by Plantex. Plantex will have no liability to Biovail with respect to such nonconformance and the cost of any testing and evaluation by the testing laboratory will be borne by Biovail. If it is determined that the nonconformance is caused by Plantex, then Plantex will credit Biovail's account for the price invoiced for the portion of nonconforming API (or if payment therefor has previously been made by Biovail, pay Biovail the amount of such credit or offset the amount thereof against other amounts then due to Plantex) and the cost of any testing and evaluation by the testing laboratory will be born by Plantex.

- 5.3 Plantex shall accept for return and replacement any API manufactured and supplied to Biovail under this Agreement that does not conform with the warranty set forth in Section 5.1 above and for which proper notice has been given and nonconformance of which has been confirmed by Plantex. This will be the recipient's sole remedy for claims that any shipment of API failed to comply with such warranties. It is understood that the foregoing limited remedy applies only to the failure to conform to the warranty contained in Section 5.1. All returns of API with obvious defects must be in the original manufactured condition. Plantex will pay reasonable return freight and shipping charges, and shall assume the risk of loss in transit associated with those returns.
  - 5.4 The provisions of paragraph 5.2 do not apply to any deficiencies in the Product not reasonably detectable within thirty (30) days of actual receipt of the Product by Biovail or its Affiliate. Biovail shall notify Plantex of any such deficiencies within thirty (30) days after they come to the attention of Biovail or its Affiliate.
  - 5.5 To the extent that Biovail has new formulations of Finished Products in development as of the Effective Date or thereafter develops new formulations of Finished Products, it shall develop appropriate specifications for the API required for the manufacture of such Finished Products which it shall furnish to Plantex as promptly as they are finalized. Plantex shall respond to any such specifications within sixty (60) days of their being delivered by Biovail to confirm whether or not it will be able to supply API in accordance with such specifications. If Plantex does so confirm the specifications, they shall be deemed "Specifications" for all purposes of this Agreement and deemed added to this Agreement. If Plantex does not so confirm its ability to meet such specifications, or does not actually meet the Specifications as so agreed, Biovail may obtain API for such new Finished Products from an alternate supplier, and the quantities of API obtained from such other supplier for those new formulations shall not be taken into account in determining Biovail's compliance with Section 2.1.
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- 5.6 If at any time during the Term of this Agreement Plantex is unable to supply to Biovail the requisite quantities of API meeting the warranty set out in Section 5.1, Biovail may obtain any such quantities from an alternate supplier.

**6. ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS**

- 6.1 Biovail hereby represents, warrants and covenants to Plantex that (a) Biovail is a corporation duly organized and existing under the laws of its jurisdiction of incorporation, (b) it has the requisite authority to enter into this Agreement and to perform its obligations hereunder, (c) this Agreement is a legal, valid and binding agreement of Biovail, enforceable against Biovail in accordance with its terms, (d) Biovail is not aware of any contractual or other restriction, limitation or condition which might affect adversely its ability to perform hereunder, (e) Biovail, its Affiliates and any contract manufacturers are in material compliance with all laws and regulations applicable to conduct of their business; (f) the importation, storage, manufacture, use, sale and/or distribution of any or all of the Finished Products shall not (1) violate any applicable laws or regulations nor (2) infringe upon the patent, trade secret or proprietary right of any third party; and (g) its current annual requirements for the API are approximately {\*\*\*}†.
- 6.2 Plantex hereby represents, warrants and covenants to Biovail that (a) it is a corporation amalgamated, organized and existing under the laws of the State of New Jersey, (b) it has the corporate authority to enter into this Agreement and to perform its obligations hereunder, (c) this Agreement is a legal, valid and binding agreement of Plantex enforceable against Plantex in accordance with its terms, (d) it is not aware of any contractual or other restriction, limitation or condition which might affect adversely its ability to perform hereunder and (e) it is in material compliance with all applicable laws and regulations.
- 6.3 The representations, warranties, covenants and undertakings contained in this Agreement are continuous in nature and shall be deemed to have been given by each Party at execution of this Agreement and at each stage of performance hereunder.

**7. REGULATORY INSPECTIONS AND COMMUNICATIONS**

Biovail will promptly deliver to Plantex all reports, data, information and correspondence received by it from the FDA or any other Regulatory Authority with respect to the API and any cGMP issues relating thereto. In addition, Biovail will promptly deliver to Plantex any written response, information, data or correspondence delivered by it to the FDA or any other Regulatory Authority with respect to the API. Each of the Parties agrees to cooperate to the extent reasonably requested by the other in connection with any communications with the FDA or any other Regulatory Authority.

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† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

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**8. COMPLAINT HANDLING AND ADVERSE DRUG REACTION REPORTS**

- 8.1 Plantex and Biovail shall provide prompt notice to the other of any information concerning side effects, injury, toxicity or sensitivity reactions received by it which may be associated with the Finished Products or the API. Biovail shall be responsible for all adverse drug event reporting and responding to all adverse drug reports received from lay persons and/or health care professionals regarding the Finished Products.
- 8.2 Copies of complaints regarding the Finished Products or the API received by either Party shall be sent promptly by facsimile to the other. Biovail shall investigate all complaints associated with the manufacturing of the Finished Products and shall provide a written summary to Plantex of all such investigations, as well as a prompt written response to the complainant, with a copy to Plantex.

**9. RECALLS AND WITHDRAWALS**

To the extent permitted or required by law, any decision by Biovail to recall, withdraw or cease distribution of any Finished Product as a result of a violation of applicable law or regulation, or because the Finished Product presents a possible safety risk, shall be made after consultation between Plantex and Biovail to minimize the business and legal risk to both Parties and to assure compliance by the Parties with the requirements of applicable laws and regulations. Biovail shall indemnify and hold harmless Plantex against any and all reasonable costs and expenses which Plantex may incur as a result of any recall of Finished Products unless, however, such recall is due to a defect in the API, in which case Plantex shall indemnify and hold harmless Biovail against any and all reasonable costs and expenses which Biovail may incur as a result of such recall.

**10. INDEMNIFICATION AND LIMITATIONS**

- 10.1 Plantex shall indemnify, defend, save and hold Biovail and each of its Affiliates and their respective officers, directors, employees and agents, harmless from and against Loss or Losses payable to third parties in connection with any and all Actions by third parties resulting from, or arising out of any material breach of any warranty or material non-fulfillment or non-performance by Plantex of any agreement, covenant or obligation of Plantex under this Agreement. Plantex will not be liable hereunder for any Losses resulting from any settlement of any claim, litigation or proceeding effected without its consent, which consent shall not be unreasonably withheld.
  - 10.2 Biovail shall indemnify, defend, save and hold Plantex and each of its Affiliates and their respective officers, directors, employees and agents harmless from and against Loss or Losses payable to third parties in connection with any and all Actions by third parties resulting from, or arising out of (a) any material breach of any representation or warranty herein pertaining to Biovail or material non-fulfillment or non-performance by Biovail of any covenant or undertaking made
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herein; (b) any actual or alleged defect in any Finished Product not resulting from any breach of this Agreement by Plantex; (c) any actual or alleged infringement or violation of any patent, trade secret or proprietary rights of any third party arising out of the storage, manufacture, use, sale and/or distribution of any Finished Product, or (d) any enforcement action by a Regulatory Authority relating to any Finished Product resulting from the failure by Biovail to comply with applicable laws, rules, orders or regulations. Biovail will not be liable hereunder for any Loss or Losses resulting from any settlement of any claim, litigation or proceeding effected without its consent, which consent shall not be unreasonably withheld.

- 10.3 EXCEPT AS EXPRESSLY PROVIDED FOR IN SECTION 10.1 AND 10.2 REGARDING INDEMNIFICATION WITH RESPECT TO LOSSES, NEITHER PLANTEX NOR BIOVAIL (NOR ANY OF THEIR RESPECTIVE AFFILIATES) SHALL BE LIABLE TO THE OTHER UNDER ANY PROVISION OF THIS AGREEMENT OR UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE.
- 10.4 The terms and conditions of this Article 10 shall survive any termination of this Agreement.
- 10.5 Upon the occurrence of an event that requires indemnification under this Agreement, the Indemnified Party will give prompt written notice to the Indemnifying Party providing reasonable details of the nature of the event and basis of the indemnity claim. The Indemnifying Party will then have the right, at its expense and with counsel of its choice, to defend, contest, or otherwise protect against any such Action. The Indemnified Party will also have the right, but not the obligation, to participate, at its own expense in the defense thereof with counsel of its choice. The Indemnified Party shall cooperate to the extent reasonably necessary to assist the Indemnifying Party in defending, contesting or otherwise protesting against any Action, provided that the reasonable cost in doing so will be paid by the Indemnifying Party. If the Indemnifying Party fails within thirty (30) days after receipt of notice to notify the Indemnified Party of its intent to defend, or to defend, contest or otherwise protect against the Action or fails to diligently continue to provide the defense after undertaking to do so, the Indemnified Party will have the right upon ten (10) days prior written notice to the Indemnifying Party to defend, settle and satisfy any Action and recover the costs of the same from the Indemnifying Party.
- 10.6 In the event that in determining the respective obligations of indemnification under this Article 10, it is found that the fault of the Indemnified Party or its respective Affiliates, contributes to any Losses for which the Indemnifying Party is otherwise liable hereunder, then each Party shall be responsible for that portion of the indemnifiable Losses to which its fault contributed.
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- 10.7 Without limiting its obligations hereunder, Biovail shall maintain, commencing with the Effective Date and continuing throughout the Term, sufficient product liability insurance coverage to satisfy its obligations hereunder. Biovail shall, upon request, provide to Plantex certificates of insurance, evidencing such insurance.
- 10.8 Without limiting its obligations hereunder, Plantex shall maintain, commencing with the Effective Date and continuing throughout the Term, sufficient product liability insurance coverage to satisfy its obligations hereunder. Plantex shall, upon request, provide to Biovail certificates of insurance, evidencing such insurance.

**11. TERM AND TERMINATION**

- 11.1 This Agreement will terminate upon the occurrence of any of the following events or conditions which termination will automatically occur where termination by a specified Party is not indicated and will occur by action of the specified Party where so indicated:
    - 11.1.1 The expiration of the Term;
    - 11.1.2 The breach of any representation or warranty made hereunder or the non-performance of any covenant, undertaking or any other obligation made hereunder by either Party that is not cured (a) within thirty (30) days from the date of written notice delivered to the Party in breach in the case of a payment default, and (b) within ninety (90) days from the date of written notice in all other cases, provided, however, that only the aggrieved Party may terminate this Agreement pursuant to this Section 11.2.2;
    - 11.1.3 The mutual written agreement of the Parties to this Agreement;
    - 11.1.4 Pursuant to the provisions of Section 12; and
    - 11.1.5 The filing of a bankruptcy petition by or against Plantex or Biovail or the appointment of a receiver for the assets or business of Plantex or Biovail that is not dismissed within sixty (60) days from the date of such filing or appointment.
  - 11.2 Upon termination of this Agreement, all rights and obligations will cease to exist except for (a) the payment of unpaid invoices due, (b) the recovery by a Party hereto of damages caused by a breach of any representation or warranty contained in this Agreement or the nonperformance by either Party of any covenant or undertaking made hereunder, (c) the rights and obligations of the Parties under Article 10 of this Agreement and (d) any other term or condition that by its term survives termination.
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**12. FORCE MAJEURE**

Except for the obligation of Plantex or Biovail to make payments to the other pursuant to this Agreement (that will not be deferred or extended for any reason), neither Plantex nor Biovail will be responsible to the other for any failure to perform or delay in performing if the failure or delay is due to any strike, riot, civil commotion, sabotage, embargo, war or act of God or other cause beyond its reasonable control. Neither Party will be responsible for any failure to perform or delay in performing due to inability to obtain deliveries where the inability is caused by its supplier. Notwithstanding the foregoing, if any delay in the performance by either Party of its obligations under this Agreement shall continue for a period of ninety (90) days or more, then the Party not suffering the force majeure event may terminate this Agreement by written notice to the other Party and each of Plantex and Biovail shall be relieved from all duties and obligations under this Agreement, except those duties and obligations accruing prior to such termination.

**13. CONFIDENTIALITY**

- 13.1 In carrying out the terms of this Agreement it may be necessary that one Party disclose to the other certain information, which is considered by the disclosing Party to be proprietary and of a confidential nature. As used herein “Confidential Information” means any and all information, know-how and data, technical or non-technical, concerning any finished drug product or active pharmaceutical ingredient, its manufacture, marketing and sale, that is disclosed under this Agreement as set forth below and that Biovail or Plantex, as the case may be, considers to be and treats as proprietary and confidential. Confidential Information includes, but shall not be limited to plans, processes, compositions, formulations, specifications, samples, systems, techniques, analyses, production and quality control data, testing data, marketing and financial data, and such other information or data relating to any finished drug product or active pharmaceutical ingredient, or its manufacture, marketing or sale.
- 13.2 The recipient of any Confidential Information shall not use it for any purpose other than for purposes of performing its obligations under this Agreement. The Party receiving any Confidential Information will divulge it only to those of its officers, directors, employees, advisors and Affiliates (and such Affiliates’ officers, directors, employees and advisors) who have a need to know it as a part of the receiving Party’s obligations hereunder and said officers, directors, employees, advisors and Affiliates (and such Affiliates’ officers, directors, employees and advisors) shall hold the information in confidence pursuant to this Agreement. The recipient of any Confidential Information shall not disclose it to any third party, except as otherwise contemplated in this subsection, without the written consent of the disclosing Party.
- 13.3 The obligations of confidentiality as provided herein will terminate seven (7) years from the expiration or termination of this Agreement and will impose no obligation upon the recipient of any Confidential Information with respect to any portion of the received information that (a) was known to or in the possession of
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the recipient prior to the disclosure; or (b) is or becomes publicly known through no fault attributable to the recipient; or (c) is provided to the recipient from a source independent of the disclosing Party that is not subject to a confidential or fiduciary relationship with the disclosing Party concerning the information; or (d) is generated by the recipient independently of any disclosure from the disclosing Party; or (e) is required by law to be disclosed to government officials who shall be informed of the confidential nature of such information.

- 13.4 Upon expiration or earlier termination of this Agreement, the recipient of any Confidential Information shall, as the disclosing Party may direct in writing, either destroy or return to the disclosing Party all Confidential Information disclosed together with all copies thereof, provided, however, the recipient may retain one archival copy thereof for the purpose of determining any continuing obligations of confidentiality.
- 13.5 The terms of this Article 13 will survive termination of this Agreement.

## 14. GENERAL PROVISIONS

- 14.1 This Agreement shall be binding upon each of the Parties hereto and each of their respective successors and assigns, if any.
- 14.2 Neither Party may assign any of its rights or obligations under this Agreement without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. Such consent may be conditioned upon the agreement of the assigning Party to remain primarily liable for performance of all obligations of the assignee. Notwithstanding the foregoing, a Party may assign all of its rights and obligations under this Agreement to an Affiliate of a Party upon written notice thereof to the other Party. Any attempt to assign this Agreement in violation of the provisions set forth herein will be deemed a default by the assigning Party under this Agreement and null and void.
- 14.3 Any notice, request, instruction or other communication required or permitted to be given under this Agreement must be in writing and must be given by sending the notice properly addressed to the other Party's address shown below (or any other address as either Party may indicate by notice in writing to the other from time to time) (a) by hand or by prepaid registered or certified mail, return receipt requested, (b) via telecopy, facsimile or telegram, or (c) via nationally recognized overnight courier.

If to Plantex: Plantex USA Inc.  
Two University Plaza, Suite 305 Hackensack, NJ  
07601  
Attention: President  
Fax Number: 201-343-3833

with a copy to: Plantex USA Inc.  
Two University Plaza, Suite 305 Hackensack, NJ

07601  
Attention: General Counsel  
Fax Number: 201-343-3833

if to Biovail

BIOVAIL LABORATORIES INCORPORATED  
Chelston Park, Building 2  
Collymore Rock, St. Michael BH1  
Barbados, West Indies  
Attention: President  
Telephone:  
Facsimile: (246) 437-7085

with a copy to

BIOVAIL CORPORATION  
7150 Mississauga Road  
Mississauga, Ontario L5N 8M5  
Attention: General Counsel  
Telephone: (905) 286-3070  
Facsimile: (905) 286-3071

All such notices shall be deemed given when received.

- 14.4 Except to the extent required by law or deemed appropriate by legal counsel to comply with securities laws, including the furnishing of a press release and the filing of such documents and information with the U.S. Securities and Exchange Commission as may be required by federal securities laws and the filing of any report, statement or document required by any other federal or state regulatory body, neither Plantex nor Biovail will publish, disclose or otherwise announce the existence of this Agreement or the terms hereof with out the consent of the other Party, which consent will not be unreasonably withheld.
  - 14.5 Either Parties’ failure to terminate or seek redress for a breach of, or to insist upon strict performance of any term, covenant, condition or provision contained in this Agreement will not prevent a similar subsequent act from constituting a breach of this Agreement.
  - 14.6 This Agreement will be governed and construed in accordance with the laws of the State of New Jersey, except for its conflict of law provisions
  - 14.7 Plantex and Biovail will at all times act as independent parties without the right or authority to bind the other with respect to any agreement, representation or warranty made with or to any third party. Except as otherwise stated herein, Plantex and Biovail each will be responsible for all costs, expenses, taxes and liabilities arising from the conduct of its own business, as well as from the activities of its officers, directors, agents or employees, and each will hold harmless and indemnify the other from those obligations.
  - 14.8 This Agreement contains the entire and only agreement between the Parties with respect to the manufacture and sale of the API and no oral statements or
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representations or written matter not contained in this Agreement will have any force or effect. This Agreement may not be amended or modified in any way except by writing executed by authorized representatives of both Parties.

- 14.9 If any portion of this Agreement is determined to be illegal or otherwise unenforceable by agreement of the Parties, by an arbitrator, by a court of competent jurisdiction or by an administrative agency of competent jurisdiction, that section, to the extent permitted by law, shall be treated as deleted from this Agreement and the remaining portions of this Agreement will continue to be in full force and effect according to the terms hereof.
  - 14.10 The Parties agree as and from the Effective Date, this Agreement shall supersede the Supply Agreement between Biovail and Plantex's Affiliate, ABIC Ltd., dated June 6, 1996, as amended ("Abic Agreement"), and except for any rights of indemnification thereunder or payment obligations for amounts due thereunder, neither Party the Abic Agreement shall have any further rights or obligations thereunder. Promptly following the execution of this Agreement, Plantex shall arrange with ABIC Ltd. to sign such instrument as either party to the Abic Agreement shall deem necessary and appropriate to effectuate the provisions of this section.
  - 14.11 This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.
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**IN WITNESS WHEREOF**, the Parties have executed this Agreement on the date written at the beginning of this Agreement.

PLANTEX USA INC.

BIOVAIL LABORATORIES  
INCORPORATED

By: /s/ George Suokas  
Name: George Suokas  
Title: President

By: (signed)  
Name:  
Title:

By: /s/ Cheryl L. Bohnel  
Name: Cheryl L. Bohnel  
Title: Dir. of Finance

CONFIDENTIAL TREATMENT REQUESTED:

*Portions of this Exhibit have been redacted pursuant to a request for confidential treatment under Rule 24b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended. Such redacted portions have been replaced with “{\*\*\*}” in this Exhibit. An unredacted version of this document has been filed separately with the Securities and Exchange Commission along with the request for confidential treatment.*

AMENDMENT NO. 1 TO THE SUPPLY AGREEMENT

This Amendment No. 1, is entered into as of the 30th day of December 2005 (the “Effective Date”), by and between:

PLANTEX USA, INC.

a corporation organized under the laws of the State of New Jersey with offices at Two University Plaza, Suite 305, Hackensack NJ 07601

(“Plantex”)

- and -

BIOVAIL LABORATORIES INTERNATIONAL SRL

a Barbados society with restricted liability, whose head office is Chelston Park, Building 2, Collymore Rock, St. Micheal BH1, Barbados, West Indies

(“Biovail”)

WHEREAS on or about September 30, 2004, Biovail Laboratories Incorporated (“BLI”) and Plantex entered into a Supply Agreement (the “Agreement”) for the purchase and supply of the active pharmaceutical ingredient, diltiazem hydrochloride, under the terms and conditions set forth in the Agreement;

WHEREAS effective as of January 27, 2005, BLI merged into its parent and was subsequently wound up into its affiliate Biovail;

WHEREAS Biovail and Plantex have agreed to amend the Agreement as provided herein;

NOW, THEREFORE, for and in consideration of the premises and mutual promises and benefits contained herein, the parties hereby agree as follows:

1. Unless otherwise specifically defined herein, each term used herein which is defined in the Agreement, shall have the same meaning ascribed to such term in the Agreement.
2. As of the Effective Date of this Amendment No.1, the Agreement is amended and modified as follows:

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- a. Section 1.4.21 is added:

“**Stored API**” - means the API which has been purchased by Biovail or its Affiliates from Plantex and has been sold and stored by Plantex on behalf of Biovail or its Affiliates pursuant to Section 2.1.”

- b. Section 2.1 is deleted in its entirety and is replaced with the following:

“From the Effective Date through December 31, 2005, Biovail shall purchase, or cause its Affiliates to purchase, from Plantex, and Plantex shall sell to Biovail or such Affiliates, a minimum quantity of {\*\*\*}† of API. Plantex acknowledges that, as of November 22, 2005, Biovail has purchased and taken delivery of {\*\*\*}† of API. By December 31, 2005, Biovail shall purchase, or cause its Affiliates to purchase, from Plantex, and Plantex shall sell to Biovail or such Affiliates, an additional {\*\*\*}† of API (“Additional API”).

For the calendar year 2006, Biovail shall purchase, or cause its Affiliates to purchase, from Plantex, and Plantex shall sell to Biovail or such Affiliates {\*\*\*}† of API (“2006 API”).

Plantex shall store the 2006 API and the Additional API on Biovail’s behalf or such Affiliates’ behalf under cGMP conditions in Israel, for delivery to Biovail or such Affiliates in accordance with Biovail’s or such Affiliates’ directions and Section 4 (Ownership; Delivery; Risk of Loss) herein below.

Thereafter, for the period commencing on January 1, 2007 through to the end of the Term, Biovail hereby agrees that at least {\*\*\*}† of the API used in all Finished Products manufactured and/or marketed by Biovail or its Affiliates for sale in the Territory shall be comprised of API sold by Plantex to Biovail or its Affiliates hereunder, and Biovail and its Affiliates shall purchase such API directly from Plantex and Plantex shall sell such API to Biovail or its Affiliates in accordance with the terms of this Agreement to accomplish the foregoing. In addition to the 2006 API and the Additional API, Plantex shall store all API purchased by Biovail or its Affiliates (to the extent Biovail and Plantex subsequently expressly agree in writing that Plantex store such API) under cGMP conditions in Israel, for delivery to Biovail in accordance with Biovail’s or such Affiliates’ directions and Section 4 (Ownership; Delivery; Risk of Loss) herein below.”

- c. The fourth (4<sup>th</sup>) sentence in Section 2.2 (“Plantex will...of API”) is replaced with the following sentences:

“Plantex will issue invoices upon departure of API from the API manufacturing facility.” Plantex will provide Biovail or its Affiliates, with such invoices, the lot

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† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

numbers and the quantities of API in each such lot and the expiration dates of each such lot, which are held by Plantex as Stored API in accordance with Section 2.1”

- d. Section 4 is deleted in its entirety and is replaced with the following:

“Ownership; Delivery; Risk of Loss

Title to and ownership of Stored API shall pass from Plantex to Biovail or its Affiliates only after the Stored API ordered by Biovail or its Affiliates is manufactured by Plantex, invoiced to Biovail or its Affiliates and stored by Plantex on Biovail’s or its Affiliates’ behalf in accordance with Section 2.1. Notwithstanding transfer of ownership, risk of loss of Stored API shall pass from Plantex to Biovail or its Affiliates when the Stored API is delivered CIP (per Incoterms 2000) San Juan, Puerto Rico or such other port as may be directed from time to time by Biovail or its Affiliate.

Other than Stored API, title to, ownership of and risk of loss of API ordered by Biovail or its Affiliates in accordance with this Agreement shall pass from Plantex to Biovail or its Affiliates when API is delivered CIP (per Incoterms 2000) San Juan, Puerto Rico or such other port as may be directed from time to time by Biovail or its Affiliate.

All deliveries from Plantex will be made on or before the delivery date specified on each Firm Purchase Order or the additional purchase orders accepted and confirmed in writing by Plantex.”

- e. Section 14.3 is amended as follows:

“BIOVAIL LABORATORIES INCORPORATED” is deleted and replaced with “BIOVAIL LABORATORIES INTERNATIONAL SRL”.

3. It is agreed that the Parties are currently developing “new” specifications for the API which may be different from those specifications attached as “Schedule I” to the Agreement. Once the Parties agree in writing to “new” specifications that are appropriate for the manufacture of the Finished Products and that Plantex or its Affiliate can meet such “new” specifications, then these “new” specifications shall be deemed “Specifications” for all purposes of the Agreement and deemed added to the Agreement as Schedule I, replacing the existing Schedule I. Plantex shall bear all the costs associated with ensuring API (including Stored API) conforms to “Specifications” at the time of delivery to Biovail or its Affiliates.
4. Except as amended hereby, the Agreement shall continue in full force and effect in accordance with its terms. This Amendment No. 1 shall be deemed incorporated into, and a part of, the Agreement for any and all purposes as of its Effective Date.
5. This Amendment No. 1 and the Agreement, as amended by this Amendment No. 1, constitute the entire agreement and understanding between the parties hereto and

supersede all prior negotiations, representations or agreements, whether written or oral, relating to the subject matter hereof.

- 6. This Amendment No. 1 may be executed in multiple counterparts, each of which shall be deemed an original but all of which, taken together, shall constitute one and the same instrument.
- 7. The validity, performance and construction of this Amendment No. 1 shall be governed by, and construed in accordance with the laws of the State of New Jersey, without regard to its choice of law or conflict of law rules.

IN WITNESS THEREOF, the parties hereto have caused this Amendment No. 1 to be executed by their duly authorized representatives as of the latest date set forth below.

|                              |                                                     |
|------------------------------|-----------------------------------------------------|
| Plantex USA, Inc.            |                                                     |
| By: <u>/s/ Georve Svokos</u> | By: <u>/s/ Cheryl Bohnel</u>                        |
| Name: George Svokos          | Name: Cheryl Bohnel                                 |
| Title: President             | Title: Director of Accounting / Corporate Secretary |
| Date: December 30, 2005      | Date: December 30, 2005                             |

|                                        |        |
|----------------------------------------|--------|
| Biovail Laboratories International SRL |        |
| By: <u>/s/ John A.R. McCleery</u>      | By:    |
| Name: John A.R. McCleery               | Name:  |
| Title: Vice President, General Manager | Title: |
| Date: December 30, 2005                | Date:  |

**CONFIDENTIAL TREATMENT REQUESTED:**

*Portions of this Exhibit have been redacted pursuant to a request for confidential treatment under Rule 24b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended. Such redacted portions have been replaced with “{\*\*\*}” in this Exhibit. An unredacted version of this document has been filed separately with the Securities and Exchange Commission along with the request for confidential treatment.*

**AMENDMENT No. 2 TO SUPPLY AGREEMENT**

**THIS AMENDMENT No. 2 TO SUPPLY AGREEMENT** (the “Second Amendment”) is hereby made as of December 19, 2006 by and between Plantex USA, Inc., a New Jersey corporation, with offices at 2 University Plaza, Suite 305, Hackensack, New Jersey 07601 (“Plantex”) and Biovail Laboratories International Srl, with offices at Chelston Park, Building 2, Collymore Rock, St. Michael, Barbados, West Indies BB14018 (“Biovail”). Plantex and Biovail are sometimes together referred to herein as the “Parties” and separately as a “Party.”

**WHEREAS**, Plantex and Biovail entered into a Supply Agreement with the Effective Date of October 1, 2004, as amended by Amendment No. 1 on December 30, 2005 (collectively, the “Supply Agreement”); and

**WHEREAS**, the Parties desire to enter into this Second Amendment to make certain modifications to the terms and conditions of the Supply Agreement in order to reflect the current mutual intent and desire of the Parties.

**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual agreements set forth below, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Delivery of API. In full satisfaction of the purchase and delivery requirements for 2006 API (as defined in the Supply Agreement) and despite Section 2.1 of the Supply Agreement, Biovail has directed, and Plantex has agreed, that the 2006 API shall be delivered to Biovail as follows:
  - a. Plantex shall ship {\*\*\*}† of API to Biovail no later than December 31<sup>st</sup>, 2006; and
  - b. Plantex shall ship the balance of the 2006 API, being {\*\*\*}† of API, to Biovail during the third calendar quarter of 2007.

For the avoidance of doubt, Plantex will issue invoices for the 2006 API upon shipment.

2. Miscellaneous. All capitalized terms used herein, unless otherwise defined herein, shall have the respective meanings set forth in the Supply Agreement. Except as expressly modified by this Second Amendment, all terms and conditions of the Supply Agreement shall remain in full force and effect and shall be otherwise unaffected hereby.

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† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

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**IN WITNESS WHEREOF**, the Parties have caused this Second Amendment to be executed in multiple counterparts by their respective duly authorized representatives, as of the date first set forth above.

**BIOVAIL LABORATORIES INTERNATIONAL SRL**

By: /s/ Michel Chouinard  
Name: Michel Chouinard  
Title: Chief Operating Officer

**PLANTEX USA, INC.**

By: /s/ George Svokos  
Name: George Svokos  
Title: President  
By: /s/ Allen Lefkowitz  
Name: Allen Lefkowitz  
Title: Chief Financial Officer



**CONFIDENTIAL TREATMENT REQUESTED:**

*Portions of this Exhibit have been redacted pursuant to a request for confidential treatment under Rule 24b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended. Such redacted portions have been replaced with “{\*\*\*}” in this Exhibit. An unredacted version of this document has been filed separately with the Securities and Exchange Commission along with the request for confidential treatment.*

**AMENDMENT No. 3 TO SUPPLY AGREEMENT**

**THIS AMENDMENT No. 3 TO SUPPLY AGREEMENT** (the “Second Amendment”) is hereby made as of June 25, 2007 by and between Plantex USA, Inc., a New Jersey corporation, with offices at 2 University Plaza, Suite 305, Hackensack, New Jersey 07601 (“Plantex”) and Biovail Laboratories International SRL, with offices at Chelston Park, Building 2, Collymore Rock, St. Michael, Barbados, West Indies BB14018 (“Biovail”). Plantex and Biovail are sometimes together referred to herein as the “Parties” and separately as a “Party.”

**WHEREAS**, Plantex and Biovail entered into a Supply Agreement with the Effective Date of October 1, 2004, as amended by Amendment No. 1 on December 30, 2005 and by Amendment No. 2 on December 19, 2006 (collectively, the “Supply Agreement”); and

**WHEREAS**, the Parties desire to enter into this Third Amendment to make certain modifications to the terms and conditions of the Supply Agreement in order to reflect the current mutual intent and desire of the Parties.

**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual agreements set forth below, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Delivery of API. Section 1 of the Second Amendment to the Supply Agreement shall be deleted, it being acknowledged that Section 1(a) of the Second Amendment has been fulfilled and the first {\*\*\*}† of the 2006 API has been delivered to Biovail.

With respect to the balance of the 2006 API, being {\*\*\*}† of API: (i) it is acknowledged, for the avoidance of doubt, that it is Stored API, and (ii) Biovail has directed, and Plantex has agreed, that it shall be delivered to Biovail no later than December 31<sup>st</sup>, 2007.

2. Miscellaneous. All capitalized terms used herein, unless otherwise defined herein, shall have the respective meanings set forth in the Supply Agreement. Except as expressly modified by this Third Amendment, all terms and conditions of the Supply Agreement shall remain in full force and effect and shall be otherwise unaffected hereby.

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† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

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**IN WITNESS WHEREOF**, the Parties have caused this Third Amendment to be executed in multiple counterparts by their respective duly authorized representatives, as of the date first set forth above.

**BIOVAIL LABORATORIES INTERNATIONAL SRL**

By: /s/ Jean-Luc Martre

Name: Jean-Luc Martre

Title: Vice-President Commercial Operations

**PLANTEX USA, INC.**

By: /s/ Allen Lefkowitz

Name: Allen Lefkowitz

Title: Chief Financial Officer

By: /s/ Cheryl Bohnel

Name: Cheryl Bohnel

Title: Secretary

CONFIDENTIAL TREATMENT REQUESTED:

*Portions of this Exhibit have been redacted pursuant to a request for confidential treatment under Rule 24b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended. Such redacted portions have been replaced with “{\*\*\*}” in this Exhibit. An unredacted version of this document has been filed separately with the Securities and Exchange Commission along with the request for confidential treatment.*

PRODUCT DEVELOPMENT and LICENSE AGREEMENT  
(Diltiazem Bead Tablets)

THIS AGREEMENT IS MADE EFFECTIVE THIS 31st DAY OF MAY 2000 BETWEEN:

BIOVAIL LABORATORIES INCORPORATED a Barbados corporation incorporated under the International Business Companies Act, 1991-24, whose head office is

Chelston Park  
Building 2, Collymore Rock  
St. Michael BH1  
Barbados, West Indies,

(“Biovail”)

- and -

Universiteit Gent  
a public law entity having its offices at St. Pietersnieuwstraat 25  
B-9000 Gent  
Belgium

(the “University”) and -

Professor Jean-Paul Remon  
acting as Director of the Department of Pharmaceutical Technology of the University,  
Harelbekestraat 72 B  
B-9000 Gent

(“Remon”)

WHEREAS Biovail has developed and is marketing a once-daily controlled release formulation of diltiazem, in the form of capsules;

WHEREAS Remon has developed a method of compressing of beads into tablets which was communicated to Biovail under a secrecy agreement signed on August 21st, 1998;

WHEREAS Biovail has expressed an interest in the commercial exploitation of this method;

WHEREAS Biovail is interested in developing a controlled release formulation of diltiazem, in the form of tablet;

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WHEREAS that controlled release tablet formulation is intended to be bio-equivalent to marketed controlled release Diltiazem in form of non compressed encapsulated Beads according to FDA and TPP regulations.

WHEREAS the Licensors have represented to Biovail that they have the capability of developing controlled release formulations of various medicines;

WHEREAS Biovail is interested in engaging the Licensors, and each of them, to perform specific development services relating to the development of a controlled release formulation of diltiazem for which Biovail may obtain marketing authorizations in Canada, the United States of America and such other countries;

WHEREAS the Licensors are willing to perform the development work specified in this Agreement to apply their existing technology to the preparation of a controlled release formulation of Diltiazem, subject to the terms and conditions hereinafter set forth;

WHEREAS the Licensors are willing to license to Biovail such application of this technology for the controlled release formulation of Diltiazem, allowing Biovail inter alia to obtain marketing authorizations in Canada, in the United States or in any other countries.

IN CONSIDERATION OF the mutual covenants and agreements contained in this Agreement and other good and valuable consideration (the receipt and sufficiency of which are acknowledged by each of the Parties), it is agreed by and between the Parties as follows:

DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth in this Article:

1.1 Additional Products means any controlled release formulations of any pharmaceutically active compound in the form of tablets made by compressing beads or pellets using any part or all of the University Technology, and which are developed or to be developed pursuant to the terms of this Agreement, excluding:

- (a) any such formulation in which the principal active ingredient is the subject of any existing or future agreement relating to the Technology between the University and any third party;
  - (b) any such formulation which is primarily intended for agricultural use;
  - (c) any such formulation which is primarily intended for veterinary use; and
  - (d) any such formulation in which the principal active ingredient is the subject of patent protection in the form of a product or product by process claim which is in force for at least four more years.
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- 1.2      Affiliated Company means any company, partnership, joint venture or subsidiary that is Controlled directly or indirectly by one of the Parties, or any company that directly or indirectly Controls one of the Parties, or any company that is directly or indirectly Controlled by a company which also directly or indirectly Controls one of the Parties, so that Affiliated Company shall include any parent or subsidiary of one of the Parties, or any direct or indirectly held subsidiary of one of the Parties. Affiliate has a corresponding meaning.
- 1.3      Agreement means this agreement, all schedules to this Agreement and all instruments supplemental to this Agreement or in amendment or confirmation of this Agreement; “hereof”, “hereto” and “hereunder” and similar expressions mean and refer to this Agreement and not to any particular article, or paragraph; and “article”, “paragraph”, or “schedule” mean and refer to the specified article, paragraph, or schedule of this Agreement.
- 1.4      Application for Regulatory Approval means an application made to a Regulatory Authority in the Territory for permission to Market and/or Manufacture the Product in any country in the Territory.
- 1.5      Beads means Biovail’s formulation of extended release diltiazem, in the form of generally spherical particles individually covered with an appropriate extended release coating and used by Biovail, *infer alia*, in manufacturing a controlled release formulation of diltiazem in the form of capsules marketed in the USA and in Canada in association with the trade mark Tiazac.
- 1.6      Biovail Technology means any technology, information or data relating to the Product or any Additional Product developed by or for Biovail by Persons other than the Licensors.
- 1.7      Business Day means any day other than a Saturday, Sunday or statutory holiday in the Territory.
- 1.8      Clinical Batches means commercial size batches of any product on which the clinical studies and tests necessary to file an Application for Regulatory Approval and for obtaining Regulatory Approval are to be performed.
- 1.9      CMC Section means the Chemistry, Manufacturing and Control data section of an Application for Regulatory Approval filed in the USA or Canada.
- 1.10     Control means the ownership, directly or indirectly, of more than fifty percent (50%) of the voting rights attached to the issued voting shares of a Party to this Agreement.
- 1.11     Effective Date means the date on which this Agreement becomes effective as set out on page 1.
- 1.12     FDA means the Food and Drug Administration of the United States of America.
- 1.13     First Commercial Sale means the first arm’s length sale of the Product by Biovail or an Affiliated Company to a Purchaser.
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- 1.14 GCP means Good Clinical Practice, as prescribed from time to time by the FDA, the TPP or other Regulatory Authority in the country in which the Product is to be Marketed during the term of this Agreement.
- 1.15 GLP means Good Laboratory Practice, as prescribed from time to time by the FDA, the TPP or other Regulatory Authority in the country in which the Product is to be Marketed during the term of this Agreement.
- 1.16 GMP means the Good Manufacturing Practices, as prescribed from time to time by the FDA, the TPP or other Regulatory Authority in the country in which the Product is to be Marketed during the term of this Agreement.
- 1.17 Improvement means an improvement to the Product for which Regulatory Approval may be obtained by filing a supplement to the Regulatory Approval.
- 1.18 Intellectual Property means all trademarks, patents, copyrights, industrial designs (including applications for any of the foregoing, and any renewals, divisions, extensions and reissues, where applicable, relating thereto), owned by or licensed to the Licensors, or either of them, and relating to the Product or any Additional Product.
- 1.19 Invention means the technology involved in the compression of beads into tablets, as invented by Professor Jean-Paul Remon and as communicated to Biovail of Canada under a confidentiality agreement made in September, 1998 and presently the subject of a Patent Application Nr. GB 992 1933.9.
- 1.20 Know-How means any and all trade secrets, know-how, and other non-publicly known inventions, discoveries, formulae, processes, and data related to the technology used to formulate and Manufacture the Product or any Additional Product owned by or licensed to the Licensors, or either of them, and which relate to preparations or formulations of the Product or any Additional Product, and includes all data and information relating to:
- (a) Any characteristics, selection, judgment of properties and data relating to all materials used or useful in the processing, preparing, manufacturing, making and testing of the Product or any Additional Product; and
  - (b) All information and data concerning any processes, techniques, equipment and methods used or useful in the processing, preparing, manufacturing, making and testing of the Product or any Additional Product.
- 1.21 Lab Batches means batches of a product manufactured using laboratory size equipment for the purpose of developing and testing any formulation for that product.
- 1.22 Licensors means the University and Remon.
- 1.23 Manufacture means to process, prepare, make, test, package or label the Product, and Manufacturing and Manufactured have a corresponding meaning;
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- 1.24      Market means to register, promote, distribute, test, market, advertise, sell or offer to sell, and Marketing has a corresponding meaning.
- 1.25      NDA means a New Drug Application filed with FDA in connection with an Application for Regulatory Approval in the United States.
- 1.26      NDS means a New Drug Submission filed with TPP in connection with an Application for Regulatory Approval of the Product by the TPP.
- 1.27      Net Sales means the total of all amounts received in arm's-length sales made by Biovail or by any Affiliate of Biovail of the Product to arm's length purchasers, including Sub-Licensees and distributors, in the Territory, (excluding sales made by Biovail to any Affiliate of Biovail) net of:
- (a)      distributors', wholesalers' or trade discounts or rebates, and rebates actually paid to customers for distribution services;
  - (b)      price adjustments to customers' inventories to address market price declines;
  - (c)      charge-backs or rebates actually allowed and taken on such sales in such amounts as are customary in the trade and are specifically related to the Product (excluding cash discounts, except for normal trade discounts for early payment of invoices);
  - (d)      duties and taxes on any sale to the extent separately included in the amount billed;
  - (e)      transportation charges separately itemized;
  - (f)      credits for product returns; and
  - (g)      other deductions mutually agreed on by the Licensors and Biovail.
- 1.28      Party means any of Biovail, the University, or Remon, and Parties means any two or more of them.
- 1.29      Person means an individual, partnership, joint venture, trustee, trust, corporation, unincorporated organization or other entity or a government, state or agency or political subdivision thereof, and pronouns have a similarly extended meaning.
- 1.30      Pilot Batch means a batch of approximately 50,000 doses of a product made on pilot size production equipment at Biovail's manufacturing facility on which in vitro studies or pilot bio studies may be performed.
- I.31      Pilot Bio Study means the development and conducting of comparative bioavailability studies on a Lab Batch or a Pilot Batch of a Product to determine whether that Product meets the applicable in vivo Product Standards.
- 1.32      Product means the controlled release formulation of Diltiazem in the form of a tablet which meets the Product Standards, which is made by compressing Beads using any part or all of the
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University Technology, and which is developed by the Licensors pursuant to their obligations under this Agreement.

- 1.33
- Product Standards means the standards for the Product set out in Schedule 1.33 to this Agreement, including the Target Profile, and the dosage forms and strengths for the Product.
- 1.34
- Regulatory Approval means approval to Market pharmaceutical products issued by government health authorities.
- 1.35
- Regulatory Authority means a government health authority or other body having jurisdiction to grant Regulatory Approvals within the Territories.
- 1.36
- Royalty Bearing Product means the Product and any Additional Product.
- 1.37
- Sub-Licensee means any Person licensed or authorized by Biovail to Market the Product or any Additional Product in any country in the Territory and includes any Affiliate of Biovail, and any distributor appointed by Biovail for the Product.
- 1.38
- Target Profile means the bioavailability profile for the Product to be achieved by Biovail, as specified by Biovail.
- 1.39
- Term means the period of time that this Agreement will remain in force unless earlier terminated in accordance with the provisions of Article 12.
- I.40
- Territory means all countries of the world.
- 1.41
- TPP means the Therapeutic Products Program of Health Canada or any successor agency having the administrative authority to regulate or approve the testing or marketing of human pharmaceutical or biological therapeutic products in Canada.
- I.42
- University Technology means collectively, the Invention, the Know-How and all Intellectual Property in existence at the Effective Date or developed by or for the Licensors after the Effective Date.
- I.43
- The following Schedules are attached to this Agreement:
- (a)
- Schedule 1.33      Product Standards
- (b)
- Schedule 2.1        Product Development Steps
- (c)
- Schedule 3.1        Development Fees
- 2
- PRODUCT DEVELOPMENT SERVICES
- 2.1
- Biovail hereby engages the Licensors, and each of them, to work in close co-operation with Biovail to apply the University Technology to the development of the Product in accordance with Schedule 2.1. Licensors shall diligently pursue the development of the Product to enable Biovail to apply for and obtain Regulatory Approval for the Product in Canada and the United
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States. In return, Biovail agrees to pay to the Licensors the Fees set out in Article 3 of this Agreement.

The Licensors shall use their best efforts, in accordance with the highest professional standards in performing the development services described in this section, and shall diligently perform the development work. The Licensors shall incur no liability for any damage, as specified in Article 16.5, caused to Biovail if the development of the Product, or the Application for Regulatory Approval for the Product, is not successful.

Review of Work done to Date

2.2 The Licensors shall provide to Biovail, as soon as reasonably possible after the Effective Date, the results of any in vitro or in vivo testing of any formulation of the Product that is available to the Licensors at that time.

Formulation Development

2.3 The Licensors shall perform all of the services specified in this Article 2, in co-operation with Biovail, and shall assist Biovail:

- (a) in developing the Product to meet the Product Standards, and
- (b) in acquiring the ability to Manufacture the Product in full compliance with the Product Standards.

2.4 Biovail shall supply to the Licensors, at the request of and at no cost to the Licensors, such quantities of Beads as the Licensors may reasonably require for the purposes of the development of the Product. The Licensors shall as soon as reasonably possible after the execution of this Agreement provide to Biovail a schedule with its estimated requirements, by quantity and time, for the Beads. The Licensors shall keep full and accurate records of the quantities of Beads received and used by them, for three (3) years following the receipt of each shipment from Biovail. Such records shall be made available for inspection by Biovail or an independent certified public or chartered accountant of Biovail's choice during normal business hours after reasonable notice, up to two (2) years after the termination or expiration of this Agreement, and at Biovail's expense. Such inspection shall occur no more often than once a year, except in the year following the discovery of any discrepancies, during which quarterly inspections shall be permitted.

2.5 Biovail shall provide to the Licensors, at the request of the Licensors, all data on Diltiazem, including chemistry and pharmacological data and analytical and methodological data that, in the opinion of Biovail, the Licensors may require to carry out their obligations under this Agreement.

Preparation of Lab Batches

2.6 The Licensors shall develop, for and on behalf of Biovail, all formulations for the Product, and prepare all Lab Batches of those formulations, required for the purposes of this Agreement. The Licensors shall conduct whatever analytical tests and studies are required to

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demonstrate that those Lab Batches meet the applicable Product Standards in accordance with protocols approved by Biovail.

2.7 The Licensors shall as soon as reasonably possible after the completion of any test or study on any Lab Batch provide the results of that test or study, together with all information relating to the formulation of the Lab Batch tested, to Biovail for review.

Stability Protocols and Analytical Methods

2.8 Biovail shall be responsible for developing all of the stability protocols, including but not limited to those required for the CMC Section, and all bioavailability protocols, required for the test and studies contemplated by paragraph 2.22 of this Agreement.

2.9 The Licensors shall develop and validate all necessary analytical methods and disclose those to Biovail for review and approval before use. Such approval shall not be unreasonably delayed or withheld. Biovail shall, at the request of the Licensors, provide to the Licensors any validated analytical methods known to Biovail and useful in the development of the Product.

2.10 Any report or protocol required by this Agreement to be delivered to Biovail shall be deemed to be approved by Biovail upon the expiry of thirty (30) working days from the date of delivery to Biovail unless Biovail has within that thirty (30) days delivered to the Licensors a notice specifying all of the defects or deficiencies in that report or protocol. Biovail may designate any third person to inspect any such report or protocol.

Reporting by the Licensors

2.11 The Licensors shall deliver on oral report on the development of the Product, by conference call, every two weeks. The Licensors shall deliver to Biovail every sixty days during the development of the Product, written reports setting out the steps taken by the Licensors to develop the Product, summaries of any tests or studies conducted by the Licensors since the last such report was delivered, and a comparison of the progress made in the development of the Product against the Development Plan, and shall provide to Biovail on a monthly basis an extract relating to the Product from Biovail's internal monthly R&D report.

Pilot Batches and Pilot Bio Studies at Biovail

2.12 As soon as possible after Biovail is satisfied that the Lab Batches of the Product prepared and tested by the Licensors meet the Product Standards, Biovail shall use its reasonable best efforts to manufacture one or more Pilot Batches of the Product in all dosage strengths of the Product at a Biovail facility. The Licensors shall at the request of Biovail, assist Biovail in the manufacture of those Pilot Batches of the Product. Remon and any other representatives of the Licensors reasonably required for that purpose shall at the request of Biovail be present at the manufacture of each such Pilot Batch. Biovail shall reimburse the Licensors for the reasonable out of pocket expenses incurred by the Licensors for that purpose.

2.13 Biovail may perform such Pilot Bio Studies on each Pilot Batch as Biovail may reasonably require for the purposes of this Agreement, and shall notify the Licensors of the successful

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completion of each such Pilot Study, or of the reasons why the results of any Pilot Bio Study was not successful.

2.14 In the event that Biovail determines from the results of any such Pilot Bio Study that the Product studied does not meet the Product Standards, the Licensors shall, at the request of Biovail, make any necessary modifications to the formulation of the Product and prepare additional Lab Batches of the Product, and shall assist in repeating the development, production and testing of Pilot Batch until the deficiencies noted by Biovail are corrected..

Clinical Batches

2.15 Biovail shall use its reasonable best efforts to manufacture one or more Clinical Batches of the Product as soon as reasonably possible, after the successful completion of the Pilot Bio Studies. The Licensors shall provide whatever assistance is reasonably required by Biovail for that purpose.

2.16 Biovail shall complete the Pivotal Bio Studies on the Product as soon as reasonably possible after the manufacture of the Clinical Batch(es).

Scope of Assistance by the Licensors

2.17 The Licensors shall provide to Biovail, at no additional cost to Biovail except as provided in this Agreement, such assistance in the Manufacture of any Pilot Batches, Clinical Batches, validation batches and pre-approval batches, in the Application for Regulatory Approval and in the Manufacture of the Product, at Biovail's manufacturing facility as Biovail may reasonably require. Such assistance shall be sufficient to enable Biovail to Manufacture the Product on a commercial scale so that the Product when manufactured will meet the Product Standards.

2.18 In fulfilment of the obligations of the Licensors:

- (a) technical personnel of Biovail shall, at Biovail's expense, have the right by prior arrangement to visit the relevant research and development facilities of the Licensors to review, examine and acquire any formulations, test results or other Know-How related to the use of the University Technology to develop and manufacture the Product under this Agreement. The Licensors shall co-operate fully with and assist Biovail's personnel in order to facilitate the review and examination of that Know-How; and
  - (b) at the request of Biovail, Remon or any other employees of the Licensors skilled in manufacturing the Product and acceptable to Biovail, shall visit Biovail's manufacturing facility to advise and assist Biovail's personnel in the use or application of the Know-How, including the Manufacture of that Product, and in any relevant analytical and quality control procedures known to the Licensors, and methods for such Manufacture. Dates and times for such visits shall be arranged at the mutual convenience of Biovail and the Licensors, but shall not be unreasonably delayed by the Licensors.
- 2.19 Biovail shall be entitled to a maximum of twenty (20) man-days of such visits for the Product, by Remon and/or employees of the Licensors skilled in the Manufacture of the Product. Should Biovail required additional assistance, the Licensors shall at the request of Biovail
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provide such assistance. Biovail shall reimburse the Licensors for the travel expenses reasonably incurred by the Developer in providing such assistance to Biovail.

Information for the Application for Regulatory Approval

2.20 The Licensors shall provide to Biovail all information relating to the Product as it may possess, which may be reasonably necessary to enable Biovail to complete the CMC section of an Application for Regulatory Approval, within twenty (20) working days of the acquisition or development of such information.

2.21 The Licensors shall provide to Biovail such assistance as Biovail may reasonably require to complete the product development report required for an Application for Regulatory Approval. In accordance with its obligations, the Licensors shall disclose Know-How to Biovail including:

- (a) all Manufacturing procedures and processes, raw material lists and specifications, equipment lists and specifications;
- (b) Master formula describing quantitative composition of all active and inactive components;
- (c) Manufacturing procedures for both Lab Batches as used by the Licensors;
- (d) all in vitro and in vivo test methodologies, test results and product specifications generated by the Licensors; and,
- (e) all reports of stability studies conducted by the Licensors; and
- (f) all other data and information reasonably in the possession of or available to the Licensors and reasonably required by or useful to Biovail in the preparation of an Application for Regulatory Approval in any country in the Territory.

Further Studies

2.22 Biovail shall, perform at its own expense, any other tests or studies required to obtain Regulatory Approval of the Product anywhere in the Territory where Biovail may wish to apply for Regulatory Approval of the Product.

3 DEVELOPMENT FEES AND MILESTONES

3.1 In partial compensation for the costs incurred by University for the development of the Product using the University Technology, and for developing a successful Clinical Batch, and in consideration for the license given hereafter in Article 5, Biovail shall pay to the Licensors, or to any other person designated by the Licensors, development fees in the amount of {\*\*\*}† as specified in Schedule 3.1 to this Agreement, upon the completion of the events specified in Schedule 3.1.

† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

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- 3.2 The payments required by paragraph 3.1 of this Agreement shall be paid to the University and to Remon or his assigns, as indicated in Schedule 3.1.
- 3.3 Each of the payments specified in Schedule 3.1 of this Agreement shall be non-refundable, and fully earned by the Licensors upon completion of the development work preceding the completion of the milestone in respect of which the payment is made specified this Agreement. No such payment shall be credited or debited against any other amount that may be payable to the Licensors by Biovail under this Agreement.
- 3.4 None of the payments made to the Licensors, or either of them shall be returned or repaid even if any subsequent milestones or standards are not met.

4 REGULATORY APPROVALS

- 4.1 Provided that there are no legal or regulatory impediments to such applications, Biovail shall itself file, or have its Sub-Licensee file, an Application for Regulatory Approval of the Product in Canada and in the United States of America, as soon as reasonably possible after the completion of the tests and studies considered necessary by Biovail for that purpose.
- 4.2 Provided that there are no legal or regulatory impediments to such applications, Biovail shall itself file or have its Sub-Licensee file, an Application for Regulatory Approval in such other countries in which Biovail deems commercialization of the Product desirable, as soon as reasonably possible after the completion of the tests and studies considered necessary by Biovail for that purpose.

5 GRANT OF RIGHTS TO BIOVAIL

Transfer to Biovail

- 5.1 The Licensors, and each of them, hereby grant to Biovail an exclusive license to Manufacture and Market the Product and subject to the provisions of paragraphs 5.5 and 5.6, any Additional Product, for pharmaceutical use, in the Territory, to use the Technology for those purposes and to authorize or Sub-License others to do any of the things that Biovail has the right to do under this Agreement.
- 5.2 Biovail shall have the exclusive right to negotiate, and shall be solely responsible for the negotiation of, Sub-Licenses for the Manufacture or Marketing of the Product and/or of any Additional Product.
- 5.3 All of the right, title and interest in and to any formulation of the Product developed by Biovail, and in and to any Biovail Technology, or any University Technology relating exclusively to the Product and developed or applied by the Licensors pursuant to this Agreement, shall belong to and be owned by Biovail. The Licensors shall retain all rights to any University Technology not granted to Biovail by this Agreement, but grants to Biovail an exclusive license under that University Technology to the full extent required to enable Biovail to Manufacture and Market the Product and, subject to the provisions of paragraphs 5.5 and 5.6, any Additional Product. Biovail shall own all data and information relating to the Product, or to any Additional Product developed from any tests or studies conducted by or for Biovail, including all clinical
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information and all data generated by any bioavailability studies or clinical studies conducted pursuant to the provisions of this Agreement.

Additional Products and Other Uses of the Technology

5.4 Biovail shall not use the University Technology to develop any Additional Product, or any other pharmaceutical product or formulation except in accordance with this Agreement. Biovail shall not use the University Technology to develop a generic version of the Product without the consent in writing of the Licensors, or to develop an Additional Product except in accordance with the terms of this Agreement. Biovail shall not use the Biovail Technology, and the University shall not use the University Technology, to develop any product containing the same active ingredient as the Product.

5.5 If at any time after the Effective Date Biovail wishes to use the University Technology to develop any pharmaceutical product or formulation other than the Product, Biovail shall notify the Licensors of that intention in writing, and shall identify the active ingredient(s) and dosing strengths of that proposed formulation, and shall confirm that the proposed formulation meets the criteria for an Additional Product. The Licensors shall within fourty-five (45) days of their receipt of that notice :

- (a) confirm to Biovail in writing that no agreement to develop or no license has been granted to any third party for the use of the University Technology with the active ingredient referred to in that notice; or
- (b) notify Biovail that such an agreement to develop or a license has been granted; and
- (c) if such a license has not been granted, notify Biovail in writing whether the Licensors wish to carry out the development activities set out in Article 2 of this Agreement for that Additional Product.

5.6 Upon the delivery of the confirmation of a notice by the Licensors pursuant to paragraph 5.5(a), or the expiration of the time specified in paragraph 5.5 without the delivery of a notice by the Licensors pursuant to paragraph 5.5(b), the Licensors and Biovail shall enter into, and shall be deemed to have entered into, a license agreement for that Additional Product on the same terms as those of this Agreement. Biovail shall within sixty (60) days of the delivery of that notice pay to the Licensors the sum of {\*\*\*}† as an advance on any royalties payable under this Agreement in respect of the Net Sales of that Additional Product.

5.7 Biovail shall diligently pursue the development of any such Additional Product. If that development has been suspended or discontinued for a period longer than six (6) months, Biovail shall, at the request in writing of the Licensors and upon repayment by the Licensors of the amounts paid pursuant to this Agreement, surrender any rights granted to Biovail by this Agreement and in respect of that Additional Product to the Licensors, if Biovail fails to conduct or resume such development work within four (4) months of such a request from the Licensors.

† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

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5.8 The Licensors may convert any license agreement in respect of that Additional Product to a non-exclusive license agreement if Biovail has not filed an Application for Regulatory Approval of that Additional Product within three (3) years of the effective date of that license agreement. Biovail shall, within 30 days after the request in writing from the Licensors, to be made no more frequently than once every six months, report to the Licensors in writing about all the steps taken by Biovail or its Affiliates to develop any Additional Product identified in the request, and it shall advise the Licensors whether or not it is continuing the research and development of that Additional Product in accordance with the requirements of paragraph 5.7, and whether it has filed an Application for Regulatory Approval of that Additional Product.

5.9 If the Licensors notify Biovail pursuant to paragraph 5.5(c) that the Licensors do not wish to develop that Additional Product, Biovail itself may develop that Additional Product and sub-license any rights in that Additional Product to others.

Development by the Licensors of Additional Products

5.10 If the Licensors notify Biovail pursuant to paragraph 5.5(c) that the Licensors wish to develop that Additional Product, each of the Licensors shall, at the request of Biovail, work in close co-operation with Biovail to apply the University Technology to the development of that Additional Product on the same terms and conditions as those specified in this Agreement. Licensors shall diligently pursue the development of any such Additional Product to enable Biovail to apply for and obtain Regulatory Approval for that Additional Product in Canada and the United States. In return, Biovail shall pay to the Licensors the same Fees as those set out in Article 3 of this Agreement.

Restriction on the Developer’s Activities

5.11 The Licensors shall not themselves Market the Product, or any other modified, controlled or extended release form of Diltiazem, within the Territory, and shall not assist, authorize or permit any other Person other than Biovail to Manufacture or Market the Product, or any other modified, controlled or extended release form of Diltiazem, within the Territory, except as expressly permitted by this Agreement, or as otherwise expressly authorized in writing by Biovail.

6 MARKETING OF THE PRODUCT

6.1 Provided that it is then commercially reasonable to Biovail to do so, Biovail shall by itself or through a Sub-Licensee Market the Product in Canada, the United States of America and in all other countries in which Regulatory Approval has been granted for the Product in the name of Biovail or an Affiliate within six (6) months of obtaining that Regulatory Approval for the Product.

6.2 Provided that it is then commercially reasonable to Biovail to do so, Biovail shall take all steps available to it to cause a Sub-Licensee to Market the Product in any countries in which Regulatory Approval has been granted for the Product in the name of that Sub-Licensee, within six (6) months of the receipt of Regulatory Approval in that country.



6.3 Biovail shall deliver to the Licensors at the end of each calendar quarter a report setting the countries in which Applications for Regulatory Approval for the Product have been filed, Sub-Licenses to Market the Product have been entered into, and the Product is being Marketed.

6.4 The provisions of paragraphs 6.1 to 6.3 shall apply to any Additional Product developed by Biovail.

7 INTELLECTUAL PROPERTY

Patent Review

7.1 The Licensors shall notify Biovail within ten (10) days after the Effective Date of any patents or patent applications known to the Licensors, or either of them, that may be infringed by any the Manufacture or Marketing of the Product in the Territory. The Licensors shall modify or amend any formulation of the Product to avoid any such infringement, or the infringement of any other patents or patent applications that come to the attention of the Licensors or either of them, and shall not be liable to Biovail for any delay in the development of the Product resulting in any such modification or amendment required by any patents issued or patent application published more than sixty (60) days after the Effective Date.

7.2 Biovail may, from time to time during the development of the Product and at its own expense, conduct any patent review deemed by Biovail to be necessary or advisable to identify any patents that may be infringed by the Manufacture or Marketing of the Product in the Territory. Biovail shall notify the Licensors within ten (10) days of the completion of any such review of any patents that may be infringed by any such Manufacture or Marketing. The Licensors may modify or amend any formulation of the Product to avoid any such infringement, and shall not be liable to Biovail for any delay in the development of the Product resulting in any such modification or amendment required by any patents issued or patent application published more than sixty (60) days after the Effective Date.

Patent Applications

7.3 The Licensors shall file and diligently prosecute applications for patents for the Invention, all countries of the Territory, including without limitation in the United States, Canada and the European Patent Office, provided that patent protection for the Invention in any such country is reasonably available.. All such applications and all patents issuing from such applications in the Territory shall be assigned to Biovail to the full extent that such applications or patents cover the Product. If such a partial assignment cannot reasonably be made the Licensors shall grant to Biovail an exclusive license for the Product and any Additional Product under such applications or patents for the Term of this Agreement at no further cost to Biovail. Each of Biovail and the Licensors shall at no further cost to the other execute any documents that may reasonably be required by the other to fulfil its obligations to apply for and to obtain any such patents.

7.4 The Licensors shall advise Biovail in writing of its plans to file patent applications for the Invention, and of the countries in the Territory in which the Licensors intend to file such applications. Biovail may at its own expense file an application for the Invention in any country in respect of which the Licensors have not indicated that they will file an application. Any such application filed by Biovail and any patent issuing therefrom shall be filed in the name of the

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inventors or of the Licensors. All such applications filed by Biovail shall be assigned to the Licensors to the full extent that such applications or patents cover any and all technical application other than the Product or any Additional Product. If such a partial assignment cannot reasonably be made, Biovail shall grant to the Licensors an exclusive license, including the right to sublicense for any and all technical application other than the Product or any Additional Product, under such applications or patents for the duration of the patent. Subject to the provisions of paragraph 7.7 of this Agreement, Biovail may deduct all of the costs associated with or incurred in the filing, prosecution, issuing and maintenance of any such patents and applications in any such country from the royalties payable to the Licensors pursuant to Article 8 of this Agreement.

7.5 Biovail may, at its own expense, file applications for patent for any new invention relating directly to the Product or to any Additional Product (after a license has come into existence according to Sections 5.5 and 5.6) or to the Biovail Technology in any countries or territories in which Biovail intends to sell the Product or have the Product sold, and where such patent protection is reasonably available.

7.6 The Licensors shall, at their own expense, file applications for patents any new invention not relating directly to the Product or to any Additional Product but otherwise relating to the University Technology in the United States of America, Canada, and in Europe and in all other countries and territories in which Biovail indicates, in writing to the University, its intention to sell the Product or any Additional Product, or have the Product or any Additional Product, sold and where such patent protection is reasonably available, within the times prescribed by the applicable laws. The Licensors shall advise Biovail in writing of their plans to file such patent applications and of the countries in which the Licensors intends to file such applications. Biovail may file any such application in any country in respect of which the Licensors has not indicated it will file an application after notice from Biovail stating its intention to sell in such a country, as is indicated in section 7.3. All such applications filed by Biovail shall be assigned to the Licensors to the full extent that such applications or patents cover any and all technical application other than the Product or any Additional Product. If such a partial assignment cannot reasonably be made, Biovail shall grant to the Licensors an exclusive license, including the right to sublicense, for any and all technical application other than the Product or any Additional Product, under such applications or patents for the duration of the patent. Subject to the provisions of paragraph 7.7 of this Agreement, Biovail may deduct all of the costs associated with the filing, prosecution, issuing and maintenance of any such patents and applications in any such country from the royalties payable to the Licensors pursuant to Article 8 of this Agreement.

7.7 The deduction by Biovail of costs associated with the filing, prosecution, issuing and maintenance of patents and applications permitted by paragraphs 7.4 and 7.6 in respect of any country in the Territory shall be limited to the amount of royalties paid or payable in respect of sales of the Product or any Additional Product in that country, except in the case of such costs incurred in respect of costs incurred with respect to:

- (a) the international phase of a PCT application;
  - (b) a European application prior to the entry of a national phase application;
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(c) national phase applications in the United States, Canada, Japan, the United Kingdom, France and Germany which may be deducted from any royalties payable by Biovail to the Licensors under this Agreement.

Improvements

7.8 Any improvements to the University Technology made by the Licensors shall be included within the scope of the Licenses granted by this Agreement and shall be disclosed promptly by the Licensors to Biovail. No additional royalty or other compensation shall be paid by Biovail to the Licensors in respect of any improvement that does not allow Biovail to manufacture the Product at a lower cost. Provided that any such improvement allows Biovail to manufacture the Product at a lower cost, the Parties shall conduct good faith negotiations regarding any additional compensation that Biovail should pay with respect to such improvement.

7.9 All improvements in or to the Biovail Technology made or acquired by Biovail shall remain the property of Biovail.. All improvements to the University Technology made or acquired by Biovail may be used by the Licensors and their licensees without compensation to Biovail. Biovail shall retain all other rights in and to the Improvements not granted by this Article.

Enforcement of Intellectual Property Rights

7.10 Each of the Licensors and Biovail shall notify the other of any material infringement of the University Technology or of the Biovail Technology of which it becomes aware during the term of this Agreement. To the extent that it is commercially feasible to do so Biovail shall institute patent infringement actions against any controlled release product in tablet form made from compressed active beads or active pellets containing Diltiazem, or any other controlled release product in tablet form made from compressing active beads or active-pellets containing the same active ingredient as contained in any Additional Product, marketed by third parties in the United States of America, Canada or Europe and having a material impact on the sales of the Product in the Territory.

7.11 The Licensors shall have the right, but not the duty, to institute an action for any infringement of any University Technology hereby licensed to Biovail. The costs and expenses of any such action shall be borne by the Parties in such proportions as they may agree in writing. Each party shall execute all necessary and proper documents and take such actions as shall be appropriate to allow the other party to institute and prosecute such infringement actions and render such assistance as reasonably required by the party enforcing such patents. Any award paid by a third party as a result of such an infringement action (whether by way of settlement or otherwise) shall first be allocated among the Parties to reimburse each of them for their respective contributions to the costs and expenses incurred in such action, and then in proportion to their respective losses (namely, lost royalties for the Licensors, and lost sales for Biovail) arising from such infringing acts.

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8 ROYALTIES ON SALES

8.1 Biovail shall pay to the Licensors or to their assigns, in accordance with the provisions of paragraph 8.10 below, a royalty in the amount of {\*\*\*}† of the Net Sales of each Royalty Bearing Product in the Territory as well as of any material value or reduction that Biovail may obtain from the purchasers of the Product in compensation for the Product and of any payment or settlement for disputes with third parties over the use or purchase of the Product.

8.2 Biovail’s obligations to pay the royalties required by paragraph 8.1 shall cease, in any particular country with respect to the Royalty Bearing Product:

- (a) upon the expiry of the patent-protection for the University Technology covering the Royalty Bearing Product in that country; or
- (b) on the 15th anniversary of the First Commercial Sale of the Royalty Bearing Product in that country if no patent protection was applied for obtained in that country,

and thereafter the license granted to Biovail shall be a paid-up royalty-free license.

8.3 Biovail shall notify the Licensors of the date of the First Commercial Sale of the Royalty Bearing Product by itself, its Affiliated Companies, or its Licensees of the Royalty Bearing Product in the Territory within thirty (30) days of that First Commercial Sale.

8.4 The royalties required by paragraph 8.1 shall be due and payable within sixty (60) days of the end of March, June, September and December with respect to sales of the Royalty Bearing Product in the three (3) month periods ending on last days of March, June, September and December. Such royalties shall be paid to the Licensors, to such bank account as the Licensors may designate, in U.S. dollars. Biovail shall on payment of royalties submit a written statement summarizing on a country by country basis the accrual of the royalties in question together with a copy of the quotations of the main banker of Biovail on the currency rates in question.

8.5 Upon expiry of Biovail’s obligation to pay royalties in respect of the Net Sales of the Royalty Bearing Product in any particular country, Biovail and its Affiliated Companies and its Sub-Licensees shall have a perpetual, non-terminable paid-up license to use the Know-How for that Royalty Bearing Product and to Manufacture and Market that Royalty Bearing Product in that particular country without further obligation to the Licensors.

Marketing, Promotion and Minimum Royalties

8.6 Biovail shall use, or shall cause a Sub-Licensee of Biovail to use, commercially reasonable efforts to market, promote and sell the Royalty Bearing Product in the Territory.

Reports

8.7 Within sixty (60) days of the end of each calendar quarter, Biovail shall send to the Licensors a statement disclosing the Net Sales of each Royalty Bearing Product for the just ended calendar

† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

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quarter, and the royalties due to the Licensors. The Licensors may disclose those reports to any person entitled to receive that portion of the royalties attributable to Remon or his assigns, as contemplated by paragraph 8.10 of this Agreement.

8.8 Biovail, if required so to do by any applicable tax law, may deduct any governmental withholding tax required to be deducted by it on payment of royalties hereunder or on payment of any of the development fees set out in Section 3, but shall account to the relevant tax authorities for the sum so deducted and provide the Licensors with proof of such payment from such authorities. Biovail shall provide reasonable assistance to the Licensors in securing any benefits available to the Licensors with respect to governmental tax withholdings by any relevant law or double tax treaty.

8.9 Biovail shall keep at its registered office, and shall cause its Affiliated Companies and its (sub-Licensees to keep, full and accurate records of the sales of each Royalty Bearing Product for each country for purposes of compliance with its obligations hereunder. Such records shall be made available following the First Commercial Sale of each Royalty Bearing Product in the Territory, for inspection by the Licensors or an independent certified public or chartered accountant of the Licensors' choice during normal business hours after reasonable notice, up to two (2) years after the termination or expiration of this Agreement, and at the Licensors' expense. Such inspection shall occur no more often than once a year, except in the year following the discovery of any discrepancies, during which quarterly inspections shall be permitted.

8.10 All royalty payments made pursuant to the provisions of paragraph 8.1 shall be apportioned between the Licensors. {\*\*\*}† of such royalties shall be paid directly to the University (to the credit of account number {\*\*\*}† of the ASLK/CGER Bank in Brussels for "Universiteit Gent" and specifying the Department of Remon as recipient). {\*\*\*}† of such royalties and such milestones as indicated shall be paid separately to Remon or his assigns. The University and Remon acknowledge that a separate agreement shall be made for {\*\*\*}† of the compensation and that this provides full satisfaction of any claim Remon may have for his rights in the Invention and the Know-How.

9 REPRESENTATIONS AND WARRANTIES

9.1 Unless specifically stated below, each Party hereby represents and warrants to the other Party as follows:

(a) Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized; has the corporate or other power and authority and the legal right to conduct its business as it is now being conducted; and is in compliance with all requirements of applicable law, except to the extent that any noncompliance would not have a material adverse effect on the properties, business, or financial or other condition of such Party and would not materially adversely affect such Party's ability to perform its obligations under this Agreement.

† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

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(b) Such Party has the corporate or other power and authority and the legal right to enter into this Agreement and to perform its obligations hereunder and has taken or will take all necessary corporate or other action on its part to authorize the execution and delivery of this Agreement and the performance of its obligations hereunder. This Agreement has been duly executed and delivered on behalf of such Party, and constitutes a legal, valid and binding obligation, enforceable against such Party in accordance with its terms, except as such enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting the enforcement of creditors' rights generally from time to time in effect and general principles of equity.

(c) Each Party will comply with all applicable laws and regulations in the Territory in connection with the performance of its duties hereunder.

(d) All necessary consents, approvals and authorizations of all governmental authorities and other Persons required to be obtained by such Party in connection with this Agreement have been or will be obtained.

(e) The execution and delivery of this Agreement and the performance of such Party's obligations hereunder will not conflict with, violate the provisions of, constitute a default or give rise to rights of any entity under (a) the Party's Articles of Incorporation or Bylaws; (b) any requirement of applicable laws or regulations; (c) any judgement, decree or order of any court or governmental or regulatory agency applicable to the Party, its subsidiaries, its Affiliates or their respective assets; or (d) any agreement, commitment or contractual obligation of such Party or of any of its subsidiaries or Affiliates is a party or by which they or their respective assets are bound, except such conflicts that do not materially adversely affect such Party's ability to perform its obligations under this Agreement.

9.2 The Licensors warrant that they have not developed for themselves or any other Person any controlled release formulation containing Diltiazem, and that they have not granted licenses to, authorized, or permitted any Persons other than Biovail to use the University Technology to Manufacture or to Market, any controlled release formulation containing Diltiazem in any country within the Territory.

9.3 The Licensors represent and warrant that:

(a) they own, will own or will have the right to use all of the University Technology and that they have or will have the right to transfer to Biovail the rights transferred by this Agreement;

(b) that all University Technology to be supplied to Biovail will, at the time the information is disclosed, accurately reflect the results of the tests and studies performed and all other information known to Biovail;

(c) they are not aware of any actual or potential claims by any third parties adverse to Biovail's right to use the University Technology or to authorize Biovail to use the University Technology;

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(d) they are not aware of any third party rights that would be infringed in the Territory by the use by Biovail or its Licensees of the University Technology, or by the Manufacture or Marketing of the Product in the Territory; and

(e) no information has been provided to third parties (apart from Affiliates of Biovail) that would facilitate any such party in Manufacturing the Product in the Territory.

10 CONFIDENTIALITY AND NON-DISCLOSURE

10.1 Each of the Licensors and Biovail shall receive and maintain all disclosures by the other Party hereunder, and any other information about the businesses or affairs of the other relating to Biovail Technology, the University Technology or to the Product in confidence, and shall not at any time disclose any such received information to Persons other than their Affiliated Companies, agents officers, employees, representatives, consultants and advisors, and to licensees and potential licensees of Biovail, except where permitted by this Agreement, and in any case only under confidentiality agreements which are at least as restrictive as the provisions of this Agreement. The Licensors and Biovail shall use such received information only to the extent necessary or permitted by this Agreement, or required by law. The Licensors and Biovail shall take all reasonable steps, including but not limited to prosecution, to ensure that their respective Affiliated Companies, agents, officers, employees, representatives, consultants, advisors and licensees and potential licensees maintain the obligations of confidence imposed on the Licensors and Biovail by this Agreement.

10.2 Paragraph 10.1 shall not apply to any Biovail Technology or University Technology which:

- (a) was already known to the receiving Party at the time of its disclosure by the disclosing Party;
- (b) has been published or is otherwise within the public knowledge or is generally known to the public;
- (c) has come into the public domain without any breach of this Agreement;
- (d) became known or available to the receiving Party from a source having the right to make such disclosure to the receiving Party and without restriction on such disclosure to the receiving Party;
- (e) is disclosed to the public and is generally available to the public as a result of compliance with any applicable law or regulation; or
- (f) is disclosed as the result of any applications for patents relating to the Product anywhere in the world.

10.3 Any information or data relating to the Product and developed after the Effective Date may be disclosed by the Party developing that information or data, provided that such disclosure does not result in any disclosure contrary to paragraph 10.1.

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11      ASSIGNMENT

11.1      This Agreement may be assigned by Biovail or the Licensors only with the prior written consent of the other, which consent shall not be unreasonably withheld, subject to confirmation by any assignee of Biovail or the Licensors to the other that such assignee agrees to be bound by the terms of this Agreement. No such assignment shall relieve the assigning Party of its obligations under this Agreement. Consent shall not be necessary for any assignment of this Agreement, including both the rights and obligations hereunder, to a company that is, an Affiliated Company of the assigning Party, provided the assigning Party notifies the other Party promptly of such assignment. Any such assignment may be on a country by country basis. No such assignment shall relieve the assigning Party of its obligations under this Agreement.

11.2      The Licensors may assign their rights to receive the payments referred to in Articles 3 and 8, in any one or more countries of the Territory, to any other Person, on notice in writing to Biovail. Neither Party shall transfer, assign or otherwise encumber the University Technology without taking all steps necessary to preserve the rights granted to the other Party by this Agreement.

11.3      Notwithstanding the provisions of paragraph 11.1, this Agreement and the rights and obligations under it may be assigned by either Party to any purchaser of that Party, subject to confirmation by the purchaser of that Party to the other Party that it agrees to be bound by the terms of this Agreement. No such assignment shall relieve the assigning Party of its obligations under this Agreement. Neither Party shall transfer, assign or otherwise encumber the University Technology without taking all steps necessary to preserve the rights granted to the other Party by this Agreement.

12      TERM, TERMINATION AND OTHER REMEDIES

12.1      This Agreement becomes effective on the date indicated on Page 1.

Termination During Product Development

12.2      Either Party may terminate this Agreement and the license(s) of the University Technology herein contemplated forthwith by notice in writing to the other Party, and without further liability to the other Party, with respect to the Product if any patent evaluation for the Product discloses patent rights which would prevent the Licensors from performing its obligations under this Agreement, or which would prevent Biovail from Manufacturing or Marketing the Product in any country in the Territory, and the attempts to modify the formulation pursuant to paragraph 7.1 have been unsuccessful in avoiding any potential infringement.

Termination — Non-Payment of Fees

12.3      If Biovail defaults in its obligation to pay any of the development fees specified in paragraph 3.1, the Licensors may, by written notice, terminate all rights and obligations of Biovail under this Agreement unless Biovail cures the default in payment not later than thirty (30) days after Biovail receives notification in writing of such default from Biovail.

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Termination - General

12.4 In the event of any default by the Licensors or Biovail in the performance of its obligations under this Agreement not otherwise referred to in this Agreement, the Party not in default may, by written notice to the Party in default, terminate all rights and obligations of the Party in default under this Agreement for the country or countries affected by that breach unless:

- (a) the Party in default cures the default within ninety (90) days after it receives notification in writing of such default, if such default can be cured within such ninety (90) days; or
- (b) the Party in default provides to the Party not in default, a reasonable plan for curing such default as soon as reasonably possible if such cure will take longer than such ninety (90) days.

12.5 Upon any termination by the Licensors pursuant to paragraph 12.4:

- (a) Biovail shall return to the Licensors all documents and other materials relating to the use of the University Technology in that countries or those countries, except for one copy that may be retained by Biovail's outside counsel; and
- (b) Biovail shall cease all use of the University Technology, including any sales of the Product in that country or those countries;

12.6 Upon any termination by Biovail pursuant to paragraphs 12.4, the Licensors shall return to Biovail all documents, all quantities of Diltiazem, (including any in-process material containing Diltiazem), and all other materials originating with Biovail and relating to the Manufacture of the Product in that countries or those countries, except for one copy that may be retained by the Licensors' outside counsel.

Surviving Rights and Obligations

12.7 The Parties' rights and obligations under Article 10 shall survive any termination of this Agreement.

12.8 Termination, relinquishment or expiration of this Agreement for any reason shall be without prejudice to any rights which shall have accrued to the benefit of either party prior to such termination, relinquishment or expiration. Such termination, relinquishment or expiration shall not relieve either party from obligations which are expressly indicated to survive termination or expiration of this Agreement.

13 FORCE MAJEURE

I3.1 In the event that either Party to this Agreement shall be rendered wholly or partially unable to carry out its obligations under this Agreement, other than obligations to render statements and make payments pursuant to the provisions of the Agreement, by reason of causes beyond its control, including but not restricted to acts of God, acts, omissions, or regulations of any government or subdivision thereof, judicial action, fire, storm, accident, war, riot, labour disputes, or transportation failure, then the performance of the obligations of such party, in so far as it is affected by such cause, shall be excused during the continuance of any inability so caused provided that the Party affected advises the other Party of its inability within thirty (30) days after such cause comes into existence.

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14        PROPER LAW

14.1        Any action brought by Biovail or the Licensors, or their respective assignees, to enforce any provision of this, or alleging any breach thereof shall be brought before a court of competent jurisdiction in London, England. This Agreement shall be governed and construed under and in accordance with the laws of Great Britain. The Parties irrevocably submit and attorn to the jurisdiction of the courts of Great Britain, without regard to their conflict of law rules, with respect to all matters arising out of or in connection with this Agreement and all matters, agreements or documents contemplated by this Agreement. The Parties waive any objections they may have to venue being in such courts, including, without limitation, any claim that such venue is an inconvenient forum.

15        COMPLIANCE WITH LAWS AND CHANGES IN LEGISLATION

15.1        If national, international and/or supranational legislation or rules necessitate changes in the present Agreement or make it illegal for one or both of the Parties to apply one or more of the provisions in the Agreement, it is the intention that the Agreement shall continue to be applied by the Parties to the extent it is legally possible. Changes in the provisions of this Agreement that might be necessary due to the above-mentioned conditions shall be kept to the minimum which is legally required and to the extent possible the changes shall aim at maintaining the contents of this Agreement as much as possible in word as well as in spirit, especially with respect to the financial balance between the Parties established by paragraphs 3.1 and 3.2.

16        INDEMNIFICATION

16.1        Biovail shall indemnify the Licensors and hold the Licensors harmless from and against any and all claims, damages, liabilities, costs and expenses, including reasonable counsel fees, arising from:

- (a)        any allegation of injury, damage or wrongdoing to third parties arising out of the use by any person of the Product and any Additional Product anywhere in the Territory, or out of Biovail's breach of this Agreement;
- (b)        any allegation of injury, damage or wrongdoing to any person arising out of any use by that person of any Product or Additional Product Manufactured or Marketed by Biovail;
- (c)        any default, negligence or act of omission of Biovail, by an Affiliated Company or by any Sub-Licensee;
- (d)        any breach of this agreement or any covenant or warranty in it; and/or
- (e)        any infringement or allegation of infringement of a third party's rights, including intellectual property rights, arising out of the Manufacture or Marketing of the Product or of any Additional Product in the Territory.

16.2        The Licensors shall indemnify Biovail and its Licensees and hold Biovail and its Licensees harmless from and against any and all claims, damages, liabilities, costs and expenses, including reasonable counsel fees, arising from:

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- (a) any allegation of infringement of a third party's rights resulting from any breach by the Licensors of its obligations under this agreement, or from the performance by the Licensors of any of the services specified in Article 2 of this Agreement; or
- (b) any allegation of injury, damage or wrongdoing to third parties arising out of any breach of this Agreement, by the Licensors; or
- (e) any allegation of injury, damage or wrongdoing to third parties arising out of the use of the University Technology to Manufacture the Product; or
- (d) any default, negligence or act of omission of the Licensors; or
- (e) any breach of this agreement or any covenant or warranty in it.

Notice

16.3 In the event that either Party seeks indemnification under this Article 16, such Party shall: i) promptly inform the indemnifying Party of any claim, suit or demand threatened or filed, ii) permit the indemnifying Party to assume direction and control of the defense of such claims, suit or demand resulting therefrom (including the right to obtain a settlement thereof at the discretion of the indemnifying Party with the reasonable consent of the other Party hereto), and iii) co-operate as requested (at the expense of the indemnifying Party) in the defense of such claims, suit or demand.

Limitations

16.4 An indemnifying Party's (including Biovail's) obligations under this Article 16 shall not extend to any claims, suits or demands for liability, damages, losses, costs or expenses arising from the indemnified Party's failure to comply with the terms and conditions of this Agreement, to the extent arising from the negligence or wilful misconduct of the indemnified Party, its agents or employees.

16.5 Except as expressly provided herein, neither Party to this Agreement shall be liable to the other for any consequential, special, incidental or contingent damages or expenses, whether in contract (including patent infringement), tort (including negligence) or otherwise arising out of, connected with, or resulting from its performance under this Agreement or the use or sale of the Product including, without limiting the foregoing, loss of revenue, profit, property, opportunity or use of any kind, including without limitation, damages for any loss of profits by the other Party hereto or others, or for any other similar collateral or consequential damages which may result from the use or sale of the Product.

17 GENERAL CONDITIONS AND PROVISIONS

17.1 Article and paragraph titles used in this Agreement are for convenience only and are not a part of the text hereof.

17.2 This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof (and into which all prior negotiations, commitments, representations and



undertakings of the Parties are merged) and except as herein provided there are no other oral or written understandings or agreements between the Parties hereto relating to the subject matter hereof.

17.3 No amendment or other modification of this Agreement shall be valid or binding on either Party hereto, unless reduced to writing and executed by the Parties hereto.

17.4 The Parties hereto are independent and neither Party is the agent, joint venturer, partner or employee of the other and, except as expressly provided herein, Biovail shall not be obligated by any agreements, representations or warranties made by the Licensors to any Person, nor with respect to any other action of the Licensors.

17.5 All terms used in any one number or gender shall extend to mean and include any other number and gender as the facts, context, or sense of this Agreement or any paragraph or Article hereof may require.

17.6 No waiver by either Party of any breach or series of breaches or defaults in performance by the other Party, and no failure, refusal or neglect to exercise any right, power or option given to either Party hereunder or to insist upon strict compliance with or performance of the obligations under this Agreement, shall constitute a waiver of the provisions of this Agreement with respect to any subsequent breach thereof or a waiver by such Party of its right at any time thereafter to require exact and strict compliance with the provisions thereof.

17.7 All provisions of this Agreement shall be severable and no such provision shall be affected by the invalidity of any other such provision to the extent that such invalidity does not also render such other provision invalid, always provided that the balance anticipated between the Parties relating to the payment and transfer of title to the University Technology, is not materially affected. In the event of the invalidity of any provision of this Agreement, it shall be interpreted and enforced as if all remaining provisions of the Agreement were valid and enforceable. If any provision of this Agreement shall be susceptible of two interpretations, one of which would render the provisions invalid and the other of which would cause the provision to be valid, such provision shall be deemed to have the meaning which would cause it to be valid.

17.8 The Parties agree that time is of the essence. If any item that is contemplated by this Agreement shall not be done as provided herein then the defaulting Party shall be subject to the termination provisions contained herein. However, such termination shall not limit any other remedies at law or in equity which may be available to the non-defaulting Party.

17.9 All information, data, reports, studies and results required to be provided to the Licensors or to Biovail by the terms of this Agreement shall, if necessary, be translated into the English language, at no expense to the Party receiving the information, data, reports, studies or results.

18 NOTICE

18.1 Any notice or other communication required or permitted to be given pursuant to the provisions of this Agreement shall be in writing and shall be given by prepaid first class mail, by facsimile or by other means of electronic communications, or by hand delivery as hereinafter provided. Any such notice if mailed by prepaid first-class mail at any time other than during a

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general discontinuance of postal service due to a strike, lockout or otherwise shall be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication shall be deemed to have been received on the Business Day following the sending, or if hand-delivered shall be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual noted below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address shall be governed by this paragraph. In the event of a general discontinuance of postal service due to a strike, lockout or otherwise, notices or other communications shall be delivered by hand or sent by facsimile or other means of electronic communication and shall be deemed to have been received in accordance with this paragraph. Notices and other communications shall be addressed as follows: :

Biovail Laboratories Incorporated  
Chelston Park  
Building 2, Collymore Rock  
St Michael, BH1  
Barbados  
Attention: Mr. Eugene Melnyk, President  
Facsimile: + 1 246 437 7085

With a copy to:

Biovail Corporation International  
2488 Dunwin Drive  
Mississauga, Ontario  
L5L 1J9  
Attention: Mr. Ken Cancellara  
Facsimile: +1 416 285 6499

AND TO:

Universiteit de Gent  
Department of Research Policy  
Sint Pietersnieuwstraat 25  
B-9000 Gent, Belgium  
Facsimile: 011-3 29-264 35 83

With a copy to:

Prof. Dr. J. Erauw  
Law School  
Universiteitstraat 4  
B-9000 Gent, Belgium

AND TO:

To Prof. Dr. Jean-Paul Remon  
Department of Pharmaceutical Technology

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Harelbekestraat 72 B  
B-9000 Gent, Belgium

18.2 Notwithstanding the foregoing, any notice or other communication required or permitted to be given by any Party pursuant to or in connection with any court procedures contained herein or in any Schedule hereto may only be delivered by hand. The failure to send or deliver a copy of a notice to counsel for the Licensors or Biovail shall not invalidate any notice given under this Article 18.

19 COPIES, ETC.

19.1 This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument. Counterparts may be executed either in original or faxed form and the parties adopt any signatures received by a receiving fax machine as original signatures of the parties. Any Party providing its signature in faxed form will promptly forward to the other Party an original of the signed copy of this Agreement that was so faxed. The failure of either Party to forward that original shall not affect the enforceability of this Agreement.

In Witness Whereof the Parties hereto have executed this Agreement.

On this Effective Date, 5 March 2000

BIOVAIL LABORATORIES INCORPORATED  
Per: /s/ Eugene Melnyk  
Eugene Melnyk, President and Chief Executive Officer

UNIVERSITEIT GENT  
Per: /s/ J. Willems  
Prof. Dr. J. Willems, Rector of the University

JEAN-PAUL REMON  
/s/ Jean-Paul Remon 31 May 2000

GEZIEN EN GOEDGEKEURD  
/s/ Yannick de Clercq  
YANNICK DE CLERCQ  
REGERINGSCOMMISSARIS

\_\_\_\_\_

Schedule 2.1

| Diltiazem Bead Tablets            | Dates     | Responsibility     |
|-----------------------------------|-----------|--------------------|
| Formulation Development           | Completed | University of Gent |
| Transfer of Formula               | Completed | University of Gent |
| Transfer of the Validated Methods | Completed | University of Gent |
| Technology Transfer               | Completed | University of Gent |

SCHEDULE 3.1

Services Contracted by Biovail  
and Fees to be paid to  
the Licensors by Biovail

The fees specified in this Schedule 3.1 shall be paid by Biovail to the Licensors for the services performed by the Licensors and included in each of the events specified below:

| Payment Number and Event:                                                                                 | Amount*<br>payable to the<br>University | Amount<br>payable to<br>Remon |
|-----------------------------------------------------------------------------------------------------------|-----------------------------------------|-------------------------------|
| 1. Upon execution of this Agreement:                                                                      | {***}†                                  |                               |
| 2. Upon the manufacture to the satisfaction of Biovail of the Pilot Batch of the Product                  | {***}†                                  |                               |
| 3. On the completion to the satisfaction of Biovail of the Pilot Bio Study performed on the Pilot Batches | {***}†                                  | {***}†                        |
| 4. On the completion to the satisfaction of Biovail of the Clinical Batch                                 | {***}†                                  | {***}†                        |

\* All amounts in this Schedule are expressed in US dollars.

† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

## SCHEDULE 1.32

### Product Standards

#### Dosage Form

The Product will be in form of a marketable tablet prepared from Beads. The Product will have physical characteristics, including friability and hardness, sufficient to permit handling, packaging and Marketing of the Product in plastic bottles of the type commonly used for the distribution and sale of pharmaceuticals in North America

#### Dosage Strengths

The Product shall be developed in 4 dosages strengths: 120 mg; 180 mg; 240 mg and 360 mg 420 mg of diltiazem per tablet, and in any other strengths than can be compressed on conventional tablet presses.

#### Dissolution and Bioavailability

The Product shall provide a dissolution profile obtained according to FDA standards and test conditions, that does not differ from the one obtained from Beads by more than ten percent (10%) at any point in time on the profile.

The Product tested in vivo in healthy volunteers shall meet the criteria for Bioequivalence according to both FDA and TPP regulations.

#### Product Composition

The Product shall contain at least 34% active diltiazem, in amounts sufficient to comply with the FDA standards and regulations for the dosage strengths specified above.

Each tablet shall have a Capsule shape defined by a format design proposed by the Licensors and approved and adapted to Biovail's tableting machine, (The upper punch may have a secability bar).

The Product will contain only approvable excipients that are listed in the Inactive Ingredient Guide as issued and upgraded periodically by the FDA, in amounts that do not exceed the amounts permitted by such Inactive Ingredient Guide(s), that are approved by the FDA for use in pharmaceutical preparations intended for oral administration to humans, and for which there is a Drug Master File available in all countries in the Territory where Drug Master Files are required.

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CONFIDENTIAL TREATMENT REQUESTED:

*Portions of this Exhibit have been redacted pursuant to a request for confidential treatment under Rule 24b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended. Such redacted portions have been replaced with “{\*\*\*}” in this Exhibit. An unredacted version of this document has been filed separately with the Securities and Exchange Commission along with the request for confidential treatment.*

First Amendment to the Product Development and License Agreement

THE PARTIES

**Ghent University**, public institution with legal personality, having its administrative offices in Belgium, B-9000 Gent, Sint-Pietersnieuwstraat 25 and duly represented by Prof. dr. Luc Moens, vice-rector (hereinafter referred to as “**University**”)

AND

**Biovail Laboratories International SRL** (successor in interest to Biovail Laboratories Incorporated), a society with restricted liability organized under the laws of Barbados and having a principal place of business at Welches Christ Church, Barbados, West Indies, BB17154 (hereinafter referred to as “**Biovail**”)

AND

**Professor Jean-Paul Remon**, living at John Youngestraat 14 B-9090 Melle, Belgium (hereinafter referred to as “**Remon**”).

PREAMBLE

**Whereas**, the parties have entered into a Product Development and License Agreement dd. May 31, 2000 (hereinafter the “**Agreement**”);

**Whereas**, University has requested Biovail to make payment of future royalties due to University in EURO;

**Now, therefor**, it is agreed by and between the parties as follows:

Article 1. Subject

1.1 Article 8.4. of the Agreement shall as of the date of this amendment be deleted and replaced by following:

The royalties required by paragraph 8.1 shall be due and payable within sixty (60) days of the end of March, June, September and December with respect to sales of the Royalty Bearing Product in the three (3) month periods ending on last days of March, June, September and December. Such royalties shall be paid to the Licensors, to such bank account as the Licensors

may designate. {\*\*\*}† of the royalties which in accordance with paragraph 8.10 are due to Remon or his assigns shall be paid in U.S. dollars. {\*\*\*}† of the royalties which in accordance with paragraph 8.10 are due to University shall be paid in EURO. The royalties payable to University shall be calculated in U.S. dollars and be converted into EURO on the due date of payment (or the earlier date on which payment is made) using the conversion rate listed on the European Central Bank website. Biovail shall on payment of royalties submit a written statement summarizing on a country by country basis the accrual of the royalties in question together with a copy of quotations of the main banker of Biovail on the currency rates in question and shall provide reasonable detail on the U.S. dollar/EURO conversion of the royalties due to University.

**Article 2. Miscellaneous**

2.1 All other provisions of the Agreement remain unchanged and in full force and effect.

**IN WITNESS WHEREOF**, THE PARTIES HAVE EXECUTED THIS AGREEMENT IN THREE (3) ORIGINAL COPIES ON JULY 21, 2009

|                                      |                                   |
|--------------------------------------|-----------------------------------|
| <b>For Ghent University</b>          | <b>GEZIEN EN GOEDGEKEURD ZIEN</b> |
| <u>/s/ P. Van Cauwenberge</u>        | <u>/s/ Yannick de Clercq</u>      |
|                                      | 27 Aug 2009                       |
| <u>Prof. dr. Luc Moens</u>           | <u>YANNICK DE CLERCQ</u>          |
| <u>Prof. Dr. P. Van</u>              | <u>REGERINGSCOMMISSARIS</u>       |
| <u>Vice-Rector of the University</u> |                                   |
| <u>Cauwenberge Rector</u>            |                                   |

**For Biovail Laboratories International SRL**

/s/ Fitzroy Bardouille  
Fitzroy Bardouille  
Vice-President, Finance

**For Professor Jean-Paul Remon**

/s/ Jean-Paul Remon  
Jean-Paul Remon

† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.



**CONFIDENTIAL TREATMENT REQUESTED:**

*Portions of this Exhibit have been redacted pursuant to a request for confidential treatment under Rule 24b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended. Such redacted portions have been replaced with “{\*\*\*}” in this Exhibit. An unredacted version of this document has been filed separately with the Securities and Exchange Commission along with the request for confidential treatment.*

**NON-EXCLUSIVE LICENSE AGREEMENT**

This Agreement, effective as of December 5, 1996, is between ETHYPHARM S.A., a French Corporation, having offices at 21 rue Saint Mathieu, 78550 Houdan, France, (hereinafter ETHYPHARM) and Hoechst Marion Roussel, Inc., a Delaware Corporation, having offices at 10236 Marion Park Drive, Kansas City, Missouri 64137 (hereinafter HMRI).

**ARTICLE I**  
**BACKGROUND OF THE AGREEMENT**

ETHYPHARM has developed certain technology relating to diltiazem formulations for the North American market that are bioequivalent to Cardizem CD<sup>®</sup>, but which may likely infringe HMRI's PATENTS. The ETHYPHARM formulations possess the advantage that while being bioequivalent to Cardizem CD<sup>®</sup>, they are smaller than CD, and thus easier for patients to swallow. HMRI is interested in obtaining rights to these formulations, so that they may be marketed as line extensions to the current offering of Cardizem<sup>®</sup> products. ETHYPHARM is interested in collaborating with HMRI so that its technology may be rapidly commercialized in U.S.A. by the rights provided herein. Therefore the parties agree to the following terms and conditions.

**ARTICLE II**  
**DEFINITIONS**

2.01 “ETHYPHARM TECHNOLOGY” The term “ETHYPHARM TECHNOLOGY” refers to: a) the two formulations of diltiazem HCL that ETHYPHARM has currently developed that are bioequivalent to HMRI's brand of Cardizem CD<sup>®</sup>; b) the know how and trade secrets necessary or desirable to commercially manufacture these formulations; c) all bioequivalence studies completed or underway with these formulations; d) all analytical work carried out on these formulations; e) any data package assembled or partially assembled that may be suitable for submission to the FDA; and e) all other information, know how, processes etc., that are either necessary or desirable, to receive approval by the FDA in the TERRITORY or is required for commercial production.

2.02 “TERRITORY” The term “TERRITORY” refers to Australia, New Zealand, the United States, its territories and possessions. At the present time, ETHYPHARM cannot convey a non-exclusive license to HMRI for Canada. If ETHYPHARM is able to so convey a license for the ETHYPHARM TECHNOLOGY within sixty (60) days, the term TERRITORY shall include Canada. ETHYPHARM will use its best efforts to issue a non-exclusive license to HMRI for Canada.

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2.03 “NET SALES” The term “NET SALES” shall mean the gross invoice amount billed for the DOSAGE FORM by HMRI (or an affiliate of HMRI or any licensee thereof) to customers (other than an affiliate of HMRI) in the TERRITORY, less trade, cash or quantity discounts actually allowed and taken, amounts repaid or credited by reasons of rejections, returns, or because of retroactive price reductions (given in the normal course of business), freight, insurance, and other transportation costs, rebates paid pursuant to governmental regulation and taxes on such sales of the daily dosage product, as normally deducted from sales by HMRI for financial reporting purposes. The amount of NET SALES for any period shall be determined on the basis of sales recorded in the ordinary course on the books and records of HMRI (or an affiliate of HMRI) during such period consistent with past practice.

2.04 “DOSAGE FORM” The term “DOSAGE FORM” shall refer to a once-a-day diltiazem product which incorporates or utilizes the ETHYPHARM TECHNOLOGY.

2.05 “AFFILIATE” The term “AFFILIATE” shall refer to any entity which directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with one of the parties to this agreement. For the purpose of the preceding sentence, the term control shall mean the possession, direct or indirect, of the power to direct the management and policies of an entity, whether through ownership of voting securities, by contract, or otherwise.

2.06 FDA refers to the United States Food and Drug Administration, or the equivalent Health Ministry Agency for Australia, New Zealand or Canada.

2.07 “HMRI PATENTS” The term “HMRI PATENTS” refers to certain patents that have issued in the United States to HMRI’s affiliate, Carderm Capital, and that are directed to sustained release formulations of diltiazem. These include United States Patent No. 5,286,497, No. 5,470,584, and No. 5,439,689. Corresponding applications or patents exist in Australia, Canada and New Zealand and are assigned to HMRI.

ARTICLE III  
GRANT OF LICENSE

3.01 ETHYPHARM hereby grants to HMRI, a non-exclusive license on ETHYPHARM’s TECHNOLOGY in the TERRITORY. This license includes the right to make, have made, use, sell, offer for sale, export or import.

3.02 ETHYPHARM has filed certain patent applications directed to its TECHNOLOGY in the TERRITORY. In the event that any patents issue in the TERRITORY, then ETHYPHARM grants to HMRI a non-exclusive license under these patents. This license shall include the right to make, have made, use, sell, offer for sale, import or export.

ARTICLE IV  
ROYALTIES

4.01 LICENSE EXECUTION FEE

HMRI shall pay to ETHYPHARM, the one time execution fee of {\*\*\*}† for the exclusive rights granted immediately above. This payment shall be made by December 20, 1996.

4.02 ROYALTIES FOR NEW DOSAGE FORMS OF CARDIZEM CD®

HMRI will utilize the ETHYPHARM TECHNOLOGY in order to introduce a new DOSAGE FORM of Cardizem CD® that it currently does not market. This new DOSAGE FORM shall initially be a 360mg Cardizem CD®. The royalty rate for any new DOSAGE FORM, for a strength not currently on the market, shall be {\*\*\*}† of the net sales of the new DOSAGE FORM in the TERRITORY.

4.03 ROYALTIES ON OTHER EXISTING DOSAGE FORMS

The parties agree that HMRI shall be free, but not obligated, to use ETHYPHARM’s TECHNOLOGY to produce its currently existing once-daily diltiazem products. If HMRI shall use ETHYPHARM’s TECHNOLOGY to produce such DOSAGE FORMS, then the royalty shall be {\*\*\*}† of net sales.

4.04 MINIMUM ROYALTIES

For a period of 7 years, measured from the end of the quarter in which HMRI receives final approval from the FDA for the 360mg DOSAGE FORM, HMRI agrees to pay ETHYPHARM the following minimum royalties on this 360mg dosage form:

| Year | Minimum Royalty (US\$) |
|------|------------------------|
| 1    | {***}†                 |
| 2    | {***}†                 |
| 3    | {***}†                 |
| 4    | {***}†                 |
| 5    | {***}†                 |
| 6    | {***}†                 |
| 7    | {***}†                 |

The parties agree that after 7 years, all guarantees of a minimum royalty base shall cease. The royalty on the 360mg dosage form shall remain at {\*\*\*}† of net sales. No minimum royalty shall be due on any other DOSAGE FORM OF CARDIZEM CD® except the 360mg dosage form.

4.05 PAYMENT OF ROYALTIES AND FEES

Royalty payments to ETHYPHARM shall be made on a quarterly basis, and will be paid within 30 days of the close of each quarter. Each royalty payment shall be accompanied by a statement which shall set forth for each DOSAGE FORM: 1) the amount of sales of that

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DOSAGE FORM; 2) the amount of royalty due thereon for that quarter, and; 3) all deductions taken in computing to arrive at NET SALES.

4.06      REDUCTION OF ROYALTY IN EVENT ETHYPHARM GRANTS FURTHER LICENSES

The minimum royalty schedule agreed to in Section 4.04 shall be revised in the event that: 1) ETHYPHARM grants an additional license on the ETHYPHARM technology in the TERRITORY; or 2) if ETHYPHARM or one of its affiliates sells or offers for sale, a DOSAGE FORM in the TERRITORY. This reduction in royalties shall apply to the entire year in which such an event shall occur. The schedule below should be interpreted such that the year refers to the number of years after launch and the royalty reduction (as in the year relating to the scheduled payment in 4.04.). Illustratively, if a license is granted in the third year, minimum royalties are called for, even if that year is five years from the date of this Agreement, the royalty payment shall be on reference to year 3 of the schedules set forth herein, or {\*\*\*}†. The new reduced minimum royalty schedule shall be:

| Year after Launch | Minimum Royalty (US\$) |
|-------------------|------------------------|
| 1                 | {***}†                 |
| 2                 | {***}†                 |
| 3                 | {***}†                 |
| 4                 | {***}†                 |
| 5                 | {***}†                 |
| 6                 | {***}†                 |
| 7                 | {***}†                 |

4.07      RECORDS

HMRI agrees to keep records showing sales of the DOSAGE FORMS under the license granted herein in sufficient detail to enable royalties payable under sections 3.02 and 3.03 to be calculated. HMRI agrees to maintain these records for THREE (3) years after payment of the royalty. HMRI has no obligation to ETHYPHARM to maintain these records beyond this THREE (3) year period. HMRI agrees to permit its records to be inspected from time to time to the extent necessary to verify the accuracy of the reports specified in section 4.05. Such inspection shall be carried out at ETHYPHARM’s expense by an independent certified public accountant acceptable to HMRI, during normal business hours, at the location where HMRI routinely stores such records. The certified public accountant shall only report to ETHYPHARM the amount of royalties payable under this agreement.

† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

ARTICLE V  
TERM

5.01 The term of this Agreement shall run for Ten (10) years from the date of the launch of the initial DOSAGE FORM. If any patents issue on the ETHYPHARM TECHNOLOGY in the TERRITORY, then the life of this Agreement shall run until the expiration of the patent in the TERRITORY, provided that the DOSAGE FORM would literally infringe any claim of the issued patent, absent the license granted under Section 3.02. After the expiration of the Agreement, HMRI shall be free to use the ETHYPHARM TECHNOLOGY.

5.02 If either party shall be in default of any obligation hereunder, or shall be adjudged bankrupt, or becomes insolvent, or makes an assignment for the benefit of creditors, or is placed in the hands of a receiver or a trustee in bankruptcy, the other party may terminate this Agreement by giving sixty( 60) day's notice to the other party, specifying the basis for termination. If within sixty (60) days after receipt of such notice, the party who received notice shall remedy the condition forming the basis for termination, such notice shall cease to be operative, and this AGREEMENT shall continue in full force.

5.03 HMRI shall have the right to cancel this AGREEMENT by December 20, 1996 on the basis of any information uncovered in its due diligence review, or if sufficient information is not provided during its due diligence review. If HMRI has paid the LICENSE EXECUTION FEE, then ETHYPHARM agrees to return these moneys to HMRI within 14 days of ETHYPHARM receiving notice of HMRI's decision to cancel. ETHYPHARM shall not owe HMRI any interest for the period in which it is in receipt of this LICENSE EXECUTION FEE, provided it is returned within the 14 day period.

ARTICLE VI  
TECHNOLOGY TRANSFER

6.01 Within 60 days after the execution of this Agreement, ETHYPHARM shall make available to HMRI all of the ETHYPHARM TECHNOLOGY. The exact manner by which this disclosure shall occur will be decided by the technical personnel of HMRI after consultation with the technical personnel of ETHYPHARM. The goal of this disclosure shall be to provide the information it requires in order to be able to receive rapid approval of the DOSAGE FORM by the FDA. This disclosure will include, but not be limited to, information regarding the composition of the formulation, all biostudies carried out on the formulations including summaries as well as raw data, methods of manufacture, quality control assays, methods of storing, methods of packaging, etc. This disclosure will include written materials (in English) prepared by ETHYPHARM personnel, visits by HMRI personnel to ETHYPHARM's facilities and visits by ETHYPHARM's personnel to HMRI's facilities in the. United States.

6.02 HMRI will reimburse ETHYPHARM for the reasonable and customary expenses associated with the technology transfer. These expenses include internal costs, such as employee salaries and external costs, such as the travel expenses. ETHYPHARM will obtain HMRI's approval prior to incurring any expenses associated with the technology transfer. The technical personnel of HMRI will determine the most appropriate mechanism for estimating and approving costs associated with the technology transfer after consultation with ETHYPHARM.

ETHYPHARM will submit invoices to HMRI detailing its expenses for the technology transfer on a monthly basis. HMRI will reimburse ETHYPHARM for its expenses associated with the technology transfer within 30 days of its receipt of the invoice.

6.03 HMRI will be responsible for obtaining the appropriate approvals by the FDA in the TERRITORY. HMRI will use its best efforts to file the supplemental NDA on the initial DOSAGE FORM rapidly, and will have the supplemental NDA filed by July 1, 1998. HMRI will also be responsible for manufacturing the DOSAGE FORMS for sale in the TERRITORY. After completion of the TECHNOLOGY TRANSFER, ETHYPHARM agrees to continue to provide technical support to HMRI throughout the term of this agreement, when requested by HMRI.

6.04 During the period in which HMRI is seeking FDA approval of the DOSAGE FORM, HMRI will keep ETHYPHARM advised of the status of the regulatory submission. Once final approval of the FDA is obtained for said DOSAGE FORM, HMRI will launch the product within 90 days of receiving final approval.

6.05 FUTURE IMPROVEMENTS

During the term of this Agreement, ETHYPHARM will keep HMRI advised of any improvements to the ETHYPHARM TECHNOLOGY. HMRI shall be free to use these improvements for no additional consideration, Any improvement made to ETHYPHARM’s TECHNOLOGY by HMRI shall be the property of HMRI.

ARTICLE VII  
LITIGATION AND PATENTS

7.01 ETHYPHARM agrees to keep HMRI informed if it files patent applications on the ETHYPHARM TECHNOLOGY in the TERRITORY. ETHYPHARM also agrees to keep HMRI advised of the status of the prosecution of these patent applications in the TERRITORY.

7.02 Each party shall notify the other party of any suspected infringement of the patents and shall inform the other party of any evidence of such infringement.

7.03 In the event of an infringement, HMRI has the first right to bring suit under the patents at its own expense in ETHYPHARM’S name. ETHYPHARM agrees to cooperate with HMRI in any such litigation, including providing witnesses, documents or items in response to discovery requests or to facilitate prosecution of the action.

If after One Hundred and Twenty (120) days, HMRI has not brought suit, then ETHYPHARM is free to institute suit at its own expense. HMRI will cooperate with ETHYPHARM in any such action if it has any documents, witnesses, or items that are relevant to the action.

ARTICLE VIII  
INDEMNIFICATION

8.01 HMRI agrees to defend ETHYPHARM and hold ETHYPHARM harmless from any loss incurred or suffered, arising out of, or in connection with:



- a) the manufacture, sale, distribution, or packaging of any DOSAGE FORMS produced pursuant to this agreement including, without limitation, product liability claims;
- b) the filing, or the failure to file, any report, application, document, or information required to be filed regarding the DOSAGE FORM with the FDA, and;
- c) any claim, or related claim, based upon entering into this agreement with HMRI, whether instituted by a third party, or an agency of the United States government.

8.02 In order for HMRI to incur this liability under section 8.01, ETHYPHARM must promptly notify HMRI of any third party claim or third party suit, which ETHYPHARM considers to fall within the provisions of section 8.01. ETHYPHARM shall specify with particularity the basis of the claims or suit and provide HMRI with any information requested so that it may assess the claim.

8.03 HMRI shall at its own expense assume the defense of such claim or suit, provided that ETHYPHARM, upon reasonable notice, consults and cooperates with HMRI regarding the suit, and any discovery requests. ETHYPHARM agrees to provide witnesses, documents or items requested by HMRI, whether to comply with a discovery request, or to adequately defend the suit. Failure to cooperate will extinguish HMRI's obligations under section 8.01.

8.04 HMRI shall control any such litigation and shall at its own sole discretion defend, settle or compromise the action.

#### ARTICLE IX CONFIDENTIALITY

9.01 HMRI is being provided with ETHYPHARM's TECHNOLOGY which contains valuable know how and trade secrets. During the technology transfer described in Article VI, ETHYPHARM will be exposed to valuable trade secrets and know how of HMRI's which are utilized in the manufacture of Cardizem CD®. Each party recognizes the confidential and proprietary nature of the others information and agrees to take the following steps to protect it.

9.02 All written material transferred pursuant to this Agreement will be labeled confidential, if the owner considers such information confidential. During any visits to manufacturing facilities pursuant to the technology transfer, the disclosing party will advise the recipient if it is being exposed to confidential information and the nature of the confidential information. Each party agrees that any confidential information received from the other party will only be used for the transaction described by this agreement and for no other purpose. Each party agrees not to disclose the other party's confidential information to any third party. The obligations of confidentiality do not prohibit submitting any information to the FDA, or other governmental agency, that is required for product approval or maintenance of such approval.

9.03 The obligations of confidentiality and non-use will not apply to information which:

- a) can be shown by the recipient to have been in the public domain at the time of its receipt from the disclosor;
- b) subsequently comes into the public domain through no fault of the recipient;
- c) the recipient can show information was already in its possession prior to its disclosure hereunder, or;
- d) the information had previously been received from a third party who had not received it in confidence from the disclosor hereunder.

ARTICLE X  
WARRANTIES AND REPRESENTATIONS

10.01 ETHYPHARM represents and warrants that it has free, clear, and good title to the ETHYPHARM TECHNOLOGY and its granting a license to HMRI in the TERRITORY does not conflict with any previous or existing agreement.

10.02 Each party represents and warrants that it has the power and authority to execute and deliver this agreement and to carry out its obligations hereunder and to consummate the transactions contemplated hereby.

ARTICLE XI  
MISCELLANEOUS

11.01 Subject to any prior countervailing obligations for the duration of this Agreement, HMRI shall have a right of first refusal on all products and technology owned or acquired by ETHYPHARM for marketing in the TERRITORY, insofar as such products relate to the slow release of diltiazem, and its salts, esters and analogues. This right of first refusal shall be such that no subject product or technology shall be offered for sale or distribution in the TERRITORY on terms more favorable than terms first offered to HMRI, and shall not be offered on terms equivalent to those first offered to HMRI, until HMRI has either failed or refused, for a period of one hundred eighty (180) days from the date of offer, to accept an offer to license, distribute or market in the TERRITORY. This right of first refusal shall not apply to either Australia or Canada for the current Ethypharm diltiazem formulations currently marketed in Europe by ETHYPHARM and its licensees, which formulations are not bioequivalent to Cardizem CD.

11.02 Neither party shall be liable for nonperformance or delay in performance due to any Act of God; act, regulation or law of any government; war; riot; civil commotion; destruction of production facilities or materials by fire, earthquake or storm; strike; labor disturbances; epidemic; failure of public utilities or common carriers; or any limitation requirement or prohibition imposed or required by the United States Food and Drug Administration or any other governmental agency having jurisdiction over the subject matter of this agreement.

11.03 A. Any notice, consent, authorization, communication of approval required to be given hereunder shall be effected by: (i) depositing it in writing in Registered or Certified Mail, with the requisite postage affixed, addressed to the party notified, or (ii) transmitting it by

telefax, confirmed by letter addressed to the party or notified; or (iii) personally delivering it in writing to the party notified, at the address of such party herein below set forth or at such latest address as may hereunder be given by such party in writing to the other for notice:

To:       ETHYPHARM  
          ETHYPHARM S.A.  
          21 rue Saint Mathieu,  
          78550 Houdan, France  
          Attention:     Patrice Debregeas  
                          President Directeur General

To:       HMRI  
          Hoechst Marion Roussel, Inc.  
          10236 Marion Park Drive,  
          Kansas City, Missouri 64137  
          Attention:     Chief Legal Counsel

B.       Unless otherwise specified in this Agreement, the date of such deposit, transmission or delivery, respectively, shall be the date of such notice, consent, authorization, communication or approval.

11.04   While the limitations and restrictions imposed by the parties herein upon each other are considered by the parties to be reasonable in all the circumstances, it is recognized that restrictions of the nature in question may fail for technical reasons unforeseen, and, accordingly, if any such restrictions shall be adjudged to be void, but would be valid if part of the wording thereof were deleted or the period, if any thereof, reduced or the range of said restriction shall apply with such modifications as may be necessary to make it valid and effective, then the said Agreement shall be modified to make it valid; provided, however, that this agreement is not thereby rendered fundamentally different in its content or effect.

11.05   All money amounts referred to in this Agreement are in U.S. Dollars, and payments may be made in U.S. Dollars.

11.06   The parties hereto shall not assign or transfer, partially or entirely, any of their rights or interests or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld. However, either party to this Agreement may transfer this agreement to the surviving corporation resulting from either a corporate merger, corporate acquisition, or corporate reorganization. This transfer shall have no effect upon any of the rights and obligations created under this Agreement, and the surviving corporation shall assume all of the rights and obligations of the entity it acquires.

11.07   This Agreement shall be interpreted in accordance with and governed by the laws of the State of Missouri, U.S.A.

11.08   The headings for the Paragraphs of this agreement are to facilitate reference only, do not form a part of this Agreement and shall not in any way affect the interpretation hereof.

11.09 Upon execution of this Agreement, neither party shall give any public notice or make any press announcement regarding this Agreement except such notice as may have been jointly developed and agreed upon by the parties. Either party is free to refer to this Agreement in any regulatory filing required to be submitted to the SEC or any equivalent government agency.

IN WITNESS WHEREOF, each of the parties hereto, through their duly-authorized representative, has executed this Agreement on the day and year first above written.

HOECHST MARION ROUSSEL, INC.

By (Signed)  
Title \_\_\_\_\_

ETHYPHARM S.A.

By (Signed)  
Title \_\_\_\_\_

By (Signed)  
Title \_\_\_\_\_

éthypharm  
Direction Générale et Médicale  
194, Bureaux de la Colline  
S2213 SAINT-CLOUD — FRANCE  
Visioconference (33) 01 41 12 00 75  
Tél. (33) 01 41 12 17 20  
Fax (33) 01 41 12 17 30

HAND DELIVERED  
Mr. Charles R. Struby  
Director,  
U.S. Commercial Development  
Hoechst Marion Roussel, Inc.  
10236 Marion Park Drive  
Kansas City, MO 64134-0627  
U.S.A.

Dear Charley:

This letter is given in reference to the Non-Exclusive License Agreement executed December 5, 1996. As the Agreement specifies, Ethypharm is committed to using our best efforts to eliminate any contractual impediments to including Canada within the Territory as defined in Paragraph 2.02 of the Non-Exclusive License Agreement. In the event that Ethypharm cannot accomplish this objective notwithstanding its best efforts, then the Minimum Royalties provided in Paragraph 4.04 shall be reduced to the following amounts:

| Year | Minimum Royalty |
|------|-----------------|
| 1    | {***}†          |
| 2    | {***}†          |
| 3    | {***}†          |
| 4    | {***}†          |
| 5    | {***}†          |
| 6    | {***}†          |
| 7    | {***}†          |

Dated this 5<sup>th</sup> day of December, 1996.

ETHYPHARM  
/s/ Patrice Debrégeas  
Patrice Debrégeas  
  
/s/ Gérard Leduc  
Gérard Leduc

† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

**CONFIDENTIAL TREATMENT REQUESTED:**

*Portions of this Exhibit have been redacted pursuant to a request for confidential treatment under Rule 24b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended. Such redacted portions have been replaced with “{\*\*\*}” in this Exhibit. An unredacted version of this document has been filed separately with the Securities and Exchange Commission along with the request for confidential treatment.*

**AGREEMENT**

This Agreement, effective as of July 21, 2000, is between ETHYPHARM S.A., a French Corporation having offices at 21 Rue St. Mathieu, 78550 Houdan, France, (hereinafter ETHYPHARM) and AVENTIS PHARMACEUTICALS INC., a Delaware Corporation formerly known as Hoechst Marion Roussel, Inc. having principal offices at 399 Interpace Parkway, Parsippany, New Jersey, 07054 (hereinafter AVENTIS).

The parties entered into a NON-EXCLUSIVE LICENSE AGREEMENT and a RESEARCH AND DEVELOPMENT AGREEMENT both of which were effective as of December 5, 1996. The NON-EXCLUSIVE LICENSE AGREEMENT was amended by a letter dated December 5, 1996, and an ADDENDUM dated January 4, 1999.

Due to changes in business conditions, the parties have determined that it is in their mutual best interest to modify the existing agreements as set forth below.

1. AVENTIS agrees to pay to ETHYPHARM the sum of {\*\*\*}† which amount shall be paid by a wire transfer to an account designated by ETHYPHARM upon execution of this AGREEMENT but not later than July 27, 2000.
2. The payment provided for above shall be full and complete discharge of all payment obligations (including royalties) provided for in the NON-EXCLUSIVE LICENSE AGREEMENT (as modified by the ADDENDUM), and all payment obligations provided for in the RESEARCH AND DEVELOPMENT AGREEMENT.
3. All other terms of the NON-EXCLUSIVE LICENSE AGREEMENT shall remain in full force and effect. AVENTIS shall have the right to assign the NON-EXCLUSIVE LICENSE AGREEMENT to any person or corporation which is acquiring all or substantially all of the rights to manufacture and sell Cardizem® CD in the TERRITORY, so long as the acquirer agrees to make the required royalty payments.
4. AVENTIS hereby grants to ETHYPHARM the right to refer to AVENTIS’ regulatory filings in the United States for the purpose of selling ETHYPHARM’S own once-daily diltiazem range of products. AVENTIS will take any steps necessary to confirm this

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right of reference to governmental agencies. Nothing in this paragraph shall be construed to give ETHYPHARM any right to obtain copies of the regulatory filings or to exercise any control over those materials or the information contained therein. AVENTIS further agrees to use reasonable efforts to provide to ETHYPHARM a description of the modifications made by AVENTIS to the ETHYPHARM technology in developing the approved 360 mg. dose of Cardizem® CD.

5. The parties have been engaged in discussions concerning four dosage development projects. Those projects relate to the development of 1) a sustained release injectable dosage form for erythropoietin, 2) a fast dissolving tablet for fexofenadine, 3) an oral formulation for low molecular weight heparin and 4) an improved dosage form for ramipril. In the event that AVENTIS elects to have ETHYPHARM complete any of these projects, ETHYPHARM agrees to complete the development of the dosage form at ETHYPHARM'S sole expense. A dosage form shall be complete when the parties agree that it 1) meets the relevant dissolution requirements for the product, 2) can be manufactured in pilot scale and can be scaled up to full production, 3) is pharmaceutically acceptable and 4) is ready to begin clinical testing. All information concerning the development projects shall remain the sole property of ETHYPHARM.
6. ETHYPHARM agrees that it will not offer any of these four projects to any other company provided that, for each of the four projects, no later than September 1, 2000, AVENTIS notifies ETHYPHARM of its decision to have ETHYPHARM complete the development project or projects and no later than November 1, 2000, the parties enter into a license agreement for the dosage form so developed. Such license agreement shall be on such terms as the parties may agree including appropriate non-refundable license fees which may include advanced royalties but ETHYPHARM shall not insist on any payment of development costs or milestone payments as a condition of entering into the license agreement. In the event that the parties do not enter into such a license agreement within the time allotted, ETHYPHARM shall be free to license the dosage form to any other party for such projects; provided, however, that in the event ETHYPHARM proposes to enter into a license agreement with a third party on terms more favorable than the terms last offered to AVENTIS, ETHYPHARM shall notify AVENTIS of the terms of such proposal and AVENTIS shall have ten days to either accept or reject the license on those terms.
7. The parties agree that the RESEARCH AND DEVELOPMENT AGREEMENT dated December 5, 1996, is hereby terminated and of no further force or effect except for the obligations of AVENTIS to indemnify ETHYPHARM under paragraph 9.01 to 9.04 inclusive that shall survive and continue as provided and shall also include the provisions of this new Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement.

**AVENTIS PHARMACEUTICALS, INC.**

**ETHYPHARM S.A.**

/s/ Gerald P. Belle  
By: Gerald P. Belle  
Title: President & Chief Executive Officer

/s/ Gerard Leduc  
By: Gerard Leduc  
Title: General Manager

/s/ Patrice DeBregeas  
By: Patrice DeBregeas  
Title: President



**CONFIDENTIAL TREATMENT REQUESTED:**

*Portions of this Exhibit have been redacted pursuant to a request for confidential treatment under Rule 24b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended. Such redacted portions have been replaced with “{\*\*\*}” in this Exhibit. An unredacted version of this document has been filed separately with the Securities and Exchange Commission along with the request for confidential treatment.*

**AMENDMENT TO LICENSE AGREEMENT  
(Diltiazem Formulations)**

**THIS AGREEMENT IS EFFECTIVE THE 29th DAY OF DECEMBER, 2000**

**BETWEEN**

**BIOVAIL LABORATORIES INCORPORATED,**  
a Barbados corporation incorporated under the  
International Business Companies Act, 1991-24,  
whose head office is  
Chelston Park  
Building 2, Collymore Rock  
St Michael BH1  
Barbados, West Indies

hereafter “BLI”

**AND**

**ETHYPHARM S.A.**  
a French corporation having offices at  
21 rue Saint Mathieu  
78550 Houdan  
France

Hereafter “Ethypharm”

**WHEREAS** Ethypharm has developed certain technology relating to diltiazem formulations for the North American market, which are bioequivalent to Cardizem CD.

**WHEREAS** Ethypharm and Aventis Pharmaceuticals Inc. (“API”) have entered into a non-exclusive license agreement effective the 5th day of December, 1996, and certain amendments to that agreement made the 5th day of December, 1996, the 4th of January, 1999, and the 21st day of July, 2000, (all collectively referred to as the “License Agreement”) under which API was granted the non-exclusive right and license under Ethypharm’s Technology in the Territory, all as defined in the License Agreement.

**WHEREAS** BLI has acquired the License Agreement by assignment from API;

**WHEREAS** BLI and Ethypharm have agreed to effect certain changes to the License Agreement, effective upon any assignment of the License Agreement from API to BLI;

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**IN CONSIDERATION OF** the mutual covenants and agreements contained in this Agreement and other good and valuable consideration (the receipt and sufficiency of which are acknowledged by each of the Parties), it is agreed by and between the Parties as follows:

**1. DEFINITIONS**

Where used in this Amendment any capitalized terms defined below shall have the meanings given to them in this Agreement, and those not defined below shall have the meanings given to them to them in the License Agreement, respectively:

- 1.1 **Conversion Date** means the date upon which Biovail delivers to Ethypharm the notice contemplated by paragraphs 4.1 or 4.2.
- 1.2 **Diltiazem Products** means all controlled release formulations of any medicine containing diltiazem.
- 1.3 **Effective Date** means the date set out on page 1 of this Agreement.
- 1.4 **Ethypharm Patents** means any patents or patent applications disclosing or claiming the Ethypharm Technology or any aspect of it, and includes without limitation US Patent Application Number 09/091,646, filed June 22, 1998, and Canadian Patent Application Number 2,242,224, filed June 22, 1998, and any patents to issue from those applications.
- 1.5 **Parties** means BLI and Ethypharm, and Party means any one of them.
- 1.6 **Payment** means the amount to be paid to Ethypharm pursuant to the provisions of Article 3 of this Agreement.
- 1.7 **Sub-Licensed Products** means any extended release oral formulation of diltiazem, containing less than 360 mg of diltiazem,
  - (a) for which Regulatory Approval will be sought or granted on the basis of a New Drug Application filed with the FDA that does not assert that the Sub-Licensed Product is bioequivalent to any product which has already received Regulatory Approval from the FDA; or
  - (b) for which Regulatory Approval will be sought or granted on the basis that such formulation is AB-rated bioequivalent to a formulation described in New Drug Application #20-062, approved by the FDA with respect to a once a day dosage form of diltiazem hydrochloride; or
  - (c) and which also contains at least one other active ingredient; (ie is a combination product); or
  - (d) is a formulation for which Regulatory Approval will be sought or granted on the basis that it is, and which will be Marketed as, a twice-daily formulation.

but does not include any extended release oral formulation of diltiazem for which Regulatory Approval is sought or granted on the basis that such product or formulation is AB-rated bioequivalent to any formulation described in Biovail's New Drug Application #20-401, approved by the FDA with respect to a once a day dosage form of diltiazem hydrochloride, or in any supplements or amendments to that New Drug Application.

1.8 **Term of the Agreement** means the time period starting on the Effective Date and continuing until the expiry or termination of the License Agreement.

1.9 **Territory** means the United States of America, its territories and possessions, and Canada, including Quebec.

## 2. **ASSIGNMENT OF THE LICENSE AGREEMENT**

2.1 Ethypharm acknowledges that BLI has acquired by assignment from API to BLI all of the right, title and interest of API in, including all rights and obligations of API under, the License Agreement for the Territory only, except for API's obligations to Ethypharm under Article VIII, of said License Agreement, and acknowledges that from and after the Effective Date, all of the rights and obligations of API under the License Agreement as limited here in and for the Territory shall have been transferred and assigned to BLI.

## 3. **PAYMENT OF ROYALTIES**

3.1 On the Effective Date, BLI shall pay by wire Transfer to Ethypharm the sum of {\*\*\*}† in consideration of all of the royalty payments owing to Ethypharm from the Effective Date to the end of the Term of the License Agreement.

3.2 Notwithstanding the provisions of sections 4.02 and 4.03 of the Non-Exclusive License Agreement effective the 5<sup>th</sup> day of December, 1996, as amended, and notwithstanding the provisions of sections 2 and 3 of the Amending Agreement of July 21, 2000, BLI shall have no further obligation to pay to Ethypharm any royalty payments, including any minimum royalty payments, in respect of the use of the Ethypharm Technology or the Ethypharm Patents to make, use, sell, offer for sale, or import Diltiazem Products in the Territory.

## 4. **BLI EXCLUSIVITY**

4.1 If at any time prior to February 20, 2001, BLI is satisfied that US patent application no. 09/091,646 will issue with claims enforceable against competing controlled release diltiazem-based products, BLI shall convert the rights granted by the License Agreement from non-exclusive to exclusive by paying to Ethypharm the sum of {\*\*\*}† within five (5) business days after the date of issue of the patent.

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- 4.2 If at any time prior to March 15, 2001, BLI is satisfied that US patent application no. 09/091,646 will issue with claims enforceable against competing controlled release diltiazem-based products, BLI may convert the rights granted by the License Agreement from non-exclusive to exclusive by notice in writing to Ethypharm. Upon delivery of that notice, BLI shall pay to Ethypharm the sum of {\*\*\*}† within five (5) business days after the date of issue of the patent.
- 4.3 Notwithstanding the provisions of the License Agreement, Ethypharm acknowledges that, subject only to the provisions of this Agreement, the rights granted to BLI from and after the Conversion Date shall be exclusive, and that after the Conversion Date BLI shall have the exclusive right to use the Ethypharm Technology and the Ethypharm Patents to make, use, sell, offer for sale, or import Diltiazem Products in the Territory.
- 4.4 Upon the Conversion Date, BLI shall grant to Ethypharm a royalty free, non-exclusive license to Manufacture and Market, directly or indirectly, the Sub-Licensed Products in the Territory.

**No other changes to the License Agreement**

- 4.5 Except as specifically amended by this Agreement, all terms of the License Agreement shall remain in full force and effect.

**5. OWNERSHIP OF ETHYPHARM TECHNOLOGY**

- 5.1 In addition to the representations and warranties contained in the License Agreement, Ethypharm represents and warrants to BLI that:
- (a) it owns the Ethypharm Technology and the Ethypharm Patents and has the right to grant to BLI the rights granted by this Agreement.
  - (b) it has not granted to any other person any rights inconsistent with the rights granted to API by the License Agreement or to BLI by this Agreement.
  - (c) its performance of this Agreement, and the grant to BLI of the exclusive rights granted by this agreement, does not conflict with, or result in breach of, any other agreement to which it or any of its Affiliates is a party, or by which its rights to intellectual property are bound.
  - (d) Ethypharm is not aware of any breach by API of; and does not intend to make any claim for, any of the terms of the License Agreement prior to the Effective Date.

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**6. PROSECUTION OF PATENT APPLICATION**

- 6.1 Ethypharm shall cause all applications for the Ethypharm Patents in the Territory to be prosecuted diligently and shall take all steps reasonably available to Ethypharm to ensure that any patents issue as soon as possible.
- 6.2 Ethypharm shall provide to BLI or to a patent attorney or patent agent designated by BLI copies of all communications from the US and Canadian patent offices, and all responses to those communications. If at any time after the Effective Date BLI is not satisfied with the prosecution of any applications for the Ethypharm Patents in the Territory, BLI may on notice in writing to Ethypharm assume responsibility for the prosecution of those applications. Ethypharm shall provide all assistance that BLI may reasonably require for that purpose.

**7. INFRINGEMENT PROCEEDINGS**

- 7.1 Effective from and after the Conversion Date, each of BLI and Ethypharm shall immediately report to the other any infringement of, challenge to the validity or ownership of, or use of the Ethypharm Technology or of the Ethypharm Patents that may come to their attention. BLI shall have the sole and exclusive right to commence and prosecute any action or proceeding in respect of any such infringement or misappropriation, and if necessary may do so in the name of Ethypharm. Ethypharm shall fully co-operate with BLI at the expense of BLI and execute such documents and do such acts and things as, in the opinion of BLI, may be necessary or desirable. If BLI shall fail within a reasonable time to take appropriate steps against that infringement or misappropriation, Ethypharm shall be entitled to take such reasonable steps against such infringement or misappropriation for the protection of BLI's and/or Ethypharm's rights, and if necessary may do so in the name of and on behalf of BLI.

**8. TERM AND TERMINATION**

- 8.1 The Term of this Agreement shall terminate upon any termination or expiry of the License Agreement, and shall be extended upon any extension of the License Agreement.
- 8.2 This Agreement shall not be subject to termination for any breach or default of either party, except after all other remedies as provided for in this Agreement have been exhausted, and the Party found to be in default has failed to comply with an order or judgment of a court of competent jurisdiction.

**9. FORCE MAJEURE**

- 9.1 In the event that either party hereto shall be rendered unable to carry out its obligations under this Agreement, other than obligations to render statements and make payments pursuant to the provisions of this Agreement, by reason or causes beyond its control, including but not restricted to acts of God, acts, omissions, or regulations of any government or subdivision thereof, judicial action, fire, storm, accident, war, riot, labor disputes, or transportation failure, then the performance of the obligations of such party insofar as it is affected by such cause, shall be excused during the continuance of any

inability so caused provided that the party affected advises the other party of its inability within thirty (30) days after such cause comes into existence.

**10. GOVERNING LAW**

10.1 This Agreement shall be construed, interpreted and enforced in accordance with the laws of New York without giving effect to principles of conflicts of law, unless otherwise provided for in this Agreement.

**11. MISCELLANEOUS**

- 11.1 Nothing herein contained shall be deemed to constitute or be construed as constituting either Party the agent or partner of the other. The relationship of the Parties shall be that of independent contractors. Neither party shall have any right, title or authority to enter into any contract, agreement or commitment on behalf of the other or to bind the other in any manner whatsoever.
- 11.2 This Agreement, together with the Licensing Agreement, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, undertakings, negotiations and discussions, whether oral or written, with respect to the subject matter hereof. There are no other agreements between the Parties, collateral or otherwise, written or oral, relating to the subject matter hereof. Unless expressly stated otherwise herein, this Agreement shall not be amended, modified or supplemented except by a writing signed by the Parties.
- 11.3 If any one or more provisions of this Agreement are found or held prohibited, invalid, illegal or unenforceable in any respect in any jurisdiction in relation to any Party, such prohibition, invalidity, illegality or unenforceability shall not affect, impair or invalidate the remaining provisions hereof or of the Agreement itself, or affect or impair the validity, legality or enforceability of such provision in any other jurisdiction or in relation to any other Party, and any such prohibited, invalid, illegal or unenforceable provision shall be deemed to be severable.
- 11.4 Ethypharm confirms that it has received its own independent legal advice with respect to this Agreement and is satisfied that the terms of this Agreement comply with all applicable laws and regulations in the Territory.
- 11.5 Any notices required or permitted to be given hereunder may be effectively given if delivered personally or sent by facsimile and addressed in the case of BLI to:

In the case of Biovail to:

Biovail Laboratories Incorporated  
Chelston Park  
Building 2, Collymore Rock  
St Michael  
Barbados, West Indies

Attention: Eugene Melnyk, President  
Facsimile: (246) 437-7085

with a copy to:

Biovail Corporation International  
2488 Dunwin Drive  
Mississauga, Ontario L5L 1J9

Attention: The President  
Facsimile (416) 285-6499

or in the case of Ethypharm to:

Ethypharm S.A.  
21 rue Saint Mathieu  
78550 Houdan, France

Attention: Patrice Debregeas  
President, Directeur General  
Facsimile: 33-1-41122989

- 11.6 Any such notice shall be deemed to have been given and received when actually received, unless the day of receipt is not a Business Day in which event it shall be deemed to have been given and received on the next following Business Day. Any Party may change its address for notice from time to time by notice given in accordance with the foregoing.
- 11.7 This Agreement may be signed in any number of counterparts which when taken together will constitute one and the same Agreement, and may be delivered by facsimile transmission of an executed counterpart of the Agreement.

**IN WITNESS WHEREOF** the Parties to this Agreement have caused this Agreement to be executed by their duly authorized representatives effective as of the date first written above.

**BIOVAIL LABORATORIES INCORPORATED**

Per: /s/ Eugene Melnyk  
Eugene Melnyk, President

**ETHYPHARM S.A.**

By: /s/ Patrice Debregeas  
Patrice Debregeas, President Directeur General

\_\_\_\_\_



CONFIDENTIAL TREATMENT REQUESTED:

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PRESTWICK PHARMACEUTICALS, INC.

- and -

OVATION PHARMACEUTICALS, INC.

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Marketing, Distribution and Supply Agreement

for

Xenazine

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**MARKETING, DISTRIBUTION AND SUPPLY AGREEMENT**

This MARKETING, DISTRIBUTION AND SUPPLY AGREEMENT (this “Agreement”) is dated as of September 16, 2008 (the “Effective Date”) by and between Prestwick Pharmaceuticals, Inc., a company incorporated under the laws of the State of Delaware and having a principal place of business at 1825 K Street NW, Suite 1475, Washington, D.C. 20006 (“Prestwick”), and Ovation Pharmaceuticals, Inc., a company incorporated under the laws of the State of Illinois and having a principal place of business at Four Parkway North, Deerfield, Illinois 60015 (“Distributor”). Prestwick and Distributor are sometimes referred to herein individually as a “Party” and collectively as the “Parties”.

**RECITALS**

**WHEREAS**, Prestwick has developed and received regulatory approval for a tetrabenazine product for treatment of chorea associated with Huntington’s disease in the Territory;

**WHEREAS**, Prestwick desires to appoint an exclusive distributor to Commercialize such product in the Territory;

**WHEREAS**, Distributor has the commercial capabilities to Commercialize pharmaceutical products in the Territory and particularly such tetrabenazine product for chorea associated with Huntington’s disease in the Territory;

**WHEREAS**, Distributor desires to be appointed the exclusive distributor for such product to Commercialize such product in the Territory to maximize the commercial value of such product.

**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual covenants contained herein, the Parties, intending to be legally bound, agree as follows:

**ARTICLE 1  
DEFINITIONS**

The following terms shall have the following meanings as used in this Agreement:

1.1 “Active Substance” means tetrabenazine.

1.2 “A&P” means activities exclusively and directly related to the marketing and promotion of Product in the Territory to the relevant specialist audience, including promotional materials, and branded items for detailing activities, marketing publications, market research studies, non personal promotion and advertisements, public and professional relations (including activities at local and national congresses in the Territory and satellite symposia), medical education programs and promotional meetings. For purposes of clarity, A&P shall not include Detailing.

1.3 “Affiliate” means any individual, corporation, company, partnership, trust, limited liability company, association or other business entity (“Person”) which directly or indirectly controls, is controlled by or is under common control with the Party in question. As used in this

definition of “Affiliate,” the term “control” shall mean, as to any Person, (a) direct or indirect ownership of fifty percent (50%) or more of the voting interests or other ownership interests in the Person in question; (b) direct or indirect ownership of fifty percent (50%) or more of the interest in the income of the Person in question; or (c) possession, directly or indirectly, of the power to direct or cause the direction of management or policies of the Person in question (whether through ownership of securities or other ownership interests, by contract or otherwise). Notwithstanding the foregoing, the direct or indirect owners of equity securities of a Party such as financial institutions, venture capital funds and private equity investors (and other direct or indirect portfolio companies or investments of such financial institutions, venture capital funds and private equity investors) will not be its “Affiliates” for purposes of this Agreement.

1.4 “Business Day” means any Monday, Tuesday, Wednesday, Thursday or Friday that is not a day on which banking institutions in the State of New York are authorized by Law to close.

1.5 “Calendar Quarter” means that three (3) month period during the Term of each Calendar Year ending March 31, June 30, September 30 and December 31; provided, however, that the calendar quarter in which this Agreement expires or is terminated shall extend from the first day of such calendar quarter until the effective date of such expiration or termination of this Agreement.

1.6 “Calendar Year” means (a) for the calendar year this Agreement is entered into, the period commencing on the Effective Date and ending on December 31 of the same year, (b) for each successive period beginning on January 1 and ending twelve consecutive calendar months later on December 31, and (c) for the calendar year in which this Agreement expires or is terminated, the period beginning on January 1 of such calendar year and ending on the effective date of the expiration or termination of this Agreement.

1.7 “Cambridge Agreement” means the Second Amended and Restated Agreement between Prestwick and Cambridge Laboratories (Ireland) Limited (“Licensor”) dated November 18, 2005 and any amendments thereto or modifications thereto.

1.8 “Cambridge Amendment” means that certain amendment to the Cambridge Agreement, dated September 12, 2008, by and among Licensor, Prestwick Holdings, Inc., Prestwick, Biovail Americas Corp. and Distributor.

1.9 “Change of Control” means, with respect to a Party, (a) the acquisition (directly or indirectly, whether by merger, consolidation, purchase and sale, share exchange or otherwise) by a Third Party of a beneficial interest in the securities of such Party representing more than fifty percent (50%) of the combined voting power of such Party’s then outstanding securities; or (b) the transfer, sale or assignment of more than fifty percent (50%) of the assets of such Party to a Third Party.

1.10 “Commercialization” means activities directed to the marketing, promotion, selling, or offering for sale of a product for an indication, including pre-marketing, advertising, educating, planning, obtaining pricing approvals, marketing, promoting, detailing, distributing and post-marketing safety surveillance and preparation of filings for reporting to the FDA. When used as a verb, “Commercialize” means to engage in such activities.

1.11 “Commercialization Plan” means the plan pursuant to which Product shall be Commercialized in a Calendar Year in the Territory and at a minimum shall include the following: (a) market research, including market size, dynamics, growth, customer segmentation, competitive analysis, and Product positioning, (b) annual sales forecasts broken down by Calendar Quarter, (c) advertising and promotion programs and strategies, (d) sales plans and activities, including sales force allocations, both in number of representatives and the deployment of such representatives, (e) Phase 4 Studies to be conducted, (f) number of and position of Details to be performed in a Calendar Year (“Detail Requirements”) and (g) budget for performing the above noted activities in a Calendar Year (“Commercialization Budget”). Notwithstanding the foregoing, the Commercialization Plan for the current Calendar Year and following Calendar Year shall be the initial Marketing Plan.

1.12 “Commercially Reasonable Efforts” means carrying out of obligations or tasks consistent with the reasonable practices of the pharmaceutical industry for the development or commercialization of a pharmaceutical product having similar market potential or profit potential as Product, based on conditions then prevailing.

1.13 “Competing Product” means any product for treating the symptoms of hyperkinetic movement disorders that respond to the Active Substance where such product contains the Active Substance or any similar active substance. “Similar active substance” shall have the same definition as is provided for in EC Commission Regulation 847/2000 of 27 April 2000.

1.14 “Control” means, with respect to any intellectual property right or other intangible property, that a Party or one of its Affiliates owns or has a license or sublicense to such item or right, and has the ability to grant access, license or sublicense in or to such right without violating the terms of any agreement or other arrangement with any Third Party.

1.15 “Co-Promotion” means those detailing and other activities undertaken by a pharmaceutical company’s sales force in concert with at least one other pharmaceutical company’s sales force to implement an agreed to commercialization plan and strategies with respect to a particular prescription pharmaceutical product under a single trademark. When used as a verb, “Co-Promote” means to engage in such activities.

1.16 “Deductions” means (a) the fees and discounts provided to wholesalers to the extent they relate to any program pertaining to Product, including, without limitation, trade and cash discounts and “returns”, as evidenced in the form of receipted invoices or other reasonable evidence thereof, to distribute Product to patients or hospitals, (b) rebates charged by state authorities for the scripts relating to Product purchased for their Medicaid patients as evidenced in the form of written acknowledgement from Medicaid of such rebate and payment of such and supported by Prestwick’s Medicaid reconciliation, (c) discounts given to the federal government for their purchases of Product evidenced in the form of receipted invoices, (d) fees and discounts provided to specialty pharmacy distributors to the extent they relate to any program pertaining to Product, including, without limitation, trade and cash discounts and “returns”, as evidenced in the form of receipted invoices or other reasonable evidence thereof, to distribute Product to patients or hospitals, (e) the fees associated with any patient assistance program pertaining to Product that have been agreed to with Licensor in the Cambridge Amendment, including, without limitation, agreed cost of goods and agreed administrative fees associated with such programs and (f) the fees associated with any co-pay assistance programs pertaining to Product that have been agreed to by

Licensors in the Cambridge Amendment, including without limitation, agreed administrative fees associated with such program, provided, the above shall be subject to modification as provided in the Marketing Plan attached hereto as Schedule 1.39. The term “returns” means any returns of units of Product to Distributor for any reason other than the fault of Distributor. In respect of returns of any units of Product, (1) Distributor will provide to Prestwick a full accounting of such returns, (2) Distributor shall not be entitled to more than one deduction for the return of any unit of Product (for the sake of clarity, Distributor shall only be entitled to one deduction for a return of a unit of Product where such unit of Product is returned to Distributor by a wholesale distributor or special pharmacy, shipped to another wholesale distributor or special pharmacy, and then returned to Distributor by that other wholesale distributor or special pharmacy), (3) Distributor shall not be entitled to any deduction for a unit of Product that is returned to Distributor by one wholesale distributor or special pharmacy, shipped to another wholesale distributor or special pharmacy, and then sold by that other wholesale distributor or special pharmacy, and (4) any shipment by Distributor of any unit of Product to a wholesale distributor or special pharmacy that is subsequently returned to Distributor, shipped by Distributor to another wholesale distributor or special pharmacy and sold by that other wholesale distributor or special pharmacy shall only constitute one sale of such unit of Product by Distributor for purposes of calculating Net Sales Revenue. Distributor agrees that the provisions for deducting returns for purposes of computing Net Sales Revenue shall not be used by Distributor in such circumstances where (1) Distributor shipped units of Product to a wholesale distributor or specialty pharmacy at a time when such units of Product would be considered old or not used by such wholesale distributor or special pharmacy and thereafter returned by such wholesale distributor or special pharmacy to Distributor, and (2) Distributor knowingly sold excessive units of Product to a wholesaler or specialty pharmacy in light of the previous ordering patterns of that wholesaler or specialty pharmacy. In the event that the Distributor consents to any agreed amendment of Schedule 10 to the Cambridge Agreement by Prestwick and Licensors, the definition of “Deductions” shall automatically be amended to conform to such amendment of Schedule 10, mutatis mutandis, without any consent or further action of the Parties.

1.17 “Detail” means, with respect to Product, the communication by a sales representative during a sales call (a) involving face-to-face contact, (b) describing the indicated uses which have been approved by the applicable Regulatory Authorities, (c) using the Promotional Materials in an effort to increase the familiarity of prescribing and/or hospital ordering agents with Product for the indicated uses which have been approved by the applicable Regulatory Authorities, and (d) made at such medical professional’s office, in a hospital or at a marketing meeting sponsored by Distributor primarily for Product where the principal objective is to place an emphasis on Product and not simply to discuss Product with such medical professional. For the avoidance of doubt, discussions at conventions or other meetings not specifically sponsored by a Party for Product shall not constitute “Details” or “Detailing”.

1.18 “Development” means non-clinical and clinical research and drug development activities, including without limitation toxicology, test method development and stability testing, process development, formulation development, delivery system development, quality assurance and quality control development, statistical analysis, clinical studies (including pre- and post-approval studies), regulatory affairs, and product approval and clinical study regulatory activities.



- 1.19 “Development Expenses” means, with respect to a product, the direct out of pocket costs incurred by a Party that are specifically attributable to the Development of such product.
- 1.20 “Dollar” or “\$” means United States dollars (i.e., the legal currency authorized by the United States of America).
- 1.21 “Dossier Development” means the development of the dossier to enable the First NDA to be granted for Product.
- 1.22 “Escrow Agent” means JP Morgan Chase, N.A.
- 1.23 “Escrow Agreement” means the escrow agreement dated as of the Effective Date and entered into by Prestwick, Distributor and the Escrow Agent.
- 1.24 “Exclusivity Period” means the period from the Effective Date through the expiry of the last to expire regulatory exclusivity in the Territory for any Product.
- 1.25 “FDA” means the United States Food and Drug Administration and any successor agency thereto.
- 1.26 “First Commercial Sale” means the first commercial arm’s length sale by Distributor or its Affiliates of Product to a Third Party in the Territory.
- 1.27 “First NDA” means NDA # 21-894 letter dated August 15, 2008.
- 1.28 “GAAP” means Generally Accepted Accounting Principles in the United States.
- 1.29 “Galenical Development” means developments of the initial Product, any Product that subsequently becomes Product, or the Active Substance or any metabolite thereof (other than the Dossier Development, any Regulatory Developments and any Isomeric Developments) and shall include, among others, developments of new delivery mechanisms for or formulations of the Active Substance.
- 1.30 “Galenical Product” means the product that results from Galenical Development.
- 1.31 “Generic Equivalent” means, with respect to a particular product, a product that receives Regulatory Approval on the basis that it is bioequivalent to such particular product and that it is not manufactured or marketed with the license or authorization of Prestwick, Distributor or any of their respective Affiliates.
- 1.32 “Governmental Authority” means any court, tribunal, arbitrator, agency, legislative body, commission, official or other instrumentality of (a) any government of any country, (b) a federal, state, province, county, city or other political subdivision thereof or (c) any supranational body.
- 1.33 “Invention” means, whether patentable or not, any improvement, enhancement or modification of Product by Distributor, Prestwick, their respective Affiliates or their permitted subcontractors.

1.34 “Isomeric Development” means any development of any of the isomers of the Active Substance or Product or any metabolite of the Active Substance or Product or any other development of any isomers associated with the Active Substance or Product.

1.35 “Isomeric Product” means the product that results from Isomeric Development.

1.36 “Know-How” means any information, results and data of any type whatsoever, in any tangible or intangible form whatsoever, including without limitation, databases, ideas, discoveries, inventions, trade secrets, practices, methods, tests, assays, techniques, specifications, processes, formulations, formulae, knowledge, know-how, skill, experience, materials, including pharmaceutical, chemical and biological materials, products and compositions, scientific, technical or test data (including pharmacological, biological, chemical, biochemical, toxicological and clinical test data), analytical and quality control data, stability data, studies and procedures, drawings, plans, designs, diagrams, sketches, technology, documentation, and patent-related and other legal information or descriptions.

1.37 “Law” or “Laws” means the laws, statutes, rules, codes, regulations, orders, judgments and/or ordinances of a Governmental Authority.

1.38 “Losses” means any and all amounts paid or payable to Third Parties with respect to a Third Party Claim, including without limitation, damages (including all incidental and consequential damages), deficiencies, defaults, awards, settlement amounts, assessments, fines, dues, penalties, costs, liabilities, obligations, taxes, liens, losses, lost profits, fees and expenses (including, without limitation, court costs, interest and reasonable fees of attorneys, accountants and other experts).

1.39 “Marketing Plan” means the plan for the marketing of Product in the Territory set forth on Schedule 1.39 as such plan may be updated (subject to Section 10.10) as provided therein.

1.40 “Minimum Order Quantities” means the quantities of Product to be ordered by Distributor in the Territory as set forth in Schedule 1.40 for the first two (2) years after the date of the First Commercial Sale, and thereafter as such quantities may be updated as provided in the Cambridge Agreement.

1.41 “Minimum Sales Quantities” means the quantities of Product to be sold by Distributor in the Territory as set forth in Schedule 1.41 for the first five (5) years after the date of the First Commercial Sale, and thereafter as such quantities may be updated as provided in the Cambridge Agreement.

1.42 “NDA” means a New Drug Application for any product, as appropriate, requesting permission to place a drug on the market in accordance with 21 C.F.R. Part 314, and all supplements or amendments filed pursuant to the requirements of the FDA, including all documents, data and other information concerning a product which are reasonably necessary for FDA approval to market a product in the Territory.

1.43 “Net Sales Revenue” means invoiced gross sales of Product in the Territory by Distributor, its Affiliates or permitted subcontractors less Deductions, provided, that (a) the Parties agree that no deductions for bad debts is permissible and (b) Deductions from invoiced gross sales

shall not, in any given monthly calculation of Net Sales Revenue, cause the sum of the estimated accrual of such Deductions for the applicable month (or the actual accrual thereof at such time that such estimated accrual can be adjusted to reflect such final accrual), in each case, measured on a trailing twelve (12) month average basis (or shorter period if applicable) (such amount, the “Deduction Cap”), to exceed {\*\*\*}† of the sum of the invoiced gross sales for such applicable month. If a Product is sold for consideration other than cash, the Net Sales Revenue from such sale or transfer shall be deemed the then fair market value of such consideration. If Distributor, its Affiliates or permitted subcontractor chooses to sell a Product together with another product with composite pricing, Net Sales Revenue for such Product will be recalculated based on the then average price of such Product to the applicable customer category when such Product is sold independently of any other product. In the event that the Distributor consents to any agreed to amendment to the definition of “Net Sales Revenue” contained in the Cambridge Agreement by Prestwick and Licensor, the definition of “Net Sales Revenue” contained herein shall automatically be amended to conform to such amendment of the definition of “Net Sales Revenue”, contained in the Cambridge Agreement, *mutatis mutandis*, without any consent or further action of the Parties.

1.44 “Patent” means (a) any patent, re-examination, reissue, renewal, extension, supplementary protection certificate and term restoration, any confirmation patent or registration patent or patent of addition based on any such patent, (b) any pending application for patents, including without limitation continuations, continuations-in-part, divisional, provisional and substitute applications, and inventors’ certificates, (c) all foreign counterparts of any of the foregoing, and (d) all applications to the extent based on the priority dates of any of the foregoing.

1.45 “Phase 4 Study(ies)” means the studies required to fulfill commitments made as a condition of the Regulatory Approval of Product in the Territory as described in the First NDA.

1.46 “Prestwick Know-How” means any Know-How that is necessary or useful for the Commercialization or use of Product in the Territory, conducting Phase 4 Studies or exercise of Distributor’s others rights or performance of Distributor’s obligations under this Agreement that either is Controlled by Prestwick on the Effective Date or comes within Prestwick’s Control during the Term in connection with activities performed under this Agreement or the Cambridge Agreement.

1.47 “Prestwick Patents and Intellectual Property” means any Patent, Invention or other intellectual property or proprietary right that is necessary or useful for the Commercialization or use of Product in the Territory, conducting Phase 4 Studies or exercise of Distributor’s other rights or performance of Distributor’s obligations under this Agreement that is either Controlled by Prestwick on the Effective Date or comes within Prestwick’s Control during the Term in connection with activities performed under this Agreement or the Cambridge Agreement.

1.48 “Product” means (a) the fully labeled and packaged product containing the Active Substance as described in the First NDA and any supplements to the foregoing, including, but not

† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

limited, to any Regulatory Product, or (b) any Galenical Product or Isomeric Product deemed a “Product” pursuant to Sections 2.4.2 or 2.5.2, respectively.

1.49 “Product Trade Dress” means any trade dress (a) Controlled by Prestwick on the Effective Date or (b) comes within Prestwick’s Control during the Term, in each case that is used or registered for Product.

1.50 “Product Trade Mark” means any trade mark or trade name (a) Controlled by Prestwick on the Effective Date or (b) comes within Prestwick’s Control during the Term, in each case that is used or registered for Product.

1.51 “Promotional Materials” means all written, printed, video or graphic advertising, promotional, educational and communication materials (other than Product labels and package inserts) for marketing, advertising and promotion of Product in the Territory, including, without limitation, copyrights in any such materials and all designs, industrial designs, design patents, design registrations, and design patent applications developed in connection with such materials, for use (a) by a sales representative or (b) in advertisements, web sites or direct mail pieces.

1.52 “Prosecution and Maintenance” means, with respect to a Patent, the preparing, filing, prosecuting and maintenance of such Patent, as well as re-examinations, reissues, requests for Patent term extensions and the like with respect to such Patent, together with the conduct of interferences, the defense of oppositions and other similar proceedings with respect to the particular Patent.

1.53 “Regulatory Approval” means all approvals (including, without limitation, where applicable, orphan drug designation, product and/or establishment licenses, registrations or authorizations of any Governmental Authority) necessary for the Development, use or Commercialization of Product in the Territory, including any label expansions of any of the above and, in the event of a Technology transfer, manufacture and packaging of the Product.

1.54 “Regulatory Development” means development of Product involving seeking regulatory approval for new indications for Product, such new indications being those other than the indications set forth in the First NDA.

1.55 “Regulatory Filings” means all material documents filed with a Governmental Authority in the Territory relating to Product, including Investigational New Drug Applications and, in the event of a Technology transfer, drug master files and NDAs.

1.56 “Regulatory Product” means the product that results from Regulatory Development.

1.57 “SKU” means a specific packaged presentation of a defined quantity of a specific dosage strength of Product, identified by Distributor’s N.D.C. number.

1.58 “Sub-Distributor” shall mean a Third Party to whom Distributor has granted, directly or indirectly, a right or license to sell, market, distribute and/or promote Product (“Distribution Rights”) in the Territory pursuant to Section 2.6; and “Sub-Distribution Agreement” shall mean an agreement or arrangement granting such rights or licenses.

- 1.59      “Support Center” means the Specialty Pharmacy Hub as further described in Schedule 1.59 or any other hub distributor designated by Distributor in accordance with the terms hereof.
- 1.60      “Territory” means the United States of America, including, without limitation, all of its territories, possessions and protectorates.
- 1.61      “Third Party” means any Person or Governmental Authority other than Prestwick or Distributor or any of their respective Affiliates.
- 1.62      Additional Definitions. Each of the following definitions is set forth in the Section of this Agreement indicated below

| Definition                      | Section  |
|---------------------------------|----------|
| AAA                             | 14.3     |
| Agreement                       | Preamble |
| Binding Portion                 | 5.2.2    |
| Commercialization Report        | 4.3.3(a) |
| Confidential Information        | 7.1.1    |
| Controlling Party               | 8.3.3    |
| Designated Senior Officer       | 4.2.2    |
| Disbursing Party                | 6.6      |
| Disclosing Party                | 7.1.1    |
| Distribution Rights             | 1.56     |
| Distributor                     | Preamble |
| Effective Date                  | Preamble |
| Enforcement Action              | 8.3      |
| Existing CDA                    | 7.5      |
| FIFO                            | 10.4     |
| First Installment               | 6.3.3    |
| Forecast                        | 5.2.1    |
| Force Majeure Event             | 15.3     |
| Galenical Notice                | 2.4.2    |
| Galenical Option                | 2.4.1    |
| Handling Deductions             | 6.3.5    |
| Indemnification Claim Notice    | 13.2     |
| Indemnified Party               | 13.2     |
| Indemnifying Party              | 13.2     |
| Indemnatee                      | 13.2     |
| Indemnitees                     | 13.2     |
| Infringing Product              | 8.3      |
| Initial Forecast                | 5.2.1    |
| Invoice                         | 6.3.2    |
| Isomeric Option                 | 2.5.1    |
| Licensors                       | 1.7      |
| Licensors Galenical Development | 2.4.2    |

| Definition                      | Section  |
|---------------------------------|----------|
| Licensors Notice                | 2.5.1(a) |
| Key Patents                     | 8.1      |
| Party                           | Preamble |
| Parties                         | Preamble |
| Period 1                        | 4.3.2(b) |
| Period 2                        | 4.3.2(b) |
| Person                          | 1.3      |
| Prestwick                       | Preamble |
| Prestwick Galenical Development | 2.4.2    |
| Pharmacovigilance Agreement     | 3.3.2    |
| Press Releases                  | 7.2      |
| Purchase Order                  | 5.2.3    |
| Receiving Party                 | 6.6      |
| Recipient                       | 7.1.1    |
| Sales Representative            | 4.3.2(a) |
| Specialists                     | 4.3.2(a) |
| Specifications                  | 3.4.2(b) |
| Sub-Distribution Agreement      | 1.56     |
| Statement Date                  | 6.3.3    |
| Supply Price                    | 6.3.1    |
| Technology                      | 5.1.3    |
| Term                            | 11.1     |
| Third Party Claim               | 13.1.1   |
| Trademark Enforcement Action    | 8.4.2    |
| TSX                             | 7.2      |
| Upfront Payment                 | 6.1      |
| Withholding Taxes               | 6.6      |

**ARTICLE 2**  
**GRANT OF RIGHTS**

2.1 Exclusive Distribution Right. Subject to the terms and conditions of this Agreement, Prestwick hereby (a) appoints Distributor as its exclusive distributor (even as to Prestwick and its Affiliates) of Product in the Territory and Distributor hereby agrees to act in that capacity, (b) grants Distributor an exclusive (even as to Prestwick and its Affiliates), royalty-free license to use Prestwick Know-How and under Prestwick Patents and Intellectual Property to distribute and sell Product in the Territory, and (c) grants Distributor a co-exclusive (with Prestwick), royalty-free license (1) under Prestwick Patents and Intellectual Property and (2) to use Prestwick Know-How, to market and promote Product in the Territory.

2.2 Development Right. Subject to the terms and conditions of this Agreement, Prestwick hereby grants to Distributor a non-exclusive, royalty free license to conduct Phase 4 Studies in accordance with this Agreement.



2.3 Trademark and Trade Dress License. Subject to terms and conditions of this Agreement, Prestwick hereby (a) grants to Distributor an exclusive (even as to Prestwick and its Affiliates), royalty-free license, to use Product Trademarks and Product Trade Dress exclusively for the purposes of distributing and selling Product in the Territory Product in the Territory pursuant to this Agreement and (b) grants Distributor a co-exclusive (with Prestwick), royalty-free license, to use Product Trademarks and Product Trade Dress exclusively for the purposes of marketing and promoting Product in the Territory pursuant to this Agreement.

2.4 Option to Galenical Product.

2.4.1 Grant. Prestwick hereby grants to Distributor an irrevocable option to participate in the Commercialization of any Galenical Product in the Territory that Prestwick has rights to Commercialize through the Cambridge Agreement irrespective of whether Prestwick wishes to participate in the Commercialization of such Galenical Product itself (the “Galenical Option”).

2.4.2 Exercise of Galenical Option. Promptly upon Prestwick receiving (a) consent from Licensor allowing it to conduct Galenical Development (“Prestwick Galenical Development”) or (b) notice from Licensor allowing Prestwick to co-invest in Galenical Development to be conducted by Licensor (“Licensor Galenical Development”), Prestwick shall provide written notice to Distributor providing the following information: (i) all the information provided by Licensor to Prestwick, if applicable, (ii) name and active ingredient(s) of the Galenical Product to be developed from such Galenical Development, (iii) indication for which the NDA for such Galenical Product shall be filed, (iv) the amount of Development Expenses spent or budgeted for such Galenical Development, (v) if known by Prestwick, whether Licensor has agreed to or intends to co-invest in such Galenical Development and any other material information regarding such proposed Galenical Development (“Galenical Notice”). Prestwick shall promptly provide to Distributor such additional information in Prestwick’s control, and shall promptly request from Licensor and deliver to Distributor such additional information provided by Licensor in response thereto, as Distributor may reasonably request. Distributor shall have sixty (60) days from receipt of the Galenical Notice to exercise the Galenical Option by providing written notice to Prestwick of such exercise.

(a) Prestwick Galenical Development. Upon the exercise of the Galenical Option with respect to Prestwick Galenical Development by Distributor, (i) Prestwick shall (1) within thirty (30) days of such exercise notify Distributor if Licensor is co-investing in such Prestwick Galenical Development and (2) promptly notify Distributor if Licensor subsequently withdraws from co-investing in such Galenical Development and (ii) (1) Distributor shall pay for {\*\*\*}† of the Development Expenses from such Galenical Development, provided, if Licensor is co-investing, then Distributor shall pay {\*\*\*}† of the Development Expenses not reimbursed by Licensor and (2) any such Galenical Product resulting from such Prestwick Galenical Development shall be deemed included in the definition of “Product” herein, provided, that in such case the Supply Price with respect to such Product (which will be expressed as a percentage of Distributor’s Net Sales Revenue (provided that the Deduction Cap with respect to

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such Galenical Product shall be adjusted as the Parties may reasonably agree in good faith) of such Product) shall be mutually agreed upon by the Parties such that (x) the forecast values of the operating cash flows of each of the Parties from the incremental distribution arrangement for such Product are expected to be equal to each other, (y) the Supply Price will not be adjusted for any differences between actual and forecast cash flows and (z) the arrangement for determining Supply Price will not make the distribution arrangement be deemed a joint venture or partnership. If the Parties are unable to agree to the Supply Price with respect to any such Product within three (3) months of the initial submission of a proposal by one Party with respect thereto, either Party may submit the matter to Arbitration for final resolution in accordance with Section 14.3.

(b) **Licensors Galenical Development.** Upon the exercise of the Galenical Option with respect to Licensors Galenical Development by Distributor, Prestwick shall within thirty (30) days of such exercise notify (i) Licensor of Prestwick's exercise of the right to co-invest in such Licensors Galenical Development and (ii) Distributor if Prestwick is exercising for the benefit of Distributor or for both Distributor and Prestwick. In the event (1) Prestwick is exercising for the benefit of both Distributor and itself, then (A) such Galenical Product resulting from such Licensors Galenical Development shall be deemed included in the definition of "Product" herein, provided, that in such case the Supply Price with respect to such Product (which will be expressed as a percentage of Distributor's Net Sales Revenue (provided that the Deduction Cap with respect to such Galenical Product shall be adjusted as the Parties may reasonably agree in good faith) of such Product) shall be agreed to by the Parties such that (x) the forecast values of the operating cash flows of each of the Parties from the incremental distribution arrangement for such Product, are expected to be equal to each other, (y) the Supply Price will not be adjusted for any differences between actual and forecast cash flows and (z) the arrangement for determining Supply Price will not make the distribution arrangement be deemed a joint venture or partnership and (B) Distributor shall reimburse {\*\*\*}† of the Development Expenses paid by Prestwick to Licensor for the right to Commercialize the resulting Galenical Product in the Territory or (2) Prestwick is exercising solely for the benefit of Distributor, then (A) Prestwick (x) hereby appoints Distributor as its exclusive distributor (even as to Prestwick and its Affiliates) for the Commercialization of such Galenical Product in the Territory and Distributor hereby agrees to act in that capacity and (y) grants Distributor an exclusive (even as to Prestwick and its Affiliates), royalty-free license to use Prestwick Know-How and under Prestwick Patents and Intellectual Property to Commercialize such Galenical Product in the Territory, all on the same terms and conditions that such right is granted to Prestwick by Licensor (including the price for supply), (B) Distributor shall reimburse {\*\*\*}† of the Development Expenses due and payable by Prestwick to Licensor for such right and (C) for the avoidance of doubt, Prestwick shall not be entitled to any portion of the supply price or net sales or any other payment with respect to such Galenical Product in excess of the amount to be paid by Prestwick to Licensor with respect to such Galenical Product pursuant to the Cambridge Agreement. If the Parties are unable to agree to the Supply Price with respect to any such Product within three (3) months of the initial submission of a proposal by one Party with respect thereto, either Party may submit the matter to Arbitration for final resolution in accordance with Section 14.3.

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(c) If Licensor elects not to continue Galenical Development pursuant to Section 4.7 of the Cambridge Agreement and reimburses Development Expenses for such Galenical Development paid by Prestwick, Prestwick shall promptly reimburse to Distributor {\*\*\*}† (if Prestwick did co-invest) or {\*\*\*}† (if Prestwick did not co-invest) of such amounts reimbursed to Prestwick by Licensor to the extent Distributor exercised its rights to co-invest under Section 2.4.2(a) or (b) and paid {\*\*\*}† (if Prestwick did co-invest) or {\*\*\*}† (if Prestwick did not co-invest) of the Development Expenses paid by Prestwick to Licensor. If Licensor exercises its option under Section 4.8 of the Cambridge Agreement to subsequently co-invest in Galenical Development, Prestwick shall promptly reimburse to Distributor {\*\*\*}† (if Prestwick did co-invest) or {\*\*\*}† (if Prestwick did not co-invest) of any amounts reimbursed to Prestwick by Licensor to the extent Distributor exercised its rights to co-invest under Section 2.4.2(a) or (b) and paid {\*\*\*}† (if Prestwick did co-invest) or {\*\*\*}† (if Prestwick did not co-invest) of the Development Expenses for such Galenical Development.

2.4.3 Subsequent Buy-In. In the event Distributor does not exercise a Galenical Option pursuant to Section 2.4.2, Distributor shall have a second right (i) prior to the filing of an applicable NDA or (ii) to the extent Prestwick elects to exercise its right under Section 4.8 of the Cambridge Agreement to co-invest in a Galenical Product after the filing of an applicable NDA, concurrently with Prestwick's election, to receive rights to Commercialize the resulting Galenical Product as it would have if it had exercised the Galenical Option if it reimburses two times the amount of Development Expenses that would have been paid by Distributor under Section 2.4.2 for such Galenical Product if it had exercised thereof and thereafter pays its share of any additional Development Expenses incurred in accordance with Section 2.4.2.

## 2.5 Option to Isomeric Product.

2.5.1 Grant. Prestwick hereby grants to Distributor an irrevocable option to participate in the Commercialization of any Isomeric Product in the Territory that Prestwick has rights to Commercialize through the Cambridge Agreement irrespective of whether Prestwick wishes to participate in the Commercialization of such Isomeric Product itself (the "Isomeric Option").

(a) Exercise of Isomeric Option. Promptly upon Prestwick receiving notice from Licensor allowing it to co-invest on any Isomeric Product, Prestwick shall provide written notice to Distributor providing the following information: (i) all the information provided by Licensor to Prestwick, (ii) name and active ingredient(s) of the Isomeric Product, (iii) indication for which the NDA for such Isomeric Product shall or will be filed, (iv) the amount of Development Expenses spent or budgeted for Development of such Isomeric Product and (v) any other material information regarding such Isomeric Product ("Licensor Notice"). Prestwick shall promptly provide to Distributor such additional information in Prestwick's control, and shall promptly request from Licensor and deliver to Distributor such additional information provided by Licensor in response thereto, as Distributor may reasonably request. Distributor shall have ninety (90) days from receipt of the Licensor Notice to exercise the Licensor Option by providing written notice to Prestwick of such exercise. Upon the exercise of the Licensor Option by Distributor,

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Prestwick shall within thirty (30) days of such exercise notify (x) Licensor of Prestwick’s exercise of the right to co-invest and (y) Distributor if Prestwick is exercising solely for the benefit of Distributor or for both Distributor and Prestwick. In the event (1) Prestwick is exercising for the benefit of both Distributor and itself, then (A) such Isomeric Product shall be deemed included in the definition of “Product” herein, provided, that in such case the Supply Price with respect to such Product (which will be expressed as a percentage of Distributor’s Net Sales Revenue (provided that the Deduction Cap with respect to such Isomeric Product shall be adjusted as the Parties may reasonably agree in good faith) of such Product) shall be agreed to by the Parties such that (x) the forecast values of the operating cash flows of each of the Parties from the incremental distribution arrangement for such Product, are expected to be equal to each other, (y) the Supply Price will not be adjusted for any differences between actual and forecast cash flows and (z) the arrangement for determining Supply Price will not make the distribution arrangement be deemed a joint venture or partnership and (B) Distributor shall reimburse {\*\*\*}† of the Development Expenses paid by Prestwick to Licensor for the right to Commercialize the Isomeric Product in the Territory or (2) Prestwick is exercising solely for the benefit of Distributor, then (A) Prestwick (x) hereby appoints Distributor as its exclusive distributor (even as to Prestwick and its Affiliates) for the commercialization of such Isomeric Product in the Territory and Distributor hereby agrees to act in that capacity and (y) grants Distributor an exclusive (even as to Prestwick and its Affiliates), royalty-free license to use Prestwick Know-How and under Prestwick Patents and Intellectual Property, to Commercialize such Isomeric Product in the Territory, all on the same terms and conditions that such right is granted to Prestwick by Licensor (including the price for supply), (B) Distributor shall reimburse {\*\*\*}† of the Development Expenses due to Licensor for such right and (C) for the avoidance of doubt, Prestwick shall not be entitled to any portion of the supply price or net sales or any other payment with respect to such Isomeric Product in excess of the amount to be paid to by Prestwick to Licensor with respect to such Isomeric Product pursuant to the Cambridge Agreement. If the Parties are unable to agree to the Supply Price with respect to any such Product within three months of the initial submission of a proposal by one Party with respect thereto, either Party may submit the matter to Arbitration for final resolution in accordance with Section 14.3.

2.5.2     Subsequent Buy-In. In the event Distributor does not exercise an Isomeric Option pursuant to Section 2.5.1 and Prestwick chooses to exercise its rights to co-invest in such Isomeric Product, Distributor shall have a second right prior to the filing of an applicable NDA to receive rights to Commercialize the resulting Isomeric Product as it would have if it had exercised its Isomeric Option if it reimburses two times the amount of Development Expenses that would have been paid by it under Section 2.5.1 for such Isomeric Product if it had exercised thereof and thereafter pays its share of any additional Development Expenses incurred in accordance with Section 2.5.1.

2.6        Sub-Distributor or Subcontractor.

2.6.1     Performance. Distributor shall have the right to grant any right to Commercialize Product or subcontract any Commercialization activities for Product to its

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Affiliates or other Third Parties in its sole discretion; provided, however, that Distributor shall not (a) subcontract the performance of Detailing, Sales Representatives, Specialists or their supervisors without the prior written consent of Prestwick, which consent may be withheld in Prestwick's sole discretion, or (b) subcontract the Support Center hub distribution function to a party other than TheraCom, Inc. without the prior written consent of Prestwick, such consent not to be unreasonably withheld, delayed or conditioned. For the avoidance of doubt, sales by Distributor to wholesalers for further resale shall not be deemed to be a grant of a right to Commercialize Product or a subcontract of any Commercialization activity for Product.

2.6.2 Liability for Affiliates & Permitted Subcontractors. The Parties recognize that Distributor may perform some or all of its obligations under this Agreement through Affiliates or permitted subcontractors; provided, however, that Distributor shall remain responsible for and be guarantor of the performance by its Affiliates or permitted subcontractors and shall cause its Affiliates and permitted subcontractors to comply with the provisions of this Agreement in connection with such performance. Distributor hereby expressly waives any requirement that Prestwick exhaust any right, power or remedy, or proceed against an Affiliate or permitted subcontractor, for any obligation or performance hereunder prior to proceeding directly against Distributor. Wherever in this Agreement Distributor delegates responsibility to its Affiliate or permitted subcontractor, Distributor agrees that such entities may not make decisions inconsistent with this Agreement, amend the terms of this Agreement or act contrary to its terms in any way.

2.7 Limitations of Use. Distributor hereby covenants and agrees not to use or sublicense any of its rights under the licenses set forth in this Article 2 except as expressly permitted in this Agreement.

2.8 Retained Rights. Any rights of a Party not expressly granted to the other Party under the provisions of this Agreement shall be retained by the first Party. No implied right or license in any intellectual property right, whether by implication, estoppel or otherwise is granted under this Agreement by either Party to the other.

2.9 Exclusivity. Except for circumstances covered under Section 15.6.2, during the Term and for period of {\*\*\*}† thereafter, neither Prestwick or Distributor, nor any of their respective Affiliates shall directly or indirectly Develop, manufacture or Commercialize or have any interest in the Commercialization of, either itself or with, or through, a Third Party, any Competing Product in the Territory, except any product as authorized under this Agreement. Notwithstanding the foregoing, the above shall not apply with respect to (a) Prestwick with respect to any Galenical Product and Isomeric Product that Distributor chooses not to co-invest in pursuant to Sections 2.4 and 2.5, respectively, and (b) Distributor with respect to any Galenical Product and Isomeric Product that it chooses to co-invest in and Prestwick does not pursuant to Sections 2.4 and 2.5, respectively.

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**ARTICLE 3**  
**REGULATORY MATTERS**

3.1 Filing & Maintenance of Regulatory Approvals. As the NDA holder, Prestwick shall be ultimately responsible for filing for Regulatory Approval of Product for additional indications and maintenance of all Regulatory Approvals for Product, including filing all required reports (including but not limited to Annual Reports, Expedited Safety Reports, Field Alert Reports, Periodic Reports, REMS reports), post-approval supplements, advertising and promotional material submissions, and all study protocols, study reports and other submissions related to the Phase 4 Studies identified in the First NDA, with the applicable Regulatory Authorities, provided, that Distributor shall be responsible for preparing all such filings, reports and other submissions for Product in the Territory in a timely manner that allows a reasonable period in the circumstances for review of such filings and reports and subsequent submission by Prestwick in accordance with required submission dates. Notwithstanding anything to the contrary contained herein, (a) Distributor will pay all costs and expenses (i) incurred by Distributor preparing all filings, reports and other submissions with respect to the Phase 4 Studies identified in the First NDA and (ii) for maintenance filings, reports and submissions for the initial Product and any Regulatory Product; (b) Prestwick, with respect to any Galenical Product and Isomeric Product that Distributor chooses not to co-invest in pursuant to Sections 2.4 and 2.5, respectively, will pay all costs and expenses incurred by Distributor preparing all filings, reports and other submissions with respect to maintenance filings, reports and submissions for any such Galenical Product or Isomeric Product; (c) Distributor, with respect to any Galenical Product and Isomeric Product that it chooses to co-invest in and Prestwick does not pursuant to Sections 2.4 and 2.5, respectively, will pay all costs and expenses incurred by Distributor in preparing all filings, reports and other submissions with respect to maintenance filings, reports and submissions for any such Galenical Product or Isomeric Product; (d) Prestwick and Distributor, with respect to any Galenical Product and Isomeric Product that both choose to co-invest in, will share equally all costs and expenses incurred by Distributor preparing all filings, reports and other submissions with respect to maintenance filings, reports and submissions for any such Galenical Product or Isomeric Product; and (e) all costs and expenses incurred preparing all filings, reports and other submissions with respect to Development shall be Development Expenses.

3.2 Regulatory Communication. Except as may otherwise be provided in any pharmacovigilance agreement or quality agreement entered into between the Parties or any of their Affiliates in connection with this Agreement, Distributor shall not communicate with any Governmental Authority regarding Product or this Agreement without the prior written consent of Prestwick (such consent not to be unreasonably withheld, delayed, or conditioned) unless such communication is required by a Governmental Authority or by applicable Law, subpoena or other legal process. In the event that Prestwick consents and/or Distributor is required by a Governmental Authority or by applicable Law, subpoena or other legal process to communicate with such Governmental Authority, then Distributor shall, to the extent practicable, provide Prestwick with reasonable advance notice of any meeting or other communication with any Governmental Authority relating to Product, and Prestwick shall have the right, if legally permissible, to participate in any such meeting or other communications as well as have the right to participate in all preparations, internal caucuses, and debriefing sessions related to such meetings or other communications, in each case solely to the extent related to Product. Distributor shall promptly, but in no event more than two (2) Business Days after receipt, furnish Prestwick with copies of all documents or correspondence Distributor has had with or receives from any Governmental Authority, and contact reports conversations or meetings with any Governmental

Authority, in each case relating to Product (including without limitation any minutes from a meeting with respect thereto).

### 3.3 Adverse Event Reporting.

3.3.1 Reporting to Prestwick. Distributor shall timely report to Prestwick any information concerning any side effect, injury, toxicity or sensitivity reaction associated with use of Product in the Territory, whether or not determined to be attributable to Product of which Distributor becomes aware. In the event that Distributor receives notice of any adverse or unexpected event associated with use of Product in the Territory from a Third Party, Distributor shall forward such notice to Prestwick by fax within twenty-four (24) hours and shall confirm such fax by registered mail as soon as practicable. After reporting such incidents, within ten (10) days thereafter, Distributor will further report to Prestwick whether, in its judgment, any of them are unexpected or unusual in type, incidence or severity.

3.3.2 Pharmacovigilance. Distributor shall be responsible for all processing of information related to any adverse events associated with use of Product in the Territory, including, without limitation, any information regarding such adverse events that is forwarded to Distributor by Prestwick from a Third Party related to Product. Distributor shall prepare all expedited and periodic filings of such adverse events to the applicable Governmental Authority in the Territory in accordance with applicable Laws and provide such filings to Prestwick in a timely manner such that Prestwick may have a reasonable period in the circumstances to review such filings and subsequently file them in compliance with all applicable Laws. As soon as reasonably practicable following the Effective Date, the Parties shall enter into a pharmacovigilance agreement (“Pharmacovigilance Agreement”), which shall govern the collection, review, assessment, tracking and filing of information related to adverse events associated with Product.

3.3.3 Field Alerts. Distributor shall be responsible for all processing of information related to any field alert report related to Product in the Territory, except for any Product quality or manufacturing defects not in the purview of the Distributor. Distributor shall be responsible for preparing all such applicable field alert reports and submit such reports to Prestwick for its review and subsequent filing with the applicable Governmental Authority in accordance with all applicable Laws.

3.3.4 Medical Inquiries for Product. Distributor shall be responsible for handling all medical questions or inquiries with regard to Product in the Territory. Prestwick shall forward any and all medical questions or inquiries with regard to Product which it receives from the Territory to Distributor in accordance with all applicable Laws.

### 3.4 Recalls and Withdrawals.

3.4.1 Notification and Determination. In the event that any Governmental Authority threatens, initiates or recommends any voluntary or involuntary action to remove Product from the market in the Territory (in whole or in part), the Party receiving notice thereof shall notify the other Party of such communication immediately, but in no event later than one (1) Business Day, after receipt thereof. In all cases, Prestwick shall make the final determination regarding whether or not to initiate any recall or withdrawal of Product in the Territory, including the scope of such recall or withdrawal (e.g., a full or partial recall, or a temporary or permanent

recall); provided, however, that before Prestwick determines whether or not to initiate a recall or withdrawal, the Parties shall promptly meet and discuss in good faith the reasons therefor, provided further that such discussions shall not delay any action that Prestwick reasonably believes has to be taken in relation to any recall. In the event of any such recall or withdrawal, whether voluntary or involuntary, Distributor shall implement any necessary action, with assistance from Prestwick as reasonably requested by Distributor, to conduct such recall or withdrawal. Distributor shall utilize a batch tracing and recall system which will enable Distributor to identify, on a prompt basis, customers within the Territory who have been supplied with Product of any particular batch, and to recall such Product from such customers in accordance with Prestwick’s instructions.

3.4.2 Cost Allocation. All direct costs and expenses associated with implementing a recall (whether voluntary or involuntary) or withdrawal of Product in the Territory shall be allocated between Prestwick and Distributor as follows:

- (a) in the event, and to the extent, that the recall or withdrawal arises as a result of a material breach of this Agreement by a Party, then the breaching Party shall bear {\*\*\*}† of the costs and expenses for implementing the recall or market withdrawal;
- (b) to the extent not recovered from Licensor or any other Third Party supplier, in the event, and to the extent, that the recall or withdrawal arises as a result of Product supplied not meeting specifications for such Product as provided in the Regulatory Approval (“Specifications”) when title is transferred to Distributor, then Distributor shall bear {\*\*\*}† and Prestwick shall bear {\*\*\*}† of the costs and expenses for implementing the recall or market withdrawal;
- (c) in the event, and to the extent, that the recall or withdrawal arises out of any event other than a material breach by Distributor of this Agreement or Product to meet Specifications when received by Distributor, then Distributor shall bear {\*\*\*}† and Prestwick shall bear {\*\*\*}† of the costs and expenses for implementing the recall or market withdrawal.

3.5 Assistance for Product. Each Party shall promptly inform the other Party of any notification of any action by, or notification or other information which it receives (directly or indirectly) from, any Governmental Authority (together with copies of correspondence related thereto), which (a) raises any material concerns regarding the safety or efficacy of Product, (b) indicates or suggests a potential material liability for either Party to Third Parties arising in connection with Product or (c) which indicates a reasonable potential for a recall or market withdrawal of Product in the Territory.

**ARTICLE 4**  
**COMMERCIALIZATION OF PRODUCT**

4.1 Commercialization. Distributor will be solely responsible for Commercializing and have the sole right to Commercialize, Product in the Territory during the Term in accordance with

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the this Agreement, subject only to Prestwick's option to Co-Promote Product pursuant to Section 4.5. Except as specifically provided in this Agreement, Prestwick shall not be responsible for any expenses (including pre-marketing and Detailing expenses) incurred in connection with the Commercialization of Product in the Territory, except for costs it incurs for Co-Promoting Product (other than as set forth in Section 4.5.1).

#### 4.2 Commercialization Plan.

4.2.1 Submission. Beginning with September 1, 2009, Distributor shall submit to Prestwick an annual update to the Commercialization Plan by September 1st for the following Calendar Year for review and approval. In the event that Prestwick wishes to Co-Promote Product in the Territory in the following Calendar Year, it shall within thirty (30) days of Distributor's submission of the annual update to the Commercialization Plan propose which territories or medical professional offices and hospitals it wishes to be designated in the Commercialization Plan for Detailing.

4.2.2 Approval. The Parties shall finalize and unanimously approve the annual update to the Commercialization Plan by November 15 of each Calendar Year, provided, that in the event the Parties are unable to agree, then the Designated Senior Officers of each of the Parties will meet at least once in person or by means of telecommunication (telephone, video, or web conferences) to discuss such disagreement and use their good faith efforts to finalize and approve an update to the Commercialization Plan. If the Designated Senior Officers within thirty (30) days after submission of such disagreement to such officers fail to finalize and approve an update to the Commercialization Plan, then the determination of the update to the Commercialization Plan shall be made by (a) Distributor in its sole discretion, if Distributor has not provided a notice of termination pursuant to Section 11.4; provided, however, that (i) the amount to be spent during each Calendar Year of the Exclusivity Period on (1) A&P activities shall not be less than {\*\*\*}†, (2) Support Center activities shall be approximately {\*\*\*}† and (3) Distributor's co-pay assistance program shall be approximately {\*\*\*}† of gross sales of Product in the Territory in a Calendar Year and (ii) the number of Sales Representatives and Specialists shall not be less than those required under Section 4.3.2 below, or (b) Prestwick in its sole discretion, if Distributor has provided notice of termination pursuant to Section 11.4; provided, however, that (i) the amount to be spent during each Calendar Year of the Exclusivity Period on (1) A&P activities shall not be required to be greater than {\*\*\*}†, (2) Support Center activities shall be approximately {\*\*\*}† and (3) Distributor's co-pay assistance program shall be approximately {\*\*\*}† of gross sales of Product in the Territory in a Calendar Year; (ii) the number of Sales Representatives and Specialists shall not be more than those required under Section 4.3.2 below ; and (iii) in no event shall Distributor be obligated to expend any resources, other than with respect to the items described in clauses (i) and (ii) of this proviso, in excess of the amounts or levels set forth in the Commercialization Plan in effect at the time Distributor provides notice of termination pursuant to Section 11.4. As used herein, the "Designated Senior Officer" shall mean the Chief Executive Officer of Distributor and the Chief Executive Officer of Prestwick, respectively, or such other senior official of such Party as such Party may designate in writing to the other Party from time to time

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time. In the event Distributor or Prestwick wishes to make any material change to, materially deviate from, or otherwise update the Commercialization Plan other than the annual update, such change, deviation or update shall be subject to approval as if such update was an annual update pursuant to this Section 4.2.2.

4.3 Commercialization. During the Exclusivity Period, Distributor shall Commercialize the Product in the Territory as set forth in this Section 4.3.

4.3.1 Diligence in Commercialization.

(a) During the Exclusivity Period, Distributor shall conduct in the Territory no fewer Details in a Calendar Year than that provided for in the Commercialization Plan.

(b) During the Exclusivity Period, Distributor shall spend no less than {\*\*\*}† in a Calendar Year in conducting A&P activities in the Territory in accordance with the Commercialization Plan. For purpose of clarity, no Deductions used to calculate Net Sales Revenue shall be used to calculate the amount spent on A&P activities. In the event of a labeling change or other safety risk with respect to Product that would reasonably be expected to have a material adverse effect on sales of Product, the Parties shall negotiate in good faith to determine commercially reasonable reductions to the amount required to be spent on A&P activities.

(c) During the Exclusivity Period, Distributor shall spend approximately {\*\*\*}† in a Calendar Year in conducting Support Center activities in the Territory in accordance with the Commercialization Plan. For purpose of clarity, no Deductions used to calculate Net Sales Revenue shall be used to calculate the amount spent on Support Center activities. In the event of a labeling change or other safety risk with respect to Product that would reasonably be expected to have a material adverse effect on sales of Product, the Parties shall negotiate in good faith to determine commercially reasonable reductions to the amount required to be spent on Support Center activities.

(d) During the Exclusivity Period, Distributor shall spend approximately {\*\*\*}† of gross sales of Product in the Territory in a Calendar Year in its co-pay assistance program. In the event of a labeling change or other safety risk with respect to Product that would reasonably be expected to have a material adverse effect on sales of Product, the Parties shall negotiate in good faith to determine commercially reasonable reductions to the amount required to be spent in the co-pay assistance program.

(e) Distributor shall launch the Product in the Territory within the later of: (i) four months after the date that Distributor is authorized under applicable Law to market and sell the Product in the Territory; or (ii) one (1) week after finished, packaged and labeled Product ready for release to consumers in the Territory and meeting Specifications is delivered to Distributor in the Territory.

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(f) During each Calendar Year, Distributor shall, except as may otherwise be required by applicable Law, conduct Commercialization of Product in accordance with the Marketing Plan in all material respects and order {\*\*\*}† of the Minimum Order Quantities.

(g) The amounts set forth in Sections 4.3.1(a) through (f) shall be proportionately reduced for any period less than a full calendar year.

(h) If sixty (60) days prior to the expiry of the Exclusivity Period there is no FDA approved Generic Equivalent for Product in the Territory, the Parties shall meet to discuss whether or not expenditures for A&P activities, Support Center activities or co-pay assistance program activities with respect to the Product in the Territory are thereafter beneficial or appropriate.

#### 4.3.2 Detailing.

(a) Sales Representatives. During the Exclusivity Period, Distributor shall assign (1) at least {\*\*\*}† sales representatives to perform Detailing in the first or second position (“Sales Representatives”), in the Territory and (2) at least {\*\*\*}† dedicated regional sales representatives who shall (x) Detail only Product in the first position and (y) be targeted to reach high value (A and B) Product targets as a priority to low value (C) Product targets, including, but not limited to, top decile targets and perform Detailing in the first position with such targets (“Specialists”), in each case who have been adequately trained; provided, however, that in the event the number of Sales Representatives or Specialists is less than the specified number as a result of the termination of employment of one or more Sales Representatives or Specialists, Distributor shall not be in breach of this Section 4.3.2 if it replaces each such Sales Representative or Specialist within ninety (90) days of such termination. Distributor shall also ensure that it assigns a sufficient number of qualified supervisors to oversee the conduct of the Sales Representatives and Specialists. No Sales Representative or Specialist shall be eligible for Distributor’s “All Star Program” or similar program (e.g. their annual sales, budget and activity plan) unless such Sales Representative meets their target for Product.

(b) National Incentive. From the First Commercial Sale and until the launch of Sabril by Distributor (“Period 1”), national incentives for Sales Representatives shall be calculated based solely on Product sales or prescriptions. Following Period 1 and until the end of the period that is equal in duration to Period 1, provided, such period shall not exceed {\*\*\*}† (“Period 2”), at least {\*\*\*}† of national incentives for Sales Representatives shall be calculated based on Product sales or prescriptions. Following Period 2, at least {\*\*\*}† of national incentives for Sales Representative shall be calculated based on Product sales or prescriptions. Notwithstanding anything to the contrary contained in this Section 4.3.2(b), after the date that is {\*\*\*}† after the First Commercial Sale and during the Exclusivity Period, at least {\*\*\*}† of national incentives for Sales Representative shall be based on Product sales or prescriptions.

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† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

#### 4.3.3 Reports & Audits.

(a) Distributor shall maintain an adequate internal system (and necessary records) for the reporting within thirty (30) days following the end of each Calendar Year during the Term of (i) the number of Details performed by its Sales Representatives and Specialists in the Territory, by decile and target medical professional office or hospital and (ii) the amounts spent for (x) A&P Activities and (y) Support Center activities, each against the requirements under the Commercialization Plan (each, a “Commercialization Report”).

(b) Distributor shall keep accurate and complete records of Details carried out by each Sales Representative and Specialists, payroll and bonus programs for Sales Representatives and payments made thereof, and the amounts spent for A&P activities and Support Center activities as required under this Agreement. If within two (2) years of receipt of a Commercialization Report Prestwick wishes to verify the number of Details, payroll and bonus programs for Sales Representatives and payments made thereof, or the amounts spent on A&P activities or Support Center activities provided in such report, Distributor shall make its records available for inspection and review by an independent accountant with advance notice during business hours, reasonably acceptable to Distributor, for the purpose of so verifying the number of Details performed by Distributor, payroll and bonus programs for Sales Representatives and payments made thereof, or amounts spent on A&P activities or Support Center activities. All costs and expenses incurred in connection with any such verification shall be paid by Prestwick, provided that Distributor shall pay such costs and expenses if the number of Details, payroll and bonus programs for Sales Representatives and payments made thereof, or amounts spent on A&P activities or Support Center activities determined by the independent accounts is lower than the number of Details, payroll and bonus programs for Sales Representatives and payments made thereof, or amounts spent on A&P activities or Support Center activities, in each case, required under this Agreement.

(c) Each Party will treat all information subject to review under this Section 4.3.3 in accordance with the provisions of Article 7. Prior to conducting any audit hereunder, Prestwick will cause its accounting firm to enter into a reasonably acceptable confidentiality agreement with Distributor obligating such accounting firm to maintain all information in confidence with standards no less stringent than the terms of Article 7 of this Agreement.

#### 4.4 Promotional Materials.

4.4.1 Creation of Promotional Materials. Distributor will create and develop Promotional Materials for Commercialization of Product in the Territory in accordance with the Regulatory Approvals and applicable Laws, and will forward such Promotional Materials to Prestwick for regulatory submission. Distributor will also assist Prestwick, at Distributor’s sole cost, in obtaining any required approval of all Promotional Materials for Commercialization of Product in the Territory by Governmental Authorities including the FDA’s Division of Drug Marketing Advertising and Communications.

4.4.2 Ownership of Promotional Materials. During the Term, Distributor shall own all right, title and interest in and to any Promotional Materials relating to Product, including without limitation applicable copyrights and trademarks, but excluding trademarks owned by Prestwick.

4.5 Co-Promotion.

4.5.1 Right. Prestwick shall have the right, at its sole cost and discretion, to Co-Promote Product in the Territory to certain medical professional offices and hospitals as may be reasonably agreed to by the Parties from time to time. Distributor shall provide Prestwick with (a) a reasonable quantity of existing Promotional Materials reasonably requested for conducting such Co-Promotion activities and (b) reasonable access and use of Distributor's existing infrastructure and training and other educational materials to assist in the recruitment, training and operational management of Prestwick's sales force.

4.5.2 Joint Steering Committee. Upon Prestwick's election to Co-Promote Product in the Territory, the Parties shall establish a specialized committee to facilitate communications between the Parties with respect to the Co-Promotion of Product within the Territory.

4.6 Sales Representatives. No sales representative of a Party shall be treated as an employee of the other Party, and such an individual is not, and is not intended to be, eligible to participate in any benefits programs or in any employee benefit plans that are sponsored by the other Party or that are offered from time to time by the other Party to its own employees. Each Party shall not be responsible to the other Party, or to the other Party's sales representatives for any compensation, expense reimbursements or benefits, payroll-related taxes or withholdings, or any governmental charges or benefits that may be imposed upon or be related to the performance by the other Party and its sales representatives, all of which shall be the sole responsibility of the other Party, even if it is subsequently determined by any court or governmental agency that any such sales representative may be an employee or a common law employee of the Party or is otherwise entitled to such payments and benefits. Further, each Party shall be solely responsible and liable for all probationary and termination actions taken by it, as well as for the formulation, content and dissemination (including content) of all employment policies and rules (including written probationary and termination policies) applicable to its employees and contractors.

4.7 Compliance with Laws. Each Party and its permitted Third Party contractors shall perform its responsibilities under this Article 4 in accordance with all applicable Laws, including, but not limited to, applicable Laws in the hiring, employment, and discharge of all sales representatives.

4.8 Use of Marks and Approval of Promotional Materials. Distributor shall in relation to the marketing, distribution and sale of Product only use Promotional Materials which contain the trade mark XENAZINE and which comply with applicable Laws and requirements of the FDA in the Territory and which have been approved in writing by Licensor prior to use. Distributor shall submit to Licensor for approval any promotional materials Distributor proposes using and Distributor shall use Commercially Reasonable Efforts to cause Licensor to provide approvals or details of required alterations within fourteen (14) days of Licensor's receipt. Promotional materials used by Distributor in connection with Commercialization of Product shall contain an acknowledgement of Licensor's ownership of the trade mark XENAZINE in such form as agreed to by Distributor and Licensor.

**ARTICLE 5**  
**SUPPLY OF PRODUCT**

5.1 Principles of Supply.

5.1.1 Exclusive Supply. For purposes of clarity, subject to the terms of this Agreement, Distributor shall obtain Product exclusively from Prestwick or its designee (provided that Distributor shall only be required to pay Prestwick for Product obtained from any such designee in accordance with the terms of this Agreement).

5.1.2 Obligation to Supply.

(a) Prestwick shall supply Product in accordance with the terms hereof; provided, however, Prestwick's obligation to supply Product shall be subject to its ability to source Product from Licensor (or any successor supplier) in accordance with the Cambridge Agreement or Licensor's then existing contract manufacturers in accordance with Licensor's then existing contract manufacturing supply agreements for Product or Active Substance.

(b) Prestwick shall promptly deliver to Licensor (or any successor supplier) all Forecasts, alterations to Forecasts, Purchaser Orders and other related correspondence received from Distributor in accordance with the terms of the Cambridge Agreement (or successor agreement) and otherwise comply in all material respects with any similar procedural requirements under the Cambridge Agreement (or successor agreement) as may be necessary to obtain supply of Product.

5.1.3 Assignment or Transfer of Supply Contracts or Rights. In the event that Licensor exercises its right to terminate supply of the Product pursuant to Clause 8.7 of the Cambridge Agreement, within ten (10) Business Days after Prestwick's receipt of the notice thereof, Prestwick hereby covenants, and shall notify Licensor and Distributor of Prestwick's decision, to request Licensor to take, and use Commercially Reasonable Efforts to effect such request, one of the following actions within thirty (30) Business Days thereof: (i) transfer the manufacturing technology and Know-How necessary to manufacture Product ("Technology") to Prestwick or its designee; or (ii) to the extent Licensor's existing contract manufacturing supply arrangements are assignable without Third Party consent, assign to Prestwick, and to the extent such Third Party consent requires Third Party consent, request assignment of, Licensor's existing contract manufacturing supply agreements and all rights to Technology, whether such Technology is located at the contract manufacturing organizations' site or otherwise. In the event that Prestwick elects the option in subsection (i) of this paragraph to have the Technology transferred to Distributor as its designee, Prestwick shall also grant to Distributor an exclusive and royalty-free license to the Prestwick Know-How, the Prestwick Patents and Intellectual Property, the Product Trade Dress and the Product Trade Mark to manufacture Product.

5.1.4 Secondary Assignment or Transfer. In the event that Prestwick has previously effected a transfer or assignment under subsection (i) or subsection (ii) of Section 5.1.3 above, and subsequent to such transfer or assignment, Distributor has the right to terminate this Agreement pursuant to Section 11.2.3, Prestwick shall then, at Distributor's option: (i) transfer the Technology to Distributor; or (ii) to the extent Prestwick's existing contract manufacturing supply arrangements are assignable without Third Party consent, assign to Distributor, and to the extent such Third Party consent requires Third Party consent, request assignment of, Prestwick's existing contract manufacturing supply agreements and all rights to Technology, whether such Technology is located at the contract manufacturing organizations' site or otherwise. In the event that

Distributor elects the option in subsection (ii) of this Section 5.1.4, Prestwick shall also grant to Distributor an exclusive and royalty-free license to the Prestwick Know-How, the Prestwick Patents and Intellectual Property, the Product Trade Dress, and the Product Trade Mark to manufacture Product.

5.1.5 Assignment or Transfer upon Insolvency. In the event that Distributor has the right to terminate this Agreement pursuant to Section 11.3, within five (5) days after Distributor’s receipt of the notice thereof, Prestwick hereby covenants to take all actions necessary to request Licensor to take, and use Commercially Reasonable Efforts to effect such request, one of the following actions (or Prestwick itself shall take the following actions if its rights under Section 5.1.3 have been previously exercised), at Distributor’s option: (i) transfer the Technology to Distributor; or (ii) to the extent Licensor’s existing contract manufacturing supply arrangements are assignable without Third Party consent, assign to Distributor, and to the extent such Third Party consent requires Third Party consent, request assignment of, Licensor’s existing contract manufacturing supply agreements and all rights to Technology, whether such Technology is located at the contract manufacturing organizations’ site or otherwise. In the event that Distributor elects the option in subsection (ii) of this Section 5.1.5, Prestwick shall also grant to Distributor an exclusive and royalty-free license to the Prestwick Know-How, the Prestwick Patents and Intellectual Property, the Product Trade Dress, and the Product Trade Mark.

5.1.6 Allocation of Cost of Transfer. Any out-of-pocket costs and expenses incurred by Distributor and Prestwick in connection with any transfer or assignment contemplated in Sections 5.1.3 through 5.1.5 that are not paid or reimbursed by Licensor shall be borne {\*\*\*}† by Distributor and {\*\*\*}† by Prestwick. Any change in the “Cost of Goods” for Product resulting from any transfer or assignment contemplated in Sections 5.1.3 through 5.1.5 shall be borne or shared, as the case may be, {\*\*\*}† by Distributor and {\*\*\*}† by Prestwick, including any amounts owed as a result of any pay or take elements in a supply contract.

5.2 Forecasting and Ordering.

5.2.1 Forecast. On the Effective Date, Distributor shall deliver to Prestwick, a fifteen (15) month forecast (the “Initial Forecast”), and thereafter on the first Business Day of each month, Distributor shall deliver a rolling twelve (12) month forecast updating the prior forecast (together with the Initial Forecast, the “Forecast”).

5.2.2 Binding Forecast. The quantity of Product forecasted for the first three months of each Forecast shall be firm and binding (“Binding Portion”) and Distributor shall be obligated to purchase the quantities of Product in the Binding Portion of each Forecast; provided, however, that the quantity set forth in each Binding Portion may be altered once by Distributor, to the extent Licensor is obligated to accept such alteration under the Cambridge Agreement, within a range of {\*\*\*}† of the relevant quantity no later than {\*\*\*}† before the desired delivery date and may not otherwise be altered in subsequent updated forecasts.

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5.2.3 Binding Forecast Purchase Orders. During the Term, Distributor shall deliver to Prestwick, a firm purchase order (“Purchase Order”) for the quantities of Product for the Binding Portion of each Forecast required by Distributor no later than six (6) months before the desired delivery date. Each Purchase Order shall be ordered based on whole batches of Product manufactured; provided, that prior to December 31, 2009, Prestwick shall reimburse Distributor the cost of any expired Product ordered in excess of the amounts forecasted by Distributor to the extent that such expired Product does not constitute a Deduction or is otherwise deducted in connection with payment of net sales on Product to Licensor in a manner that reduces Distributor’s payment obligations to Prestwick on a dollar for dollar basis. If Distributor wishes to alter any Purchase Order because it has altered any quantity in the Binding Portion in accordance with Section 5.2.2, Distributor must submit an amended Purchase Order to reflect that. In the event a Purchase Order for quantities in the Binding Portion of a Forecast is not received six (6) months before the end of the month for which such quantities were forecasted, the forecast for such month in the Binding Portion of a Forecast shall be deemed a Purchase Order.

5.2.4 Supply Shortages. In the event that there is a shortage of Product supplied to Prestwick by Licensor that leads to Prestwick being unable to provide the Binding Portion of the Forecast, Prestwick shall use Commercially Reasonable Efforts to cause Licensor (or any successor supplier) to cause supplier of Product to allocate supply of Product between the Territory and Canada based upon net sales of Product in the Territory during the previous twelve (12) month period immediately prior to such shortage as compared to the total sales for Product in the Territory and Canada in such 12-month period.

5.2.5 Receipt and Acceptance. Prestwick shall deliver Product against each Purchase Order in accordance with this Section 5.2. Distributor shall purchase all Product ordered and specified in a Purchase Order. Purchase Orders may be delivered electronically or by other means to such location as Prestwick shall designate and shall be in a form reasonably acceptable to Prestwick, provided, however that a Purchase Order shall be binding on Prestwick provided that the Purchase Order contains orders for Product that are in compliance with Distributor’s forecasting obligations set out above. Prestwick shall provide written confirmation of such Purchase Order to Distributor within fifteen (15) Business Days of receipt of such Purchase Order. Other than terms respecting quantity and delivery date(s) (provided, such delivery dates are in accordance with the terms of this Agreement), the terms and conditions of any Purchase Order submitted by Distributor or written confirmation thereof by Prestwick shall be of no force and effect, whether or not objected to by Prestwick, and nothing in any such Purchase Order or written acceptance shall supersede the terms and conditions of this Agreement. All Purchase Orders, written acceptances of Purchase Orders and other notices contemplated under this Section 5.2 shall be sent to the attention of such persons as each Party may identify to the other in writing from time to time.

5.2.6 Rejection of Product. In the event Product does not meet Specifications when title is transferred to Distributor for such Product, the Parties shall use Commercially Reasonable Efforts (including exercising its rights under the Cambridge Agreement) to return such Product to Licensor and either obtain replacement Product or a refund.

### 5.3 Shipping and Delivery.

5.3.1 Outside Territory and Canada. With respect to Product shipped from outside the Territory and Canada, Prestwick shall arrange for the shipment of Product to Distributor's designated warehouse in the Territory. Delivery of Product so shipped, shall be FCA (Incoterms 2000), and title to, ownership of, and risk of loss of Product shall pass from Prestwick to Distributor at the location that is immediately after Product enters international waters (including the airspace above international waters) while in transit from the shipment point to the U.S. Customs port designated by Distributor.

5.3.2 U.S. To the extent that Product is packaged in the continental U.S., then, at the option of Prestwick, Product may be delivered to Distributor EXW (Incoterms 2000) immediately after completion of the packaging. In the case of such Product, title to, ownership of, and risk of loss of Product shall pass from Prestwick to Distributor at the time of delivery.

5.3.3 Canada. In the case of delivery of Product from Canada, Product shall be delivered DDP (Incoterms 2000), and title to, ownership of, and risk of loss of Product shall pass from Prestwick to at the U.S. Customs port designated by Distributor, immediately after the Product has cleared US Customs.

Notwithstanding the above, in all cases Product shall be shipped at Distributor's expense via a carrier identified by Distributor in the applicable Purchase Order. Distributor shall be responsible for freight and insurance charges.

5.4 Safety Stock. During the Term, Distributor shall at all times hold {\*\*\*}† stock of Product, which shall be calculated as {\*\*\*}† of the then current Forecast, provided, in the event Prestwick does not supply Product in such quantity having shelf life equal to or greater than twenty-four (24) months, then such requirement shall be reduced to {\*\*\*}† stock of Product until such quantity is supplied.

5.5 Liability for Affiliates & Permitted Subcontractors. The Parties recognize that Prestwick may perform some or all of its obligations under this Agreement through Affiliates or permitted subcontractors; provided, however, that Prestwick shall remain responsible for and be guarantor of the performance by its Affiliates or permitted subcontractors and shall cause its Affiliates and permitted subcontractors to comply with the provisions of this Agreement in connection with such performance. Prestwick hereby expressly waives any requirement that Distributor exhaust any right, power or remedy, or proceed against an Affiliate or permitted subcontractor, for any obligation or performance hereunder prior to proceeding directly against Prestwick. Wherever in this Agreement Prestwick delegates responsibility to its Affiliate or permitted subcontractor, Prestwick agrees that such entities may not make decisions inconsistent with this Agreement, amend the terms of this Agreement or act contrary to its terms in any way.

5.6 Quality and Pharmacovigilance Agreement. Prior to the earlier of (x) sixty (60) days after the Effective Date or (y) five (5) days prior to the date of the first shipment of Product, the Parties shall negotiate in good faith to enter into (i) a Quality Agreement that addresses (a) label copy approval, (b) batch release documentation, (c) change notification, (d) product

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complaint investigations (Distributor initiated), (e) manufacturing investigations (Prestwick initiated), (f) annual product review and (g) regulatory inspection notification and response and (ii) a Pharmacovigilance Agreement.

**ARTICLE 6**  
**FINANCIAL TERMS**

6.1 Consideration. In partial consideration of the rights granted to it herein, Distributor shall pay Escrow Agent {\*\*\*}† on the Effective Date (the “Upfront Payment”). Escrow Agent shall release the Upfront Payment to Prestwick or Distributor in accordance with the terms and conditions of the Escrow Agreement.

6.2 Development Expenses. Distributor shall reimburse Prestwick for {\*\*\*}† of all Development Expenses incurred by it after the Effective Date and due to Licensor pursuant to the Cambridge Agreement with respect to Regulatory Development. Any amounts of Development Expenses owed to Prestwick by Distributor under this Agreement shall be paid within thirty (30) days of Distributor’s receipt of an invoice for such Development Expense. Invoices for Development Expenses owed shall be delivered by Prestwick to Distributor upon the earlier of (a) such amounts being due to Licensor or (b) Prestwick incurring such Development Expense.

6.3 Supply Price and Payment.

6.3.1 Supply Price. The supply price for Product shall be (a) seventy-two percent (72%) of Net Sales Revenue in a Calendar Year up to \$125,000,000 of Net Sales Revenue in such Calendar Year, (b) sixty-five percent (65%) of Net Sales Revenue in a Calendar Year from and in excess of \$125,000,000 of Net Sales Revenue in such Calendar Year, and (c) the relevant percentage of any collections, recoveries, damages, awards, settlements and any other payments made or paid to Distributor as compensation for or in lieu of Net Sales Revenue net of any out of pocket costs incurred by Distributor to obtain such amounts (the “Supply Price”).

6.3.2 Invoice. Each delivery of Product hereunder shall be accompanied by an invoice setting forth the estimated Supply Price (calculated using estimated Net Sales Revenue) for Product supplied (“Invoice”).

6.3.3 Payment. Within (a) thirty (30) days of receipt of an Invoice, Distributor shall pay a portion of the Invoice (“First Installment”), which shall be equal to {\*\*\*}† supplied, (b) ten (10) days after the end of each calendar month (“Statement Date”), Distributor shall provide a statement of the quantity of Product sold by Distributor and a calculation, including all information relevant to that calculation, of total Net Sales Revenue for the prior calendar month and the calculation of the actual Supply Price for Product supplied against the Invoice and (c) the later of (x) nine (9) days of notice from Prestwick of its agreement with the Statement or (y) fourteen (14) days of the Statement Date pay the Supply Price with respect to Product sold in such month reduced by any First Installment payments made for Product sold in such month and not previously credited to the Supply Price.

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6.3.4 Deferred Payment. Notwithstanding Section 6.3.3(c), Distributor may defer for a period of six (6) calendar months after the First Commercial Sale date (a) {\*\*\*}† of the Supply Price where such Supply Price is determined based upon Net Sales Revenue less than {\*\*\*}† and (b) {\*\*\*}† of the Supply Price where such Supply Price is determined based upon Net Sales Revenue equaling or exceeding {\*\*\*}†, without penalty or interest. For clarity, such amounts deferred shall be owed within thirty (30) days of the end of the sixth calendar month after the date of the First Commercial Sale.

6.3.5 Handling Deductions. Distributor shall be entitled to deduct from payment of the First Installment of each Invoice, an amount equal to any increase of its Third Party costs for customs and handling on the importation of Product solely attributable to any excess of the amount invoiced by Licensor to the Distributor for the Supply Price over the First Installment for Product ("Handling Deductions"), provided, that Distributor provides an itemized statement of such reduction with the payment of the First Installment.

6.4 Payment Method. All amounts due to either Party hereunder will be paid in Dollars by wire transfer in immediately available funds to an account designated by such Party. Any amounts (other than amounts being contested in good faith) that are overdue and payable under this Agreement shall bear interest at a rate of {\*\*\*}† per month from the due date until the date of payment. For clarity, upon resolution of any amounts disputed such amounts determined to be due shall bear interest at the rate provided above from the time such amounts were originally due.

6.5 Reconciliations. The Parties acknowledge that any amounts paid or shared in any way under this Agreement may be based upon estimates, which estimates will be GAAP-compliant; provided, however, that when the actual results become known relative to any estimated amount, any difference between the actual results and the estimate is reported and the next payment due hereunder related to such estimated item is appropriately adjusted for such difference. The Parties acknowledge and agree that any reports and payments relating to any cost, expense, or other financial amount shared pursuant to this Agreement for the final quarter of any Calendar Year shall reflect year-end reconciliations and adjustments, if any, applicable to the previous three (3) quarters' reported results.

6.6 Taxes. Each Party will be responsible for any and all income or other taxes owed by it ("Receiving Party") and required by applicable Law to be withheld or deducted from any of the payments made by or on behalf of the other Party ("Disbursing Party") to it hereunder ("Withholding Taxes") and the Disbursing Party may deduct from any amounts that the Disbursing Party is required to pay hereunder an amount equal to such Withholding Taxes. Any amounts withheld shall be deemed as paid to the Receiving Party for all purposes under this Agreement. Each Party will provide the other Party with (a) reasonable advance notice of tax withholding obligations to which it reasonably believes that it is subject and (b) any reasonable information available to it that is necessary to determine the Withholding Taxes. Such Withholding Taxes will be paid to the proper taxing authority for the Receiving Party's account and evidence of such payment will be secured and sent to the Receiving Party within one (1) month of such payment. The Parties will do all such lawful acts and things and sign all such

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lawful deeds and documents as either Party may reasonably request from the other Party to enable each Party or its Affiliates to (i) take advantage of any applicable legal provision or any treaty provisions with the object of paying the sums due to such Party hereunder with the lowest legal amount of Withholding Taxes and (ii) comply with its tax withholding obligations.

6.7      Records Retention; Financial Audit.

6.7.1      Record Retention. Each Party and their Affiliates will maintain complete and accurate books, records and accounts for the calculation of Development Expenses, Net Sales Revenue and Handling Deductions, in sufficient detail to confirm the accuracy of any payments required under this Agreement, which books, records and accounts will be retained by such Party for two (2) years after the end of the period to which such books, records and accounts pertain, or longer as is required by applicable Law.

6.7.2      Financial Audit. Each Party will have the right to have an independent certified public accounting firm, reasonably acceptable to the other Party, access during normal business hours, and upon reasonable prior written notice, such of the records of such Party, its Affiliates or permitted subcontractors as may be reasonably necessary to verify the accuracy of Development Expenses, Net Sales Revenue and Handling Deductions and the Supply Price paid based thereof for any Calendar Year during the Term ending not more than two (2) years prior to the date of such request; provided, however, that, (a) a Party will not have the right to conduct more than one (1) such audit in any twelve (12) month period and that (b) it shall not be permitted to audit the same period of time more than once, unless evidence of fraud in a subsequent audit and such Party reasonably believes that such evidence indicates the reasonable possibility of fraud in any such prior period. The Party having such audit conducted will bear all costs of such audit, unless the audit reveals a discrepancy in such Party's favor of more than ten percent (10%), in which case the other Party will bear the cost of the audit. The result of the audit shall, in the absence of manifest error, be final and binding on the Parties. For purposes of clarity, each Party shall obtain from each Affiliate or permitted subcontractors involved in the Commercialization of Product in the Territory or development of Product audit rights for the other as set forth in this Section 6.7.2.

6.7.3      Payment of Additional Amounts. If, based on the results of any audit, additional payments are owed to a Party under this Agreement, then the other Party will make such additional payments within thirty (30) Business Days (provided that the other Party has received an invoice in respect of the same) after the accounting firm's written report is delivered to the Parties, except in the case that a Party is seeking an appeal based upon manifest error.

6.7.4      Confidentiality. Each Party will treat all information subject to review under this Section 6.7 in accordance with the provisions of Article 7. Prior to conducting any audit hereunder, each Party will cause its accounting firm to enter into a reasonably acceptable confidentiality agreement with the audited party obligating such accounting firm to maintain all such financial information in confidence with standards no less stringent than the terms of Article 7 of this Agreement.

## ARTICLE 7 CONFIDENTIALITY

### 7.1 Confidential Information.

7.1.1 Confidential Information. As used in this Agreement, the term “Confidential Information” means all information or data, whether provided in written, oral, graphic, video, computer, electronic or other form, provided pursuant to this Agreement by one (1) Party (the “Disclosing Party”) to the other Party (the “Recipient”), including but not limited to, information relating to the Disclosing Party’s existing or proposed research, Development efforts, patent applications, business or products, and any other materials that have not been made available by the Disclosing Party to the general public. Notwithstanding the foregoing sentence, Confidential Information shall not include any information or materials that:

(a) were already known to the Recipient (other than under an obligation of confidentiality) at the time of disclosure by the Disclosing Party, to the extent such Recipient has documentary evidence to that effect;

(b) were generally available to the public or otherwise part of the public domain at the time of disclosure thereof to the Recipient;

(c) became generally available to the public or otherwise part of the public domain after disclosure or development thereof, as the case may be, and other than through any act or omission of a Party in breach of such Party’s confidentiality obligations under this Agreement;

(d) were disclosed to a Party, other than under an obligation of confidentiality, by a Third Party who had no obligation to the Disclosing Party not to disclose such information to others; or

(e) were independently discovered or developed by or on behalf of the Recipient without the use of the Confidential Information belonging to the other Party, to the extent such Recipient has documentary evidence to that effect.

7.1.2 Confidentiality Obligations. Each of Distributor and Prestwick shall keep all Confidential Information received from the other Party with the same degree of care it maintains the confidentiality of its own Confidential Information, but in no event less than a reasonable degree of care. Neither Party shall use such Confidential Information for any purpose other than in performance of this Agreement or disclose the same to any other Person other than to such of its and its Affiliates’ directors, officers, managers, employees, independent contractors, agents or consultants who have a need to know such Confidential Information to implement the terms of this Agreement or enforce its rights under this Agreement; provided, however, that a Recipient shall advise any of its and its Affiliates’ directors, officers, managers, employees, independent contractors, agents or consultants who receive such Confidential Information of the confidential nature thereof and of the obligations contained in this Agreement relating thereto, and the Recipient shall ensure (including, in the case of a Third Party, by means of a written agreement with such Third Party having terms at least as protective as those contained in this Article 7) that all such directors, officers, managers, employees, independent contractors, agents or consultants comply with such obligations as if they had been a Party hereto. Each Party agrees that it shall be responsible for any breaches of this Section 7.1.2 by its Affiliates or its or any of its Affiliates’ directors, officers, managers, employees, independent contractors, agents or consultants. Upon

termination of this Agreement, the Recipient shall return or destroy all documents, tapes or other media containing or embodying Confidential Information of the Disclosing Party that remain in the possession of the Recipient or its directors, managers, employees, independent contractors, agents or consultants, except that the Recipient may keep one (1) copy of the Confidential Information in the legal department files of the Recipient, solely for archival purposes. Such archival copy shall be deemed to be the property of the Disclosing Party, and shall continue to be subject to the provisions of this Article 7. It is understood that receipt of Confidential Information under this Agreement will not limit the Recipient from assigning its employees to any particular job or task in any way it may choose, subject to the terms and conditions of this Agreement.

7.1.3 Permitted Disclosure and Use. Notwithstanding Section 7.1.2, a Party may disclose Confidential Information belonging to the other Party to the extent such disclosure is reasonably necessary to: (a) comply with or enforce any of the provisions of this Agreement; (b) for communication with investors, lenders, consultants, advisors or others on a need to know basis, in each case under appropriate confidentiality provisions substantially equivalent to those of this Agreement, or (c) comply with applicable Laws, subpoenas or similar legal process. If a Party deems it necessary to disclose Confidential Information of the other Party pursuant to Section 7.1.3(c), such Party shall (i), if reasonably possible, give reasonable advance notice of such disclosure to the other Party to permit such other Party sufficient opportunity to object to such disclosure or to take measures to ensure confidential treatment of such information and (ii) furnish only that portion of the Confidential Information that it is advised by counsel is legally required.

7.1.4 Notification. The Recipient shall notify the Disclosing Party promptly upon discovery of any unauthorized use or disclosure of the Disclosing Party's Confidential Information, and will cooperate with the Disclosing Party (at the Recipient's expense if such use or disclosure results from a breach of Recipient's obligations hereunder) in any reasonably requested fashion to assist the Disclosing Party to regain possession of such Confidential Information and to prevent its further unauthorized use or disclosure.

7.2 Publicity; Filing of this Agreement. The Parties agree that the public announcement of the execution of this Agreement shall be substantially in the forms of the press releases attached hereto as Exhibit A, and each Party shall approve of the other Party's Press Release prior to its publishing (the "Press Releases"). Any other publication, news release or other public announcement relating to this Agreement or to the performance hereunder, shall first be reviewed and approved by both Parties; provided, however, that any disclosure which is required by applicable Law as advised by the disclosing Party's counsel may be made without the prior consent of the other Party. To the extent practicable, the disclosing Party shall be given at least three (3) Business Days advance notice of any such legally required disclosure, and the other Party shall provide any comments on the proposed disclosure during such period. To the extent that either Party determines that it or the other Party is required to file or register this Agreement or a notification thereof to comply with the requirements of an applicable stock exchange (including without limitation the Toronto Stock Exchange ("TSX")) or NASDAQ regulation or any Governmental Authority, including without limitation the Canadian Securities Administrators, U.S. Securities and Exchange Commission or the U.S. Federal Trade Commission, such Party shall promptly inform the other Party thereof. Prior to making any such filing, registration or notification, the Parties shall agree on the provisions of this Agreement for which the Parties shall seek confidential treatment, it being understood that if one (1) Party determines to seek

confidential treatment for a provision for which the other Party does not, then the Parties will use reasonable efforts in connection with such filing to seek the confidential treatment of any such provision. The Parties shall cooperate, each at the requesting Party's expense, in such filing, registration or notification, including, without limitation, such confidential treatment request, and shall execute all documents reasonably required in connection therewith.

7.3 Use of Names. Subject to Section 7.2, neither Party shall use the name of the other Party in relation to this transaction in any public announcement, press release or other public document without the prior written consent of such other Party, which consent shall not be unreasonably withheld, delayed, or conditioned; provided, however, that either Party may use the name of the other Party in any document filed with any Governmental Authority, including the FDA, the U.S. Securities and Exchange Commission, and the TSX.

7.4 Confidentiality of this Agreement. The terms of this Agreement shall be Confidential Information of each Party and, as such, shall be subject to the provisions of this Article 7.

7.5 Disclosures Under Existing CDA. The Parties agree and acknowledge that Distributor and Prestwick entered into that certain Confidentiality and Non-Use Agreement dated February 15, 2008 and as amended to date ("Existing CDA"). The Parties agree that "Confidential Information" (as such term is used in the Existing CDA) disclosed to the Parties or their Affiliates under the Existing CDA prior to the Effective Date shall be deemed to have been disclosed under this Agreement and, from and after the Effective Date, shall be held in confidence by such the Parties and their Affiliates in accordance with the terms of this Article 7.

## **ARTICLE 8 INTELLECTUAL PROPERTY**

8.1 Patent Prosecution and Maintenance. During the Term, Prestwick shall Prosecute and Maintain the Prestwick Patents and Intellectual Property for which it or its Affiliate is an owner or assignee ("Key Patents"). Prestwick shall keep Distributor informed of the status of each Key Patent and shall give reasonable consideration to any suggestions or recommendations of Distributor concerning the Prosecution and Maintenance thereof. Before taking any steps regarding the filing, prosecution or maintenance of any Key Patent, Prestwick will allow Distributor to comment on the action proposed to be taken and Prestwick will take into account any comments and suggestions made by Distributor. If, during the Term, Prestwick intends to allow any Key Patent to expire or otherwise be abandoned, Prestwick shall notify Distributor of such intention at least sixty (60) days prior to the date upon which such Key Patent shall expire or be abandoned, and Distributor shall thereupon have the right, but not the obligation, to assume responsibility for the Prosecution and Maintenance thereof. Any such Patent will, at Distributor's request, be assigned to Distributor or at its direction to one (1) of Distributor's Affiliates for nil consideration. Prestwick shall not during the Term assign any Key Patents for which it is the registered proprietor to any Third Party.

8.2 Defense of Third Party Infringement Claims. If Product becomes the subject of a Third Party's claim or assertion of infringement, the Party first having notice of the claim or assertion shall promptly notify the other Party, and the Parties shall promptly confer to consider the claim or assertion and the appropriate course of action. Unless the Parties otherwise agree in

writing, each Party shall have the right to defend itself against a suit that names it as a defendant. Neither Party shall enter into any settlement of any claim described in this Section 8.2 that adversely affects the other Party's rights or interests without such other Party's prior written consent, such consent not to be unreasonably withheld, delayed, or conditioned. In any event, the Parties shall reasonably assist one another and cooperate in any such litigation at the other Party's request and expense.

8.3 Enforcement. Subject to the provisions of this Section 8.3, in the event that either Party reasonably believes that the filing of an NDA or ANDA or Commercialization by a Third Party of a product (an "Infringing Product") constitutes infringement of a Key Patent, such Party shall promptly notify the other Party of such infringement. In such event, Prestwick shall have the initial right (but not the obligation) to enforce such Key Patents with respect to such Infringing Product, or to defend any declaratory judgment action with respect thereto at its sole expense (an "Enforcement Action").

8.3.1 Initiating Enforcement Actions. In the event that Prestwick fails to initiate an Enforcement Action under Section 8.3 to enforce such Key Patent against an infringement by a Third Party in the Territory, within thirty (30) days of a request by Distributor to initiate such Enforcement Action, Distributor may initiate an Enforcement Action against such infringement at Distributor's sole expense. In such case, Prestwick shall cooperate with Distributor in such Enforcement Action. The Party initiating or defending any such Enforcement Action shall keep the other Party reasonably informed of the progress of any such Enforcement Action, and such other Party shall have the right to participate with counsel of its own choice.

8.3.2 Recoveries. Any recovery received as a result of any Enforcement Action under Section 8.3 shall be used first to reimburse the Parties for the costs and expenses (including attorneys' and professional fees) incurred in connection with such Enforcement Action, and the remainder of the recovery shall be shared {\*\*\*}† to Distributor and {\*\*\*}† to Prestwick.

8.3.3 Consultation. The Party assuming the lead role in the Enforcement Action (the "Controlling Party") shall consult with the non-Controlling Party on all material aspects of the enforcement. The non-Controlling Party shall have a reasonable opportunity for meaningful participation in decision-making and formulation of strategy. The Parties shall reasonably cooperate with each other in all such actions or proceedings. Each Party agrees to be joined as a party plaintiff if necessary and shall provide all reasonable cooperation (including any necessary use of its name) required to prosecute such litigation, provided that the Controlling Party shall indemnify the non-Controlling Party in relation to any costs awards made against it. The non-Controlling Party shall be entitled to be represented by an independent counsel of its own choice at its own expense.

8.3.4 Appeal. In the event that a judgment is entered against the Controlling Party and an appeal is available, the Controlling Party shall have the first right, but not the obligation, to file such appeal. In the event the Controlling Party does not desire to file such an appeal, it will promptly, in a reasonable time period (i.e., with sufficient time for the non-

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† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

Controlling Party to take whatever action may be necessary) prior to the date on which such right to appeal will lapse or otherwise diminish, permit the non-Controlling Party to pursue such appeal at such non-Controlling Party’s own cost. If the Law requires the Controlling Party’s involvement in such appeal, the Controlling Party shall be a nominal party of the appeal and shall provide reasonable cooperation with the other Party at the other Party’s expense.

8.4      Trademarks.

8.4.1      Maintenance of Trademarks. Prestwick will maintain and enforce Product Trade Marks and Product Trade Dress, at its sole costs and expense. If during the Term, Prestwick intends to allow any Product Trade Mark or Product Trade Dress to expire or otherwise be abandoned, Prestwick shall notify Distributor of such intention at least sixty (60) days prior to the date upon which such Product Trade Mark or Product Trade Dress shall expire or be abandoned and Distributor shall thereupon have the right, but not the obligation, to assume responsibility for the Prosecution and Maintenance thereof. Any such Product Trade Mark or Product Trade Dress will, at Distributor’s request, be assigned to Distributor or at its discretion, one (1) of Distributor’s Affiliates for nil consideration. Prestwick shall not during the Term assign any Product Trade Marks or Product Trade Dress to any Third Party.

8.4.2      Infringement and Enforcement. In the event either Party becomes aware of any infringement of a Product Trade Mark or Product Trade Dress by a Third Party in the Territory, such Party shall promptly notify the other Party. In such event of a Third Party infringement of a Product Trade Mark or Product Trade Dress, Prestwick shall have the initial right (but not the obligation) to take legal action with respect to such infringement of such Product Trade Mark or Product Trade Dress at its own expense (a “Trademark Enforcement Action”). In the event that Prestwick fails to initiate a Trademark Enforcement Action to prevent infringement of such Product Trade Mark or Product Trade Dress by a Third Party in the Territory, as applicable, within forty five (45) days of a request by Distributor to initiate such Trademark Enforcement Action, Distributor may initiate a Trademark Enforcement Action against such Third Party at Distributor’s sole expense. In each case, the other Party shall cooperate (which cooperation shall include being named a party plaintiff, if necessary) with such Party pursuing a Trademark Enforcement Action at such Party’s expense. The Party initiating or defending any such Trademark Enforcement Action shall keep the other Party reasonably informed of the progress of any such Trademark Enforcement Action, and such other Party shall have the right to participate with counsel of its own choice. Any recovery received as a result of any Trademark Enforcement Action under this Section 8.4.2 shall be used first to reimburse the Parties for the costs and expenses (including attorneys’ and professional fees) incurred in connection with such Trademark Enforcement Action, and the remainder of the recovery shall be shared {\*\*\*}† to Distributor and {\*\*\*}† to Prestwick.

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**ARTICLE 9**  
**REPRESENTATIONS AND WARRANTIES**

9.1 Representations and Warranties.

9.1.1 Mutual Representations. Each of the Parties hereby represents and warrants to the other Party that, as of the Effective Date:

(a) Such Party has full corporate right, power and authority to enter into this Agreement and to perform its respective obligations under this Agreement and that it has the right to grant the rights granted pursuant to this Agreement.

(b) Such Party is not insolvent and no proceedings have been taken or authorized by such Party, or to the knowledge of such Party been taken or threatened by any other Person, with respect to bankruptcy, insolvency, liquidation, dissolution or winding up of such Party.

(c) This Agreement is a legal and valid obligation binding upon such Party and enforceable in accordance with its terms, subject to (i) the effect of any applicable Law of general application relating to bankruptcy, reorganization, insolvency, moratorium or similar Laws affecting creditors' rights and relief of debtors generally and (ii) the effect of general principles of equity, including general principles of equity governing specific performance, injunctive relief and other equitable remedies (regardless of whether such enforceability is considered in a proceeding in equity or at law). The execution, delivery and performance of the Agreement by such Party does not conflict with any agreement, instrument or understanding, oral or written, to which it is a Party or by which it is bound, nor violate any applicable Law of any Governmental Authority having jurisdiction over it.

(d) Such Party has not granted any right to any Third Party that would conflict with the rights granted to the other Party hereunder.

(e) Except for Regulatory Approvals, manufacturing approvals and/or similar approvals necessary for the manufacture or Commercialization of Product (and the components thereof), such Party has obtained all necessary consents, approvals and authorizations of all Governmental Authorities and other Persons required to be obtained by it as of the Effective Date in connection with the execution, delivery and performance of this Agreement.

(f) There is no action or proceeding pending against such Party or, to such Party's knowledge, threatened against such Party that questions the validity of this Agreement or any action taken by such Party in connection with the execution of this Agreement.

(g) Except as set forth in Schedule 9.1.1(g) attached hereto, there is no investment banker, broker, finder, financial advisor or other intermediary who has been retained by or is authorized to act on behalf of such Party (or any of its Affiliates) who might be entitled to any fee or commission in connection with the transactions contemplated by this Agreement.

(h) Neither such Party nor its Affiliates has been debarred or is subject to debarment and neither it nor any of its Affiliates will use in any capacity, in connection with the



Commercialization of Product, any Person who has been debarred pursuant to Section 306 of the United States Federal Food, Drug and Cosmetic Act, or who is subject of a conviction described in such section.

9.2 Investigation. A Party’s remedies based on any representation or warranty of another Party contained in or made pursuant to this Agreement shall not be affected by any investigation conducted by such Party or any of its representatives or any knowledge acquired (or capable of being acquired) by any such Party or its representatives, in each case, at any time, whether before or after the execution and delivery of this Agreement.

9.3 Disclaimer of Warranty. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 9.1 OF THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS AND GRANTS NO WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, BY STATUTE OR OTHERWISE, AND PRESTWICK AND DISTRIBUTOR EACH SPECIFICALLY DISCLAIM ANY OTHER REPRESENTATIONS AND WARRANTIES, WHETHER WRITTEN OR ORAL, EXPRESS, STATUTORY OR IMPLIED, INCLUDING ANY WARRANTY OF QUALITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE OR ANY WARRANTY AS TO THE VALIDITY OF ANY PATENTS OR THE NON-INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES.

9.4 Essential Basis. The Parties acknowledge and agree that the disclaimers, exclusions and limitations of liability set forth in this Article 9 form an essential basis of this Agreement, and that, absent any of such disclaimers, exclusions or limitations of liability, the terms of this Agreement, including, without limitation, the economic terms, would be substantially different.

**ARTICLE 10  
COVENANTS**

From the Effective Time and through the Term, the following covenants shall apply:

10.1 Phase 4 Studies. Distributor shall be responsible for, at its sole cost and expense, in conducting and completing Phase 4 Studies (including any such Phase 4 Study that is required to be repeated as a result of a failure by Distributor to meet FDA standards for reviewability or are otherwise aborted by Distributor) in accordance with (a) professional standards and practices, (b) all applicable Laws and (c) the timeline provided in the First NDA or any extensions agreed to by the FDA and the development plan. Prestwick shall promptly provide Distributor any information in its possession or control related to the Phase 4 Studies and all other regulatory and safety matters related to the Product, including any information or correspondence received from the FDA. Furthermore, in the event that Prestwick is delayed in providing such materials to Distributor or has not made adequate progress in achieving milestones for any of the Phase 4 Studies, Distributor shall not be liable for such delays in completing the Phase 4 Studies to the extent such delay is related to Prestwick’s failure to provide such materials or make adequate progress in achieving milestones. Distributor shall provide Prestwick with monthly reports regarding the status of such Phase 4 Studies and promptly provide any other information regarding the Phase 4 Studies requested by Prestwick. Distributor shall not be required to reimburse

Prestwick for any expenditures made by, or accrued on the balance sheet of, Prestwick prior to the Effective Date in connection with performing the Phase 4 Studies.

10.2 Debarment. Each Party agrees to promptly inform the other Party in writing as if it or any Person who is performing services hereunder on its behalf is debarred or is the subject of a conviction described in Section 306 of the United States Federal Food, Drug and Cosmetic Act, or if any action, suit, claim, investigation or legal administrative proceeding is pending or, to the best of such Party's knowledge, is threatened, relating to the debarment of such Party, its Affiliates or any Person used in any capacity by such Party or its Affiliates in connection with the Commercialization of Product.

10.3 Territory Compliance. Distributor shall not import or sell Product outside the Territory and shall use Commercially Reasonable Efforts to prevent importation or resale of Product outside the Territory by a Third Party that purchased such Product in the Territory from Distributor. Prestwick and its Affiliates shall not sell Product in the Territory and Prestwick shall use Commercially Reasonable Efforts to prevent importation or resale of a Product in the Territory by a Third Party that purchased such Product outside the Territory from Prestwick or its Affiliates.

10.4 FIFO Policy. For the sake of clarity, Distributor agrees to use first in-first out ("FIFO") inventory control for Product as a means of controlling the amount of returns to Distributor.

10.5 No Amendment of the Cambridge Agreement. During the Term, Prestwick shall not, without the prior written consent of Distributor, in its sole discretion, amend, supplement, modify or waive any provision of the Cambridge Agreement, provided, however that notwithstanding the foregoing, to the extent such amendment, supplement or modification could not reasonably be expected to interfere with or adversely affect the rights or obligations of Distributor hereunder, Prestwick may, without the prior written consent of Distributor (but with good faith consultation with Distributor) amend, supplement or modify the Cambridge Agreement. Promptly, and in any event no later than five (5) Business Days, following receipt by Prestwick of a fully executed amendment, supplement, modification or waiver of the Cambridge Agreement, as applicable, Prestwick shall furnish a copy of such amendment, supplement, modification or waiver to Distributor.

10.6 Maintenance of Cambridge Agreement. Subject to Distributor's obligations hereunder, Prestwick (including its Affiliates or permitted subcontractors) shall comply fully in all respects with its obligations under the Cambridge Agreement and shall not take any action or forego any action that shall constitute a material or uncured breach of the Cambridge Agreement. In furtherance of the foregoing, as and when reasonably requested by Distributor, Prestwick shall use its Commercially Reasonable Efforts to exercise in all material respects all of its rights under the Cambridge Agreement; provided, however, that Prestwick or its Affiliates shall not be required to pursue any claim or adversarial proceeding (including without limitation, filing or continuing any law suit, mediation, arbitration or other proceeding) unless (i) the failure to do so would result in Distributor incurring any material loss or damages relating to a breach by Cambridge under the Cambridge Agreement and Distributor would not otherwise have standing or other rights to pursue such claim directly against Cambridge, (ii) (other than matters related to the failure to supply of Product as a result of actions or omissions by Cambridge or its subcontractors) the prosecution of any such claim or adversarial proceeding would not reasonably be expected to be adverse to or

otherwise contrary to the best interests of Prestwick or any of its Affiliates in any material respect and (iii) Distributor delivers a written notice (A) acknowledging that Prestwick and its Affiliates have declined to pursue any such claim or adversarial proceeding, (B) requesting that Prestwick or its applicable Affiliates pursue any such claim or adversarial proceeding, and (C) agreeing that to the extent such costs are not reimbursed by Cambridge, Distributor shall reimburse Prestwick or its Affiliates, within thirty (30) days of presentment of invoices or other documentation reflecting such expenses, {\*\*\*}† of the reasonable out of pocket costs and expenses incurred by Prestwick or its Affiliates associated with such claim or proceeding. Promptly upon the receipt of any written notice from Licensor of Prestwick’s breach under the Cambridge Agreement, Prestwick shall give written notice of the breach to Distributor setting forth in reasonable detail the nature of the breach. Prestwick shall promptly cure any and all such breaches (to the extent such breach is not due to Distributor’s failure to perform its obligations hereunder) and give written notice to Distributor (and to Licensor, if applicable) that such alleged breach has been cured. However, any cure or failure to cure by Prestwick of such breaches shall not avoid or mitigate its obligations under this Agreement. Prestwick shall take all actions necessary to exercise its rights under the Cambridge Agreement so that the options under Sections 2.4 and 2.5 may be given effect.

10.7      Breach of Cambridge Agreement by Licensor.

10.7.1      Upon the occurrence of any breach by Licensor of the Cambridge Agreement which is not cured as provided in the Cambridge Agreement, as applicable, Prestwick shall give prompt written notice thereof to Distributor, and, at Distributor’s request, subject to Sections 10.6 and 10.7, the Parties shall meet and confer in good faith to determine a course of action with respect to such breach.

10.7.2      Nothing in this Section 10.7 shall obligate either Party to take any action, or omit to take any action, that would conflict with, violate or cause a violation of, any applicable Law binding upon such Party.

10.7.3      Any collections, recoveries, damages, awards, settlements and other payments received from Licensor for losses related to Net Sales Revenue in the Territory from Licensor (including for failure to supply Product or any failure of Product to meet the Specifications) shall be used first to reimburse the Parties for any Losses paid or payable to Third Parties by the Parties (in proportion to the aggregate amount of Losses incurred by each Party with respect to the applicable action, if any), second to reimburse the Parties for the costs and expenses (including attorneys’ and professional fees) incurred in connection with such action, and the remainder of such amounts shall be divided {\*\*\*}† to Distributor and {\*\*\*}† to Prestwick.

10.8      Termination of Cambridge Agreement by Prestwick. Upon the occurrence of any event which could reasonably be expected to give rise to Prestwick’s right to terminate all or any part of the Cambridge Agreement, Prestwick shall consult with Distributor in determining whether or not to exercise such termination right. In any event and notwithstanding anything to the contrary contained herein, Prestwick shall not exercise any such right to terminate without the prior written consent of Distributor, which consent may be withheld in its sole discretion.

† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

10.9 Breach of Cambridge Agreement due to Distributor. Distributor (including its Affiliates or permitted subcontractors) shall not take any action or omit to take any action required, to the extent under its control, under this Agreement that shall constitute a material breach of the Cambridge Agreement.

10.10 Marketing Plan. Prestwick shall promptly provide to Distributor any proposed updates, amendments, modifications or waivers of the Marketing Plan, and shall not agree to any such update, amendment, modification or waiver without the prior written consent of Distributor, which consent, for the avoidance of doubt, may be withheld, conditioned or delayed for any or no reason whatsoever if such amendment would result in Distributor being required to make expenditures or incur obligations during the Exclusivity Period such that (i) the amount to be spent during each Calendar Year of the Exclusivity Period on (1) A&P activities would be greater than {\*\*\*}†, (2) Support Center activities would be greater than approximately {\*\*\*}† and (3) Distributor’s co-pay assistance program would be greater than approximately {\*\*\*}† of gross sales of Product in the Territory in a Calendar Year; (ii) the number of Sales Representatives and Specialists would be greater than those required under Section 4.3.2.

**ARTICLE 11**  
**TERM AND TERMINATION**

11.1 Term. This Agreement shall commence as of the Effective Date and, unless sooner terminated as provided herein, shall continue in effect until the later of fifteen (15) years from the date of approval of the last NDA (a) for Product or (b) resulting from Regulatory Development, or Galenical Development or Isomeric Development that Distributor co-invests in pursuant to the terms of Sections 2.4 or 2.5, respectively (the “Term”).

11.2 Termination for Certain Breaches.

11.2.1 Prestwick. Prestwick may, without prejudice to any other remedies available to it at law or in equity, terminate this Agreement:

- (a) upon six (6) months notice in the event of the first breach of Sections 4.3.1(b), (c) or (d) or 4.3.2 and Distributor fails to cure such breach prior to the expiration of such 6-month notice;
- (b) (x) upon two (2) months notice if Distributor breaches (i) Sections 4.3.1(b), (c) or (d) or 4.3.2 after the first such breach of such Section(s) and Distributor fails to cure such breach prior to the expiration of such two (2) month notice period, or (y) immediately upon notice if Distributor breaches Section 2.9;
- (c) immediately upon notice if Distributor breaches Sections 4.3.1(e) or (f), 10.1 or 10.9, in each case where such breach is not due to Prestwick or Licensor’s failure to supply Product in accordance with the terms hereof;

† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

(d) upon fifteen (15) days notice in the event of non-payment of amounts (other than amounts disputed in good faith, provided that upon final resolution of such dispute such amounts shall be due no later than 5 days after such resolution) due to it by Distributor and Distributor fails to cure such default prior to the expiration of such 15-day notice; and

(e) upon six (6) months notice in the event of any material breach of applicable Laws by Distributor in performing its obligations hereunder and Distributor fails to cure such breach prior to the expiration of such 6-month notice.

11.2.2 For purposes of Section 11.2.1(a) and 11.2.1(b), a breach of Sections 4.3.1(b), (c) or (d) shall be deemed to be cured for all purposes under this Agreement if Distributor spends, in addition to the amount budgeted under the applicable year set forth in the Commercialization Plan, an amount equal to {\*\*\*}† of the amount of the shortfall in expenditure that resulted in such breach over the course of the applicable cure period.

11.2.3 Distributor. Distributor may, without prejudice to any other remedies available to it at law or in equity, terminate this Agreement (a) immediately upon notice if Prestwick breaches Section 2.9, or (b) upon thirty (30) days notice if Prestwick fails to supply Product in accordance with the Binding Portion of the Forecast and where such failure is not due to Licensor or other Third Party suppliers failure to supply Product to Prestwick.

11.3 Termination for Insolvency. Either Party may terminate this Agreement upon written notice to other Party at any time, to the extent permitted by applicable Law, if the other Party shall become insolvent, or shall make or seek to make or arrange an assignment for the benefit of creditors, or if proceedings in voluntary or involuntary bankruptcy shall be initiated by, on behalf of or against such Party (and, in the case of any such involuntary proceeding, not dismissed within ninety (90) days), or if a receiver or trustee of such Party's property shall be appointed and not discharged within ninety (90) days.

11.4 Other Termination By Distributor. After three (3) years from the Effective Date, Distributor shall have the right to terminate this Agreement upon twelve (12) months advance written notice, provided, that (a) when it gives notice of such termination that it is not in material breach of this Agreement and (b) it does not materially breach this Agreement at any time during the notice period and up to and including the effective date of such termination.

11.5 Termination for Failure to Agree Post Exclusivity Requirements. If the Parties are unable to agree by the expiry of the Exclusivity Period on the expenditures as described in Section 4.3.1(j), either Party may terminate this Agreement upon ninety (90) days written notice.

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**ARTICLE 12**  
**EFFECTS OF TERMINATION**

12.1 **Effect of Termination by Prestwick Pursuant to Sections 11.2.1(a) or (b) or 11.3.** Without limiting any other legal or equitable remedies that Prestwick may have, if this Agreement is terminated by Prestwick in accordance with Sections 11.2.1(a) or (b) or 11.3, then the following provisions shall apply:

12.1.1 **Assignments.** Distributor will promptly, in each case within ten (10) days after receipt of Prestwick's request, and at no cost to Prestwick:

(a) assign (or cause to be assigned) to Prestwick all of Distributor's right, title and interest in and to any (i) Promotional Materials and (ii) copyrights and trademarks and trade dress (including any goodwill associated therewith) to the extent that such are included in Product packaging or Promotional Materials, any registrations and design patents for the foregoing and any Internet domain name registrations for such trademarks and slogans, all to the extent solely related to Product; provided, however, in the event Prestwick exercises such right to have assigned such Promotional Materials, Distributor shall grant, and hereby does grant, a royalty-free right and license to any housemarks, trademarks, names and logos of Distributor (not otherwise transferred pursuant to this clause (a)) contained therein for a period of eighteen (18) months in order for Prestwick to use such Promotional Materials in connection with the Commercialization of Product in the Territory;

(b) assign (or cause to be assigned) to Prestwick, the management and continued performance of any Phase 4 Studies for Product ongoing hereunder as of the effective date of such termination;

(c) transfer (or cause to be transferred) to Prestwick all of Distributor's right, title and interest in and to any and all Commercialization data Controlled by Distributor for Product in the Territory; and

(d) provide copies of any other books, records, documents and instruments Controlled by Distributor to the extent related to Product;

provided, however, that to the extent that any agreement or other asset described in this Section 12.1.1 is not assignable by Distributor, then such agreement or other asset will not be assigned, and upon the request of Prestwick, Distributor will take such reasonable steps as may be necessary to allow Prestwick to obtain and to enjoy the benefits of such agreement or other asset, without additional payment therefor, in the form of a license or other right to the extent Distributor has the right and ability to do so. For purposes of clarity, Prestwick shall have the right to request that Distributor take any or all of the foregoing reasonable actions in whole or in part, or with respect to all or any portion of the assets set forth in the foregoing provisions.

12.1.2 **Disposition of Inventory.** Prestwick shall have the option, exercisable within thirty (30) days following the effective date of such termination, to purchase any inventory of Product affected by such termination at the price such Product was obtained by Distributor. If Prestwick does not exercise such option during such thirty (30) - day period, or if Prestwick provides Distributor with written notice of its intention not to exercise such option, then

Distributor and its Affiliates will be entitled, during the period ending on the last day of the eighteenth (18th) full month following the effective date of such termination, to sell any inventory of Product affected by such termination that remains on hand as of the effective date of the termination, so long as Distributor pays to Prestwick the Supply Price payable hereunder applicable to said subsequent sales, in accordance with the terms and conditions set forth in this Agreement, and Distributor shall retain all rights hereunder necessary for Distributor to sell such inventory during such period in accordance with the terms hereof.

12.1.3 Disposition of Commercialization Related Materials. Distributor will promptly deliver to Prestwick in electronic, sortable form (a) a list identifying all wholesalers and other distributors involved in the Commercialization of Product in the Territory as well as any customer lists related to the Commercialization of Product in the Territory and (b) all Promotional Materials as well as any items bearing Product Trademark and/or any trademarks or housemarks solely related to Product.

12.2 Effect of Termination by Distributor Pursuant to Section 11.2.3 or 11.3. Without limiting any other legal or equitable remedies that Distributor may have, if this Agreement is terminated by Distributor in accordance with Sections 11.2.3 or 11.3, then the following provisions shall apply:

12.2.1 Grant of Licenses; Termination of Rights. Prestwick shall, and hereby does, grant to Distributor an exclusive (even as to Prestwick and its Affiliates), royalty free, perpetual, license or sublicense, as applicable, to use Prestwick Know-How and under Prestwick Patents and Intellectual Property to Commercialize Product in the Territory.

12.2.2 Assignments. Prestwick will promptly, in each case within ten (10) days after receipt of Distributor's request, and at no cost to Distributor:

(a) assign (or cause to be assigned) to Distributor all of Prestwick's and its Affiliates' right, title and interest in and to the Cambridge Agreement and any other agreements (or portions thereof) between Prestwick and its Affiliates and Third Parties that relate to the Development or Commercialization of Product in the Territory;

(b) assign (or cause to be assigned) to Distributor all of Prestwick's and its Affiliates' right, title and interest in and to any (i) Promotional Materials and (ii) copyrights and Product Trade Marks and Product Trade Dress (including any goodwill associated therewith as well as any trademarks of Prestwick's and its Affiliates' to the extent that such are included in Product packaging or Promotional Materials), any registrations and design patents for the foregoing and any Internet domain name registrations for such trademarks and slogans, all to the extent solely related to Product; provided, however, in the event Distributor exercises such right to have assigned such Promotional Materials, Prestwick shall grant (or cause to be granted), and hereby does grant, a royalty-free right and license to any housemarks, trademarks, names and logos of Prestwick and its Affiliates (not otherwise transferred pursuant to this clause (b)) contained therein for a period of eighteen (18) months in order for Distributor to use such Promotional Materials in connection with the Commercialization of Product in the Territory;

(c) assign (or cause to be assigned) to Distributor, the management and continued performance of any clinical trials for Product ongoing hereunder as of the effective date of such termination;

(d) transfer (or cause to be transferred) to Distributor all of, if any, Prestwick's and its Affiliates' right, title and interest in and to any and all Regulatory Filings, Regulatory Approvals and other regulatory materials for Product in the Territory;

(e) transfer (or cause to be transferred) to Distributor all of Prestwick's and its Affiliates' right, title and interest in and to any and all Commercialization data Controlled by Prestwick or its Affiliates for Product in the Territory;

(f) provide copies of any other books, records, documents and instruments Controlled by Prestwick or its Affiliates to the extent related to Product in the Territory;

provided, however, that to the extent that any agreement or other asset described in this Section 12.2.2 is not assignable by Prestwick or its Affiliates, then such agreement or other asset will not be assigned, and upon the request of Distributor, Prestwick will take such reasonable steps as may be necessary to allow Distributor to obtain and to enjoy the benefits of such agreement or other asset, without additional payment therefor, in the form of a license or other right to the extent Prestwick or its Affiliates have the right and ability to do so. For purposes of clarity, Distributor shall have the right to request that Prestwick take any or all of the foregoing reasonable actions in whole or in part, or with respect to all or any portion of the assets set forth in the foregoing provisions.

12.2.3 Disclosure and Delivery. Prestwick will promptly transfer (or cause to be transferred) to Distributor, at its cost, copies of any physical embodiment of any Prestwick Know-How or Prestwick Patents and Intellectual Property, to the extent then used in connection with the Development or Commercialization of Product in the Territory; such transfer shall be effected by the delivery of documents, to the extent such Prestwick Know-How or Prestwick Patents and Intellectual Property are embodied in documents, and to the extent that Prestwick Know-How or Prestwick Patents and Intellectual Property are not fully embodied in documents, Prestwick shall make, at its cost, its employees and agents who have knowledge of such Prestwick Know-How or Prestwick Patents and Intellectual Property in addition to that embodied in documents reasonably available to Distributor for interviews, demonstrations and training to effect such transfer in a manner sufficient to enable Distributor to practice such Prestwick Know-How or Prestwick Patents and Intellectual Property.

12.2.4 Disposition of Inventory. Distributor shall have the option, exercisable within thirty (30) days following the effective date of such termination, to purchase any inventory of Product affected by such termination at the price such Product was obtained by Prestwick.

12.3 Effect of Termination by Prestwick Pursuant to Section 11.2.1, 11.3 or 15.6.2 or by Distributor in accordance with Section 11.4 or 15.6.2, or under Section 11.5. If this Agreement is terminated by:



12.3.1 Prestwick in accordance with Section 11.2.1 (other than 11.2.1(a) and (b)), 11.3 or 11.5 or by Distributor in accordance with Section 11.5, then (i) Sections 12.1.1, 12.1.2 and 12.1.3 shall apply, (ii) with respect to any sales of Product in the Territory, Prestwick shall pay to Distributor on a monthly basis within twenty (20) days after the last day of any month an amount equal to the difference between (A) {\*\*\*}† of Net Sales Revenue (or {\*\*\*}† in the event Net Sales Revenue for such Calendar Year exceeds {\*\*\*}† in a Calendar Year after the effective date of such termination and (B) all annual Commercialization costs expended by Prestwick with respect to Product in the Territory in such Calendar Year, including, but not limited to, all reasonable internal FTE and external costs expended for buildup and maintenance of an infrastructure to support sales of Product, Detailing, A&P activities, Support Center Activities and patient assistance program, and (iii) Section 2.9, together with any definitions referenced therein, will survive such termination of this Agreement.

12.3.2 Distributor in accordance with Section 11.4, then (i) with respect to any sales of Product in the Territory, Prestwick shall pay to Distributor on a monthly basis within twenty (20) days after the last day of any month an amount equal to the difference between (A) {\*\*\*}† of Net Sales Revenue (or {\*\*\*}† in the event Net Sales Revenue for such Calendar Year exceeds {\*\*\*}† in a Calendar Year after the effective date of such termination and (B) all annual Commercialization costs expended by Prestwick with respect to Product in the Territory in such Calendar Year, including, but not limited to, all reasonable internal FTE and external costs expended for buildup and maintenance of an infrastructure to support sales of Product, Detailing, A&P activities, Support Center Activities and patient assistance program, and (ii) Section 2.9, together with any definitions referenced therein, will survive such termination of this Agreement.

12.3.3 Prestwick in accordance with Section 15.6.2 then (i) Sections 12.2.1, 12.2.2, 12.2.3 and 12.2.4 shall apply, and (ii) with respect to any sales of Product in the Territory, Distributor shall pay to Prestwick on a monthly basis within twenty (20) days after the last day of any month an amount equal to (A) {\*\*\*}† of Net Sales Revenue (or {\*\*\*}† in the event Net Sales Revenue for such Calendar Year exceeds {\*\*\*}† in a Calendar Year after the effective date of such termination.

12.3.4 Distributor in accordance with Section 15.6.2, then (i) Sections 12.1.1, 12.1.2 and 12.1.3 shall apply, and (ii) with respect to any sales of Product in the Territory, Prestwick shall pay to Distributor on a monthly basis within twenty (20) days after the last day of any month an amount equal to the difference between (A) {\*\*\*}† of Net Sales Revenue (or {\*\*\*}† in the event Net Sales Revenue for such Calendar Year exceeds {\*\*\*}† in a Calendar Year after the effective date of such termination and (B) all annual Commercialization costs expended by Prestwick with respect to Product in the Territory in such Calendar Year, including, but not limited to, all reasonable internal FTE and external costs expended for buildup and maintenance of an infrastructure to support sales of Product, Detailing, A&P activities, Support Center Activities and patient assistance program.

12.4 Rights in Bankruptcy. All rights and licenses granted under or pursuant to this Agreement by Prestwick are, and shall otherwise be deemed to be, for purposes of Section 365(n)

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† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

of the U.S. Bankruptcy Code, licenses of right to “intellectual property” as defined under Section 101 of the U.S. Bankruptcy Code. The Parties agree that Distributor, as licensee of such rights under this Agreement, shall retain and may fully exercise all of its rights and elections under the U.S. Bankruptcy Code. The Parties further agree that, in the event of the commencement of a bankruptcy case by or against Prestwick under the U.S. Bankruptcy Code, upon written request by the Distributor to the Debtor in Possession, Trustee, or Proposed Debtor (in the case an involuntary petition is filed against Prestwick), the Distributor shall be entitled to the immediate delivery of a complete duplicate of (or complete access to, as appropriate) any such intellectual property and all embodiments of such intellectual property.

12.5 Survival. The following Articles and Sections, together with any definitions used or exhibits referenced therein, will survive any expiration or termination of this Agreement: Sections 2.9, 3.4, 5.1.3, 5.1.4, 5.1.5, 5.1.6, 6.6 and 6.7, and Articles 7, 9, 12-15, inclusive.

**ARTICLE 13**  
**INDEMNIFICATION; INSURANCE**

13.1 Indemnification.

13.1.1 Indemnification by Prestwick. Prestwick hereby agrees to save, defend and hold Distributor, its Affiliates, and their respective directors, agents and employees harmless from and against any and all Losses arising in connection with any and all charges, complaints, actions, suits, proceedings, hearings, investigations, claims, demands, judgments, orders, decrees, stipulations or injunctions by a Third Party (each a “Third Party Claim”) resulting from (a) any material breach by Prestwick or its Affiliates of any of its representations, warranties or covenants pursuant to this Agreement, (b) any Withholding Taxes with respect to amounts paid or payable by Distributor to Prestwick under this Agreement or (c) the gross negligence or willful misconduct by Prestwick or its Affiliates or their respective officers, directors, employees, agents, consultants or sublicensees in performing any of its obligations under this Agreement; in each case except to the extent that such Losses are subject to indemnification by Prestwick pursuant to Section 13.1.2.

13.1.2 Indemnification by Distributor. Distributor hereby agrees to save, defend and hold Prestwick, its Affiliates, and their respective directors, agents and employees harmless from and against any and all Losses arising in connection with any and all Third Party Claims resulting from (a) any material breach by Distributor or its Affiliates of any of its representations, warranties or covenants pursuant to this Agreement, (b) failure of Prestwick to meet its obligation to Licensor to meet the Minimum Sales Quantities, provided in such case indemnification of Licensor shall be limited to fifty-six percent (56%) of such Losses paid to Licensor with respect to such failure or (c) the gross negligence or willful misconduct by Distributor or its Affiliates or their respective officers, directors, employees, agents or consultants in performing any of its obligations under this Agreement; in each case except to the extent that such Losses are subject to indemnification by Prestwick pursuant to Section 13.1.1.

13.1.3 Other Provisions. The rights of indemnification under this Section 13.1 shall be subject to the provisions of Sections 13.2 through 13.8.

13.2 Notice of Claim. All indemnification claims in respect of any indemnitee seeking indemnity under Section 13.1 (collectively, the “Indemnitees” and each an “Indemnitee”) will be

made solely by the corresponding Party (the “Indemnified Party”). The Indemnified Party will give the indemnifying Party (the “Indemnifying Party”) prompt written notice (an “Indemnification Claim Notice”) of any Losses or the discovery of any fact upon which such Indemnified Party intends to base a request for indemnification under Section 13.1, but in no event will the Indemnifying Party be liable for any Losses that result from any delay in providing such notice which materially prejudices the defense of such Third Party Claim. Each Indemnification Claim Notice must contain a reasonably detailed description of the Third Party Claim and the nature and amount of such Loss (to the extent that the nature and amount of such Loss are known at such time). Together with the Indemnification Claim Notice, the Indemnified Party will furnish promptly to the Indemnifying Party copies of all notices and documents (including court papers) received by any Indemnatee in connection with the Third Party Claim. The Indemnifying Party shall not be obligated to indemnify the Indemnified Party to the extent any admission or statement made by the Indemnified Party materially prejudices the defense of such Third Party Claim.

13.3 Control of Defense. At its option, the Indemnifying Party shall have the right to assume the defense of any Third Party Claim subject to indemnification as provided for in Section 13.1.1 and 13.1.2 by giving written notice to the Indemnified Party within thirty (30) days after the Indemnifying Party’s receipt of an Indemnification Claim Notice. Upon assuming the defense of a Third Party Claim, the Indemnifying Party may appoint as lead counsel in the defense of the Third Party Claim any legal counsel it selects. Should the Indemnifying Party assume the defense of a Third Party Claim, the Indemnifying Party will not, except as provided in Sections 13.4 and 13.7 below, be liable to the Indemnified Party or any other Indemnatee for any legal expenses incurred by such Indemnified Party or other Indemnatee in connection with the analysis, defense or settlement of the Third Party Claim.

13.4 Right to Participate in Defense. Without limiting Section 13.3, any Indemnatee will be entitled to participate in, but not control, the defense of a Third Party Claim for which it has sought indemnification hereunder and to employ counsel of its choice for such purpose; provided, however, that such employment will be at the Indemnatee’s own expense (and shall not be Losses) unless (a) the employment thereof has been specifically authorized by the Indemnifying Party in writing, or (b) the Indemnifying Party has failed to assume the defense and employ counsel in accordance with Section 13.3 (in which case the Indemnified Party will control the defense and reasonable fees and expenses representing the Indemnified Party shall be reimbursed by the Indemnifying Party).

13.5 Settlement. With respect to any Losses relating solely to the payment of money damages in connection with a Third Party Claim and that will not result in the Indemnatee’s becoming subject to injunctive or other relief or otherwise materially adversely affect the business (other than payment of money) of the Indemnatee, and as to which the Indemnifying Party will have acknowledged in writing the obligation to indemnify the Indemnatee hereunder, the Indemnifying Party will have the sole right to consent to the entry of any judgment, enter into any settlement or otherwise dispose of such Loss, on such terms as the Indemnifying Party will deem appropriate (provided, however that such terms shall include a complete and unconditional release of the Indemnified Party from all liability with respect thereto), and will transfer to the Indemnified Party all amounts which said Indemnified Party will be liable to pay prior to the time of the entry of judgment. With respect to all other Losses in connection with Third Party Claims, where the Indemnifying Party has assumed the defense of the Third Party Claim in accordance

with Section 13.3, the Indemnifying Party will have authority to consent to the entry of any judgment, enter into any settlement or otherwise dispose of such Loss; provided, however, it obtains the prior written consent of the Indemnified Party (which consent will be at the Indemnified Party's reasonable discretion). The Indemnifying Party that has assumed the defense of the Third Party Claim in accordance with Section 13.3 will not be liable for any settlement or other disposition of a Loss by an Indemnitee that is reached without the prior written consent of such Indemnifying Party. Regardless of whether the Indemnifying Party chooses to defend or prosecute any Third Party Claim, no Indemnitee will admit any liability with respect to, or settle, compromise or discharge, any Third Party Claim without first offering to the Indemnifying Party the opportunity to assume the defense of the Third Party Claim in accordance with Section 13.3, within thirty (30) days of such offer.

13.6 Cooperation. If the Indemnifying Party chooses to defend or prosecute any Third Party Claim, the Indemnified Party will, and will cause each other Indemnitee to, cooperate in the defense or prosecution thereof and will furnish such records, information and testimony, provide such witnesses and attend such conferences, discovery proceedings, hearings, trials and appeals as may be reasonably requested in connection with such Third Party Claim. Such cooperation will include access during normal business hours afforded to the Indemnifying Party to, and reasonable retention by the Indemnified Party of, records and information that are reasonably relevant to such Third Party Claim, and making Indemnitees and other employees and agents available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder, and the Indemnifying Party will reimburse the Indemnified Party for all its reasonable out-of-pocket expenses incurred in connection with such cooperation.

13.7 Expenses of the Indemnified Party. Except as provided above, the reasonable and verifiable costs and expenses, including fees and disbursements of counsel, incurred by the Indemnified Party in connection with any Third Party Claim will be reimbursed on a Calendar Quarter basis by the Indemnifying Party, without prejudice to the Indemnifying Party's right to contest the Indemnified Party's right to indemnification and subject to refund in the event the Indemnifying Party is ultimately held not to be obligated to indemnify the Indemnified Party.

13.8 Insurance. Each Party will obtain and keep in force, through self insurance or otherwise, in a form reasonably acceptable to the other Party hereto, insurance in scope and amount as required by Law applicable to a Party's activities hereunder and such additional amounts as may be reasonably necessary to cover such Party's indemnity obligations under this Agreement with scope and coverage as is normal and customary in the biotechnology/pharmaceutical industry generally for parties similarly situated. It is understood that such insurance will not be construed to limit a Party's liability with respect to its indemnification obligations under this Article 13. Each Party will, except to the extent self insured, provide to the other Party upon request a certificate evidencing the insurance such Party is required to obtain and keep in force under this Article 13. Such certificate will provide that such insurance will not expire or be cancelled or modified without at least thirty (30) days' prior notice to the other Party.

**ARTICLE 14**  
**GOVERNING LAW; DISPUTE RESOLUTION**

14.1 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of New York without giving effect to any conflict of laws provisions, except matters of intellectual property that will be determined in accordance with the intellectual property laws relevant to the intellectual property in question. The UNICITRAL Convention for the International Sale of Goods, as well as any other unified laws relating to the conclusion and implementation of contracts for the international sale of goods, will not apply.

14.2 Jurisdiction; Venue; Service of Process.

14.2.1 Prestwick and its successors and assigns irrevocably and unconditionally:

(a) agree that any and all disputes between any of them and Distributor arising out of, connected with, related to, or incidental to this Agreement shall be resolved only by the in the courts of the State of New York located in the City of New York, Borough of Manhattan, or of the United States of America for the Southern District of New York;

(b) waive any objection which they may have now or hereafter to the laying of venue in the City of New York, Borough of Manhattan of any such suit, action or proceeding in any such court, or claim that any such suit, action or proceeding has been brought in an inconvenient forum; and

(c) acknowledge the competence of any such court, submits to the jurisdiction of any such court in any such suit, action or proceeding and agree that the final judgment in any such suit, action or proceeding brought in any such court or in any arbitration conducted in accordance with Section 14.3 shall be conclusive and binding upon them and may be enforced in the courts of Barbados once a further judgment has been obtained in the courts of Barbados, which further judgment may as a matter of practice be obtained without re-litigation or re-arbitration of the merits of the matter adjudicated by such State or Federal court in the State of New York or the arbitrators in accordance with Section 14.3, a certified or exemplified copy of which shall be conclusive evidence of the fact and of the amount of its obligation; provided that service of process is effected upon Prestwick in the manner specified below or as otherwise permitted by law.

14.2.2 Prestwick irrevocably consents to service of process upon it out of said courts in any such arbitration, suit, action or proceeding by mailing copies thereof by registered or certified air mail, postage prepaid, to Prestwick at the address referred to in Section 15.1 hereof. The foregoing shall not, however, limit the rights of the Parties to serve process in any other country or any other manner permitted by law or to bring any legal action or proceeding or to obtain an attachment or execution of judgment in any competent jurisdiction, including in the courts of Barbados.

14.3 Arbitration. Other than a claim made for indemnification under Section 13.1, any dispute, controversy or claim arising out of or relating to this Agreement, including, without limitation, disputes relating to (a) the validity, inducement or breach of or the interpretation of any provision of this Agreement or (b) the interpretation or application of Law, shall be decided by arbitration in accordance with the Rules of the American Arbitration Association (“AAA”) in effect at the time the dispute arises, unless the Parties hereto mutually agree otherwise. To the extent such rules are inconsistent with this provision, this provision will control.

14.3.1 Any demand for arbitration must be made in writing to the other Party.

14.3.2 There will be a panel of three arbitrators, one selected by each Party and one selected by mutual agreement of the arbitrators selected by each Party. If the arbitrators selected by the Parties cannot agree on a third arbitrator within thirty (30) days, then the AAA shall select the third arbitrator. Any arbitration involving intellectual property shall be heard by arbitrators who are experts in such areas.

14.3.3 The arbitration shall be held in New York, New York, U.S.A., or such other place as the Parties agree. The arbitrators shall apply the substantive law of New York in accordance with Section 13.1, without regard to conflicts of laws and except that the interpretation and enforcement of this arbitration provision shall be governed by the Federal Arbitration Act.

14.3.4 Except for claims for indemnification as provided in Section 13.2, neither Party shall have the right independently to seek recourse from a court of law or other authorities in lieu of arbitration, but each Party has the right before or during the arbitration to seek and obtain from the appropriate court provisional remedies to avoid irreparable harm, maintain the status quo or preserve the subject matter of the arbitration. There shall be a stenographic record of the proceedings. The decision of the arbitrators shall be made by majority vote and shall be final and binding upon both Parties. The arbitrators shall render a written opinion setting forth findings of fact and conclusions of law.

14.3.5 The expenses of the arbitration shall be borne by the Parties in proportion as to which each Party prevails or is defeated in arbitration. Each Party shall bear the expenses of its counsel and other experts.

## ARTICLE 15 MISCELLANEOUS

15.1 Notices. All notices or other communications that are required or permitted under this Agreement will be in writing and delivered personally, sent by facsimile (and promptly confirmed by personal delivery or overnight courier as provided in this Agreement), or sent by internationally-recognized overnight courier to the addresses below. Any such communication will be deemed to have been given (a) when delivered, if personally delivered or sent by facsimile on a Business Day (so long as promptly confirmed by personal delivery or overnight courier as provided in this Agreement), and (b) on the second Business Day after dispatch, if sent by internationally-recognized overnight courier. Unless otherwise specified in writing, the mailing addresses of the Parties shall be as described below.

**For Prestwick:**

Prestwick Pharmaceuticals, Inc.

Fax:

**with a copy to:**

Morgan, Lewis & Bockius, LLP  
502 Carnegie Center  
Princeton, NJ 08540  
Fax: (609) 919-6701

Attention:

Attention: Denis Segota, Esq.

**For Distributor:**

Ovation Pharmaceuticals, Inc.  
Four Parkway North  
Deerfield, IL 60015  
Fax: (847) 282-1059  
Attention: Patrick J. Morris

**with a copy to:**

Katten Muchin Rosenman LLP  
525 West Monroe Street  
Chicago, IL 60661  
Fax: (312) 577-8747  
Attention: Kenneth W. Miller

15.2 **Independent Status.** Neither Party is an agent, employee or representative of the other. Neither Party shall have the authority to make any statements, representations or commitments of any kind, nor to take any action, which shall be binding on the other Party, except as may be explicitly authorized by the other Party in writing. This Agreement shall not constitute, create or in any way be interpreted as a joint venture, partnership or formal business organization of any kind.

15.3 **Force Majeure.** Neither Party shall be liable to the other for any failure or delay in the fulfillment of its obligations under this Agreement, when any such failure or delay is caused by fire, flood, earthquakes, wars, peril of the sea, acts of God, or any similar cause beyond the reasonable control of the performing Party (each, a “**Force Majeure Event**”). In the event that either Party is prevented from discharging its obligations under this Agreement on account of a Force Majeure Event, the performing Party will notify the other Party forthwith, and will nevertheless make every endeavor, in the utmost good faith, to discharge its obligations, even if in a partial or compromised manner.

15.4 **Entire Agreement; Amendment and Waiver.** This Agreement, including the Exhibits and Schedules attached hereto (each of which is hereby and thereby incorporated herein and therein by reference) between the Parties shall constitute the entire agreement and understanding of the Parties relating to the subject matter of this Agreement and supersedes all prior oral or written agreements, representations, understandings or arrangements between the Parties relating to the subject matter of this Agreement. No amendment, supplement or other modification to any provision of this Agreement shall be binding unless in writing and signed by both Parties. No waiver of any rights under this Agreement shall be effective unless in writing signed by the Party to be charged. A waiver of a breach or violation of any provision of this Agreement will not constitute or be construed as a waiver of any subsequent breach or violation of that provision or as a waiver of any breach or violation of any other provision of this Agreement.

15.5 **Headings; Construction; Certain Conventions.** The headings used in this Agreement have been inserted for convenience of reference only and do not define or limit the provisions hereof. The Exhibits and Schedules to this Agreement are incorporated herein by reference and will be deemed a part of this Agreement. Unless otherwise expressly provided herein or the context of this Agreement otherwise requires, (a) words of any gender include each

other gender, (b) words such as “herein”, “hereof”, and “hereunder” refer to this Agreement as a whole and not merely to the particular provision in which such words appear, (c) words using the singular will include the plural, and vice versa, (d) the words “include,” “includes” and “including” will be deemed to be followed by the phrase “but not limited to”, “without limitation”, “inter alia” or words of similar import, (e) the word “or” will be deemed to include the word “and” (e.g., “and/or”) and (f) references to “ARTICLE,” “Section,” “subsection”, “clause” or other subdivision, or to a Schedule or Exhibit, without reference to a document are to the specified provision, Schedule or Exhibit of this Agreement. This Agreement will be construed as if it were drafted jointly by the Parties and shall not be strictly construed against either Party.

#### 15.6 Assignment.

15.6.1 Limitations on Assignment. Subject to Section 2.6, neither Party shall assign or transfer any of its rights nor obligations under this Agreement without the prior written consent of the other Party, provided, that a Party shall be entitled (without the consent of the other Party) to assign this Agreement (or any of its rights or obligations under this Agreement, including in or to the Regulatory Approval for Product) to (a) its Affiliate (as long as such entity remains an Affiliate of such Party) provided that such Party shall be responsible for the performance of this Agreement by such Affiliate; (b) to any Person to which it has sold all or substantially all of its assets relating to this Agreement whether in writing or by operation of law (e.g. merger, asset sale or otherwise), provided that the acquiring Person agrees to be bound by the terms of this Agreement or (c) pursuant to that certain Assignment Option Agreement, dated as of September 15, 2008, by and between Distributor and Biovail Americas Corp. Any assignment, or attempted assignment, in contravention of this Section 15.6.1 shall be null and void and of no force or effect.

15.6.2 Change of Control. Notwithstanding Section 15.6.1 above, in the event that a Party is subject to a Change of Control with a Third Party, which, at the date of such Change of Control was (or an Affiliate of such Third Party was) Developing, or Commercializing a Competing Product in the Territory, then within thirty (30) days of the completion of such Change of Control, such Party shall provide written notification to the other Party specifying election of one of the following two (2) alternatives:

(a) Such Party agrees to dispose of such Competing Product within a period of twelve (12) months following the completion date of such Change of Control; or

(b) Such Party elects to terminate this Agreement which shall become effective thirty (30) days from such notification of such Party’s election to terminate the Agreement in its entirety, and in such event, Section 2.9 shall not survive such termination, provided, that in the event of a Change of Control of Distributor where Distributor elects such termination, upon the request of Prestwick such termination shall not become effective for a period up to twelve (12) months, as determined by Prestwick, after such notice and Distributor shall be obligated to perform its obligations hereunder and shall have all of its rights hereunder during such period.

15.7 Severability. If any provision of this Agreement or application thereof to anyone is adjudicated to be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect any provision or application of this Agreement which can be given effect without the invalid or unenforceable provision or application and shall not invalidate or render



unenforceable such provision or application in any other jurisdiction. Further, the judicial or other competent authority making such determination shall have the power to limit, construe or reduce the duration, scope, activity and/or area of such provision, and/or delete specific words or phrases as necessary to render, such provision enforceable in such jurisdiction.

15.8 Further Assurances. Each Party shall, as and when requested by the other Party, do all acts and execute all documents as may be reasonably necessary to give effect to the provisions of this Agreement.

15.9 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

15.10 Limitation of Liability. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, OR PUNITIVE DAMAGES, DIMINUTION IN VALUE, MULTIPLE OF EARNINGS DAMAGES, OR LOSS OF PROFITS, REVENUE OR INCOME, HOWEVER CAUSED, ON ANY THEORY OF LIABILITY AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING UNDER ANY CAUSE OF ACTION AND ARISING IN ANY WAY OUT OF THIS AGREEMENT.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, the Parties have executed this Agreement in duplicate originals by their proper officers as of the Effective Date.

**OVATION PHARMACEUTICALS, INC.**

**PRESTWICK PHARMACEUTICALS, INC.**

By: /s/ Jeffrey S. Aronin  
Name: Jeffrey S. Aronin  
Title: President & CEO

By: /s/ G.F. Horner III  
Name: G.F. Horner III  
Title: President & CEO

EXHIBIT A

Press Releases

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CONTACT: Nelson F. Isabel  
Vice-President, Investor Relations  
& Corporate Communications  
(905) 286-3000

Draft for review only:

## **BIOVAIL ACQUIRES PRESTWICK PHARMACEUTICALS**

**Represents Ongoing Implementation of Company's New Strategic Focus**

**Provides Company's First Commercial Product in Specialty CNS Markets**

TORONTO, Canada, September XX, 2008 - Biovail Corporation (NYSE, TSX: BVF) today announced it has acquired Prestwick Pharmaceuticals, Inc., a privately held, U.S.-based pharmaceutical company that holds the Canadian and U.S. licensing rights to Xenazine® (tetrabenazine tablets). Xenazine® was recently approved by the United States Food and Drug Administration (FDA) for the treatment of chorea associated with Huntington's disease. Xenazine® was granted Orphan Drug designation by the FDA, which provides the product with seven years of market exclusivity in the United States.

Prestwick recently entered into an exclusive agreement with Ovation Pharmaceuticals, Inc., a leading U.S.-based specialty biopharmaceutical company, to commercialize Xenazine® in the U.S. The product's commercial launch is anticipated late-2008.

"We are delighted to have acquired Prestwick, and with it, an interest in Xenazine® - the first and only FDA-approved treatment for any symptom of Huntington's disease," said Biovail Chief Executive Officer Bill Wells. "The transaction meets all of our acquisition criteria, and represents Biovail's first commercial exposure to specialty markets in central nervous system, or CNS disorders. The acquisition is another important step in the implementation of our New Strategic Focus."

Under the terms of the agreement, Biovail will pay \$100 million to acquire 100% of Prestwick Pharmaceuticals and related license rights. Beyond Xenazine®, the acquisition also provides Biovail with other early-stage products, including Lisuride Sub Q (advanced Parkinson's disease), Lisuride Patch (Parkinson's disease) and D-Serine (Schizophrenia).

Biovail will commercialize tetrabenazine tablets in Canada (marketed under the Nitoman® brand name) through the Biovail Pharmaceuticals Canada sales force. Biovail will

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pay a variable supply price that ranges from 50% to 67% of net sales to Cambridge Laboratories (Ireland) Ltd., the worldwide license holder of tetrabenazine.

In addition, Biovail holds an option to develop future related products with Ovation for the U.S. market in conjunction with Cambridge.

The transaction is expected to be accretive to both earnings per share and cash flows in 2009.

**Transfer of U.S. Commercialization Rights to Ovation Pharmaceuticals, Inc.**

Prestwick Pharmaceuticals recently entered into an exclusive supply and marketing agreement with Ovation Pharmaceuticals, Inc. for Xenazine® in the U.S. Following Biovail’s acquisition of Prestwick, Biovail will supply the product to Ovation for a variable percentage of the product’s annual net sales. For net sales up to \$125 million, Biovail’s supply price will be 72% of net sales. Beyond \$125 million, Biovail’s supply price will be 65% of net sales. At both tiers, Biovail will pay a supply price of 50% of net sales to Cambridge.

Ovation will market Xenazine® to U.S. specialists through a 48-person sales force, which already markets a number of other products targeting CNS disorders, including epilepsy and Attention Deficit Disorder. As part of the agreement, Biovail holds an option to co-promote Xenazine® in the United States. Should this option be exercised, Biovail has the right to utilize Ovation’s existing infrastructure to assist in the recruitment, training and operational management of a sales force.

**Approval of Xenazine®**

Xenazine® was approved by the FDA on August 15, 2008 for the treatment of chorea associated with Huntington’s disease, based on the results of a double-blind, placebo-controlled, Phase 3 study that found that Xenazine® significantly reduced patients’ chorea burden, improved global outcome scores, and was generally safe and well tolerated. Additional post-marketing preclinical studies further elucidating the safety profile of the product will be conducted. Xenazine® has been available in Europe for more than 30 years and in Canada since 1996.

**About Huntington’s Disease**

Affecting an estimated 25,000 Americans, Huntington’s disease is a devastating neurodegenerative disease that causes progressive movement disorders, cognitive dysfunction and behavioral changes and is ultimately a fatal condition. Chorea is the most common symptom, affecting approximately 90% of Huntington’s disease patients, and is characterized by excessive, involuntary and repetitive movements, which are the most visible and dangerous manifestations of Huntington’s disease and interfere with patients’ abilities to perform activities of daily living, including dressing, bathing and caring for themselves. For more information about Huntington’s disease, please visit <http://www.hdfoundation.org> or <http://www.hdsa.org>.

### **About Xenazine® (tetrabenazine)**

Xenazine® is indicated for the treatment of chorea associated with Huntington’s disease. Xenazine® is a highly selective and reversible centrally-acting dopamine depleting drug that works by inhibiting a molecule known as vesicular monoamine transporter 2 (VMAT2). Full prescribing information is available on the Investor Relations page of Biovail’s website at [www.biovail.com](http://www.biovail.com).

### **Important Safety Information**

The most frequent adverse events reported with Xenazine® include sedation/somnolence, fatigue, insomnia, depression, akathisia and nausea. Xenazine® can increase the risk of depression and suicidal thoughts and behavior (suicidality) in patients with Huntington’s disease and the drug is therefore contraindicated in patients who are actively suicidal, and in patients with untreated or inadequately treated depression. Xenazine® is also contraindicated in patients with impaired hepatic function and in patients taking monoamine oxidase inhibitors or reserpine. Xenazine® was approved with a required Risk Evaluation and Mitigation Strategy (REMS) to ensure that the benefits of the drug outweigh its risks, particularly the risks of depression and suicidal thoughts and actions. REMS is a strategy to manage a known or potential serious risk associated with a drug or biological product.

### **Caution Regarding Forward-Looking Information and “Safe Harbor” Statement**

To the extent any statements made in this release contain information that is not historical, these statements are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, and may be forward-looking information under applicable Canadian provincial securities legislation (collectively, “forward-looking statements”). These forward-looking statements relate to, among other things, our objectives, goals, targets, strategies, intentions, plans, beliefs, estimates and outlook, including, without limitation, statements concerning the terms of the transaction, including the Company’s proposed plans for the supply and promotion of Xenazine® in the U.S. and Canada and the terms for such supply and promotion, the anticipated launch of Xenazine® and the anticipated impact of the transaction on Biovail, and rights associated with future development or products, and can generally be identified by the use of words such as “believe,” “anticipate,” “expect,” “intend,” “plan,” “will,” “may” and other similar expressions. In addition, any statements that refer to expectations, projections or other characterizations of future events or circumstances are forward-looking statements.

Although Biovail believes that the expectations reflected in such forward-looking statements are reasonable, such statements involve risks and uncertainties, and undue reliance should not be placed on such statements. Certain material factors or assumptions are applied in making forward-looking statements, and actual results may differ materially from those expressed or implied in such statements. Important factors that could cause actual results to differ materially from these expectations include, among other things: the difficulty of predicting U.S. Food and Drug Administration approvals or the impact of post-marketing studies on such approvals, acceptance and demand for new pharmaceutical products, the impact of competitive products and pricing, uncertainties associated with the development, acquisition and launch of

new products, reliance on key strategic alliances, contractual disagreements with third parties, availability of raw materials and finished products, the regulatory environment, consolidated tax rate assumptions, fluctuations in operating results and other risks detailed from time to time in the Company’s filings with the Securities and Exchange Commission and the Canadian Securities Administrators, as well as the Company’s ability to anticipate and manage the risks associated with the foregoing. Additional information about these factors and about the material factors or assumptions underlying such forward-looking statements may be found in the body of this news release, as well as under the heading “Risk Factors” contained in Item 3(D) of Biovail’s most recent Annual Report on Form 20-F.

The Company cautions that the foregoing list of important factors that may affect future results is not exhaustive. When relying on Biovail’s forward-looking statements to make decisions with respect to the Company, investors and others should carefully consider the foregoing factors and other uncertainties and potential events. Biovail undertakes no obligation to update or revise any forward-looking statement.

**About Biovail Corporation**

Biovail Corporation is a specialty pharmaceutical company engaged in the formulation, clinical testing, registration, manufacture, and commercialization of pharmaceutical products. The Company is focused on the development and commercialization of medicines that address unmet medical needs in niche specialty central nervous system (CNS) markets. For more information about Biovail, visit the Company’s web site at [www.biovail.com](http://www.biovail.com).

For further information, please contact Nelson F. Isabel at 905-286-3000 or send inquiries to [ir@biovail.com](mailto:ir@biovail.com).



**CONTACT:**  
Sally Benjamin Young  
(847) 282-5770

**OVATION PHARMACEUTICALS ACQUIRES RIGHTS TO COMMERCIALIZE  
XENAZINE® (Tetrabenazine) IN U.S. FOR CHOREA ASSOCIATED WITH  
HUNTINGTON'S DISEASE**

**— U.S. Product Launch Expected By Year End —**

DEERFIELD, ILL., [DATE] — OVATION Pharmaceuticals, Inc. announced today that it has acquired from Prestwick Pharmaceuticals the exclusive license in the United States to commercialize Xenazine® (tetrabenazine), an orphan drug recently approved by the U.S. Food and Drug Administration (FDA) for the treatment of chorea associated with Huntington's Disease (HD). Financial terms of the deal were not disclosed. Subsequently, Biovail Corporation, Canada's largest publicly traded pharmaceutical company, acquired Prestwick.

Under the terms of the agreement, Biovail and OVATION will jointly develop additional follow-on indications for Xenazine and related products in the U.S. in conjunction with Cambridge Laboratories Limited, the worldwide license holder of the drug. Xenazine is the first and only FDA-approved treatment for any HD-related disorders. OVATION expects to launch the product in the U.S. by the end of this year.

"Obtaining the rights to Xenazine in the U.S. adds another important growth driver to our series of multiple specialty product launches expected over the next several years," said Jeffrey S. Aronin, President and Chief Executive Officer of OVATION. "This drug represents a strong strategic fit and complements our existing portfolio of central nervous system products, in addition to continuing our business strategy of pursuing opportunities to bring important new medicines to severely ill patients with unmet medical needs."

Noting OVATION's strong commercial capabilities to support the launch of Xenazine, Aronin added, "We will be able to efficiently and effectively reach patients suffering from this devastating neurodegenerative and ultimately fatal disease. We are pleased that we can bring to these patients the first approved therapy to treat this disorder."

Chorea affects approximately 25,000 Americans, interfering with their ability to perform activities of daily living, including dressing, bathing and caring for themselves. Currently there are no treatments to stop or reverse the onset or progression of HD. Chorea is a debilitating movement disorder characterized by excessive, involuntary and repetitive movements which are the most visible and dangerous manifestations of Huntington disease.

The precise mechanism by which Xenazine exerts its anti-chorea effects is unknown, but it is believed to be related to its effects as a reversible depletor of monoamines by inhibiting a

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molecule known as vesicular monoamine transporter 2 (VMAT2). Xenazine has been designated an orphan drug by the FDA.

The most frequent adverse events reported with Xenazine in a randomized, 12-week, placebo controlled clinical trial of HD subjects include sedation/somnolence, fatigue, insomnia, depression, akathisia and nausea. Xenazine can increase the risk of depression and suicidal thoughts and behavior (suicidality) in patients with Huntington’s disease and the drug is therefore contraindicated in patients who are actively suicidal, and in patients with untreated or inadequately treated depression. Xenazine is also contraindicated in patients with impaired hepatic function and in patients taking monoamine oxidase inhibitors or reserpine. Although Xenazine has been shown to decrease the chorea of HD, it was also shown to cause slight worsening in mood, cognition, rigidity and functional capacity and prescribers should periodically re-evaluate the need for therapy.

**About OVATION Pharmaceuticals**

OVATION is a fast-growing biopharmaceutical company that develops, manufactures and markets medically necessary therapies to satisfy unmet medical needs for patients with severe illnesses. Headquartered in Deerfield, Ill., with products available in more than 85 countries, OVATION is committed to having a significant impact on patients’ lives through its focus on central nervous system, hematology/oncology, and hospital-based therapies. The four new launches the company expects over the next three years will largely be fueled by its late-stage CNS pipeline, which is one of the most robust in the industry. OVATION has been recognized for excellence in the global pharmaceutical and biotechnology industries with the 2006 and 2007 “Pharma Company of the Year” award from *Scrip* magazine for small to mid-sized enterprises. More information about the company, its products and full prescribing information may be found at [www.ovationpharma.com](http://www.ovationpharma.com).

SCHEDULE 1.39

Marketing Plan

The Marketing Plan means the Ovation Second U.S. Marketing Plan Letter, dated as of 11 September 2008 as attached below, (in conjunction with the original March 2007 Xenazine U.S. Marketing Plan prepared by Prestwick, as modified by the first U.S. Marketing Plan Letter, dated as of 30 July 2008, each as attached below) and as amended thereafter, subject to Section 10.10 of this Agreement, under the Cambridge Agreement.

See attached.

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Mr. Mark Evans  
Chief Executive Officer  
Cambridge Laboratories (Ireland) Limited

Thursday, September 11, 2008

Dear Mark,

This letter and attachments are an update to the March 2007 Xenazine® U.S. Marketing Plan prepared by Prestwick Pharmaceuticals, Inc. (“Prestwick”) and the Ovation Pharmaceuticals, Inc. (“Ovation”) U.S. Marketing Plan Letter, dated as of 30 July 2008 (in the event the details of the original marketing plan and the two subsequent update letters conflict the terms of this update letter shall prevail). This update to the Marketing Plan incorporates the topics we discussed in our meeting held this week in Chicago including our pricing strategy for Xenazine and our plan for reimbursement and patient assistance. Per your request, we are providing you with detail regarding our pricing assumptions and associated sales and quantity projections as well as detailed projections and estimates of gross to net adjustments associated with specialty pharmacy fees, patient assistance and co-pay assistance programs.

As we discussed in our meeting, we are fully confident that the market will support a yearly cost of therapy for Xenazine of {\*\*\*}†. Also addressed in our discussion is the requirement to support this type of price point with a comprehensive patient assistance and co-pay assistance program. As detailed below, we are projecting significantly higher sales as compared with the previous Prestwick strategy.

Marketing Plan Target Sales Projection

|                        | 2008   | 2009   | 2010   | 2011   | 2012   | 2013   | 2014   | 2015   |
|------------------------|--------|--------|--------|--------|--------|--------|--------|--------|
| Gross \$ Sales (\$MM): |        |        |        |        |        |        |        |        |
| Demand                 | {***}† | {***}† | {***}† | {***}† | {***}† | {***}† | {***}† | {***}† |
| Inventory              | {***}† | {***}† | {***}† | {***}† | {***}† | {***}† | {***}† | {***}† |
| Factory                | {***}† | {***}† | {***}† | {***}† | {***}† | {***}† | {***}† | {***}† |
|                        | {***}† | {***}† | {***}† | {***}† | {***}† | {***}† | {***}† | {***}† |
| Total mgs (000s):      | {***}† | {***}† | {***}† | {***}† | {***}† | {***}† | {***}† | {***}† |
| Demand                 | {***}† | {***}† | {***}† | {***}† | {***}† | {***}† | {***}† | {***}† |
| Inventory              | {***}† | {***}† | {***}† | {***}† | {***}† | {***}† | {***}† | {***}† |
| Factory                | {***}† | {***}† | {***}† | {***}† | {***}† | {***}† | {***}† | {***}† |
|                        | {***}† | {***}† | {***}† | {***}† | {***}† | {***}† | {***}† | {***}† |
| WAC ASP/mg             | {***}† | {***}† | {***}† | {***}† | {***}† | {***}† | {***}† | {***}† |

NOTE: The above target forecast assumes a Nov-2008 launch as well as the conditions and program elements discussed in the Marketing Plan.

† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

|                   |        |
|-------------------|--------|
| Launch Price/Year | {***}† |
| Days              | {***}† |
| Avg. Maint. Dose  | {***}† |
| Total mg/year     | {***}† |
| ASP/mg            | {***}† |

NOTE: The average selling price/mg calculated al left assumes average dally dose of 50mg and full compliance. It is likely that compliance will be less than 100% while average daily dose will likely exceed 50mg/day.

We are also providing you with order estimates for bottles of 12.5mg and 25mg product that are consistent with the total market estimates referenced in the above forecast. These forecasts, which are attached hereto as Exhibit A and Exhibit B shall be incorporated by reference and attached as Schedule 6 and Schedule 7, respectively. to that certain Second Amended and Restated Agreement between Cambridge Laboratories (Ireland) Limited and Prestwick, dated 18 November 2005 (the “Development Agreement”).

**Reimbursement Assistance, Patient Assistance Program Support and Distribution**

As we discussed, reimbursement and patient assistance is a critical area of support for Xenazine. We are very pleased that you acknowledge our general philosophy to charge a fair premium for differentiated and medically necessary products and support that market position with comprehensive reimbursement and patient assistance program. In the attached Exhibit C, we provide a summary of the gross to net estimates for patient assistance and co-pay assistance {\*\*\*}† that we discussed with you in our meeting. Additionally, we are providing our estimates of other gross to net adjustments to provide you with a full picture of expected adjustments. Exhibit C presents the gross to net adjustments as a percentage of sales and actual expenses will vary with actual sales performance.

Very Best Regards,

/s/ Jeffery S. Aronin  
Jeffrey S. Aronin  
President & Chief Executive Officer  
Ovation Pharmaceuticals, Inc.

Read and Acknowledged:

/s/ Mark Evans  
Mr. Mark Evans  
Chief Executive Officer  
Cambridge Laboratories (Ireland) Limited

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EXHIBIT A

SCHEDULE 6

MINIMUM ORDER QUANTITIES (Bottles)

First 12 Month Binding Forecast, per Clause 10.9

| Year   | Strength | Bottles | mgs    |
|--------|----------|---------|--------|
| Year 1 | 12.6mg   | {***}†  | {***}† |
|        | 25mg     | {***}†  | {***}† |
|        | Combined |         | {***}† |

mgs

For long-term planning purposes, additional non-binding quantities for year 2 are provided below.

| Year | Strength | Bottles | mgs    |
|------|----------|---------|--------|
|      | 12.6mg   | {***}†  | {***}† |
|      | 25mg     | {***}†  | {***}† |
|      | Combined |         | {***}† |

NOTE: These Minimum Order Quantities assume inventories at month 12 are at approximately 6 months (based on next 12 month demand) and at month 24 are just above 3 months supply per Forecast & Orders Clause 10.9.

† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

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EXHIBIT B  
SCHEDULE 7

MINIMUM SALES QUANTITIES (mgs)

NOTE: Schedule 6 contains the bottle quantity of binding purchases for year 1. Additionally, conversion to mgs is also provided. These amounts represent both demand and inventory build in the trade and at Ovation. For Minimum Sales Quantities, the unit of measure provided below is mgs per year. The exact strength mix of 12.5mg and 25mg will be determined by initial market uptake and titration. In subsequent years, when firm forecast are established per mutual agreement of the parties, strength detail can be provided.

First 12 Month Binding Forecast

| Year   | mgs    |
|--------|--------|
| Year 1 | {***}† |

For long-term planning purposes, additional non-binding quantities for years 2-5 are provided below.

| Year   | mgs    |
|--------|--------|
| Year 2 | {***}† |
| Year 3 | {***}† |
| Year 4 | {***}† |
| Year 5 | {***}† |

The mg sales levels presented above are consistent with the mg projections provided in the Ovation Pharmaceuticals, Inc. (“Ovation”) U.S. Marketing Plan Letter, dated as of 5 September 2008. Note that the Marketing Plan letter is on a calendar basis while the above quantities are on a 12 month basis. Thus, some variance will exist.

*The parties agree that in the event they cannot reach mutual agreement on the Minimum Sales Quantities for any of years 2 through 5 in accordance with Section 9.11 of the Agreement and the establishment of the Minimum Sales Quantities for any such year is ultimately referred to binding arbitration under Clause 22 of the Agreement, the arbitrator shall not have authority to set the Minimum Sales Quantity for the year in question at greater than {\*\*\*}† of the non-binding quantities set forth above for such year.*

† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

EXHIBIT C

Ovation’s Current Estimate of Ordinary or Customary Charges or Deductions from Net Sales

The gross to net reduction for calculating royalty payments with Cambridge is detailed as follows:

| Variable Components                                     | % Total | Year 1<br>Component | Year 2<br>Component | Year 3<br>Component | Year 4<br>Component | Year 5<br>Component | Year 6<br>Component | Year 7<br>Component |
|---------------------------------------------------------|---------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|
| Discounts to Payors                                     |         | {***}†              | {***}†              | {***}†              | {***}†              | {***}†              | {***}†              | {***}†              |
| Cash Discounts                                          |         | {***}†              | {***}†              | {***}†              | {***}†              | {***}†              | {***}†              | {***}†              |
| Medicaid CPI                                            |         | {***}†              | {***}†              | {***}†              | {***}†              | {***}†              | {***}†              | {***}†              |
| Returns                                                 |         | {***}†              | {***}†              | {***}†              | {***}†              | {***}†              | {***}†              | {***}†              |
| Specialty Pharmacy<br>Co-Pay (Out of<br>Pocket) Program |         | {***}†              | {***}†              | {***}†              | {***}†              | {***}†              | {***}†              | {***}†              |
| Federal Supply<br>Schedule (FSS)                        |         | {***}†              | {***}†              | {***}†              | {***}†              | {***}†              | {***}†              | {***}†              |

NOTE: The assumptions above are to be applied relative to the month of product launch; thus, calendar year calculations will differ somewhat if the product is not launched in January.

Variable Costs (stated as % of Gross Sales):

Discount to Payers:

Payer mix is assumed as Medicare {\*\*\*}†, Commercial {\*\*\*}† and Medicaid {\*\*\*}† (based on marketing research study). There are no plans to offer rebate contracts with Medicare/Commercial. Medicaid will be subject to the required {\*\*\*}† discount, which nets out to a {\*\*\*}† ({\*\*\*}† x {\*\*\*}† payer mix) overall figure for this component.

Cash Discounts:

Normal cash discounts for timely payment are assumed at {\*\*\*}†.

Medicaid CPI:

In year 1, there would be no incremental CPI rebates, However, as an {\*\*\*}† annual inflation rate is assumed (vs. assumed {\*\*\*}† for CPI), there would be incremental CPI rebates required to be paid to Medicaid, This increases approximately {\*\*\*}† percentage points each year.

Returns:

The returns reserve is low, at {\*\*\*}†, as the product will be distributed via a limited number of specialty pharmacies (likely 3 at launch). Relative to traditional retail trade pharmacy stocking which can cover over 50,000 pharmacies and lead to product returns, specialty

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pharmacy affords a significantly more efficient management of trade inventory levels. Thus, we expect returns to be minimal.

Specialty Pharmacy:

This is the fee-for-service portion of the specialty pharmacy program. Contract negotiations have not been finalized yet, however. Ovation is targeting achieving a low {\*\*\*}† for this component. By comparison, traditional fee-for-service arrangements are typically in the {\*\*\*}† range.

Co-Pay Program:

The co-pay program is based on a detailed estimate of the level of out of pocket costs associated with Xenazine. This analysis was based on the payer mix detailed, along with expected benefit design elements from our research with pharmacy directors (see MME report). The co-pay program will seek to reduce economic hardship of the patient. The model assumes an overall level of {\*\*\*}† for this component. The final rate will be dependent on finalizing negotiations with 3rd party administrators of these programs. Over time, the exact rate assumed for co-pay assistance will be dependent on both federal and state regulations. There is potential for these regulations to change which may result in future variability to this rate.

FSS (Federal Supply Schedule):

A 24% statutory discount is assumed for the portion of the business administered through organizations such as the Department of Defense and Veteran’s Affairs. This mix is estimated to be approximately {\*\*\*}†, which when applied to a {\*\*\*}† figure yields the {\*\*\*}† assumption.

Fixed Costs:

Specialty pharmacy HUB services fees will also be incurred as part of the specialty pharmacy management and distribution of Xenazine. Ovation is estimating these expenses to be approximately {\*\*\*}† in 2008, {\*\*\*}† in 2009 and {\*\*\*}† annually in 2010 and thereafter.

† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.



SCHEDULE 1.40

Minimum Order Quantities

See attached.

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EXHIBIT A

SCHEDULE 6

MINIMUM ORDER QUANTITIES (Bottles)

First 12 Month Binding Forecast, per Clause 10.9

| Year   | Strength | Bottles | mgs    |
|--------|----------|---------|--------|
| Year 1 | 12.6mg   | {***}†  | {***}† |
|        | 25mg     | {***}†  | {***}† |
|        | Combined |         | {***}† |
| mgs    |          |         |        |

For long-term planning purposes, additional non-binding quantities for year 2 are provided below.

| Year | Strength | Bottles | mgs    |
|------|----------|---------|--------|
|      | 12.6mg   | {***}†  | {***}† |
|      | 25mg     | {***}†  | {***}† |
|      | Combined | {***}†  | {***}† |

NOTE: These Minimum Order Quantities assume inventories at month 12 are at approximately 6 months (based on next 12 month demand) and at month 24 are just above 3 months supply per Forecast & Orders Clause 10.9.

† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

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SCHEDULE 1.41

Minimum Sales Quantities

See attached.

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EXHIBIT B  
SCHEDULE 7

MINIMUM SALES QUANTITIES (mgs)

NOTE: Schedule 6 contains the bottle quantity of binding purchases for year 1. Additionally, conversion to mgs is also provided. These amounts represent both demand and inventory build in the trade and at Ovation. For Minimum Sales Quantities, the unit of measure provided below is mgs per year. The exact strength mix of 12.5mg and 25mg will be determined by initial market uptake and titration. In subsequent years, when firm forecast are established per mutual agreement of the parties, strength detail can be provided.

First 12 Month Binding Forecast

| Year   | mgs    |
|--------|--------|
| Year 1 | {***}† |

For long-term planning purposes, additional non-binding quantities for years 2-5 are provided below.

| Year   | mgs    |
|--------|--------|
| Year 2 | {***}† |
| Year 3 | {***}† |
| Year 4 | {***}† |
| Year 5 | {***}† |

The mg sales levels presented above are consistent with the mg projections provided in the Ovation Pharmaceuticals, Inc. (“Ovation”) U.S. Marketing Plan Letter, dated as of 5 September 2008. Note that the Marketing Plan letter is on a calendar basis while the above quantities are on a 12 month basis. Thus, some variance will exist.

*The parties agree that in the event they cannot reach mutual agreement on the Minimum Sales Quantities for any of years 2 through 5 in accordance with Section 9.11 of the Agreement and the establishment of the Minimum Sales Quantities for any such year is ultimately referred to binding arbitration under Clause 22 of the Agreement, the arbitrator shall not have authority to set the Minimum Sales Quantity for the year in question at greater than {\*\*\*}† of the non-binding quantities set forth above for such year.*

† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

SCHEDULE 1.59

Specialty Pharmacy Hub Description

“TheraCom, Inc. offers comprehensive reimbursement, clinical and data collection and reporting solutions customized for the biotechnology and pharmaceutical manufacturer.”

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SCHEDULE 9.1.1(g)

Brokers; Investment Banker

None.

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CONFIDENTIAL TREATMENT REQUESTED:

*Portions of this Exhibit have been redacted pursuant to a request for confidential treatment under Rule 24b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended. Such redacted portions have been replaced with “{\*\*\*}” in this Exhibit. An unredacted version of this document has been filed separately with the Securities and Exchange Commission along with the request for confidential treatment.*

**DATED** 10<sup>th</sup> December 1998

(1) LIFEHEALTH LIMITED

AND

(2) CAMBRIDGE SELFCARE DIAGNOSTICS LIMITED

\_\_\_\_\_  
LICENCE AGREEMENT  
\_\_\_\_\_

Stringer Saul  
17 Hanover Square  
London W1R 9AJ

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Date: 10/12 1998

Parties:

- 1
- LIFEHEALTH LIMITED an English company registered under number 3017293 whose registered office is at Richmond House, Old Brewery Court, Sandyford Road, Newcastle-upon-Tyne, NE2 1XG (“Lifehealth”).
- 2
- CAMBRIDGE SELF CARE DIAGNOSTICS LIMITED an English company registered under number 2039082 whose registered office is at Richmond House, Old Brewery Court, Sandyford Road, Newcastle-upon-Tyne, NE2 1XG (“CSD”).

Recitals:

- (A)
- Pursuant to an agreement dated 29 May 1995 between Lifehealth and Roche, Lifehealth acquired the rights to manufacture, use, sell or otherwise deal in certain products, including the Product (as hereinafter defined) in the United Kingdom and the Republic of Ireland.
- (B)
- Pursuant to an agreement dated 18 July 1995 between the parties, Lifehealth granted to CSD a licence to manufacture, use, sell or otherwise deal in certain products, including the Product in the United Kingdom and the Republic of Ireland.
- (C)
- Pursuant to agreements between Roche and Lifehealth dated 04 August 1997 and 16 September 1997 Lifehealth has acquired the rights to manufacture, use, sell or otherwise deal in the Product for all countries in the world excluding the United Kingdom and the Republic of Ireland.
- (D)
- The parties have agreed that Lifehealth shall grant to CSD a licence to manufacture, use, sell or otherwise deal in the Product for all countries in the world subject to the terms and conditions set forth herein and that this agreement should replace the terms of the agreement of 18 July 1995 in so far as it relates to the Product.

Operative provisions:

1. Definitions

- 1.1
- In this Agreement the following terms shall have the following meanings unless the context otherwise requires:
- ‘Commercial Life’
- means for so long as any market exists for the relevant product in any country which results in sufficient demand to make the continued production and sale of the relevant product commercially viable.
- ‘Confidential information’
- means any and all information of a proprietary or confidential nature relating to the Product,





including, without limitation, the Information, information relating to Improvements, price data and customer lists whether disclosed (orally or in writing) and/or whether acquired prior to or pursuant to this Agreement.

‘CSD’s Cost of Goods’

includes, without limitation:

- (a) the costs of procuring all raw materials including (without limitation) purchase costs of the raw materials and costs incurred in their delivery to CSD or any contract manufacturer engaged by CSD; and
- (b) sums paid for the services of any contract manufacturer in the manufacturing of the Product and for delivery of the Product when so manufactured to CSD’s premises PROVIDED that the parties will consult in good faith with a view to agreeing an appropriate figure for this item, it being acknowledged that if any contract manufacturer manufactures other products for CSD in addition to the Product a fair allocation needs to be made between all the products so manufactured of the total of such costs of manufacture and delivery; and
- (c) costs incurred in preparing cartons, leaflets and any foil or other packaging for the Products (including, without limitation, artwork, organisation and printing costs); and
- (d) tooling costs incurred by CSD with Lifehealth’s consent for equipment to manufacture the Product PROVIDED that Lifehealth may not withhold its consent to the incurring of any costs if the tooling in question is required in order for the Product to comply with any requirements of a Regulatory Authority.

|                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|---------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ‘Development Plan’        | means the plan, to be agreed between the parties, pertaining to CSD seeking, obtaining and maintaining Marketing Authorisations for the Product in counties in the Territory                                                                                                                                                                                                                                                                                                                   |
| ‘Effective Date’          | means the date of signature of this Agreement                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| ‘Financial Year’          | means each period of twelve months from the 1st of July to the 30th of June.                                                                                                                                                                                                                                                                                                                                                                                                                   |
| ‘Improvements’            | means all improvements, modifications or adaptations to any part of the Information and/or the Product which might reasonably be of commercial interest to either party in the design manufacture or supply of the Product and which may be made or acquired by either party during the term of this Agreement.                                                                                                                                                                                |
| ‘Information’             | means all identifiable know-how, clinical reports, studies and pre-clinical studies, experience, data and all other technical or commercial information of Lifehealth relating to the Product whether in human or machine readable form and whether stored electronically or otherwise and which might reasonably be of commercial interest to either party in the design manufacture or supply of the Product or in seeking, obtaining, varying and maintaining any Marketing Authorisations. |
| ‘Interest’                | means interest (both before and after judgement) calculated at the rate of {***}† above the base rate from time to time of Lifehealth’s bankers compounded with quarterly rests.                                                                                                                                                                                                                                                                                                               |
| ‘Marketing Authorisation’ | means the regulatory approval or approvals from a Regulatory Authority permitting the holder of the approval to market the Product in a country in the Territory.                                                                                                                                                                                                                                                                                                                              |
| ‘Marketing Plan’          | means the five (5) year plan pertaining to the marketing of the Product to be agreed between the parties and updated annually by mutual                                                                                                                                                                                                                                                                                                                                                        |

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|                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                        | agreement between the parties pursuant to this Agreement.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| {***}†                 | {***}†                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| ‘Product’              | means any pharmaceutical preparation and/or product containing Tetrabenazine.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| ‘Regulatory Authority’ | shall mean the Medicines Control Agency in respect of the United Kingdom, the FDA in respect of the United States and such equivalent authority in respect of each of the other countries in the Territory.                                                                                                                                                                                                                                                                                                                                                                                                       |
| ‘Roche’                | means Roche Products Limited.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| ‘Roche Agreements’     | mean the agreements between Roche and Lifehealth dated 29 May 1995, 04 August 1997 and 16 September 1997.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| ‘Specification’        | means, in relation to any country in the Territory, the specification for the Product as appears in the Marketing Authorisation for the Product in the relevant country in the Territory.                                                                                                                                                                                                                                                                                                                                                                                                                         |
| ‘Territory’            | means all countries in the world.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| ‘Total Net Receipts’   | means the total monies actually received by CSD resulting from sales of the Product (including, for the avoidance of doubt and without limitation, any sums actually received by CSD from any insurer in respect of any Product which may be lost, damaged and/or destroyed) after deduction of VAT and any charges payable in respect of transport or insurance included therein but shall exclude extraordinary payments made to CSD by third parties for the acquisition by those third parties of any rights in relation to the Product, such payments to be dealt with in the manner set forth in Clause 6.9 |

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- 2. Grant of rights**
- 2.1 The terms of this Agreement replace the terms of the agreement between the parties dated 18 July 1995 in so far as it relates to the Product. Otherwise the agreement dated 18 July 1995 shall remain in full force and effect.
- 2.2 For the term of this Agreement Lifehealth, to the extent that it is capable of doing so, hereby grants to CSD:
- 2.2.1 an exclusive licence to use its Information to manufacture Product and to seek, obtain, vary and maintain, where possible, in the name of Lifehealth, Marketing Authorisations and manufacturing licences for the Product; and
- 2.2.2 an exclusive licence to use, sell, market, promote or otherwise deal in the Product manufactured under the licence of clause 2.2.1 anywhere in the Territory.
- 2.3 The parties shall be entitled to sub-license any wholly owned subsidiary (as defined in s 736 of the Companies Act 1985 as amended) of the parties for so long as it is such a wholly-owned subsidiary under the rights granted or to be granted under clause 2.2 hereof provided that
- 2.3.1 the sub-licence is in writing and contains obligations on the sub-licensee at least as onerous as those set out in this Agreement; and
- 2.3.2 the parties shall remain responsible for any and all acts and/or omissions of their sub-licensees as though they were the acts and/or omissions of themselves under this Agreement; and
- 2.3.3 the party granting the sub-licence shall forthwith notify the other party in writing of any sub-licence granted pursuant to this clause and shall at the same time provide the other party with a copy of such sub-licence.
- 2.4 CSD shall have the right to grant sub-licenses of any of the rights licensed under clause 2.2 and/or appoint agents or distributors for the Product and/or to subcontract the manufacture of the Product, to a third party (save that CSD shall not have the right to sub-licence any such rights to a third party in respect of the United Kingdom) on condition that CSD obtains the prior written approval of Lifehealth to the identity of such person and the terms of their appointment. Lifehealth's approval to any such agreement and/or appointment shall not be unreasonably withheld or delayed.
- 2.5 In the case of any sub-licence granted by CSD under the terms of this Agreement the terms of such sub-licence shall not permit the sub-licensee to further sub-licence the rights granted to them save where Lifehealth has agreed in writing that a sub-licensee may have the right to further sub-licence the rights granted.
- 2.6 CSD shall use its reasonable endeavours to ensure that any person appointed by it pursuant to clause 2.4 above complies with the terms of their appointment and that such person is restrained, to the fullest extent permissible by law, from manufacturing and

distributing in competition to CSD, Lifehealth and/or other persons appointed under this Agreement in relation to the Product.

- 2.7 Both parties agree to the fullest extent permitted by law that they will not be involved directly or indirectly in the manufacture, development, production, distribution, sale, promotion and/or marketing of any Tetrabenazine product competitive to the Product without the prior written consent of the other party such consent not to be unreasonably withheld or delayed.

### **3. Technical information**

- 3.1 The parties acknowledge that, pursuant to the agreement between them dated 18 July 1995 some of the Information in Lifehealth's possession that is reasonably necessary or desirable to enable CSD to design, manufacture on a commercial scale and sell the Product has already been provided to CSD as has all technical assistance. Within 30 days of the Effective Date Lifehealth shall provide to CSD any other Information in its possession which will assist CSD to design, manufacture on a commercial scale and sell the Product and seek, obtain, vary and maintain Marketing Authorisations and manufacturing licences for the Product.
- 3.2 Lifehealth warrants that all Information disclosed to CSD by Lifehealth is, to the best of Lifehealth's knowledge and belief, accurate (provided always that Lifehealth will promptly correct any significant errors in the Information subsequently discovered by Lifehealth or CSD which CSD notifies in writing to Lifehealth and promptly inform CSD of any changes to the Information).

### **4. Improvements**

- 4.1 Each party shall forthwith disclose to the other in confidence and in such detail as that other may reasonably require all Improvements that it may develop or acquire during the term of this Agreement except in so far as such disclosure would disclose information derived from and subject to confidentiality obligations in favour of a third party.
- 4.2 Save as otherwise provided herein, Improvements arising from work carried out by and/or on behalf of either Lifehealth or CSD shall be jointly owned by the parties. Neither party shall license and/or exploit such Improvements in any way without the consent of the other party.

### **5. Confidentiality**

- 5.1 Each party agrees to maintain secret and confidential all Confidential Information and to use the same exclusively for the purposes of this Agreement, and to disclose the same only to those of its employees, contractors and sub-licensees pursuant to this Agreement (if any) to whom and to the extent that such disclosure is reasonably necessary for the purposes of this Agreement.

- 5.2 The foregoing obligations of clause 5.1 above shall not apply to Confidential Information or other information which:
- 5.2.1 is or becomes generally available to the public in eye readable form (except where due to a breach of the terms of this Agreement or the agreement dated 18th July 1995 or breach of the terms of appointment of any person appointed by either party under this Agreement); or
- 5.2.2 is required to be disclosed by an order of a court or other tribunal of competent jurisdiction.
- 5.3 The parties acknowledge that it will be necessary to disclose Confidential Information to consultants, agents, licensees, distributors or agents of CSD or any third party engaged by CSD to prepare submissions or applications to Regulatory Authorities. CSD shall ensure, prior to disclosure to any such person, that the intended recipient has signed a confidentiality agreement on terms no less onerous than the provisions in this Agreement and that such terms have been approved by Lifehealth (such approval not to be unreasonably withheld or delayed).
- 5.4 Notwithstanding the foregoing provisions the parties and any sub-licensees pursuant to this Agreement shall be entitled to disclose the Information to actual or potential customers for the Product in so far as such disclosure is reasonably necessary to promote the sale or use of Product.
- 5.5 Each party shall procure that all its employees, contractors and sub-licensees pursuant to this Agreement (if any) who have access to any Confidential Information of the other to which the obligations of clause 5.1 apply shall be made aware of and subject to these obligations.

**6. Payment**

- 6.1 CSD shall pay to Lifehealth {\*\*\*}† of the {\*\*\*}† which shall be calculated in accordance with the following:
- 6.1.1 No later than the 10<sup>th</sup> day of October of each year following the Effective Date CSD shall supply to Lifehealth an audited certificate produced by its auditors showing the Total Net Receipts and the sum of {\*\*\*}† referred to in the definition of {\*\*\*}† for the Financial Year ending 30 June in that year.
- 6.1.2 At any time following receipt of the said audited certificate Lifehealth may submit to CSD an invoice for {\*\*\*}† of the {\*\*\*}† shown therein and CSD agrees to pay to Lifehealth such of that amount as, at the date of the invoice, has not already been paid to Lifehealth, plus VAT thereon (in so far as is applicable) at the appropriate rate no later than 14 days after receipt of the said invoice.

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- 6.2 In the event that, in respect of any Financial Year, the sum of {\*\*\*}† referred to in the definition of {\*\*\*}† exceeds the Total Net Receipts for that period, CSD shall be entitled to recoup from any {\*\*\*}† payable to Lifehealth in the future a sum equal to {\*\*\*}† of the amount by which the sum of {\*\*\*}† referred to in the definition of {\*\*\*}† exceeds the Total Net Receipts for that period.
- 6.3 CSD shall account direct to Roche (or to any such other party, if any, as may be entitled thereto) for the amount of any royalties due to be paid pursuant to the Roche Agreements.
- 6.4 Should CSD become aware that the cumulative sum of the Total Net Receipts in any Financial Year of the Agreement have exceeded {\*\*\*}† CSD shall notify Lifehealth of such in writing and thereafter, subject to the following, payments to Lifehealth of its {\*\*\*}† of the {\*\*\*}† based on management accounts prepared by CSD shall be made quarterly within thirty (30) days of the end of each quarter of the Financial Year in respect of the {\*\*\*}† from the Total Net Receipts in excess of {\*\*\*}† SAVE THAT the parties acknowledge that CSD's priority is to apply such funds as are necessary to meet the obligations jointly agreed under the Marketing Plan and the Development Plan and thus CSD shall make any quarterly payments contemplated hereunder only when that can be done without jeopardising the ability of CSD to achieve the objectives jointly agreed pursuant to the Marketing Plan and the Development Plan.
- 6.5 Should CSD become aware that the cumulative sum of the Total Net Receipts in any Financial Year of the Agreement has exceeded {\*\*\*}† CSD shall notify Lifehealth of such in writing and thereafter, subject to the following, payments to Lifehealth of its {\*\*\*}† of the {\*\*\*}† based on management accounts prepared by CSD shall be made monthly within thirty (30) days of the end of each month of the Financial Year in respect of the {\*\*\*}† from the Total Net Receipts in excess of {\*\*\*}† SAVE THAT the parties acknowledge that CSD's priority is to apply such funds as are necessary to meet the obligations jointly agreed under the Development Plan and the Marketing Plan and thus CSD shall make any monthly payments contemplated hereunder only when that can be done without jeopardising the ability of CSD to achieve the objectives jointly agreed in the Marketing Plan and the Development Plan.
- 6.6 The parties agree that the {\*\*\*}† is to be shared {\*\*\*}† between the parties subject to the terms set forth in this Agreement. If interim payments have been made to Lifehealth under clauses 6.4 and/or 6.5 the parties shall carry out an appropriate reconciliation once the {\*\*\*}† has been determined in accordance with clauses 6.1 and 7.2 so that each party receives {\*\*\*}† of the {\*\*\*}† for any Financial Year and both parties agree to make any payments that are necessary to achieve that end. All sums due under this Agreement shall be paid in Sterling to the credit of the recipient's bank account to be designated in writing by the recipient and shall be made in full without deduction of taxes charges and other duties that may be imposed except in so far as any such deduction may be credited in full by Lifehealth against Lifehealth's own tax liabilities (except in relation to VAT). The

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parties agree to co-operate in all respects necessary to take advantage of such double taxation agreements as may be available.

- 6.7 If part of the Total Net Receipts shall not be received by CSD in Sterling then it shall be converted to Sterling for the purposes of calculation of the Total Net Receipts at the exchange rate at which CSD does actually convert it to Sterling or if it is not so converted within the relevant period the exchange rate shall be deemed to be the spot rate for Sterling quoted by Lifehealth's bankers at close of business on the business day immediately on which the monies were received by CSD.
- 6.8 The parties shall, save as provided herein, share equally any extraordinary payments made to CSD by third parties for the acquisition by those third parties of any rights pertaining to the Product. Save as provided herein, CSD shall pay to Lifehealth, within seven (7) days of clearance of any such extraordinary payment contemplated herein, an amount equal to {\*\*\*}† of that extraordinary payment.
- 6.9 If as a requirement of the agreement giving rise to an extraordinary payment CSD is obliged to incur costs and/or expenses, including, but not limited to, a requirement to develop or further develop the Product, which has not already been provided for in the allocation of funds to implement the Development Plan and/or Marketing Plan then the parties shall meet to agree any necessary revisions to the Development Plan and/or Marketing Plan as appropriate.
- 6.10 If at the time of receipt of any extraordinary payment there exists a carried forward shortfall under clause 6.2 and/or the agreement giving rise to the extraordinary payment imposes an immediate obligation upon CSD to expend any costs or expenses not provided for in the Development Plan and/or Marketing Plan which cannot be met out of the then Total Net Receipts then CSD shall be entitled to deduct and retain from the extraordinary payment the amount of the shortfall and/or such costs and expenses and CSD shall pay to Lifehealth, within seven (7) days of receipt of the extraordinary payment {\*\*\*}† of the balance remaining of the extraordinary payment. The amount deducted shall form part of the Total Net Receipts and the amount of any immediate actual costs and expenses incurred shall be included in those items {\*\*\*}† the Total Net Receipts to give the {\*\*\*}†.

## **7. Records and reports**

- 7.1 CSD agrees to keep true and accurate records and books of account containing all data necessary for the determination of Total Net Receipts and the {\*\*\*}† which records and books of account shall upon reasonable notice of Lifehealth be open at all reasonable times during business hours for inspection by Lifehealth or an independent accountant selected by Lifehealth and acceptable to CSD (which acceptance shall not be unreasonably withheld) for the purpose of verifying the accuracy of CSD's reports

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hereunder. The accountant may take copies of the records and books of account but shall not disclose to Lifehealth any information relating to the business or affairs of CSD other than such information as relates to the calculation of the Total Net Receipts and {\*\*\*}†. Lifehealth shall be solely responsible for the costs of the accountant.

- 7.2 If the independent accountant appointed pursuant to clause 7.1 above certifies that the amount of royalties due to Lifehealth in respect of any period differs from the amount of royalties actually paid to Lifehealth for that period then CSD shall forthwith pay such shortfall plus Interest thereon to Lifehealth upon Lifehealth serving a copy of such certificate upon CSD. If the shortfall for that period exceeds five percent (5%) of the amount actually paid for that period and the reason for such variation is the failure of CSD to provide to its auditors correct or sufficient information then CSD shall also reimburse Lifehealth for the costs of the independent accountant.
- 7.3 CSD shall maintain a register of agreements entered into in carrying out its obligations under this agreement including but not limited to all sub-licence, agency, distribution confidentiality, consultancy, technical and contract manufacturing agreements. Lifehealth shall have the right to inspect said register of agreements during normal working hours and on the provision of reasonable notice. In the event that Lifehealth signs a confidentiality or other such agreement pertaining to the Product, the Information or the Improvements, it shall provide a copy of such to CSD and CSD shall place of copy of any such agreement in the register of agreements.
- 7.4 Lifehealth agrees to maintain confidential all financial information received with respect to CSD's operations pursuant to the foregoing clauses 6.1 and 7.1.

## **8. Regulatory Approvals and Development Plan**

- 8.1 As soon as practicable following the Effective Date the parties shall agree the Development Plan. The Development Plan shall address, amongst other things, the proposed activities of the parties with regard to the seeking, obtaining, varying and maintaining of Marketing Authorisations, the costs of implementing the proposed activities, the time frame within which the proposed activities are to be achieved, the procedure for the review of the proposed objectives and a non-binding forecast by CSD of the Total Net Receipts and {\*\*\*}† for the next Financial Year of the Agreement and a non-binding forecast of its anticipated expenditure in carrying out its obligations pursuant to this Agreement and the Development Plan for the next two (2) Financial Years (hereinafter "the Anticipated Expenditure"). The Anticipated Expenditure for any year should not exceed the forecast {\*\*\*}† for that year except by written agreement of the parties.

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- 8.2 The Development Plan shall be reviewed and revised bi-monthly at meetings which shall take place between the parties. At those bi-monthly meetings the parties shall agree the level of expenditure to be committed to the Development Plan.
- 8.3 Lifehealth shall during the agreement of the Development Plan, at each revision of the Development Plan and otherwise upon request by CSD provide advice concerning the Product and such other strategic advice as is required or requested.
- 8.4 Should CSD encounter any obstacle to achieving one of the objectives in the Development Plan such that achieving that objective becomes, in the opinion of CSD, economically undesirable, the parties shall meet to discuss the difficulty encountered by CSD and endeavour to determine a strategy to overcome the difficulty.
- 8.5 Lifehealth shall provide to CSD, at the cost of Lifehealth, all information in its possession regarding the Product so as to assist CSD in obtaining Marketing Authorisations.
- 8.6 CSD shall be responsible, either by itself or through agents, consultants, distributors or licensees appointed by CSD with the prior approval of Lifehealth, for preparing and submitting all applications for Marketing Authorisations and/or manufacturing licences and variations or renewals of the same in countries in the Territory save that Lifehealth shall provide such assistance in carrying out the said tasks as CSD reasonably requests.
- 8.7 All Marketing Authorisations shall be in the name of Lifehealth unless such is not possible or the parties agree otherwise. CSD shall ensure, to the extent that it is permissible under the laws of the relevant part of the Territory, that all Marketing Authorisations which are not in the name of Lifehealth shall be capable of assignment to Lifehealth or its nominee.
- 8.8 Upon termination of the agreement with the holder of the Marketing Authorisation and the request of Lifehealth, CSD shall procure, to the extent that it is legally permissible to do so and at the cost of Lifehealth, that the relevant Marketing Authorisation is assigned to Lifehealth or its nominee. Upon the termination of this Agreement and the request of Lifehealth, CSD shall procure, to the extent that it is legally permissible to do so and at the cost of Lifehealth, that all Marketing Authorisations are assigned to Lifehealth or its nominee.
- 8.9 For the avoidance of doubt, CSD shall be in control of the day to day conduct and implementation of the Development Plan.
- 8.10 In the event that CSD decides, with the written agreement of Lifehealth, to pay any sum in respect of any objective in the Development Plan or to bring about commercial advantage to the parties in respect of the sales or distribution of the Product which will

result in the sum of {\*\*\*}† referred to in the definition of {\*\*\*}† exceeding the Total Net Receipts for that period, the provisions of clause 6.2 shall apply.

- 8.11 Should any regulatory authority, court of law or governmental body or agency in any country in the Territory require discontinuance of the sale of the Product in that country, then the Product shall be withdrawn from sale in that country and the associated costs (including the repurchase of relevant stock Product where commercially desirable or CSD is obliged to do so) shall be {\*\*\*}† the Total Net Receipts for the purposes of calculating the {\*\*\*}†.
- 8.12 Should the parties :
  - 8.12.1 agree that the Product has reached the end of its useful Commercial Life in the Territory or any part thereof; or
  - 8.12.2 agree to cease implementation of the Development Planthey shall ensure that all relevant costs have been paid from the Total Net Receipts and to this end shall produce all necessary statements and make all necessary payments.

**9. Marketing Plan**

- 9.1 The parties shall, within ninety (90) days of the Effective Date, agree the Marketing Plan setting forth details of the manner in which the Product will be marketed in the Territory for the immediately succeeding five (5) years of the Term of this Agreement.
- 9.2 Within sixty (60) days of the each anniversary of the Effective Date the parties shall review and revise the Marketing Plan by mutual agreement.
- 9.3 The parties shall, in determining the Marketing Plan and any amendment to or revision of the Marketing Plan, take account of the reasonable strategic importance of any country in the Territory to the overall marketing strategy for the Product, the likely commercial return to be made in marketing the Product in a particular country in the Territory and the financial resources available to the parties to market the Product in a particular country in the Territory.
- 9.4 In the event that Lifehealth, for {\*\*\*}† years, seeks to revise the Marketing Plan so as to include commencement of marketing of the Product in a particular country in the Territory and CSD, for those {\*\*\*}† does not agree with such a revision and the reason for CSD’s unwillingness to agree to the revision relates to

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factors other than those set forth in clause 9.3, Lifehealth may, by written notice, terminate this Agreement only insofar as it relates to the country in issue.

**10. Performance**

- 10.1 During the continuance of this Agreement CSD shall:
  - 10.1.1 carry out the Marketing Plan and the Development Plan as widely as its resources reasonably permit;
  - 10.1.2 ensure that all Product supplied by CSD complies with the Specifications and is manufactured in accordance with the requirements of any relevant Regulatory Authority and shall upon reasonable notice from Lifehealth give Lifehealth or its authorised representative access at any reasonable time to the premises of CSD for the purpose of ensuring that CSD is observing these obligations;
  - 10.1.3 ensure that it complies with all requirements of any Regulatory Authority in the Territory in so far as such requirements relate to an acknowledgement to the effect that the Product is subject to a licence from Lifehealth; and
  - 10.1.4 not act as agent of Lifehealth and specifically not give any indication that it is acting otherwise than as principal and in advertising or selling Product not make any representation or give any warranty on behalf of Lifehealth.

**11. Indemnities and Insurance**

- 11.1 The parties have agreed that they shall be jointly liable in equal shares for any liability arising pursuant to this Agreement and accordingly the parties agree to indemnify and keep indemnified the other party against any and all costs, damages, claims, expenses and/or other liabilities arising from any third party claim (whether in contract, tort or otherwise) concerning:-
  - 11.1.1 the Product;
  - 11.1.2 the Information;
  - 11.1.3 the manufacture of the Product;
  - 11.1.4 the use of the Product;
  - 11.1.5 the packaging of the Product;
  - 11.1.6 the sale, distribution, marketing or promotion of the Product;
  - 11.1.7 the infringement of the intellectual rights of a third party by the acts set forth previously in this sub-clause, the Product or the Information; and/or
  - 11.1.8 the negligence or wilful malfeasance of either party;

provided that the above indemnity shall not apply to any such liabilities which arise as a result of any breach of any contract, any breach of duty of care and/or any acts and/or omissions of the party claiming under the indemnity which have not been approved by the party not claiming under the indemnity.

- 11.2 In relation to clause 11.1 above a matter agreed in the Development Plan, Marketing Plan or otherwise agreed in writing or at any meeting between the parties shall be deemed approved for the purposes of clause 11.1 provided that full disclosure of all relevant information and factors of which each party is aware have been made to the other party before reaching such agreement.
- 11.3 In the event that a claim is made by any third party in any country in the Territory against either of the parties relating to this Agreement details of the claim shall be sent, as soon as is practicable, by the party that received the claim to the other party. The parties shall discuss and agree a course of action for dealing with the claim including but not limited to whether the claim will be defended and the means by which the claim will be defended, how the parties will pay the legal costs of the action and how the parties will pay any award of damages and/or costs made against either of them.
- 11.4 Both parties shall ensure that they have in place and maintain product liability insurance with a reputable insurer to cover the risks associated with this Agreement to the value of {\*\*\*}†. Either party shall, on the request of the other party, provide evidence of the existence and maintenance of such insurance. If possible, such insurance shall be in the joint names of the parties, or in the alternative note the interest of the other party. The cost of taking out and maintaining such insurance shall be an expense to be deducted from the Total Net Receipts. Each year the parties shall review and if necessary alter the extent of cover under the joint insurance policy.
- 11.5 Neither party shall be liable to the other to the extent that the other party’s loss, claim, damages, costs, expenses, award and/or other liability is covered by a policy of insurance.
- 11.6 Nothing in this Agreement shall exclude and/or limit the liability of either party for death or personal injury due to its negligence or any other liability which it is not permitted to exclude or limit as a matter of law.
- 12. Intellectual property**
- 12.1 To the best of Lifehealth’s knowledge and belief the exercise of the rights granted or to be granted to CSD hereunder will not result in the infringement of valid patents or other intellectual property rights of third parties.
- 12.2 Where the parties have developed or acquired an Improvement to which clause 4 above applies they shall not publish the same or do anything that might prejudice the validity of

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any patent that might subsequently be granted on it until the parties have agreed on whether or not patent protection will be sought for the Improvement.

12.3 CSD shall sell the Product under its generic name unless the parties mutually agree otherwise.

**13. Packaging**

13.1 CSD shall be responsible for ensuring that all packaging, labelling, inserts and Patient Information Leaflets comply with the laws and requirements of Regulatory Authorities of the countries in the Territory where the Product is sold.

13.2 CSD shall provide to Lifehealth a printers’ proofs of the final draft of any labelling, packaging, package inserts and Product Information Leaflets for approval. For countries in the Territory where Lifehealth is the holder of the Marketing Authorisation, Lifehealth shall notify CSD within five (5) working days if it requires any changes to be made to the printers’ proofs unless Lifehealth has notified CSD that its representative who would check such printer’s proof is unavailable for any period due to holiday or illness in which case such period of 5 days shall not commence until that person returns to work. Failure by Lifehealth to provide such notice within the required time period shall constitute acceptance of the printers’ proofs.

13.3 Any substantive changes in the packaging shall be discussed and agreed between the parties pursuant to the Development Plan

**14. Warranties**

14.1 In addition to any other warranties and representations set forth elsewhere in this Agreement, Lifehealth hereby warrants:

14.1.1 that it has acquired the rights to manufacture, use, sell and distribute the Product from Roche as set forth in the recitals to this Agreement;

14.1.2 that it is not aware of any issued or pending patent or any other intellectual property right of any third party which could be infringed by CSD in carrying out its obligations under this Agreement;

14.1.3 that it has no knowledge of the existence of any data, clinical or otherwise, which suggests there may exist safety and/or efficacy concerns with the Product for any application of the Product; and

14.1.4 that it has not developed or acquired the rights to any product, device or system that is or is likely to be directly competitive with the Product.

14.2 In addition to any representations and warranties set forth elsewhere in this Agreement CSD hereby warrants:-

- 14.2.1 that it will comply with all laws pertaining to the packaging, manufacture, marketing or sale of the Product in any country in the Territory in which it manufactures and/or sells the Product;
  - 14.2.2 that it will manufacture the Product or have it manufactured to Specification and in accordance with any applicable requirements of any Regulatory Authority in the countries in which the Product is manufactured and/or sold; and
  - 14.2.3 that it has not developed or acquired the rights to any product, device or system that is or is likely to be directly competitive with the Product.
- 14.3 In addition to any representations and warranties set forth elsewhere in this Agreement, each party hereby warrants to the other:-
- 14.3.1 that they have the corporate power and authority to execute and deliver this agreement and to carry out all the terms and provisions hereof in so far as they apply to each other respectively;
  - 14.3.2 that they are not prevented from entering into any of the obligations set forth in this Agreement; and
  - 14.3.3 that the execution and delivery of this Agreement has been duly authorised by all necessary corporate action.

**15. Product Recall and Adverse Events Procedures**

- 15.1 In the event that it proves necessary to recall any quantity of the Product, the parties shall follow the product recall procedure set forth in Schedule 2 to this Agreement as amended from time to time.
- 15.2 Should any adverse event occur concerning the Product the parties shall follow the procedure set forth in Schedule 1 to this Agreement as amended from time to time.

**16. Term and termination**

- 16.1 Unless terminated earlier in accordance with the following provisions of this clause this Agreement shall continue for the Commercial Life of the Product in the Territory.
- 16.2 If either party is in breach of any obligation on it hereunder and, in the case of a breach capable of remedy, it shall not have been remedied by the defaulting party within 30 days of written notice specifying the breach and requiring its remedy, or if either party becomes insolvent, has a receiver appointed over the whole or any part of its assets, enters into any compound with creditors, or has an order made or resolution passed for it to be wound up (otherwise than in furtherance of a scheme for amalgamation or reconstruction) then the other party or in the case of breach the party not in breach of the obligation or condition may forthwith terminate this Agreement by written notice without prejudice to the accrued rights of either party.

- 16.3 Termination of this Agreement for any reason shall not bring to an end:
- 16.3.1 the confidentiality obligations on the parties hereto;
  - 16.3.2 CSD's obligations to pay sums which have accrued due or which will become due in respect of sales of the Product;
  - 16.3.3 the obligations on the parties pursuant to clauses 4, 5, 6, 7, 8.7, 11, and 16;
- 16.4 On termination of this Agreement for any reason CSD shall continue to have the right for a period of 12 months from the date of termination to complete deliveries on contracts in force at that date and to dispose of Product already manufactured subject to payment to Lifehealth of sums thereon in accordance with the terms set forth in this Agreement.
- 16.5 On termination of this Agreement for any reason CSD shall offer to Lifehealth, save as is necessary for the performance of obligations under clause 16.4, at cost all stocks of Product and promotional and other literature relating thereto in its possession or control and shall provide Lifehealth with all reasonable facilities to inspect the same.
- 16.6 On termination of this Agreement for any reason CSD shall deliver up to Lifehealth all production manuals and all other documents or materials whether human or machine readable and whether stored electronically or otherwise (including copies thereof) in its possession or control containing Information remaining subject to the confidentiality obligations of clause 5 hereof.
- 16.7 On termination of this Agreement for any reason the parties shall undertake an account to each other for sums paid pursuant to this Agreement in the same manner as would normally take place after each Financial Year of this Agreement under clause 6 hereof.
- 16.8 In the event of termination of this Agreement for breach of the Agreement the party in breach shall cease to have the right to utilise the Improvements and all rights in the Improvements shall vest in the party not in breach.
- 16.9 On the termination of this Agreement for any reason CSD (save where expressly permitted by this Agreement) shall not anywhere in the Territory for a period of 12 months after such termination be involved directly or indirectly in the manufacture, development, production, distribution, sale, promotion and/or marketing of any Product in competition with Lifehealth and/or its agents, licensees and distributors.
- 16.10 For the avoidance of doubt on the termination of this Agreement for any reason CSD shall not use any Confidential Information (for so long as it remains confidential pursuant to clause 5.2) directly or indirectly in the manufacture, development, production, distribution, sale, promotion and/or marketing of any Product.
- 17. Force majeure**
- 17.1 If either party to this Agreement is prevented or delayed in the performance of any of its obligations under this Agreement by force majeure, and if such party gives written notice



thereof to the other party specifying the matters constituting force majeure, together with such evidence as it reasonably can give and specifying the period for which it is estimated that such prevention or delay will continue then the party in question shall be excused the performance or the punctual performance as the case may be as from the date of such notice for so long as such cause of prevention or delay shall continue up to a maximum period of 3 months.

- 17.2 If the event of force majeure persists for a period of 3 months from the date of notification of such as provided for in clause 17.1 above, either party may, by written notice to the other, terminate this Agreement.
- 17.3 For the purpose of this Agreement ‘force majeure’ shall be deemed to be any cause affecting the performance of this Agreement arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of the party to perform and without prejudice to the generality thereof shall include the following:
- 17.3.1 strikes, lock-outs or other industrial action;
  - 17.3.2 civil commotion, riot, invasion, war threat or preparation for war;
  - 17.3.3 fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural physical disaster;
  - 17.3.4 impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport; and
  - 17.3.5 political interference with the normal operations of any party.

## **18. General**

- 18.1 This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective legal successors but shall not otherwise be assignable by either party without the prior written consent of the other which consent shall not be unreasonably withheld.
- 18.2 This Agreement constitutes the entire agreement and understanding of the parties and supersedes all prior written or oral representations agreements or understandings between them relating to the subject matter of this Agreement other than any false misrepresentation made by a party to induce the other party to enter into this Agreement.
- 18.3 No variation or amendment of this Agreement shall bind either party unless made in writing and agreed to in writing by duly authorised officers of both parties.
- 18.4 If any provision of this Agreement is agreed by the parties to be illegal void or unenforceable under any law that is applicable hereto or if any court or other authority of competent jurisdiction in a final decision so determines this Agreement shall continue in force save that such provision shall be deemed to be excised herefrom with effect from the date of such agreement or decision or such earlier date as the parties may agree.

- 18.5 The headings in this Agreement are for convenience only and are not intended to have any legal effect.
- 18.6 A failure by either party hereto to exercise or enforce any rights conferred upon it by this Agreement shall not be deemed to be a waiver of any such rights or operate so as to bar the exercise or enforcement thereof at any subsequent time or times.
- 18.7 Should Lifehealth receive an offer from a third party to acquire a controlling interest in it or an offer from a third party to purchase its business relating to the Product or should Lifehealth decide that it wishes to sell its business relating to the Product it must provide CSD with notice of the offer or the decision and CSD shall have first option to negotiate to either purchase the business of or controlling interest in Lifehealth. If CSD and Lifehealth do not agree terms for the purchase of the business of or a controlling interest in Lifehealth within ninety (90) days of CSD exercising its option hereunder, Lifehealth shall be entitled to continue negotiations with the aforementioned third party or any other third party for the acquisition by those third parties of the business of or controlling interest in Lifehealth.

**19. Notices**

- 19.1 Any notice required to be given hereunder by either party to the other shall be in writing and shall be served by sending the same by registered or recorded delivery post to the address of the other party as given herein or to such other address as that party may have previously notified to the party giving notice as its address for such service.
- 19.2 All notices documents communications and any other data to be provided under this Agreement shall be in the English language unless otherwise agreed.

**20. Governing law and disputes**

- 20.1 The construction validity and performance of this Agreement shall be governed in all respects by English Law.
- 20.2 All disputes arising in any way out of or affecting this Agreement shall be subject to the non-exclusive jurisdiction of the English courts to which the parties hereto agree to submit.

IN WITNESS WHEREOF this Agreement was signed by the parties on the day of the year first hereinbefore written

|                            |   |                |
|----------------------------|---|----------------|
| Signed by Mark Evans       | ) |                |
| for and on behalf of       | ) | /s/ MARK EVANS |
| <b>CAMBRIDGE SELFCARE</b>  | ) |                |
| <b>DIAGNOSTICS LIMITED</b> | ) | /s/ P. MURRAY  |
| in the presence of:        |   |                |

Signed by  
for and on behalf of  
**LIFEHEALTH LIMITED**  
in the presence of

)  
)  
) /s/ P. MURRAY

## **SCHEDULE 1**

### **ADVERSE EXPERIENCE REPORTING AND PROVISION OF MEDICAL INFORMATION**

#### **1. ADVERSE EXPERIENCE REPORTING**

CSD shall use its reasonable endeavours to obtain and record written medical confirmation and relevant detail of all suspected or alleged adverse reactions to the Product reported to CSD or coming to its attention and shall ensure by means of a written log that all such cases and the dossiers of information relating to them are uniquely identified and retrievable.

##### **1.2 CSD in accordance with the attached reporting procedure:-**

- (a) shall comply with all legal and regulatory requirements in those countries in the Territory in which the Product is sold concerning the reporting of adverse experiences to the Product;
- (b) shall use all reasonable efforts to inform Lifehealth within one working day CSD and Lifehealth consult and agree course of action of all serious adverse reactions to the Product of which it is aware or made aware of. In the event that a serious adverse reaction is recorded, CSD and Lifehealth shall consult and agree a course of action to deal with the serious adverse reaction;
- (c) shall respond promptly to reasonable requests from Lifehealth for further information on any adverse experience reported under (b) above; and
- (d) shall provide to Lifehealth every six (6) months a report summarising all adverse experiences or a report confirming no adverse experiences. Lifehealth and CSD shall review the report provided hereunder and identify trends or changes in pattern of adverse experience and agree a course of action to respond to any such trends or changes;

#### **2. PROVISION OF MEDICAL INFORMATION**

2.1 CSD shall provide, in so far as it is able, answers to questions raised by doctors or by paramedical personnel or by any other persons entitled to such information.

2.2 Each party shall provide to the other as soon as is practicable after it becomes aware of any toxicological or any other information insofar as it relates to the Product which is relevant to the use, indications and contra-indications or safety of the Product.

2.3 Lifehealth shall notify CSD of:

- (a) any revision of clinical recommendations and precautions relevant to the Product; and

- (b) toxicological or any other information insofar as it relates to the Product which becomes available to Lifehealth which is relevant to the use, indications and contra-indications or safety of the Product.
- 2.4 During the term of this Agreement Lifehealth shall use its reasonable efforts to provide CSD with relevant data and access to Lifehealth’s staff as CSD reasonably request to assist CSD properly to answer questions relating to the Product raised by doctors or by paramedical personnel or by any other persons entitled to such information.
- 3. **PRODUCT COMPLAINTS**
- 3.1 CSD shall provide to Lifehealth, as soon as CSD becomes aware of it, any information about any complaint received from users of the Product.

**SPONTANEOUS ADVERSE EVENT (ADE) REPORTING PROCEDURE - INDIVIDUAL CASE REPORTS**

All Adverse Event (ADE) reports provided to Lifehealth should be directed to a named individual, nominated by CSD. The nominated contact will be responsible for all communication between Lifehealth and CSD.

Standard form ADE1/C shall be used to record the initial report of an adverse experience. As much information as possible about the ADE shall be requested and recorded.

Each ADE Report shall be assigned an identifying number by the nominated contact. All serious ADEs reported to CSD are to be forwarded as soon as possible, i.e. on the same working day.

CSD shall follow up an ADE report to obtain additional details, and where the reporter is a non health professional, medical confirmation. Form ADE1/D may be used to obtain follow-up information and written confirmation of the initial report.

CSD will log the initial report into its centralised procedure, and assign a central reference number. Lifehealth will acknowledge receipt of the report and advise CSD of the central reference number assigned.

CSD will submit the ADE report to Regulatory Authorities in all countries where the Product is sold, including the Regulatory Authority in the country where the report originated, according to regulatory requirements. Lifehealth will be copied on any correspondence with any Regulatory Authority.

**SCHEDULE 2**  
**PRODUCT RECALL PROCEDURE**

**Initiating Product Recall**

CSD shall carry out a recall of the Product whenever so directed or requested by a Regulatory Authority or other governmental authority in the Territory. In the absence of any such direction or request CSD shall only carry out a recall of the Product when so requested by Lifehealth. CSD shall immediately inform Lifehealth of any request from a Regulatory Authority for the Product to be recalled. The cost of any recall of Product shall be an expense to be {\*\*\*}† the Total Net Receipts in the calculation of the {\*\*\*}†

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29<sup>th</sup> October, 2002

Stephen Jones  
Lifehealth Limited  
23 Winkfield Road  
Windsor  
Berkshire  
SL4 4BA

Dear Stephen,

**ISOMERIC DEVELOPMENTS OF TETRABENAZINE**

I thought it would be useful for both of us to have recorded in writing our agreement reached on 4 July concerning the participation of Lifehealth in the proposed isomeric developments of tetrabenazine. As you know, there were two proposed isomeric developments that we discussed. The first was the development of the isomers of the *trans* form of tetrabenazine and the second involved the development of the isomers of dihydrotetrabenazine derived from the *cis* form of tetrabenazine.

**The isomers of the *trans* form of tetrabenazine**

It was agreed that Lifehealth and Cambridge would {\*\*\*}† the costs of this development. We will obviously keep you fully apprised of all aspects of this development as we progress and we welcome your input and approval on the direction and costs of that development. This development will constitute an “Improvement” pursuant to our existing licence agreement and as a result, the intellectual property rights will be jointly owned by Lifehealth and Cambridge and all other restrictions regarding licensing of those rights set forth in the various clauses of our agreement will apply.

**Development of the isomers of dihydrotetrabenazine resulting from the *cis* form of tetrabenazine**

When we discussed this at the meeting on 4 July, you expressed the view that Lifehealth did not want to be involved, at this stage, in this development and did not want to share with Cambridge

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any costs of the development. You also said that you and Lifehealth had no objections to Cambridge pursuing that development at its own cost. We have decided that we will continue with that development. Cambridge will bear all costs of this development and we have already put in place accounting measures to separate the costs of this project from those associated with the “trans” project. We would also like to confirm that, as this development will fall outside the licence agreement, Cambridge will own all intellectual property rights arising from this development.

---



I would be grateful if you could confirm your agreement to the above by return letter.

Very best wishes,

Yours sincerely,

/s/ MARK EVANS

**MARK EVANS**

I hereby confirm my agreement to the above

/s/ STEPHEN JONES                      1/11/02

FOR LIFEHEALTH LTD

**\_\_\_\_\_**

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31<sup>st</sup> March, 2004

Stephen Jones,  
Forest Edge,  
23 Winkfield Road,  
Windsor,  
Berks.  
SL4 4BA

Dear Stephen,

Cambridge has, with the approval of Lifehealth, entered into a revised agreement with Celltech Pharma S.A. regarding the right to distribute tetrabenazine in Spain and Portugal (hereinafter “the Spanish Agreement”). The Spanish Agreement provides for both the payment to Cambridge by Celltech of an upfront sum in consideration for development costs and the possibility of Cambridge having to refund all or part of that payment in certain circumstances.

Provision is made in the 1998 agreement between Lifehealth and Cambridge for the sharing of any up front payment but no provision exists to cover the situation whereby any up front payment has to be refunded in whole or in part. Lifehealth and Cambridge hereby agree that the upfront payment received from Celletech shall be shared in accordance with clause 6.8. Lifehealth and Cambridge also agree to {\*\*\*}† any reimbursement of the whole or any part of the payment received from Celltech. In the event that such a reimbursement is rightly due pursuant to the provisions of the Spanish Agreement Cambridge shall inform Lifehealth of such and Lifehealth shall pay to Cambridge an amount equal to {\*\*\*}† of the sum to be refunded to Celltech. Cambridge shall thereafter make payment to Celltech of the whole of the sum to be refunded.

Please indicate your agreement to such by signing in the space provided and returning to us this letter.

Very best wishes,

/s/ MARK EVANS

MARK EVANS

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For and on behalf of  
CAMBRIDGE LABORATORIES LIMITED

/s/ STEPHEN JONES  
STEPHEN JONES

For and on behalf of  
LIFEHEALTH LIMITED

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12<sup>th</sup> August, 2004

Stephen Jones  
Lifehealth Limited  
23 Winkfield Road  
Windsor  
Berkshire  
SL4 4BA

Dear Stephen

Cambridge Ireland

Thank you for your letter of 9th August. We appreciate your concerns. We will ensure, and shall put systems in place to ensure, that where the new group structure of Cambridge results in duplication of costs or incremental costs, the additional costs, over and above what would have been taken into account in the calculation of the {\*\*\*}† had Cambridge not changed its structure, shall not be taken into account in that calculation of the {\*\*\*}† under the contract.

On the question of the currency, the exchange rate issue from the US sales will be no different to what it is now. Cambridge Ireland (CLI) will be paid in \$US the same way Cambridge Laboratories (CLUK) is now. Clause 6.7 regarding times and rates of conversions to Sterling will continue to apply.

With regard to legal costs Allistair is keeping all costs relating to the restructuring entirely separate from general tetrabenazine related costs so there is no possibility of overlap. There won't be many other instances where legal costs would be incurred in relation to a tetrabenazine related matters that wouldn't have been incurred in the normal way.

As the details of this arrangement are now set out in four different letters I think you will agree it is in both our interests to record everything in one document that we can both sign.

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Overall Structure

We are moving certain operations to Ireland to avail ourselves of some of the tax advantages available in Ireland. With regard to tetrabenazine this means procurement, sales and dossier development work will be moved to CLI.

All the distribution agreements for tetrabenazine currently in the name of CLUK will be assigned to CLI and CLI will assume all those obligations. All future distribution agreements for tetrabenazine will be entered into by CLI. CLI will take over the obligations of CLUK under the agreements for the manufacture of tetrabenazine. CLI will also enter into an agreement for distribution of certain products in the UK, including tetrabenazine, with CLUK. CLI will enter into a services agreement with CLUK pursuant to which CLUK will provide certain services to CLI including pharmacovigilance, medical information and scientific services.

Agreements for Assignment

With regard to tetrabenazine, you have agreed to the assignment of the following agreements from CLUK to CLI:

- 1. The original license agreements between CLUK and Lifehealth of 1995 and 1998 and all amendments, alterations and side letters.
- 2. The Synkem, Pharmaserve and Boots manufacturing agreements and all amendments, side letters, alterations and technical agreements. Please note that the new manufacturing agreement to replace the one with Boots will be in the name of CLI.
- 3. All tetrabenazine distribution agreements and letters of appointment currently in force and all amendments, alterations and side letters. This means our agreements and arrangements with AOP, AFT, Orphan Australia, Medifront, Medilink, Megapharm, OPI, Celltech Spain, Prestwick (both the US agreement and the Canadian), Paesel Lorei, Fagron and Chiesi. Please note that future distribution agreements will be in the name of CLI.

Calculation of {\*\*\*}†

With the exception of sales in the UK, all revenue will be earned by CLI in the same way it is now earned by CLUK.

CLI will obviously also be incurring a number of the costs that are deductible in the calculation of the {\*\*\*}† However, CLUK will also be incurring some of those costs. As agreed we will ensure, and shall put systems in place to ensure, that where the new group structure of Cambridge results in duplication of costs or incremental costs, the additional costs, over and above what would have been taken into account in the calculation of the {\*\*\*}† had Cambridge not changed its structure, shall not be taken into account in that calculation of the {\*\*\*}† under the contract.

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Running through the deductibles set out in the definition:

{\*\*\*}†

Sales in the UK

CLUK will continue to be responsible for UK sales and sales of the existing UK stock whether in the UK or elsewhere.

In respect of the UK sales and any other sales of the existing UK stock the figure used for calculations will be the revenue earned by CLUK, not CLI. We will of course not be double accounting in respect of the UK sales so you will not be {\*\*\*}† of both CLI and CLUK arising from UK sales and other sales of the existing UK stock.

The costs of the existing UK stock will be a CLUK cost that will be accounted for in the usual way. Once that stock has run out CLI will be incurring the cost of goods and that cost will be accounted for in the usual way.

You will obviously see and have the right to comment on the distribution agreement that will be put in place between CLI and CLUK.

Accounting to you

We will provide you with a group reconciliation statement concerning {\*\*\*}† that reflects the above. That statement will set out how much you have to invoice to both CLI and CLUK. You will receive payments from both CLUK and CLI.

Consent

Could you please, on behalf of Lifehealth Limited, indicate Lifehealth’s consent to these assignments taking place, the sub-distribution agreement between CLI and CLUK and the amendment to the agreement reflecting the new accounting arrangements by signing this letter in the space provided and returning it to me.

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Many thanks and very best wishes.

Yours sincerely

/s/ MARK EVANS

Mark Evans  
Chief Executive Officer

Signed by

/s/ STEPHEN JONES

Stephen Jones  
Director  
Lifehealth Limited

Dated: 15 / 8 / 04

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LifeHealth Limited  
23 Winkfield Road  
Windsor  
SL4 4BA  
UK  
Attention: Stephen Jones

June 19, 2009

Dear Stephen:

In connection with the sale by Cambridge Laboratories (Ireland) Limited (“Cambridge”) of its worldwide rights in and to tetrabenazine and related assets (the “TBZ Business”) to Biovail Laboratories International (Barbados) SRL (“Biovail”) (the “Transaction”), we are writing to confirm our understanding on certain points relating to the TBZ Business.

Reference is made to the Licence Agreement between LifeHealth Limited (“Lifehealth”) and Cambridge, dated December 10, 1998 (the “1998 Lifehealth Licence”), as amended by Amendment No. 1, dated 29 October 2002, Amendment No. 2, dated 31 March 2004, and Amendment No. 3, dated 12 August 2004 (collectively, the “1998 Lifehealth Licence Amendments”, and the 1998 Lifehealth Licence, as amended by the 1998 Lifehealth Licence Amendments, is referred to as the “1998 Amended Lifehealth Licence”), and the Licence and Consent Agreement between Cambridge and Lifehealth, dated September 22, 2006 (the “2006 Lifehealth Licence”, and, the 2006 Lifehealth Licence together with the 1998 Amended Lifehealth Licence is referred to as the “LifeHealth Agreements”). Capitalized terms used but not otherwise defined herein shall have the meanings attributed to them in the LifeHealth Agreements.

We confirm our commitment to proceed with the development of a second indication for the controlled release formulation of tetrabenazine (the “CR Formulation”), subject to our determination, after satisfactory due diligence, that it is commercially and clinically reasonable to so proceed. The exact indication to be developed will be determined by agreement between Lifehealth and Biovail, after further review and consideration, and may include tardive dyskinesia, dystonia or some other indication. We also confirm that, conditional on the closing of the Transaction, the costs associated with the development of the CR Formulation, as between Lifehealth and Biovail, shall be shared as follows:

- Development costs associated with the CR Formulation for Tourette Syndrome will be shared by Lifehealth and Biovail (in the manner contemplated by the LifeHealth Agreements);
-



- Biovail will be responsible for {\*\*\*}† associated with the clinical development in the United States of the second indication of the CR Formulation and such costs will not be {\*\*\*}† Total Net Receipts for the purposes of calculating {\*\*\*}†;
- Lifehealth and Biovail will share the costs associated with the galenical development in the United States of the second indication of the CR Formulation (in the manner contemplated by the LifeHealth Agreements); and
- As regards the development and regulatory costs associated with the exploitation of the second indication of the CR Formulation in jurisdictions outside of the United States, Lifehealth and Biovail will share all such costs (in the manner contemplated by the LifeHealth Agreements).

We also wish to confirm to you our commitment to growing the TBZ Business on a worldwide basis. In that regard, and without prejudice to the provisions of clause 9.4 of the 1998 Lifehealth Licence, Biovail agrees to use commercially reasonable efforts to exploit tetrabenazine in jurisdictions outside of the United States, subject to our reasonable determination that such activities are commercially reasonable on a market by market basis.

Yours sincerely,

/s/ MICHEL CHOUINARD

Michel Chouinard  
Chief Operating Officer, Biovail Laboratories International SRL

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DATED JUNE 19, 2009

- (1) LIFEHEALTH LIMITED
- and
- (2) CAMBRIDGE LABORATORIES (IRELAND) LIMITED
- and
- (3) CAMBRIDGE LABORATORIES LIMITED
- and
- (4) BIOVAIL LABORATORIES INTERNATIONAL (BARBADOS) SRL

---

DEED OF NOVATION AND AMENDMENT

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**THIS DEED OF NOVATION AND AMENDMENT** is made on June 19, 2009

**BETWEEN:**

- (1) **LIFEHEALTH LIMITED**, a company organised under the laws of England and Wales with company number 03017293 whose registered office is at 23 Winkfield Road, Windsor, Berkshire SL4 4BA, United Kingdom (“**Lifehealth**”);
- (2) **CAMBRIDGE LABORATORIES (IRELAND) LIMITED**, a company organised under the laws of the Republic of Ireland with company number 403279 whose registered office is at Alexandra House, The Sweepstakes, Ballsbridge, Dublin 4, Republic of Ireland (“**Cambridge Ireland**”);
- (3) **CAMBRIDGE LABORATORIES LIMITED**, a company organised under the laws of England and Wales with company number 2039082 whose registered office is at First Floor Deltic House, Kingfisher Way, Silverlink Business Park, Wallsend, Tyne & Wear, NE28 9NX, United Kingdom (“**CLL**”); and
- (4) **BIOVAIL LABORATORIES INTERNATIONAL (BARBADOS) SRL**, a society with restricted liability under the laws of Barbados with society number 967 whose registered office is at Watches, Christ Church, Barbados BB1715 (“**Biovail**”).

**RECITALS**

- (A) CLL (under its previous name Cambridge Selfcare Diagnostics Limited (“**CSD**”)) and Lifehealth entered into a Licence Agreement dated 10 December 1998 (the “**1998 Lifehealth Licence**”), as amended by Amendment No. 1, dated 29 October 2002, Amendment No. 2, dated 31 March 2004, and Amendment No. 3, dated 12 August 2004 (collectively, the “**1998 Lifehealth Licence Amendments**”, and the 1998 Lifehealth licence, as amended by the 1998 Lifehealth Licence Amendments is referred to as the “**1998 Amended Lifehealth Licence**”). Pursuant to Amendment No. 3, the 1998 Amended Lifehealth Licence has been assigned by CLL (referred to as CLUK in Amendment No. 3) to Cambridge Ireland such that the 1998 Amended Lifehealth Licence is currently in effect between Cambridge Ireland and Lifehealth. Cambridge Ireland and Lifehealth also entered into a Licence and Consent Agreement dated 22 September 2006 (the “**2006 Lifehealth Licence**”).
  - (B) Under Amendment No. 3, the 1998 Lifehealth Licence (as amended by Amendment Nos. 1 and 2) was assigned by CLL (defined as CLUK in Amendment No. 3) to Cambridge Ireland together with any and all sub-licences entered into by CLL pursuant to and in accordance with the 1998 Lifehealth licence.
  - (C) Pursuant to the Asset Purchase Agreement (as defined below) Cambridge Ireland is selling its TBZ Business to Biovail and as part of that Transaction Cambridge Ireland wishes to novate the Licence Agreement to Biovail.
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- (D) This Deed sets out the terms and conditions upon which all Cambridge Ireland’s rights and obligations in respect of the Licence Agreement shall be novated to Biovail and upon which Lifehealth agrees to the novation.
- (E) CLL enters into this Deed to confirm that the assignment of rights and obligations undertaken pursuant to Amendment No. 3, together with any novation of any sub-licences between CLL and any third party, was effective.
- (F) It is agreed that the novation effected by this Deed shall take full effect in accordance with its terms.
- (G) No other agreements between Cambridge Ireland and Lifehealth are being novated, including but not limited to (i) the licence agreement dated 18 July 1995 and (ii) the pharmacovigilance agreement dated 6 November 2006.

**THE PARTIES AGREE AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Deed the following words and expressions shall have the following meanings unless the context otherwise requires:

“**Affiliate**” of a party means any entity that is directly or indirectly controlling, controlled by, or under common control with such party and “control” means the power to direct the management and policies of such party, directly or indirectly, whether through ownership of voting securities, by contract or otherwise and the terms “controlling” and “controlled” have meanings correlative to the foregoing;

“**Asset Purchase Agreement**” means the agreement between Cambridge Ireland and Biovail, dated 16 May 2009, as amended to the date hereof;

“**Deed**” means this Deed of Novation and Amendment comprising its recitals and clauses;

“**Effective Time**” means the time and date on which the Transaction completes;

“**Licence Agreement**” means all the agreements, amendments, alterations and side letters referred to in recital A above;

“**TBZ Business**” means Cambridge Irelands and its Affiliates’ worldwide rights in and to tetrabenazine (including rights to improvements) and related assets;

“**Transaction**” means the sale of Cambridge Ireland’s TBZ Business to Biovail pursuant to the Asset Purchase Agreement.
- 1.2 In this Deed, capitalised terms other than those set out in the recitals hereto or clause 1.1 above shall have the meaning attributed to them in the Licence Agreement

- 1.3 In this Deed unless otherwise specified, reference to:
- 1.3.1 a party means a party to this Deed and includes its permitted assignees and/or the respective successors in title to substantially the whole of its undertaking;
  - 1.3.2 words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders; and
  - 1.3.3 recitals, clauses or paragraphs are to recitals, clauses or paragraphs to this Deed.
2. **ASSIGNMENT FROM CLL TO CAMBRIDGE IRELAND**
- 2.1 The parties (other than Biovail) acknowledge and agree that:
- 2.1.1 pursuant to Amendment No. 3 of the 1998 Lifehealth Licence (as amended by Amendment Nos. 1 and 2), the 1998 Lifehealth Licence (as amended by Amendment Nos. 1 and 2) was fully and effectively assigned by CLL (defined as CLUK in Amendment No. 3) to Cambridge Ireland such that Cambridge Ireland enjoys all rights and powers of CLL under the 1998 Lifehealth Licence (as amended by Amendment Nos. 1 and 2) and Cambridge Ireland is liable for all duties and obligations of CLL under the 1998 Lifehealth Licence (as amended by Amendment Nos. 1 and 2);
  - 2.1.2 all sub-licences under the 1998 Lifehealth Licence (as amended by Amendment Nos. 1 and 2) to which CLL was a party at the time of the assignment referred to in clause 2.1.1 above, together with all distribution agreements, letters of appointment, manufacturer agreements and all amendments, side letters, alterations and technical agreements relating to those sub-licences and to which CLL was also a party at that time (“**Sub Agreements**”), have been fully and effectively assigned to Cambridge Ireland prior to the Effective Time such that Cambridge Ireland enjoyed all rights and powers of CLL under such Sub Agreements and Cambridge Ireland was following such assignment liable for all duties and obligations of CLL under such Sub Agreements;
  - 2.1.3 as at the Effective Time, CLL is accordingly no longer a sub-licensor or a grantor of rights in relation to tetrabenazine and any related products pursuant to the 1998 Amended Lifehealth Licence;
  - 2.1.4 CLL assigned all of its rights and powers and fully and effectively delegated all of its duties and obligations under the Sub Agreements to Cambridge Ireland and all counterparties to the Sub Agreements which remain in effect at this date deal with Cambridge Ireland in place of CLL.
- 2.2 Each of CLL, Cambridge Ireland and Lifehealth confirms severally that to the extent that its consent was required for any assignment referred to in this clause 2, such consent was given and is hereby acknowledged.

2.3 Without prejudice to its rights against Cambridge Ireland in respect of warranties under the Asset Purchase Agreement, Biovail agrees that it shall not assert a claim against any party hereto to the effect that the assignments described in clauses 2.1.1, 2.1.2 or 2.1.4 were ineffective.

**3. NOVATION**

- 3.1 With effect from the Effective Time, Cambridge Ireland hereby novates to Biovail all of Cambridge Ireland's rights, benefits and obligations under the Licence Agreement so that from and after the Effective Time the Licence Agreement shall be construed and treated as if Biovail was a party and Lifehealth and Biovail shall have rights and obligations under or in relation to the Licence Agreement, in all respects, as if Biovail was named as a party instead of CSD and all references therein to CSD shall be construed as references to Biovail.
- 3.2 Lifehealth agrees to the novation pursuant to clause 3.1 upon the terms of this Deed and on the condition that (i) Cambridge Ireland and Biovail have novated or received consent to assign the agreements (such that those assignments have taken effect pursuant to the provisions of the Asset Purchase Agreement) listed in Appendix A and (ii) Biovail executes and delivers the side letter annexed at Appendix B.
- 3.3 Cambridge Ireland and Biovail undertake to use reasonable endeavours, for a period of 90 days following the Effective Time, to procure the assignment or novation to Biovail of all sub-licenses of rights under the Licence Agreement (other than the agreements listed in Appendix A and Appendix D).
- 3.4 Cambridge Ireland and Biovail jointly and severally undertake to indemnify and keep indemnified Lifehealth against any and all costs, damages, claims, expenses and/or other liabilities incurred by Lifehealth to the extent arising from any failure of Cambridge Ireland and Biovail to procure the assignment or novation to Biovail of the distribution agreements set forth in Appendix E.
- 3.5 Cambridge Ireland undertakes to use reasonable endeavours to ensure that the benefits and burdens of the Contract Manufacture Agreement between Cambridge Ireland and Pharmaserve Limited, dated May 6, 2005, as it relates to the TBZ Business, are available to Biovail at the Effective Time.
- 3.6 Cambridge Ireland releases and discharges Lifehealth from all Lifehealth's obligations and liabilities to Cambridge Ireland under the Licence Agreement which accrue from and after the Effective Time in respect of any acts and/or omissions of Lifehealth.
- 3.7 Without prejudice to Cambridge Ireland's obligations under this Deed (including under clause 8 and clause 9 of this Deed), Lifehealth releases and discharges Cambridge Ireland from all Cambridge Ireland's obligations and liabilities to Lifehealth under the Licence Agreement which accrue from and after the Effective Time in respect of any acts and/or omissions of Cambridge Ireland in respect of the Licence Agreement.

- 3.8 Lifehealth and Cambridge Ireland each remain liable to the other in relation to any obligations and/or rights under the Licence Agreement which accrued before the Effective Time. For the avoidance of doubt, any payments in relation to sales of Products made before the Effective Time shall remain payable by Cambridge Ireland even if not due to be paid until after the Effective Time.
- 3.9 Biovail undertakes with Lifehealth on and with effect from the Effective Time and thereafter to perform all the obligations and assume all the liabilities of Cambridge Ireland accruing from and after the Effective Time under or in connection with the Licence Agreement, as if Biovail had been named as a party to the Licence Agreement in place of CSD.
- 3.10 Biovail shall be entitled to all of the rights and benefits of Cambridge Ireland under the Licence Agreement which accrue from and after the Effective Time, so that Biovail shall be substituted in place of CSD as a party to the Licence Agreement.

**4. WITHHOLDING TAX**

- 4.1 With effect from the Effective Time, the Licence Agreement shall be amended to state that all sums payable by Biovail to Lifehealth, or by Lifehealth to Biovail (if any), as the case may be, under the Licence Agreement shall be paid free and clear of all deductions, set-offs, counterclaims and/or other withholdings, except any deduction or withholding which may be required by law in relation to taxation. If any such deduction or withholding is required by law, then Biovail or Lifehealth, as the case may be, shall:
- 4.1.1 ensure that the amount by which the payment is reduced does not exceed the minimum legally required amount of withholding tax;
  - 4.1.2 account in full for the required amount of withholding tax to the relevant taxation or other competent authority on or before its due date; and
  - 4.1.3 promptly provide to the other party an official receipt from the relevant taxation or other competent authority for the amount of withholding tax or, if such receipts are not issued by the authority concerned, a certificate of deduction or equivalent evidence relating to the required amount of withholding tax.
- 4.2 Subject to clause 4.4 below, if any withholding tax is required to be (and is in fact) deducted or withheld from an amount payable by Biovail to Lifehealth under the Licence Agreement, Biovail shall be obliged to pay to Lifehealth such grossed up amount as will, after the deduction or withholding for withholding tax from such grossed-up amount has been made, leave Lifehealth with the same amount as Lifehealth would have received, after the deduction, withholding or payment of all withholding taxes required by law, if the novation effected by this Deed had not occurred and the sum in question had been paid by Cambridge Ireland (determined giving effect to reasonably available mitigation strategies to avoid or reduce such taxes). In other words, Biovail shall be obliged to pay such additional amount as will ensure that the amount received by Lifehealth, after the deduction or withholding of all withholding taxes required by law on the increased



amount, is the same as the amount which Lifehealth would have received from Cambridge Ireland, after the deduction or withholding of all withholding taxes required by law, if the novation effected by this Deed had not occurred and the sum in question had been paid by Cambridge Ireland.

- 4.3 Subject to clause 4.4 below, if as a result of a change in (i) the ownership of Lifehealth’s equity, (ii) the residence of Lifehealth for tax purposes, (iii) the domicile of Lifehealth or (iv) the location in which Lifehealth’s obligations or business under the Licence Agreement are performed or conducted it being understood that such location is presently the United Kingdom, and will change pursuant to clause 7.2 of this Deed) (collectively, “**Lifehealth’s Status**”) from and after the Effective Time, any amounts payable to Biovail in connection with the performance or conduct of its business under the Licence Agreement are subject to an increase in the amount of withholding taxes that are, or should become, required to be (and are in fact) withheld or deducted from such payments or paid, over those that would have been required to be withheld, deducted or paid had such change in Lifehealth’s Status not occurred, Lifehealth shall be obliged to pay to Biovail such grossed-up amount as will, after the deduction or withholding for withholding taxes from such grossed-up amount has been made, leave Biovail with the same amount as Biovail would have been entitled to receive, after the deduction or withholding of all withholding taxes required by law, if the change in Lifehealth’s Status had not occurred. In other words, Lifehealth shall be obliged to pay such additional amounts as will ensure that the sum of (i) the amount received by Biovail in connection with the performance or conduct of its business under the Licence Agreement and (ii) the related additional amount payable by Lifehealth; less the deduction or withholding of all withholding taxes required by law on such amounts, is the same as the amount which Biovail would have received, after the deduction or withholding of all withholding taxes required by law, if the change in Lifehealth’s Status had not occurred.
- 4.4 Biovail or Lifehealth, as the case may be, shall not be required to pay any additional amount under clause 4.2 or clause 4.3 above, as applicable, to the extent that the withholding tax in question arises or is increased as a result of:
- 4.4.1 any connection between the other party and the jurisdiction imposing the withholding tax in question, other than a connection arising pursuant to the other party’s rights and obligations under the Licence Agreement and this Deed;
  - 4.4.2 notwithstanding any exception in clause 4.4.1 and clause 4.4.4, in the case of any additional amounts otherwise payable under clause 4.2, a change in Lifehealth’s Status;
  - 4.4.3 a failure by the other party to take reasonable steps to reduce the amount of such withholding tax (or to prevent such withholding tax from arising) including making any claims, filings or elections, provided that Biovail or Lifehealth, as the case may be, will promptly reimburse the other party for all reasonable out-of-pocket third party costs incurred by the other party in taking any such steps;

- 4.4.4 any action by the other party that increases the amount of withholding tax or results in withholding tax being exigible, other than such other party's entrance into, or the effect of its entrance into (including the performance of any obligation or the exercise of any of its rights under), this Deed, in each case in accordance with the terms of this Deed; or
- 4.4.5 any breach by the other party of any of its obligations under the Licence Agreement or the provisions of this Deed.
- 4.5 If Lifehealth or Biovail, as the case may be, subsequently obtains relief or credit in respect of any such withholding tax, then such party shall repay the other party an amount equal to the credit or relief obtained up to a maximum of the amount by which the other party's payment was increased to take account of the withholding or deduction of withholding tax.
- 4.6 Within any timescale reasonably specified by Lifehealth or Biovail, as the case may be, the other party shall co-operate and take all reasonable steps and provide all documents reasonably necessary and/or desirable for Lifehealth or Biovail, as the case may be, to obtain any available relief or credit in respect of any such withholding tax, and shall give any information reasonably required by Lifehealth or Biovail, as the case may be, in connection with the making of a claim for relief and/or credit under any applicable double taxation treaty.
- 4.7 Should either party determine that a gross up amount is payable to it under this clause 4, the parties shall use reasonable endeavours to agree on the amount so payable. If either Biovail or Lifehealth disputes the amount of any gross up payment required by such party pursuant to clause 4 of this Deed, it shall give written notice of such dispute to the other party reasonably promptly. Each of Biovail and Lifehealth shall use reasonable endeavours in good faith to resolve such dispute within 15 days of the date of such notice. If Biovail and Lifehealth are unable to resolve such dispute after such good faith negotiations, either Biovail or Lifehealth may refer the dispute to an independent expert to be agreed between Biovail and Lifehealth. If Biovail and Lifehealth cannot agree on an independent expert to act within 7 days of the date of a request from either of them to appoint an expert, such independent expert will be appointed by the President for the time being of the Institute of Chartered Accounts on the application of either Biovail or Lifehealth. Such person will act as an expert and not as an arbitrator. Biovail and Lifehealth agree that the decision of the expert (which will be given in writing, stating reasons) will be final and binding on Biovail and Lifehealth. Each of Biovail and Lifehealth will provide the expert with such information as the expert may reasonably require for the purposes of his determination. The costs of the reference to an expert will be borne in the first instance by the party making the reference. The expert will in his decision determine the liability for such costs, which decision will be final and binding on Biovail and Lifehealth.

5. EXCHANGE RATES

- 5.1 After the Effective Time, for the purposes of determining the amounts payable by Biovail to Lifehealth that are based on any amounts accounted for by, or reported to, Biovail in any currency other than Sterling (the “**Reporting Currency**”), Biovail shall provide Lifehealth with a statement of the calculation of the amount due to Lifehealth expressed in any such Reporting Currency (the “**Base Amount Due**”) for a particular calendar month. Biovail will also provide Lifehealth with a statement of the calculation of the Sterling equivalent of the Base Amount Due, with such Sterling equivalent equal to (i) the foreign currency exchange rates published by HM Revenue & Customs for both VAT and customs purposes for that calendar month multiplied by (ii) the Base Amount Due; with such amount referred to as the “**Sterling-Equivalent Amount Due**”.
- 5.2 In the case where amounts payable by Biovail to Lifehealth are based on any amounts accounted for by, or reported to, Biovail in Sterling, Biovail shall provide Lifehealth with a statement of the calculation of the amount due to Lifehealth expressed in Sterling, and the amount so determined as payable by Biovail to Lifehealth shall be referred to as the “Sterling Amount Due”.
- 5.3 Any payments to be made to Lifehealth shall be paid by Biovail to Lifehealth in Sterling in an amount equal to the sum of Sterling-Equivalent Amount Due and the Sterling Amount Due.

6. ADJUSTED/NEW OBLIGATIONS

- 6.1 It is agreed that the provisions of the Licence Agreement shall be amended with effect from the Effective Time (or, in the case of clauses 6.1.1, 8.1.2, 8.1.3 and 6.1.4, the application of the terms of the Licence Agreement are clarified) as follows:
- 6.1.1 for the avoidance of doubt, Biovail acknowledges that it would not be unreasonable for Lifehealth to withhold its consent pursuant to clause 2.4 of the 1998 Lifehealth Licence to a distribution agreement for the United Kingdom and/or the Republic of Ireland that Biovail proposes to enter into if the economic effect on Lifehealth of such proposed agreement is less favourable to Lifehealth than the economic effect on Lifehealth of the distribution arrangement then in effect (or most recently in effect) with respect to such territories;
- 6.1.2 for the avoidance of doubt, the assignment and transfer by Cambridge Ireland to Biovail of inventory constituting part of the TBZ Business in the Transaction shall not be deemed to be sales of Product (as defined in the 1998 Amended Lifehealth Licence) to any third party for purposes of the 1998 Amended Lifehealth Licence;
- 6.1.3 for the avoidance of doubt, sales of Product by Biovail (and its successors) to Biovail Laboratories International SRL (“**BLS**”) or Prestwick Pharmaceuticals, Inc. (“**Prestwick**”) and their respective successors pursuant to the Second Amended and Restated Agreement dated November 18, 2005 between Cambridge Ireland and Prestwick and subject to the sublicense agreement dated September

12, 2008 between BLS and Prestwick, as amended (collectively; the “**U.S. Agreement**”), and sales of Product by Biovail (and its successors) to Biovail Corporation (“**BVF**”) and its successors pursuant to the First Amended and Restated Agreement for Canadian Rights to Nitoman dated November 18, 2005 between Cambridge Ireland and Prestwick, as assigned to BVF effective December 1, 2008 (collectively, the “**Canadian Agreement**”), shall be included in the calculation of Total Net Receipts; provided that sales of Product by BLS or Prestwick or their respective successors for the U.S. market pursuant to the rights granted to them under the U.S. Agreement, including sales to Lundbeck Inc. (“**Lundbeck**”) or its successors pursuant to the Marketing, Distribution and Supply Agreement for Xenazine dated September 16, 2008 between Prestwick and Ovation Pharmaceuticals, Inc. (now Lundbeck), and sales of Product by BVF or its successors in the Canadian market pursuant to the rights granted to it under the Canadian Agreement, shall not be included in the calculation of Total Net Receipts. Except as provided in the foregoing sentence, for purposes of calculating Total Net Receipts under the 1998 Amended Lifehealth Licence, the amount of Total Net Receipts shall be determined based on the revenues from the sale of Product by Biovail or its relevant Affiliate to customers that are not Affiliates of Biovail;

- 6.1.4 for the avoidance of doubt, in calculating {\*\*\*}† under the 1998 Amended Lifehealth Licence, (a) the costs incurred by a party or any of its Affiliates that may be {\*\*\*}† Total Net Receipts in {\*\*\*}† of the definition of {\*\*\*}† shall not include {\*\*\*}†
- 6.1.5 for the purposes of calculating Total Net Receipts under the 1998 Amended Lifehealth Licence, for sales of Product by Biovail to its Affiliates under the U.S. Agreement and the Canadian Agreement, the amount of Total Net Receipts shall be calculated on the basis that all amounts payable for such Product are received within customary trade terms of 45 days, without duplication;
- 6.1.6 the wording of the opening paragraph of clause 11.1 of the 1998 Lifehealth Licence shall be amended to read as follows:
- “The parties have agreed that they shall be jointly liable in equal shares for any liability arising pursuant to this Agreement and accordingly each party agrees to indemnify and keep indemnified the other party against that indemnifying party’s share of any and all costs, damages, claims, expenses and/or other liabilities arising from any third party claim (whether in contract, tort or otherwise) concerning: -”; and
- 6.1.7 the wording of clause 8.2 of the 1998 Lifehealth Licence shall be amended to read as follows:

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† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

“The Development Plan shall be reviewed and revised quarterly at meetings which shall take place between the parties. At those quarterly meetings the parties shall agree the level of expenditure to be committed to the Development Plan. Biovail shall provide Lifehealth with no less than 30 days notice prior to each quarterly meeting. Biovail and Lifehealth agree to hold such additional meetings as may be necessary upon the mutual agreement of Biovail and Lifehealth.”

## **7. LICENCE AGREEMENT**

- 7.1 Lifehealth, Cambridge Ireland, CLL and Biovail agree that from (and including) the Effective Time clause 18.7 of the 1998 Lifehealth Licence (and any other provisions the same or equivalent to it in any of the other parts of the Licence Agreement) shall have no force or effect and each of the parties irrevocably waives and releases each other party from any obligation to comply with such clauses or provisions solely with respect to the potential sale of Lifehealth (whether by way of share sale or the sale of the business and assets of Lifehealth) to H Lundbeck A/S, any holding company of H Lundbeck A/S, any subsidiary of H Lundbeck A/S and/or any other company associated, controlled and/or used by H Lundbeck A/S for such purpose.
- 7.2 Biovail and Lifehealth agree that all meetings to be held pursuant to the Licence Agreement shall be held in Barbados or at a location mutually agreed upon by Biovail and Lifehealth and Lifehealth shall perform all of its obligations under the Licence Agreement at such meetings. Biovail agrees to reimburse Lifehealth for all reasonable travel and accommodation expenses incurred in connection with such meetings and that such amounts will not be {\*\*\*}† Total Net Receipts for the purposes of calculating {\*\*\*}† and that such costs shall be borne entirely by Biovail. The parties agree that Lifehealth’s compliance with this clause 7.2 shall not constitute a change in Lifehealth’s Status for purposes of clause 4 of this Deed.
- 7.3 Lifehealth confirms that it consents to (if not already given) Cambridge Ireland having entered into the various agreements under the Licence Agreement as set forth in Appendix C. Cambridge Ireland confirms that it has delivered a copy of each of the various agreements set forth in Appendix C to Lifehealth.
- 7.4 Lifehealth hereby acknowledges that, as of the date hereof, and to the best of Lifehealth’s knowledge, (i) there are no material unresolved disputes with Cambridge Ireland under the Licence Agreement and (ii) there have been no amendments to the Licence Agreement, other than the 1998 Lifehealth Licence Amendments.
- 7.5 Cambridge Ireland hereby acknowledges that, as of the date hereof, and to the best of Cambridge Ireland’s knowledge, (i) there are no material unresolved disputes with Lifehealth under the Licence Agreement and (ii) there have been no amendments to the Licence Agreement, other than the 1998 Lifehealth Licence Amendments.

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† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

**8. CONFIDENTIALITY**

- 8.1 Despite the novation of the Licence Agreement from Cambridge Ireland to Biovail, Cambridge Ireland shall remain liable to comply with the duties of confidentiality within the Licence Agreement as if the Licence Agreement had not been novated.
- 8.2 Biovail shall, from and after the Effective Time, comply with the duties of confidentiality within the Licence Agreement as if it had been a party to the Licence Agreement from each of their relevant effective dates.

**9. NON COMPETITION**

- 9.1 Despite the novation of the Licence Agreement from Cambridge Ireland to Biovail, Cambridge Ireland shall remain liable to comply with the restrictions within clauses 16.9 and 16.10 of the Licence Agreement as if the Licence Agreement had not been novated but had been terminated.
- 9.2 Clause 9.1 shall not be deemed breached solely as a result of Cambridge Ireland:
  - 9.2.1 complying with its obligations to continue to operate the agreements listed in Appendix D for the benefit of Biovail or to provide transition services for a period of 90 days following the Effective Time (or such longer period as may be agreed between Cambridge Ireland and Biovail for transition purposes, not to exceed an additional 90 days) in accordance with the terms of the Asset Purchase Agreement;
  - 9.2.2 continuing to conduct the tetrebenazine business in Portugal consistent with past practice for a maximum period of 24 months immediately following the Effective Time pending the receipt of regulatory clearance of the Transaction in Portugal, in accordance with the terms of the Asset Purchase Agreement and related letters; or
  - 9.2.3 acting as the distributor of Product in the United Kingdom and the Republic of Ireland under the distribution agreement between Cambridge Ireland and CLL dated 11 May 2009 (the “**Cambridge Distribution Agreement**”) as in effect immediately prior to the Effective Time, including acting as the distributor of Product for a period not exceeding six months following the Effective Time or in accordance with clause 20.1.1 of the Cambridge Distribution Agreement

**10. COSTS**

- 10.1 All legal costs incurred by Biovail and Cambridge Ireland in connection with this Deed and the Transaction shall be borne by Cambridge Ireland and Biovail as appropriate and

shall not be {\*\*\*}† Total Net Receipts in the calculation of {\*\*\*}† under the Licence Agreement.

10.2 All legal costs incurred by Lifehealth in connection with this Deed shall be reimbursed to Lifehealth by Cambridge Ireland.

**11. MISCELLANEOUS**

11.1 This Deed may be varied only by a document signed by each of the parties.

11.2 If any provision of this Deed is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect

11.2.1 the legality, validity or enforceability in that jurisdiction of any other provision of this Deed; or

11.2.2 the legality, validity or enforceability in any other jurisdiction of that or any other provision of this Deed.

11.3 This Deed may be executed and delivered in any number of counterparts and all such counterparts taken together shall be deemed to constitute one instrument.

11.4 No third party shall have the right to enforce any provision of this Deed,

11.5 This Deed shall be governed by and construed in accordance with English law.

11.6 The parties agree that the courts of England shall have exclusive jurisdiction to settle any dispute which may arise in connection to the validity, effect, interpretation or performance of, or the legal relationships established by, this Deed.

† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

**GIVEN** under the Common Seal of **CAMBRIDGE  
LABORATORIES (IRELAND) LIMITED**

in the presence of:

/s/ Mark P. Evans  
\_\_\_\_\_  
Director

/s/ David Wildy  
\_\_\_\_\_  
Director/Secretary

DAVID WILDY

Executed as a Deed by **CAMBRIDGE LABORATORIES LIMITED** acting by Mark P Evans, a director, in the presence of:

Witness' Signature /s/ David Wildy

Name David Wildy

Address \_\_\_\_\_

/s/ MARK P. EVANS

Executed as a Deed by **BIOVAIL LABORATORIES INTERNATIONAL (BARBADOS) SRL** acting by Michel Chouinard, a Manager of Biovail Laboratories International (Barbados) SRL who, in accordance with the laws of Barbados, is acting under the authority of Biovail Laboratories International (Barbados) SRL

/s/ FITZROY BARDOUILLE

WITNESS by F. BARDOUILLE

Executed as a Deed by **LIFEHEALTH LIMITED** acting by  
Stephen Jeffrey Jones, a director, in the presence of:

Witness' Signature /s/ Caroline Jones

Name Caroline Jones

Address \_\_\_\_\_

/s/ STEPHEN JEFFREY JONES



APPENDIX A

Cambridge Ireland has novated or received consent to assign the arrangements and agreements between Cambridge Ireland or its applicable Affiliate and the entities set forth below:

- 1. Distribution Agreement between Cambridge Laboratories (Ireland) Limited and Temmler Pharma GMBH & Co KG, dated May 17, 2006, and all schedules, amendments, alterations, side letters and technical agreements.
  - 2. Distribution Agreement between Cambridge Laboratories Limited and EUSA Pharma (formerly OPi), dated March 4, 2004, and all schedules, amendments, alterations, side letters and technical agreements.
  - 3. Distribution Agreement between Cambridge Laboratories Limited and Chiesi Farmaceutici SPA, dated July 28, 2003, and all schedules, amendments, alterations, side letters and technical agreements.
  - 4. Distribution Agreement between Cambridge Laboratories (Ireland) Limited and UCB Pharma S.A. dated October 27, 2008, and all schedules, amendments, alterations, side letters and technical agreements.
  - 5. Distribution Agreement between Cambridge Laboratories (Ireland) Limited and UCB Pharma (Produtos Farmaceuticos) Lda dated October 24, 2008, and all schedules, amendments, alterations, side letters and technical agreements.
  - 6. Distribution Agreement between Cambridge Laboratories (Ireland) Limited and Apotheekzorg BV, dated June 11, 2008, and all schedules, amendments, alterations, side letters and technical agreements.
  - 7. Distribution Agreement between Cambridge Laboratories Limited and Medilink A/S for Tetrabenazine, dated August 1, 2000, and all schedules, amendments, alterations, side letters and technical agreements.
  - 8. Distribution Agreement between Cambridge Laboratories Limited and Megapharm Limited regarding Xenazine, dated October 15, 2003, and all schedules, amendments, alterations, side letters and technical agreements.
  - 9. Distribution Agreement for Tetrabenazine, Improved Tetrabenazine and Anapolon between Cambridge Selfcare Diagnostics Limited and Orphan Australia Pty Limited, dated October 2, 1998, and all schedules, amendments, alterations, side letters and technical agreements.
  - 10. Supply Agreement between Cambridge Laboratories and Plasto SA (Synkem Division) regarding Tetrabenazine. dated July 31, 1998, and all schedules. amendments, alterations, side letters and technical agreements.
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- 11. Contract Manufacturing Agreement between Cambridge Laboratories Limited and Laboratoires Fournier SA, dated May 9, 2005, and all schedules, amendments, alterations, side letters and technical agreements.
- 12. Distribution Agreement for Tetrabenazine between Cambridge Selfcare Diagnostics Limited and AFT Pharmaceuticals Limited dated 2 October 1998 and all schedules, amendments, alternations, side letters and technical agreements.
- 13. Distribution Agreement between Cambridge Laboratories (Ireland) Limited and Medifront OY re Xenazine-Xenazina-Nitoman dated September 2008 and all schedules, amendments, alternations, side letters and technical agreements.
- 14. Distribution Agreement between Cambridge Laboratories (Ireland) Limited and Orphan SA Pharmaceuticals Pty Limited regarding tetrabenazine, dated 23 January 2008 and all schedules, amendments, alternations, side letters and technical agreements.
- 15. Second Amended and Restated Agreement between Cambridge Laboratories (Ireland) Limited and Prestwick Pharmaceuticals, Inc., dated November 18. 2005, and all schedules, amendments, alterations, side letters and technical agreements.
- 16. First Amended and Restated Agreement for Canadian Rights to Nitoman between Cambridge Laboratories (Ireland) Limited and Prestwick Pharmaceuticals, dated November 18, 2005, and all schedules, amendments, alterations, side letters and technical agreements.

## APPENDIX B

LifeHealth Limited  
23 Winkfield Road  
Windsor  
SL4 4BA  
UK  
Attention: Stephen Jones

June 19, 2009

Dear Stephen:

In connection with the sale by Cambridge Laboratories (Ireland) Limited ("Cambridge") of its worldwide rights in and to tetrabenazine and related assets (the "TBZ Business") to Biovail Laboratories International (Barbados) SRL ("Biovail") (the "Transaction"), we are writing to confirm our understanding on certain points relating to the TBZ Business.

Reference is made to the Licence Agreement between Lifehealth Limited ("Lifehealth") and Cambridge, dated December 10, 1998 (the "1998 Lifehealth Licence"), as amended by Amendment No. 1, dated 29 October 2002, Amendment No. 2, dated 31 March 2004, and Amendment No. 3, dated 12 August 2004 (collectively, the "1998 Lifehealth Licence Amendments"), and the 1998 Lifehealth Licence, as amended by the 1998 Lifehealth Licence Amendments, is referred to as the "1998 Amended Lifehealth Licence"), and the Licence and Consent Agreement between Cambridge and Lifehealth, dated September 22, 2006 (the "2006 Lifehealth Licence"), and, the 2006 Lifehealth Licence together with the 1998 Amended Lifehealth Licence is referred to as the "LifeHealth Agreements"). Capitalized terms used but not otherwise defined herein shall have the meanings attributed to them in the LifeHealth Agreements.

We confirm our commitment to proceed with the development of a second indication for the controlled release formulation of tetrabenazine (the "CR Formulation"), subject to our determination, after satisfactory due diligence, that it is commercially and clinically reasonable to so proceed. The exact indication to be developed will be determined by agreement between Lifehealth and Biovail, after further review and consideration, and may include tardive dyskinesia, dystonia or some other indication. We also confirm that, conditional on the closing of the Transaction, the costs associated with the development of the CR Formulation, as between Lifehealth and Biovail, shall be shared as follows:

- Development costs associated with the CR Formulation for Tourette Syndrome will be shared by Lifehealth and Biovail (in the manner contemplated by the LifeHealth Agreements);
  - Biovail will be responsible for all of the costs associated with the clinical development in the United States of the second indication of the CR Formulation
-

and such costs will not be {\*\*\*}† Total Net Receipts for the purposes of calculating {\*\*\*}†;

- Lifehealth and Biovail will share the costs associated with the galenical development in the United States of the second indication of the CR Formulation (in the manner contemplated by the LifeHealth Agreements); and
- As regards the development and regulatory costs associated with the exploitation of the second indication of the CR Formulation in jurisdictions outside of the United States, Lifehealth and Biovail will share all such costs (in the manner contemplated by the LifeHealth Agreements).

We also wish to confirm to you our commitment to growing the TBZ Business on a worldwide basis. In that regard, and without prejudice to the provisions of clause 9.4 of the 1998 Lifehealth Licence, Biovail agrees to use commercially reasonable efforts to exploit tetrabenazine in jurisdictions outside of the United States, Subject to our reasonable determination that such activities are commercially reasonable on a market by market basis.

Yours sincerely,

Michel Chouinard  
Chief Operating Officer, Biovail Laboratories International SRL

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† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

## APPENDIX C

Lifehealth has consented to the following arrangements and agreements between Cambridge Ireland or its applicable Affiliate and the entities set forth below:

1. Second Amended and Restated Agreement between Cambridge Laboratories (Ireland) Limited and Prestwick Pharmaceuticals, Inc., dated November 18 2005, and all schedules, amendments, alterations, side letters and technical agreements.
  2. First Amended and Restated Agreement for Canadian Rights to Nitoman between Cambridge Laboratories (Ireland) Limited and Prestwick Pharmaceuticals, dated November 18, 2005, and all schedules, amendments, alterations, side letters and technical agreements.
  3. Distribution Agreement between Cambridge Laboratories (Ireland) Limited and Temmler Pharma GMBN & Co KG, dated May 17, 2006, and all schedules, amendments, alterations, side letters and technical agreements.
  4. Distribution Agreement between Cambridge Laboratories Limited and EUSA Pharma (formerly OPi), dated March 4, 2004, and all schedules, amendments, alterations, side letters and technical agreements.
  5. Distribution Agreement between Cambridge Laboratories Limited and Chiesi Farmaceutici SPA, dated July 28, 2003, and all schedules, amendments, alterations, side letters and technical agreements.
  6. Distribution Agreement between Cambridge Laboratories (Ireland) Limited and UCB Pharma S.A. dated October 27, 2008, and all schedules, amendments, alterations, side letters and technical agreements.
  7. Distribution Agreement between Cambridge Laboratories (Ireland) Limited and UCB Pharma (Produtos Farmaceuticos) Lda dated October 24, 2008, and all schedules, amendments, alterations, side letters and technical agreements.
  8. Distribution Agreement for Tetrabenazine between Cambridge Seticare Diagnostics Limited and AFT Pharmaceuticals Limited dated October 2, 1998, and all schedules, amendments, alterations, side letters and technical agreements.
  9. Distribution Agreement between Cambridge Laboratories (Ireland) Limited and Apotheekzorg BV, dated June 11, 2008, and all schedules, amendments, alterations, side letters and technical agreements.
  10. Distribution Agreement between Cambridge Laboratories (Ireland) Limited and Giddi Pharma, dated August 11, 2008, and all schedules, amendments, alterations, side letters and technical agreements.
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11. Distribution Agreement between Cambridge Laboratories (Ireland) Limited and MediFront OY re: Xenazine-Xenazina-Nitoman, dated September, 2008, and all schedules, amendments, alterations, side letters and technical agreements.
12. Distribution Agreement between Cambridge Laboratories Limited and Medilink A/S for Tetrabenazine, dated August 1, 2000, and all schedules, amendments, alterations, side letters and technical agreements.
13. Distribution Agreement between Cambridge Laboratories Limited and Megapharm Limited regarding Xenazine, dated October 15, 2003, and all schedules, amendments, alterations, side letters and technical agreements.
14. Distribution Agreement for Tetrabenazine, Improved Tetrabenazine and Anapolon between Cambridge Selfcare Diagnostics Limited and Orphan Australia Pty Limited, dated October 2, 1998. and all schedules, amendments, alterations. side letters and technical agreements.
15. Distribution Agreement between Cambridge Laboratories (Ireland) Limited and Orphan SA Pharmaceuticals Pty Limited regarding Tetrabenazine. dated January 23, 2006, and all schedules, amendments, alterations, side letters and technical agreements.
16. Distribution Agreement between Cambridge Laboratories (Ireland) Limited and Proreo Pharma AG, dated December 14, 2005, and all schedules, amendments, alterations, side letters and technical agreements.
17. Supply Agreement between Cambridge Laboratories and Plasto SA (Synkem Division) regarding Tetrabenazine, dated July 31, 1998, and all schedules, amendments, alterations, side letters and technical agreements.
18. Contract Manufacturing Agreement between Cambridge Laboratories Limited and Laboratoires Fournier SA, dated May 9, 2005, and all schedules, amendments, alterations, side letters and technical agreements.
19. Contract Manufacture Agreement between Cambridge Laboratories Limited and Cambridge Laboratories Ireland and Pharmaserve Limited regarding Various Products, dated May 6, 2005, and all schedules, amendments, alterations, side letters and technical agreements.
20. Service Agreement between Paddock Laboratories, Inc. and Cambridge Laboratories (Ireland) Limited, dated March 11, 2009, and all schedules, amendments, alterations, side letters and technical agreements.
21. Agreement for the Warehousing and Distribution of Pharmaceuticals between McGregor Cory Limited and Cambridge Selfcare Diagnostics Limited, dated March 16, 1999, and all schedules, amendments, alterations, side letters and technical agreements.

22. Technical Agreement between Exel Freight Management Limited and Cambridge Laboratories Limited. dated May 5, 2005. and all schedules, amendments, alterations, side letters and technical agreements.
23. Supply to US Patients Agreement between Dixon and Hall Ltd. and Cambridge Laboratories Limited, dated April 16, 2008, and all schedules, amendments, alterations, side letters and technical agreements.
24. Annual Global Marketing Plan for Tetrabenazine (February 2009).

## APPENDIX D

Cambridge Ireland and Biovail are to agree upon a reasonable approach to allocating or sharing the benefit and burden under the following contracts following the Effective Time:

25. Contract Manufacturing Agreement between Cambridge Laboratories Limited and Pharmaserve Limited dated 6 May 2005
  26. Pharmacovigilance Agreement between Cambridge Laboratories (Ireland) Limited and LifeHealth Limited dated 6 November 2006
  27. Agreement for the Warehousing and Distribution of Pharmaceuticals between Cambridge Selfcare Diagnostics Limited and McGregor Cory Limited dated 16 March 1999 as amended by letter dated 11 June 2002
  28. Technical Agreement between Cambridge Laboratories Limited and Exel Freight Management Limited dated 5 May 2005
  29. Agreement in relation to supply to American patients between Cambridge Laboratories Limited and Dixon & Hall Limited dated 7 April 2008 (including related technical agreement)
  30. Agreement between Cambridge Laboratories (Ireland) Limited and Jayne Irving dated 10 January 2005 as amended by letters dated 15 September 2006, 9 January 2008 and 4 February 2009
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## **APPENDIX E**

31. Distribution Agreement between Cambridge Laboratories (Ireland) Limited and Giddi Pharma, dated August 11, 2008, and all schedules, amendments, alterations, side letters and technical agreements.
  32. Distribution Agreement between Cambridge Laboratories (Ireland) Limited and Proreo Pharma AG, dated December 14, 2005, and all schedules, amendments, alterations, side letters and technical agreements.
-

CONFIDENTIAL TREATMENT REQUESTED:

Portions of this Exhibit have been redacted pursuant to a request for confidential treatment under Rule 24b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended. Such redacted portions have been replaced with “{\*\*\*}” in this Exhibit. An unredacted version of this document has been filed separately with the Securities and Exchange Commission along with the request for confidential treatment.

SUPPLY AGREEMENT

This Agreement is made between :

**CAMBRIDGE LABORATORIES**, a division of Cambridge Selfcare Diagnostics Limited, a company organised and existing under the laws of England, with offices at Richmond House, Old Brewery Court, Sandyford Road, Newcastle upon Tyne NE2 1XG, GREAT BRITAIN

“CAMBRIDGE”

and

**PLASTO. S.A. (SYNKEM Division)**, a company organised- and existing under the laws of France with registered offices at 47 Rue de Longvic, 21300 CHENOVE, FRANCE

“SYNKEM”

WHEREAS

- 1) CAMBRIDGE is marketing a pharmaceutical product containing Tetrabenazine as active ingredient.
- 2) CAMBRIDGE wishes SYNKEM to manufacture and supply Tetrabenazine in bulk form and SYNKEM is willing to manufacture and supply such compound to CAMBRIDGE upon the terms and conditions hereof.

NOW, THEREFORE THE PARTIES HERETO AGREE AS FOLLOWS :

Article 1  
**Definitions**

|                    |                                                                                                                                                                                                                                                                                                                                     |
|--------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| “COMPOUND”         | means Tetrabenazine in bulk powder form;                                                                                                                                                                                                                                                                                            |
| “FINISHED PRODUCT” | means the product in finished pharmaceutical form manufactured from the COMPOUND supplied hereunder;                                                                                                                                                                                                                                |
| “FORCE MAJEURE”    | means, in relation to either party, any circumstances beyond the reasonable control of that party and not caused by such party (including, without limitation, governmental orders or restriction, war, warlike condition, revolution, riot, internal or external strike, lock out, other forms of industrial action, fire, flood); |

## **Article 2**

### **Supply**

**2.1** During the term of this Agreement, SYNKEM shall supply CAMBRIDGE with such quantities of the COMPOUND as will be ordered by CAMBRIDGE in accordance with the provisions hereof.

SYNKEM shall manufacture the COMPOUND in accordance with cGMP and will maintain the appropriate manufacturing approvals as laid down by the relevant regulatory authorities.

**2.2** All orders for the COMPOUND shall be placed by CAMBRIDGE no less than six months before the requested delivery date.

**2.3** CAMBRIDGE shall on an annual rolling forecast basis, updated quarterly, provide SYNKEM with purchase forecasts.

Any modification to a firm purchase order sent by CAMBRIDGE shall require the written consent of both parties.

**2.4** Each order shall amount to a whole number of batches of the COMPOUND.

One batch of the COMPOUND amounts to approximately 100 kg, being understood that the precise quantity corresponding to one batch might vary slightly from one batch to another because of differences in the yield of each manufacturing run. This amount may be adjusted later taking into account the exact yield of the future manufacturing runs made by SYNKEM pursuant to this Agreement.

**2.5** All consignments of the COMPOUND shall be governed by the “CIP Nottingham” 1990 ICC INCOTERM, including, without limitation, its provisions for the passing of risks.

**2.6** The exact place of delivery shall be Boots Contract Manufacturing (“BCM”), Receiving Dock, D95 Building, 1 Thane Road, Nottingham, 2NG 3AA, Great Britain.

**2.7** Each batch of COMPOUND shall be accompanied by an analytical certificate prepared by SYNKEM showing, the actual analytical data and the COMPOUND’s batch number. A copy of the analytical certificate shall be send to CAMBRIDGE together with the relevant invoice at CAMBRIDGE’s address mentioned in Article 22.

### **Article 3**

#### **Price**

**3.1** The price for the first {\*\*\*}† kilograms of the COMPOUND supplied hereunder (including the three validation batches) shall be GBP {\*\*\*}† per kilogram ; thereafter and until June 2001, the price of the COMPOUND supplied hereunder shall be GBP {\*\*\*}† per kilogram.

The parties shall then negotiate diligently and in good faith a price for the COMPOUND delivered after the end of June 2001. If despite such good faith negotiations the parties are unable to agree upon a revised price by the end of June 2001, either party may terminate this Agreement by sending three months' written notice to the other party during which the unadjusted price shall apply.

**3.2** The prices quoted in 3.1 have been agreed on the basis of an exchange rate of GBP £1 to FRF 9.6 (the "Agreed Rate"). If, on the date SYNKEM raises the relevant invoice, the Agreed Rate and the latest monthly average rate between FRF and GBP quoted by Natexis Multidevise Database are further apart than 2.5%, the supply price shall, for that invoice, be adjusted by applying the exact percentage difference between the Agreed Rate and such average rate.

When the French Franc is replaced by the Euro as the unit of currency in France, the GBP:Euro exchange rate governing the pricing mechanism for the COMPOUND will be fixed so that the price for the COMPOUND remains the same as what it should have been in GBPs had the change in currency not have occurred.

**3.3** The price quoted for the first {\*\*\*}† kg includes:

- full validated analytical methods for the raw materials including each intermediate and the bulk COMPOUND;
- NMR/HPLC/IR/MASS SPEC/MP where appropriate;
- residual solvents analysis for chloroform, methylene chloride, methanol and ethanol;
- the writing of SOP procedures for the production of the 100 kg batches.

The price does not include:

- polymorphism study of the COMPOUND using different solvents;
- stability testing;
- accelerated degradation studies of the COMPOUND.

If the parties so decide, these studies may be implemented by SYNKEM at cost price.

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† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

**Article 4**  
**Payment**

CAMBRIDGE shall pay each consignment of the COMPOUND by bank transfer in GB Pounds:

- {\*\*\*}† shall be paid upon ordering the relevant consignment of COMPOUND ;
- {\*\*\*}† shall be paid within 30 calendar days of the end of the month during which the relevant invoice was raised.

**Article 5**  
**Exclusive rights**

**5.1** SYNKEM shall not enter into agreements to supply the COMPOUND to a third party and shall, after the termination of this Agreement, remain bound by the obligations mentioned in Article 14 for the time period set forth in that Article 14.

**5.2** CAMBRIDGE shall purchase all its requirements of the COMPOUND from SYNKEM and shall refrain from manufacturing the COMPOUND or having the same manufactured by a third party.

Notwithstanding the foregoing, after CAMBRIDGE has purchased a minimum of {\*\*\*}† kg of COMPOUND from SYNKEM, CAMBRIDGE shall be entitled to enter into a supply agreement with a third party which shall act as a second source supplier provided that CAMBRIDGE shall continue to purchase at least {\*\*\*}† of its requirements of COMPOUND from SYNKEM.

SYNKEM shall provide CAMBRIDGE with all data available at SYNKEM regarding analytical methods and improvements made to the manufacturing process to enable that third party to manufacture the COMPOUND provided that such third party shall be bound by confidentiality obligations similar to those contained in this Agreement and CAMBRIDGE shall be liable to SYNKEM for any breach thereof by such third party.

**Article 6**  
**Major changes to the manufacturing process**

**6.1** In the event of SYNKEM proposing major changes to the manufacturing process of the COMPOUND, SYNKEM shall inform CAMBRIDGE of these proposed process changes and shall not institute these process changes without CAMBRIDGE's prior written consent. Together with its proposal, SYNKEM shall indicate to CAMBRIDGE the conditions upon which CAMBRIDGE may be entitled to use such changes after termination of this Agreement.

CAMBRIDGE shall be responsible at its own cost for having those changes approved by the relevant regulatory authorities.

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† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

**6.2** In the event the approved process changes generate an increase in the yield of the manufacture of the COMPOUND or a decrease in the production costs, SYNKEM and CAMBRIDGE shall equally share the corresponding benefit.

**Article 7**  
**Regulatory obligations**

**7.1** Upon request, SYNKEM shall provide to CAMBRIDGE all the relevant data required by CAMBRIDGE to enable CAMBRIDGE to submit a complete IND&NDA submission to the US Food and Drug Administration and CTX or MAA to the relevant European Authorities for the COMPOUND. CAMBRIDGE shall be responsible for writing said IND, NDA, CTX, MAA applications at its own cost. CAMBRIDGE shall use such data given by SYNKEM only for the purpose of drafting said applications for the COMPOUND and submitting the same to the relevant health authorities. Without prejudice to the provisions of Clause 6.1, CAMBRIDGE, as the holder of all the above applications, shall be the owner of all the COMPOUND related data and information appearing or referred to in said applications.

**7.2** If requested by regulatory authorities or by CAMBRIDGE, SYNKEM shall accept and permit an inspection by CAMBRIDGE or the relevant regulatory authorities, at reasonable time and upon reasonable prior notice, of its facilities where the COMPOUND is manufactured or stored and of the manufacturing records pertaining to the manufacture of the COMPOUND.

**7.3** Regarding inspections requested and made by CAMBRIDGE:

- CAMBRIDGE shall, before making any such inspection, give full details of the reason of such inspection and of all matters which will be dealt with during such inspection. This information shall be provided to SYNKEM in written form.
- Any information which may come to CAMBRIDGE’s knowledge during such inspection shall be subject to the secrecy provisions of Article 14.

**Article 8**  
**Warranty, liability and indemnification**

**8.1** SYNKEM warrants that the COMPOUND manufactured and supplied hereunder shall meet the specifications described in Schedule 1 attached hereto and is of the same quality than the 1 kg kilo lab sample as accepted by CAMBRIDGE. SYNKEM DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTY OF SATISFACTORY QUALITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

**8.2** Subject to Clause 8.3, CAMBRIDGE’s EXCLUSIVE REMEDY FOR ANY FAILURE OF THE COMPOUND TO MEET THE QUALITY REQUIREMENTS DESCRIBED IN 8.1 SHALL BE THE REPLACEMENT OR REFUND PURSUANT TO CLAUSE 9.2. IN NO CASE SHALL SYNKEM BE LIABLE TO CAMBRIDGE FOR INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES.

- 8.3** (a) SYNKEM shall indemnify and hold CAMBRIDGE harmless from and against any and all liability, damage, cost or expense (including reasonable attorneys’ fees) arising out of third party claims based upon failure by SYNKEM to supply COMPOUND which meets the quality requirements described in 8.1 above, such failure to be acknowledged as the cause of the third party’s damage by a court of competent jurisdiction or the parties hereto by mutual written agreement.
- (b) SYNKEM shall not be liable hereunder for failure of the COMPOUND to meet the quality requirements described in 8.1 hereof if CAMBRIDGE has not tested the COMPOUND pursuant to Clause 9.1 before using the same or if, despite such tests evidencing a failure of the COMPOUND to meet such quality requirements, CAMBRIDGE has decided to use it or sell the FINISHED PRODUCT made from such COMPOUND.
- 8.4** CAMBRIDGE shall indemnify and hold SYNKEM harmless from and against any and all liability, damage, cost and expenses (including reasonable attorneys’ fees) arising out of third party claims other than those based upon failure by SYNKEM to supply COMPOUND which meets the quality requirements described in 8.1 above, including without limitation faulty manufacture, labelling or promotion of the FINISHED PRODUCT by CAMBRIDGE or its sub-contractors or licensees.
- 8.5** CAMBRIDGE warrants and represents that the manufacture and supply of COMPOUND hereunder shall not infringe any patent or other intellectual proprietary rights and CAMBRIDGE shall indemnify and hold SYNKEM harmless against any and all liability, damage, cost and expenses (including reasonable attorneys’ fees) resulting from any alleged infringement. However, this shall not apply if and to the extent that the manufacturing process (or portion thereof) has been designed by SYNKEM and infringes a third party patent claiming such process.
- 8.6** The indemnities set forth in this Article 8 are subject to the condition that the party seeking indemnity notifies the other party (the “Indemnifying Party”) without delay of the bringing or threat of any claim or legal proceedings against or involving or implicating the Indemnifying Party and :
- (a) abide by such reasonable instructions as the Indemnifying Party may issue concerning the conduct of such claim or the defence of such proceedings; and
- (b) does not make without the Indemnifying Party’s express written consent any admission of liability to a claimant or plaintiff or his, her or its legal representative or insurer in respect of such claim, threatened claim, proceedings or threatened proceedings; and
- (c) does not make without the Indemnifying Party’s express written consent any settlement or compromise of such claim, threatened claim, proceedings or threatened proceedings.

**Article 9**  
**Defective COMPOUND**

- 9.1** (a) Upon delivery, CAMBRIDGE shall inspect the COMPOUND according to the relevant analytical methods set forth in Schedule 1 attached hereto. If the COMPOUND

delivered does not conform with the quality requirements described in 8.1 above, CAMBRIDGE may reject such COMPOUND by notifying SYNKEM within thirty days from the date of delivery to CAMBRIDGE.

(b) Hidden defects not revealed by the above inspection which cause the COMPOUND not to conform with the quality requirements described in 8.1 above shall be notified to SYNKEM immediately upon discovery. In such event, CAMBRIDGE may reject such COMPOUND by notifying SYNKEM within thirty (30) days from the date of such discovery.

**9.2** After the consultation and agreement among the parties, the quantity of COMPOUND which was rejected under Clause 9.1 (“Defective COMPOUND”) shall be replaced by SYNKEM with the same quantity of COMPOUND which meets the quality requirements described in 8.1 above by one of the following procedures which is acceptable to CAMBRIDGE:

(a) SYNKEM shall, at no additional cost to CAMBRIDGE, reprocess the Defective COMPOUND within such period of time as will be reasonably agreed upon by the parties by following a reworking procedure acceptable to CAMBRIDGE and in compliance with the relevant DMF for the COMPOUND.

Any loss of COMPOUND resulting from this procedure shall, if such substance had been already paid by CAMBRIDGE, be replaced by an equivalent quantity of new COMPOUND or give rise to a compensation by SYNKEM for the COMPOUND lost at the applicable price (as specified in Clause 3.1), at CAMBRIDGE’s option.

(b) SYNKEM shall carry out new production of the COMPOUND at no additional cost to CAMBRIDGE within such period of time as will be reasonably agreed upon by the parties.

**9.3** In the event that CAMBRIDGE destroys or disposes of the Defective COMPOUND (or FINISHED PRODUCT containing the Defective COMPOUND), this shall be done in full compliance with local and national laws and regulations. In no event shall CAMBRIDGE destroy or dispose of the Defective COMPOUND without SYNKEM’s prior written consent.

**Article 10**  
**Insurance**

**10.1** At all times this contract is in effect, each of CAMBRIDGE and SYNKEM shall maintain product liability insurance in an amount of not less than {\*\*\*}† in the case of CAMBRIDGE or {\*\*\*}† in the case of SYNKEM so as to cover any liability it may incur pursuant to Article 8.

**10.2** Each party hereto shall upon request at all reasonable times provide the other with a certificate of insurance as evidence of such insurance. In the event that such insurance is significantly reduced or restricted, terminated or otherwise not renewed, the affected party shall immediately notify the other.

† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.



**Article 11**  
**Term**

This Agreement shall come into effect on the date of its complete signature by both parties and, subject to the provisions for anticipatory termination herein contained, shall remain in force for an initial term of five years.

It shall thereafter continue for an indefinite period unless and until terminated by either party giving not less than eighteen (18) months prior written notice, such notice to be effective at the end, of the initial term or at any time thereafter.

**Article 12**  
**Anticipatory termination**

**12.1** If either party shall at any time fail to abide by any of the provisions of this Agreement, the other party shall have the right to terminate this Agreement on thirty (30) days' prior written notice to the defaulting party specifying the default complained of, provided, however, if said defaulting party cures the default complained of within the said thirty (30) day period, the Agreement will continue in full force and effect as if no default had occurred.

**12.2** Either party may terminate this Agreement at any time by giving written notice with immediate effect to the other party if the other party is declared bankrupt or insolvent, or makes an assignment for the benefit of creditors, or if a receiver is appointed, or any procedures are commenced, voluntarily or involuntarily, by or against a party under any bankruptcy or similar law and such procedure is not dismissed within sixty days of its commencement.

**Article 13**  
**Consequences of termination**

Upon termination of this Agreement pursuant to its provisions or the provisions of the applicable law:

**13.1** SYNKEM shall manufacture and supply those quantities of the COMPOUND ordered by CAMBRIDGE prior to such termination and CAMBRIDGE shall pay the then current supply price (as determined pursuant to Article 3) for such COMPOUND ;

**13.2** Termination shall be without prejudice to (i) any remedies which either party may then or thereafter have under this Agreement or at law or in equity (including without limitation possible damages) and (ii) either party's right to obtain performance of any obligation provided for in this Agreement which survives termination by its terms or by a fair interpretation thereof.

**13.3.** Termination shall not relieve the parties of their obligations that would survive termination by a reasonable interpretation of this Agreement including Articles 8, 14 and 17.

**13.4.** On termination, SYNKEM shall return to CAMBRIDGE all documentation samples given to them referring to the COMPOUND, except for one copy of each document which may be retained by SYNKEM for reference should a dispute arise in the future about the COMPOUND.

**Article 14**  
**Secrecy**

**14.1** Each party hereto (“RECIPIENT”) agrees that it will (i) maintain in good faith the confidentiality of any and all proprietary or confidential information disclosed by the other party (“DISCLOSER”) and (ii) refrain from using the same except for the purpose of implementing this Agreement. These obligations shall survive termination of this Agreement for any reason for a period of twenty years from the termination date. When CAMBRIDGE is the DISCLOSER, the term “information” includes, without limitation, all information relating to the COMPOUND or to the manufacturing process of the COMPOUND disclosed by CAMBRIDGE to SYNKEM.

**14.2** These obligations shall not apply to confidential information in respect of which RECIPIENT can prove that such information (i) is or becomes public knowledge through no breach hereof or (ii) was in RECIPIENT’s possession prior to disclosure by DISCLOSER and was not obtained directly or indirectly from DISCLOSER or (iii) is lawfully acquired from a third party who did not obtain it directly or indirectly from DISCLOSER or (iv) is required to be disclosed by law or any relevant regulatory authority.

**14.3** RECIPIENT shall, on demand on termination of this Agreement for any reason provided by this Agreement or by law, return to DISCLOSER all documents and other tangible mediums of expression embodying DISCLOSER’s information and shall keep no summary or copy thereof except for one copy to be retained in DISCLOSER’s confidential files for evidence purposes.

**Article 15**  
**Force Majeure**

**15.1** Should either party be affected by FORCE MAJEURE, it shall without delay notify the other party of the nature and extent thereof.

**15.2** Neither party shall be deemed to be in breach of this Agreement or otherwise be liable to the other by reason of any delay in performance, or non-performance, of any of its obligations hereunder to the extent that such delay or non-performance is due to any recognised FORCE MAJEURE of which it has notified the other party, and the time of performance for that obligation shall be extended accordingly.

**Article 16**  
**Hardship**

Should the action of third parties, economic, regulatory conditions, FDA regulatory requirements or other conditions outside the control of either party create a situation in which the effect of any provision hereof is severely inequitable to that party, then the parties agree to negotiate in good faith for the revision of the relevant provisions hereof as may be reasonably required by the affected party or parties.

Either party desiring to negotiate for revision in accordance with this Article shall give the other party a statement in writing setting forth the circumstances of the hardship suffered from with a request for a meeting of representatives at a time and place convenient to the other party within

thirty (30) days of the request. The other party shall not unreasonably withhold its agreement to meet and negotiate.

If the parties fail to agree on new terms within thirty days of the first meeting on this issue, the party having requested renegotiation shall be entitled to terminate this Agreement with immediate effect.

**Article 17**  
**Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of England without reference to choice of law principles.

**Article 18**  
**Jurisdiction**

Any claim, controversy or dispute arising between the parties hereto in connection with or with respect to this Agreement which is not resolved through mutual good faith efforts and negotiation shall be resolved by the English courts which shall have non exclusive jurisdiction.

**Article 19**  
**Entire agreement**

**19.1** This Agreement shall exclude all of SYNKEM’s general terms and conditions of supply and all of CAMBRIDGE’s general terms and conditions of purchase.

**19.2** This Agreement (including all Schedules attached hereto) expresses the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior offers, negotiations, agreements and correspondence.

**Article 20**  
**Assignment**

No party hereto may assign its rights or obligations hereunder without prior written consent of the other party.

**Article 21**  
**Amendments**

No amendment, changes, modifications or alterations of the terms and conditions of this Agreement shall be effective unless in writing and duly executed by both parties.

**Article 22**  
**Notices**

Any notices or other communication to be given by one party to the other pursuant to this Agreement shall be in writing and shall be given by sending the same by registered letter, express courier, cable or facsimile transmission to the address of the relevant party as set out

below or such other address as the addressee may notify the addresser in writing from time to time.

PLASTO SA (SYNKEM DIVISION)  
47 rue de Longvic  
21300 Chenôve  
France

Fax : +33.380 447420

CAMBRIDGE LABORATORIES  
Richmond. House, Old Brewery Court  
Sandyford Road  
Newcastle upon Tyne NE2 1XG  
Great Britain

Fax : +44 191 222 1006

**Article 23**  
**Severability**

Should any part of this Supply Agreement be held unenforceable or in conflict with the applicable laws or regulations of any jurisdiction, the invalid or unenforceable part or provision shall be replaced with a provision which accomplishes, to the extent possible, the original business purpose of such invalid or unenforceable part or provision in a commercially reasonable, valid and enforceable manner, and the remainder of this Supply Agreement shall remain binding upon the parties hereto.

**Article 24**  
**General provisions**

**24.1** Failure by either party to respond to any proposal or statement made by the other party shall not be deemed to be consent thereto nor operate so as to modify the nature, effects or extent of any obligation under this Agreement.

**24.2** Failure by either party to exercise or enforce any right conferred to it by this Agreement shall not be considered a waiver nor operate so as to preclude the exercise or enforcement thereof at any subsequent time or on any subsequent occasion.

**24.3** This document is not an offer and shall not constitute a contract unless signed by both parties.

**24.4** Unless the context otherwise requires, the words in singular shall be deemed to include the plural and vice-versa.

**24.5** Title headings have been inserted for convenience only and shall not be used in interpreting this Agreement.

Made in duplicate

CAMBRIDGE LABORATORIES

Date : 24<sup>th</sup> July 1998

PLASTO S.A. (SYNKEM Division) (Division of Cambridge  
Selfcare Diagnostics Limited)

Date : 31<sup>st</sup> July 1998

Signature : /s/ Diana Boyd

Name : Diana Boyd

Position : Company Secretary

Signature: /s/ Jean-François Colas

Name: Colas, Jean- François

Position : Directeur Industriel

**CONFIDENTIAL TREATMENT REQUESTED:**

*Portions of this Exhibit have been redacted pursuant to a request for confidential treatment under Rule 24b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended. Such redacted portions have been replaced with “{\*\*\*}” in this Exhibit. An unredacted version of this document has been filed separately with the Securities and Exchange Commission along with the request for confidential treatment.*

**This Amendment Agreement** is made this 25th day of February 2005

**BETWEEN**

**CAMBRIDGE LABORATORIES LIMITED**, a company organised and existing under the laws of England and having its registered office at 17 Hanover Square, London W1S 1HU, Great Britain, and trading as **CAMBRIDGE LABORATORIES IRELAND** having its principal place of business at Alexandra House, The Sweepstakes, Ballsbridge, Dublin 4

Hereinafter “Cambridge”

**SYNKEM S.A.S.** a company organised and existing under the laws of France with registered offices at 47 Rue de Longvic, 12300 Chenove, France.

Hereinafter “Synkem”

**RECITALS**

Cambridge Laboratories Limited was formerly called Cambridge Selfcare Diagnostics Limited.

Cambridge is establishing a branch office in Ireland called Cambridge Laboratories Ireland (“Cambridge Ireland”), that ,will become an affiliated company under common ownership with Cambridge. Cambridge and Synkem entered into an. agreement on 31 July 1998 for the exclusive supply to Cambridge by Synkem of the active ingredient tetrabenazine (hereinafter “the Supply Agreement”).

Cambridge and Synkem entered into an agreement on 01 May 2003 for the preparation and maintenance of a Drug Master File for the active ingredient tetrabenazine (hereinafter “the DMF Agreement”).

The parties have discussed the possibility of transferring the rights and obligations of Cambridge to Cambridge Ireland, as well as of amending certain of the pricing and supply aspects of the Supply Agreement and the DMF Agreement.

The parties therefore have decided to enter into this amendment agreement (the “Amendment Agreement”) to amend aspects of both the Supply Agreement and the DMF Agreement as set forth herein.

Terms beginning with a capital letter in this Amendment Agreement and which are not defined herein shall have the meaning ascribed to them in the Supply Agreement or the DMF Agreement, as applicable.

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THE PARTIES AGREE as follows

1. **Assignment to Cambridge Ireland.** Synkem hereby agrees that Cambridge may assign its rights and obligations under the Supply Agreement, the DMF Agreement and this Amendment Agreement to Cambridge Ireland following incorporation of Cambridge Ireland as an affiliated company under common ownership with Cambridge, provided that Cambridge notifies Synkem as soon as Cambridge Ireland has been incorporated as an affiliate under common ownership and that Cambridge guarantees to Synkem the compliance by Cambridge Ireland of all of the provisions of the Supply Agreement, the DMF Agreement and this Amendment Agreement. .
2. **Compound Price.** Article 3 of the Supply Agreement is hereby deleted. Save as set forth in clause 3 below, the price Cambridge is to pay to Synkem for the Compound shall be determined in accordance with the scale set forth in Part A of Schedule 1 hereto.
3. **Validation of MII Process.** In connection with the work of validation of the MII process, Cambridge shall be responsible for paying Synkem the sum of {\*\*\*}† in consideration for the validation of the MII processes to FDA standards in support of the NDA for the Finished Product. Cambridge will also reimburse Synkem the sum of {\*\*\*}† for the costs of purchase from Interior of approximately three tonnes of MII 172, the validation of this production and the storage thereof at Synkem. Synkem shall use such three tonnes of MII 172 purchased from Interior solely for the manufacture of the Compound and the validation data for the update of the Tetrabenazine Drug Master File. For the sake of clarity Cambridge shall own the MII process validation data and all rights pertaining to that data. The price to be paid by Cambridge for any Compound incorporating the above-mentioned three tonnes of MII 172 shall be as set forth in Part B of Schedule 1 hereto.
4. **Currency.** Notwithstanding anything to the contrary in the Supply Agreement, the currency of payment shall be the Euro.
5. **Payment.** Article 4 of the Supply Agreement shall be deleted and replaced with the following:  
  
“Cambridge shall pay for each consignment of the Compound in full, by bank transfer in Euro, within thirty (30) days of the date of the invoice sent by Synkem regarding such consignment which invoice shall be sent on or after the delivery of the consignment.”
6. **Delivery Terms.** Articles 2.5 and 2.6 of the Supply Agreement shall be deleted and replaced with the following:  
  
“All consignments of the Product shall be delivered CIP (Incoterms 2000) to Cambridge’s Finished Product manufacturer in the EU, the name and address of such manufacturer to be provided to Synkem by Cambridge by at least two weeks before the requested delivery date.

† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

7. **Compound Specifications.** A third sentence shall be added to the end of Article 8.1 of the Supply Agreement as follows:
- “The specifications described in Schedule 1 attached hereto may be amended from time to time by mutual agreement of the parties recorded in writing and signed by appropriately authorised representatives.”
8. **Batch Size.** By derogation to Article 2.4 of the Supply Agreement, one batch of the Compound shall amount to approximately three hundred kilograms (300 kg).
9. **Term.** The initial term of five years referred to in Article 11 of the Supply Agreement shall be extended for a further five (5) years commencing on Commencement Date of this Amendment Agreement being the date that appears at the top of this Amendment Agreement.
10. All other conditions of the Supply Agreement and the DMF Agreement shall remain unchanged and shall continue to apply.

IN WITNESS whereof this Amendment Agreement has been executed by the duly authorised representatives of the parties the day and year first above written

**For and on behalf of**  
**CAMBRIDGE LABORATORIES LIMITED**  
trading as  
CAMBRIDGE LABORATORIES IRELAND

**Signed** : /s/ Mark P. Evans

**Name** : Mark P. Evans

**Title** : CEO

**For and on behalf of**  
**SYNKEM S.A.S**

**Signed** : /s/ T. Schwitzguebel

**Name** : T. Schwitzguebel

**Title** : Director Operations



**SCHEDULE 1**

**PRICES**

**Part A — Prices for Compound after Synkem has used the three tonnes of MII 172 purchased from Interior under Article 3 of the Amendment Agreement**

For up to {\*\*\*}† kg/year: {\*\*\*}† / kg

If Cambridges orders between {\*\*\*}† kg and {\*\*\*}† kg per year: the average price per kg will be {\*\*\*}† / kg

If Cambridges orders between {\*\*\*}† kg and {\*\*\*}† kg per year. the average price per kg will be : {\*\*\*}† /kg

If Cambridges orders over {\*\*\*} kg per year, the average price per kg will be : {\*\*\*}† / kg

Yearly quantities are the quantities that will be delivered during the same calendar year (from January to December). Each order must be for a minimum of at least one batch, which must be ordered at least six months prior to the requested delivery date. Synkem shall make its best efforts but shall not be obliged to supply more than seven batches within any six month period (for orders exceeding seven batches, the parties shall renegotiate delivery dates).

**Part B Prices adjustment for Compound incorporating the three tonnes of MII 172 purchased from Interior under Article 3 of the Amendment Agreement**

About 770 kg of MII are needed to manufacture two 300 kg batches of Compound. The validated MII will be used to manufacture the Compound from 2004 until 2007 according to Cambridge’s forecasts, provided the MII 172 stability is sufficient. The cost of the MII 172 used in such Compound batches (about {\*\*\*}† per kg of Compound) will be subtracted from the above Compound prices until the stock of MII 172 is consumed.

For example, the Compound price applicable to orders under {\*\*\*}† kg of Compound per year will be : {\*\*\*}† = {\*\*\*}† /kg

† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

**CONFIDENTIAL TREATMENT REQUESTED:**

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**(1) CAMBRIDGE LABORATORIES LIMITED**  
**trading as**  
**CAMBRIDGE LABORATORIES IRELAND**

**and**

**(2) LABORATOIRES FOURNIER SA**

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**CONTRACT MANUFACTURE AGREEMENT**

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**CONTRACT MANUFACTURE AGREEMENT**

THIS AGREEMENT is made the 9<sup>th</sup> day of May 2005 (the “Effective Date”)

**BETWEEN**

- (1)

Cambridge Laboratories Limited, a company incorporated in England whose registered office is located at 17 Hanover Square, London W1S 1HU trading as Cambridge Laboratories Ireland with offices at Alexandra House, The Sweepstakes, Ballsbridge, Dublin 4, Ireland (“Cambridge”)
- and
- (2)

Laboratoires Fournier SA a company incorporated in France whose registered office is at 42 rue de Longvic, 21300 Chenôve, France (“Manufacturer”)

**RECITALS:**

- (A)

Manufacturer is a pharmaceutical company, with activities in the area of the manufacture, assembly and packaging of pharmaceutical products.
- (B)

Cambridge is a pharmaceutical company, with activities in the marketing and sales of pharmaceutical products, including the Product as defined hereunder.
- (C)

Cambridge wishes Manufacturer to manufacture the Product on its behalf and Manufacturer is willing to Manufacture the Product on the terms and conditions hereinafter set out.

**THE PARTIES AGREE AS FOLLOWS:**

**1 Definitions**

1.1 In this Agreement the following terms shall have the following meanings unless the context otherwise requires:

- “Active Substance”

means tetrabenazine
- “Affiliates”

means in respect of each party any company which at the relevant time is controlled, controlling or under common control with such party. For the purposes of this definition, control means the direct or indirect ownership of:  
(a) a majority of the voting rights in such party; or (b) the right to appoint or remove a majority of its board of directors;



|                              |                                                                                                                                                                                                                                                                     |
|------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| “Agreement”                  | means this Contract Manufacture Agreement, along with its recitals and Schedules hereto.                                                                                                                                                                            |
| “Batch”                      | means a uniquely identified or identifiable quantity of raw materials, starting materials, packaging materials or Product which has been processed in one process or series of processes to the extent that such quantity could be expected to be homogeneous;      |
| “Certificate of Analysis”    | means a document stating that the results of the laboratory analysis of the Product, packaging materials or Raw Materials conforms with the Specifications;                                                                                                         |
| “Certificate of Conformance” | means a document signed by a Qualified Person stating and confirming that the Product or product to which such document refers has been Manufactured in accordance with the Specifications (and referencing the Regulatory Approval number, if applicable) and GMP; |
| “Cost of Production”         | means, as relevant to the context in which the phrase is used, both the individual and overall cost of material, equipment, labour and direct overheads to Manufacturer in Manufacturing the Product;                                                               |
| “Defect”                     | means a non-compliance of the Product with the Specifications caused by the failure by Manufacturer to comply with GMP, the Specifications or the Technical Conditions;                                                                                             |
| “Firm Period”                | means the binding element of the Vendor’s Schedule, being the first {***}† months thereof;                                                                                                                                                                          |

† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

|                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|--------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| “Force Majeure”                | means, in relation to either party, any strike, lock-out or other form of industrial action, civil commotion, Act of God, fire, explosion, flood, failure of utilities, war or hostilities, acts of Government or Government appointed agents, embargoes or other export restrictions, or perils of the sea, or any circumstance beyond the reasonable control of that party;                                                                                                                                               |
| “Forecast”                     | means the non-binding element of the Vendor’s Schedule, being the last eight months thereof;                                                                                                                                                                                                                                                                                                                                                                                                                                |
| “GMP”                          | means, as relevant to the Product, the principles and guidelines of good manufacturing practice as contained in a directive 2003/94/EC (medicinal products for human use), as such principles and guidelines are interpreted and expanded in “The Rules Governing Medicinal Products in the European Community, Volume IV. Good Manufacturing Practice for Medicinal Products”, together with those rules and guidelines contained in the United States Code of Federal Regulations (Title 21, Parts 210-211, 600 and 610); |
| “Information”                  | means any information, technology, know how, data or commercial information of a confidential and proprietary nature relating to a party’s business, products, intellectual property or services, including without limiting the foregoing, the Technical Information, Specifications and Product price data;                                                                                                                                                                                                               |
| “Manufacture”                  | means, following Validation, the production of the Product from the Raw Materials and the Active Substance and includes manufacturing, formulating, assembling, packaging, labelling, storage, handling, use, testing and quality control;                                                                                                                                                                                                                                                                                  |
| “Manufacturing Specifications” | means the processes, instructions, assays, in process testing requirements, finished product testing requirements and other information required to Manufacture the Product as set forth in the Specifications                                                                                                                                                                                                                                                                                                              |

|                                |                                                                                                                                                                                                                                                                            |
|--------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| “Packaging Specifications”     | means the specifications for the labelling and packaging of the Product set forth in the Specifications. The parties acknowledge that there are a number of different Packaging Specifications that relate to the Product to be supplied;                                  |
| “Product”                      | means the product containing the Active Substance and described in the Specifications;                                                                                                                                                                                     |
| “Product Specifications”       | means the specifications for the Product set forth in the Specifications;                                                                                                                                                                                                  |
| Protocol                       | means the document setting forth the rules, standards, performances and goals expected of the Validation as determined by Manufacturer after transfer of the Technical Information referred to in Article 2.3 hereof and agreed and approved by Cambridge.                 |
| “Qualified Person”             | means the person so designated in accordance with EEC Directive 75/319;                                                                                                                                                                                                    |
| “Raw Materials”                | means the raw materials specified in the Specifications;                                                                                                                                                                                                                   |
| “Raw Materials Specifications” | means the specifications or requirements for the Raw Materials as set forth in the Specifications.                                                                                                                                                                         |
| “Regulatory Approval”          | means any product licence, marketing authorisation or clinical trials certificate or equivalent issued for the Product by the relevant Regulatory Authority and in terms permitting, as appropriate, the importation, distribution, sale, marketing or use of the Product; |
| “Regulatory Authority”         | means the Irish Medicines Board and the French Regulatory Authority or any equivalent competent body in any jurisdiction as relevant to the Product and the territories in which the Product is to be marketed or used with the exception of Japan;                        |

|                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|-------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| “Specifications”        | means the Manufacturing Specifications, the Packaging Specifications, the Raw Materials Specifications and the Product Specifications set forth in the document entitled “Schedule 2 Specification” signed on even date and amended from time to time in accordance with the terms of this Agreement;                                                                                                                                                                                                                  |
| “Technical Conditions”  | means the Technical Conditions setting out or otherwise identifying the Specifications for the Product which are annexed as Schedule 1 hereto. The Technical Conditions may be modified from time to time by mutual written agreement between the parties;                                                                                                                                                                                                                                                             |
| “Technical Information” | means all know-how, registration data, experience, instructions, standards, methods, test and trial results, manufacturing processes, hazard assessments, quality control standards, formulae, specifications, storage data, samples, drawings, designs, descriptions of packaging materials and all other relevant information relating to the Product, the Raw Materials, the Active Substance or the Manufacture, storage, packaging, shipping, handling or use of the Product, Raw Materials and Active Substance; |
| “Trade Mark(s)”         | means the trade mark(s) set out in Schedule 4 which are either owned by Cambridge or to which Cambridge has the necessary right of use;                                                                                                                                                                                                                                                                                                                                                                                |
| “Validation”            | means the process of proving the reproducibility, efficacy, and repeatability of all procedures, processes, equipment, materials, testing equipment, tests, activity or system and the ability thereof to Manufacture the Product in accordance with the principles of GMP, the Specifications and the Protocol to the satisfaction of the Manufacturer;                                                                                                                                                               |

|                     |                                                                                                                                                                                                                                                                                                                                                                                                                          |
|---------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| “Vendor’s Schedule” | means Cambridge’s 12 months rolling requirements for supply of the Product for the period of twelve (12) calendar months as from the date on which it is sent to Manufacturer, and which shall be comprised of a binding Firm Period and a non-binding Forecast. The Vendor Schedule shall specify requirements for both the 12.5 mg and the 25 mg strengths of the Product and the different packaging for the Product. |
| “Commercial Packs”  | means all Product for which Manufacturer has carried out the Manufacture, including primary and secondary packaging, destined for the territories as indicated on the list set forth in Schedule 5 hereto.                                                                                                                                                                                                               |
| “Export Packs”      | means all Product for which the Manufacturer has not done secondary packaging and which is intended for the territories indicated on the list set forth in Schedule 5 hereto.                                                                                                                                                                                                                                            |

- 1.2 Any reference in this Agreement to “writing” or cognate expressions includes a reference to mail, telex, cable, facsimile transmission or comparable means of communication.
- 1.3 Words in this Agreement importing the singular meaning shall where the context so admits include the plural meaning and vice versa.
- 1.4 The headings in this Agreement are for convenience only and shall not affect its interpretation.

**2 Technology Transfer**

- 2.1 Within 2 weeks after the signature of this Agreement, and prior to Manufacturer’s obligations to Manufacture the Product hereunder arising, Cambridge will supply and transfer to Manufacturer all the Technical Information that it has in its possession or control to enable Manufacturer to Manufacture and adequately transport the Product, the Raw Materials and the Active Substance in accordance with the Specifications, GMP and this Agreement and more generally to fulfil all of its obligations hereunder.
- 2.2 As from the date of signature hereof and throughout the Validation process, Cambridge will promptly provide such technical assistance as may reasonably be requested to enable the effective transfer of the Technical Information referred to in clause 2.1 and to enable the Manufacturer to carry out the Validation and Manufacture the Product.
- 2.3 Upon receipt of such Technical Information and technical assistance, Manufacturer shall carry out Validation of the process of Manufacture in accordance with the Protocol.



- 2.4 In accordance with the Protocol, Manufacturer shall Manufacture three (3) Validation Batches of the Product in accordance with the Specifications for use in the Validation process. This Validation process may include Stability Studies to current ICH standards.
- 2.5 Notwithstanding anything else herein contained, should (i) Validation of the process of Manufacture not be proven in accordance with the Protocol; (ii) should Manufacturer be unable for whatever reason to Manufacture the Product in accordance with the Technical Conditions, the Specifications, or this Agreement, or (iii) the Regulatory Authorities not approve the Product, the parties shall meet and discuss the issues and the means by which any problems may be resolved. If the issues preventing the Validation are not able to be overcome to the satisfaction of Cambridge, Cambridge may terminate this Agreement on provision of at least 1 month's written notice and the provisions set forth in Article 13 shall apply. Manufacturer may terminate this Agreement during or at the end of the Validation process in the event that Validation is not carried out to Manufacturer's satisfaction and the provisions set forth in Article 13 shall apply.
- 2.6 Cambridge shall pay Manufacturer for the Validation in accordance with Part A of Schedule 3. For the sake of clarity, if the Validation is unsuccessful Cambridge shall only be required to pay for those modules of the Validation process that were completed by Manufacturer prior to the failure, plus those other costs as set forth in Article 13 hereof.

**3 Supply and use of the Active Substance**

- 3.1 Cambridge will supply to Manufacturer in a timely manner, and at least 4 weeks in advance of Manufacturer's requirement of any Active Substance, to enable Manufacturer to fulfil its obligations hereunder, free of charge, such quantities of the Active Substance as Manufacturer requires to Manufacture the quantities of the Product indicated in the Vendor's Schedule.
- 3.2 Manufacturer shall keep full and accurate records of its inventory of the Active Substance and shall provide to Cambridge, on the last working day of each month, a report of its stock of the Active Substance, including work in progress and utilisation in the period. Cambridge has informed Manufacturer that Cambridge will over the course of the following years be moving to a fully integrated CFR 21 compliant electronic system. Cambridge will keep Manufacturer informed of its activities in this respect, in particular in the event that such activities may have an impact on Manufacturer's activities hereunder. The parties agree to make their best efforts to ensure that their activities are CFR 21 compliant. In the event that there is a problem and Cambridge's and Manufacturer's CFR 21 systems are incompatible, Cambridge and Manufacturer will come together to discuss how to address such situation. If agreement as to how to address this situation cannot be reached between operational representatives of each party, either party may refer the matter for further discussion between the respective Chief Executive Officers.
- 3.3 Active Substance provided by Cambridge shall comply with the Specifications for such and shall be accompanied by a Certificate of Analysis from Cambridge's Active Substance manufacturer. Cambridge warrants that the Active Substance manufacturer is a

qualified pharmaceutical company, entitled to carry on its business and manufacture the Active Substance.

- 3.4 Manufacturer will store the Active Substance supplied by Cambridge in accordance with the Specifications and GMP and shall use such solely for the Manufacture of the Product in accordance with GMP, the Specifications and the Technical Conditions, for the purposes hereof. Notwithstanding the foregoing, to the extent possible given the Manufacturer's needs for the purposes hereof, on Cambridge's written request, Manufacturer will supply Active Substance to third parties designated by Cambridge for research and development work.
- 3.5 Manufacturer acknowledges that Cambridge is supplying the Active Substance for the Manufacture free of charge and agrees to compensate Cambridge for any costs incurred by Cambridge in replacing any Active Substance that has been rendered unusable due to the failure of Manufacturer to store the Active Substance in accordance with the Specifications and GMP, the negligence or wilful default of Manufacturer or in the event of waste in failing to comply with the Specifications, GMP and the Technical Conditions in the Manufacture of the Product. Following Validation, the parties may, by mutual agreement recorded in writing, adjust the acceptable waste percentage set forth in Article 12 of the Technical Conditions. The parties shall review the acceptable waste percentage annually. In the event that the Manufacturer has complied with the Specifications, the Technical Agreement and GMP but in doing so Manufacturer has exceeded the acceptable wastage percentage of Active Substance set forth in the Technical Conditions the parties shall review the reason for the excess and, if the parties agree that the Active Substance waste level of the Batch in question is an anomaly, they shall agree upon an equitable sharing of the cost of replacement of the excess Active Substance used in that Batch over the agreed waste percentage. In the event that Manufacturer has manufactured a Batch of Product in accordance with the Specifications, GMP and the Technical Agreement but the Batch nonetheless fails, the parties shall meet, as soon as is practicable after the Batch failure, to determine whether there is any solution aside from Manufacturing a replacement Batch from scratch. The parties shall agree upon an equitable sharing of the costs of whatever remedial action is agreed upon. Cambridge acknowledges that the requirement on Manufacturer to reimburse Active Substance that has been wasted will not apply in respect of Active Substance used in the Validation save in the event of negligence or wilful malfeasance on the part of Manufacturer.
- 3.6 In the event that Cambridge requests, in writing, that Manufacturer provide Active Substance to a third party for research and development work Cambridge shall pay Manufacturer for its reasonable and documented handling, storage and transportation costs, and shall hold Manufacturer harmless from any claims resulting from or relating to the use of the Active Substance in such context.
- 3.7 Cambridge shall retain title in any Active Substance until such Active Substance becomes incorporated in the Manufacture of the Product subject to Cambridge's insurance obligations set forth in Article 10 hereof, save that such shall not limit Cambridge rights under clause 3.5 to seek compensation for the cost of replacement for wasted or misused Active Substance.

**4 Contract Manufacture**

- 4.1 Cambridge hereby appoints Manufacturer to Manufacture Cambridge’s requirement for the Product and Manufacturer accepts such appointment. During the period of this Agreement Manufacturer will Manufacture for Cambridge the Product in accordance with this Agreement.
- 4.2 Except as otherwise provided herein or specifically requested otherwise by Cambridge, Manufacturer shall source, at its cost, all Raw Materials other than the Active Substance.
- 4.3 Manufacturer represents, warrants and covenants that:
- 4.3.1 it has and will use all best endeavours to maintain during the term of this Agreement, such authorisations from the Regulatory Authority in France as are necessary to enable it to manufacture the Product;
  - 4.3.2 it will conduct the Manufacture in accordance with GMP, the Specifications and the Technical Conditions;
  - 4.3.3 it will ensure that any Raw Materials employed by Manufacturer in the Manufacture and not supplied by or on behalf of Cambridge will at the time of use comply with the Specifications and that it has Certificates of Conformance to confirm such where applicable;
  - 4.3.4 In the event that Manufacturer receives, in relation to the Product, any 483 Notice, warning letter from FDA or any similar notice from any other Regulatory Authority or government agency where a failure to comply with such could result in Manufacturer being unable to perform its obligations under this Agreement or any other communication from any Regulatory Authority pertaining directly or indirectly to the manufacture of the Product (hereinafter “Regulatory Notices”), Manufacturer shall use commercially reasonable endeavours to send to Cambridge, within five (5) working days following receipt of such Regulatory Notice and in any event no later than ten (10) working days following receipt of such, edited copies of such Regulatory Notices (removing only those words which would result in breach of confidentiality obligations to any third party) and to notify Cambridge of any requirements set forth in those Regulatory Notices that it is going to be unable to rectify within the time frame set forth for rectification in the Regulatory Notice. Manufacturer shall, save as set forth above, use commercially reasonable endeavours to rectify any matters set forth in any Regulatory Notice in the time frame set forth for rectification of the issue in the Regulatory Notice or other time frame, if and as agreed upon with the Regulatory Authority or government agency. If Cambridge has received notification from Manufacturer that it is going to be unable to rectify certain matters raised in any Regulatory Notice within the time frame for rectification and that this would render Manufacturer unable to further Manufacture the Product within a reasonable timeframe, Cambridge shall have the right to terminate this Agreement.

- 4.4 Cambridge represents, warrants and covenants that:
- 4.4.1 it will be responsible for assessing and confirms that it has assessed the competence of Manufacturer to carry out the Manufacture of the Product in accordance with GMP;
  - 4.4.2 it has notified Manufacturer of any special requirements in respect of record- keeping that may be necessary to comply with Cambridge’s adverse event/defect/recall procedure;
  - 4.4.3 it shall notify Manufacturer of any hazards to the health or safety of any personnel of Manufacturer and Cambridge shall keep Manufacturer so advised throughout the continuance of this Agreement.
  - 4.4.4 the Technical Information that it will provide to the Manufacturer is to the best of its knowledge true, exact, complete and sufficient for the purposes hereof and has been used successfully by two other manufacturers in the manufacture of the Product,
  - 4.4.5 the Specifications are to the best of its knowledge true, exact and complete and sufficient to Manufacture the Product in accordance with the purposes hereof and have been successfully used by two other manufacturers in the manufacture of the Product;
  - 4.4.6 it holds the rights in and to the Technical Information, the Product, the Active Substance and the Product packaging to enable the Manufacturer to Manufacture the Product and to perform its obligations hereunder,
  - 4.4.7 that, to the best of its knowledge and belief, the Technical Information, Product, Product packaging, Active Substance, Manufacture and Raw Materials do not infringe the rights of any third party, and that the Manufacturer may freely use them for the purposes hereof and that it has not at any time in the past 10 years received any claim from any third party that any of the aforementioned items or actions infringe their intellectual property rights.

**5 Technical Conditions**

- 5.1 The respective responsibilities of Manufacturer and Cambridge relating to the Manufacture of the Product, the way in which each Batch of the Product is to be Manufactured and checked for compliance with and adherence to the appropriate Specifications and GMP, the responsibility for purchasing materials, testing and releasing materials and undertaking production and quality control including in-process controls as well as sampling and analysis shall be as specified in the Technical Conditions.
- 5.2 Subject to Cambridge complying in all respects with its obligations under this Agreement, Manufacturer shall be responsible for ensuring the safe operation of the process of Manufacture of the Production in its premises.

5.3 Any alteration to the Technical Conditions must be agreed between the parties and such agreement will include but not be limited to agreeing the implications of such alterations on the Cost of Production and the cost of Validation thereof. Should no agreement be reached, the escalation provisions of clause 15 shall apply.

**6 Duration**

6.1 Unless sooner terminated as hereinafter provided, this Agreement shall come into force on the Effective Date hereof and shall continue in force for a minimum period of seven (7) years. This Agreement may be renewed for an open-ended term by either party providing notice of renewal to the party at least 18 months prior to the end of such seven-year period. If either party wishes to terminate on the seventh anniversary of the Effective Date it must provide no less than 18 months' written notice of such to the other party to expire on the seventh anniversary of the Effective Date. Notwithstanding the foregoing, in the event that no notice of renewal or of termination is sent by either party by the deadlines set forth in this Article, the Agreement shall expire at the end of such seven (7) year period. If renewed, it shall continue until terminated by either party giving to the other not less than 18 months' notice.

**7 Vendor's Schedule Forecast and Supply**

7.1 During the term of this Agreement and following Validation Cambridge will submit to Manufacturer Vendor's Schedules. The first Vendor's Schedule shall be submitted to Manufacturer within seven (7) days of the successful completion of that Validation and shall cover the twelve (12) calendar months from that date. Thereafter Vendor's Schedules will be submitted each month by no later than the twentieth (20th) day of each calendar month, specifying Cambridge's anticipated requirements for Product in calendar monthly periods for the relevant twelve (12) month period covered by the Vendor's Schedule.

7.2 The first Vendor's Schedule submitted to Manufacturer shall be accompanied by purchase orders covering the Firm Period of such Vendor's Schedule. All subsequent Vendor's Schedules submitted shall be accompanied by purchase orders covering the relevant amount of Product indicated as being required in the last month of the Firm Period and stating a date for delivery consistent with the Firm Period and which delivery date must be at least thirteen (13) weeks from the date of receipt by Manufacturer of such purchase order. The quantity set forth in the Firm Period may not be altered. The quantity set forth in the Forecast may be altered by Cambridge within a range of plus or minus {\*\*\*}† for months {\*\*\*}†, plus or minus {\*\*\*}† for the months thereafter. Manufacturer shall notify Cambridge of its receipt of any purchase order and acceptance of such delivery date in writing within five (5) working days of receipt. Unless inconsistent with the aforementioned restrictions on the Firm Period and agreed percentage changes in the Forecast, all such purchase orders ("Firm Period Orders") shall be confirmed by Manufacturer and shall be binding on Manufacturer. If Cambridge requires and orders

† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

additional quantities of the Product over and above those set forth in the Firm Period, Manufacturer shall use reasonable endeavours to fulfil that order. Notwithstanding the foregoing, the parties acknowledge that, within two (2) weeks of the end of Validation, Manufacturer will notify Cambridge in writing of the maximum quantity of the Product Manufacturer can Manufacture in any year and/or, if applicable, per purchase order (hereinafter “Manufacturer’s Annual Production Capacity”) and Manufacturer shall not be obliged to fulfil any orders, whether Firm Period Orders or other orders, for quantities ordered in excess of Manufacturer’s Annual Production Capacity”. If Manufacturer receives an order from Cambridge where the quantity ordered or any part of that quantity would result in Manufacturer’s Annual Production Capacity being exceeded it shall notify Cambridge of such as soon as is commercially practical. Each order placed by Cambridge must be for one full batch or any whole number multiple of full batches of Product. Manufacturer shall not be obliged to fulfil orders for partial batches of Product.

- 7.3 The Product is supplied by Manufacturer Ex-works (EXW) (Incoterms 2000). Time for delivery in respect of Firm Period Orders is of the essence. Manufacturer shall deliver EXW any Firm Period Orders on or before the delivery date. Manufacturer shall make its commercially reasonable efforts to deliver the Products ordered other than in Firm Period Orders on or before the delivery date set forth in the relevant order. Notwithstanding the foregoing, Manufacturer’s obligation of delivery is contingent upon Manufacturer having received Cambridge’s notice provided under clause 7.5. Upon the earlier of (a) receipt by Manufacturer of Cambridge’s notice to be provided under clause 7.5 or (b) the agreed delivery date for any order, Manufacturer may deliver the Product and render to Cambridge an invoice for the quantity of the Product ordered. Title to the Product shall be and remain with Manufacturer unless and until Cambridge has paid in full for the Product and any other Product supplied hereunder.
- 7.4 Each batch of the Product Manufactured shall be numbered in accordance with Manufacturer’s batch numbering SOP full written details of which shall be provided to Cambridge and each Batch supplied shall be identified with its Batch number.
- 7.5 Prior to delivery of each Batch of Export Pack to be supplied, Manufacturer shall supply to Cambridge a Certificate of Analysis and a Certificate of Conformance signed by the Manufacturer’s Qualified Person, the samples and a summary of the Batch Manufacturing records. Prior to delivery of each Batch of Commercial Pack to be supplied, Manufacturer shall supply to Cambridge a Certificate of Analysis, a Certificate of Conformance and a release statement signed by the Manufacturer’s Qualified Person, the samples and a summary of the Batch Manufacturing records. Cambridge will, at least 5 business days prior to scheduled delivery date of each Batch, notify Manufacturer whether, based on the information provided by Manufacturer pertaining to that Batch as set forth above in this clause, Cambridge is prepared without prejudice to its rights hereunder to take delivery of that Batch.
- 7.6 Any Defects shall be reported to Manufacturer in writing promptly after discovery. Unless there is a dispute between the parties as to the cause of the Defect in the Product (in which case clauses 7.7 and 7.8 shall apply) Manufacturer shall use its commercially reasonable efforts to Manufacture and deliver to Cambridge within six (6) weeks of such

reporting by Cambridge, at no charge, a sufficient quantity of the Product to replace the defective Batch or Batches.

- 7.7 If there is any dispute concerning whether Product complies with the Specifications or whether such failure is due (in whole or in part) to acts or omissions of Cambridge after delivery of Product, a sample of the rejected Product and a sample retained by Manufacturer as set forth above shall be exchanged between Cambridge and Manufacturer for a counter-check. If such counter-check does not resolve the dispute, a sample of the rejected Product and a sample retained by Manufacturer shall be submitted to an independent, qualified third-party laboratory that is mutually acceptable and selected by the Parties promptly in good faith. The test result obtained by such laboratory shall determine whether the rejected Product fails to comply with the Specifications due to acts or omissions of Cambridge after delivery of the Product or acts or omissions of Manufacturer prior to delivery of the Product and such laboratory's determinations shall be final and determinative for purposes of this Agreement save for manifest error on the face of decision. The Party against whom the laboratory rules shall bear all costs of the third party laboratory activities.
- 7.8 If it is determined pursuant to clause 7.7 above that the Product does not conform to the Specifications due to the default of Manufacturer then Manufacturer shall Manufacture and deliver to Cambridge, at no charge, a sufficient quantity of the Product to replace the defective Batch or Batches. For the sake of clarity the provisions of clause 3.5 shall apply in respect of the cost of replacement of wasted Active Substance. If Cambridge accepts that the relevant Batches of Product were Manufactured in accordance with the Specifications or that any defect did not arise due to Manufacturer's default Manufacturer shall Manufacture and deliver to Cambridge, at the usual cost, a sufficient quantity of the Product to replace the defective Batch or Batches.
- 7.9 After the period of Validation, Manufacturer agrees to maintain a safety stock of Export Pack Product. The amount of such safety stock shall be determined at the beginning of each calendar year as an amount equal to one month's average Product requirements as stipulated in Cambridge's Forecast for such calendar year.

## **8 Intellectual Property and Improvements**

- 8.1 Cambridge hereby authorises Manufacturer to use the Trade Marks and Cambridge's other intellectual property on or in relation to the Product for the purpose only of exercising its rights and performing its obligations under this Agreement. All data and intellectual property and other rights pertaining to the data arising from the Validation work and on-going stability and quality conformance work carried out by Manufacturer shall be the property of Cambridge.
- 8.2 Each party hereby acknowledges that it shall not acquire any rights in respect of any of the other party's intellectual property in relation to the Product or the Manufacture thereof or of the goodwill associated therewith.

- 8.3 Except as is necessary for the proper performance of this Agreement by the parties, no licence, express or implied, is granted by this Agreement by either party to the other under any of its intellectual property rights.
- 8.4 Cambridge authorises the Manufacturer to place Manufacturer’s company name and address on the Product packaging and leaflet with an indication that it is the manufacturer of the Product if so required by law.
- 9 Prices**
- 9.1 All orders for the Product for the eighteen (18) months following validation will be at the prices set forth in part B of Schedule 3.
- 9.2 Following the period set forth in clause 9.1, Manufacturer may review the price annually in accordance with the INSEE index number 064688387 (pharmacy perfumery and maintenance industries salaries index) for the preceding month of June (published the following September). In the event that the increase in Cost of Production and Raw Material costs exceed the amount of such index, Manufacturer shall provide written evidence to Cambridge of such increases in the Costs of Production and Raw Materials and the parties shall meet to discuss that increase, the impact on the Costs of Production and ways in which that increase might be off-set including but not limited to, for example, alternative sources of supply of the Raw Material in question. If, after going through that process the parties find that the exceptional increase cannot be fully offset, the matter shall be referred for further discussion initially to the Chief Financial Officers of both parties and, if necessary, to the Chief Executive Officers of both parties. If resolution as to how to deal with the exceptional cost increase has not been reached following discussion between the Chief Executive Officers, either party may terminate this Agreement on provision of ninety (90) days written notice.
- 9.3 Invoices will be submitted to Cambridge when the Product has been delivered in accordance with clauses 7.3 and 7.5. Cambridge will, save as set forth below, pay to Manufacturer the full invoice value for the Product within forty five (45) days after the date of the invoice or forty five (45) days after the date of delivery of the Product, whichever is the later. Payment will be made direct into Manufacturer’s bank account by bank transfer and Manufacturer will provide Cambridge with the necessary details of Manufacturer’s bank account and will take whatever actions are necessary to facilitate payment by bank transfer.
- 10 Limitation of Liability, Indemnity and Insurance**
- 10.1 Manufacturer indemnifies and shall keep Cambridge and its Affiliates indemnified against all third party claims, actions, judgments, damages or lawsuits (including costs or expenses or professional fees) brought against Cambridge and or its Affiliates to the extent and arising out of any breach of this Agreement by Manufacturer or any wilful or negligent act or omission of Manufacturer or its employees in the Manufacture of the Product.



- 10.2 Cambridge and/or its Affiliates indemnifies and shall keep Manufacturer and its Affiliates indemnified against all third party claims, actions, judgments, damages or lawsuits (including costs or expenses or professional fees) brought against Manufacturer and/or its Affiliates to the extent and arising out of (i) any breach of this Agreement by Cambridge and/or its Affiliates; (ii) or any negligent or wilful act or omission of Cambridge and/or its Affiliates, its employees or agents (including but not limited to in researching and developing the Product or in supplying the Active Substance and Raw Materials); (iii) any intellectual property rights covering the Product, Product packaging, Active Substance and/or Raw Materials; and (iv) any error, inaccuracy, inexactitude, or incompleteness in the Specifications.
- 10.3 Manufacturer shall indemnify, defend and hold harmless, Cambridge and/or its Affiliates from and against all third party claims, actions, judgments, damages, lawsuits, and related costs and expenses made or brought against Cambridge and/or its Affiliates in respect of bodily injury or death caused by or attributed to the Product insofar as they arise out of: (a) the contamination of the Product manufactured by Manufacturer while in the custody or control of Manufacturer, (b) the failure of Manufacturer to manufacture, store, handle or ship the Product in accordance with the Specifications or the GMPs.
- 10.4 Cambridge and/or its Affiliates shall indemnify, defend and hold harmless Manufacturer and/or its Affiliates against all third party claims, actions, judgments, damages, lawsuits and related costs and expenses made or brought against Manufacturer and/or its Affiliates in respect of bodily injury or death caused by or attributed to the Product, the Raw Materials or the Active Substance, including but not limited to product liability claims, the sale of the Product, Product labelling, and any claims related to the inherent physiological properties of such substances, except and to the extent provided in Articles 10.1 and 10.3 above.
- 10.5 **NO OTHER WARRANTY. EXCEPT AS SET FORTH IN CLAUSES 4, 7 AND THIS CLAUSE 10, MANUFACTURER IS MANUFACTURING AND SUPPLYING THE PRODUCT HEREUNDER ON AN “AS IS” BASIS WITHOUT REPRESENTATION OR WARRANTY WHETHER EXPRESS OR IMPLIED INCLUDING WARRANTIES OF SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE, OR INFRINGEMENT OF THIRD PARTY RIGHTS, AND ALL SUCH WARRANTIES ARE EXPRESSLY DISCLAIMED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS.**
- 10.6 The party claiming the benefit of any indemnity hereunder must promptly notify the other of any claim, not accept any compromise or settlement of such claim or take any material steps in relation to such claim without the prior consent of the other party and shall co-operate fully with the other party in the handling of any such claim.
- 10.7 Without prejudice to the obligation of either party to indemnify the other against claims by a third party, under no circumstance shall either party be liable to the other in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever to the other (i) for any increased costs or expenses, (ii) for any loss of profit, business, contracts revenues or anticipated savings, or (iii) for any special, indirect, incidental, punitive or

consequential loss or damage of any nature whatsoever, whether occasioned by the negligence of the respective parties, their employees or agents or otherwise. Notwithstanding the foregoing, in the event that Manufacturer breaches clause 11 by intentionally or negligently (a) using Cambridge's Information pertaining to the Manufacture of the Product to Manufacture the Product and sell it or otherwise provide it to a third party other than with Cambridge's express written consent, or (b) using Cambridge's Information pertaining to the Manufacture, of the Product or any part of it to manufacture a competing product containing tetrabenazine, or (c) providing Cambridge's Information pertaining to the Manufacture of the Product or any part of it to a third party to enable them to manufacture the Product or a competing product containing tetrabenazine, the limitations of liability set forth in clause 10.7 above shall not apply in respect of such a breach but Manufacturer's liability shall be limited to a maximum amount of {\*\*\*}†. The parties also acknowledge that the limitations of liability mentioned in this clause 10.7(i), (ii) and (iii) shall, when the losses, damages, costs, liabilities or expenses incurred by a party arise from the grossly negligent or wilfully malfeasant acts of the employees of the other party, (y) not apply in respect of bodily injury or death or (z) apply up to a maximum of {\*\*\*}† Euro in respect of all other claims other than bodily injury or death.

- 10.8 The parties undertake to ensure that they have in place and maintain throughout the Term and for a period of 5 years thereafter, product liability insurance with a reputable insurer or self insurance in an amount which the parties agree is appropriate for their business, the type of product which is the subject of this Agreement and the territories in which the Product will be sold and for their obligations under this Agreement. Further to the preceding sentence (a) Fournier shall hold product liability insurance of no less than 50 million Euros in respect of Product sold in the United States and 20 million Euros in respect of Product sold outside the United States, and (b) in respect of Product sold in the United States, Cambridge shall ensure it holds product liability insurance of no less than 20 million Euros and shall use commercially reasonable endeavours to ensure its US Distributor holds no less than 30 million Euros product liability insurance and (c) in respect of Product sold outside the United States Cambridge shall ensure it holds product liability insurance of no less than 10 million Euros and shall use commercially reasonable endeavours to ensure its distributors in those countries hold no less than 10 million Euros. Cambridge shall provide adequate insurance with a reputable insurer or self insurance to cover the Active Substance while on the Manufacturer's premises. Manufacturer will fully co-operate with Cambridge in respect of permitting access for inspections and providing information to Cambridge or its insurer for the purposes of acquiring and maintaining such insurance. Each party shall provide to the other on request evidence of the existence and maintenance of such cover.
- 10.9 Each party shall provide the other party with a certificate or certificates from the insurance company verifying the above and shall notify the other party in writing at least 30 days prior to the expiration or termination of such coverage.

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† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

- 10.10 Three (3) months prior to the renewal of each party’s product liability insurance the parties shall share information about product liability risk in relation to the Product and shall discuss the extent of each others product liability coverage in respect of the Product.
- 10.11 In the event that the Active Substance is placed on the substance exclusion list and/or the Product is placed on the product exclusion list of the reinsurance treaties of either Swiss Re or Munich Re resulting in either or both parties being unable to obtain product liability insurance in respect of the Product or the cost of such product liability insurance to either or both parties significantly increasing, whichever party first becomes aware of that listing shall notify the other within two (2) working days and the parties shall, as soon as is practical but in any event no later than fifteen (15) days from the receipt of notice about the listing, meet to discuss the commercial risks to the parties from such a listing and whether the commercial risks are such that the parties no longer wish to continue with this Agreement. If agreement as to whether or not to continue with this Agreement cannot be reached within seven (7) days of the meeting between the parties the matter shall be referred to the Chief Executive Officers of both parties for discussion who shall discuss such within seven (7) days of referral of the matter to them. If the Chief Executive Officers are unable to reach agreement as to whether or not to continue with this Agreement within seven (7) days of them meeting, either party may terminate this Agreement on the provision of written notice. Throughout the duration of this consultation process the obligations on the parties under this Agreement shall be suspended.

**11 Confidentiality**

- 11.1 Each party (“Recipient”) agrees to maintain as secret and confidential all Information of the other party or its Affiliates obtained from or on behalf of the other (“Discloser”) pursuant to this Agreement or prior to and in contemplation of it, to respect Discloser’s proprietary rights therein, to use the same exclusively for the purpose of this Agreement and for no other use and to disclose the same only to those of its professional advisers, including legal financial and risk assessment advisers, authorised sub-contractors and employees to whom and to the extent that such disclosure is reasonably necessary for the purpose of this Agreement. For the sake of clarity the Specifications, the Certificates of Conformance, all Product related data arising from the Validation and all Batch documentation generated by Manufacturer in the Manufacture is confidential Information of Cambridge and shall not be used or disclosed by Manufacturer other than for the purposes of this Agreement and where necessary for disclosing to the relevant Regulatory Authorities in order to comply with regulatory requirements relating to the Product and its Manufacture by Manufacturer.
- 11.2 The foregoing obligations of clause 11.1 above shall not apply to Information which:
- 11.2.1 the Recipient can prove by documentary evidence was already in its possession or the possession of its Affiliates and not covered by any obligations of confidentiality to the other party before disclosure by Discloser. For the sake of clarity this exception shall not apply to any Information pertaining to the Product

or the Active Substance or the business of Cambridge provided to Manufacturer by Cambridge or Synkem prior to the Effective Date;

- 11.2.2 is subsequently lawfully disclosed to the Recipient by a third party who has not derived it directly or indirectly from the Discloser or any of the Discloser's Affiliates;
  - 11.2.3 is or becomes generally available to the public (in printed publications in general circulation) through no act or default of Recipient or its agents or employees;
  - 11.2.4 was independently developed by Discloser without any reference to the Information of the other party; and
  - 11.2.5 Discloser is required to disclose by law.
- 11.3 Recipient shall allow access to the Discloser's Information exclusively to those of its employees who have reasonable need to see and use it for the purposes of this Agreement and shall inform each of the said employees of the confidential nature of the Information and of the obligations on Recipient in respect thereof and ensure that each of its employees having access to the Information is contractually bound by obligations of confidentiality and shall take all reasonable steps to enforce such obligations.
- 11.4 In the event that Manufacturer accepts a contract from a third party to manufacture a competing product it shall ensure that appropriate measures are undertaken to ensure that Cambridge's Information is not disclosed to such third party.

## **12 Termination**

- 12.1 Either party may forthwith terminate this Agreement by written notice to the other if:
- 12.1.1 that other party is in material breach of any of the provisions of this Agreement and, in the case of a breach capable of remedy, fails to remedy the same within 30 days of receipt of a written notice specifying the breach and requiring its remedy; or
  - 12.1.2 an encumbrancer takes possession or an administrator, liquidator or receiver is appointed over the property or assets of that other party; or
  - 12.1.3 that other party makes any voluntary arrangement with its creditors or becomes subject to an administration order; or
  - 12.1.4 that other party goes into liquidation except for the purposes of amalgamation or reconstruction and in such manner that the company resulting there from effectively agrees to be bound by or assume the obligations imposed on that other party under this Agreement.
- 12.2 Any waiver by either party of a breach of any provision of this Agreement shall not be considered a waiver of any subsequent breach of the same or any other provision.

- 12.3 The rights to terminate this Agreement given by this clause 12 shall be without prejudice to any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.
- 13 Consequences of Termination**
- 13.1 Termination of this Agreement for any reason shall not bring to an end any provisions of this Agreement which, in order to give effect to their meaning, need to survive its termination and such provisions shall remain in full force and effect thereafter and in particular but without limiting the scope of the foregoing obligations of the parties under clauses 8, 9,10,11,13 a15, 17 and 19.
- 13.2 On termination of this Agreement for any reason:
- 13.2.1 Cambridge shall notify Manufacturer whether it wishes Manufacturer to complete any ongoing Manufacture;
  - 13.2.2 In the event that this Agreement is being terminated by Cambridge for failure by Manufacture to Manufacture in accordance with GMP and the Specifications and such failure has been either accepted by Manufacturer or objectively verified by a Regulatory Authority or independent laboratory, Cambridge shall be under no obligation to purchase or take delivery of or pay for any further Product.
  - 13.2.3 subject to clause 13.2.1 each party shall deliver up to the other or destroy all materials, reports, and other documents (including copies thereof) in its possession or control containing Information of the other party, and each will cease to make use of the other's Information;
  - 13.2.4 Manufacturer shall return to Cambridge, at Cambridge's cost, any unused and still viable Active Substance (other than the amount required to complete any orders in process if Cambridge so elects);
  - 13.2.5 Subject to clauses 13.2.1 and 13.2.2, Cambridge shall pay for all the Product which has been ordered or is as listed in the Firm Period of the Vendor's Schedule at prices then prevailing and shall take delivery of such Product as soon as possible when it is notified by Manufacturer that it is available for collection;
  - 13.2.6 Cambridge may request to purchase at Manufacturer's cost, and, if it exercises that option, Manufacturer will be obliged to supply all stocks of Raw Materials remaining in Manufacturer's possession and which will not be used in the completing of any orders in process. Cambridge shall also be responsible for paying the Manufacturer's storage, quality control and transportation costs it had incurred in relation to such Raw Materials following termination.
  - 13.2.7 With respect to any capital expenditures on machines and equipment which may have been made for the Manufacturer to fulfil its obligations hereunder:

- 13.2.7.1 Manufacturer shall have first option to retain title to such machines and equipment. If Manufacturer exercises that option, no further amortization payments thereon shall be owing from Cambridge.
  - 13.2.7.2 If Manufacturer does not exercise such option, and Cambridge wants to acquire the equipment then title and possession to the machines should pass to Cambridge and Cambridge shall pay to Manufacturer the unamortized amounts remaining on such machines and equipment as well as any related transfer costs (shipping, disassembly, etc.) and upon payment in full, such machines and equipment shall be transferred to Cambridge.
- 13.3 If neither party wishes to take or retain ownership of the machines:
  - 13.3.1 Manufacturer shall use commercially reasonable efforts to sell the machines and obtain the best possible price for the machines.
  - 13.3.2 If the sale is successful then following receipt of the proceeds of that sale, depending on the extent of the proceeds of sale either Cambridge shall pay to Manufacturer a sum equal to the unamortized amounts remaining on the machines less the proceeds from the sale of the machines or Manufacturer will pay to Cambridge a sum equal to the proceeds of sale less the unamortized amounts.
  - 13.3.3 In the event that Manufacturer does not manage to sell the machines, Cambridge shall pay to Manufacturer the unamortized amounts remaining on such machines and equipment and related transfer costs and upon payment in full, title and possession to the machines shall pass to Cambridge.
- 14 Affiliates and Assignment**
  - 14.1 Manufacturer shall be entitled to perform any of the obligations undertaken by it and to exercise any of the rights granted to it under this Agreement through any of its Affiliates, and any act or omission of any such Affiliate shall for the purposes of this Agreement be deemed to be the act or omission of Manufacturer. For the purposes of such delegated performance Manufacturer shall be entitled to disclose only on a need to know basis Cambridge's Information to employees of relevant Affiliates.
  - 14.2 Cambridge is establishing a branch office in Ireland that will become an Affiliate of Cambridge. Manufacturer agrees to the obligations of Cambridge under this Agreement being performed by Cambridge Laboratories Ireland and, following incorporation of the Irish branch as an Affiliate, to have those obligations assigned to and performed by that Affiliate, provided that Cambridge remains liable to Manufacturer for the acts and omissions of the Affiliate and its compliance herewith. Cambridge shall notify Manufacturer once the Irish branch has been incorporated as an Affiliate. In addition Cambridge shall be entitled to perform any of the obligations undertaken by it and to exercise any of the rights granted to it under this Agreement through any of its Affiliates, and any act or omission of any such Affiliate shall for the purposes of this Agreement be deemed to be the act or omission of Cambridge.

14.3 Save as set forth above neither party shall be entitled to assign any of its rights or duties under this Agreement without the prior written consent of the other which consent shall not be unreasonably withheld or delayed. For the sake of clarity if Manufacturer assigns the Agreement to a party to whom Cambridge has reasonable objections and has refused its consent Cambridge shall be entitled to terminate this agreement on provision of thirty (30) days written notice.

**15 Escalation Provisions**

15.1 The parties shall attempt to amicably resolve any dispute or disagreement arising in relation hereto before submitting such dispute or disagreement to the courts as follows:

- 15.1.1 the parties shall as soon as reasonably practicable commence good faith negotiations to resolve the dispute or disagreement;
- 15.1.2 should such good faith negotiations not take place or should such good faith negotiations not resolve the dispute or disagreement within a reasonable period, but in any event within twenty one (21) days of commencement of the negotiations, the dispute or disagreement shall immediately be referred to the respective Chief Executive Officers of the parties for their resolution;
- 15.1.3 should the respective Chief Executive Officers of the parties fail to resolve the dispute or disagreement within fourteen (14) days of it being referred to them, then either party may refer the dispute to the courts. Notwithstanding the foregoing, in the event that the dispute in question relates to whether the Product satisfies the Specifications or GMPs, then in accordance with Article 7.7 hereof, the dispute shall be referred to a qualified third party laboratory prior to submission to the courts.

**16 Force Majeure**

16.1 If either party is affected by Force Majeure it shall forthwith notify the other party of the nature and extent thereof.

16.2 Each party shall be deemed not to be in breach of this Agreement, nor otherwise be liable to the other by reason of any delay in performance, or non-performance, of any of its obligations hereunder to the extent that such delay or non-performance is due to any Force Majeure of which it has notified the other party and the time for performance of that obligation shall be extended accordingly.

16.3 If the Force Majeure in question prevails for a continuous period in excess of six months, the parties shall enter into bona fide discussions with a view to agreeing upon such alternative arrangements as may be fair and reasonable. If the parties cannot agree such alternative arrangements then either party shall be entitled to terminate this Agreement immediately by written notice.

**17 Notices**

- 17.1 Any notice or other information required or authorised by this Agreement to be given by either party to the other may be given by hand or sent to the other by first class registered pre-paid post, telex, facsimile transmission or comparable means of communication to the following addresses:
- If to Cambridge:
- The Chief Financial Officer  
Cambridge Laboratories Ireland  
Alexandra House  
The Sweepstakes  
Ballsbridge  
Dublin 4  
Ireland  
Fax (+) 353 631 9452
- If to Fournier:
- The Customer Services Manager  
Laboratoires Fournier SA  
Rue des Prés Potets  
21121 Fontaine-les-Dijon
- with a copy to
- Director of Legal Affaires  
Laboratoires Fournier SA  
42 rue de Longvie  
21300 Chenôve  
Fax: 33 (0)3 80 44 7262
- 17.2 Any notice or other information given by post pursuant to clause 17.1 which is not returned to the sender as undelivered shall be deemed to have been given on the third day after the envelope containing the same was so posted. Proof that the envelope containing any such notice or information was properly addressed, pre-paid, registered and posted, and that it has not been so returned to the sender, shall be sufficient evidence that such notice or information has been duly given.
- 17.3 Any notice or other information sent by telex, cable, facsimile transmission or comparable means of communication shall be deemed to have been duly sent on the date of transmission, provided that a confirming copy thereof is sent by first class pre-paid post to the other party at the address referred to in clause 17.1 within 24 hours after transmission.



**18 Liaison**

18.1 Upon signature of this Agreement the parties will each identify in writing the person responsible for the day to day operation of this Agreement including production planning relating to forecast requirements.

**19 General**

- 19.1 Nothing in this Agreement shall create, or be deemed to create, a partnership, joint venture or other common interest grouping between the parties.
- 19.2 The Schedules and Recitals hereto form an integral part of this Agreement. This Agreement, its Schedules and Recitals contain the entire agreement between the parties with respect to its subject matter, supersedes all previous agreements and understandings between the parties, with the exception of the Confidentiality Agreement entered into on 19 February 2004, and may not be modified except by an instrument in writing signed by the duly authorised representatives of the parties
- 19.3 Each party acknowledges that, in entering into this Agreement, it does not do so on the basis of or in reliance on any representation, warranty or other provision except as expressly provided in this Agreement, and accordingly all conditions, warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.
- 19.4 If any provision of this Agreement is agreed by the parties to be or is held by any court or other competent authority to be void or unenforceable in whole or part, the other provisions of this Agreement and the remainder of the affected provisions shall continue to be valid save that such illegal void or unenforceable provision or part thereof shall be deemed to be excised herefrom.
- 19.5 This Agreement shall be governed by and construed in all respects in accordance with the laws of England, and the parties hereby submit to the exclusive jurisdiction of the English courts.

IN WITNESS whereof this Agreement has been executed by the duly authorised representatives of the parties the day and year first above written

For and on behalf of  
**CAMBRIDGE LABORATORIES LIMITED**  
trading as  
CAMBRIDGE LABORATORIES IRELAND

Signed: /s/ MARK P. EVANS

Name: MARK P. EVANS

Title: CEO

For and on behalf of  
**LABORATOIRES FOURNIER S.A.**

Signed: /s/ Pierre Noustial  
Name: Pierre Noustial  
Title: CEO

Schedule 1  
Technical Conditions

**1. Raw Materials**

Manufacturer will be responsible for ensuring that each batch of Raw Materials (other than those supplied by or on behalf of Cambridge) complies with the Raw Materials Specifications. Manufacturer shall be responsible for testing all Raw Materials (other than those supplied by or on behalf of Cambridge) to determine compliance of such with the Raw Materials Specifications. Cambridge will be responsible for ensuring that each batch of Raw Materials that it may provide to Manufacturer complies with the Raw Materials Specifications, and that it has obtained a Certificate of Conformance signed by a Qualified Person of each Raw Materials supplier, if applicable. Cambridge shall ensure that the Manufacturer (either directly or through a third party consultant, if so required by the suppliers) may audit the suppliers of Active Substance and any Raw Materials supplied by Cambridge.

Manufacturer will ensure that Raw Materials (other than those supplied by or on behalf of Cambridge) are only sourced from the list of approved suppliers listed in the Specifications, which list may be amended from time to time by mutual agreement between the parties. Notwithstanding the foregoing, in the event that Manufacturer is unable to obtain sufficient Raw Materials from such suppliers, it shall inform Cambridge and the parties shall come together to find another source of supply thereof. In the event of such shortage of Raw Materials, Manufacturer shall not be liable for any delay in supplying the Product to Cambridge.

Manufacturer shall store all Raw Materials in accordance with GMP and the storage requirements of the supplier of such Raw Materials.

Manufacturer shall use Raw Materials on the basis of shortest Expiry/Retest Date first.

**2. Manufacturing, Packaging and Product Specifications**

The Specifications are set forth in Schedule 2 to the Agreement. Any changes to the Specifications must be the subject of a written amendment agreed between the parties prior to implementation. The Specifications shall be treated as confidential Information of Cambridge.

Cambridge will inform Manufacturer promptly of any changes that are to be made to the terms of the Marketing Authorisations for the Product which may require a change to the Specifications.

Cambridge is responsible for ensuring that each batch of Active Substance it supplies complies with the Specifications.

Manufacturer may make propositions to Cambridge regarding Product's primary and secondary packaging. Notwithstanding the foregoing, Cambridge is responsible for ensuring that the Product primary and secondary packaging and labelling complies with the Specifications, does not infringe any third party rights, and complies with all applicable rules and regulations.

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**3. Quality Control**

Manufacturer shall be responsible for carrying out appropriate quality control of the Raw Materials (other than those supplied by or on behalf of Cambridge) it uses in the Manufacture of the Product to ensure that the same comply with the Specifications.

Manufacturer shall be responsible for the quality control of any intermediate and finished Product in accordance with the Manufacture Specifications to ensure that the same comply with the Product Specifications.

**4. Reworked Product**

Manufacturer will not subject any Product manufactured by it under this Agreement to any re-processing unless it uses a method agreed by Cambridge. Notwithstanding the foregoing, Manufacturer may rework the Product, provided that it notifies Cambridge in advance of such reworking.

**5. Product Release**

Manufacturer is responsible for releasing the Commercial Packs on the market by providing:

- a Certificate of Analysis
- a Certificate of Conformance
- a release statement signed by a Qualified Person.

Manufacturer is responsible for certifying that the Export Packs are suitable for further packaging operations by providing:

- a Certificate of Analysis
- a Certificate of Conformance

**6. Batch Documentation**

Manufacturer shall retain at its premises Manufacturing records (including the Specifications and the manufacturing, packaging and quality control and quality assurance records for each batch of Product) in order to comply with GMP and this Agreement. Notwithstanding the forgoing all title in the Manufacturing records shall be owned by Cambridge, shall be treated by Manufacturer as confidential Information of Cambridge and shall not be used or disclosed by Manufacturer other than for the purposes of this Agreement and where necessary for disclosing to the relevant Regulatory Authorities.

Manufacturer will keep under safe and secure storage the Manufacturing records for each batch of Product for a period of five years or such other period as required by GMP. Manufacturer must ensure this documentation is available for inspection by authorised Cambridge personnel a maximum of 3 times a year on reasonable notice. Upon expiry of the period it is required to keep the Manufacturing records Manufacturer shall notify Cambridge in writing that it intends to destroy such and, in the absence of any response from Cambridge within three months of

notification, Manufacturer may destroy or otherwise dispose of the said records or such samples in a safe and controlled manner.

Manufacturer will submit to Cambridge, as soon as practicable following a written request from Cambridge, copies of all the Manufacturing records.

**7. Audits**

Manufacturer will allow, once a year during normal business hours and upon reasonable notice, authorised representatives of Cambridge to inspect the relevant parts of its premises where the Manufacture of the Product is carried out or the Product or Raw Materials are stored and to inspect the process of Manufacture. Manufacturer will permit Cambridge to conduct additional such inspections in the event that such are required due to a Product safety or manufacturing problem. Notwithstanding, the foregoing, Manufacturer’s obligation to allow such visitors is on condition that: (a) Cambridge procures that such visitors agree in writing to observe the requirements of Manufacturer regarding security, health and safety, confidentiality or any other applicable regulations at the relevant premises and (b) any visit shall be under the specific supervision of Manufacturer.

Manufacturer will allow representatives of any Regulatory Authority to inspect the relevant parts of its premises where the Manufacture of the Product is carried out or the Product or Raw Materials are stored and to inspect the process of Manufacture. Cambridge must promptly inform Manufacturer (i) of any request of any Regulatory Authority to carry out such an inspection, and (ii) of each new marketing application, change thereto or other document filed with Regulatory Authorities which might trigger an inspection.

Each party shall provide the other party with full written reports of any inspection by a Regulatory Authority pertaining to the Manufacture of the Product and shall obtain the other party’s prior written approval to any written responses to any issues raised by any Regulatory Authority pertaining to the Manufacture of the Product.

**8. Customer Complaints**

Each party shall promptly inform the other party of all material complaints or problems relating to the Product of which it becomes aware. Upon the request of the other party, each party shall promptly supply to the other party all reasonable and relevant information needed for the investigation of customer complaints or other concerns with respect to the quality of the Product. The responsibility to reply to the customer/patient will be with Cambridge.

**9. Recalls**

Cambridge shall be responsible for conducting any recall of defective Product and Manufacturer shall co-operate with and give all reasonable assistance to Cambridge in conducting any such recall, at Cambridge’s expense.

Cambridge shall keep Manufacturer informed of any Adverse Event involving the Product or products containing the same active ingredient as the Product coming to their attention.

Cambridge shall keep Manufacturer informed of any material change or event in the market relevant to the Product coming to their attention and able to be disclosed to the other.

**10. Samples**

Manufacturer shall, with each Batch of Product supplied to Cambridge, provide to Cambridge, at no additional costs, the quantities of samples of the Product as set forth in the Specifications to enable Cambridge to perform quality control or address any issue arising under clause 7 of the Agreement.

A sample of finished Product and Raw Materials (excluding solvents, gasses and water) will be retained and stored by Manufacturer under conditions consistent with the Product and Raw Materials labelling and GMP. Manufacturer will allow Cambridge access to these samples once a year on reasonable written notice in normal business hours. Exceptional access may also be granted in the event of a problem in the Manufacture of the Product. The sample size of each batch of finished Product and Raw Materials will be as defined in the Specifications.

Samples of finished Product will be stored for one year beyond the expiry of the formulated Product.

Samples of Raw Materials will be kept for a minimum of five years if their stability allows and Manufacturer will notify Cambridge of any instability likely to affect the ability to store such samples for the stated minimum period.

**11. Disposal Of Samples Printed Packaging Materials And Rejected Product**

Samples, printed packing materials and rejected Product will be disposed of by Manufacturer in a safe and controlled manner.

**12. Acceptable Waste Levels**

Cambridge and Manufacturer agree that during Manufacture of the Product, a certain level of Raw Materials and Active Substance waste is unavoidable, and therefore agree that the level of acceptable waste shall be a yearly batch average of 5%. Such percentage shall be confirmed by the parties after Validation.

Schedule 3

Prices

Part A

Validation costs

Upon completion of Validation, for supply of completed validation data on 12.5mg and 25mg tablets of Product, Cambridge to pay Manufacturer: {\*\*\*}† broken down as follows:

- {\*\*\*}† for purchasing Raw Material and specific equipment and analytical transfer report
- {\*\*\*}† for setting-up the process and manufacturing the regulatory batches
- {\*\*\*}† for manufacturing the validation batches and providing the 3 months stability data of regulatory batches
- {\*\*\*}† for 6 months stability data
- {\*\*\*}† for 12 months stability data
- {\*\*\*}† for 18 months stability data
- {\*\*\*}† for 24 months stability data
- {\*\*\*}† for 36 months stability data
- {\*\*\*}† for 48 months stability data
- {\*\*\*}† for 60 months stability data

Cambridge shall pay Manufacturer such amounts upon receipt of the corresponding invoices.

Part B

Product Supply price

For supply of packs of 12.5mg and 25mg tablets of Product following Validation, Cambridge shall pay Manufacturer the amounts, as set out below:

† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

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| Pack Presentation<br>HDPE bottles with<br>induction sealed CRC                                                                               | Price/Pack of 112 tablets € EXW            |                      |                 |
|----------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|----------------------|-----------------|
|                                                                                                                                              | Where total tablet quantity per annum** is |                      |                 |
|                                                                                                                                              | up to 20 million                           | more than 20 million |                 |
| Export Pack                                                                                                                                  | {***}†                                     | {***}†               |                 |
| 100 packs in labeled shipper                                                                                                                 |                                            |                      |                 |
| Commercial Pack<br>Xenazine 25 etc<br>With label/leaflet<br>combination<br>10 packs in labeled<br>shrink-wrap, 10 x 10 in<br>labeled shipper | {***}†                                     | {***}†               |                 |
| Additional Work                                                                                                                              | 5,000 packs pa                             | 20,000 packs pa      | 50,000 packs pa |
| Over labeling Export<br>Packs<br>presenting as 10 packs in<br>labeled shrink-wrap 10 x<br>10 in labeled shipper                              | {***}†                                     | {***}†               | {***}†          |

- Annual Quantities calculated at submission of January Vendor Schedule each year.

Part C

Amortization of Capital Expenditures

The investment for the initial equipment and machine purchases and installation of the packaging line is estimated at {\*\*\*}†.

Cambridge agrees to reimburse Manufacture for such capital expenditures pursuant to the amortization following schedule.

The amortization will be spread out over 5 years on a straight line basis, the first payment being made by Cambridge on the signature date of the Agreement and each following anniversary date thereof as indicated below:

|      |        |
|------|--------|
| 2005 | {***}† |
| 2006 | {***}† |
| 2007 | {***}† |
| 2008 | {***}† |
| 2009 | {***}† |

In the event that for the purposes of the Manufacture of the Product, Manufacturer is required to make any other additional equipment or machines purchases, it shall submit such planned

† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.



expenditures to Cambridge and after approval by Cambridge, Cambridge shall reimburse Manufacture for such expenditures in the same manner as set forth above.

Notwithstanding the foregoing, in the event that Manufacturer is able to use such equipment and machines for the manufacture of products other than the Products and Manufacturer is able to recover the amortization of the machines from a third party, Manufacturer will apply a reduction to the above-indicated amortization rates based on the percentage such machines and equipment are used for such third party client (taking into account the percentage of time used for such third party as compared to the use for Cambridge and the comparative volume of product manufactured for such third party). Cambridge shall have the right, not more than twice in any twelve month period and on reasonable notice and during normal working hours and in such manner as to limit disruption to Manufacturer’s activities, to inspect the machine log of the packaging line to confirm usage by parties other than Cambridge.

Schedule 4

Trade Marks

| Mark     | Territory | Class | Number              |
|----------|-----------|-------|---------------------|
| NITOMAN  | CTM       | 5     | Pending application |
| XENAZINE | CTM       | 5     | 1832047             |
| XENAZINA | CTM       | 5     | 2733327             |
| NITOMAN  | US        | 5     | Pending application |
| XENAZINE | US        | 5     | 2839404             |
| ZENAZINE | US        | 5     | Pending application |



**U.S. Department of Justice**

*Michael J. Sullivan  
United States Attorney  
District of Massachusetts*

*Main Reception: (617) 748-3100*

*John Joseph Moakley United States Courthouse  
Suite 9200  
1 Courthouse Way  
Boston, Massachusetts 02210*

May 16, 2008

By Mail and Fax  
202-778-5281

Geoffrey Hobart, Esq.  
Covington & Burling  
1210 Pennsylvania Avenue, NW  
Washington, DC 20004-3401

Re: United States v. Biovail Pharmaceutical, Inc.

Dear Mr. Hobart:

This letter sets forth the Agreement between the United States Attorney for the District of Massachusetts (“the U.S. Attorney”) and your client, Biovail Pharmaceuticals, Inc. (“BPI” or “Defendant”), in the above-captioned case. The Agreement is as follows:

1. Plea

On a date no earlier than July 31, 2008 and no later than September 15, 2008, Defendant agrees to waive indictment and plead guilty pursuant to Fed R. Crim. P. 11(c)(1)(C) and 11(c)(1)(A) to the seven count Information attached as Exhibit A. The Information charges that:

- (1) BPI violated 18 U.S.C. § 371 by conspiring with others to knowingly and willfully make payments to induce another party to recommend purchasing or ordering BPI’s drug Cardizem, L.A. in violation of 42 U.S.C. § 1320a-7b(b)(2)(B); and
- (2) BPI violated 42 U.S.C. § 1320a-7(b)(2)(B) by knowingly and willfully making payments to induce another party to recommend purchasing or ordering BPI’s drug Cardizem, L.A.

Defendant expressly and unequivocally admits that it in fact knowingly, intentionally and willfully committed the crimes charged in Counts One through Seven of the Information, and is in fact guilty of those offenses. BPI agrees to waive venue, any applicable statutes of limitations and any legal or procedural defects in the Information.

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2. Penalties

With respect to its violation of 18 U.S.C. § 371 (Count One), BPI is subject to a maximum possible fine of \$500,000, twice the gross gain derived from the offense or twice the gross loss, whichever is greatest. *See* 18 U.S.C. §§ 3571(c) and (d). The loss from this offense is \$12,357,550, and thus the maximum possible fine on Count One is \$24,715,100.

With respect to its violations of 42 U.S.C. § 1320a-7b(b)(2) (Counts Two through Seven), for each separate count, BPI is subject to a maximum possible fine of \$500,000, twice the gross gain derived from the offense or twice the gross loss, whichever is greatest. *See* 18 U.S.C. §§ 3571(c) and (d). For each of these counts, twice the gross gain or gross loss is less than \$500,000, and thus the maximum possible fine on each of Counts Two through Seven is \$500,000.

BPI may also be sentenced to a term of probation of not less than one year and not more than five years. *See* 18 U.S.C. § 3561(c)(1). BPI shall also pay a mandatory special assessment of \$400 per count of the Information, a total of \$2,800.

3. Sentencing Guidelines

The parties agree to jointly take the following positions at sentencing under the United States Sentencing Guidelines:

- a. The parties agree that the United States Sentencing Guideline Manual in effect as of November 1, 2002 should be used in determining Defendant's sentence.
- b. The parties agree that there is no basis for a departure or deviation under the factors set forth in 18 U.S.C. § 3553(a) from the sentencing range established by the United States Sentencing Guidelines.
- c. The parties agree that the Counts involve substantively the same harm, and thus group under U.S.S.G. § 3D1.2.

The U.S. Attorney's agreement that the disposition set forth below is appropriate in this case is based, in part, on Defendant's acceptance of responsibility for the offenses of conviction in this case.

The U.S. Attorney specifically may, at his sole option, be released from his commitments under this Agreement, including, but not limited to, his agreement that paragraph 4 constitutes the appropriate disposition of this case, if at any time between his execution of this Agreement and sentencing, Defendant:

- (a) Fails to admit a complete factual basis for the plea;
- (b) Fails to truthfully admit its conduct in the offenses of conviction;
- (c) Falsely denies, or frivolously contests, relevant conduct for which Defendant is accountable under U.S.S.G. § 1B1.3;

- (d) Gives false or misleading testimony in any proceeding relating to the criminal conduct charged in this case and any relevant conduct for which Defendant is accountable under U.S.S.G. § 1B1.3;
- (e) Engages in acts which form a basis for finding that Defendant has obstructed or impeded the administration of justice under U.S.S.G. § 3C1.1;
- (f) Attempts to withdraw its plea.

Defendant expressly understands that it may not withdraw its plea of guilty, unless the Court rejects this Agreement under Fed. R. Crim. P. 11(c)(5).

4. Agreed Disposition

The U.S. Attorney and Defendant agree pursuant to Fed. R. Crim. P. 11(c)(1)(C) that the appropriate disposition of this case is as follows and that this fine is within the statutory maximums:

- a. A criminal fine in the amount of twenty two million two hundred forty three thousand five hundred ninety dollars (\$22,243,590), as follows:

Defendant shall pay this fine within five business days of the date of sentencing.

The parties agree that the basis for this fine is as follows:

- i. The parties agree that the base fine is \$12,357,550, which is the amount of payments to physicians and others paid by or on behalf of BPI through the PLACE program. *See* U.S.S.G. §§ 8C2.3, 8C2.4(b) and 2B4.1(c)(1)(A).
- ii. Pursuant to U.S.S.G. § 8C2.5, the culpability score is seven (7) as determined as follows:
  - (a) Base culpability score is five (5) pursuant to U.S.S.G. § 8C2.5(a);
  - (b) Add 3 points in that the unit of the organization within which the offense was committed had 200 or more employees, and an individual within the high level personnel of this unit participated in or condoned the offense;
  - (c) Deduct one (1) point pursuant to U.S.S.G. § 8C2.5(g)(3).
- iii. Pursuant to U.S.S.G. § 8C2.6, the appropriate multiplier range associated with a culpability score of seven (7) is 1.4 to 2.8.
- iv. Thus, the Guideline Fine Range is \$17,300,570 to \$34,601,140.
- v. The parties agree that (1) disgorgement pursuant to U.S.S.G. §8C2.9 is not necessary, (2) there is no basis for a downward departure or deviation

under the U.S.S.G.; (3) the proposed fines are within the statutory maximums pursuant to 18 U.S.C. §§ 3571(c) and (d) because the gross gain from Count One exceeded \$10,000,000; and (4) a fine within the guideline range will result in a reasonable sentence taking into consideration all of the factors set forth in 18 U.S.C. §§3553(a), 3572.

- b. Mandatory special assessments totaling \$2,800. Pursuant to 18 U.S.C. § 3013(a)(2)(B), to be imposed as \$400 per count.
- c. Restitution: Because 42 U.S.C. §1320a-7b(b)(2)(B) prohibits remuneration to induce the ordering or recommending, inter alia, of an item “for which payment may be made in whole or in part under a Federal health care program,” the victims of the crimes set forth in the Information attached as Exhibit A are the federal health insurance programs. Restitution to the federal health insurance programs will be addressed by a Civil Settlement Agreement to be entered into between Defendant and the United States on or before July 31, 2008. To satisfy its restitution obligations, Defendant agrees to pay or cause to be paid \$2,404,286, plus interest at the Medicare Trust Fund Rate from May 1, 2008 to the date of payment. Defendant acknowledges that any settlement and/or release of civil liability must be approved by the Civil Division of the United States Department of Justice and the Department of Health and Human Services, Office of Inspector General.

5. Payment of Mandatory Special Assessment

Defendant agrees to pay the mandatory special assessment to the Clerk of the Court on or before the date or sentencing.

6. No Further Prosecution of Defendant

Other than the charges set forth in the Information attached as Exhibit A, the Government agrees not to bring any additional federal criminal non-tax charges against Defendant with respect to the conduct covered by the Information. This agreement is expressly contingent upon:

- a. the guilty plea of Defendant to the information attached hereto as Exhibit A being accepted by the Court and not withdrawn or otherwise challenged; and
- b. Defendant’s performance of all of its obligations as set forth in this Agreement.

If Defendant’s guilty plea is not accepted by the Court or is withdrawn for any reason, or if Defendant should fail to perform any obligation under this Agreement, this declination of prosecution shall be null and void.

The United States expressly reserves the right to prosecute any individual, including but not limited to former officers, directors, employees and agents of Biovail Corporation and/or Biovail Pharmaceuticals, Inc. for the conduct set forth in the attached Information.

7. Waiver of Rights to Appeal and to Bring Collateral Challenge

Defendant is aware that it has the right to challenge its sentence and guilty plea on direct appeal. Defendant is also aware that it may, in some circumstances, be able to argue that its plea should be set aside, or its sentence set aside or reduced, in a collateral challenge such as pursuant to a motion under 28 U.S.C. § 2255.

In consideration of the concessions made by the U.S. Attorney in this Agreement, Defendant knowingly and voluntarily waives its right to appeal or collaterally challenge:

- (a) Defendant's guilty plea and any other aspect of Defendant's conviction, including, but not limited to, any rulings on pretrial suppression motions or any other pretrial dispositions of motions and issues; and
- (b) The imposition by the District Court of the sentence agreed to by the parties, as set out in paragraph 4 and, even if the Court rejects one or more positions advocated by the parties with regard to the application of the U.S. Sentencing Guidelines.

Defendant's waiver of rights to appeal and to bring collateral challenges shall not apply to appeals or challenges based on new legal principles in First Circuit or Supreme Court cases decided after the date of this Agreement which are held by the First Circuit or Supreme Court to have retroactive effect.

This Agreement does not affect the rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b), and the U.S. Attorney therefore retains his appeal rights.

8. Cooperation

(a) Terms of Cooperation

Defendant shall cooperate completely and truthfully in any trial or other proceeding arising out of any federal investigation of its current and former officers, agents, employees or other persons or entities relating to the conduct set forth in the Information. Defendant shall make reasonable efforts to facilitate access to, and to encourage the cooperation of, its current and former officers, agents, and employees for interviews sought by law enforcement agents, upon request and reasonable notice. Defendant shall also take reasonable measures to encourage its current and former officers, agents, and employees to testify truthfully and completely before any grand jury, and at any trial or other hearing, at which they are requested to do so by any government entity.

In addition, Defendant shall furnish to law enforcement agents, upon request, all documents and records in its possession, custody or control relating to the conduct that is within the scope of any ongoing grand jury investigation, trial or other criminal proceeding in the District of Massachusetts, and that are not covered by the attorney-client privilege or work product doctrine.

Provided, however, notwithstanding any provision of this Agreement, that: (1) Defendant is not required to request of its current or former officers, agents, or employees that they forego seeking the advice of an attorney nor that they act contrary to that advice; (2) Defendant is not required to take any action against its officers, agents, or employees for following their attorney's advice; and (3) Defendant is not required to waive any privilege or claim of work product protection except to the extent set forth in the succeeding paragraph.

Defendant specifically agrees to continue to waive and/or waive any attorney-client privilege and/or work product protections regarding the legality of the PLACE program and/or the decision to enter into, implement and/or continue the PLACE program as to any such advice or communications,

Defendant acknowledges that it expressly and unequivocally admits that it knowingly, intentionally and willfully committed the crime charged in the Information and is in fact guilty of that offense. Defendant agrees that it will not make statements inconsistent with this explicit admission of guilt to the crimes charged in the Information,

9. Probation Department Not Bound By Agreement

The sentencing disposition agreed upon by the parties and their respective calculations under the Sentencing Guidelines are not binding upon the United States Probation Office.

10. Fed. R. Crim. P. 11(c)(1)(C) Agreement

Defendant's plea will be tendered pursuant to Fed. R. Crim. P. 11(c)(1)(C). Defendant cannot withdraw its plea of guilty unless the sentencing judge rejects this Agreement. If the sentencing judge rejects this Agreement, this Agreement shall be null and void at the option of either the United States or Defendant, with the exception of paragraphs 12-13, which shall remain in effect.

11. Civil and Administrative Liability

By entering into this Agreement, the United States does not compromise any civil or administrative liability, including but not limited to any False Claims Act or tax liability which BPI may have incurred or may incur as a result of its conduct and its plea of guilty to the attached Information.

12. Waiver of Defenses

If this Plea Agreement or Defendant's guilty plea is not accepted by the Court for any reason, or is later withdrawn or otherwise successfully challenged by Defendant for any reason, Defendant hereby waives, and agrees it will not interpose any defense to any charges brought against it which defenses Defendant might otherwise have under any statute of limitations, the Speedy Trial Act, or the United States Constitution with respect to preindictment delay, except that Defendant may raise any such defense that Defendant may have for conduct occurring before April 1, 2003, as further described in the parties tolling agreement attached hereto as Exhibit B.



13. Withdrawal of Plea By Defendant

Should Defendant move to withdraw its guilty plea at any time, this Agreement shall be null and void at the option of the U.S. Attorney, with the exception of this paragraph. In this event, Defendant understands and agrees that the Government may pursue any and all charges that might otherwise have been brought but for this Agreement, and Defendant hereby waives, and agrees that it will not interpose, any defense to any additional charges brought against it which might otherwise have under any statute of limitations, the Speedy Trial Act, or the United States Constitution with respect to pre-indictment delay, except any such defense that Defendant may already have for conduct occurring before April 1, 2003.

14. Breach of Agreement

If the U.S. Attorney determines that Defendant has failed to comply with any provision of this Agreement, or has committed any crime following its execution of this Agreement, the U.S. Attorney may, at his sole option, be released from his commitments under this Agreement in their entirety by notifying Defendant, through counsel or otherwise, in writing. The U.S. Attorney may also pursue all remedies available to him under the law, irrespective of whether he elects to be released from his commitments under this Agreement. Further, the U.S. Attorney may pursue any and all charges which have been, or are to be, dismissed pursuant to this Agreement. Defendant recognizes that no such breach by it of an obligation under this Agreement shall give rise to grounds for withdrawal of its guilty plea. Defendant understands that, should it breach any provision of this agreement, the U.S. Attorney will have the right to use against Defendant before any grand jury, at any trial or hearing, or for sentencing purposes, any statements which may be made by it, and any information, materials, documents or objects which may be provided by it to the government subsequent to this Agreement, without any limitation. In this regard, Defendant hereby waives any defense to any charges which it might otherwise have under any statute of limitations or the Speedy Trial Act.

15. Who Is Bound By Agreement

This Agreement is limited to the U.S. Attorney for the District of Massachusetts, and cannot and does not bind the Attorney General of the United States or any other federal, state or local prosecutive authorities.

16. Corporate Authorization

Defendant shall provide to the Government and the Court a copy of a resolution of the Board of Directors of Biovail Pharmaceuticals, Inc. affirming that the Board of Directors has authority to enter into the Plea Agreement and has (1) reviewed the Information in this case and the proposed Plea Agreement; (2) consulted with legal counsel in connection with the matter; (3) voted to enter into the proposed Plea Agreement; (4) voted to authorize Biovail Pharmaceuticals, Inc. to plead guilty to the charges specified in the Plea Agreement and (5) voted to authorize the corporate officer identified below to execute the Plea Agreement and all other documents necessary to carry out the provisions of the Plea Agreement. A copy of the resolution is attached as Exhibit C. Defendant agrees that either a duly authorized corporate officer or a duly authorized attorney for Biovail Pharmaceuticals, Inc., at the discretion of the Court, shall appear

on behalf of Biovail Pharmaceuticals, Inc. and enter the guilty plea and will also appear for the imposition of sentence.

17. Complete Agreement

This letter and the attachments thereto (Exhibit A - the Information, Exhibit B - the Tolling Agreement and Exhibit C - the Corporate Resolution) contains the complete agreement between the parties to this Agreement relating to the disposition of this criminal case. No promises, representations or agreements have been made other than those set forth in this letter. This Agreement supersedes prior understandings, if any, of the parties, whether written or oral, other than those set forth in the attachments hereto. This Agreement can be modified or supplemented only in a written memorandum signed by the parties or on the record in court.

If this letter accurately reflects the Agreement between the U.S. Attorney and Defendant, please have Defendant sign the Acknowledgment of Agreement below. Please also sign below as Witness. Return the original of this letter to Assistant U.S. Attorney Sara Bloom.

Very truly yours,

MICHAEL J. SULLIVAN  
United States Attorney

By: /s/ DIANE C. FRENIERE  
DIANE C. FRENIERE, Chief  
White Collar Crime Section

**Acknowledgment of Plea Agreement**

The Board of Directors has authorized me to execute this Plea Agreement on behalf of Biovail Pharmaceuticals, Inc. The Board has read this Plea Agreement, the attached criminal Information, the tolling agreement and the corporate authorization or has been advised of the contents thereof and has discussed them fully with Biovail Pharmaceuticals, Inc.'s attorney. The Board acknowledges that this letter fully sets forth Biovail Pharmaceuticals, Inc.'s agreement with the Government. The Board further states that no additional promises or representations have been made to Biovail Pharmaceuticals, Inc. by any officials of the United States in connection with the disposition of this matter, other than those set forth in the Plea Agreement.

Dated: May 16, 2008

/s/ NANCY SELL  
NANCY SELL  
Title: President and Secretary  
Biovail Pharmaceuticals, Inc.

Dated: 05/16/08

/s/ GEOFFREY HOBART  
GEOFFREY HOBART, ESQ.  
Covington & Burling, LLP.  
Attorney for Biovail Pharmaceuticals, Inc.

**EXHIBIT A**

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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

|                               |   |                                                                                      |
|-------------------------------|---|--------------------------------------------------------------------------------------|
| UNITED STATES OF AMERICA,     | ) | Criminal Number                                                                      |
|                               | ) |                                                                                      |
| v.                            | ) | <b>VIOLATION:</b>                                                                    |
|                               | ) |                                                                                      |
| BIOVAIL PHARMACEUTICALS, INC. | ) | 18 U.S.C. § 371 — Conspiracy to Offer and<br>Pay Illegal Remunerations to Physicians |
|                               | ) |                                                                                      |
|                               | ) | 42 U.S.C. § 1320a-7(b)(b)(2) — Offers of<br>Remuneration to Physicians               |
| Defendants.                   | ) |                                                                                      |
|                               | ) |                                                                                      |
|                               | ) |                                                                                      |

**INFORMATION**

THE UNITED STATES ATTORNEY CHARGES THAT:

**PRELIMINARY ALLEGATIONS**

At all times material hereto, unless otherwise alleged:

1. Defendant **BIOVAIL PHARMACEUTICAL, INC.** (“**BPI**”), a Delaware corporation, had corporate headquarters in Morrisville, North Carolina.
- The Drug Cardizem, L.A.**

2. In January 2001, **BPI** acquired the Cardizem line of drugs from another company for \$409.5 million dollars.

3. Cardizem is the brand name of a drug known as diltiazem, which is a heart medication used to control high blood pressure.

4. In or before 2003, the patent ran out on Cardizem, the then brand name version of diltiazem, and the drug faced generic competition.

5. In the late 2002 and early 2003, **BPI** was preparing to introduce the product Cardizem, L.A. (CLA) to the market. Cardizem, L.A. was **BPI’s** proprietary name for a new 24 hour time release, or long acting (L.A.), formulation of the brand name drug Cardizem.
-

6. **BPI** began selling Cardizem, L.A. on or about March 23, 2003. At that time, the generic version of Cardizem cost about one third less than the new drug, Cardizem, L.A.

**The PLACE Program**

7. As part of their promotion of Cardizem, L.A., beginning in March 2003, **BPI** implemented a program known as the PLACE (Proving Long Acting Through Experience) program.
8. The PLACE program paid physicians and other prescribers up to \$1,000 for enrolling between 11-15 patients in the program, causing patients to fill prescriptions for Cardizem, L.A. These included prescriptions that were paid for by Medicaid.
9. The first phase of the PLACE program required the prescribing medical professionals (e.g. physicians, nurse practitioners, physician's assistants) to enroll in the program by signing a business reply card by which they agreed to participate, and by completing a 2 page, 10 multiple choice questionnaire. This questionnaire was not expected to take, and did not usually take, the prescribing professional more than 10 minutes to complete.
10. Under this initial part of the program, the prescribing medical professionals were paid \$250 if they (a) signed the business reply card and thus agreed to participate in the program and write Cardizem, L.A. prescriptions for their patients, and (b) completed this brief questionnaire.
11. A payment of \$250 for 10 to 15 minutes of these medical professionals' time exceeded the reasonable fair market value of their time.
12. In addition, if the business reply card was signed and the questionnaire completed and returned, an office manager or assistant received \$50.00. In some cases, these assistants simply put the materials in an envelope. In other cases, the assistants did nothing at this stage.
13. The payments of \$50 to these office assistants exceeded the reasonable fair market value of the assistants' actual time spent.

14. The second phase of the PLACE program provided that if the medical prescriber returned the final questionnaire, they would be paid, in addition to the initial \$250 payment, as follows:
    - (1) an additional \$250 if they enrolled between 1 and 5 patients;
    - (2) an additional \$500 if they enrolled between 6 and 10 patients; and
    - (3) an additional \$750 if they enrolled between 11 and 15 patients.
  15. These payments of \$250-\$750 exceeded the reasonable fair market value of the medical prescribers' time necessary to enroll these patients and complete the final questionnaire.
  16. In addition, if the final questionnaire was returned, the office assistant also received an additional \$100.00. This payment also exceeded the fair market value of the office assistants' time necessary to complete the program.
  17. To enroll a patient, the physician or other medicine prescriber was required to write a 30 day prescription for the patient and the patient had to fill the prescription. **BPI** provided a coupon or voucher, however, so that first thirty days of the drug would be free.
  18. The physicians and other medicine prescribers were told that in order to receive the payment they also had to track the patients experience on Cardizem, L.A. for three regularly scheduled visits. These visits were nothing more than the routine visits and required no additional work for the prescriber.
  19. **BPI** did not design or implement the PLACE program in a way calculated to provide new or meaningful scientific data about whether Cardizem, L.A. worked better than other available drugs.
  20. **BPI** employees responsible for the PLACE program reported regularly on the number of prescriptions generated by the PLACE program and congratulated those involved for their success in using the PLACE program to generate prescriptions for Cardizem, L.A.
-

21. **BPI** paid and caused full payments to be made to medical prescribers and office assistants even if the information provided in the final study questionnaire was incomplete and/or not usable.
22. According to the final study report, nearly 64 percent of the final study questionnaires were not complete or contained inconsistent data.
23. The senior management of **BPI** and **BPI's** parent company communicated to the sales force that a successful launch of Cardizem, L.A. was critical to **BPI's** success and growth as a company, as well as to their own financial well-being. On February 28, 2003, a **BPI** parent company Vice President sent an email to the sales force with respect to the launch of Cardizem, L.A. that stated:
- We have to deliver growth to Wall Street and everyone knows exactly what is expected from us. If we ever don't deliver, my net worth will shrink dramatically. I will suffer tremendously if this were to happen . . . We have made a huge upfront commitment and now we expect you (the reps) to make a commitment in return.
24. **BPI** and its parent company management also congratulated the sales team on its success in using the PLACE program to drive prescriptions for Cardizem, L.A.
25. Thus, on or about April 11, 2003, the **BPI** Product Manager in charge of the PLACE program sent an email to all district sales managers that stated:
- Congratulations on doing an incredible job with the PLACE Program. The prescription generation has been phenomenal — Currently, we have 10,505RXs!!
26. Similarly, on June 23, 2003, this **BPI** Product Manager sent another email, including higher level sales and marketing managers, as follows:
- To date, a total of 89,092 Rxs have been recorded for Cardizem LA, as of June 6<sup>th</sup> 2003. Congratulations once again on all the success the PLACE Program is having in driving prescriptions and market share!!
27. In addition, on April 5, 2003, the CEO of **BPI's** parent company responded to a report of increasing Cardizem, L.A. prescriptions from the PLACE program with the following:



This is a GREAT start. Now, who would care to venture a guess (don't we call them forecasts?) on what conversion we can expect to paying customers. I would really like to know what you think. Thanks and nice work.

28. Likewise, on April 8, 2003, the CEO of **BPI's** parent company responded to reports of 8356 faxed in prescription forms with "I have to tell you, I have NEVER seen this type of response!! CONGRATS!!!"
29. In preparing to launch Cardizem, L.A., **BPI** also contracted with R-Corp. to acquire a additional contracted sales representatives to promote Cardizem, L.A. at the time of its launch. Under the agreement, R-Corp. sales representatives were hired to help **BPI** sales representatives promote Cardizem, L.A. at its launch.
30. Prior to the launch of Cardizem, L.A., R-Corp. representatives raised a concern about whether the PLACE program complied with all laws, and specifically the Anti-Kickback laws and indicated that R-Corp. was unwilling to proceed without assurances that the program complied with the Anti-Kickback Act.
31. On or about March 21, 2003, an attorney for R-Corp. spoke with counsel for **BPI's** parent company and informed the counsel for **BPI's** parent company about R-Corp.'s internal guidelines regarding the Anti-Kickback Act, These included the following:

The purpose of the study cannot be to induce physicians to prescribe the product...

The compensation cannot take into account the volume or value of any referrals or business generated between the parties . . .

The recruitment of investigators needs to be aimed at practitioners that are experts in the field or leading researchers.

Recruitment of investigators is not to be aimed at high prescribers... Participation in the research and any payments cannot be made contingent upon a practitioner prescribing a Reliant product.

[Emphasis in original]

#### **The Medicaid Program**

32. Title XIX of the Social Security Act, 42 U.S.C. §§ 1396 *et seq.*, established a program to enable the states to furnish medical assistance to certain categories of persons whose

income and resources were insufficient to meet the costs of necessary medical services. Commonly called Medicaid, the program was administered by the states, but was funded jointly by the federal and state governments.

33. To participate in the Medicaid program, a state was required to develop a plan that was approved by the Secretary of Health and Human Services as meeting federal requirements. The state paid qualified providers for furnishing necessary services covered by the state plan to individuals who were eligible for medical assistance. The federal government contributed a portion of the costs that each participating state incurred in purchasing items and services from qualified providers on behalf of eligible persons. The state bore the remainder of the costs. At all times relevant hereto, Massachusetts was among the states that had Medicaid programs receiving federal funding.
34. Medicaid programs, including that in Massachusetts, were “federal health care programs” within the meaning of 18 U.S.C. § 24, in that they were public plans affecting commerce under which medical benefits, items and services were provided to individuals under the plans.
35. The federal government contributed to the costs of prescription drugs for persons who were Medicaid beneficiaries, including but not limited to persons receiving prescriptions for blood pressure treatment, such as Cardizem, L.A.
36. As discussed in this Information, prescribers D, E, G, R, S and W were each medical providers in Massachusetts who provided care and treatment for Medicaid-eligible patients for high blood pressure. Each of these prescribers prescribed Cardizem, L.A. for one or more patients who were Medicaid program beneficiaries in 2003. At all times relevant to this Information, the Medicaid program in Massachusetts reimbursed the Cardizem, L.A. prescriptions for the physicians’ Medicaid eligible patients.
37. At all times relevant to this Information, federal law provided that it was illegal to knowingly and willfully offer or pay any remuneration (including any kickback, bribe or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to

*induce* such person to *order*, or arrange for or *recommend purchasing*, any item for which payment may be made in whole or in part under a Federal health care program.

38. **BPI** employees knew that Cardizem, L.A. prescriptions, including those induced through the PLACE program, would include prescriptions for Medicaid patients.
39. In 2003, Medicaid paid in excess of \$3 million in reimbursement for prescriptions for Cardizem, L.A. nationwide.

**COUNT ONE  
(CONSPIRACY -18 U.S.C. § 371)**

**The Conspiracy**

40. The allegations set forth in Paragraphs 1- 39 are herein realleged and incorporated by reference.
41. Commencing on or before August 2002, and continuing thereafter until in or about at least December 2003, the exact dates being unknown to the Grand Jury, in the District of Massachusetts and elsewhere, defendants

**BIOVAIL PHARMACEUTICALS INC.,**

and others known and unknown to the Grand Jury, did knowingly and willfully combine, conspire, and agree to commit an offense against the United States, to wit, 42 U.S.C. § 1320a-7b(b)(2)(A), by knowingly and willfully offering and paying remuneration, directly and indirectly, overtly and covertly, in cash and in kind, to physicians to induce them to prescribe Cardizem, L.A. for individuals, including Medicaid patients, for which payments were made in whole and in part under Medicaid and other Federal health care insurance programs.

**Purpose of the Conspiracy**

42. The purpose of the conspiracy was to target medical prescribers who were potential high prescribers of Cardizem, L.A. and to offer them payments and to pay them to induce them to prescribe Cardizem, L.A. for their patients, including their Medicaid patients.

**Manner and Means of the Conspiracy**

It was part of the conspiracy that :

43. From March 2003 through at least December 2003, **BPI** implemented the PLACE program to induce medical prescribers to prescribe Cardizem, L.A. for their patients.

44. From March 2003 through at least December 2003, **BPI** presented the PLACE program to medical prescribers and others as a scientific study of the performance of Cardizem, L.A., when the program was actually designed to induce prescribers to prescribe the product for their patients by paying prescribers up to \$ 1,000.
45. From November 2002 through at least on or about March 2003, **BPI** confirmed their objectives for the Cardizem, L.A. program to include the following:
- (1) Accelerate uptake among high prescribing PCPs;
  - (2) Engage physicians in evaluation of Cardizem [L.A.]; and
  - (3) Provide sales reps with an opportunity to reinforce/build relationships with key prescribers.
46. From March 2003 through at least December 2003, **BPI** paid the participants in the PLACE program more than the fair market value of their time in order to induce them to try Cardizem, L.A. on their patients.
47. From in or about October 2002 through on or about February 2003, **BPI** increased the payments to the physicians from the originally proposed honorarium of \$100 (or a medically relevant item) to \$300, then \$500 and then \$1,000 per prescriber.
48. In furtherance of the conspiracy, **BPI** paid the physicians up to \$1,000 for their *participation, without seeking attorney advice regarding the legality of the payments*, even though **BPI** was advised by Q-Corp., the company helping **BPI** to help design and implement the PLACE program, that **BPI** would have to consult its own attorneys as to the appropriateness and permissibility of increasing the payment to such a high honorarium.
49. From in or about March 2003 through at least July 2003, **BPI** created 25,000 PLACE kits and targeted approximately 17,000 prescribers for participation in the program and provided these target lists to their sales representatives.
50. From in or about March 2003 through at least July 2003, **BPI** targeted prescribers based upon their projected potential and likelihood of prescribing Cardizem, L.A.

51. From in or about March 2003 through at least May 2003, **BPI** falsely assured other participants, and specifically representatives of R-Corp., that the PLACE program had been reviewed by attorneys for compliance with the Anti-Kickback statutes as well as other laws, when in fact no such review had been done.
52. In or about March 2003, a Vice President of **BPI's** parent company dismissed R-Corp's concern about compliance with the Anti-Kickback Act as whining, indicated he did not really care what R-Corp had to say about it, and insisted that the program had to proceed to meet **BPI's** objectives.
53. In or about March 2003, this Vice President, when questioned further about how to deal with the objections concerning the program's potential lack of compliance with the Anti-Kickback Act, caused the program to go forward, concluding: "This is a formality anyway. The program has to proceed."
54. On or about April 10, 2003, **BPI** and a Vice President of its parent corporation signed a letter to R-Corp. in which **BPI** confirmed to R-Corp. the following:
- You have indicated, and assured us, that Biovail and [Q-Corp.] have carefully *reviewed the program from an anti-kickback perspective . . . and firmly believe* that the program does not present an unreasonable risk of enforcement action. Further, you have indicated that the program has been reviewed by expert counsel well versed in these regulatory and enforcement matters and that counsel has confirmed your position. It is on the basis of your assurances, therefore, that we have agreed to enter an agreement directly with [Q-Corp]. to implement the Project.
- You have agreed to indemnify and hold R-Corp. . . harmless from any losses . . . arising from or relating to the Project including any losses relating to any governmental or enforcement actions relating to the same.
55. On or about April 10, 2003, **BPI** executed this letter to persuade R-Corp. to go forward with the PLACE program, even though **BPI** had not obtained any review of the PLACE program's compliance with the Anti-Kickback Act, much less an expert counsel review of the PLACE program from an anti-kickback perspective.
56. From in or about March 2003 through in or about July 2003, **BPI** made the false representation that they had a legal advice as to the lawfulness of the PLACE program

from an anti-kickback perspective in order to persuade R-Corp. to proceed with the program.

57. From in or about April 2003 through at least December 2003, **BPI** caused health insurers, including federal health care programs such as Medicaid, to pay for Cardizem, L.A. prescriptions generated by the PLACE program.

**Overt Acts**

58. In furtherance of the conspiracy, and to effect its objects, **BPI** and other co-conspirators known and unknown to the Grand Jury, committed numerous overt acts, including, but not omitted to, the following:

59. On various dates between March 2003 and in or about July 2003, **BPI** enrolled and caused to be enrolled approximately 15,000 prescribers in the PLACE program, including the six prescribers identified in the chart below.

60. On various dates between March 2003 and in or about September 2003, **BPI** caused approximately 5,000 prescribers, including the prescribers identified in the chart below, to be paid \$250 for filling out the initial questionnaire.

61. On or about the dates set forth below and thereafter, **BPI** caused approximately 10,000 prescribers, including the prescribers identified in the chart below, to be paid and additional \$750 for enrolling 11-15 patients.

62. In 2003, each of the prescribers identified in the chart below prescribed Cardizem, L.A. for patients for whom the prescriptions were reimbursed by Medicaid:

| <u>Prescriber</u>             | <u>Enrollment Date<br/>On or About</u> | <u>\$750 Payment Date<br/>On or About</u> |
|-------------------------------|----------------------------------------|-------------------------------------------|
| Prescriber D<br>Dartmouth MA  | May 6, 2003                            | November 5, 2003                          |
| Prescriber E<br>Braintree, MA | April 9, 2003                          | November 5, 2003                          |

|                                 |                |                  |
|---------------------------------|----------------|------------------|
| Prescriber G<br>Bridgewater, MA | June 2, 2003   | November 5, 2003 |
| Prescriber R<br>Springfield, MA | April 28, 2003 | November 5, 2003 |
| Prescriber S<br>Agawam, MA      | April 29, 2003 | November 5, 2003 |
| Prescriber W<br>Long Meadow, MA | April 14, 2003 | November 5, 2003 |

*All in violation of Title 18, United States Code, Section 371.*



COUNTS TWO - SEVEN  
(OFFER OF REMUNERATION TO PHYSICIANS)  
(42 U.S.C. § 1320a-7(b)(2)(A))

63. Paragraphs 1-62 are realleged and incorporated as if fully set forth herein.
64. From on or about March 21, 2003 through January 1, 2005, in the District of Massachusetts and elsewhere, defendant

BIOVAIL PHARMACEUTICALS, INC.,

did knowingly and willfully cause to be offered remuneration, directly and indirectly, overtly and covertly, in cash and in kind, to the physicians and other medical prescribers listed below to induce those prescribing medical professionals to prescribe Cardizem, L.A. for their patients, including their Medicaid patients, for which payments for prescriptions beyond the first month of free drug, would be made in whole and in part under state Medicaid programs, as follows:

| Count | Date of Offer<br>(On or About) | Medical Prescriber   |
|-------|--------------------------------|----------------------|
| 2     | May 6, 2003                    | Medical Prescriber D |
| 3     | April 9, 2003                  | Medical Prescriber E |
| 4     | June 2, 2003                   | Medical Prescriber G |
| 5     | April 28, 2003                 | Medical Prescriber R |
| 6     | April 29, 2003                 | Medical Prescriber S |
| 7     | April 14, 2003                 | Medical Prescriber W |

All in violation of Title 42, United States Code, Section 1320a-7b(2)(A).

MICHAEL J. SULLIVAN  
UNITED STATES ATTORNEY  
DISTRICT OF MASSACHUSETTS

By: /s/ SARA BLOOM  
SARA MIRON BLOOM  
ASSISTANT UNITES STATES ATTORNEY

Date: 5/16/08

**EXHIBIT B**

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**U.S. Department of Justice**

*United States Attorney  
District of Massachusetts*

*Main Reception: (617) 748-3100*

*United States Courthouse, Suite 9200  
1 Courthouse Way  
Boston, Massachusetts 02210*

April 2, 2008

By TELEFAX  
202-778-5281

Geoffrey Hobart, Esq.  
Covington & Burling  
1210 Pennsylvania Avenue, NW  
Washington, DC 20004-3401

Re: Biovail: Tolling Agreement on Statute of Limitations

Dear Mr. Hobart:

This letter confirms and sets forth an agreement between the Office of the United States Attorney for the District of Massachusetts and your clients, Biovail Corporation, Biovail Pharmaceuticals, Inc. and ail parents, subsidiaries, successors and assigns (hereinafter "Biovail"). The terms of the agreement arc as follows:

1. As you are aware, this Office is presently conducting a joint criminal and civil investigation of your client, Biovail, and its officers, employees and agents. That conduct includes, without limitation, allegations that Biovail and certain of its officers, employees and agents, may have violated various federal criminal statutes, including but not limited to 18 U.S.C. §371 (conspiracy to defraud the United States), 18 U.S.C. § 1341 and 1343 (mail and wire fraud), 342 U.S.C. § 1320(a)-7(b) (criminal penalties for acts involving the Medicare and State health care programs), certain civil statutes including but not limited to 31 U.S.C. § 3729 (civil False Claims Act); and certain administrative statutes such as 42 U.S.C. § 1320a-7 (exclusion) and 42 U.S.C. § 1320a-7a (civil monetary penalties), in connection with Biovail's activities in connection with the distribution, sale, marketing, approval, and promotion of the drug Cardizem, L.A.

2. In the course of our discussions, this Office has expressed its intention to afford you and your client the further opportunity to provide information to this Office which you deem relevant to matters relating to that investigation. In response, you have advised us that you intend to provide certain information to this Office, and that you wish such information be considered prior to a prosecution decision concerning potential criminal charges resulting from that investigation. You have requested further time to prepare any materials and gather information for presentation to this Office, and to consider and evaluate further information as may be provided by this Office. As a result, this Office and your client have agreed, as more fully set

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forth below, to toll the applicable statutes of limitations for the offenses described in paragraph one for the time period April 2, 2008 through October 30, 2008 for that conduct described in paragraph one.

3. This Office and your client Biovail, hereby agree that your client will not at any time interpose a statute of limitations defense or any constitutional claim based upon pre-indictment delay to any indictment or count thereof, or to any civil complaint or count thereof, or to any administrative action, which charges or alleges that your client committed any federal offense or violation related to the conduct described in paragraph one, that includes the time period April 2, 2008 to October 30, 2008 in the calculation of the limitations period. Nothing herein shall affect, or be construed as any waiver of, any applicable statute of limitations defenses that Biovail may have with respect to the time period prior to and including April 1, 2008, and your client expressly reserves its right to raise any such defense, any provisions of this agreement notwithstanding, except to the extent that your client has waived certain statute of limitation defenses in any waiver agreement(s) with other United States Attorney’s Offices or the Department of Justice, which agreement(s) remain in effect.

4. Your client, Biovail, enters into this agreement knowingly and voluntarily. Biovail acknowledges that the statute of limitations and United States Constitution regarding prejudicial pre-indictment delay confers benefits on it, and it is not required to waive those benefits, and that Biovail is doing so after consulting with you because Biovail believes it is in its best interest to do so. Biovail also acknowledges its understanding that it may be charged with the foregoing criminal offenses and civil and administrative violations and/or any other offenses or violations at any time prior to and including October 30, 2008. Biovail further acknowledges its understanding that it may be charged with any offenses or violations not specifically described above, at any time during the relevant statute of limitations period.

5. This agreement relates only to the allegations described in paragraph one above and any charges or claims based on those allegations. This writing contains the entire agreement between this Office and your client concerning the statute of limitations with respect to these matters and can be modified or supplemented only by means of a writing signed by this Office and your client.

If your client is willing to enter into this agreement on the terms set forth above, Biovail should indicate the same by signing on the spaces provided below.

Very truly yours,

MICHAEL J. SULLIVAN  
United States Attorney

/s/ SARA BLOOM

By: /s/ Sara Miron Bloom  
Sara M. Bloom  
Assistant U.S. Attorney

/s/ GEOFFREY HOBART

Geoffrey Hobart  
Covington & Burling  
Attorney for Biovail Corporation and Biovail  
Pharmaceuticals, Inc.

Dated: 5/14/08

/s/ WILLIAM WELLS

William Wells  
Chief Executive Officer  
Biovail Corporation

Dated: 5/14/08

/s/ WENDY KELLY

Wendy Kelly  
Director and Authorized Representative  
Biovail Pharmaceuticals, Inc.

Dated:

**EXHIBIT C**

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**UNANIMOUS WRITTEN CONSENT OF  
THE DIRECTORS OF  
BIOVAIL PHARMACEUTICALS, INC.**

THE UNDERSIGNED, being the sole director of Biovail Pharmaceuticals, Inc., a Delaware corporation (the "Corporation"), does hereby give her written consent in accordance with Section 141(f) of the General Corporation Law of the State of Delaware, in lieu of action in a meeting of the board of directors of the Corporation, to the adoption of the following resolutions:

WHEREAS, the United States Attorney for the District of Massachusetts has been conducting an investigation into the Corporation's conduct alleging that the Corporation offered remuneration to physicians to recommend the purchase one of the Corporation's drug products (the "Investigation");

WHEREAS, the Corporation's legal counsel has been negotiating a resolution of the Investigation; and

WHEREAS, the Corporation's legal counsel has reported to the board the terms and conditions of a proposed resolution of the Investigation;

NOW, THEREFORE, IT IS:

RESOLVED, that the Corporation is hereby authorized to enter into the Plea Agreement dated May 16, 2008, between the United States Attorney for the District of Massachusetts and the Corporation (the "Agreement");

FURTHER RESOLVED, that Nancy Sell, President & Secretary, is hereby authorized and directed in the name and on behalf of the Corporation to take all actions and deliver any agreements, certificates and documents and instruments with respect to or contemplated by the Agreement and matters set forth above, including, without limitation, the payment of all amounts, fees, costs and other expenses necessary or appropriate to effectuate the purpose and intent of the foregoing resolutions and to effectuate and implement the settlements contemplated hereby;

FURTHER RESOLVED, that any actions taken by the officers of the Corporation prior to the adoption of these resolutions that are within the authority conferred hereby are hereby fully ratified, confirmed and approved as the act and deed of the Corporation; and

FURTHER RESOLVED, that this Written Consent be filed with the minutes of the Board of Directors of the Corporation.

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IN WITNESS WHEREOF, the undersigned has set her hand as of the day and year first written above.

/s/ NANCY SELL  
Nancy Sell

**U.S. Department of Justice**

*Michael J. Sullivan  
United States Attorney  
District of Massachusetts*

*Main Reception: (617) 748-3100*

*John Joseph Moakley United States Courthouse  
1 Courthouse Way  
Suite 9200  
Boston, Massachusetts 02210*

May 16, 2008

By Mail and Fax  
202-778-5281

Geoffrey Hobart, Esq.  
Covington & Burling  
1210 Pennsylvania Avenue, NW  
Washington, DC 20004-3401

**Re:     Side Letter Agreement with Biovail Corporation**

Dear Mr. Hobart:

This letter ("Side Letter Agreement") will confirm that, in exchange for full performance of the Plea Agreement entered into by and among the United States Attorney for the District of Massachusetts ("U.S. Attorney") and your client, Biovail Pharmaceuticals Inc. ("BPI"), a copy of which Plea Agreement is attached hereto as Exhibit One, and in exchange for certain other promises made herein between and among the U.S. Attorney and your client, Biovail Corporation (collectively, Biovail Corporation and BPI as "Biovail"), the U.S. Attorney and Biovail Corporation hereby agree as follows:

a.       No Criminal Prosecution of Biovail Corporation

The U.S. Attorney hereby declines prosecution of Biovail Corporation for conduct by or attributable to Biovail Corporation that:

- (1)       falls within the scope of the Information to which BPI is pleading guilty;
- (2)       was a subject of the grand jury investigation by the U.S. Attorney in Massachusetts including allegations that Biovail directly or indirectly offered or paid remuneration, in the form of payments through a program known as the PLACE program, to customers including but not limited to physicians to induce these individuals to recommend, prescribe and/or purchase Biovail's drug Cardizem, L.A.;

The U.S. Attorney does not decline criminal prosecution of Biovail Corporation or any of Biovail's related entities for any other conduct beyond that set forth above.

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This Side Letter Agreement is not intended to and does not affect the criminal liability of any individual.

It is understood among the parties to this Side Letter Agreement that the U.S. Attorney's promise not to prosecute Biovail Corporation is dependent upon and subject to (a) BPI's Fulfilling its material obligations in the Plea Agreement, (b) BPI and Biovail Corporation entering into a Civil Settlement Agreement acceptable to the Department of Justice prior to July 31, 2008, and (e) Biovail Corporation entering into a Corporate Integrity Agreement acceptable to the Office of Inspector General of the United States Department of Health and Human Services by no later than September 30, 2008. If any of these conditions are not met, Biovail Corporation agrees to waive any defenses regarding pre-indictment delay, statute of limitations, or Speedy Trial Act with respect to any and all criminal charges that could have been timely brought or pursued as of April 1, 2008.

b. Cooperation of Biovail Corporation

Biovail shall cooperate completely and truthfully in any trial or other proceeding arising out of any ongoing federal grand jury investigation of its current and former officers, agents, and employees. Biovail shall make reasonable efforts to facilitate access to, and to encourage the cooperation of, its current and former officers, agents, and employees for interviews sought by law enforcement agents, upon request and reasonable notice. Biovail shall also take reasonable measures to encourage its current and former officers, agents, and employees to testify truthfully and completely before any grand jury, and at any trial or other hearing, at which they are requested to do so by any government entity.

In addition, Biovail shall furnish to law enforcement agents, upon request, all documents and records in its possession, custody or control relating to the conduct that is within the scope of any ongoing grand jury investigation, trial or other criminal proceeding in the District of Massachusetts, and that are not covered by the attorney-client privilege or work product doctrine.

Provided, however, notwithstanding any provision of this Agreement, that: (1) Biovail is not required to request of its current or former officers, agents, or employees that they forego seeking the advice of an attorney nor that they act contrary to that advice; (2) Biovail is not required to take any action against its officers, agents, or employees for following their attorney's advice; and (3) Biovail is not required to waive any privilege or claim of work product protection except to the extent set forth in the succeeding paragraph.

Biovail specifically agrees to continue to waive and/or waive any attorney-client privilege and/or work product protections regarding the legality of the PLACE program and/or the decision to enter into, implement and/or continue the PLACE program as to any such advice or communications.

Biovail Corporation acknowledges that BPI expressly and unequivocally admits that it knowingly, intentionally and willfully committed the crime charged in the Information and is in fact guilty of that offense. Biovail Corporation agrees that it will not make statements inconsistent with this explicit admission of guilt by BPI to the crime charged in the Information.

c.        Who Is Bound By Agreement

This Agreement is limited to the U.S. Attorney for the District of Massachusetts, and cannot and does not bind the Attorney General of the United States or any other federal, state or local prosecutive authorities.

d.        Complete Agreement

This Side Letter Agreement and the Plea Agreement with BPI and its attachments are the complete and only agreements between the parties. No promises, agreements or conditions have been entered into other than those set forth or referred to in the above-identified documents. This agreement supersedes prior understandings, if any, of the parties, whether written or oral. This agreement cannot be modified other than in a written memorandum signed by the parties or on the record in court.

If this letter accurately reflects the agreement entered into between the U.S. Attorney and Biovail Corporation and its Board of Directors has authorized you to enter into this agreement, please sign below and return the original of this letter to Assistant U.S. Attorney Sara Miron Bloom.

Very truly yours,

MICHAEL J. SULLIVAN  
United States Attorney

/s/ DIANE C. FRENIERE  
\_\_\_\_\_  
DIANE FRENIERE, Chief  
White Collar Section  
District of Massachusetts

/s/ SARA BLOOM  
\_\_\_\_\_  
SARA MIRON BLOOM  
Assistant U.S. Attorney  
District of Massachusetts

**NON-PROSECUTION AGREEMENT WITH BIOVAIL CORP.**

**ACKNOWLEDGMENT OF AGREEMENT**

The Board of Directors of Biovail Corp. has been generally advised of the Plea Agreement with Biovail Pharmaceuticals, Inc., and the criminal Information charging Biovail Pharmaceuticals, Inc. and has discussed this matter with counsel. I acknowledge that this Side Letter Agreement accurately reflects the agreement entered into between the United States Attorney’s Office for the District of Massachusetts and Biovail Corp., and I am duly authorized to enter into this agreement on behalf of Biovail Corp. Biovail Corp. expects to enter into a civil settlement agreement with the United States Attorney’s Office for the District of Massachusetts, the Department of Justice and the Department of Health and Human Services, Office of Inspector General. I further acknowledge that no additional promises or representations have been made to Biovail Corp. by the United States Attorney’s Office for the District of Massachusetts in connection with the disposition of this matter other than as set forth in this Side Letter Agreement.

/s/ WENDY KELLEY  
Wendy Kelley  
Senior Vice President, General Counsel and Corporate Secretary

Dated: 5/16/08

/s/ GEOFFREY E. HOBART  
Geoffrey E. Hobart  
Covington & Burling LLP  
Counsel for Biovail Corp.

Dated: 5/16/08

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**CORPORATE INTEGRITY AGREEMENT**  
**BETWEEN THE**  
**OFFICE OF INSPECTOR GENERAL**  
**OF THE**  
**DEPARTMENT OF HEALTH AND HUMAN SERVICES**  
**AND**  
**BIOVAIL CORPORATION**

**I. PREAMBLE**

Biovail Corporation hereby enters into this Corporate Integrity Agreement (CIA) with the Office of Inspector General (OIG) of the United States Department of Health and Human Services (HHS) to promote compliance with the statutes, regulations, and written directives of Medicare, Medicaid, and all other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) (Federal health care program requirements) and with the statutes, regulations, and written directives of the Food and Drug Administration (FDA requirements). This CIA specifically applies to Biovail Corporation and all its corporate subsidiaries, affiliates, and other related corporate entities, including but not limited to BTA Pharmaceuticals, Inc. (collectively “Biovail”). Contemporaneously with this CIA, Biovail Corporation is entering into a Settlement Agreement with the United States.

**II. TERM AND SCOPE OF THE CIA**

A. The period of the compliance obligations assumed by Biovail under this CIA shall be 5 years from the effective date of this CIA, unless otherwise specified. The effective date shall be the date on which the final signatory of this CIA executes this CIA (Effective Date). Each one-year period, beginning with the one-year period following the Effective Date, shall be referred to as a “Reporting Period.”

B. Sections VII, IX, X, and XI shall expire no later than 120 days after OIG’s receipt of: (1) Biovail’s final Annual Report; or (2) any additional materials submitted by Biovail pursuant to OIG’s request, whichever is later.

C. The scope of this CIA shall be governed by the following definitions:

1. “Covered Persons” includes:

a. Except as otherwise provided below, all owners of Biovail (other than shareholders who: (1) have an ownership interest of less than 5%; and (2) acquired the ownership interest through public trading). The term “Covered Persons” shall not include Eugene Melnyk provided that he does not directly participate in the management and operation of Biovail;

b. all officers, directors, and employees of Biovail (including, but not limited to, BTA Pharmaceuticals, Inc. (BTA)) who are based in the United States or have job responsibilities in the United States, except as carved out below in this Section II.C.1; and

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c. all contractors, subcontractors, agents, and other persons who perform Government Pricing and Contracting Functions or Promotional and Product Services Related Functions on behalf of Biovail, including but not limited to sales representatives and other individuals who engage in Promotional and Product Services Related Functions on behalf of Biovail or BTA under the terms of an agreement (the “PSS Contract”) between BTA and Publicis Selling Solutions, Inc. (PSS) in place as of the Effective Date of the CIA. The term “Covered Persons” shall also apply to all contractors, subcontractors, agents and other persons who may perform Government Pricing and Contracting Functions or Promotional and Product Services Related Functions on behalf of Biovail or BTA under any renewals of the PSS Contract or any new contract entered after the Effective Date and relating to the Functions.

Notwithstanding the above, the term “Covered Persons” does not include: (1) part-time or per diem employees, contractors, subcontractors, agents, and other persons who are not reasonably expected to work more than 160 hours per year, except that any such individuals shall become “Covered Persons” at the point when they work more than 160 hours during the calendar year; or (2) employees of Biovail who perform only manufacturing functions.

2. “Relevant Covered Persons” includes all Covered Persons whose job responsibilities relate to Government Pricing and Contracting Functions or Promotional and Product Services Related Functions, as defined below in Sections II.C.4 and 5, respectively. Relevant Covered Persons include employees of PSS engaged in Promotional and Product Services Related Functions under the PSS Contract and those Biovail and BTA employees who have responsibilities managing or overseeing the PSS Contract and any subsequent contract, renewal, or amendment to a contract relating to the provision of Promotional and Product Services Related Functions or Government Pricing and Contracting Functions on behalf of Biovail or BTA.

3. “Government Reimbursed Products” refers to all Biovail products that are sold in the United States by Biovail or by third-party contractors on Biovail’s behalf and which are reimbursed by Federal health care programs.

4. The term “Government Pricing and Contracting Functions” means the collection, calculation, verification, or reporting of pricing and other information for purposes of the Medicaid Drug Rebate Program (codified at 42 U.S.C. § 1396r-8, et seq.), the Medicare Program (codified at 42 U.S.C. § 1395-1395hhh), the 340B Drug Pricing Program (codified at 42 U.S.C. § 256(b)), or any other government programs through which health care items or services may be purchased or reimbursed, in whole or in part, by the federal government, and the Veteran’s Administration pricing program (the “VA Programs”), as set forth in the Federal Supply Schedule and the Veteran’s Healthcare Act of 1992. This definition includes, but is not limited to, the calculation and reporting of Average Sales Price (ASP), Average Manufacturer Price (AMP), Best Price (BP), and all pricing and other information reported and used in connection with reimbursement under the Federal health care programs described in this paragraph.

5. The term “Promotional and Product Services Related Functions” means the promotion, marketing, sales, or provision of information about, or services relating to, Government Reimbursed Products in or for the United States market.

6. The term “Third Party Educational Activity” shall mean any U.S.-based continuing medical education (CME), independent medical education (IME), disease awareness, or other scientific, educational, or professional program, meeting, or event sponsored by Biovail, including but not limited to, sponsorship of symposia at medical conferences.

### **III. CORPORATE INTEGRITY OBLIGATIONS**

Biovail shall establish and maintain a Compliance Program that includes the following elements:

A. Chief Compliance Officer, Committee, and Board Responsibilities.

1. *Chief Compliance Officer.* Biovail has appointed, and shall maintain during the term of the CIA, an individual to serve as its Chief Compliance Officer. To the extent necessary, within 90 days after the Effective Date, Biovail shall modify the position description, scope of responsibility, and authority of the Chief Compliance Officer such that the following requirements are satisfied. The Chief Compliance Officer shall be primarily responsible for ensuring the effective operation of Biovail’s compliance program on an enterprise-wide basis. The Chief Compliance Officer shall be primarily responsible for developing and implementing policies, procedures, and practices designed to ensure compliance with the requirements set forth in this CIA and with Federal health care program and FDA requirements. The Chief Compliance Officer shall be a member of senior management of Biovail, shall make periodic (at least quarterly) reports regarding compliance matters directly to the Risk and Compliance Committee of the Board of Directors of Biovail. The Chief Compliance Officer shall be authorized to report on such matters to the Risk and Compliance Committee of the Board of Directors at any time. The Chief Compliance Officer shall not be or be subordinate to the General Counsel or Chief Financial Officer. The Chief Compliance Officer shall be responsible for monitoring the day-to-day compliance activities engaged in by Biovail as well as for any reporting obligations created under this CIA.

Biovail may appoint an individual to serve as Biovail’s U.S. Compliance Officer for BTA and other U.S. operations of Biovail. Any such U.S. Compliance Officer would be responsible for assisting the Chief Compliance Officer in implementing policies, procedures, and practices within the U.S. designed to ensure compliance with the requirements set forth in this CIA and with Federal health care program and FDA requirements. Any U.S. Compliance Officer shall not be or be subordinate to the General Counsel or Chief Financial Officer of Biovail.

Biovail shall report to OIG, in writing, any changes in the identity or position description of the Chief Compliance Officer or the U.S. Compliance Officer, or any actions or changes that would affect the Chief Compliance Officer’s or the U.S. Compliance Officer’s ability to perform the duties necessary to meet the obligations in this CIA, within 15 days after such a change.



2. *Compliance Committee.* Prior to the Effective Date, Biovail established a U.S. Healthcare Compliance Policy Committee with responsibilities relating to U.S. healthcare compliance. To the extent necessary, within 90 days after the Effective Date, Biovail shall amend the duties, responsibilities, and authorities of the U.S. Healthcare Compliance Policy Committee to meet the requirements set forth below. The U.S. Healthcare Compliance Policy Committee shall, at a minimum, include the Chief Compliance Officer and other members of management necessary to meet the requirements of this CIA (e.g., executives of relevant departments, such as regulatory, government contracting, human resources, internal audit, operations, legal, medical affairs, and sales and marketing or their designees). The Chief Compliance Officer shall chair the U.S. Healthcare Compliance Policy Committee and the Committee shall support the Chief Compliance Officer in fulfilling his/her responsibilities including with regard to the CIA (e.g., shall assist in the analysis of the organization's risk areas, shall oversee monitoring of internal and external investigations, and shall receive reports about internal and external audits).

Biovail shall report to OIG, in writing, any changes in the composition of the U.S. Healthcare Compliance Policy Committee, or any actions or changes that would affect the U.S. Healthcare Compliance Policy Committee's ability to perform the duties necessary to meet the obligations in this CIA, within 15 days after such a change.

3. *Board of Directors Resolution.* The Risk and Compliance Committee of the Board of Directors of Biovail Corporation (Risk Committee) shall be responsible for the review and oversight of matters related to compliance with Federal health care program requirements, FDA requirements, and the obligations of this CIA. The Risk Committee shall, at a minimum, be responsible for the following:

- a. meeting at least quarterly to review and oversee Biovail's Compliance Program, including but not limited to the performance of the Chief Compliance Officer and compliance department.
- b. for each Reporting Period (as defined in Section ILA) of the CIA, adopting a resolution summarizing its review and oversight of Biovail's compliance with Federal health care program requirements, FDA requirements, and the obligations of this CIA. Each individual member of the Risk Committee shall sign a statement indicating that he or she agrees with the resolution.

At minimum, the resolution shall include the following language:

"The Risk and Compliance Committee of Biovail's Board of Directors (Risk Committee) has made a reasonable inquiry into the operations of Biovail's Compliance Program, including the performance of the Chief Compliance Officer and the compliance department. Based on its inquiry, the Risk Committee has concluded that, to the best of its knowledge, Biovail has implemented an effective Compliance Program to meet the Federal health care program requirements, FDA requirements, and the obligations of the CIA."

If the Risk Committee is unable to provide such a conclusion in the resolution, the Risk Committee shall include in the resolution a written explanation of the reasons why it is unable to provide the conclusion and the steps it is taking to implement an effective Compliance Program at Biovail.

Biovail shall report to OIG, in writing, any changes in the composition of the Risk Committee, or any actions or changes that would affect the Risk Committee's ability to perform the duties necessary to meet the obligations in this CIA, within 15 days after such a change.

B. Written Standards.

1. *Code of Conduct.* Prior to the Effective Date, Biovail developed and implemented a program to distribute a code of conduct (known as its "Standards of Business Conduct") to its employees, officers, and directors. Within 120 days after the Effective Date, Biovail shall either amend its Standards of Business Conduct to meet the requirements set forth below, or Biovail shall develop, implement, and distribute to all Covered Persons a written U.S. Healthcare Code of Conduct which meets the requirements set forth below. (For purposes of this CIA, the revised Standards of Business Conduct or the U.S. Healthcare Code, as applicable, shall be referred to as the "Code of Conduct".) Biovail shall make the promotion of, and adherence to, the Code of Conduct an element in evaluating the performance of all employees who are Covered Persons. The Code of Conduct shall, at a minimum, set forth:

- a. Biovail's commitment to full compliance with all Federal health care program and FDA requirements, including its commitment to market, sell, promote, research, develop, provide information about, and advertise its products in accordance with Federal health care program and FDA requirements;
- b. Biovail's requirement that all of its Covered Persons shall be expected to comply with all Federal health care program and FDA requirements and with Biovail's own Policies and Procedures as implemented pursuant to Section III.C (including the requirements of this CIA);
- c. the requirement that all of Biovail's Covered Persons shall be expected to report to the Chief Compliance Officer, or other appropriate individual designated by Biovail, suspected violations of any Federal health care program or FDA requirements or of Biovail's own Policies and Procedures;
- d. the possible consequences to both Biovail and Covered Persons of failure to comply with Federal health care program and FDA requirements and with Biovail's own Policies and Procedures and the failure to report such noncompliance; and
- e. the right of all individuals to use the Disclosure Program described in Section III.E, and Biovail's commitment to nonretaliation and to maintain, as appropriate, confidentiality and anonymity with respect to such disclosures.

Within 150 days after the Effective Date, each Covered Person shall certify, in writing, that he or she has received, read, understood, and shall abide by Biovail's Code of Conduct. New Covered Persons shall receive the Code of Conduct and shall complete the required certification within 30 days after becoming a Covered Person or within 150 days after the Effective Date, whichever is later.

Biovail shall periodically review the Code of Conduct to determine if revisions are appropriate and shall make any necessary revisions based on such review. Any revised Code of Conduct shall be distributed within 30 days after any revisions are finalized and approved by Biovail's Board or Directors or a committee thereof. Each Covered Person shall certify, in writing, that he or she has received, read, understood, and shall abide by the revised Code of Conduct within 30 days after the distribution of the revised Code of Conduct.

2. *Policies and Procedures.* Within 120 days after the Effective Date, Biovail shall implement written Policies and Procedures regarding the operation of Biovail's compliance program and its compliance with Federal health care program and FDA requirements for activities occurring in or related to the United States market. At a minimum, the Policies and Procedures shall address:

- a. the subjects relating to the Code of Conduct identified in Section III.B.1;
- b. appropriate ways to conduct Government Pricing and Contracting Functions in compliance with all applicable Federal healthcare program requirements, including, but not limited to the Federal anti-kickback statute (codified at 42 U.S.C. § 1320a-7b), and the False Claims Act (codified at 31 U.S.C. 3729-3733);
- c. compensation (including salaries and bonuses) for Relevant Covered Persons. These Policies and Procedures shall be designed to ensure that financial incentives do not inappropriately motivate such individuals to engage in improper promotion, sales, marketing, pricing, or contracting for Biovail's products;
- d. disciplinary policies and procedures for violations of Biovail's Policies and Procedures, including policies relating to Federal health care program and FDA requirements;
- e. appropriate ways to conduct Promotional and Product Services Related Functions in compliance with all applicable Federal healthcare program requirements, including, but not limited to the Federal anti-kickback statute (codified at 42 U.S.C. § 1320a-7b), and the False Claims Act (codified at 31 U.S.C. 3729-3733);
- f. appropriate ways to conduct Promotional and Product Services Related Functions in compliance with all applicable FDA requirements;

g. the materials and information that may be distributed by Biovail sales representatives (including any contract sales agents) about Government Reimbursed Products for use in the United States and the manner in which Biovail sales representatives respond to requests for information about non-FDA approved (or “off-label”) uses of the products;

h. the materials and information that may be distributed by Biovail representatives who are not field sales agents (*e.g.*, through a medical services or medical information department or otherwise); the mechanisms through, and manner in which, Biovail receives and responds to requests for information about off-label uses of Government Reimbursed Products; the form and content of information disseminated in response to such requests; and the internal review process for the information disseminated;

The Policies and Procedures shall include a requirement that Biovail develop a database (the “Inquiries Database”) that includes the following items of information for each request for information or inquiry about Government Reimbursed Products (hereafter, “Inquiry”): 1) date of Inquiry; 2) form of Inquiry (*e.g.*, fax, phone, medical information request form); 3) name of the requesting health care professional (HCP) or health care institution (HCI); 4) nature and topic of request (including exact language of the Inquiry if made in writing); 5) an evaluation of whether the Inquiry relates to information about an off-label indication for the product; 6) nature/form of the response from Biovail (including a record of the materials provided to the HCP or HCI in response to the request); 7) the name of the field sales representative who called on or interacted with the HCP or HCI; and 8) the status and findings of any follow-up review conducted by Biovail in situations in which it appears that the Inquiry may have related to improper off-label promotion;

i. systems, processes, policies, and procedures relating to the development of call plans for field sales representatives (including contract sales agents) who promote, market, or sell Government Reimbursed Products in the United States. The Policies and Procedures shall require that Biovail review the call plans for its Government Reimbursed Products and the bases upon and circumstances under which HCPs and HCIs belonging to specified medical specialties or types of clinical practices are included in, or excluded from, the call plans. The Policies and Procedures shall also require that Biovail modify the call plans as necessary to ensure that Biovail is promoting its products in a manner that complies with all applicable Federal health care program and FDA requirements. Biovail’s call plan review shall occur at least annually and shall also occur each time the FDA approves a new or additional indication for a Government Reimbursed Product;

j. systems, processes, policies, and procedures relating to the development, implementation, and review of plans for the distribution of samples of Government Reimbursed Products in the United States (U.S. Sample Distribution Plans);

- k. consultant or other fee-for-service arrangements entered into with HCPs or HCIs related to the United States market for Government Reimbursed Products (including, but not limited to, speaker programs, speaker training programs, advisory boards, mentorships, preceptorships, or any other financial relationship with an HCP or HCI) and all events and expenses relating to such engagements or arrangements. These Policies and Procedures shall be designed to ensure that the engagements, arrangements, and related events are used for legitimate and lawful purposes in accordance with applicable Federal health care program and FDA requirements. The policies shall include requirements about the uses, content, and circumstances of such engagements, arrangements, and events;
- l. sponsorship or funding of grants (including educational grants) or charitable contributions in the United States. These Policies and Procedures shall be designed to ensure that Biovail's sponsorship or funding complies with all applicable Federal health care program requirements and FDA requirements;
- m. funding of, or participation in, any Third Party Educational Activity as defined in Section II.C.6 above. These Policies and Procedures shall be designed to ensure that Biovail's sponsorship or funding of, or participation in, such programs satisfies all applicable Federal health care program and FDA requirements related to the sponsorship of any Educational or Informational Activity;
- n. review of all promotional and other materials and information intended to be disseminated outside Biovail in the United States by legal, medical, and regulatory personnel in a manner designed to ensure that legal, regulatory, and medical concerns are properly addressed during Biovail's review and approval process and are elevated when appropriate; and
- o. sponsorship or funding of U.S.-based research or related activities (including clinical trials, market research, or authorship of articles or other publications) by Biovail in a manner that is designed to ensure that Biovail's funding or sponsorship of, or participation in, such activities complies with all applicable Federal health care program and FDA requirements. In addition, such Policies and Procedures shall ensure that sales and marketing activities are separate from research activities (e.g., clinical trial enrollment).

Within 120 days after the Effective Date, the relevant portions of the Policies and Procedures shall be distributed to all Covered Persons whose job functions relate to those Policies and Procedures. Appropriate and knowledgeable staff shall be available to explain the Policies and Procedures.

At least annually (and more frequently, if appropriate), Biovail shall assess and update, as necessary, the Policies and Procedures. Within 30 days after the effective date of any revisions, the relevant portions of any such revised Policies and Procedures shall be distributed to all individuals whose job functions relate to those Policies and Procedures.

C. Training and Education.

1. *General Training.* Within 120 days after the Effective Date, Biovail shall provide at least two hours of General Training to each Covered Person. This training, at a minimum, shall explain Biovail's:

- a. CIA requirements; and
- b. Biovail's Compliance Program (including the Code of Conduct and the Policies and Procedures as they pertain to general U.S. compliance issues and CIA compliance issues).

To the extent that Biovail provided General Training to Covered Persons during the 180 days immediately prior to the Effective Date that satisfied the requirements set forth in Section III.C.1.b above, the OIG shall credit that training for purposes of satisfying Biovail's General Training obligations of this Section III.C.1 for the first Reporting Period. Biovail may satisfy its remaining General Training obligations for the Covered Persons who received the training described in the preceding sentence by notifying them within 90 days after the Effective Date in writing or in electronic format of the fact that Biovail entered a CIA and providing an explanation of Biovail's requirements and obligations under the CIA.

New Covered Persons shall receive the General Training described above within 30 days after becoming a Covered Person or within 120 days after the Effective Date, whichever is later. After receiving the initial General Training described above, each Covered Person shall receive at least one hour of General Training in each subsequent Reporting Period.

2. *Specific Training.* Within 120 days after the Effective Date, each Relevant Covered Person engaged in Government Contracting and Pricing Functions shall receive at least four hours of Specific Training in addition to the General Training required above. This Specific Training shall include, at a minimum, a discussion of:

- a. all applicable Federal health care program requirements relating to Government Pricing and Contracting Functions;
- b. all Biovail Policies and Procedures and other requirements applicable to Government Pricing and Contracting Functions;
- c. the personal obligation of each individual involved in Government Pricing and Contracting Functions to comply with all applicable Federal health care program requirements and all other applicable legal requirements;
- d. the legal sanctions for violations of the applicable Federal health care program requirements; and
- e. examples of proper and improper practices related to Government Pricing and Contracting Functions.

Within 120 days after the Effective Date, each Relevant Covered Person engaged in Promotional and Product Services Related Functions (including BTA employees who have responsibilities managing or overseeing the PSS Contract) shall receive at least four hours of Specific Training in addition to the General Training required above.

This Specific Training shall include, at a minimum, a discussion of:

- f. all applicable Federal health care program requirements relating to Promotional and Product Services Related Functions;
- g. all applicable FDA requirements relating to Promotional and Product Services Related Functions;
- h. all Biovail Policies and Procedures and other requirements applicable to Promotional and Product Services Related Functions;
- i. the personal obligation of each individual involved in Promotional and Product Services Related Functions to comply with all applicable Federal health care program and FDA requirements and all other applicable legal requirements;
- j. the legal sanctions for violations of the applicable Federal health care program and FDA requirements; and
- k. examples of proper and improper practices relating to Promotional and Product Services Related Functions.

To the extent that Biovail provided Specific Training to Relevant Covered Persons during the 180 days immediately prior to the Effective Date that satisfied the requirements set forth in this Section III.C.2 above, the OIG shall credit that training for purposes of satisfying Biovail's Specific Training obligations of this Section III.C.2 for the first Reporting Period.

New Relevant Covered Persons shall receive Specific Training as set forth above within 30 days after the beginning of their employment or becoming Relevant Covered Persons, or within 120 days after the Effective Date, whichever is later. A Biovail employee who has completed the Specific Training shall review a new Relevant Covered Person's work, to the extent that the work relates to Government Pricing and Contracting Functions or Promotional and Product Services Related Functions until such time as the new Relevant Covered Person completes his or her Specific Training.

After receiving the initial Specific Training described in this Section, each Relevant Covered Person shall receive at least three hours of Specific Training in each subsequent Reporting Period as defined in Section II.A.

3. *Certification.* Each individual who is required to attend training shall certify, in writing, or in electronic form, if applicable, that he or she has received the required training. The certification shall specify the type of training received and the date received. The

Chief Compliance Officer (or designee) shall retain the certifications, along with all course materials. These shall be made available to OIG, upon request.

- 4. *Qualifications of Trainer.* Persons providing the training shall be knowledgeable about the subject area, including applicable Federal health care program and FDA requirements.
- 5. *Update of Training.* Biovail shall review the training annually, and, where appropriate, update the training to reflect changes in Federal health care program requirements, FDA requirements, any issues discovered during internal audits or any IRO Review, and any other relevant information.
- 6. *Computer-based Training.* Biovail may provide the training required under this CIA through appropriate computer-based training approaches. If Biovail chooses to provide computer-based training, it shall make available appropriately qualified and knowledgeable staff or trainers to answer questions or provide additional information to the individuals receiving such training.

D. Review Procedures.

1. *General Description.*

- a. *Engagement of Independent Review Organization.* Within 120 days after the Effective Date, Biovail shall engage an entity (or entities), such as an accounting, auditing, or consulting firm (hereinafter “Independent Review Organization” or “IRO”), to perform reviews to assist Biovail in assessing and evaluating its Government Pricing and Contracting Functions and its Promotional and Product Services Related Functions. The applicable requirements relating to the IRO are outlined in Appendix A to this CIA, which is incorporated by reference.

Each IRO engaged by Biovail shall have expertise in applicable Federal health care program and FDA requirements as may be appropriate to the Review for which the IRO is retained. Each IRO shall assess, along with Biovail, whether it can perform the engagement in a professionally independent and objective fashion, as appropriate to the nature of the review, taking into account any other business relationships or other engagements that may exist.

The IRO(s) shall conduct reviews that assess Biovail’s systems, processes, policies, procedures, and practices relating to Government Pricing and Contracting Functions and Promotional and Product Services Related Functions (IRO Reviews).



- b. *Frequency and Brief Description of Reviews.* As set forth more fully in Appendix B, the IRO Reviews shall consist of two components - a Systems Review and a Transactions Review. The Systems Review shall assess Biovail's systems, processes, policies, and procedures relating to the Medicaid Drug Rebate Program and the reporting of ASP for purposes of the Medicare Program and certain elements of Biovail's Promotional and Product Services Related Functions (Systems Review). As set forth in Appendix B, if there are no material changes in Biovail's relevant systems, processes, policies, and procedures, the Systems Review shall be performed for the periods covering the first and fourth Reporting Periods. If Biovail materially changes its relevant systems, processes, policies, and procedures, the IRO shall perform a Systems Review for the Reporting Period in which such changes were made in addition to conducting the Systems Review for the first and fourth Reporting Periods. The Transactions Review shall be performed annually and shall cover each of the five Reporting Periods.
- c. *Retention of Records.* The IRO and Biovail shall retain and make available to OIG, upon request, all work papers, supporting documentation, correspondence, and draft reports (those exchanged between the IRO and Biovail) related to the reviews.

2. *IRO Review Reports.* The IRO(s) shall prepare a report (or reports) based upon each Review performed. The information and content to be included in each report is described in Appendix B, which is incorporated by reference.

3. *Validation Review.* In the event OIG has reason to believe that: (a) any IRO Review fails to conform to the requirements of this CIA; or (b) the IRO's findings or Review results are inaccurate, OIG may, at its sole discretion, conduct its own review to determine whether the applicable IRO Review complied with the requirements of the CIA and/or the findings or Review results are inaccurate (Validation Review). Biovail shall pay for the reasonable cost of any such review performed by OIG or any of its designated agents. Any Validation Review of Reports submitted as part of Biovail's final Annual Report shall be initiated no later than one year after Biovail's final submission (as described in Section II) is received by OIG.

Prior to initiating a Validation Review, OIG shall notify Biovail of its intent to do so and provide a written explanation of why OIG believes such a review is necessary. To resolve any concerns raised by OIG, Biovail may request a meeting with OIG to: (a) discuss the results of any Review submissions or findings; (b) present any additional information to clarify the results of the applicable Review or to correct the inaccuracy of the Review; and/or (c) propose alternatives to the proposed Validation Review. Biovail agrees to provide any additional information as may be requested by OIG under this Section III.E.3 in an expedited manner. OIG will attempt in good faith to resolve any Review issues with Biovail prior to conducting a Validation Review.

However, the final determination as to whether or not to proceed with a Validation Review shall be made at the sole discretion of OIG.

4. *Independence and Objectivity Certification.* The IRO shall include in its report(s) to Biovail a certification or sworn affidavit that it has evaluated its professional independence and objectivity, as appropriate to the nature of the engagement, with regard to the IRO Review and that it has concluded that it is, in fact, independent and objective.

E. Disclosure Program.

To the extent not already accomplished, within 90 days after the Effective Date, Biovail shall establish a Disclosure Program that includes a mechanism (e.g., a toll-free compliance telephone line) to enable individuals to disclose, to the Chief Compliance Officer or some other person who is not in the disclosing individual’s chain of command, any identified issues or questions associated with Biovail’s policies, conduct, practices, or procedures with respect to a Federal health care program or FDA requirement believed by the individual to be a potential violation of criminal, civil, or administrative law. Biovail shall appropriately publicize the existence of the disclosure mechanism (e.g., via periodic e-mails to employees or by posting the information in prominent common areas).

The Disclosure Program shall emphasize a nonretribution, nonretaliation policy, and shall include a reporting mechanism for anonymous communications for which appropriate confidentiality shall be maintained. Upon receipt of a disclosure, the Chief Compliance Officer (or designee) shall gather all relevant information from the disclosing individual. The Chief Compliance Officer (or designee) shall make a preliminary, good faith inquiry into the allegations set forth in every disclosure to ensure that he or she has obtained all of the information necessary to determine whether a further review should be conducted. For any disclosure that is sufficiently specific so that it reasonably: (1) permits a determination of the appropriateness of the alleged improper practice; and (2) provides an opportunity for taking corrective action, Biovail shall conduct an internal review of the allegations set forth in the disclosure and ensure that proper follow-up is conducted.

The Chief Compliance Officer (or designee) shall maintain a disclosure log, which shall include a record and summary of each disclosure received (whether anonymous or not), the status of the respective internal reviews, and any corrective action taken in response to the internal reviews. The disclosure log shall be made available to OIG upon request.

F. Ineligible Persons.

1. *Definitions.* For purposes of this CIA:

- a. an “Ineligible Person” shall include an individual or entity who:
  - i. is currently excluded, debarred, suspended, or otherwise ineligible to participate in the Federal health care programs or in Federal procurement or nonprocurement programs; or

- ii. has been convicted of a criminal offense that falls within the scope of 42 U.S.C. § 1320a-7(a), but has not yet been excluded, debarred, suspended, or otherwise declared ineligible.

b. “Exclusion Lists” include:

- i. the HHS/OIG List of Excluded Individuals/Entities (available through the Internet at <http://www.oig.hhs.gov>); and
- ii. the General Services Administration’s List of Parties Excluded from Federal Programs (available through the Internet at <http://www.epls.gov>).

2. *Screening Requirements.* Biovail shall ensure that all prospective and current Covered Persons are not Ineligible Persons, by implementing the following screening requirements.

- a. Biovail shall screen all prospective and current Covered Persons against the Exclusion Lists prior to engaging their services and, as part of the hiring or contracting process, shall require such Covered Persons to disclose whether they are Ineligible Persons.
- b. Biovail shall screen all Covered Persons against the Exclusion Lists within 90 days after the Effective Date and on an annual basis thereafter.
- c. Biovail shall implement a policy requiring all Covered Persons to disclose immediately any debarment, exclusion, suspension, or other event that makes that person an Ineligible Person.

Nothing in this Section affects the responsibility of (or liability for) Biovail to refrain from billing Federal health care programs for items or services furnished, ordered, or prescribed by an Ineligible Person. Biovail understands that items or services furnished by excluded persons are not payable by Federal health care programs and that Biovail may be liable for overpayments and/or criminal, civil, and administrative sanctions for employing or contracting with an excluded person regardless of whether Biovail meets the requirements of Section III.F.

3. *Removal Requirement.* If Biovail has actual notice that a Covered Person has become an Ineligible Person, Biovail shall remove such Covered Person from responsibility for, or involvement with, Biovail’s business operations related to the Federal health care programs and shall remove such Covered Person from any position for which the Covered Person’s compensation or the items or services furnished, ordered, or prescribed by the Covered Person are paid in whole or part, directly or indirectly, by Federal health care programs or otherwise with Federal funds at least until such time as the Covered Person is reinstated into participation in the Federal health care programs.

4. *Pending Charges and Proposed Exclusions.* If Biovail has actual notice that a Covered Person is charged with a criminal offense that falls within the scope of 42 U.S.C. §§ 1320a-7(a), 1320a-7(b)(1)-(3), or is proposed for exclusion during the Covered Person's employment or contract term or during the term of a physician's or other practitioner's medical staff privileges, Biovail shall take all appropriate actions to ensure that the responsibilities of that Covered Person have not and shall not adversely affect the quality of care rendered to any beneficiary, patient, or resident, or any claims submitted to any Federal health care program.

G. Notification of Government Investigation or Legal Proceedings.

Within 30 days after discovery, Biovail shall notify OIG, in writing, of any ongoing investigation or legal proceeding known to Biovail conducted or brought by any U.S. based governmental entity or its agents involving an allegation that Biovail has committed a crime or has engaged in fraudulent activities. This notification shall include a description of the allegation, the identity of the investigating or prosecuting agency, and the status of such investigation or legal proceeding. Biovail shall also provide written notice to OIG within 30 days after the resolution of the matter, and shall provide OIG with a description of the findings and/or results of the investigation or proceedings, if any.

H. Reporting.

1. *Reportable Events.*

- a. *Definition of Reportable Event.* For purposes of this CIA, a "Reportable Event" means anything that involves:
- i. a matter that a reasonable person would consider a probable violation of criminal, civil, or administrative laws applicable to any Federal health care program and/or applicable to any FDA requirements relating to the promotion of products for which penalties or exclusion may be authorized; or
  - ii. the filing of a bankruptcy petition by Biovail.

A Reportable Event may be the result of an isolated event or a series of occurrences.

b. *Reporting of Reportable Events.* If Biovail determines (after a reasonable opportunity to conduct an appropriate review or investigation of the allegations) through any means that there is a Reportable Event, Biovail shall notify OIG, in writing, within 30 days after making the determination that the Reportable Event exists. The report to OIG shall include the following information:

- i. a complete description of the Reportable Event, including the relevant facts, persons involved, and legal and Federal health care program authorities and/or FDA authorities implicated;

- ii. a description of Biovail's actions taken to correct the Reportable Event; and
- iii. any further steps Biovail plans to take to address the Reportable Event and prevent it from recurring.
- iv. If the Reportable Event involves the filing of a bankruptcy petition, the report to the OIG shall include documentation of the filing and a description of any Federal health care program and/or FDA authorities implicated.

2. Biovail shall not be required to report as a Reportable Event any matter previously disclosed under Section III.G above.

I. Notification of Communications with FDA.

Within 30 days after the date of any written report, correspondence, or communication between Biovail and the FDA that materially discusses Biovail's or a Covered Person's actual or potential unlawful or improper promotion of any products (including any improper dissemination of information about off-label indications), Biovail shall provide a copy of the report, correspondence, or communication to the OIG. Biovail shall also provide written notice to the OIG within 30 days after the resolution of any such disclosed off-label matter, and shall provide the OIG with a description of the findings and/or results of the matter, if any.

J. Reporting of Physician Payment

1. Posting of Payment Information

By April 30, 2010, Biovail shall post in a prominent position on its website an easily accessible and readily searchable listing of all U.S.-based physicians, U.S.-based Physician Related Entities (as defined below in Section III.J.2), or U.S.-based Product Decision-Makers (as defined below in Section III.J.2) who or which received any Payments (as defined below in Section III.J.2.) directly or indirectly from Biovail during the first three months of 2010.

After the initial posting, 30 days after the end of each subsequent calendar quarter, Biovail shall also post on its website a listing of updated information about all Payments provided during the applicable calendar year during the preceding quarter(s). No later than January 31, 2011, and each calendar year thereafter during the term of the CIA, Biovail shall also post on its website a report of the cumulative value of Payments provided to each U.S.-based physician, U.S.-based Related Entity, and/or U.S.-based Product Decision Makers during the preceding calendar year. The quarterly and annual reports shall be easily accessible and readily searchable.

Each listing shall include a complete list of all individual U.S.-based physicians, U.S.-based Related Entities and/or U.S.-based Product Decision-Makers to whom or to which

Biovail directly or indirectly made Payments in the preceding calendar quarter or year (as applicable). Each listing shall be arranged alphabetically according to the physicians’ last name, the name of the Related Entity, or the name of the Product Decision-Maker. The Payment amounts in the lists shall be reported in \$5,000 increments (e.g., \$0 - \$5,000; \$5,001- \$10,000; etc.) For each entry, the listing shall include the following information: i) physician’s or Product Decision-Maker’s full name; ii) name of Related Entity (if applicable); iii) city and state of the physician’s practice, the Related Entity, or the Product Decision-Maker (as applicable); iii) the purpose of the Payment; and iii) the aggregate value of the Payment(s) in the preceding quarter(s) or year (as applicable).

2. Definitions and Miscellaneous Provisions

Biovail shall continue to make each annual listing and the most recent quarterly listing of Payment information available on its website at least throughout the term of this CIA. Biovail shall retain and make available to OIG, upon request, all work papers, supporting documentation, correspondence, and records related to all applicable Payments and to the annual and quarterly listings of Payments. Nothing in this Section III.J affects the responsibility of Biovail to comply with (or liability for noncompliance with) all applicable Federal health care program requirements and state laws as they relate to all applicable Payments made to U.S.-based physicians, U.S.-based Related Entities, or U.S.-based Product Decision-Makers.

If the proposed Physician Payments Sunshine Act of 2009 or similar legislation is enacted, the OIG shall determine whether the purposes of this Section III.J are reasonably satisfied by Biovail’s compliance with such legislation. In such case, and in its sole discretion, the OIG may agree to modify or terminate provisions of Section III.J as appropriate.

For purposes of this Section III.J, the term “Payments” is defined to include all payments or transfers of value (whether in cash or in kind) made to U.S.-based physicians, U.S.-based Related Entities, and/or U.S.-based Product Decision-Makers. The term Payments includes, for example, payments or compensation for services rendered, grants, fees (including data service fees, and formulary placement fees), honoraria, and payments relating to research or education. The term Payments also includes food, entertainment, gifts, trips or travel, product(s)/item(s) provided for less than fair market value; or other economic benefit. The term Payments does not include: i) samples of drug products that meet the definition set forth in 21 C.F.R. § 203.3(i), or ii) discounts, rebates, or other pricing terms.

For purposes of this Section III.J, the term “U.S.-based Related Entity” is defined to be any entity by or in which any U.S.-based physician receiving Payments is employed, has tenure, or has an ownership interest.

For purposes of this Section III.J, the term “U.S.-based Product Decision-Maker” is defined to be any individual or entity in a position to arrange for or recommend the purchasing, prescribing, ordering, or furnishing of any Government Reimbursed Product in the U.S. market, including with regard to the placement of any Government Reimbursed Product on a formulary or other preferred drug list.

3. If Biovail does not make any Payments to U.S.-based physicians, U.S.-based Related Entities, or U.S.-based Product Decision-Makers during a Reporting Period, Biovail shall not be required to post Payment information as set forth in Section III.J.1 for that Reporting Period. Instead, the Chief Compliance Officer shall certify that Biovail made no such Payments during the applicable Reporting Period. Biovail shall include such certification(s) in the applicable Annual Report(s).

K. Review of Records Reflecting the Content of Detailing Sessions.

For each Reporting Period, Biovail shall obtain non-Biovail records (e.g., Verbatims or similar records) generated by an independent entity (Survey Entity) reflecting the purported content and subject matter of detailing interactions between sales representatives and U.S.-based HCPs for up to three Covered Products (as defined below in this Section III.K.) For each Covered Product, Biovail shall contract with a Survey Entity to conduct inquiries into the content and subject matter of the detailing interactions in the United States. The OIG shall select and notify the Survey Entity of a one week period within every other quarter in the Reporting Period for which the surveys shall be conducted, beginning in the second full quarter after the Effective Date. For each Covered Product, Biovail shall obtain records reflecting the purported content and subject matter of detailing sessions during the identified week in all regions across the United States.

Prior to start of the second Reporting Period and every Reporting Period thereafter, based on information provided by Biovail and other information known to it, and after consultation with Biovail, the OIG shall select up to three Government Reimbursed Products to be the basis for the review outlined in this Section III.K and shall notify Biovail of its selection. The identified products shall be known as the “Covered Products.” The parties have already identified the Covered Products for the first Reporting Period.

Biovail shall review the records obtained from the Survey Entity and shall identify any instances in which the records appear to indicate that Covered Persons may have discussed and/or disseminated information about off-label uses of the Covered Products. Biovail shall make findings based on its review (Off-Label Findings) and shall take any responsive action it deems necessary. If necessary for purposes of its review, Biovail shall endeavor to gather additional factual information about the circumstances relating to any Off-Label Findings. As part of each Annual Report, Biovail shall provide the OIG with copies of the underlying records of the detailing interactions, a copy of Biovail’s Off-Label Findings, and a description of the action(s), if any, Biovail took in response to the Off-Label Findings.

IV. CHANGES TO BUSINESS UNITS OR LOCATIONS

A. Change or Closure of Unit or Location. In the event that, after the Effective Date, Biovail changes locations or closes a business unit or location engaged in Government Pricing or Contracting Functions or Promotional and Product Services Related Functions, Biovail shall notify OIG of this fact as soon as possible, but no later than within 30 days after the date of change or closure of the location.

B. Purchase or Establishment of New Unit or Location. In the event that, after the Effective Date, Biovail purchases or establishes a new business unit or location engaged in Government Pricing or Contracting Functions or Promotional and Product Services Related Functions, Biovail shall notify OIG no later than the date the purchase or establishment is publicly disclosed or the operation of the new business unit or location. This notification shall include the address of the new business unit or location, phone number, fax number, Federal health care program provider and/or supplier number, and the name and address of the contractor that issued each number (if applicable). Each new business unit or location and all Covered Persons at each new business unit or location shall be subject to the applicable requirements of this CIA. In the event that Biovail purchases or merges with an entity in a transaction that will result in the addition of a significant number of new Covered Persons, Biovail shall consult with OIG regarding a plan and timeline for implementing the CIA requirements with respect to those new Covered Persons. The OIG shall determine, in its sole discretion, whether to grant time extensions for the implementation of the applicable CIA requirements with respect to new business units or locations and new Covered Persons at such locations.

C. Sale of Unit or Location. In the event that, after the Effective Date, Biovail proposes to sell any or all of its business units or locations that are subject to this CIA, Biovail shall notify OIG of the proposed sale no later than the date the sale is publicly disclosed. This notification shall include a description of the business unit or location to be sold, a brief description of the terms of the sale, and the name and contact information of the prospective purchaser. This CIA shall be binding on the purchaser of such business unit or location, unless otherwise determined and agreed to in writing by the OIG.

## **V. IMPLEMENTATION AND ANNUAL REPORTS**

A. Implementation Report. Within 150 days after the Effective Date, Biovail shall submit a written report to OIG summarizing the status of its implementation of the requirements of this CIA (Implementation Report). The Implementation Report shall, at a minimum, include:

1. the name, address, phone number, and position description of the Chief Compliance Officer required by Section III.A, and a summary of other noncompliance job responsibilities the Chief Compliance Officer may have;
2. the names and positions of the members of the U.S. Healthcare Compliance Policy Committee required by Section III.A;
3. a copy of Biovail's Code of Conduct required by Section III.B.1;
4. a copy of all Policies and Procedures required by Section III.B.2;
5. the number of individuals required to complete the Code of Conduct certification required by Section III.B.1, the percentage of individuals who have completed such certification, and an explanation of any exceptions (the documentation supporting this information shall be available to OIG, upon request);



6. the following information regarding each type of training required by Section III.C:
  - a. a description of such training, including a summary of the topics covered, the length of sessions, and a schedule of training sessions; and
  - b. the number of individuals required to be trained, percentage of individuals actually trained, and an explanation of any exceptions.

A copy of all training materials and the documentation supporting this information shall be available to OIG, upon request.

7. the following information regarding the IRO(s): (a) identity, address, and phone number; (b) a copy of the engagement letter; and (c) a summary and description of any and all current and prior engagements and agreements between Biovail and the IRO;
8. a certification from the IRO regarding its professional independence and objectivity with respect to Biovail;
9. a description of the Disclosure Program required by Section III.E;
10. a description of the process by which Biovail fulfills the requirements of Section III.F regarding Ineligible Persons;
11. the name, title, and responsibilities of any person who is determined to be an Ineligible Person under Section III.F; the actions taken in response to the screening and removal obligations set forth in Section III.F; and the actions taken in response to the screening and removal obligations set forth in Section III.F;
12. a list of all of Biovail's locations (including locations and mailing addresses); the corresponding name under which each location is doing business; the corresponding phone numbers and fax numbers; each location's Federal health care provider or supplier number(s) (if applicable), and the name and address of each Federal health care program contractor to which Biovail currently submits claims (if applicable);
13. a description of Biovail's corporate structure, including identification of any parent and sister companies, subsidiaries, and their respective lines of business; and
14. the certifications required by Section V.C.

B. Annual Reports. Biovail shall submit to OIG annually a report with respect to the status of, and findings regarding, Biovail's compliance activities for each of the five Reporting Periods (Annual Report).

Each Annual Report shall include, at a minimum:

1. any change in the identity, position description, or other noncompliance job responsibilities of the Chief Compliance Officer and any change in the membership of the U.S. Healthcare Compliance Policy Committee described in Section III.A;
2. a summary of any significant changes or amendments to the Policies and Procedures required by Section III.B and the reasons for such changes (e.g., change in applicable Federal health care program or FDA requirements);
3. the number of individuals required to complete the Code of Conduct certification required by Section III.B.1, the percentage of individuals who have completed such certification, and an explanation of any exceptions (the documentation supporting this information shall be available to OIG, upon request);
4. the following information regarding each type of training required by Section III.C:
  - a. a description of such training, including a summary of the topics covered, the length of sessions, and a schedule of training sessions; and
  - b. the number of individuals required to be trained, percentage of individuals actually trained, and an explanation of any exceptions.

A copy of all training materials and the documentation supporting this information shall be available to OIG, upon request.

5. a complete copy of all reports prepared pursuant to Section III.D, along with a copy of the IRO's engagement letter (if applicable);
6. Biovail's response and corrective action plan(s) related to any issues raised by the reports prepared pursuant to Section III.D;
7. a summary and description of any and all current and prior engagements and agreements between Biovail and the IRO, if different from what was submitted as part of the Implementation Report;
8. a certification from the IRO regarding its professional independence and objectivity with respect to Biovail;
9. a summary of the disclosures in the disclosure log required by Section III.E that relate to Federal health care programs or FDA requirements;
10. any changes to the process by which Biovail fulfills the requirements of Section III.F regarding Ineligible Persons;
11. the name, title, and responsibilities of any person who is determined to be an Ineligible Person under Section III.F; the actions taken by Biovail in response to the screening

and removal obligations set forth in Section III.F; and the actions by Biovail in response to the screening and removal obligations set forth in Section III.F;

12. a summary describing any ongoing investigation or legal proceeding required to have been reported pursuant to Section III.G. The summary shall include a description of the allegation, the identity of the investigating or prosecuting agency, and the status of such investigation or legal proceeding;

13. a summary of Reportable Events (as defined in Section III.H) identified during the Reporting Period and the status of any corrective and preventative action relating to all such Reportable Events;

14. a summary describing any communications with the FDA required to have been reported pursuant to Section III.I. This summary shall include a description of the matter and the status of the matter;

15. a copy of all information required by Section III.K;

16. a list and description of all Government Reimbursed Products promoted by Biovail in the United States (either directly or through the use of a contract sales force) and the FDA-approved uses of the products;

17. a description of all changes to the most recently provided list of Biovail's locations (including addresses) as required by Section V.A.12; the corresponding name under which each location is doing business; the corresponding phone numbers and fax numbers; each location's Federal health care program provider number or supplier number(s) (if applicable); and the name and address of each Federal health care program contractor to which Biovail currently submits claims (if applicable); and

18. the certifications required by Section V.C.

The first Annual Report shall be received by OIG no later than 90 days after the end of the first Reporting Period. Subsequent Annual Reports shall be received by OIG no later than the anniversary date of the due date of the first Annual Report.

C. Certifications. The Implementation Report and Annual Reports shall include a certification by the Chief Compliance Officer that:

1. to the best of his or her knowledge, except as otherwise described in the applicable report, Biovail is in compliance with all of the requirements of this CIA;

2. he or she has reviewed the Report and has made reasonable inquiry regarding its content and believes that the information in the Report is accurate and truthful;

3. to the best of his or her knowledge, Biovail has complied with its obligations under the Settlement Agreement: (a) not to resubmit to any Federal health care program payors any previously denied claims related to the Covered Conduct addressed in the

Settlement Agreement, and not to appeal any such denials of claims; (b) not to charge to or otherwise seek payment from federal or state payors for unallowable costs (as defined in the Settlement Agreement); and (c) to identify and adjust any past charges or claims for unallowable costs;

4. Biovail's: 1) Policies and Procedures as referenced in Section III.B.2 above; 2) templates for standardized contracts and other similar documents; and 3) the training materials used for purposes of Section III.C all have been reviewed by competent legal counsel and have been found to be in compliance with all applicable Federal health care program and FDA requirements. In addition, any Biovail promotional materials containing claims or information about Government Reimbursed Products and other materials and information intended to be disseminated outside Biovail in the United States have been reviewed by competent regulatory, medical and/or legal personnel in accordance with applicable Policies and Procedures to ensure that legal, medical, and regulatory concerns have been addressed and elevated when required, and that the materials and information when finally approved are in compliance with all applicable Federal health care program and FDA requirements. If the applicable legal requirements have not changed, after the initial review of the documents listed above, only material changes to the documents must be reviewed by competent regulatory, medical and/or legal personnel. The certification shall include a description of the document(s) reviewed and approximately when the review was completed. The documentation supporting this certification shall be available to OIG, upon request; and

5. Biovail posted information about Payments on its website as required by in Section III.J, or, if applicable, Biovail made no Payments (as defined in Section III.J) during the Reporting Period to any U.S.-based physician, U.S.-based Related Entity, or U.S.-based Product Decision-Maker.

D. Designation of Information. Biovail shall clearly identify any portions of its submissions that it believes are trade secrets, or information that is commercial or financial and privileged or confidential, and therefore potentially exempt from disclosure under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Biovail shall refrain from identifying any information as exempt from disclosure if that information does not meet the criteria for exemption from disclosure under FOIA.

**VI. NOTIFICATIONS AND SUBMISSION OF REPORTS**

Unless otherwise stated in writing after the Effective Date, all notifications and reports required under this CIA shall be submitted to the following entities:

OIG:

Administrative and Civil Remedies Branch  
Office of Counsel to the Inspector General  
Office of Inspector General  
U.S. Department of Health and Human Services  
Cohen Building, Room 5527

330 Independence Avenue, S.W.  
Washington, DC 20201  
Telephone: 202.619.2078  
Facsimile: 202.205.0604

Biovail:

Seana Carson  
Chief Compliance Officer  
Biovail Corporation  
7150 Mississauga Rd.  
Mississauga, Ontario  
L5N 8M5  
Phone: 905.286.3373  
Fax: 905.286.3201

Unless otherwise specified, all notifications and reports required by this CIA may be made by certified mail, overnight mail, hand delivery, or other means, provided that there is proof that such notification was received. For purposes of this requirement, internal facsimile confirmation sheets do not constitute proof of receipt. Upon request by OIG, Biovail may be required to provide OIG with an electronic copy of each notification or report required by this CIA in searchable portable document format (pdf), either instead of or in addition to, a paper copy.

**VII. OIG INSPECTION, AUDIT, AND REVIEW RIGHTS**

In addition to any other rights OIG may have by statute, regulation, or contract, OIG or its duly authorized representative(s) may examine or request copies of Biovail's books, records, and other documents and supporting materials and/or conduct on-site reviews of any of Biovail's U.S. locations for the purpose of verifying and evaluating: (a) Biovail's compliance with the terms of this CIA; and (b) Biovail's compliance with the requirements of the Federal health care programs in which it participates and with all applicable FDA requirements. The documentation described above shall be made available by Biovail to OIG or its duly authorized representative(s) at all reasonable times for inspection, audit, or reproduction. Furthermore, for purposes of this provision, OIG or its duly authorized representative(s) may interview any of Biovail's employees, contractors, or agents who consent to be interviewed at the individual's place of business during normal business hours or at such other place and time as may be mutually agreed upon between the individual and OIG. Biovail shall assist OIG or its duly authorized representative(s) in contacting and arranging interviews with such individuals upon OIG's request. Biovail's employees may elect to be interviewed with or without a representative of Biovail present.

**VIII. DOCUMENT AND RECORD RETENTION**

Biovail shall maintain for inspection all documents and records relating to reimbursement from the Federal health care programs, or to compliance with this CIA, for six years (or longer if otherwise required by law) from the Effective Date.

**IX. DISCLOSURES**

Consistent with HHS’s FOIA procedures, set forth in 45 C.F.R. Part 5, OIG shall make a reasonable effort to notify Biovail prior to any release by OIG of information submitted by Biovail pursuant to its obligations under this CIA and identified upon submission by Biovail as trade secrets, or information that is commercial or financial and privileged or confidential, under the FOIA rules. With respect to such releases, Biovail shall have the rights set forth at 45 C.F.R. § 5.65(d).

**X. BREACH AND DEFAULT PROVISIONS**

Biovail is expected to fully and timely comply with all of its CIA obligations.

A. Stipulated Penalties for Failure to Comply with Certain Obligations. As a contractual remedy, Biovail and OIG hereby agree that failure to comply with certain obligations as set forth in this CIA may lead to the imposition of the following monetary penalties (hereinafter referred to as “Stipulated Penalties”) in accordance with the following provisions.

1. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day Biovail fails to establish and implement any of the following obligations as described in Section III:
  - a. a Chief Compliance Officer;
  - b. a U.S. Healthcare Compliance Policy Committee;
  - c. the Risk and Compliance Committee of the Board of Director’s resolution;
  - d. a written Code of Conduct;
  - e. written Policies and Procedures;
  - f. the training of Covered Persons and Relevant Covered Persons;
  - g. a Disclosure Program;
  - h. Ineligible Persons screening and removal requirements; L notification of Government investigations or legal proceedings;
  - i. notification of Government investigations of legal proceedings;
  - j. notification of communications with the FDA as specified in Section III.I;
  - k. posting of Payment information as required by Section III.J; and
  - l. a review of records reflecting the content of detailing sessions as required by Section III.K.

2. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day Biovail fails to engage an IRO, as required in Section III.D and Appendix A.

3. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day Biovail fails to submit the Implementation Report or any Annual Reports to OIG in accordance with the requirements of Section V by the deadlines for submission.

4. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day Biovail fails to submit the annual IRO Review Report(s) in accordance with the requirements of Section III.D and Appendix B.

5. A Stipulated Penalty of \$1,500 for each day Biovail fails to grant access as required in Section VII. (This Stipulated Penalty shall begin to accrue on the date Biovail fails to grant access.)

6. A Stipulated Penalty of \$5,000 for each false certification submitted by or on behalf of Biovail as part of its Implementation Report, Annual Report, additional documentation to a report (as requested by the OIG), or otherwise required by this CIA.

7. A Stipulated Penalty of \$1,000 for each day Biovail fails to comply fully and adequately with any obligation of this CIA. OIG shall provide notice to Biovail stating the specific grounds for its determination that Biovail has failed to comply fully and adequately with the CIA obligation(s) at issue and steps Biovail shall take to comply with the CIA. (This Stipulated Penalty shall begin to accrue 10 days after Biovail receives this notice from OIG of the failure to comply.) A Stipulated Penalty as described in this Subsection shall not be demanded for any violation for which OIG has sought a Stipulated Penalty under Subsections 1-6 of this Section.

B. Timely Written Requests for Extensions. Biovail may, in advance of the due date, submit a timely written request for an extension of time to perform any act or file any notification or report required by this CIA. Notwithstanding any other provision in this Section, if OIG grants the timely written request with respect to an act, notification, or report, Stipulated Penalties for failure to perform the act or file the notification or report shall not begin to accrue until one day after Biovail fails to meet the revised deadline set by OIG. Notwithstanding any other provision in this Section, if OIG denies such a timely written request, Stipulated Penalties for failure to perform the act or file the notification or report shall not begin to accrue until three business days after Biovail receives OIG's written denial of such request or the original due date, whichever is later. A "timely written request" is defined as a request in writing received by OIG at least five business days prior to the date by which any act is due to be performed or any notification or report is due to be filed.

C. Payment of Stipulated Penalties.

1. *Demand Letter.* Upon a finding that Biovail has failed to comply with any of the obligations described in Section X.A and after determining that Stipulated Penalties are appropriate, OIG shall notify Biovail of: (a) Biovail's failure to comply; and (b) OIG's exercise of its contractual right to demand payment of the Stipulated Penalties (this notification is referred to as the "Demand Letter").
2. *Response to Demand Letter.* Within 10 days after the receipt of the Demand Letter, Biovail shall either: (a) cure the breach to OIG's satisfaction and pay the applicable Stipulated Penalties or (b) request a hearing before an HHS administrative law judge (ALJ) to dispute OIG's determination of noncompliance, pursuant to the agreed upon provisions set forth below in Section X.E. In the event Biovail elects to request an ALJ hearing, the Stipulated Penalties shall continue to accrue until Biovail cures, to OIG's satisfaction, the alleged breach in dispute. Failure to respond to the Demand Letter in one of these two manners within the allowed time period shall be considered a material breach of this CIA and shall be grounds for exclusion under Section X.D.
3. *Form of Payment.* Payment of the Stipulated Penalties shall be made by electronic funds transfer to an account specified by OIG in the Demand Letter.
4. *Independence from Material Breach Determination.* Except as set forth in Section X.D.1.c, these provisions for payment of Stipulated Penalties shall not affect or otherwise set a standard for OIG's decision that Biovail has materially breached this CIA, which decision shall be made at OIG's discretion and shall be governed by the provisions in Section X.D, below.

D. Exclusion for Material Breach of this CIA.

1. *Definition of Material Breach.* A material breach of this CIA means:
  - a. a failure by Biovail to report a Reportable Event and take corrective action as required in Section III.H;
  - b. a repeated or flagrant violation of the obligations under this CIA, including, but not limited to, the obligations addressed in Section X.A;
  - c. a failure to respond to a Demand Letter concerning the payment of Stipulated Penalties in accordance with Section X.C;
  - d. a failure to engage and use an IRO in accordance with Section III.D; or
  - e. a failure of the Risk and Compliance Committee of the Board to issue a resolution in accordance with Section III.A.3.
2. *Notice of Material Breach and Intent to Exclude.* The parties agree that a material breach of this CIA by Biovail constitutes an independent basis for Biovail's exclusion from participation in the Federal health care programs. Upon a determination by OIG that Biovail has materially breached this CIA and that exclusion is the appropriate remedy, OIG shall



notify Biovail of: (a) Biovail's material breach; and (b) OIG's intent to exercise its contractual right to impose exclusion (this notification is hereinafter referred to as the "Notice of Material Breach and Intent to Exclude").

3. *Opportunity to Cure.* Biovail shall have 30 days from the date of receipt of the Notice of Material Breach and Intent to Exclude to demonstrate to OIG's satisfaction that:

- a. Biovail is in compliance with the obligations of the CIA cited by OIG as being the basis for the material breach;
- b. the alleged material breach has been cured; or
- c. the alleged material breach cannot be cured within the 30-day period, but that: (i) Biovail has begun to take action to cure the material breach; (ii) Biovail is pursuing such action with due diligence; and (iii) Biovail has provided to OIG a reasonable timetable for curing the material breach.

4. *Exclusion Letter.* If, at the conclusion of the 30-day period, Biovail fails to satisfy the requirements of Section X.D.3, OIG may exclude Biovail from participation in the Federal health care programs. OIG shall notify Biovail in writing of its determination to exclude Biovail (this letter shall be referred to hereinafter as the "Exclusion Letter"). Subject to the Dispute Resolution provisions in Section X.E, below, the exclusion shall go into effect 30 days after the date of Biovail's receipt of the Exclusion Letter. The exclusion shall have national effect and shall also apply to all other Federal procurement and nonprocurement programs. Reinstatement to program participation is not automatic. After the end of the period of exclusion, Biovail may apply for reinstatement by submitting a written request for reinstatement in accordance with the provisions at 42 C.F.R. §§ 1001.3001-.3004.

#### E. Dispute Resolution

1. *Review Rights.* Upon OIG's delivery to Biovail of its Demand Letter or of its Exclusion Letter, and as an agreed-upon contractual remedy for the resolution of disputes arising under this CIA, Biovail shall be afforded certain review rights comparable to the ones that are provided in 42 U.S.C. § 1320a-7(f) and 42 C.F.R. Part 1005 as if they applied to the Stipulated Penalties or exclusion sought pursuant to this CIA. Specifically, OIG's determination to demand payment of Stipulated Penalties or to seek exclusion shall be subject to review by an HHS ALJ and, in the event of an appeal, the HHS Departmental Appeals Board (DAB), in a manner consistent with the provisions in 42 C.F.R. § 1005.2-100521. Notwithstanding the language in 42 C.F.R. § 1005.2(c), the request for a hearing involving Stipulated Penalties shall be made within 10 days after receipt of the Demand Letter and the request for a hearing involving exclusion shall be made within 25 days after receipt of the Exclusion Letter.

2. *Stipulated Penalties Review.* Notwithstanding any provision of Title 42 of the United States Code or Title 42 of the Code of Federal Regulations, the only issues in a proceeding for Stipulated Penalties under this CIA shall be: (a) whether Biovail was in full and timely compliance with the obligations of this CIA for which OIG demands payment; and (b) the

period of noncompliance. Biovail shall have the burden of proving its full and timely compliance and the steps taken to cure the noncompliance, if any. OIG shall not have the right to appeal to the DAB an adverse ALJ decision related to Stipulated Penalties. If the ALJ agrees with OIG with regard to a finding of a breach of this CIA and orders Biovail to pay Stipulated Penalties, such Stipulated Penalties shall become due and payable 20 days after the ALJ issues such a decision unless Biovail requests review of the ALJ decision by the DAB. If the All decision is properly appealed to the DAB and the DAB upholds the determination of OIG, the Stipulated Penalties shall become due and payable 20 days after the DAB issues its decision.

3. *Exclusion Review.* Notwithstanding any provision of Title 42 of the United States Code or Title 42 of the Code of Federal Regulations, the only issues in a proceeding for exclusion based on a material breach of this CIA shall be:

- a. whether Biovail was in material breach of this CIA;
- b. whether such breach was continuing on the date of the Exclusion Letter; and
- c. whether the alleged material breach could not have been cured within the 30-day period, but that:  
(i) Biovail had begun to take action to cure the material breach within that period; (ii) Biovail has pursued and is pursuing such action with due diligence; and (iii) Biovail provided to GIG within that period a reasonable timetable for curing the material breach and Biovail has followed the timetable.

For purposes of the exclusion herein, exclusion shall take effect only after an ALJ decision favorable to OIG, or, if the ALJ rules for Biovail, only after a DAB decision in favor of OIG. Biovail’s election of its contractual right to appeal to the DAB shall not abrogate OIG’s authority to exclude Biovail upon the issuance of an ALJ’s decision in favor of OIG. If the ALJ sustains the determination of OIG and determines that exclusion is authorized, such exclusion shall take effect 20 days after the ALJ issues such a decision, notwithstanding that Biovail may request review of the All decision by the DAB. If the DAB finds in favor of OIG after an ALJ decision adverse to OIG, the exclusion shall take effect 20 days after the DAB decision. Biovail shall waive its right to any notice of such an exclusion if a decision upholding the exclusion is rendered by the ALJ or DAB. If the DAB finds in favor of Biovail, Biovail shall be reinstated effective on the date of the original exclusion.

4. *Finality of Decision.* The review by an ALJ or DAB provided for above shall not be considered to be an appeal right arising under any statutes or regulations. Consequently, the parties to this CIA agree that the DAB’s decision (or the ALJ’s decision if not appealed) shall be considered final for all purposes under this CIA.

**XI. EFFECTIVE AND BINDING AGREEMENT**

Biovail and OIG agree as follows:

- A. This CIA shall be binding on the successors, assigns, and transferees of Biovail;
- B. This CIA shall become final and binding on the date the final signature is obtained on the CIA;
- C. This CIA constitutes the complete agreement between the parties and may not be amended except by written consent of the parties to this CIA;
- D. The undersigned Biovail signatories represent and warrant that they are authorized to execute this CIA. The undersigned OIG signatory represents that he is signing this CIA in his official capacity and that he is authorized to execute this CIA.
- E. This CIA may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same CIA. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this CIA.

ON BEHALF OF BIOVAIL CORPORATION

|                                           |                    |
|-------------------------------------------|--------------------|
| /s/ Jennifer Tindale                      | September 11, 2009 |
| _____<br>Jennifer Tindale                 | DATE               |
| Vice President, Associate General Counsel |                    |
| Biovail Corporation                       |                    |

|                                 |         |
|---------------------------------|---------|
| /s/ Geoffrey E. Hobart          | 9/11/09 |
| _____<br>Geoffrey E. Hobart     | DATE    |
| Covington & Burling LLP         |         |
| Counsel for Biovail Corporation |         |

**ON BEHALF OF THE OFFICE OF INSPECTOR GENERAL  
OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

/s/ Gregory E. Demske

9/11/09

GREGORY E. DEMSKE  
Assistant Inspector General for Legal Affairs  
Office of Inspector General  
U.S. Department of Health and Human Services

DATE

## APPENDIX A

### INDEPENDENT REVIEW ORGANIZATION

This Appendix contains the requirements relating to the Independent Review Organization (IRO) required by Section III.D of the CIA.

#### A. IRO Engagement.

Biovail shall engage an IRO that possesses the qualifications set forth in Paragraph B, below, to perform the responsibilities in Paragraph C, below. The IRO shall conduct its review in a professionally independent and objective fashion, as set forth in Paragraph D. Within 30 days after OIG receives written notice of the identity of the selected IRO, OIG will notify Biovail if the IRO is unacceptable. Absent notification from OIG that the IRO is unacceptable, Biovail may continue to engage the IRO.

If Biovail engages a new IRO during the term of the CIA, this IRO shall also meet the requirements of this Appendix. If a new IRO is engaged, Biovail shall submit the information identified in Section V.A.7 of the CIA to OIG within 30 days of engagement of the IRO. Within 30 days after OIG receives written notice of the identity of the selected IRO, OIG will notify Biovail if the IRO is unacceptable. Absent notification from OIG that the IRO is unacceptable, Biovail may continue to engage the IRO.

#### B. IRO Qualifications.

The IRO shall:

1. assign individuals to conduct the IRO Review(s) who have expertise in all applicable Federal health care program and FDA requirements related to the Reviews. The individuals shall also be knowledgeable about the general requirements of the Federal health care program(s) under which Biovail products are reimbursed;
2. assign individuals to design and select the Transaction Review sample(s) who are knowledgeable about the appropriate statistical sampling techniques; and
3. have sufficient staff and resources to conduct the reviews required by the CIA on a timely basis.

#### C. IRO Responsibilities.

The IRO shall:

1. perform each IRO Review in accordance with the specific requirements of the CIA;
  2. follow all applicable Federal health care program and FDA requirements in making assessments in the IRO Reviews;
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3. if in doubt of the application of a particular Federal health care program or FDA requirement, policy, or regulation, request clarification from the appropriate authority (e.g., CMS or FDA);
4. respond to all OIG inquiries in a prompt, objective, and factual manner; and
5. prepare timely, clear, well-written reports that include all the information required by Appendix B to the CIA.

D. IRO Independence and Objectivity.

The IRO must perform the IRO Reviews in a professionally independent and objective fashion, as appropriate to the nature of the engagement, taking into account any other business relationships or engagements that may exist between the IRO and Biovail.

E. IRO Removal/Termination.

1. *Provider.* If Biovail terminates its IRO during the course of the engagement, Biovail must submit a notice explaining its reasons to OIG no later than 30 days after termination. Biovail must engage a new IRO in accordance with Paragraph A of this Appendix.

2. *OIG Removal of IRO.* In the event OIG has reason to believe that the IRO does not possess the qualifications described in Paragraph B, is not independent and/or objective as set forth in Paragraph D, or has failed to carry out its responsibilities as described in Paragraph C, OIG may, at its sole discretion, require Biovail to engage a new IRO in accordance with Paragraph A of this Appendix.

Prior to requiring Biovail to engage a new IRO, OIG shall notify Biovail of its intent to do so and provide a written explanation of why OIG believes such a step is necessary. To resolve any concerns raised by OIG, Biovail may request a meeting with OIG to discuss any aspect of the IRO's qualifications, independence or performance of its responsibilities and to present additional information regarding these matters. Biovail shall provide any additional information as may be requested by OIG under this Paragraph in an expedited manner. OIG will attempt in good faith to resolve any differences regarding the IRO with Biovail prior to requiring Biovail to terminate the IRO. However, the final determination as to whether or not to require Biovail to engage a new IRO shall be made at the sole discretion of OIG.

## APPENDIX B TO CIA

### IRO SYSTEM AND TRANSACTION REVIEWS

#### I. IRO System and Transaction Reviews — General Description

As specified more fully below, Biovail shall retain an Independent Review Organization (IRO) to perform reviews to assist Biovail in assessing and evaluating its systems, processes, policies, procedures, and practices related to Government Pricing and Contracting Functions (as defined in Section II.C.3 of the CIA) and to Promotional and Product Services Related Functions (as defined in Section II.C.5 of the CIA). To the extent that the CIA requires a review of transactions or activities, the IRO shall review transactions and activities that occur subsequent to the Effective Date of the CIA.

The IRO shall perform two types of engagements. First, the IRO shall perform two-part system reviews of: 1) Biovail's systems, processes, policies, and procedures relating to the calculation and reporting of AMP, BP, and ASP for purposes of the Medicaid Drug Rebate program and the Medicare program, respectively; and 2) Biovail's systems, processes, policies, and procedures relating to certain elements of its Promotional and Product Services Related Functions. Collectively, these reviews shall be known as the "Systems Review". Second, the IRO shall perform Transactions Reviews as described more fully below in Section III. Biovail may engage, at its discretion, a single IRO to perform the Systems Reviews and the Transactions Reviews provided that the entity has the necessary expertise and capabilities to perform both.

If, during the term of the CIA, there are no material changes in Biovail's Government Pricing and Contracting related systems, processes, policies, and procedures related to AMP, BP, or ASP or in Biovail's Promotional and Product Services Related Functions related to the items identified in Section II.B below, the IRO shall perform a Systems Review for the first and fourth Reporting Periods. If, during the term of the CIA, Biovail materially changes its Government Pricing and Contracting related systems, processes, policies, and procedures related to AMP, BP, or ASP, or its Promotional and Product Services Related Functions as they relate to the items set forth in Section II.B, the IRO shall perform a Systems Review for the Reporting Period in which such changes were made in addition to conducting the Systems Review for the first and fourth Reporting Periods.

Any additional Systems Review(s) shall consist of: 1) an identification of the material changes; 2) an assessment of whether the systems, processes, policies, and procedures already reported on did not materially change; and 3) an update on the systems, processes, policies, and procedures that materially changed.

The IRO shall conduct the Transactions Review for each Reporting Period of the CIA.

#### II. Systems Review

##### A. Systems Review - Part 1 (relating to AMP, BP, and ASP)

The IRO shall review Biovail's systems, processes, policies, and procedures (including the controls on the systems, processes, policies, and procedures) associated with the tracking,

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gathering, and accounting for all relevant data for purposes of calculating and reporting AMP, BP, and ASP to CMS. More specifically, the IRO shall review the following for Biovail’s Government Reimbursed Products as defined in Section II.C.3 of the CIA:

- a) The systems, processes, policies, and procedures used to determine which Biovail customers are included or excluded for purposes of calculating AMP, BP, and ASP;
- b) The systems, policies, processes, and procedures used to determine whether and which particular transactions (e.g., discounts, rebates) are included in or excluded from AMP, BP, and ASP determinations;
- c) A review of Biovail’s methodology for applying transactions to the AMP, BP, and ASP determinations;
- d) A review of Biovail’s methodology for estimating any prices, discounts, or other amounts used in determining AMP, BP, and ASP;
- e) The flow of data and information by which price, contract terms, and transactions with Biovail customers are accumulated from the source systems and entered and tracked in Biovail’s information systems for purposes of determining AMP, BP, and ASP;
- f) A review of any Biovail inquiries to CMS regarding AMP, BP, and ASP determinations and reporting requirements, including requests for interpretation or guidance, and any responses to those inquiries; and
- g) The controls and processes in place to examine and address system reports that require critical evaluation (such as reports of variations, exceptions, or outliers). This shall include a review of the bases upon which variations, exceptions, and outliers are identified and the follow-up actions undertaken to identify the cause of any variations.

B. Systems Review - Part 2 (Relating to Promotional and Product Services Related Functions)

The IRO shall review Biovail’s systems, processes, policies, and procedures (including the controls on those systems, processes, policies, and procedures) relating to the following Promotional and Product Services Related Functions (known as “Reviewed Policies and Procedures”):

- 1. Biovail’s systems, policies, processes, and procedures applicable to the manner in which Biovail representatives (including employee sales representatives, contract sales agents, and/or headquarters personnel (such as medical services personnel)) handle requests for information or inquiries about the uses of Government Reimbursed Products in the United States

(including the off-label uses of the products) and the dissemination of materials relating to off-label uses of such products in the United States. This review includes:

- a) the manner in which U.S.-based field sales representatives and headquarters personnel (including medical services personnel) with responsibility for the U.S. market receive and respond to requests for information about off-label uses of Government Reimbursed Products;
- b) the form and content of product-related information disseminated by Biovail or its agents to U.S.-based HCPs or U.S.-based HCIs;
- c) Biovail's internal review and approval process for the material and information disseminated by U.S.-based field sales representatives and headquarters personnel with responsibilities for the U.S. market;
- d) Biovail's systems, processes, and procedures (including its Inquiries Database) to track requests from U.S.-based physicians and other persons for information about the uses of products in the U.S. and responses to those requests;
- e) the manner in which Biovail collects and supports data reported in its Inquiries Database related to the U.S. market;
- f) the processes and procedures by which the Chief Compliance Officer (and other appropriate individuals within Biovail) identify situations in which it appears that off-label promotion may have occurred in the United States; and
- g) Biovail's processes and procedures for investigating, documenting, resolving, and taking appropriate disciplinary action for potential situations involving off-label promotion in the United States;

2. Biovail's systems, policies, processes, and procedures relating to the retention of U.S.-based HCPs or U.S.-based HCIs as consultants or under fee-for-service arrangements (e.g., including as members of advisory boards, focus groups, or clinical research project teams, or as speakers or preceptors.) This review shall include a review of:

- a) the criteria used to determine whether, how many, and under what circumstances (including the venue for the performance of any services) Biovail will enter such arrangements and the business rationale for entering such arrangements for the U.S. market;
- b) the processes and criteria used to identify and select U.S.-based HCPs and U.S.-based HCIs with whom Biovail enters arrangements, including the role played by U.S.-based field sales representatives in the process (if any). This includes a review of Biovail's internal review and approval

process for such arrangements, and the circumstances under which there may be exceptions to the process;

- c) Biovail's tracking or monitoring of the services provided or the work performed under such arrangements (including the receipt of the work product received from the U.S.-based HCPs or U.S.-based HCIs, if any);
- d) Biovail's policies and procedures related to any requirement that the U.S.-based HCPs or U.S.-based HCIs (or their agents) disclose the existence of their arrangements with Biovail and any financial relationship the HCP or HCI has with Biovail;
- e) the uses made of work product received from the U.S.-based HCPs or U.S.-based HCIs, if any;
- f) Biovail's processes for establishing the amounts paid to U.S.-based HCPs or U.S.-based HCIs under such arrangements and the reasons or justifications for any differentials in the amounts paid to different HCPs and HCIs;
- g) the criteria used to determine under what circumstances entertainment, travel, lodging, meals, and/or other items or reimbursements are provided to the U.S.-based HCPs or U.S.-based HCIs in connection with the arrangements, and Biovail's processes for establishing the amounts paid or reimbursed for such items;
- h) whether and in what manner Biovail tracks or monitors the prescribing habits or product use of individuals or entities with whom it enters consulting or fee-for-service arrangements, if any; and
- i) the budget funding source within Biovail (e.g., department or division) for the consulting or fee-for-service arrangements;

3. Biovail's systems, policies, processes, and procedures relating to funding or sponsorship of any Third Party Educational Activity (as defined in Section II.C.6 of the CIA) in the United States. This review shall include a review of the following items:

- a) the processes and procedures used to approve the funding or sponsorship of the Third Party Educational Activity;
- b) the criteria used to determine whether and under what circumstances the funding or sponsorship will be provided;
- c) the processes and criteria used to select recipients of the funding or sponsorships, including the role played by field sales representatives in the processes (if any), and the circumstances under which there may be exceptions to the processes;

- d) Biovail's policies and procedures relating to any requirement that the recipient of the funding or sponsorship (or the recipient's agent) disclose Biovail's funding or sponsorship and any financial relationship Biovail may have with the recipient;
- e) Biovail's policies or procedures for determining and memorializing the amounts paid to recipients of the funding or sponsorship and the purpose or justifications for the amounts paid;
- f) Biovail's policies and procedures relating to the independence of any programs funded or sponsored by Biovail;
- g) Biovail's policies and procedures relating to the content and nature (e.g., promotional, non-promotional) of any programs sponsored through the funding or sponsorships;
- h) whether and in what manner Biovail tracks or monitors the prescribing habits or product use of individuals or entities receiving the funding or sponsorship, if any; and
- i) the budget funding source within Biovail (e.g., department or division) from which the funding or sponsorships are provided;

4. Biovail's systems, policies, processes, and procedures relating to funding or sponsorship of, or participation in, research agreements, grants, and/or research collaborations (including clinical trials and independent research) in the United States (collectively "U.S. Research Activities"). This review shall include a review of the following items:

- a) the processes and procedures used to approve the funding or sponsorship of, or participation in, U.S. Research Activities;
- b) the criteria used to determine whether and under what circumstances Biovail will fund or otherwise participate in U.S. Research Activities;
- c) the processes and criteria used to select recipients of the funding for the U.S. Research Activities, including the role played by field sales representatives in the processes (if any), and the circumstances under which there may be exceptions to the processes;
- d) Biovail's policies and procedures relating to any requirement that the recipient of the funding or participant in the U. S. Research Activities disclose Biovail's funding and any financial relationship Biovail may have with the recipient;
- e) Biovail's policies or procedures for determining and memorializing the amounts paid in connection with the U.S. Research Activities and the purpose or justifications for the amounts paid;

- f) Biovail's policies and procedures relating to the independence of the U.S. Research Activities funded by Biovail;
- g) whether and in what manner Biovail tracks or monitors the prescribing habits or product use of individuals or entities receiving the funding or otherwise participating in the U.S. Research Activities, if any; and
- h) the budget funding source within Biovail (e.g., department or division) for the U.S. Research Activities;

5. Biovail's systems, policies, processes, and procedures relating to compensation arrangements (including salaries and bonuses) for Covered Persons (including contract sales agents), with regard to whether the systems, policies, processes, and procedures are designed to ensure that financial incentives do not motivate such individuals to engage in improper promotion, sales, or marketing of Government Reimbursed Products. This shall include a review of the bases upon which compensation is determined and the extent to which compensation is based on product performance;

6. Biovail's systems, processes, policies, and procedures relating to the development and review of call plans for Biovail's field sales representatives (including contract sales agents) and other personnel related to the promotion, marketing, or sale of Government Reimbursed Products in the United States. This shall include a review of the extent to which U.S.-based HCPs and U.S.-based HCIs belonging to specified medical specialties or types of clinical practice are included in, or excluded from, the call lists based on their expected utilization of the products for FDA-approved uses or non-FDA-approved uses of the Government Reimbursed Products; and

7. Biovail's systems, processes, policies, and procedures relating to the development, implementation, and review of U.S. Sample Distribution Plans. This shall include a review of the bases upon, and circumstances under, which U.S.-based HCPs and U.S.-based HCIs belonging to specified medical specialties or types of clinical practice may receive samples of Government Reimbursed Products from Biovail (including, separately, from Biovail sales representatives (including contract sales agents) and from Biovail's headquarters personnel.)

#### C. Systems Review Report

For each Reporting Period for which a Systems Review is performed hereunder, the IRO shall prepare a report based upon the Systems Review. This report may be (but is not required to be) combined with the report for the Transactions Review described in Section III below, and shall include the following:

(Relating to Systems Review — Part I)

1. A description of the systems, processes, policies, and procedures in place to track, gather, and account for price terms, contract terms, and transactions with Biovail customers that are relevant to the calculation and reporting of AMP, BP, and ASP, including, but not limited to:

- a) The computer or other relevant systems (including the source systems and any other information systems, as applicable) used to track data for and to calculate and report AMP, BP, and ASP;
- b) The information input into Biovail's relevant computer or other systems used to calculate AMP, BP, and ASP;
- c) The system logic or decisional rationale used to determine which customers are included or excluded for purposes of calculating AMP, BP, and ASP;
- d) The system logic or decisional rationale used to determine whether contract terms, discounts, rebates and all other relevant transactions with Biovail customers are included or excluded when calculating AMP, BP, and ASP;
- e) The system logic or decisional rationale used to determine whether and in what manner estimates of prices, discounts and other amounts are made for purposes of determining AMP, BP, and ASP; and
- f) Biovail's policies and procedures in examining system reports for variations that require critical evaluation, including the basis on which variations, exceptions, or outliers are identified, and the follow-up actions taken in response.

2. A description of the documentation, information, and systems reviewed, and the personnel interviewed, if any, including a description of the following:

- a) Biovail's inquiries to CMS regarding the calculation of AMP, BP or ASP and any responses to those inquiries;
- b) Biovail's systems and practices for reporting AMP, BP, and ASP to CMS as required by the Medicaid Drug Rebate program and the Medicare Program; and
- c) Biovail's systems and practices for reporting any adjustments to AMP, BP, or ASP or additional information relating to the submissions.

3. Observations, findings, and recommendations for any improvements to Biovail's systems, processes, policies, and procedures, including any changes recommended in order to improve compliance with the requirements of the Medicaid Drug Rebate and/or Medicare Program(s).

(Relating to the Reviewed Policies and Procedures)

For each of the Reviewed Policies and Procedures identified in Section II.B above, the report shall include the following items:

4. A description of the documentation (including policies) reviewed and any personnel interviewed;
5. A detailed description of Biovail's systems, policies, processes, and procedures relating to the items identified in Sections II.B.1-7 above, including a general description of Biovail's control and accountability systems (e.g., documentation and approval requirements, tracking mechanisms) and written policies regarding the Reviewed Policies and Procedures;
6. A description of the manner in which the control and accountability systems and the written policies relating to the items identified in Sections II.B. 1-7 above are made known or disseminated within Biovail and to any contractors (as applicable);
7. A detailed description of any system used to track and respond to requests for information about Government Reimbursed Products including through the Inquiries Database;
8. A description of Biovail's systems, policies, processes, and procedures for tracking any expenditures associated with the Reviewed Policies and Procedures referenced in Sections II.B.2-4, above;
9. A general description of Biovail's disciplinary measures applicable for a failure to comply with its policies and procedures relating to Promotional and Product Services Related Functions;
10. A detailed description of Biovail's compensation system (including salaries and bonuses) for Covered Persons, including a description of the bases upon which compensation is determined and the extent to which compensation is based on product performance. To the extent that Biovail may establish compensation differently for individual products, the IRO shall report separately on each such type of compensation arrangement;
11. Findings and supporting rationale regarding any weaknesses in Biovail's systems, processes, policies, and procedures relating to the Reviewed Policies and Procedures, if any; and
12. Recommendations to improve any of the systems, policies, processes, or procedures relating to the Reviewed Policies and Procedures, if any.

### **III. Transactions Review**

The Transactions Review shall include a review of the following: (1) records relating to a sample of the Payments that are reported by Biovail pursuant to Section III.J of the CIA; (2) Biovail's call plans related to the promotion, marketing, or sale of Government Reimbursed Products in the U.S. and Biovail's call plan review process for Government Reimbursed Products; (3) U.S. Sampling Events as defined below in Section III.C; and (4) Inquiries reflected in Biovail's Inquiries Database. The IRO shall report on all aspects of its reviews in the Transactions Review Reports.

A. IRO Review of Payment Listings

1. Information Contained in U.S.-based Physician Payment Listings

As set forth in Section III.J of the CIA, Biovail shall post quarterly and annual listings of U.S.-based physicians, U.S.-based Related Entities and U.S.-based Product Decision-Makers who received Payments, as defined in the CIA, directly or indirectly from Biovail. For purposes of the Transaction Review, each annual listing shall be referred to as the “Payment Listing” or “Listing.” For each entry, the Listing shall include the following information: i) physician’s or Product Decision-Maker’s full name; ii) name of Related Entity (if applicable); iii) city and state of the physician’s practice, the Related Entity (as applicable), or the Product Decision-Maker; iii) the purpose of the Payment; and iii) the aggregate value of the Payment(s) in the preceding quarter(s) or year.

For purposes of the Transaction Review, the term “Control Documents” shall include all documents or electronic records associated with each Payment reflected in the Payment Listing for the sampled U.S.-based physician, U.S.-based Related Entity, and/or U.S.-based Product Decision-Maker. For example, the term, “Control Documents” includes, but is not limited to, documents relating to the nature, purpose, and amount of all Payments reflected in the Listing; contracts relating to the Payment(s) reflected in the Listing; documents relating to the occurrence of Payment(s) reflected in the Listing; documents reflecting any work product generated or service provided in connection with the Payment(s); documents submitted in connection with requests for approval for the Payment(s); and business rationale or justification forms relating to the Payment(s).

2. Selection of Sample for Review

For each Reporting Period, the OIG shall have the discretion to identify up to 75 U.S.-based physicians, U.S.-based Related Entities, and/or U.S.-based Product Decision-Makers from the applicable Listing that will be subject to the IRO review described below. Biovail may submit a written request to the OIG that the sample size should be less than 75 and the OIG shall decide, in its sole discretion, whether to grant the request. If the OIG elects to exercise its discretion to select the individuals or entities to be included in the review, it shall notify the IRO of the 75 identified U.S.-based physicians, U.S.-based Related Entities, and/or U.S.-based Product Decision-Makers subject to the IRO review. If the OIG elects not to exercise its discretion as described above, the IRO shall randomly select up to 75 (or such smaller number if approved by the OIG) U.S.-based physicians, U.S.-based Related Entities, and/or U.S.-based Product Decision-Makers to be included in the review. For each selected U.S.-based physician, U.S.-based Related Entity, and/or U.S.-based Product Decision-Maker, the IRO shall review the entry in the Listing and the Control Documents relating to Payments reflected in Listing identified by the IRO as necessary and sufficient to validate the Payment information in the Listing.



3. IRO Review of Control Documents for Selected Physicians and/or Related Entities

For each physician, Related-Entity, and/or Product Decision-Maker selected as part of the sample, the IRO shall review the Control Documents identified by the IRO as necessary and sufficient to validate each Payment reflected in the Listing to evaluate the following:

- a) Whether Control Documents are available relating to each Payment reflected in the Listing for the sampled physician, Related Entity and/or Product Decision-Maker;
- b) Whether the Control Documents were completed and archived in accordance with the requirements set forth in Biovail's policies;
- c) Whether the aggregate value of the Payment(s) as reflected in the Listing for the sampled physician, Related Entity, and/or Product Decision-Maker is consistent with the value of the Payments(s) reflected in the Control Documents; and
- d) Whether the Control Documents reflect that Biovail's policies were followed in connection with Payment(s) reflected in the Listing (e.g, all required written approvals for the activity were obtained in accordance with Biovail's policies.)

4. Identification of Material Errors and Additional Review

A Material Error is defined as any of the following:

- a) A situation in which all required Control Documents relating to Payments reflected in the Listing for the sampled physician, Related Entity and/or Product Decision-Maker do not exist and:
  - i. no corrective action was initiated prior to the selection of the sampled physicians, Related Entities, and/or Product Decision-Maker; or
  - ii. the IRO cannot confirm that Biovail otherwise followed its policies and procedures relating to the entry in the Listing for the sampled physician, Related Entity, and/or Product Decision-Maker, including its policies and procedures relating to any Payment(s) reflected in the Listing; or
- b) Information or data is omitted from key fields in the Control Documents that prevents the IRO from assessing compliance with Biovail's policies and procedures, and the IRO cannot obtain this information or data from reviewing other Control Documents.

If a Control Document does not exist, but Biovail has initiated corrective action prior to the selection of the sampled physicians, Related Entities, and/or Product Decision-Maker, or if a Control Document does not exist but the IRO can determine that Biovail otherwise followed its policies and procedures with regard to each entry in the Listing for a sampled physician, Related Entity, and/or Product Decision-Maker, the IRO shall consider such a situation to be an exception (rather than a Material Error) and the IRO shall report the situation as such. Similarly, the IRO shall note as exceptions any Control Documents for which non-material information or data is omitted.

If the IRO identifies any Material Errors, the IRO shall conduct such Additional Review of the underlying Payment associated with the erroneous Control Documents as may be necessary to determine the root cause of the Material Errors. For example, the IRO may need to review additional documentation and/or conduct interviews with appropriate personnel to identify the root cause of the Material Error(s) discovered.

**B. IRO Review of Biovail’s Call Plans and Call Plan Review Process**

The IRO shall conduct a review and assessment of Biovail’s review of call plans for Government Reimbursed Products (including call plans used by contract sales agents) as set forth in Section III.B.2.i of the CIA. Biovail shall provide the IRO with: i) a list of Government Reimbursed Products promoted, marketed, or sold by Biovail in the United States, including through any contract sales force, during the Reporting Period; ii) information about the FDA-approved uses for each such Government Reimbursed Product; and iii) the call plans for each such Government Reimbursed Product. Biovail shall also provide the IRO with information about the reviews of call plans that Biovail conducted during the Reporting Period consistent with Section III.B.2.i of the CIA and any modifications to the call plans made as a result of Biovail’s reviews.

For each call plan, the IRO shall select a sample of up to 75 of the U.S.-based HCPs and U.S.-based HCIs included on the call plan. Biovail may submit a written request to the OIG that the sample size should be less than 75 and the OIG shall decide, in its sole discretion, whether to grant the request. For each call plan, the IRO shall compare the sampled U.S.-based HCPs and U.S.-based HCIs against the criteria (e.g., medical specialty or practice area) used by Biovail in conducting its review and/or modification of the call plan in order to determine whether Biovail followed its criteria and Policies and Procedures in reviewing and modifying the call plan.

The IRO shall note any instances in which it appears that the sampled U.S.-based HCPs and U.S.-based HCIs on a particular call plan are inconsistent with Biovail’s criteria relating to the call plan and/or Biovail’s Policies and Procedures. The IRO shall also note any instances in which it appears that Biovail failed to follow its criteria or Policies and Procedures.

**C. IRO Review of the Distribution of Samples of Biovail’s Government Reimbursed Products**

The IRO shall conduct a review and assessment of the distribution of samples of Government Reimbursed Products to U.S.-based HCPs and U.S.-based HCIs. Biovail shall

provide the IRO with: i) a list of Government Reimbursed Products for which Biovail distributed samples in the United States during the Reporting Period (either directly or through a contract sales force); ii) information about the FDA-approved uses for each such sampled Government Reimbursed Product; and iii) information about Biovail's policies and procedures relating to the distribution of samples of each such Government Reimbursed Product, including Biovail's U.S. Sample Distribution Plan, if any, showing which type of samples may be distributed to U.S.-based HCPs and U.S.-based HCIs of particular medical specialties or types of clinical practices. Biovail shall also provide the IRO with information about: (1) the reviews of Sample Distribution Plans that Biovail conducted during the Reporting Period; and (2) any modifications to the Sample Distribution Plans made or corrective actions that may be taken as a result of Biovail's reviews, including investigating, documenting, resolving, and taking disciplinary action.

For each Government Reimbursed Product for which Biovail distributed samples in the United States during the Reporting Period, the IRO shall randomly select a sample of up to 75 separate instances in which Biovail provided samples of the product to U.S.-based HCPs or U.S.-based HCIs either through a sales representative or direct shipment. Biovail may submit a written request to the OIG that the sample size should be less than 75 and the OIG shall decide, in its sole discretion, whether to grant the request. Each such instance shall be known as a "U.S. Sampling Event."

For each U.S. Sampling Event, the IRO shall review all documents and information relating to the distribution of the sample to the U.S.-based HCP or U.S.-based HCI, including the sample card, direct shipment request form and/or the electronic call record. The reviewed materials shall include information about the following: 1) the quantity, dosage, and form of the Government Reimbursed Product provided to the HCP or HCI; 2) the identity and type of medical specialty or clinical practice of the HCP or HCI; 3) the identity of the field sales representative who accepted the sample request form or provided the sample to the HCP or HCI; 4) the manner and mechanism through which the sample was requested (e.g., sample card or direct shipment request form); and 5) the manner and mechanism through which the request was fulfilled (e.g., sales representative distribution or direct shipment.)

For each U.S. Sampling Event, the IRO shall evaluate whether the sample was provided to a U.S.-based HCP or U.S.-based HCI whose medical specialty or clinical practice is consistent with the uses of the product approved by the FDA and whether the sample was distributed by a Biovail representative in a manner consistent with Biovail's Sample Distribution Plan for the product(s), if any. To the extent that a sample was provided to an HCP or HCI by a Biovail representative other than a sales representative, the IRO shall contact the HCP or HCI by letter. The letter shall request that the HCP or HCI: 1) verify that he/she/it received the quantity and type of samples identified by the IRO as the U.S. Sampling Event; 2) verify that he/she/it requested the samples provided during the U.S. Sampling Event; 3) explain or confirm its type of medical specialty or clinical practice; and 4) identify the basis for requesting the sample (e.g., conversations with a Biovail sales representative, conversation with a representative of Biovail's medical services department, independent research or knowledge of the HCP or HCI, etc.)

For each U.S. Sampling Event, the IRO shall compare the medical specialty and type of clinical practice of the HCPs and HCIs that received the sample with uses of the product approved by the FDA. The IRO shall note any instances in which it appears that the medical specialty or clinical practice of the HCPs or HCIs that received a sample during a U.S. Sampling Event were not consistent with the uses of the product approved by the FDA. For each such situation, the IRO shall note the process followed by Biovail in determining that it was appropriate to provide a sample to such HCP or HCI and the basis for such determination. For each U.S. Sampling Event, the IRO shall also note any instances in which it appears that Biovail failed to follow its Sample Distribution Plan, if any, and sample policies and procedures for the product(s) provided and, if so, whether Biovail already had taken corrective action, including investigating, documenting, resolving, and taking disciplinary action, if appropriate.

D. Review of Inquiries Reflected in Inquiries Database

1. Description of Inquiries Database

As set forth in Section III.C.3.h of the CIA, Biovail, either directly or through a vendor, shall establish a database (hereafter, “Inquiries database”) to track information relating to requests for information or inquiries about Government Reimbursed Products (hereafter “Inquiries”). Specifically, Biovail shall document and record all Inquiries regarding its Government Reimbursed Products in the Inquiries Database. Biovail shall record in the Inquiries Database the following information for each Inquiry received: 1) date of Inquiry; 2) form of Inquiry (e.g, fax, phone, medical information request form); 3) name of requesting HCP or HCI; 4) nature and topic of request (including exact language of the Inquiry if made in writing); 5) an evaluation of whether the Inquiry relates to information about an off-label indication for the Government Reimbursed Product; 6) nature/form of the response from Biovail (including a record of any materials provided in response to the request); 7) the name of the U.S.-based field sales representative who called upon or interacted with the HCP or HCI, if known; and 8) the status and findings of any follow-up review conducted by Biovail in situations in which it appears that the Inquiry may have related to improper off-label promotion in the U.S..

2. Internal Review of the Inquiries Database

On a semi-annual basis, Biovail’s Chief Compliance Office or designee shall review the Inquiries Database and related information, as appropriate, and shall generate a report summarizing the items of information outlined in Section III.D.1 above for each Inquiry received during the preceding two quarters (“Inquiries Database Report”). The Chief Compliance Office or designee shall review the Inquiries Database Reports to assess whether the information contained in the report suggests that improper off-label promotion may have occurred in the U.S. in connection with any Inquiry(ies). If the Chief Compliance Office or designee, in consultation with other appropriate Biovail personnel, suspects that improper off-label promotion may have occurred in connection with any Inquiry, the Chief Compliance Office or designee shall undertake a follow-up review of the Inquiry (hereafter “Off-Label Review”), make specific findings based on the Off-Label Review, and take all appropriate corrective action (including disciplinary action of the Covered Person and reporting of the conduct, including disclosing Reportable Events pursuant to Section III.I of the CIA, if applicable).

### 3. IRO Review of Inquiries Reflected in Inquiries Database

The IRO shall select and review a random sample of up to 60 Inquiries from among the Inquiries reflected in the Inquiries Database for each Reporting Period. Forty-five of the Inquiries reviewed by the IRO shall be Inquiries for which Biovail conducted an Off- Label Review, and the other 15 shall be Inquiries for which Biovail did not conduct an Off-Label Review. Biovail may submit a written request to the OIG that the sample size should be less than 60 and the OIG shall decide, in its sole discretion, whether to grant the request. If Biovail conducted an Off-Label Review on fewer than 45 Inquiries, additional Inquiries may be selected for which an Off-Label Review was not conducted to reach a total of 60 Inquiries or such other number of inquiries as approved by OIG. For each Inquiry reviewed, the IRO shall determine:

- a) Whether each item of information listed above in Section III.D.1 is reflected in the Inquiries Database for each reviewed Inquiry; and
- b) For each Inquiry for which the Chief Compliance Office or designee conducted an Off-Label Review, the basis for suspecting that improper off-label promotion may have occurred; the steps undertaken as part of the Off-Label Review; the findings of the Chief Compliance Office or designee as a result of the Off-Label Review; and any follow-up actions taken by Biovail based on the Off-Label Review findings.

### E. Transactions Review Report

For each Reporting Period, the IRO shall prepare a report based on its Transactions Review. The report shall include the following:

#### 1. General Elements to Be Included in Report

- a) Review Objectives: A clear statement of the objectives intended to be achieved by each part of the review;
- b) Review Protocol: A detailed narrative description of the procedures performed and a description of the sampling unit and universe utilized in performing the procedures for each sample reviewed; and
- c) Sources of Data: A full description of documentation and other information, if applicable, relied upon by the IRO in performing the Transactions Review.

#### 2. Results to be Included in Report

The following results shall be included in each Transactions Report:

(Relating to the Payment Listing Reviews)

- a) a description of the entries in the Payment Listing for each physician, Related Entity, and/or Product Decision-Maker sampled and a description of Control Documents reviewed in connection with each selected individual or entity;
- b) for each sampled physician, Related Entity, or Product Decision-Maker, findings and supporting rationale as to whether: (i) all required Control Documents exist; (ii) each Control Document was completed in accordance with all of the requirements set forth in the applicable Biovail policy; (iii) the aggregate value of the Payment(s) as reflected in the Listing for the sampled individual or entity is consistent with the value of the Payment(s) reflected in the Control Documents; (iv) each Control Document reflects that Biovail's policies were followed in connection with the underlying activity reflected in the document (e.g., all required approvals were obtained); and (v) any disciplinary action was undertaken in those instances in which Biovail policies were not followed;
- c) for each sampled physician, Related Entity, or Product Decision-Maker unit reviewed, an identification and description of all exceptions discovered. The report shall also describe those instances in which corrective action was initiated prior to the selection of the sampled individuals or entities, including a description of the circumstances requiring corrective action and the nature of the corrective action;
- d) if any Material Errors are discovered in any sample unit reviewed, a description of the error, the Additional Review procedures performed and a statement of findings as to the root cause(s) of the Material Error;

(Relating to the Call Plan Reviews)

- e) a list of the Government Reimbursed Products promoted by Biovail, directly or indirectly, during the Reporting Period and a summary of the FDA-approved uses for such products;
- f) for each promoted Government Reimbursed Product: i) a description of the criteria used by Biovail in developing or reviewing the call plans and for including or excluding specified types of HCPs or HCIs from the call plans; ii) a description of the review conducted by Biovail of the call plans and an indication of whether Biovail reviewed the call plans as required by Section III.B.2.i of the CIA; iii) a description of all instances for each call plan in which it appears that the HCPs and HCIs included on the call plan are inconsistent with Biovail's criteria relating to the call plan and/or Biovail's Policies and Procedures; and iv) a description of all instances in which it appears that Biovail failed to follow its criteria or Policies and Procedures relating to call plans or the review of the call plans;

- g) findings and supporting rationale regarding any weaknesses in Biovail's systems, processes, policies, procedures, and practices relating to its call plans or the review of the call plans, if any;
- h) recommendations, if any, for changes in Biovail's systems, processes, policies, procedures, and practices that would correct or address any weaknesses or deficiencies uncovered during the Transactions Review with respect to call plans or the review of the call plans;

(Relating to the Sampling Event Reviews)

- i) for each Government Reimbursed Product for which Biovail directly or indirectly distributed samples in the United States during the Reporting Period: i) a description of the U.S. Sample Distribution Plan (including whether sales representatives may provide samples of the product and, if so, to HCPs or HCIs of which medical specialty or type of clinical practice a sales representative may provide samples); ii) a detailed description of any instances identified during the IRO review in which it appears that the medical specialty or clinical practice of the HCPs or HCIs that received a sample during a Sampling Event were not consistent with the uses of the product approved by the FDA. This description shall explain the process followed by Biovail in determining that it was appropriate to provide a sample to such HCP or HCI and the basis for such determination; and iii) a detailed description of any instances in which it appears that Biovail failed to follow its Sample Distribution Plan for the product(s) provided during the Sampling Event;
- j) findings and supporting rationale regarding any weaknesses in Biovail's systems, processes, policies, procedures, and practices relating to the distribution of samples of Government Reimbursed Products, if any;
- k) recommendations, if any, for changes in Biovail's systems, processes, policies, procedures, and practices that would correct or address any weaknesses or deficiencies uncovered during the Transactions Review with respect to the distribution of samples;

(Relating to the Review of Inquiries)

- l) in connection with the review of Inquiries, a description of each type of sample unit reviewed, including the number of each type of sample units reviewed (e.g., the number of Inquiries) and an identification of the types of documents and information reviewed for the Inquiries;
- m) for each Inquiry sample unit, the IRO shall summarize the information about the Inquiry contained in the Inquiries Database;

- n) for each Inquiry sample unit, findings and supporting rationale as to whether: (i) each item of information listed in Section III.D.1 is reflected in the Inquiries Database; and (ii) for each Inquiry for which an Off-Label Review was conducted, the basis for suspecting that improper off-label promotion may have occurred; the steps undertaken as part of the Off-Label Review; the findings of Biovail's Chief Compliance Office as a result of the Off-Label Review; and any follow-up actions taken by Biovail as a result of Chief Compliance Officer findings; and
- o) findings and supporting rationale regarding any weaknesses in Biovail's systems, processes, policies, procedures, and practices relating to the Inquiries and the Inquiries Database, if any; and
- p) recommendations for improvement in Biovail's systems, processes, policies, procedures, and practices relating to the Inquiries and the Inquiries Database, if any.



SETTLEMENT AGREEMENTI. PARTIES

This Settlement Agreement (“Agreement”) is entered into by and among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General (“OIG-HHS”) of the Department of Health and Human Services (“HHS”) (collectively, the “United States”); and Biovail Corporation (“Biovail”), through their authorized representatives. Collectively, all of the above shall be referred to as “the Parties.”

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

- A. Biovail is a Canadian company with headquarters in Mississauga, Ontario that distributes drugs.
  - B. Biovail Pharmaceuticals LLC is a limited liability company. Biovail Pharmaceuticals LLC was formerly known as Biovail Pharmaceuticals, Inc with headquarters in Bridgewater, New Jersey. Biovail Pharmaceuticals LLC and Biovail Pharmaceuticals, Inc. shall be referred to throughout the remainder of this Agreement as “BPI”.
  - C. The United States contends that Biovail submitted or caused to be submitted claims for payment to the Medicaid Program (Medicaid), Title XIX of the Social Security Act, 42 U.S.C. § 1396-1396v.
  - D. The United States contends that it has certain civil claims, as specified in Paragraph 2 below, against Biovail for engaging in the following conduct during the period from January 1, 2003 through December 31, 2004 (hereinafter the conduct described in this paragraph and subparagraphs (1) - (2) below will be referred to as the “Covered Conduct”):
    - (1) Biovail through BPI engaged in program known as the PLACE program whereby it paid physicians and other medical prescribers in order to induce them to write prescriptions for the Biovail drug Cardizem, L.A., and thereby caused false and/or fraudulent claims
-

for payment for Cardizem, L.A. to be submitted to federal health care programs.

- (2) Through the PLACE program, BPI and Biovail and others conspired to and did knowingly and willfully make payments to induce another party to recommend purchasing or ordering the drug Cardizem, L.A. in violation of 42 U.S.C. § 1320a-7b(b)(2)(B).

E. The United States also contends that it has certain administrative claims against Biovail for engaging in the Covered Conduct.

F. On or before September 15, 2009, or such other date as may be determined by the Court, BPI has agreed to enter a plea of guilty pursuant to Fed. R. Crim. P. 11(c)(1)(C) (the "Plea Agreement") to an Information to be filed in the District of Massachusetts (the "Criminal Action") that will allege violations of 18 U.S.C. § 371 and 42 U.S.C. § 1320a-7b(b)(2)(B).

G. This Agreement is neither an admission of liability by Biovail (with the exception of such admissions as BPI makes in connection with its guilty plea referenced in Preamble Paragraph F above and accepted by the Court), nor a concession by the United States that its claims are not well founded;

H. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions below.

### III. TERMS AND CONDITIONS

1. Biovail agrees to pay to the United States two million, four hundred and four thousand, two hundred and eighty-six dollars (\$2,404,286) plus interest at the Medicare Trust Fund Rate in effect on May 1, 2008 from May 1, 2008 until the date of payment (the "Settlement Amount"). This sum shall constitute a debt immediately due and owing to the

United States upon the satisfaction of the conditions of payment set forth in this paragraph. This debt is to be discharged by payment of the Settlement Amount by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney’s Office for the District of Massachusetts. Biovail agrees to make this electronic funds transfer no later than seven business days following the latest of the dates on which the following occurs: (1) this Agreement is fully executed by the Parties and delivered to Biovail’s attorneys; or (2) the date on which the Court accepts a Fed. R. Crim. P. 11(c)(1)(C) guilty plea as described in Preamble F in connection with the Criminal Action and imposes the agreed upon sentence.

If BPI’s agreed-upon guilty plea pursuant to Fed. R. Crim. P. 11(c)(1)(C) in the Criminal Action described in Preamble Paragraph F is not accepted by the Court or the Court does not impose the agreed-upon-sentence for whatever reason, this Agreement shall be null and void at the option of either the United States or Biovail. Whether the United States or Biovail exercises this option, which option shall be exercised by notifying all parties, through counsel, in writing within five(5) business days of the Court’s decision, the Parties will not object and this Agreement will be rescinded. If this Agreement is rescinded, Biovail and its subsidiary BPI, will not plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims, actions or proceedings arising from the Covered Conduct that are brought by the United States within 90 calendar days of rescission.

2. Subject to the exceptions in Paragraph 4 below, in consideration of the obligations of Biovail set forth in this Agreement, conditioned upon Biovail’s full payment of the Settlement Amount, and subject to Paragraph 12 below(concerning bankruptcy proceedings commenced, within 91 days of the effective date of this Agreement), the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release Biovail, together with its current and former divisions, parents, direct and indirect subsidiaries, successors and assigns and their current and former directors, officers and employees, from any civil or administrative monetary claim the United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil-

Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud for the Covered Conduct.

3. In consideration of the obligations of Biovail set forth in this Agreement and the Corporate Integrity Agreement (CIA) entered into between OIG-HHS and Biovail, conditioned upon Biovail’s full payment of the Settlement Amount, and subject to Paragraph 12, below (concerning bankruptcy proceedings commenced within 91 days of the effective date of this Agreement), OIG-HHS agrees to release and refrain-from instituting, directing or maintaining any administrative action seeking exclusion from the Medicare, Medicaid, or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Biovail under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities), for the Covered Conduct, except as reserved in Paragraph 4, below, and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Biovail from the Medicare, Medicaid, and other Federal health care programs under 42 U.S.C. § 1320a-7(a)(mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes the OIG-HHS from taking action against other entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 4, below.

4. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including Biovail) are the following:

- Code (Internal Revenue Code);

(a)

Any, civil, criminal or administrative liability arising under Title 26 of the United States
- (b)

Any criminal liability;
- mandatory exclusion from Federal health care programs;

(c)

Except as explicitly stated in this Agreement any administrative liability, including
- Conduct;

(d)

Any liability to the United States (or its agencies) for any conduct other than the Covered

- (e) Any liability based upon such obligations as are created by this Agreement;
- (f) Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- (g) Any liability for personal injury or; property damage or for other consequential damages arising from the Covered Conduct;
- (h) Any liability for failure to deliver items or services due; or
- (i) Any liability of individuals (including current or former directors, officers, employees or agents of Biovail) who have received or receive written notification that they are the target of a criminal investigation, are criminally indicted or charged, or are convicted, or who have entered into or in the future enter into a statute of limitations waiver or tolling agreement with the United States relating to the Covered Conduct.

5. Biovail waives and shall not assert any defenses Biovail may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this Paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

6. Biovail fully and finally releases the United States, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) which Biovail has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

7. The Settlement Amount will not be decreased as a result of the denial of claims for payment now being withheld from payment by any government entity, Medicare carrier or intermediary or any State payer, related to the Covered Conduct; and Biovail agrees not to resubmit to any government entity, Medicare carrier or intermediary or any State payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

8. Biovail agrees to the following:

(a) Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulations (FAR) § 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395hhh and 1396-1396v, and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Biovail, its present or former officers, directors, employees, shareholders, and agents in connection with the following shall be “Unallowable Costs” on Government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (“FEHBP”):

- (1) the matters covered by this Agreement and any related Plea Agreement,
- (2) the United States’ audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement,
- (3) Biovail’s investigation, defense, and corrective actions undertaken in response to the United States’ audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorney’s fees),
- (4) the negotiation and performance of this Agreement and any Plea Agreement,

- (5) the payment Biovail makes to the United States pursuant to this Agreement, including any costs and attorneys fees, and
- (6) the negotiation of, and obligations undertaken pursuant to the CIA to;
  - (i) retain an independent review organization to perform annual reviews as described in Section III of the CIA; and
  - (ii) prepare and submit reports to the OIG-HHS. However, nothing in this paragraph 8(a)(6) that may apply to the obligations undertaken pursuant to the CIA affects the status of costs that are not allowable based on any other authority applicable to Biovail.

(b) Future Treatment of Unallowable Costs: These Unallowable Costs shall be separately determined and accounted for by Biovail, and Biovail shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any State Medicaid Program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by Biovail or any of its subsidiaries to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

(c) Treatment of Unallowable Costs Previously Submitted for Payment: Biovail further agrees that within 90 days of the effective date of this Agreement it will identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid, and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid Program, if any, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Biovail or any of its subsidiaries or affiliates, and will request, and agree that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the Unallowable Costs. Biovail agrees that the United States, at a

minimum, will be entitled to recoup from Biovail any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice, and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by Biovail or any of its subsidiaries on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Biovail or any of its subsidiaries' cost reports, cost statements, or information reports. Nothing in this Agreement shall constitute a waiver of the rights of the United States to examine or reexamine the Unallowable Costs described in this Paragraph.

9. Except as otherwise expressly stated, this Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 2, 6 and 10 of this Agreement.

10. Biovail agrees that it waives and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

11. Biovail warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and will remain solvent following its payment to the United States of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Biovail, within the meaning of 11 U.S.C. § 547(c)(1); and (b) conclude that these mutual promises, covenants, and obligations do in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value which is not intended to hinder, delay, or defraud any



entity to which Biovail was or became indebted, on or after the date of this transfer, all within the meaning of I 1 U.S.C. § 548(a)(1).

12. If, within 91 days of the effective date of this Agreement, Biovail commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors, (a) seeking to have any order for relief of Biovail’s debts, or seeking to adjudicate Biovail as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Biovail or for all or any substantial part of Biovail’s assets, Biovail agrees as follows:

(a) Biovail’s obligations under this Agreement may not be avoided pursuant to 11 U.S.C. §§ 547 or 548, and Biovail will not argue or otherwise take the position in any such case, proceeding, or action that: (I) Biovail’s obligations under this Agreement may be avoided under 11 U.S.C. §§ 547 or 548; (ii) Biovail was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United States hereunder; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Biovail.

(b) If Biovail’s obligations, under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee’s avoidance powers under the Bankruptcy Code, the United States, at its sole option, may rescind the releases in this Agreement, and bring any civil and/or administrative claim, action, or proceeding against Biovail for the claims that would otherwise be covered by the releases provided in Paragraphs 2-3, above. Biovail, agrees that (i) any such claims, actions, or proceedings brought by the United States (including any proceedings to exclude Biovail from participation in Medicare, Medicaid, or other Federal healthcare programs) are not subject to an “automatic stay” pursuant to 11 U.S.C. Section 362(a) as a result of the action, case, or proceeding described in the first clause of this Paragraph, and that Biovail will not argue or otherwise contend that the United States’ claims, actions, or proceedings are subject to an automatic stay; (ii) that Biovail will not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceeding

which are brought by the United States within 90 calendar days of written notification to Biovail that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on August 20, 2004; and (iii) the United States has a valid claim against Biovail in the amount of \$2,404,286 plus applicable penalties under the False Claims Act and the United States may pursue its claim in the case; action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

(c) Biovail acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

13. Biovail represents that Rolf Reininghaus has resigned as an officer, director or employee of Biovail. Biovail agrees that it will not employ or otherwise permit Rolf Reininghaus, directly or indirectly, to provide any services to or have any affiliation with Biovail.

14. Each Party to this Agreement will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

15. Biovail represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

16. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement will be the United States District Court for the District of Massachusetts, except that disputes arising under the CIA shall be resolved exclusively under the dispute resolution provisions in the CIA.

17. This Agreement and the Plea Agreement referenced in Preamble F constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

18. The individuals signing this Agreement on behalf of Biovail represent and warrant that they are authorized by Biovail to execute this Agreement. The United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.
20. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.
21. This Agreement is binding on Biovail’s successors, transferees, heirs, and assigns.
22. All parties consent to the United States’ disclosure of this Agreement, and information about this Agreement, to the public.
23. This Agreement is effective on the date of signature of the last signatory to the Agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.
24. For purposes of construction, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

THE UNITED STATES OF AMERICA

|                                  |                                                                                                                                                                                                               |
|----------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| DATED: <u>September 14, 2009</u> | BY: <u>/s/ Sara Miron Bloom</u><br>Sara Miron Bloom<br>Assistant United States Attorney<br>District of Massachusetts                                                                                          |
| DATED: <u>9/11/09</u>            | BY: <u>/s/ Gregory E. Demske</u><br>Gregory E. Demske<br>Assistant Inspector General for Legal Affairs<br>Office of Counsel to the Inspector General United States<br>Department of Health and Human Services |

DATED: September 11, 2009

BY: /s/ Jennifer Tindale  
Jennifer Tindale  
Vice President, Associate General Counsel

DATED: 9/11/09

BY: /s/ Geoffery Hobart  
Geoffrey Hobart  
Counsel for Biovail Corporation

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE BIOVAIL CORPORATION  
SECURITIES LITIGATION

Master File No. 03-CV-8917 (GEL)

**STIPULATION AND AGREEMENT OF SETTLEMENT**

This Stipulation and Agreement of Settlement (the “Stipulation”) is entered into in the above-captioned action (the “Action”) by and among Lead Plaintiffs Ontario Teachers’ Pension Plan Board and Local 282 Welfare Trust Fund (“Lead Plaintiffs”) on behalf of themselves and the other members of the Class (as hereinafter defined) and Defendants Biovail Corporation (“Biovail”), and individual defendants Eugene N. Melnyk, Brian H. Crombie, John R. Miszuk, Kenneth Howling, and Rolf Reininghaus (the “Individual Defendants”) (Biovail and the Individual Defendants are collectively referred to hereinafter as the “Defendants”), by and through their undersigned respective counsel, subject to approval of the United States District Court for the Southern District of New York pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

WHEREAS:

A. Beginning on or about November 12, 2003, thirteen class action complaints were filed in the United States District Court for the Southern District of New York against certain of the Defendants. The actions were styled *Hays v. Biovail Corp., et al.*, Civil Action No. 03-8917 (RO); *Chrapko v. Biovail Corp et al.*, Civil Action No. 03-8979 (RO); *Felgoise v. Biovail Corp. et al.*, Civil Action No. 03-09002 (unassigned); *Newby v. Biovail Corp. et al.*, Civil Action No. 03-9011 (unassigned); *Welsh v. Biovail Corp. et al.*, Civil Action No. 03-9293 (unassigned); *Sobel v. Biovail Corp. et al.*, Civil Action No. 03-9480 (unassigned); *Shi v. Biovail Corp. et al.*,

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Civil Action No. 03-9590 (RO); *Abrahamson v. Biovail Corp. et al.*, Civil Action No. 03-9616 (JFK); *Gokhale v. Biovail Corp. et al.*, Civil Action No. 03-9701 (GBD); *Pierce v. Biovail et al.*, Civil Action No. 03-9914 (RO); *Emery v. Biovail Corp. et al.*, Civil Action No. 03-10058 (unassigned); *Wojciechowski v. Biovail Corp. et al.*, Civil Action No. 03-10221 (HB); *Rand v. Biovail Corp. et al.*, Civil Action No. 04-00188 (unassigned). By Order Consolidating All Related Actions, Appointing Co-Lead Plaintiffs and Approving Their Selection of Co-Lead Counsel entered March 9, 2004 (“March 9, 2004 Order”), these actions, together with any subsequently filed or transferred actions on behalf of investors who purchased Biovail securities related to the claims asserted in these actions were consolidated for all purposes. The March 9, 2004 Order also appointed Ontario Teachers’ Pension Plan Board and Local 282 Welfare Trust Fund as Co-Lead Plaintiffs and approved their selection of co-lead counsel for the Action;(1)

B. On June 18, 2004, Lead Plaintiffs filed the Consolidated Amended Class Action Complaint asserting claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder (the “First Amended Complaint”). The First Amended Complaint generally alleges violations of the federal securities laws through, among other things, misstatements and omissions by Defendants in Communications (as defined below) regarding two drugs that would be launched in 2003, Cardizem LA and Wellbutrin XL, and the projections that they gave Wall Street which were based on the successful launches of those drugs. The First Amended Complaint sought to proceed on behalf of a class consisting of all persons who purchased Biovail publicly traded common stock during the period February 7, 2003 through and including March 2, 2004, excluding certain named persons and entities;

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(1) The March 9, 2004 Order also appointed a third lead plaintiff whose motion to voluntarily withdraw as such was granted by Order entered on April 7, 2005.

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C. On September 28, 2004 Defendants moved to dismiss the First Amended Complaint. The motion was denied by Order entered December 22, 2004. Defendants answered the First Amended Complaint on February 4, 2005;

D. On February 28, 2006, Lead Plaintiffs' filed their motion (i) to certify the Action as a class action, (ii) to certify Lead Plaintiffs as well as Plaintiff City of Dearborn Heights Act 345 Pension System as Class Representatives, and (iii) to certify Co-Lead Counsel as Class Counsel. The motion was fully briefed and argued to the Court and was *sub judice* at the time the agreement in principle to settle the Action was reached;

E. On August 25, 2006, Lead Plaintiffs filed the Consolidated Second Amended Class Action Complaint (the "Complaint") which generally alleges, among other things, that, in Communications in connection with the launching and marketing of Cardizem LA and reporting to the public about the launch of Cardizem LA, Biovail, with the participation of the Individual Defendants issued materially false and misleading press releases and other statements, including financial statements filed with the SEC, regarding Cardizem LA and Biovail's financial condition during the Class Period in a scheme to artificially inflate the value of Biovail's common stock;

F. The Complaint further alleges that Lead Plaintiffs and the other members of the Class purchased the common stock of Biovail during the Class Period at prices artificially inflated as a result of the Defendants' dissemination in Communications of materially false and misleading statements regarding Biovail in violation of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, and Rule 10b-5 promulgated thereunder;

G. On October 20, 2006, Defendants answered the Complaint;

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H. The Defendants deny any wrongdoing whatsoever and this Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of any Defendant with respect to any claim or of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that the Defendants have asserted. The parties to this Stipulation recognize, however, that the litigation has been filed by Plaintiffs and defended by Defendants in good faith and in compliance with Federal Rule of Civil Procedure 11, that the litigation is being voluntarily settled after advice of counsel, and that the terms of the settlement are fair, adequate and reasonable. This Stipulation shall not be construed or deemed to be a concession by any Plaintiff of any infirmity in the claims asserted in the Action;

I. Plaintiffs' Co-Lead Counsel have conducted an extensive investigation and thorough discovery relating to the claims and the underlying events and transactions alleged in the Complaint, including the review of millions of pages of documents produced by Defendants and third parties and the deposing of approximately fifteen (15) fact witnesses as of the date the agreement in principle to settle was reached. Plaintiffs' Co-Lead Counsel have analyzed the evidence adduced during pretrial discovery and have researched the applicable law with respect to the claims of Lead Plaintiffs and the other members of the Class against the Defendants and the potential defenses thereto;

J. In the fall of 2005, the parties mediated before former Judge Nicholas Politan but were unable to reach an agreement to resolve the Action. In December 2007, with the benefit of the development of the Action and the extensive discovery had since the earlier mediation and with the assistance of Gary V. McGowan, Esq. acting as a mediator, Lead Plaintiffs, by their counsel, conducted discussions and arm's-length negotiations with counsel for Defendants with

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respect to a compromise and settlement of the Action with a view to settling the issues in dispute and achieving the best relief possible consistent with the interests of the Class; and

K. Based upon their investigation and pretrial discovery as set forth above, Lead Plaintiffs and Plaintiffs' Co-Lead Counsel have concluded that the terms and conditions of this Stipulation are fair, reasonable and adequate to Lead Plaintiffs and the other members of the Class, and in their best interests, and have agreed to settle the claims raised in the Action pursuant to the terms and provisions of this Stipulation, after considering (i) the cash and other benefits that Lead Plaintiffs and the other members of the Class will receive from settlement of the Action, (ii) the attendant risks of litigation, including in particular the risks of establishing recoverable damages, and (iii) the desirability of permitting the Settlement to be consummated as provided by the terms of this Stipulation.

NOW THEREFORE, without any admission or concession on the part of Lead Plaintiffs of any lack of merit of the Action whatsoever, and without any admission or concession of any liability or wrongdoing or lack of merit in the defenses whatsoever by Defendants, it is hereby STIPULATED AND AGREED, by and among the parties to this Stipulation, through their respective attorneys, subject to approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, in consideration of the benefits flowing to the parties hereto from the Settlement, that all Settled Claims (as defined below) as against the Released Parties (as defined below) and all Settled Defendants' Claims (as defined below) shall be compromised, settled, released and dismissed with prejudice, upon and subject to the following terms and conditions:

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## **CERTAIN DEFINITIONS**

1. As used in this Stipulation, the following terms shall have the following meanings:

(a) “Authorized Claimant” means a Class Member who submits a timely and valid Proof of Claim form to the Claims Administrator.

(b) “Claims Administrator” means the firm of Complete Claim Solutions, LLC, which shall administer the Settlement.

(c) “Class” means, for the purposes of this Settlement only, all persons and entities who purchased the common stock of Biovail on the New York Stock Exchange or other U.S. stock exchanges or the Toronto Stock Exchange or other Canadian stock exchanges during the period from February 7, 2003, through and including March 2, 2004. Excluded from the Class are Biovail, its subsidiaries, affiliates, predecessor and successor entities; Ernst & Young LLP [U.S. and Canada] and any of their affiliates, subsidiaries, and predecessor and successor entities; Ernst & Young LLP [U.S. and Canada] partners and partners of any of their affiliates, subsidiaries, and predecessor and successor entities; individual defendants Eugene N. Melnyk, Brian H. Crombie, John R. Miszuk, Kenneth Howling, and Rolf Reininghaus; members of their immediate families; any entity in which any defendant has a controlling interest; any person who was an officer or director of Biovail during the Class Period; and the legal representatives, heirs, successors or assigns of any of the foregoing excluded persons or entities. Also excluded from the Class are any putative Class Members who exclude themselves by filing a request for exclusion in accordance with the requirements set forth in the Notice. “Class Member” means a member of the Class.

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(d) “Class Period” means, for the purposes of this Settlement only, the period between and including February 7, 2003, and March 2, 2004.

(e) “Communications” means communications made by Biovail, and the Individual Defendants (as defined below) in their capacities as officers and/or employees and/or directors of Biovail, in communicating financial and business information to shareholders and the general public in the ordinary course of Biovail’s business.

(f) “Court” means the United States District Court for the Southern District of New York.

(g) “Defendants” means Biovail and the Individual Defendants.

(h) “Defendants’ Counsel” means the law firms of Howrey LLP and Curtis, Mallet-Prevost, Colt & Mosle LLP for Defendant Biovail and for the Individual Defendants.

(i) “Effective Date” means the date upon which the Settlement contemplated by this Stipulation shall become effective, as set forth in ¶ 23 below.

(j) “Escrow Account” means one or more interest-bearing accounts created, established, designated, controlled and maintained by Bernstein Litowitz Berger & Grossmann LLP, acting as agent for the Class, wherein the Settlement Amount (as specified in ¶ 4 herein) shall be deposited by or at its direction on behalf of the Class and held in escrow.

(k) “Escrow Agent” means Valley National Bank, or such other financial institution(s) as Plaintiffs’ Co-Lead Counsel shall select, which shall be responsible for overseeing, safeguarding and distributing the Escrow Account, acting as agent for the Class.

(l) “Final,” with respect to the Judgment (as defined herein), means: (i) if no appeal is filed, the expiration date of the time for filing or noticing of any appeal from the Court’s Judgment approving the Settlement substantially in the form of Exhibit B hereto, i.e.,

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thirty (30) days after entry of the Judgment; or (ii) if there is an appeal from the Judgment, the date of final dismissal of any appeal from the Judgment, or the final dismissal of any proceeding on certiorari to review the Judgment; or (iii) the date of final affirmance on an appeal of the Judgment, the expiration of the time to file a petition for a writ of certiorari, or the denial of a writ of certiorari to review the Judgment, and, if certiorari is granted, the date of final affirmance of the Judgment following review pursuant to that grant. Any proceeding or order, or any appeal or petition for a writ of certiorari pertaining solely to any plan of allocation and/or application for attorneys' fees, costs or expenses, shall not in any way delay or preclude the Judgment from becoming Final.

(m) "Gross Settlement Fund" means the Settlement Amount plus any income or interest earned thereon, while held by the Escrow Agent.

(n) "Individual Defendants" means Eugene N. Melnyk, Brian H. Crombie, John R. Miszuk, Kenneth Howling, and Rolf Reininghaus.

(o) "Judgment" means the proposed judgment to be entered approving the Settlement substantially in the form attached hereto as Exhibit B.

(p) "Net Settlement Fund" has the meaning defined in ¶ 5 herein.

(q) "Notice" means the Notice of Pendency of Class Action and Proposed Settlement, Motion for Attorneys' Fees and Settlement Fairness Hearing, which is to be sent to members of the Class substantially in the form attached hereto as Exhibit 1 to Exhibit A.

(r) "Order for Notice and Hearing" means the proposed order preliminarily approving the Settlement and directing notice thereof to the Class substantially in the form attached hereto as Exhibit A.

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(s) “Plaintiffs’ Counsel” means Plaintiffs’ Co-Lead Counsel and all other counsel representing Class Member Plaintiffs in the Action.

(t) “Plaintiffs’ Co-Lead Counsel” means the law firms of Bernstein Litowitz Berger & Grossmann LLP (“Bernstein Litowitz”) and Milberg LLP (“Milberg”).

(u) “Proof of Claim” means the proposed proof of claim and release to be executed by Class Members substantially in the form attached hereto as Exhibit 2 to Exhibit A.

(v) “Publication Notice” means the Summary Notice of Pendency of Class Action, Proposed Settlement and Settlement Hearing for publication substantially in the form attached as Exhibit 3 to Exhibit A.

(w) “Released Parties” means Biovail and the Individual Defendants, their past or present subsidiaries, parents, successors and predecessors, officers, directors, agents, employees, attorneys, insurers, advisors, and investment advisors, and any person, firm, trust, corporation, officer, director or other individual or entity in which any Defendant has a controlling interest or which is related to or affiliated with any of the Defendants, and the legal representatives, heirs, successors in interest or assigns of any of the Defendants.

(x) “Settled Claims” means any and all claims, debts, demands, rights or causes of action or liabilities whatsoever (including, but not limited to, any claims for damages, interest, attorneys’ fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or un-accrued, liquidated or un-liquidated, at law or in equity, matured or un-matured, whether class or individual in nature, including both known claims and Unknown Claims (as defined herein), (i) that have been asserted in this Action by the Class Members or any of them against any of the Released Parties,

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or (ii) that could have been asserted in any forum by the Class Members or any of them on behalf of the Class against any of the Released Parties which arise out of, are related to, or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Complaint and which relate to the purchase, sale or ownership of the securities of Biovail during the Class Period.

(y) “Settled Defendants’ Claims” means any and all claims, rights or causes of action or liabilities whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including both known claims and Unknown Claims (as defined herein), that have been or could have been asserted in the Action or any forum by any or all of the Released Parties against any of the Lead Plaintiffs, any of the other named plaintiffs in these consolidated actions or any of their attorneys, which arise out of or relate in any way to the institution, prosecution, or settlement of the Action (except for claims that arise out of, or are pursuant to, the provisions of this Settlement).

(z) “Settlement” means the settlement contemplated by this Stipulation.

(aa) “Settlement Amount” means the amount specified in ¶ 4 herein.

(bb) “Taxes” means collectively (i) any and all taxes, duties and similar charges (including any estimated taxes, withholdings, interest or penalties and interest thereon) arising in any jurisdiction with respect to the income or gains earned by or in respect of the Gross Settlement Fund, including, without limitation, any taxes or tax detriments that may be imposed upon the Defendants or their counsel with respect to any income earned by the Gross Settlement Fund for any period during which the Gross Settlement Fund may be finally determined to not qualify as a Qualified Settlement Fund (within the meaning contemplated in paragraph 5(b) herein) for federal or state income tax purposes or any distribution of any portion of the Gross

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Settlement Fund to Authorized Claimants and other persons entitled hereto pursuant to this Stipulation and (ii) expenses and costs incurred in connection with the taxation of the Gross Settlement Fund (including, without limitation, expenses of tax attorneys and accountants).

(cc) “Unknown Claims” means any and all Settled Claims which any Lead Plaintiff or other Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties, and any Settled Defendants’ Claims which any Defendant does not know or suspect to exist in his or its favor, which if known by him or it might have affected his or its decision(s) with respect to the Settlement. With respect to any and all Settled Claims and Settled Defendants’ Claims, the parties stipulate and agree that upon the Effective Date, the Lead Plaintiffs and the Defendants shall expressly waive, and each other Class Member shall be deemed to have waived, and by operation of the Judgment shall have expressly waived, any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Lead Plaintiffs and Defendants acknowledge, and all other Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Settled Claims and Settled Defendants’ Claims was separately bargained for and was a key element of the Settlement.

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**SCOPE AND EFFECT OF SETTLEMENT**

2. The obligations incurred pursuant to this Stipulation shall be in full and final disposition of the Action and any and all Settled Claims as against all Released Parties and any and all Settled Defendants' Claims.

3. (a) Upon the Effective Date of this Settlement, Lead Plaintiffs and the other members of the Class on behalf of themselves, their heirs, executors, administrators, predecessors, successors and assigns, shall, with respect to each and every Settled Claim, release and forever discharge, and shall forever be enjoined from prosecuting, any Settled Claims against any of the Released Parties.

(b) Upon the Effective Date of this Settlement, each of the Defendants, on behalf of themselves, their heirs, executors, administrators, predecessors, successors and assigns, and the other Released Parties, shall release and forever discharge each and every of the Settled Defendants' Claims, and shall forever be enjoined from prosecuting the Settled Defendants' Claims against any of the Lead Plaintiffs, any of the other named plaintiffs in these consolidated actions and any of their attorneys.

(c) Notwithstanding the provisions of ¶¶ 3(a) and (b) herein, in the event that any of the Released Parties asserts against either or both of the Lead Plaintiffs, any of the other named plaintiffs in these consolidated actions or any of their counsel, any claim that is a Settled Defendants' Claim, then Lead Plaintiff(s), such other named plaintiff(s) or counsel shall be entitled to use and assert such factual matters included within the Settled Claims only against such Released Party in defense of such claim but not for the purposes of affirmatively asserting any claim against any Released Party.

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**THE SETTLEMENT CONSIDERATION**

4. In consideration for the releases and discharges provided for in ¶ 3:

(a) Within thirty (30) days of Preliminary Approval of the Settlement, Biovail shall pay and shall cause the insurers to pay their agreed upon portions of the Settlement Amount, i.e., One Hundred Thirty-Eight Million Dollars (\$138,000,000.00) in cash, either by wire transfer or check, to the Escrow Agent, as agent for the benefit of Lead Plaintiffs and the other members of the Class.

(b) In addition, within six months after the Effective Date, Defendant Biovail will adopt the corporate governance enhancements described in Section A of Exhibit C to this Stipulation, and Defendant Biovail has agreed to maintain the corporate governance enhancements described in Section B of Exhibit C.

5. (a) The Gross Settlement Fund, net of any Taxes, shall be used to pay (i) the Notice and Administration Costs referred to in ¶ 7 herein, (ii) the attorneys' fee and expense award referred to in ¶ 8 herein, and (iii) the remaining administration expenses referred to in ¶ 9 herein. Additionally, Taxes shall be paid out of the Gross Settlement Fund, shall be considered to be a cost of administration of the Settlement and shall be timely paid by the Escrow Agent without prior Order of the Court.

(b) The balance of the Gross Settlement Fund after the above payments shall be the "Net Settlement Fund." The Net Settlement Fund shall be distributed to the Authorized Claimants as provided in ¶¶ 10-12 herein, subject to the obligation, to the extent required by law, to withhold from any distributions to Authorized Claimants and other persons entitled thereto pursuant to this Stipulation any funds necessary to pay Taxes including the establishment of adequate reserves for Taxes as well as any amount that may be required to be withheld under

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United States Treasury Reg. 1.468B-1(l)(2) or otherwise under applicable law in respect of such distributions. Further, the Released Parties, Lead Plaintiffs and their respective counsel shall be indemnified and held harmless by the Escrow Account up to the amount in the Escrow Account for Taxes (including, without limitation, Taxes payable by reason of any such indemnification payments). Any sums required to be held in escrow hereunder shall be held by Bernstein Litowitz, acting as agent for the Class. All funds so held in the Escrow Account shall be deemed to be in the custody of the Court for the benefit of the Class and shall remain subject to the jurisdiction of the Court until such time as the funds shall be distributed pursuant to this Stipulation and/or further order of the Court or the Settlement is terminated as provided herein. The Escrow Agent shall invest any funds held in escrow in short-term United States Agency or Treasury Securities (or a mutual fund invested solely in such instruments), pursuant to instructions from Bernstein Litowitz, acting as agent for the Class, and shall collect and reinvest all interest accrued thereon. The parties hereto agree that the Gross Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of United States Treasury Regulation § 1.468B-1 and that Plaintiffs' Co-Lead Counsel, as administrators of the Gross Settlement Fund within the meaning of United States Treasury Regulation §1.468B-2(k)(3), shall be responsible for filing tax returns for the Gross Settlement Fund and paying from the Gross Settlement Fund any Taxes owed with respect to the Gross Settlement Fund. The parties hereto agree that the Gross Settlement Fund shall be treated as a Qualified Settlement Fund from the earliest date possible, and agree to any relation-back election required to treat the Gross Settlement Fund as a Qualified Settlement Fund from the earliest date possible. Counsel for Defendants agree to provide promptly to the Escrow Agent the statement described in United States Treasury Regulation § 1.468B-3(e).

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## ADMINISTRATION

6. The Claims Administrator shall administer the Settlement for the benefit of the Class, subject to the jurisdiction of the Court. Except as stated in ¶ 14 herein, Defendants shall have no responsibility for the administration of the Settlement and shall have no liability to the Class in connection with such administration. In particular, the Defendants, Released Parties and their respective counsel have no responsibility for or liability whatsoever with respect to (a) acts, omissions or determinations of Plaintiffs' Co-Lead Counsel, the Claims Administrator or the Escrow Agent in connection with the administration of the Gross Settlement Fund or otherwise; (b) the management, investment or distribution of the Gross Settlement Fund; (c) losses suffered by or fluctuations in the value of the Gross Settlement Fund; (d) payment or withholding of any Taxes, expenses or costs incurred in connection with the taxation of the Gross Settlement Fund or the filing of any related returns; (e) the Plan of Allocation; or (f) the determination, administration, calculation or payment of any claims asserted against the Gross Settlement Fund (with the exception of providing the information referenced in the following sentence). Defendants' Counsel shall cooperate in the administration of the Settlement to the extent reasonably necessary to effectuate its terms, including providing without charge all information from Biovail's transfer records concerning the identity of Class Members and their transactions.

7. Plaintiffs' Co-Lead Counsel may pay up to \$500,000 from the Settlement Amount, without further order of the Court, for the reasonable costs and expenses associated with identifying members of the Class and effecting mail Notice and Publication Notice to the Class, and the administration of the Settlement, including, but not limited to, the actual costs of publication, printing and mailing the Notice, reimbursements to nominee owners for forwarding notice to their beneficial owners, and the administrative expenses incurred and fees charged by

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the Claims Administrator in connection with providing notice and processing the submitted claims.

**ATTORNEYS’ FEES AND EXPENSES**

8. As part of their motion for final approval of the Settlement, Plaintiffs’ Co-Lead Counsel will apply to the Court for an award from the Gross Settlement Fund of attorneys’ fees and reimbursement of expenses, including the fees of any experts or consultants incurred in connection with prosecuting the Action. Such amounts as are awarded by the Court shall be payable from the Gross Settlement Fund to Plaintiffs’ Co-Lead Counsel immediately upon award, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, collateral attack on the Settlement or any part thereof, subject to Plaintiffs’ Co-Lead Counsel’s joint and several liability and obligation to make appropriate refunds or repayments to the Gross Settlement Fund plus accrued interest at the same net rate as is earned by the Gross Settlement Fund, if and when, as a result of any appeal and/or further proceedings on remand, successful collateral attack, or for any other reason, the Settlement is terminated or the fee or cost award is reduced or reversed. Such refunds or repayments will be made within thirty (30) days of any appeal and/or further proceedings on remand, or successful collateral attack, pursuant to which the Settlement is terminated or the fee or cost award is reduced or reversed. Plaintiffs’ Co-Lead Counsel shall allocate the attorneys’ fees amongst Plaintiffs’ Counsel in a manner in which they in good faith believe reflects the contributions of such counsel to the prosecution and settlement of the Action with Defendants. The Released Parties have no liability or obligation to Lead Plaintiffs, the other members of the Class, or Plaintiffs’ Counsel, with respect to any attorneys’ fees, costs or expenses, other than the obligation to pay

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or cause to be paid the Settlement Amount. It is not a condition of this Settlement that any particular attorneys' fees, costs or expenses be awarded by the Court.

**DISTRIBUTION TO AUTHORIZED CLAIMANTS**

9. Plaintiffs' Co-Lead Counsel will apply to the Court, on notice to Defendants' Counsel, for an order (the "Class Distribution Order") approving the Claims Administrator's administrative determinations concerning the acceptance and rejection of the claims submitted herein and approving any fees and expenses not previously applied for, including the fees and expenses of the Claims Administrator, and, if the Effective Date has occurred, directing payment of the Net Settlement Fund to Authorized Claimants.
10. The Claims Administrator shall determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's Recognized Claim (as defined in the Plan of Allocation described in the Notice annexed hereto as Exhibit 1 to Exhibit A, or in such other Plan of Allocation as the Court approves).
11. The Plan of Allocation proposed in the Notice is not a necessary term of this Stipulation and it is not a condition of this Stipulation that any particular Plan of Allocation be approved.
12. Each Authorized Claimant shall be allocated a *pro rata* share of the Net Settlement Fund based on his, her or its Recognized Claim compared to the total Recognized Claims of all accepted claimants. This is not a claims-made settlement. The entire Net Settlement Fund shall be distributed to the Authorized Claimants. The Defendants shall not be entitled to get back any of the Gross Settlement Fund and, prior to the Settlement becoming Final, shall be limited to the termination provisions outlined in ¶ 25. The Defendants shall have no involvement in reviewing or challenging claims.
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## **ADMINISTRATION OF THE SETTLEMENT**

13. Any member of the Class who does not submit a valid Proof of Claim will not be entitled to receive any of the proceeds from the Net Settlement Fund but will otherwise be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment to be entered in the Action and the releases provided for herein, and will be barred from bringing any action against the Released Parties concerning the Settled Claims.

14. The Claims Administrator shall process the Proofs of Claim and, after entry of the Class Distribution Order, distribute the Net Settlement Fund to the Authorized Claimants. Except for their obligation to pay the Settlement Amount as set forth in ¶ 4(a), and to cooperate in the production of information with respect to the identification of Class Members from Biovail's shareholder transfer records, as provided herein, Defendants and their insurers shall have no liability, obligation or responsibility for the administration or disbursement of the Gross or Net Settlement Funds pursuant to the Stipulation. Plaintiffs' Co-Lead Counsel shall have the right, but not the obligation, to advise the Claims Administrator to waive what Plaintiffs' Co-Lead Counsel deem to be formal or technical defects in any Proofs of Claim submitted in the interests of achieving substantial justice.

15. For purposes of determining the extent, if any, to which a Class Member shall be entitled to be treated as an "Authorized Claimant", the following conditions shall apply:

(a) Each Class Member shall be required to submit a Proof of Claim (see attached Exhibit 2 to Exhibit A), supported by such documents as are designated therein, including proof of the transactions claimed and the losses incurred thereon, or such other documents or proof as Plaintiffs' Co-Lead Counsel, in their discretion may deem acceptable;

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(b) All Proofs of Claim must be submitted by the date specified in the Notice, unless such period is extended by Order of the Court. Any Class Member who fails to submit a Proof of Claim by such date shall be forever barred from receiving any payment pursuant to this Stipulation (unless, by Order of the Court, a later submitted Proof of Claim by such Class Member is approved), but shall in all other respects be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment to be entered in the Action and the releases provided for herein, and will be barred from bringing any action against the Released Parties concerning the Settled Claims. Provided that it is received before the motion for the Class Distribution Order is filed, a Proof of Claim shall be deemed to have been submitted when posted, if received with a postmark indicated on the envelope and if mailed by first-class mail and addressed in accordance with the instructions thereon. In all other cases, the Proof of Claim shall be deemed to have been submitted when actually received by the Claims Administrator;

(c) Each Proof of Claim shall be submitted to and reviewed by the Claims Administrator, who shall determine in accordance with this Stipulation and the approved Plan of Allocation the extent, if any, to which each claim shall be allowed, subject to review by the Court pursuant to subparagraph (e) below;

(d) Proofs of Claim that do not meet the submission requirements may be rejected. Prior to rejection of a Proof of Claim, the Claims Administrator shall communicate with the claimant in order to attempt to remedy the curable deficiencies in the Proof of Claim submitted. The Claims Administrator shall notify, in a timely fashion and in writing, each claimant whose Proof of Claim it proposes to reject in whole or in part, setting forth the reasons therefor, and shall indicate in such notice that the claimant whose claim is to be rejected has the

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right to a review by the Court if the claimant so desires and complies with the requirements of subparagraph (e) below;

(e) If any claimant whose claim has been rejected in whole or in part desires to contest such rejection, the claimant must, within twenty (20) days after the date of mailing of the notice required in subparagraph (d) above, serve upon the Claims Administrator a notice and statement of reasons indicating the claimant’s grounds for contesting the rejection along with any supporting documentation, and requesting a review thereof by the Court. If a dispute concerning a claim cannot be otherwise resolved, Plaintiffs’ Co-Lead Counsel shall thereafter present the request for review to the Court; and

(f) The administrative determinations of the Claims Administrator accepting and rejecting claims shall be presented to the Court, on notice to Defendants’ Counsel, for approval by the Court in the Class Distribution Order.

16. Each claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to the claimant’s claim, and the claim will be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to that claimant’s status as a Class Member and the validity and amount of the claimant’s claim. No discovery shall be allowed on the merits of the Action or Settlement in connection with processing of the Proofs of Claim.

17. Payment pursuant to this Settlement shall be deemed final and conclusive against all Class Members. All Class Members whose claims are not approved by the Court shall be barred from participating in distributions from the Net Settlement Fund, but otherwise shall be bound by all of the terms of this Stipulation and the Settlement, including the terms of the

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Judgment to be entered in the Action and the releases provided for herein, and will be barred from bringing any action against the Released Parties concerning the Settled Claims.

18. All proceedings with respect to the administration, processing and determination of claims described by ¶ 15 of this Stipulation and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of claims, shall be subject to the jurisdiction of the Court.

19. The Net Settlement Fund shall be distributed to Authorized Claimants by the Claims Administrator after the Effective Date on notice to Defendants’ Counsel pursuant to Order of the Court.

**TERMS OF ORDER FOR NOTICE AND HEARING**

20. Concurrently with their application for preliminary Court approval of the Settlement contemplated by this Stipulation, Plaintiffs’ Co-Lead Counsel and Defendants’ Counsel jointly shall apply to the Court for entry of an Order for Notice and Hearing, substantially in the form annexed hereto as Exhibit A.

**TERMS OF FINAL JUDGMENT**

21. If the Settlement contemplated by this Stipulation is approved by the Court, counsel for the parties shall request that the Court enter a Judgment substantially in the form annexed hereto as Exhibit B.

**OPT-OUT TERMINATION RIGHT**

22. The Defendants may terminate this Settlement if Class Members who in total purchased in excess of ten percent (10%) of the shares of Biovail common stock purchased during the Class Period exclude themselves from the Class. In the event of a termination by the Defendants, this Stipulation shall become null and void and of no further force and effect and the provisions of ¶ 25 shall apply. If the Defendants elect to terminate this Settlement pursuant to

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this paragraph written notice of such termination must be provided to Plaintiffs’ Co-Lead Counsel on or before seven (7) calendar days prior to the Settlement Fairness Hearing. Plaintiffs’ Co-Lead Counsel shall have the right to communicate with Class Members regarding their decisions to opt-out. If a sufficient number of Class Members withdraw their requests for exclusion such that the total number of remaining shares requesting exclusion falls below the ten percent (10%) threshold noted above, Plaintiffs’ Co-Lead Counsel shall so advise Defendants’ Counsel and any notice by Defendants of termination of the Settlement shall automatically and immediately become null and void.

**EFFECTIVE DATE OF SETTLEMENT, WAIVER OR TERMINATION**

23.       The “Effective Date” of Settlement shall be the date when all the following shall have occurred:
- (a)       approval by the Court of the Settlement, following notice to the Class and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure; and

(b)       entry by the Court of a Judgment, substantially in the form set forth in Exhibit B annexed hereto, and the expiration of any time for appeal or review of such Judgment, or, if any appeal is filed and not dismissed, after such Judgment is upheld on appeal in all material respects and is no longer subject to review upon appeal or review by writ of certiorari, or, in the event that the Court enters a judgment in a form other than that provided above (“Alternative Judgment”) and none of the parties hereto elect to terminate this Settlement, the date that such Alternative Judgment becomes final and no longer subject to appeal or review.
24.       Defendants or Lead Plaintiffs shall have the right to terminate the Settlement and thereby this Stipulation by providing written notice of their election to do so (“Termination Notice”) to all other parties hereto within thirty (30) days of: (a) the Court’s declining to enter
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the Order for Notice and Hearing in any material respect; (b) the Court’s refusal to approve this Settlement as set forth in this Stipulation or any material part of it; (c) the Court’s declining to enter the Judgment in any material respect; (d) the date upon which the Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court; or (e) the date upon which an Alternative Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court.

25. Except as otherwise provided herein, in the event the Settlement is terminated, then the parties to this Stipulation shall be restored to their respective status in the Action as of December 7, 2007 and, except as otherwise expressly provided, the parties shall proceed in all respects as if this Stipulation and any related orders had not been entered. Furthermore, the Escrow Agent shall pay from the Escrow Account the sum of (a) an amount equal to that portion of the Settlement Amount previously paid by Biovail and the insurers to the Escrow Agent as agent for the Class; and (b) an amount equal to any interest or other income earned thereon; less the sum of (c) an amount equal to any Taxes paid or due with respect to such income; and (d) an amount equal to costs of administration and notice actually incurred and paid or payable from the Settlement Amount, to Biovail or the insurers (as the case may be). For greater certainty, the amount to be paid to Biovail and each of the insurers will be an amount equal to the sum of each payor’s pro-rata share of (a) and (b) in the preceding sentence, less each payor’s pro-rata share of (c) in the preceding sentence. The amount in (d) shall be treated as a defense cost to be deducted from the payment due to the insurer then responsible for paying or advancing defense costs. Such payments will be made within thirty (30) days of termination. It shall be Defendants’ responsibility to timely notify the Escrow Agent what the pro-rata share of each payor was and which insurer’s payment is to be reduced by the amount in (d).

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**NO ADMISSION OF WRONGDOING**

26. This Stipulation, whether or not consummated or terminated, and any proceedings taken pursuant to it:

(a) shall not be offered or received against any of the Defendants as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by any of the Defendants with respect to the truth of any fact alleged by any of the Plaintiffs or the validity of any claim that has been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, or wrongdoing of any of the Defendants;

(b) shall not be offered or received against any of the Defendants as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by any of the Defendants;

(c) shall not be offered or received against any of the Defendants as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any of the Defendants, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation; provided, however, that if this Stipulation is approved by the Court, the Defendants may refer to it to effectuate the liability protection granted them hereunder;

(d) shall not be construed against any of the Defendants as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; and

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(e) shall not be construed as or received in evidence as an admission, concession or presumption against Lead Plaintiffs or any of the other Class Members that any of their claims are without merit, or that any defenses asserted by the Defendants have any merit, or that damages recoverable under the Complaint would not have exceeded the Gross Settlement Fund.

**MISCELLANEOUS PROVISIONS**

27. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein.

28. Each Defendant contributing to the Settlement Amount warrants as to himself or itself that, as to the payments made by or on behalf of him or it to the Settlement Amount, at the time of such payment that the Defendant made or caused to be made pursuant to ¶ 4 above, he or it was not insolvent, nor will the payment required to be made by or on behalf of him or it render such Defendant insolvent, within the meaning of and/or for the purposes of the United States Bankruptcy Code, including §§ 101 and 547 thereof. This warranty is made by each such Defendant and not by such Defendant’s Counsel.

29. If a case is commenced in respect of any Defendant contributing the Settlement Amount (or any insurer contributing funds to the Settlement Amount on behalf of any Defendant) under Title 11 of the United States Code (Bankruptcy), or a trustee, receiver, conservator, or other fiduciary is appointed under any similar law, and in the event of the entry of a final order of a court of competent jurisdiction determining the transfer of money to the Gross Settlement Fund or any portion thereof by or on behalf of such Defendant to be a preference, voidable transfer, fraudulent transfer or similar transaction and any portion thereof is required to be returned and is in fact returned to such bankrupt Defendant or to the insurer who

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contributed the funds to the Settlement Amount on behalf of the Bankrupt Defendant, and such amount is not promptly deposited to the Gross Settlement Fund by others, then, at the election of Plaintiffs' Co-Lead Counsel, the parties shall jointly move the Court to vacate and set aside the releases given and Judgment entered in favor of the Defendants pursuant to this Stipulation, which releases and Judgment shall be null and void, and the parties shall be restored to their respective positions in the litigation as of December 7, 2007 and an amount equal to the amount computed in ¶ 25 above, less any amount already in fact returned to the bankrupt Defendant or to the insurer who contributed the funds to the Settlement Amount on behalf of the Bankrupt Defendant, shall be paid to Biovail or the insurers (as the case may be).

30. The parties to this Stipulation intend the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by the Class Members against the Released Parties with respect to the Settled Claims. Accordingly, Lead Plaintiffs and Defendants agree not to make any disparaging remarks about each other in any public statements concerning this litigation or the Settlement of this litigation and Lead Plaintiffs and Defendants agree they will not assert in any forum that the litigation was brought by Plaintiffs or defended by Defendants in bad faith or without a reasonable basis. The parties hereto shall assert no claims of any violation of Rule 11 of the Federal Rules of Civil Procedure relating to the prosecution, defense, or settlement of the Action. The parties agree that the amount paid and the other terms of the Settlement were negotiated at arm's-length in good faith by the parties, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.

31. This Stipulation may not be modified or amended, nor may any of its provisions be waived except by a writing signed by all parties hereto or their successors-in-interest.

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32. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

33. The administration and consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of entering orders providing for awards of attorneys' fees and expenses to Plaintiffs' Co-Lead Counsel and enforcing the terms of this Stipulation.

34. The waiver by one party of any breach of this Stipulation by any other party shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

35. This Stipulation and its exhibits constitute the entire agreement among the parties hereto concerning the Settlement of the Action, and no representations, warranties, or inducements have been made by any party hereto concerning this Stipulation and its exhibits other than those contained and memorialized in such documents.

36. This Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

37. This Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto.

38. The construction, interpretation, operation, effect and validity of this Stipulation, and all documents necessary to effectuate it, shall be governed by the internal laws of the State of New York without regard to conflicts of laws, except to the extent that federal law requires that federal law governs.

39. No opinion or advice concerning the tax consequences of the proposed Settlement to individual Class Members is being given or will be given by Plaintiffs' Co-Lead Counsel or counsel for the Defendants; nor is any representation or warranty in this regard made by virtue of

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this Stipulation. Each Class Member’s tax obligations, and the determination thereof, are the sole responsibility of the Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Class Member.

40. This Stipulation shall not be construed more strictly against one party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the parties, it being recognized that it is the result of arm’s-length negotiations between the parties and all parties have contributed substantially and materially to the preparation of this Stipulation.

41. All counsel and any other person executing this Stipulation and any of the exhibits hereto, or any related settlement documents, warrant and represent that they have the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

42. Plaintiffs’ Co-Lead Counsel and Defendants’ Counsel agree to cooperate fully with one another in seeking Court approval of the Order for Notice and Hearing, the Stipulation

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and the Settlement, and to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement.

Dated: April 4, 2008

**BERNSTEIN LITOWITZ BERGER & GROSSMANN  
LLP**

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*Co-Counsel for Defendants*

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IN THE MATTER OF THE SECURITIES ACT,  
R.S.O. 1990, c. S.5, as amended

-and-

IN THE MATTER OF BIOVAIL CORPORATION, EUGENE N. MELNYK,  
BRIAN H. CROMBIE, JOHN R. MISZUK and KENNETH G. HOWLING

SETTLEMENT AGREEMENT BETWEEN  
STAFF OF THE ONTARIO SECURITIES COMMISSION AND  
BIOVAIL CORPORATION

**I. INTRODUCTION**

- 1. By Notice of Hearing and related Statement of Allegations dated March 24, 2008 (the “Notice of Hearing”), the Ontario Securities Commission (the “Commission”) announced that it proposed to hold a hearing to consider whether, pursuant to s. 127 and s. 127.1(1) and (2) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”), it is in the public interest to make certain orders against Biovail Corporation (“Biovail”), Eugene N. Melnyk (“Melnyk”), Brian H. Crombie (“Crombie”), John R. Miszuk (“Miszuk”) and Kenneth G. Howling (“Howling”) as described in the Notice of Hearing.

**II. JOINT SETTLEMENT RECOMMENDATION**

- 2. Staff of the Commission (“Staff”) agree to recommend settlement of the proceeding initiated in respect of Biovail by the Notice of Hearing in accordance with the terms and conditions set out below. Biovail agrees to the settlement on the basis of the facts agreed to in Part IV and consents to the making of an Order in the form attached as Schedule “A”.

**III. ACKNOWLEDGEMENT**

- 3. Biovail admits the facts set out in Part IV of this Settlement Agreement solely for the purposes of this Settlement Agreement. This Settlement Agreement and the
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facts and admissions set out herein are without prejudice to Biovail in any other proceeding including, without limitation, any civil, administrative, quasi-criminal or criminal actions or proceedings that may be brought by any person or agency, whether or not this Settlement Agreement is approved by the Commission. On March 24, 2008 Biovail announced that it had resolved a proceeding issued on that day by the United States Securities and Exchange Commission involving similar issues to those raised in this proceeding.

4. Without limiting the generality of the foregoing, Staff and Biovail expressly agree that this Settlement Agreement and the facts and admissions contained in it are made without prejudice to any other respondent to this proceeding and are not intended to, and do not, bind any other respondent to this proceeding, whether in this proceeding or in any other proceeding. In particular, Staff and Biovail acknowledge that Staff intends to pursue all of the allegations raised in the Notice of Hearing against all of the remaining respondents.

#### **IV. FACTS**

5. Biovail is a reporting issuer in the province of Ontario. The common shares of Biovail are listed and posted for trading on the Toronto Stock Exchange and the New York Stock Exchange.
6. Biovail is Canada's largest publicly traded pharmaceutical company. Since the mid-1990s, Biovail's strategy has been to apply advanced drug-delivery technologies to improve the clinical effectiveness of medicines. The Company's business strategy involves commercializing these products both directly (as is the case in Canada) and through strategic partners. Its main therapeutic areas of focus have historically been central nervous system disorders, pain management and cardiovascular disease.
7. Melnyk was the Chairman of the Board of Directors of Biovail until his resignation from the Board effective June 30, 2007. From December 2001 to October 2004 Melnyk was Chairman and Chief Executive Officer of Biovail. Melnyk resigned as

CEO of Biovail on October 8, 2004. Melnyk first became a Director of Biovail in March of 1994. Melnyk became Executive Chairman of the Board of Biovail in November of 2004 and relinquished that title on June 27, 2006. Melnyk is no longer employed by Biovail and is no longer a director of Biovail.

8. Crombie was the Chief Financial Officer of Biovail from May 2000 to August 2004. He became the Senior Vice-President, Strategic Development in August 2004. Crombie is no longer employed by Biovail.
9. Miszuk was the Vice-President, Controller and Assistant Secretary of Biovail until 2008. He had held the positions of Vice-President and Controller since November of 1997, and the position of Assistant Secretary since June of 2000. Miszuk is no longer employed by Biovail
10. Howling was a Senior Vice-President and held the position of Chief Financial Officer of Biovail in 2006 and 2007. Howling was Biovail's Vice-President, Finance and Corporate Affairs from October 2004 to 2006 and Vice-President, Finance from May 2000 to October 2004. During the Material Time (as defined below), Howling also served as Biovail's head of investor relations.

#### **Overview**

11. The conduct at issue relates to Biovail's annual financial statements for the fiscal year ended December 31, 2001, interim financial statements for Q3 of 2001, Q1, Q2 and Q3 of 2002, and Q1, Q2 and Q3 of 2003, as well as conduct concerning Biovail's disclosure during that time. These time periods are referred to individually as the "Relevant Fiscal Periods" and collectively as the "Material Time".
12. As a reporting issuer in Ontario, Biovail has continuous disclosure obligations pursuant to Part XVIII of the Securities Act, R.S.O. 1990, c. S-5 as amended (the "Act"). Sections 77 and 78 of the Act and related provisions in the Regulations direct that all financial statements filed with the Commission must be prepared in accordance with generally accepted accounting principles ("GAAP") recommended

in the Handbook of the Canadian Institute of Chartered Accountants. Moreover, all financial statements and other material filed with the Commission must not be misleading or untrue or omit a fact which would render them misleading.

13. Biovail filed with the Commission during the Material Time financial statements that, while represented to be prepared in accordance with Canadian GAAP, were, to the extent described herein, not prepared in accordance with Canadian GAAP and therefore such filings were contrary to sections 77 and 78 of the Act. Further, Biovail's representations that the financial statements had been prepared in accordance with Canadian GAAP were, to the extent described below, materially inaccurate, contrary to Ontario securities law and the public interest.
14. The matters that are the subject of this Settlement Agreement fall into five general categories:
  - (a) Biovail's failure to disclose in the documents filed with the Commission which are listed in Schedule "B" hereto (Biovail's "Public Disclosure") the establishment of and its arrangements with Pharmaceutical Technologies Corporation ("PTC");
  - (b) Biovail's improper recognition in its interim financial statements for Q2 of 2003 of revenue relating to a sale of Wellbutrin XL tablets;
  - (c) Biovail's failure to correct and disclose, on a timely basis, a material error in its 2003 financial statements;
  - (d) Biovail's dissemination of incorrect statements in certain press releases in October 2003 and March 2004, in an analyst conference call held on October 3, 2003, and in investor meetings held in October 2003 relating to a truck accident; and
  - (e) Biovail's provision of materially inaccurate information to OSC Staff during a continuous disclosure review conducted in 2003 and 2004 (the "Continuous Disclosure Review").

**Biovail’s Failure to Disclose the Establishment of and its Arrangements with PTC**

**(a) The Establishment and Activities of PTC**

- 15. In 2001, Biovail sponsored the creation of a research and development vehicle, eventually incorporated as PTC. PTC was created to engage in the application of Biovail’s drug delivery technologies to the formulation and development of a portfolio of six products.
- 16. On June 28, 2001, an individual equity investor acquired 100 percent of the common shares of PTC for \$U.S. 1 million. The equity investor acted as a consultant to Biovail from November 1999 to November 2001.
- 17. On June 29, 2001, the equity investor entered into a Share Option Agreement pursuant to which the equity investor granted to Biovail an irrevocable option, exercisable at any time until December 31, 2006 and at Biovail’s sole discretion, to purchase all, but not less than all, of the outstanding common shares of PTC, at a price that increased over time.
- 18. On June 29, 2001, PTC entered into a Product Development and Royalty Agreement (“PDRA”) with Biovail. Under the PDRA, PTC contracted to develop six products owned by Biovail Laboratories Inc. (“BLI”), a Biovail subsidiary, in exchange for the receipt of royalties upon the commercialization and sale of these products. PTC was also granted a license to use certain technology owned by BLI to complete the development of the products.
- 19. During the period June 30, 2001 to December 31, 2002, PTC engaged Biovail and third party developers to carry out research and development activities for the products in question.
- 20. On December 31, 2002, Biovail acquired 100 percent of the outstanding shares of PTC for \$22,600,000, including costs of acquisition. Biovail represents that, through the acquisition of PTC, Biovail extinguished any future milestone or

royalty obligations that Biovail may have had to PTC resulting from the approval and successful commercialization of any of the products.

**(b) Biovail's Failure to Disclose its Arrangements with PTC**

21. During the period from June 2001 to December 2002 an issuer's continuous disclosure obligations included the filing of an Annual Information Form ("AIF") and an annual and interim Management's Discussion & Analysis ("MD&A") accompanying its financial statements. OSC Rule 51-501- "AIF & MD&A" set out the filing and delivery requirements of AIF and MD&A, as well as the form and content of these documents. The AIF was to be prepared in accordance with Form 44-101F1 and the MD&A was to be prepared in accordance with Form 44-101F2.
22. Pursuant to these disclosure requirements, Biovail was required to disclose, among other things, any event occurring during the reporting period that was reasonably expected to have a material effect on Biovail's business, financial condition or results of operations. Biovail filed AIFs and annual and interim MD&As during the Material Time.
23. On November 5, 2001, Biovail filed a Short Form Base Shelf Prospectus with the Canadian provincial securities commissions in relation to the potential sale of up to U.S. \$1.5 billion in any combination of common shares, debt securities and warrants. Subsequently, on November 14, 2001 and March 26, 2002, Biovail filed two Prospectus Supplements for offerings of 12.5 million common shares for U.S. \$587.5 million and U.S. \$400 million of senior subordinated notes, respectively (the "Prospectus Supplements"). All of these filings are referred to collectively as the "Prospectuses". Biovail was required to provide full, true and plain disclosure of material facts in the Prospectuses.
24. The Prospectus Supplement filed on November 14, 2001 incorporated by reference, among other things, the Q3 interim financial statements for the 2001 fiscal year. The Prospectus Supplement filed on March 26, 2002 also incorporated by reference, among other things, its press release dated February 21, 2002 containing

condensed consolidated balance sheets and income statements as at December 31, 2001.

25. The transfer of the development of the products and the related development expenses from Biovail to PTC was an event that was reasonably expected to have a material effect on Biovail's business, financial condition or results of operations and was a material fact.
26. The acquisition of PTC by Biovail was disclosed in a Form 20-F filed on May 20, 2003, which contained the annual and Q4 interim financial statements for its 2002 fiscal year. This was several months after Biovail had purchased PTC.
27. Biovail failed to disclose in its Public Disclosure during the Material Time the existence of PTC and the nature and substance of Biovail's arrangements with PTC. In so doing, Biovail violated the requirements of Ontario securities law and acted in a manner contrary to the public interest.

**Misleading Information Provided to OSC Staff during Continuous Disclosure Review**

28. During the Continuous Disclosure Review, Staff requested information from Biovail in relation to several issues, including the arrangements between Biovail and PTC.
29. A letter to Staff from Biovail dated January 28, 2003 contained the following statement: "[n]one of Biovail, nor any of its affiliates, directors or officers were involved in the formation of [PTC]". This statement was materially inaccurate. By making this statement, Biovail violated Ontario securities law and engaged in conduct contrary to the public interest.

**Improper Revenue Recognition in Q2 2003 Financial Statements — the Wellbutrin XL Bill and Hold Arrangement**

30. On July 29, 2003, Biovail released its financial results for the quarter ending June 30, 2003 (the "Q2 2003 Press Release"). These results were further disseminated in a conference call and webcast held on July 29, 2003 (the "Q2 2003 Analyst



Call”). Biovail subsequently filed financial statements for this quarter with the Commission on August 29, 2003 (the “Q2 2003 Financial Statements”).

31. The Q2 2003 Press Release, Q2 2003 Analyst Call and the Q2 2003 Financial Statements included in Biovail’s revenue for the quarter approximately U.S. \$8 million relating to a sale of Wellbutrin XL (“WXL”) tablets to GlaxoSmithKline PLC (“GSK”) that was purportedly carried out on a “bill-and-hold” basis. Inclusion of this amount in revenue for the quarter increased Biovail’s operating income by approximately U.S. \$4.4 million. The transaction did not meet all of the revenue recognition requirements under Canadian GAAP for a bill and hold arrangement. Accordingly, the inclusion of the revenue in Q2 2003 was improper.

**(a) The Wellbutrin XL Agreement**

32. On October 26, 2001, Biovail (through its subsidiary BLI) entered into a Development, License and Co-Promotion Agreement with GSK. This agreement was modified by a Memorandum of Understanding effective January 1, 2003 (together, these two documents form the “Agreement”). Under the Agreement, Biovail agreed to manufacture and supply all of GSK’s requirements for tablets of WXL.
33. Under the Agreement, Biovail was to supply GSK with WXL tablets at two price points: “trade” prices for tablets which were to be sold to the public, and “sample” prices for tablets which were to be distributed free through physicians in order to promote the tablets in the marketplace.
34. Under the Agreement, the prices were fixed for sample tablets. Prices for trade tablets were based upon a tiered percentage of GSK’s net sales of WXL, and were higher than the sample tablet prices. The Agreement contemplated that Biovail would package the trade tablets at its own expense.
35. At the time of entering into the Agreement, WXL had not been approved by the U.S. Food and Drug Administration, and thus could not be sold to the public.

36. The FDA approved WXL on August 28, 2003. This included approving the form of packaging and labelling for WXL.
- (b) GSK's Purchase Orders**
37. The Agreement did not impose an obligation on Biovail to manufacture WXL prior to FDA approval. The Agreement did not make specific provision, whether through milestone payments or otherwise, for the expenses of pre-launch manufacture of WXL. It also did not specifically contemplate a price at which pills manufactured prior to launch would be sold.
38. During 2002, Biovail and GSK representatives met to discuss the pre-launch manufacture of WXL.
39. In April 2003, GSK sent out an initial order for 30,400,000 WXL tablets, for which it proposed to pay the sample prices provided in the Agreement (the "April Purchase Order"). These tablets were requested for June delivery.
40. Throughout April, May and June 2003, GSK and Biovail representatives continued to discuss the pre-launch manufacture of WXL. The parties agreed that in addition to the April Purchase Order, GSK would place an order for WXL for which it would pay a fixed price.
41. On June 20, 2003, GSK sent Biovail a purchase order requesting 27,090,000 WXL tablets at a fixed price per tablet and a \$1.00 per bottle packaging fee (the "June Purchase Order"). The June Purchase Order replaced the April Purchase Order and therefore also contained an order for 30,400,000 WXL tablets at sample prices.

**(c) The Recognition of Revenue**

42. On June 30, 2003, Biovail invoiced GSK for a total of 18,020,244 WXL tablets at fixed trade prices for a total amount of \$8,073,051.24 (the "June Invoice"). Biovail recorded this latter figure as revenue for its fiscal quarter ending June 30, 2003. The inclusion of this revenue increased Biovail's operating income for the quarter by approximately \$4.4 million, which was a material amount.

**(d) The Purported Bill-And-Hold Arrangement**

43. The June Invoice identified by lot number the specific WXL tablets that it encompassed (the “Specified Tablets”). Biovail represents that, subsequent to June 30, 2003, it maintained the Specified Tablets in a segregated area of its warehouse in Steinbach, Manitoba, and in a designated “site” in its inventory system. Biovail did not, however, supply all of the Specified Tablets to GSK in accordance with the terms reflected on the June Purchase Order and the June Invoice.
44. On August 1, 2003 and August 22, 2003, Biovail shipped some of the Specified Tablets to GSK as sample product. By August 31, 2003 Biovail had replaced most of those Specified Tablets with new WXL tablets (the “Pill Switch”).
45. Biovail ultimately cancelled the June Invoice and re-issued a different invoice, with different lot numbers, reflecting the sale of the new WXL tablets at the fixed prices agreed in the June Purchase Order. Credit notes were issued to prevent double-billing.
46. In July 2003, during the review of Biovail’s Q2 2003 financial statements by Biovail’s auditors, Biovail was questioned about the sale of the Specified Tablets at fixed trade prices. Biovail did not, at that time, inform its auditors that the sale was conducted on a “bill and hold” basis or of the Pill Switch.
47. In early 2004, as part of their 2003 year-end audit, Biovail’s auditors questioned the WXL revenue recorded on June 30. In response, Biovail represented that the WXL arrangement had been conducted on a bill-and-hold basis. Biovail represented that it had reached an agreement with GSK prior to June 30, 2003 that the Specified Tablets would be initially segregated within its warehouse and later shipped to GSK after FDA approval was received. The auditors required Biovail to obtain confirmation of certain particulars of the bill and hold arrangement that had not been memorialized in any contemporaneous documentation. Biovail asked for and received confirmation from GSK in the form required by the auditor.

**(e) Premature Recognition of Revenue**

48. Canadian GAAP provides that in most cases, revenue is not recognized until the passing of possession of goods. In other words, in most cases, revenue should not be recognized until delivery has occurred. Delivery generally is not considered to have occurred unless the product has been delivered to the customer's place of business or to another site specified by the customer.
49. "Bill and hold" transactions, in which delivery of the goods does not immediately take place, provide an exception to general revenue recognition principles. Such transactions, however, must meet very specific accounting requirements.
50. Biovail represents that it recognized the revenue with respect to the sale of the Specified Tablets on June 30, 2003 on a "bill and hold" basis.
51. However, Biovail now acknowledges that the revenue recognition requirements, under Canadian GAAP, for a "bill and hold" arrangement were not met with respect to the Specified Tablets.
52. Accordingly Biovail should not have recognized revenue in its Q2 2003 Financial Statements from the sale of WXL pills pursuant to the purported "bill and hold" arrangement. Biovail therefore violated Ontario securities law and engaged in conduct contrary to the public interest.
53. In its Q2 2003 Press Release and Q2 2003 Analyst Call, Biovail disseminated the financial results which incorporated this improperly recognized revenue. Doing so violated Ontario securities law and was contrary to the public interest.

**Biovail's Failure to Correct and Disclose on a Timely Basis a Material Financial Statement Error — The Foreign Exchange Error**

54. On April 29, 2003 Biovail released its financial results for the quarter ending March 31, 2003 (the "Q1 2003 Press Release"). As set out above, Biovail released its financial results for Q2 2003 on July 29, 2003. On October 30, 2003 Biovail released its financial results for the quarter ending September 30, 2003 (the "Q3

2003 Press Release”). Biovail subsequently filed financial statements for the first quarter on May 30, 2003 (the “Q1 2003 Financial Statements” ), for the second quarter on August 29, 2003 (as defined above, the “Q2 2003 Financial Statements”) and for the third quarter on November 28, 2003 (the “Q3 2003 Financial Statements”).

55. Biovail failed to account properly for an obligation denominated in Canadian dollars in its Q1 2003 Financial Statements, its Q2 2003 Financial Statements and its Q3 2003 Financial Statements. Although questions regarding the proper recording of the Canadian dollar obligation had been raised by Biovail accounting personnel in early July 2003, prior to the release of its Q2 2003 financial results and the filing of the Q2 2003 Financial Statements, Biovail did not disclose the error until it issued on March 3, 2004 its earnings release for the fourth quarter 2003 and the full fiscal year ended December 31, 2003 (the “March 3, 2004 Press Release”).
56. In December of 2002, Biovail, through its subsidiary BLI, acquired the rights to certain drugs. In so doing, Biovail assumed an obligation denominated in Canadian dollars. Since Biovail reported its results in U.S. dollars, it was required to account for this obligation in its financial statements in U.S. dollars. Biovail properly accounted for this obligation in December 2002 when it converted the obligation from Canadian dollars to U.S. dollars using the then current U.S.\$/CAN\$ exchange rate (“FX Rate”).
57. Canadian GAAP requires that any outstanding balance of a foreign currency denominated obligation that is a monetary item be revalued using the FX Rate current at each balance sheet date. At March 31, 2003, however, Biovail, continued to use the FX Rate from December 2002 (the “Error”). Biovail also continued to use the FX Rate from December 2002 on June 30, 2003 and September 30, 2003. The interim financial statements for Q1, Q2 and Q3 of 2003 therefore did not accurately reflect any unrealized exchange losses or gains and the outstanding balance of the obligation.

58. In early July 2003, the Error was raised with Biovail by BLI. Biovail represents that no immediate steps were taken to analyse the issue and confirm whether the appropriate accounting treatment was being used. The interim financial statements issued for Q2 2003 and Q3 2003 continued to record the debt obligation based on the FX Rate as of December 2002.
59. In 2004, in consultation with its auditors, Biovail took steps to file restated interim financial statements for Q1, Q2 and Q3 2003. Biovail disclosed the Error in a Press Release on March 3, 2004 and filed its restated interim financial statements on May 14, 2004. As a result of the restatement, Biovail's net income decreased by U.S. \$5.4 million and \$3.9 million for the Q1 and Q2 2003 Financial Statements respectively, and increased by \$3.1 million for the Q3 2003 Financial Statements.
60. In relation to the Error, Biovail failed to promptly analyze and deal with an issue that had the potential to, and did in fact, have a material effect on their financial statements. This resulted in the material under-reporting of income in one quarter, and the material over-reporting of income in two quarters. Biovail's conduct in this regard was contrary to Ontario securities law and the public interest.

**Biovail's Statements in Press Releases — The Truck Accident**

61. Biovail made statements in press releases issued on October 3, 8 and 30, 2003 and March 3, 2004 that, in a material respect, inaccurately disclosed the implications, for Biovail, of a truck accident that occurred on October 1, 2003.
62. The press releases concerned Biovail's disclosure that its preliminary financial results for its third quarter of 2003 would be below previously issued guidance. Particulars of the statements are outlined below.

**(a) Biovail's Revenue and Earnings Expectations**

63. On February 7, 2003, Biovail publicly disclosed in a press release its revenue and earnings guidance for 2003. The revenue range projected for the third quarter of 2003 was U.S. \$260 million to U.S. \$300 million.

64. Biovail did not achieve its third quarter 2003 revenue and earnings expectations. Rather, in its October 30, 2003 press release, Biovail reported U.S. \$215.3 million in revenue for that quarter.

**(b) The October 3, 2003 Press Release**

65. In a press release issued on October 3, 2003 (the “October 3, 2003 Press Release”), Biovail stated that its preliminary results for its 2003 third quarter “will be below previously issued guidance...Contributing significantly to this unfavourable variance was the loss of revenue and income associated with a significant in-transit shipment loss of Wellbutrin XL as a result of a traffic accident ... Revenue associated with this shipment is in the range of [U.S.] \$10 to [U.S.] \$20 million”.
66. A truck carrying WXL tablets, destined for GSK’s facility in the United States, departed from Biovail’s warehouse in Steinbach, Manitoba on September 30, 2003.
67. The contractual delivery term between Biovail and GSK meant that Biovail would be entitled to recognize the revenue associated with a WXL shipment only when that shipment reached GSK’s facility.
68. The truck carrying the WXL shipment was scheduled to reach GSK’s facility after September 30, 2003. Biovail, therefore, could recognize the revenue associated with the WXL shipment only in its fourth quarter which ended on December 31, 2003.
69. On October 1, 2003, the truck carrying the WXL shipment was involved in an accident. However, given the f.o.b. destination contractual term, the truck accident had no impact on Biovail’s revenue for its 2003 third quarter.
70. The traffic accident referred to in the press release was therefore not a reason for Biovail’s failure to meet its previously issued revenue guidance for the third quarter of 2003.
71. The October 3, 2003 Press Release also stated that “[r]evenue associated with the [WXL] shipment was in the range of [U.S.] \$10 million to [U.S.] \$20 million”.

This statement was incorrect. Regardless of the truck accident, Biovail would not have been able to recognize the associated revenue until its fourth quarter for the reasons outlined above. Further, Biovail's statement that the value of the WXL shipment was U.S. \$10 million to U.S. \$20 million was materially in error. Biovail later stated in a March 3, 2004 press release, discussed below, that the "actual revenue loss" from the shipment on the truck was U.S. \$5 million.

**(c) The October 8, 2003 Press Release**

72. On October 8, 2003, Biovail issued a further press release (the "October 8, 2003 Press Release") which stated that Biovail had recovered the WXL shipment involved in the accident and that 60 percent of the shipment was saleable and might be re-shipped within 30 days. The press release went on to state "Biovail re-confirms that the sales value of these goods is within previously stated guidance".

**(d) The October 30, 2003 Press Release**

73. In its earnings press release for the third quarter of 2003 issued on October 30, 2003 (the "October 30, 2003 Press Release"), Biovail stated that "[a] late third quarter 2003 shipment of Wellbutrin XL involved in an accident outside of Chicago was returned to Biovail's facility on October 8, 2003 for inspection. No revenue was recognized from this shipment in Q3 2003."

**(e) The March 3, 2004 Press Release**

74. The March 3, 2004 Press Release stated that "Biovail announced [on October 3, 2003] that its estimated revenue from Wellbutrin XL for third quarter 2003 would be less than [U.S.] \$10 million partially as a result of the truck accident and that the loss in revenue due to the accident would be in the range of [U.S.] \$10.0 million to [U.S.] \$20.0 million". The March 3, 2004 Press Release further stated that "the actual revenue loss from the accident was determined to be [U.S.] \$5.0 million". In fact, Biovail knew that there was no revenue loss in Q3 2003 as a result of the truck accident.



75. The October 8 and October 30, 2003 Press Releases, and the March 3, 2004 Press Release continued to disseminate the prior information provided by Biovail in its October 3, 2003 Press Release and failed to correct the incorrect information previously provided to the investing public.

**(f) October 3, 2003 Analyst Call**

76. Biovail held a conference call with analysts and a webcast held on October 3, 2003 following the release of the October 3, 2003 Press Release (the “October 3, 2003 Analyst Call”). During the October 3, 2003 Analyst Call, Biovail stated that the accident would have a material negative financial impact on its third quarter revenues. Biovail further stated that the negative impact of the truck accident on revenue would be in the range of U.S. \$15 million to U.S. \$20 million.
77. During the October 3, 2003 Analyst Call, an analyst questioned whether the accident would have fourth quarter rather than third quarter implications. Biovail responded that it was purely a third quarter issue.
78. For the reasons previously described, the above statements were incorrect in a material respect.

**(g) October 2003 Investor Meetings**

79. In October 2003, Biovail held a series of meetings with investors to, among other things, deal with questions surrounding the truck accident and the related announcements that followed (the “Investor Meetings”). The Investor Meetings took place in various cities on October 10, 13, 14 and 15 of 2003. The presentation materials contained similar incorrect statements to those described above.
80. Specifically, the presentation materials included a slide with the heading “Revised third quarter guidance” which stated “Revenue and EPS effected (sic) by three items[:] 1. Wellbutrin XL shipment / traffic accident ...”. Another slide entitled “Wellbutrin XL — timing issue” stated “Impact to Q3 ... Revenue [U.S.] \$10 to [U.S.] \$20 million”.

81. In summary, in the October 3, 2003 Press Release, Biovail made the claim that a truck accident was one of the reasons for Biovail's failure to meet previously issued revenue guidance for the quarter. Also, Biovail disseminated information in its statement that the revenue associated with the WXL shipment was in the range of U.S. \$10 million to U.S. \$20 million. Biovail repeated, or implicitly reinforced these claims during the October 3, 2003 Analyst Call, and in statements made in the October 8, 2003 Press Release, the October 30, 2003 Press Release, the March 3, 2004 Press Release and the Investor Meetings.
82. Biovail should have taken greater care, from the outset, to accurately assess the revenue associated with the product on the truck, and to accurately assess whether, but for the accident, it would have been able to recognize revenue from the sale of the product on the truck in Q3. Upon learning the true state of affairs, Biovail should have clearly disclosed, at the earliest opportunity, that the truck accident was a Q4 issue. Biovail should have clearly disclosed, at the earliest opportunity, the revenue associated with the product on the truck. Biovail should have clearly disclosed, at the earliest opportunity, that previous statements suggesting that the truck accident was one of the reasons for the Q3 earnings miss, and that the revenue associated with the product on the truck was between \$10 million and \$20 million, were incorrect. By failing to do so, Biovail violated Ontario securities law and engaged in conduct contrary to the public interest.

**V. TERMS OF SETTLEMENT**

83. Biovail agrees to the terms of settlement listed below.
84. The Commission will make an order pursuant to section 127(1) and section 127.1 of the Act that:
- (a) The Settlement Agreement be approved;
  - (b) Biovail be reprimanded;

- (c) Biovail pay an administrative penalty of CAN\$5 million, to be paid to or for the benefit of third parties designated by the Commission, pursuant to section 3.4(2) of the Act;
- (d) Biovail pay CAN\$1.5 million in respect of a portion of the costs of the investigation and hearing in relation to his matter;
- (e) Pursuant to a Consent Final Judgment entered in the United States District Court for the Southern District of New York in *Securities and Exchange Commissions v. Biovail Corporation, et al.*, dated March 18, 2008, Biovail has retained a consultant (the "Consultant") to conduct a comprehensive examination and review of Biovail's internal accounting controls, policies and procedures, training, ethics and compliance policies and procedures and other matters (the "Review"). The terms of reference for the Consultant are attached hereto as Schedule "C". The Consultant is required to provide reports from time to time to Biovail's board of directors, audit committee and the United States Securities and Exchange Commission. Biovail will provide Staff with copies of any such reports;
- (f) Biovail shall retain a further consultant acceptable to Staff (the "Ontario Consultant") to examine and report on Biovail's training of its personnel concerning compliance with the financial and other reporting requirements of Ontario securities law (the "Ontario Review"). In conducting the Ontario Review, the Ontario Consultant shall consider the investigations carried out by, and the reports prepared by, the Consultant pursuant to the Review, and may conduct such further investigations as are reasonably necessary. The terms of reference for the Ontario Review are attached hereto as Schedule "D"; and
- (g) Biovail shall use its best efforts to ensure that individuals who are current or former Biovail employees, and whom Staff wishes to interview, or call to testify at the hearing in this proceeding, are made available as Staff may reasonably require. Biovail shall use its best efforts to provide such

additional documentation as Staff may reasonably require for the purposes of this proceeding.

**VI. STAFF COMMITMENT**

85. If the Commission approves this Settlement Agreement, Staff will not commence any proceeding against Biovail under Ontario securities law in relation to the facts alleged in the Notice of Hearing.
86. If the Commission approves this Settlement Agreement and Biovail fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Ontario securities law against Biovail. These proceedings may be based on, but are not limited to, the facts alleged in the Notice of Hearing as well as the breach of the Settlement Agreement.

**VII. PROCEDURE FOR APPROVAL OF SETTLEMENT**

87. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission according to the procedures set out in this Settlement Agreement and the Commission's Rules of Practice.
88. Staff and Biovail agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing, unless the parties agree that additional facts should be submitted at the settlement hearing.
89. If the Commission approves this Settlement Agreement, Biovail agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.
90. If the Commission approves this Settlement Agreement, neither party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.
91. Whether or not the Commission approves this Settlement Agreement, Biovail will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this agreement as the basis for any attack on the Commission's

jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

**PART VIII — DISCLOSURE OF SETTLEMENT AGREEMENT**

92. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule “A” to this Settlement Agreement:
- (a) this Settlement Agreement and all discussions and negotiations between Staff and Biovail before the settlement hearing takes place will be without prejudice to Staff and Biovail; and
  - (b) Staff and Biovail will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Notice of Hearing. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this agreement.
93. Both parties will keep the terms of the Settlement Agreement confidential until the Commission approves the Settlement Agreement. At that time, the parties will no longer have to maintain confidentiality. If the Commission does not approve the Settlement Agreement, both parties must continue to keep the terms of the Settlement Agreement confidential, unless they agree in writing not to do so or if required by law.

**PART IX — EXECUTION OF SETTLEMENT AGREEMENT**

94. The parties may sign separate copies of this agreement. Together, these signed copies will form a binding agreement.
95. A fax copy of any signature will be treated as an original signature.

DATED AT Toronto, this 7<sup>th</sup> day of January, 2009

STAFF OF THE ONTARIO SECURITIES COMMISSION

By: \_\_\_\_\_  
Name: Peggy Dowdall-Logie  
Title: Executive Director

BIOVAIL CORPORATION

By: \_\_\_\_\_  
Name: Wendy Kelley  
Title: General Counsel & Corporate Secretary  
I have authority to bind the corporation

**SCHEDULE — “A” — DRAFT ORDER**  
**IN THE MATTER OF THE SECURITIES ACT,**  
**R.S.O. 1990, c.S.5, as amended**

- and —

**IN THE MATTER OF BIOVAIL CORPORATION, EUGENE N. MELNYK, BRIAN H. CROMBIE, JOHN R. MISZUK and KENNETH G. HOWLING**

**ORDER**  
**(Sections 127 and 127.1)**

**WHEREAS** on March 24, 2008 the Ontario Securities Commission (the “Commission”) issued a Notice of Hearing and related Statement of Allegations (the “Notice of Hearing”) against Biovail Corporation (“Biovail”), Eugene N. Melnyk , Brian H. Crombie, John R. Miszuk and Kenneth G. Howling;

**AND WHEREAS** Biovail has entered into a settlement agreement with Staff of the Commission dated January 7, 2009 (the “Settlement Agreement”) in relation to the matters set out in the Notice of Hearing;

**UPON** reviewing the Notice of Hearing and Settlement Agreement, and upon hearing submissions from counsel for Biovail and for Staff of the Commission;

**AND WHEREAS** the Commission is of the opinion that it is in the public interest to make this Order;

**IT IS HEREBY ORDERED** that:

1. The Settlement Agreement is approved.
2. Biovail is reprimanded.

3. Biovail shall pay an administrative penalty of CAN\$5,000,000.00 to be paid to or for the benefit of third parties designated by the Commission, pursuant to section 3.4(2) of the Act.
4. Biovail shall pay CAN\$1,500,000.00 in respect of a portion of the costs of the investigation and hearing in relation to his matter.
5. Pursuant to a Consent Final Judgment entered in the United States District Court for the Southern District of New York in *Securities and Exchange Commissions v. Biovail Corporation, et al.*, dated March 18, 2008, Biovail has retained a consultant (the “Consultant”) to conduct a comprehensive examination and review of Biovail’s internal accounting controls, policies and procedures, training, ethics and compliance policies and procedures and other matters (the “Review”). The terms of reference for the Consultant are attached to the Settlement Agreement as Schedule “C”. The Consultant is required to provide reports from time to time to Biovail’s board of directors, audit committee and the United States Securities and Exchange Commission. Biovail will provide Staff with copies of any such reports.
6. Biovail shall retain a further consultant acceptable to Staff (the “Ontario Consultant”) to examine and report on Biovail’s training of its personnel concerning compliance with the financial and other reporting requirements of Ontario securities law (the “Ontario Review”). In conducting the Ontario Review, the Ontario Consultant shall consider the investigations carried out by, and the reports prepared by, the Consultant pursuant to the Review, and may conduct such further investigations as are reasonably necessary. The terms of reference for the Ontario Review are attached to the Settlement Agreement as Schedule “D”.
7. Biovail shall use its best efforts to ensure that individuals who are current or former Biovail employees, and whom Staff wishes to interview, or call to testify at the hearing in this proceeding, are made available as Staff may reasonably require. Biovail shall use its best efforts to provide such additional documentation as Staff may reasonably require for the purposes of this proceeding.



Dated at Toronto this            day of January, 2009.

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SCHEDULE “B” — BIOVAIL’S PUBLIC DISCLOSURE

| Document Description                                                 | Content                                               | Filing Date |
|----------------------------------------------------------------------|-------------------------------------------------------|-------------|
| Form 20-F — For the year ended December 31, 2001                     | AIF, Cdn. and U.S. GAAP MD&A and financial statements | 21-May-2002 |
| Form 20-F — For the year ended December 31, 2002                     | AIF, Cdn. and U.S. GAAP MD&A and financial statements | 20-May-2003 |
| Form 6K — For the quarter ended September 30, 2001                   | U.S. GAAP MD&A and financial statements               | 13-Nov-2001 |
| Third Quarter 2001 Interim Report - For Canadian Regulatory Purposes | Cdn. GAAP MD&A and financial statements               | 13-Nov-2001 |
| Form 6K - For the quarter ended March 31, 2002                       | Cdn.. and U.S. GAAP MD&A and financial statements     | 30-May-2002 |
| Form 6K - For the quarter ended June 30, 2002                        | Cdn. and U.S. GAAP MD&A and financial statements      | 29-Aug-2002 |
| Form 6K - For the quarter ended September 30, 2002                   | Cdn. and U.S. GAAP MD&A and financial statements      | 26-Nov-2002 |
| Shelf Prospectus                                                     | —                                                     | 05-Nov-2001 |
| Prospectus Supplement                                                | —                                                     | 14-Nov-2001 |
| Prospectus Supplement                                                | —                                                     | 26-Mar-2002 |

**SCHEDULE “C” — TERMS OF REFERENCE FOR THE CONSULTANT**

5. Defendant agrees to comply with the following undertakings:

A. Retention of a Consultant

i. Biovail shall retain, pay for, and enter into an agreement with an independent consultant (“Consultant”), not unacceptable to the Commission staff, to conduct a comprehensive examination and review of the areas specified below and to make recommendations to Biovail’s board of directors and the Commission staff. The Consultant’s compensation and expenses shall be borne exclusively by Biovail, and shall not be deducted from any amount due under the provisions of the Final Judgment.

ii. The agreement with the Consultant (“Agreement”) shall provide that the Consultant examine:

a. Biovail’s internal accounting controls and its internal controls over financial reporting, provided, however, that the Consultant may, if appropriate, rely on Biovail’s independent accountant’s attestation and report on management’s assessment of the effectiveness of Biovail’s internal control structure and procedures pursuant to Section 404 of the Sarbanes-Oxley Act;

b. The policies, procedures, and effectiveness of Biovail’s regulatory and compliance functions, including the operations of any committees or other mechanisms established to review and approve transactions or for the purpose of preventing the recording of transactions or financial reporting results in a manner that is not in compliance with U.S. generally accepted accounting principles;

c. Biovail’s training of its accounting staff concerning financial reporting and U.S. generally accepted accounting principles;

d. Biovail’s ethics and compliance policies, including the adequacy and effectiveness of any whistleblower procedures designed to allow employees and others to report confidentially matters that may bear on Biovail’s financial reporting obligations;

e. Biovail’s records management and retention policies and procedures, including without limitation such procedures with respect to e-mail and other electronically stored information;

f. The functioning of Biovail’s audit committee, including

the audit committee’s policies and procedures and the methods for the selection of its members;

- g. Biovail’s policies and procedures with respect to compliance with Rule 302(b) of Regulation S-T;
- h. Biovail’s investor relations and public affairs functions, including policies and procedures designed to enhance the quality and accuracy of Biovail’s press releases, investor conference calls, and other similar public disclosures;
- i. Biovail’s policies and procedures concerning its communications with its outside auditors.

B. Consultant’s Reporting Obligations

i. The Consultant shall issue a report to Biovail’s board of directors, its audit committee, and to the Commission staff within three months of appointment, provided however, that the Consultant may seek to extend the period of review for one additional three-month term by requesting such an extension from the Commission’s staff. The Commission’s staff, after consultation with Biovail, shall have discretion to grant such extension for the period requested if deemed reasonable and warranted.

ii. The Consultant’s report shall address the Consultant’s review of the areas specified in paragraph 5.A.ii above and shall include a description of the review performed, the conclusions reached, the Consultant’s recommendations for any changes or improvements to Biovail’s policies and procedures as the Consultant reasonably deems necessary to conform to the law and best practices, and a procedure for implementing the recommended changes or improvements.

iii. Biovail shall adopt all recommendations contained in the Consultant’s report, provided, however, that within forty-five days of its receipt of the report, Biovail shall in writing advise the Consultant and the Commission staff of any recommendation that it considers to be unnecessary or inappropriate. With respect to any recommendation that Biovail considers unnecessary or inappropriate, Biovail need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure, or system designed to achieve the same objective or purpose.

iv. As to any recommendations of the Consultant with respect to which Biovail and the Consultant do not agree, such parties shall attempt in good faith to

reach an agreement within ninety days of the issuance of the Consultant’s report. In the event Biovail and the Consultant are unable to agree on an alternative proposal, Biovail shall abide by the determinations of the Consultant.

v. Biovail shall retain the Consultant for a period of twelve months from the date of appointment in accordance with paragraph 5.C below. After the Consultant’s recommendations become final pursuant to paragraph 5.B above, the Consultant shall oversee the implementation of such recommendations and provide a report to Biovail’s board of directors, its audit committee, and to the Commission staff twelve months after appointment concerning the progress of the implementation. If, at the conclusion of this twelve-month period, less than all the recommendations of the consultant (to the extent deemed significant by the Commission staff) have been substantially implemented for at least two successive fiscal quarters, the Commission staff may, in its discretion, direct Biovail to extend the Consultant’s term of appointment until such time as all recommendations (to the extent deemed significant by the Commission staff) have been substantially implemented for at least two successive fiscal quarters.

vi. In addition to the reports identified above, the Consultant shall provide Biovail’s board of directors, its audit committee, and the Commission staff with such documents or other information concerning the areas specified in paragraph 5.A.ii above as any of them may request during the pendency or at the conclusion of the review.

C. Terms of Consultant’s Retention

i. Within forty-five days after the date of entry of the Final Judgment, Biovail will submit to the Commission staff a proposal setting forth the identity, qualifications, and proposed terms of retention of the Consultant. The Commission staff, within thirty days of such notice, will either (a) deem Biovail’s choice of Consultant and proposed terms of retention not unacceptable or (b) require Biovail to propose an alternative Consultant and/or revised proposed terms of retention within fifteen days. This process will continue, as necessary, until the proposed Consultant and retention terms are not unacceptable to the Commission staff.

ii. The Consultant shall have reasonable access to all of Biovail’s books and records and the ability to meet privately with Biovail’s personnel. Biovail shall

instruct and otherwise encourage its officers, directors, and employees to cooperate fully with the review conducted by the Consultant, and inform its officers, directors, and employees that failure to cooperate with the review may be grounds for dismissal, other disciplinary actions, or other appropriate actions.

iii. The Consultant shall have the right, as reasonable and necessary in his or her judgment, to retain, at Biovail’s expense, attorneys, accountants, and other persons or firms, other than officers, directors, or employees of Biovail, to assist in the discharge of the Consultant’s obligations. Biovail shall pay all reasonable fees and expenses (as reasonably documented) of any persons or firms retained by the Consultant.

iv. The Consultant shall make and keep notes of interviews conducted, and keep a copy of documents gathered, in connection with the performance of his or her responsibilities, and require all persons and firms retained to assist the Consultant to do so as well.

iv. If the Consultant determines that he or she has a conflict with respect to one or more of the areas described in paragraph 5.A.ii above, he or she shall delegate his or her responsibilities with respect to that subject to a person who is chosen by the Consultant and who is not unacceptable to the Commission staff.

vi. For the period of engagement and for a period of two years from completion of the engagement, the Consultant shall not enter into any employment, consultant, attorney-client, auditing, or other professional relationship with Biovail, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such, and shall require that any firm with which the Consultant is affiliated or of which the Consultant is a member, or any person engaged to assist the Consultant in performance of the Consultant’s duties under the Final Judgment not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing, or other professional relationship with Biovail, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

**SCHEDULE “D” — TERMS OF REFERENCE FOR  
THE ONTARIO REVIEW**

- A.     Retention of the Ontario Consultant
- i.       The Ontario Consultant’s compensation and expenses shall be borne exclusively by Biovail.
- B.     The Ontario Consultant’s Reporting Obligations
- i.       The Ontario Consultant shall issue a report to Biovail’s board of directors, its audit committee, and to Staff within three months of appointment, provided however, that the Ontario Consultant may seek to extend the period of review for one additional three-month term by requesting such an extension from Staff. Staff, after consultation with Biovail, shall have discretion to grant such extension for the period requested if deemed reasonable and warranted.
- ii.      The Ontario Consultant’s report shall address the Ontario Consultant’s review of the areas specified in paragraph 84(f) of the Settlement Agreement and shall include a description of the review performed, the conclusions reached, the Ontario Consultant’s recommendations for any changes or improvements to Biovail’s policies and procedures as the Ontario Consultant reasonably deems necessary to conform to the law and best practices, and a procedure for implementing the recommended changes or improvements.
- iii.     Biovail shall adopt all recommendations contained in the Ontario Consultant’s report, provided, however, that within forty-five days of its receipt of the report, Biovail shall in writing advise the Ontario Consultant and Staff of any recommendation that it considers to be unnecessary or inappropriate. With respect to any recommendation that Biovail considers unnecessary or inappropriate, Biovail need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure, or system designed to achieve the same objective or purpose.

- iv. As to any recommendations of the Ontario Consultant with respect to which Biovail and the Ontario Consultant do not agree, such parties shall attempt in good faith to reach an agreement within ninety days of the issuance of the Ontario Consultant's report. In the event Biovail and the Ontario Consultant are unable to agree on an alternative proposal, Biovail shall abide by the determinations of the Ontario Consultant.
- v. Biovail shall retain the Ontario Consultant for a period of twelve months from the date of appointment. After the Ontario Consultant's recommendations become final pursuant to paragraph iv above, the Ontario Consultant shall oversee the implementation of such recommendations and provide a report to Biovail's board of directors, its audit committee, and to Staff twelve months after appointment concerning the progress of the implementation. If, at the conclusion of this twelve-month period, less than all the recommendations of the consultant (to the extent deemed significant by Staff) have been substantially implemented for at least two successive fiscal quarters, Staff may, in its discretion, direct Biovail to extend the Ontario Consultant's term of appointment until such time as all recommendations (to the extent deemed significant by Staff) have been substantially implemented for at least two successive fiscal quarters.
- vi. In addition to the reports identified above, the Ontario Consultant shall provide Biovail's board of directors, its audit committee, and Staff with such documents or other information concerning the areas specified in paragraph 84(f) of the Settlement Agreement as any of them may request during the pendency or at the conclusion of the review.

C. Terms of the Ontario Consultant's Retention

- i. Within forty-five days after the approval of the Settlement Agreement, Biovail will submit to Staff a proposal setting forth the identity, qualifications, and proposed terms of retention of the Ontario Consultant. Staff, within thirty days of such notice, will either (a) deem Biovail's choice of Ontario Consultant and proposed terms of retention not unacceptable or



(b) require Biovail to propose an alternative Ontario Consultant and/or revised proposed terms of retention within fifteen days. This process will continue, as necessary, until the proposed Ontario Consultant and retention terms are not unacceptable to Staff.

- ii. The Ontario Consultant shall have reasonable access to all of Biovail's books and records and the ability to meet privately with Biovail's personnel. Biovail shall instruct and otherwise encourage its officers, directors, and employees to cooperate fully with the review conducted by the Ontario Consultant, and inform its officers, directors, and employees that failure to cooperate with the Ontario Review may be grounds for dismissal, other disciplinary actions, or other appropriate actions.
- iii. The Ontario Consultant shall have the right, as reasonable and necessary in his or her judgment, to retain, at Biovail's expense, lawyers, accountants, and other persons or firms, other than officers, directors, or employees of Biovail, to assist in the discharge of the Ontario Consultant's obligations. Biovail shall pay all reasonable fees and expenses (as reasonably documented) of any persons or firms retained by the Ontario Consultant.
- iv. The Ontario Consultant shall make and keep notes of interviews conducted, and keep a copy of documents gathered, in connection with the performance of his or her responsibilities, and require all persons and firms retained to assist the Ontario Consultant to do so as well.

UNITED STATES DISTRICT COURT SOUTHERN  
DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE  
COMMISSION,

08 Civ.  
ECF CASE

Plaintiff,

v.

BIOVAIL CORPORATION, et al.,

Defendants.

FINAL JUDGMENT AS TO DEFENDANT

BIOVAIL CORPORATION

The Securities and Exchange Commission having filed a Complaint and Defendant Biovail having entered a general appearance; consented to the Court’s jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendant and Defendant’s agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) [ 15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate

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commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud:
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant and Defendant’s agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the “Securities Act”) [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements

made, in light of the circumstances under which they were made, not misleading; or

- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

### III.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, and 13a-16 [17 CFR §§ 240.12b-20, 240.13a-1, and 240.13a-16] by, directly or indirectly:

- (a) failing to file with or furnish to the Commission any report required to be filed or furnished to the Commission pursuant to Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)], and the rules and regulations promulgated thereunder; or
- (b) filing with or furnishing to the Commission a report required to be filed with or furnished to the Commission pursuant to Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and the rules and regulations promulgated thereunder that: (1) contains an untrue statement of material fact; (2) fails to include, in addition to the information required to be stated in such report, such further material information as may be necessary to make the required statements, in light of the circumstances

under which they are made, not misleading; or (3) fails to disclose any information required to be disclosed therein.

#### IV.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)] by, directly or indirectly:

- (a) failing to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected the transactions and dispositions of its assets; and
- (b) failing to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that:
  - i. transactions were executed in accordance with management's general or specific authorization;
  - ii. transactions were recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and to maintain accountability for assets;

iii. access to assets was permitted only in accordance with management's general or specific authorization; and

iv. the recorded accountability for assets was compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any differences.

**V.**

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Rule 302(b) of Regulation S-T [17 CFR § 232.302(b)] by, directly or indirectly, failing to retain for a period of five years and produce to the Commission staff upon request manually signed signature pages or other documents authenticating, acknowledging, or otherwise adopting the signatures that appear in typed form within its electronically filed annual reports on Form 20-F.

**VI.**

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant shall disgorge \$1, representing profits gained as a result of the conduct alleged in the Complaint, and pay a civil penalty in the amount of \$10 million pursuant to Section 20(d) of the Securities Act [ 15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [ 15 U.S.C. § 78u(d)(3)]. Defendant shall satisfy this obligation by paying a total of \$10,000,001 within ten business days of the entry of this Final Judgment to the Clerk of this Court by means of a certified check, bank cashier's check, or United States postal money order payable to the Clerk of the Court, together

with a cover letter identifying Biovail Corporation as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. Defendant shall simultaneously transmit photocopies of such payment and letter to the Commission’s counsel in this action, Robert J. Keyes, U.S. Securities and Exchange Commission. New York Regional Office, 3 World Financial Center. Room 400, New York, New York 10281-1022. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Defendant. The Clerk shall deposit the funds into an interest bearing account with the Court Registry Investment System (“CRIS”). These funds, together with any interest and income earned thereon (collectively, the “Fund”), shall be held in the interest bearing account until further order of the Court. In accordance with 28 U.S.C. § 1914 and the guidelines set by the Director of the Administrative Office of the United States Courts, the Clerk is directed, without further order of this Court, to deduct from the income earned on the money in the Fund a fee equal to ten percent of the income earned on the Fund. Such fee shall not exceed that authorized by the Judicial Conference of the United States. Defendant shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

The Commission may by motion propose a plan to distribute the Fund subject to the Court’s approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this Judgment shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Defendant shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based

on Defendant’s payment of disgorgement in this action, argue that it is entitled to, nor shall it further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Defendant’s payment of a civil penalty in this action (“Penalty Offset”). If the court in any Related Investor Action grants such a Penalty Offset, Defendant shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission’s counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this Judgment. For purposes of this paragraph, a “Related Investor Action” means a private damages action brought against Defendant by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

VII.

**IT IS ORDERED, ADJUDGED, AND DECREED** that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

VIII.

**IT IS ORDERED, ADJUDGED, AND DECREED** that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

IX.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.



**CONSENT OF DEFENDANT BIOVAIL CORPORATION**

1. Defendant Biovail Corporation (“Defendant”) waives service of a summons and the complaint in this action, enters a general appearance, and admits the Court’s jurisdiction over Defendant and over the subject matter of this action.
  2. Without admitting or denying the allegations of the complaint (except as to personal and subject matter jurisdiction, which Defendant admits), Defendant hereby consents to the entry of the final Judgment in the form attached hereto (the “Final Judgment”) and incorporated by reference herein, that, among other things:
    - A. permanently restrains and enjoins Defendant from violation of Section 17(a) of the Securities Act of 1933 ( “Securities Act”) [15 U.S.C. § 77q(a)], Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Securities Exchange Act of 1934 ( “Exchange Act”) [15 U.S.C. §§ 78j(b), 78m(a), 78m(b)(2)(A), and 78m(b)(2)(B)] and Rules 10b-5, 12b-20, 13a-1, and 13a-16, and Rule 302(b) of Regulation S-T [17 C.F.R. §§ 240.10b-5, 240.12b-20, 240.13a-1, 240.13a-16, and 232.302(b)];
    - B. orders Defendant to pay disgorgement in the amount of \$1;
    - C. orders Defendant to pay a civil penalty in the amount of \$10 million pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [ 15 U.S.C. § 78u(d)(3)]; and
    - D. orders Defendant to comply with the undertakings and agreements set forth in this Consent.
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3. Defendant acknowledges that the civil penalty paid pursuant to the Final Judgment may be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund distribution is made, the civil penalty shall be treated as a penalty paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Defendant agrees that it shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendant's payment of disgorgement in this action, argue that it is entitled to, nor shall it further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Defendant's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Defendant agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this action. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Defendant by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

4. Defendant agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any civil penalty amounts that Defendant pays pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors. Defendant further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any

federal, state, or local tax for any penalty amounts that Defendant pays pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors.

5. Defendant agrees to comply with the following undertakings:

A. Retention of a Consultant

i. Biovail shall retain, pay for, and enter into an agreement with an independent consultant (“Consultant”), not unacceptable to the Commission staff, to conduct a comprehensive examination and review of the areas specified below and to make recommendations to Biovail’s board of directors and the Commission staff. The Consultant’s compensation and expenses shall be borne exclusively by Biovail, and shall not be deducted from any amount due under the provisions of the Final Judgment.

ii. The agreement with the Consultant (“Agreement”) shall provide that the Consultant examine:

a. Biovail’s internal accounting controls and its internal controls over financial reporting, provided, however, that the Consultant may, if appropriate, rely on Biovail’s independent accountant’s attestation and report on management’s assessment of the effectiveness of Biovail’s internal control structure and procedures pursuant to Section 404 of the Sarbanes-Oxley Act;

b. The policies, procedures, and effectiveness of Biovail’s regulatory and compliance functions, including the operations of any committees or other mechanisms established to review and approve transactions or for the purpose of preventing the

- recording of transactions or financial reporting results in a manner that is not in compliance with U.S. generally accepted accounting principles;
- c. Biovail’s training of its accounting staff concerning financial reporting and U.S. generally accepted accounting principles;
  - d. Biovail’s ethics and compliance policies, including the adequacy and effectiveness of any whistleblower procedures designed to allow employees and others to report confidentially matters that may bear on Biovail’s financial reporting obligations;
  - e. Biovail’s records management and retention policies and procedures, including without limitation such procedures with respect to e-mail and other electronically stored information;
  - f. The functioning of Biovail’s audit committee, including the audit committee’s policies and procedures and the methods for the selection of its members;
  - g. Biovail’s policies and procedures with respect to compliance with Rule 302(b) of Regulation S-T;
  - h. Biovail’s investor relations and public affairs functions, including policies and procedures designed to enhance the quality and accuracy of Biovail’s press releases, investor conference calls, and other similar public disclosures;
  - i. Biovail’s policies and procedures concerning its communications with its outside auditors.

B. Consultant's Reporting Obligations

i. The Consultant shall issue a report to Biovail's board of directors, its audit committee, and to the Commission staff within three months of appointment, provided however, that the Consultant may seek to extend the period of review for one additional three-month term by requesting such an extension from the Commission's staff. The Commission's staff, after consultation with Biovail, shall have discretion to grant such extension for the period requested if deemed reasonable and warranted.

ii. The Consultant's report shall address the Consultant's review of the areas specified in paragraph 5.A.ii above and shall include a description of the review performed, the conclusions reached, the Consultant's recommendations for any changes or improvements to Biovail's policies and procedures as the Consultant reasonably deems necessary to conform to the law and best practices, and a procedure for implementing the recommended changes or improvements.

iii. Biovail shall adopt all recommendations contained in the Consultant's report, provided, however, that within forty-five days of its receipt of the report, Biovail shall in writing advise the Consultant and the Commission staff of any recommendation that it considers to be unnecessary or inappropriate. With respect to any recommendation that Biovail considers unnecessary or inappropriate, Biovail need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure, or system designed to achieve the same objective or purpose.

iv. As to any recommendations of the Consultant with respect to which Biovail and the Consultant do not agree, such parties shall attempt in good faith to reach an agreement within ninety days of the issuance of the Consultant's report. In the event Biovail and

the Consultant are unable to agree on an alternative proposal, Biovail shall abide by the determinations of the Consultant.

v. Biovail shall retain the Consultant for a period of twelve months from the date of appointment in accordance with paragraph 5.C below. After the Consultant’s recommendations become final pursuant to paragraph 5.B.i above, the Consultant shall oversee the implementation of such recommendations and provide a report to Biovail’s board of directors, its audit committee, and to the Commission staff twelve months after appointment concerning the progress of the implementation. If, at the conclusion of this twelve-month period, less than all the recommendations of the consultant (to the extent deemed significant by the Commission staff) have been substantially implemented for at least two successive fiscal quarters, the Commission staff may, in its discretion, direct Biovail to extend the Consultant’s term of appointment until such time as all recommendations (to the extent deemed significant by the Commission staff) have been substantially implemented for at least two successive fiscal quarters.

vi. In addition to the reports identified above, the Consultant shall provide Biovail’s board of directors, its audit committee, and the Commission staff with such documents or other information concerning the areas specified in paragraph 5.A.ii above as any of them may request during the pendency or at the conclusion of the review.

C. Terms of Consultant’s Retention

i. Within forty-five days after the date of entry of the Final Judgment, Biovail will submit to the Commission staff a proposal setting forth the identity, qualifications, and proposed terms of retention of the Consultant. The Commission staff, within thirty days of

such notice, will either (a) deem Biovail’s choice of Consultant and proposed terms of retention not unacceptable or (b) require Biovail to propose an alternative Consultant and/or revised proposed terms of retention within fifteen days. This process will continue, as necessary, until the proposed Consultant and retention terms are not unacceptable to the Commission staff.

ii. The Consultant shall have reasonable access to all of Biovail’s books and records and the ability to meet privately with Biovail’s personnel. Biovail shall instruct and otherwise encourage its officers, directors, and employees to cooperate fully with the review conducted by the Consultant, and inform its officers, directors, and employees that failure to cooperate with the review may be grounds for dismissal, other disciplinary actions, or other appropriate actions.

iii. The Consultant shall have the right, as reasonable and necessary in his or her judgment, to retain, at Biovail’s expense, attorneys, accountants, and other persons or firms, other than officers, directors, or employees of Biovail, to assist in the discharge of the Consultant’s obligations. Biovail shall pay all reasonable fees and expenses (as reasonably documented) of any persons or firms retained by the Consultant.

iv. The Consultant shall make and keep notes of interviews conducted, and keep a copy of documents gathered, in connection with the performance of his or her responsibilities, and require all persons and firms retained to assist the Consultant to do so as well.

v. If the Consultant determines that he or she has a conflict with respect to one or more of the areas described in paragraph 5.A.ii above, he or she shall delegate

his or her responsibilities with respect to that subject to a person who is chosen by the Consultant and who is not unacceptable to the Commission staff.

vi. For the period of engagement and for a period of two years from completion of the engagement, the Consultant shall not enter into any employment, consultant, attorney-client, auditing, or other professional relationship with Biovail, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such, and shall require that any firm with which the Consultant is affiliated or of which the Consultant is a member, or any person engaged to assist the Consultant in performance of the Consultant’s duties under the Final Judgment not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing, or other professional relationship with Biovail, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

D. Fees and Expenses of Distribution

If the Commission determines that amounts paid by Biovail under the terms of the Final Judgment shall be distributed to victims of the violations alleged in the Complaint as a Fair Fund under Section 308 of the Sarbanes Oxley Act or otherwise, Biovail shall pay all fees and expenses relating to such distribution, as reasonably documented, and such fees and expenses shall not be deducted from any amount due under the provisions of the Final Judgment or from any earnings of the distribution fund that may accrue to it prior to the distribution, as interest or otherwise.



6. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

7. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the Final Judgment.

8. Defendant enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

9. Defendant agrees that this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

10. Defendant will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

11. Defendant waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Final Judgment.

12. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted against Defendant in this civil proceeding. Defendant acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or

representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court’s entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that it shall not be permitted to contest the factual allegations of the complaint in this action.

13. Defendant understands and agrees to comply with the Commission’s policy “not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegation in the complaint or order for proceedings.” 17 C.F.R. § 202.5. In compliance with this policy, Defendant agrees: (i) not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; and (ii) that upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint. If Defendant breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant’s: (i) testimonial obligations; or (ii) right to take

legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

14. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendant to defend against this action. For these purposes, Defendant agrees that Defendant is not the prevailing party in this action since the parties have reached a good faith settlement.

15. In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Defendant (i) agrees to make its employees available for interviews by Commission staff at such times and places as the staff requests upon reasonable notice, including making available in the Southern District of New York employees located in Canada, Barbados and other locations throughout the world; (ii) will accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) appoints Defendant's undersigned attorney as agent to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waives the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony reimburses Defendant's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v) consents to personal jurisdiction over Defendant in any United States District Court for purposes of enforcing any such subpoena.

16. Defendant agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

17. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

Dated: March 18, 2008 /s/ Wendy A. Kelley  
Biovail Corporation

By: Wendy A. Kelley  
Its: SVP, General Counsel & Corporate Secretary

On March 18, 2008, Wendy Kelley, a person known to me, personally appeared before me and acknowledged executing t e foregoing Consent with full authority to do so on behalf of Biovail Corporation as its SVP, General Counsel & Corporate Secretary.

(Notarized & Signed) Donald Alexander Matheson  
Notary Public  
Donald Alexander Matheson

Approved as to form:

/s/ T. Barry Kingham

T. Barry Kingham, Esq.  
Curtis, Mallet-Prevost, Colt and Mosle LLP  
101 Park Avenue  
New York, NY 10178-0061  
Tel: 212-696-6046  
Attorney for Defendant

**SO ORDERED.**

Dated: March           , 2008  
New York, New York

\_\_\_\_\_  
**UNITED STATES DISTRICT JUDGE**

**CONFIDENTIAL TREATMENT REQUESTED:**

Portions of this Exhibit have been redacted pursuant to a request for confidential treatment under Rule 24b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended. Such redacted portions have been replaced with “{\*\*\*}” in this Exhibit. An unredacted version of this document has been filed separately with the Securities and Exchange Commission along with the request for confidential treatment.

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**J.P.Morgan**

CREDIT AGREEMENT

dated as of

June 9, 2009

among

BIOVAIL CORPORATION,

The Lenders Party Hereto

and

JPMORGAN CHASE BANK, N.A., TORONTO BRANCH

as Administrative Agent

---

J.P. MORGAN SECURITIES INC. and SCOTIA CAPITAL INC.,

as Joint Bookrunners and Joint Lead Arrangers

THE BANK OF NOVA SCOTIA and NATIONAL BANK OF CANADA,

as Syndication Agents

HSBC BANK CANADA and THE TORONTO-DOMINION BANK,

as Documentation Agents

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EXHIBITS:

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- Exhibit B — Form of Borrowing Request
- Exhibit C — Form of BA Equivalent Note
- Exhibit D — Form of Increasing Lender Agreement
- Exhibit E — Form of Augmenting Lender Agreement
- Exhibit F — Form of Compliance Certificate

CREDIT AGREEMENT dated as of June 9, 2009 (as it may be amended or modified from time to time, this “Agreement”), between Biovail Corporation, the LENDERS party hereto, and JPMORGAN CHASE BANK, N.A., TORONTO BRANCH, as Administrative Agent.

The parties hereto agree as follows:

**ARTICLE I**

**Definitions**

**SECTION 1.01    Defined Terms.**

As used in this Agreement, the following terms have the meanings specified below:

- “ABR”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.
- “Acquisition” means any acquisition (whether by purchase, merger, consolidation or otherwise) or series of related acquisitions by any Loan Party of (a) all or substantially all or any significant portion of the assets of a Person or division or line of business or a business unit of a Person, or (b) all or substantially all of the Equity Interests of a Person.
- “Additional Guarantor” means any direct or indirect Subsidiary of the Borrower (other than the Significant Subsidiaries in existence as of the Effective Date), which has become a Guarantor by delivering a Loan Guarantee in favour of the Administrative Agent.
- “Adjusted Equity” means, as of the last day of any fiscal quarter of the Borrower, Equity of the Borrower (on a consolidated basis) on such date, plus the sum of all amounts added back to EBITDA in respect of acquired In-Process Research and Development Expenditures (as defined under GAAP) pursuant to clause (a)(iv) of the definition of EBITDA during such fiscal quarter and the previous 7 fiscal quarters of the Borrower, all as determined in accordance with GAAP.
- “Adjusted LIBO Rate” means, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.
- “Administrative Agent” means JPMorgan Chase Bank, N.A., Toronto Branch, in its capacity as administrative agent for the Lenders hereunder.
- “Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Administrative Agent.
- “Affiliate” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.
- “Aggregate Consideration” means, in relation to an Acquisition, the total value of the consideration paid or liability assumed by the purchaser making such Acquisition, less the value of equity issued by the Borrower, (x) which is issued as part of the purchase price for such Acquisition; or (y) the
-

proceeds of which are invested in the Borrower specifically to provide all or part of the purchase price for such Acquisition.

“Alternate Base Rate” means, for any day, a rate per annum equal to the greatest of (a) the U.S. Base Rate in effect on such day and (b) the Federal Funds Effective Rate in effect on such day plus ½ of 1%, and (c) the Adjusted LIBO Rate for a one (1) month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1%, provided that, for the avoidance of doubt, the Adjusted LIBO Rate for any day shall be based on the rate appearing on the Reuters Screen LIBOR01 Page (or on any successor or substitute page) at approximately 11:00 a.m. London time on such day. Any change in the Alternate Base Rate due to a change in the U.S. Base Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the U.S. Base Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate, respectively.

“Applicable Law” means (a) any domestic or foreign statute, law (including common and civil law), treaty, code, ordinance, rule, regulation, restriction or by-law (zoning or otherwise); (b) any judgement, order, writ, injunction, decision, ruling, decree or award; (c) any regulatory policy, practice, guideline or directive; or (d) any franchise, licence, qualification, authorization, consent, exemption, waiver, right, permit or other approval of any Governmental Authority, binding on or affecting the Person referred to in the context in which the term is used or binding on or affecting the property of such Person, in each case whether or not having the force of law.

“Applicable Percentage” means, with respect to any Lender, the percentage of the total Commitments represented by such Lender’s Commitment; provided that in the case of Section 2.19 when a Defaulting Lender shall exist, “Applicable Percentage” shall mean the percentage of the total Commitments (disregarding any Defaulting Lender’s Commitment) represented by such Lender’s Commitment. If the Commitments have terminated or expired, the Applicable Percentages shall be determined based upon the Commitments most recently in effect, giving effect to any assignments and to any Lender’s status as a Defaulting Lender at the time of determination.

“Applicable Rate” means, for any day, with respect to any Borrowing, or with respect to the facility fees payable hereunder, as the case may be, the applicable rate per annum set forth in the table below with respect to the applicable Type of Borrowing applicable at such time or for such period as determined by reference to the Total Debt to EBITDA Ratio most recently certified to the Agent and the Lenders pursuant to Section 5.01(c):

| <u>Level</u> | <u>Total Debt to EBITDA Ratio</u>                                | <u>Prime Rate/<br/>Alternate Base Rate</u> | <u>Adjusted LIBO Rate/<br/>BA stamping fee/<br/>Letters of Credit</u> | <u>Facility Fee Rate</u> |
|--------------|------------------------------------------------------------------|--------------------------------------------|-----------------------------------------------------------------------|--------------------------|
| I            | Less than or equal to 0.50 to 1.00                               | 2.50%                                      | 3.50%                                                                 | 0.50%                    |
| II           | Greater than 0.50 to 1.00 but less than or equal to 1.25 to 1.00 | 3.00%                                      | 4.00%                                                                 | 0.50%                    |
| III          | Greater than 1.25 to 1.00 but less than or equal to 2.00 to 1.00 | 3.50%                                      | 4.50%                                                                 | 0.75%                    |
| IV           | Greater than 2.00 to 1.00                                        | 4.00%                                      | 5.00%                                                                 | 0.75%                    |

Adjustments, if any, to the Applicable Rate shall be effective five Business Days after the Administrative Agent has received the applicable Compliance Certificate; provided that if a Default has occurred and is continuing, the Applicable Rate shall not be reduced until such time as such Default has been cured or waived. If the Borrower fails to deliver the Compliance Certificate to the Administrative Agent at the time required hereunder, then the Applicable Rate shall be the highest Applicable Rate set forth in the foregoing table until five days after such Compliance Certificate is so delivered. Subject to the previous sentence, as of the Effective Date and until receipt by the Administrative Agent of the Borrower's financial statements for its fiscal quarter ending September 30, 2009, the Applicable Rate shall be at Level II Status. In the event that any BA Loan or BA Equivalent Loan is outstanding on the effective date of a change in the Applicable Rate, there shall be a readjustment to the stamping fee initially paid upon the issuance thereof, as follows: the stamping fee relating to the period from the date of issuance to but excluding the effective date shall be based upon the Applicable Rate in effect during such period; and the stamping fee relating to the period from and including the effective date to but excluding the date of maturity of such BA Loan or BA Equivalent Loan shall be based upon the Applicable Rate in effect from and after the effective date; and the Lenders and the Borrower agree to promptly make all such payments as the Administrative Agent may advise are required in order to effect such adjustments.

“Approved Fund” has the meaning assigned to such term in Section 9.04.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.04), and accepted by the Administrative Agent, in the form of Exhibit A or any other form approved by the Administrative Agent.

“Availability Period” means the period from and including the Effective Date to but excluding the earlier of the Maturity Date and the date of termination of the Commitments.

“Available Revolving Commitment” means, with respect to any Lender at any time, the Commitment of such Lender then in effect minus the sum of the outstanding principal amount of such Lender's Revolving Loans and the LC Exposure of such Lender at such time. For greater certainty, a Lender's Swingline Exposure shall not be deducted from such Lender's Commitment in calculating “Available Revolving Commitment”.

“BA Equivalent Loan” means a Loan in Canadian dollars made by a Non-BA Lender to the Borrower in respect of which the Borrower has issued a BA Equivalent Note.

“BA Equivalent Note” means a promissory note payable by the Borrower to a Non-BA Lender in the form of Exhibit C attached hereto.

“BA Lender” means any Lender who accepts and purchases Bankers' Acceptances.

“Bankers' Acceptance” or “BA” means a bill of exchange or a blank non-interest bearing depository bill as defined in the *Depository Bills and Notes Act* (Canada) drawn by the Borrower and accepted by a BA Lender in respect of which the Borrower becomes obligated to pay the face amount thereof to the holder (which may be a third party or such BA Lender) upon maturity.

“Banking Services” means each and any of the following bank services provided to any Loan Party by any Finance Party or any Affiliate of any Finance Party: (a) credit cards for commercial

customers (including, without limitation, “commercial credit cards”, purchasing cards and cardless e-payable services), (b) stored value cards and (c) treasury management services (including, without limitation, controlled disbursement, automated clearinghouse transactions, return items, overdrafts and interstate depository network services).

“Banking Services Obligations” of the Loan Parties means any and all obligations of the Loan Parties to any one or more of the Finance Parties, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor) in connection with Banking Services.

“Bankruptcy Code” means the provisions of title 11 of the United States Code, 11 U.S.C. §§101 et seq.

“Barbados Property” means the property located at Lot B, Welches, Christ Church, Barbados, WI.

“Biovail Insurance” means Biovail Insurance Incorporated, a corporation incorporated pursuant to the laws of Barbados.

“Biovail Insurance Trust Indenture” means the trust indenture dated as of June 25, 2003 entered into between Biovail Insurance, Zurich Insurance Company and others.

“Biovail Lux” means Biovail International S.a.r.l., a corporation incorporated pursuant to the laws of Luxembourg.

“Biovail SA” means Biovail S.A., a corporation incorporated pursuant to the laws of Switzerland.

“Biovail SA Indebtedness” means Indebtedness existing as of the date hereof owing by the Borrower and Biovail Laboratories International SRL to Biovail SA in the maximum aggregate principal amount of \$6,100,000.

“Biovail UK” means Biovail U.K. Ltd., a corporation incorporated pursuant to the laws of the United Kingdom.

“Board” means the Board of Governors of the Federal Reserve System of the United States of America.

“Borrower” means Biovail Corporation, a corporation continued under the federal laws of Canada.

“Borrowing” means (a) Revolving Loans of the same Type, made, converted or continued on the same date and, in the case of BA Loans, BA Equivalent Loans or Eurodollar Loans, as to which a single Interest Period is in effect, (b) a Swingline Loan or (c) the issuance of a Letter of Credit.

“Borrowing Request” means a request by the Borrower for a Revolving Borrowing in accordance with Section 2.03.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in Toronto, Ontario are authorized or required by law to remain closed; provided that, when used in connection with an ABR Loan, the term “Business Day” shall also exclude any day on

which commercial banks in New York City are authorized or required by law to remain closed; provided further that, when used in connection with a Eurodollar Loan, the term “Business Day” shall also exclude any day on which commercial banks in New York City are authorized or required by law to remain closed or on which banks are not open for dealings in dollar deposits in the London interbank market.

“CDOR Rate” means on any day the annual rate of interest which is the rate determined as being the arithmetic average (rounded to the nearest one hundred-thousandth of one percent (with 0.000005 being rounded up)) of the quotations of all institutions listed in respect of the rate for Canadian dollar denominated bankers’ acceptances for the relevant period displayed and identified as such on the “Reuters Screen CDOR Page” (as defined in the International Swap Dealer Association, Inc. definitions, as modified and amended from time to time) as of 10:00 A.M. Toronto, Ontario local time on such day and, if such day is not a Business Day, then on the immediately preceding Business Day (as adjusted by the Administrative Agent after 10:00 A.M. Toronto, Ontario local time to reflect any error in a posted rate of interest or in the posted average annual rate of interest). If such rates are not available on the Reuters Screen CDOR Page on any particular day, then the CDOR Rate on that day shall be calculated as the arithmetic mean (rounded to the nearest one hundred-thousandth of one percent (with 0.000005 being rounded up)) of the rates applicable to Canadian dollar denominated bankers’ acceptances for the relevant period publicly quoted for customers in Canada by those Lenders which are banks listed in Schedule I of the *Bank Act* (Canada) as of 10:00 A.M. Toronto, Ontario local time on such day; or if such day is not a Business Day, then on the immediately preceding Business Day.

“Canada Pension Plan” means the pension benefit plan maintained by the Government of Canada.

“Canadian Benefit Plans” means any plan, fund, program, policy or agreement, whether oral or written, formal or informal, funded or unfunded, insured or uninsured, providing employee benefits, including medical, hospital care, dental, sickness, accident, disability or life insurance, maintained by any Loan Party or any Subsidiary of any Loan Party or under which any Loan Party or any Subsidiary of any Loan Party has any actual or potential liability with respect to any employee or former employee, but shall not include any Canadian Pension Plans or statutory plans with which any Loan Party or its Subsidiaries is required to comply, including the Canada Pension Plan, the Quebec Pension Plan, or plans administered pursuant to applicable provincial health tax, workers’ compensation, workers’ safety and insurance and unemployment insurance legislation.

“Canadian dollars” and “C\$” means dollars in the lawful currency of Canada.

“Canadian Pension Plan” means any pension plan, supplemental pension, retirement savings, deferred profit sharing or other retirement income plan or arrangement of any kind, registered or unregistered, established, maintained or contributed to by a Loan Party or any Subsidiary of a Loan Party for its employees or former employees, but does not include the Canada Pension Plan or the Quebec Pension Plan.

“Capital Lease Obligations” of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

“Change in Control” means (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the *Securities Exchange Act* of 1934 and the rules of the Securities and Exchange Commission thereunder as in effect on the date hereof),



of Equity Interests representing more than 25% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Borrower; (b) occupation of a majority of the seats (other than vacant seats) on the board of directors of the Borrower by Persons who were neither (i) nominated by the board of directors of the Borrower nor (ii) appointed by directors so nominated; or (c) the acquisition of direct or indirect Control of the Borrower by any Person or group.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any Applicable Law, (b) any change in any Applicable Law or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any Applicable Law by any Governmental Authority.

“Class”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans or Swingline Loans.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Collateral” means any and all property or rights owned, leased or operated by a Person covered by the Collateral Documents and any and all other property or rights owned, leased or operated by any Loan Party, now existing or hereafter acquired, that may at any time be or become subject to a security interest or Lien in favour of the Administrative Agent (on behalf of the Lenders, and the Issuing Bank) pursuant to the Collateral Documents in order to secure the Secured Obligations.

“Collateral Documents” means each Security Document (including mortgages), each Control Agreement and each other document granting a Lien upon any of the Collateral as security for payment of the Secured Obligations and “Collateral Document” means any one of them.

“Commitment” means, with respect to each Lender, the commitment of such Lender to make Revolving Loans and to acquire participations in Letters of Credit and Swingline Loans hereunder, expressed as an amount representing the maximum aggregate amount of such Lender’s Revolving Credit Exposure hereunder, as such commitment may be (a) reduced from time to time pursuant to Section 2.09 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.04. The initial amount of each Lender’s Commitment is set forth on Schedule 2.01, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Commitment, as applicable. The initial aggregate amount of the Lenders’ Commitments is \$410,000,000.

“Compliance Certificate” means a certificate of a Financial Officer of the Borrower furnished to the Administrative Agent pursuant to Section 5.01(c).

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“Contracts” means licences of Intellectual Property, manufacturing agreements, joint ventures, marketing contacts, clinical trial contracts, research and development contracts and all other agreements, franchises, leases, easements, servitudes, privileges and other rights acquired from other Persons, as the same may be amended, supplemented, restated or replaced from time to time and when used in relation to a Person, the term “Contracts” shall mean and refer to the Contracts to which such Person is a party or by which it is bound or to which such Person may hereafter become a party or be bound and “Contract” means any one thereof.

† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Control Agreement” means an agreement, in form and substance reasonably satisfactory to the Administrative Agent, among (a) the applicable Loan Party, (b) a financial institution, securities broker or securities intermediary at which such Loan Party maintains a Deposit Account or a Securities Account, and (c) the Administrative Agent, providing for the Administrative Agent to have control over the funds held in such Deposit Account or Securities Account.

“Convertible Notes” means the 5.375% Convertible Senior Unsecured Debentures due August 1, 2014 issued by the Borrower pursuant to the Convertible Notes Indenture and any notes, debentures or similar instruments issued to refinance or otherwise replace such debentures.

“Convertible Notes Indenture” means that certain Indenture to be dated as of June 10, 2009 between the Borrower, as issuer and The Bank of New York Mellon and BNY Trust Company of Canada, as trustees, as the same shall be amended from time to time.

“Cover” shall be effected by paying to the Administrative Agent for the benefit of the Lenders immediately available and freely transferable funds in Canadian dollars in the full amount of outstanding BA Loans and BA Equivalent Loans, which funds shall be held by the Administrative Agent in a collateral account maintained by the Administrative Agent to provide for the payment of such outstanding Loans.

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“Default” means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

“Defaulting Lender” means any Lender, as determined by the Administrative Agent, that has (a) failed to fund any portion of its Loans or participations in Letters of Credit or Swingline Loans within three Business Days of the date required to be funded by it hereunder, (b) notified the Borrower, the Administrative Agent, the Issuing Bank, the Swingline Lender or any other Finance Party in writing that it does not intend to comply with any of its funding obligations under this Agreement or has made a public statement to the effect that it does not intend to comply with its funding obligations under this Agreement, other Loan Documents or under other agreements in which it commits to extend credit, (c) failed, within three Business Days after request by the Administrative Agent, to confirm that it will comply with the terms of this Agreement relating to its obligations to fund prospective Loans and participations in then outstanding Letters of Credit and Swingline Loans, (d) otherwise failed to pay over to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within three Business Days of the date when due, unless the subject of a good faith dispute, or (e) (i) become or is insolvent or has a parent company that has become or is insolvent or (ii) become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or custodian, appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or has a parent company that has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee,

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† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment.

“Deposit Account” has the meaning set forth in Article 9 of the UCC.

“Disclosed Matters” means the actions, suits and proceedings and the environmental matters disclosed in Schedule 3.06.

“dollars”, “\$”, “United States dollars” or “U.S.\$” refers to lawful money of the United States of America.

“Dublin Property” means the property located at Unit 3200, Lake Drive, Citywest Business Campus, Dublin 24, Ireland.

“EBITDA” means, for any period, Net Income for such period plus (a) without duplication and to the extent deducted in determining Net Income for such period, the sum of

(i) Interest Expense for such period,

(ii) income tax expense for such period,

(iii) all amounts attributable to depreciation and amortization expense for such period, and

(iv) any extraordinary non-cash and non-recurring charges for such period (including acquired in process research and development write offs but excluding any loss or charge from any sale, transfer, lease or other disposition of assets during such period),

minus (b) without duplication and to the extent included in Net Income,

(v) any extraordinary non-cash and non-recurring gains, and

(vi) any non-cash items of income for such period,

all calculated for the Borrower and its Subsidiaries on a consolidated basis in accordance with GAAP. Notwithstanding the foregoing, if during any period for which EBITDA is being determined, the Borrower or any of its Subsidiaries shall have consummated any acquisition permitted under Section 6.04 or any sale, transfer, lease or other disposition permitted under Section 6.05(f) of any business or operating unit or group of assets, then, for all purposes of this Agreement, EBITDA shall be determined on a pro forma basis, taking into account the positive historical EBITDA generated by such business or operating unit or group of assets as if such acquisition, sale, transfer, lease or other disposition had been consummated on the first day of such period (for the avoidance of doubt, the determination of EBITDA on a pro forma basis in connection with any acquisition, sale, transfer, lease or other disposition of any business or operating unit or group of assets, shall be computed using the actual positive historical EBITDA generated by such business or operating unit or group of assets, without any adjustment, and shall not be reduced by any negative historical EBITDA of such business or operating unit or group of assets).

“Effective Date” means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 9.02).

“Environmental Laws” means all laws, rules, regulations, codes, guidelines, bulletins, ordinances, orders, orders-in-council, rulings, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the management, release or threatened release of any Hazardous Material or to health and safety matters.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower or any Subsidiary directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, holding, collection, processing, transportation, storage, deposit, abandonment, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release, leakage or spoilage or threatened release, leakage or spoilage of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Environmental Order” means any order, judgment, ruling, variance, decree, publication or declaration of or by any Governmental Authority pursuant to any Environmental Law.

“Environmental Permit” means any authorization, consent, approval, license, permit, concession, certification, exemption or filing by or with any Governmental Authority pursuant to any Environmental Law.

“Equity” means, at any particular time, the amount which would, in accordance with GAAP, be classified upon the consolidated balance sheet of the Borrower at such time as shareholders’ equity of the Borrower.

“Equity Interests” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest.

“Equivalent Amount” means, on any date of determination, with respect to obligations or valuations denominated in one currency (the “first currency”), the amount of another currency (the “second currency”) which would result from the conversion of the relevant amount of the first currency into the second currency at the 12:00 noon rate quoted by Bloomberg on [www.bloomberg.com/markets/currencies/fxc.html](http://www.bloomberg.com/markets/currencies/fxc.html) (Page BOFC or such other page as may replace such page for the purpose of displaying such exchange rates) on such date or, if such date is not a Business Day, on the Business Day immediately preceding such date of determination, or at such other rate as may have been agreed in writing between the Borrower and the Administrative Agent.

“ERISA” means the *Employee Retirement Income Security Act* of 1974, as amended from time to time.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” means (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the existence with respect to any Plan of an “accumulated funding

deficiency” (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by the Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (g) the receipt by the Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

“Eurodollar”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

“Event of Default” has the meaning assigned to such term in Article VII.

“Excluded Account” means any Deposit Account or Securities Account which is inactive.

“Excluded Taxes” means, with respect to the Administrative Agent or any other Finance Party or any other recipient of any payment to be made by or on account of any obligation of a Loan Party hereunder, (a) taxes imposed on or measured by its net income, and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, (b) any branch profits taxes or any similar tax imposed by any jurisdiction in which the Lender is located and (c) in the case of a Foreign Lender (other than (i) an assignee pursuant to a request by the Borrower under Section 2.20(b), (ii) an assignee pursuant to an Assignment and Assumption made when an Event of Default has occurred and is continuing or (iii) any other assignee to the extent that the Borrower has expressly agreed that any withholding tax shall be an Indemnified Tax), any withholding tax that (A) is not imposed or assessed in respect of a Loan that was made on the premise that an exemption from such withholding tax would be available where the exemption is subsequently determined, or alleged by a taxing authority, not to be available and (B) is required by Applicable Law to be withheld or paid in respect of any amount payable hereunder or under any Loan Document to such Foreign Lender at the time such Foreign Lender becomes a party hereto (or designates a new lending office) or is attributable to such Foreign Lender’s failure or inability (other than as a result of a Change in Law) to comply with Section 2.18(e), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from a Loan Party with respect to such withholding tax pursuant to Section 2.18(a). For greater certainty, for purposes of item (c) above, a withholding tax includes any Tax that a Foreign Lender is required to pay pursuant to Part XIII of the ITA.

“Face Amount” means, in respect of a BA or BA Equivalent Note, the amount stated therein to be payable to the holder thereof on its maturity.

“Federal Funds Effective Rate” means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%)

of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

“Finance Parties” means the Administrative Agent, the Lenders, the Swingline Lender and the Issuing Bank and “Finance Party” means any one of the Finance Parties.

“Financial Covenants” means the covenants set out in Section 6.23, Section 6.24 and Section 6.25 hereof.

“Financial Officer” means the chief financial officer, principal accounting officer, treasurer or controller of the Borrower.

“Foreign Lender” means any Lender that is not organized under the laws of the jurisdiction in which the Borrower is resident for tax purposes and that is not otherwise considered or deemed in respect of any amount payable to it hereunder or under any Loan Document to be resident for income tax or withholding tax purposes in the jurisdiction in which the Borrower is resident for tax purposes by application of the laws of that jurisdiction. For purposes of this definition Canada and each Province and Territory thereof shall be deemed to constitute a single jurisdiction and the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“GAAP” means generally accepted accounting principles in the United States of America.

“Governmental Authority” means the government of Canada or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, including any supra-national bodies such as the European Union or the European Central Bank and including a Minister of the Crown, Superintendent of Financial Institutions or other comparable authority or agency.

“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

“Guarantors” means Biovail Americas Corp., BTA Pharmaceuticals, Inc., Biovail Technologies Ltd., Biovail Distribution Corporation, Prestwick Pharmaceuticals, Inc., Biovail Pharmaceuticals LLC, Hythe Property Incorporated, Biovail Holdings International SRL and Biovail Laboratories International SRL and each Additional Guarantor and “Guarantor” means any one of the Guarantors.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

“Hostile Acquisition” means (a) the acquisition of the Equity Interests of a Person through a tender offer or similar solicitation of the owners of Equity Interests of such Person which has not been approved (prior to such acquisition) by the board of directors (or any other applicable governing body) of such Person or by similar action if such Person is not a corporation and (b) any such acquisition as to which such approval has been withdrawn.

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all Guarantees by such Person of Indebtedness of others, (h) all Capital Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (j) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances and BA Equivalent Notes and (k) any other Off-Balance Sheet Liability. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

“Indemnified Taxes” means Taxes other than Excluded Taxes.

“Information Memorandum” means the Offering Memorandum dated June 3, 2009 relating to the Borrower and the Convertible Notes.

“Insolvency Laws” means each of the Bankruptcy Code, the *Bankruptcy and Insolvency Act* (Canada), the *Companies’ Creditors Arrangement Act* (Canada), the *Winding-Up and Restructuring Act* (Canada) and any other applicable state, provincial, territorial or federal bankruptcy, insolvency or receivership laws, each as now and hereafter in effect, any successors to such statutes and any other applicable similar law of any jurisdiction, including any law of any jurisdiction permitting a debtor to obtain a stay or a compromise of the claims of its creditors against it and including any rules and regulations pursuant thereto.

“Intellectual Property” means, individually and collectively, trademarks, trademark rights, service marks, service mark rights, business names, business name rights, trade styles, other business identifiers, trade names, trade name rights, copyrights, patents, patent rights, trade secrets, industrial designs, technology, inventions, know how, internet domain names, licenses, franchises, permits and other intellectual property, including any applications and registrations pertaining thereto and with respect to trademarks, service marks and tradenames, the goodwill of the business symbolized thereby and connected with the use thereof.

“Interest Election Request” means a request by the Borrower to convert or continue a Revolving Borrowing in accordance with Section 2.08.

“Interest Expense” means, with reference to any period, total interest expense (including that attributable to Capital Lease Obligations) of the Borrower and its Subsidiaries for such period with respect to all outstanding Indebtedness of the Borrower and its Subsidiaries (including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing and net costs under Swap Agreements in respect of interest rates to the extent such net costs are allocable to such period in accordance with GAAP), calculated on a consolidated basis for the Borrower and its Subsidiaries for such period in accordance with GAAP.

“Interest Payment Date” means (a) with respect to any ABR Loan or Prime Rate Loan (other than a Swingline Loan), the last day of each of March, June, September and December, (b) with respect to any BA Loan, BA Equivalent Loan or Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Borrowing by way of BAs, BA Equivalent Loans or Eurodollars with an Interest Period of more than three (3) months’ duration, each day prior to the last day of such Interest Period that occurs at intervals of three (3) months’ duration after the first day of such Interest Period, and (c) with respect to any Swingline Loan, the day that such Loan is required to be repaid.

“Interest Period” means (a) with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, two, three or six months thereafter, as the Borrower may elect, and (b) with respect to any Borrowing by way of BAs or BA Equivalent Loans, the period commencing on the date of such Borrowing and ending 30, 60, 90 or 180 days thereafter, subject to availability, as the Borrower may elect; provided, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless, in the case of Eurodollar Borrowings only, such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (ii) any Interest Period pertaining to a Eurodollar Borrowing that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and, in the case of a Revolving Borrowing, thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Issuing Bank” means JPMorgan Chase Bank, N.A., Toronto Branch in its capacity as the issuer of Letters of Credit hereunder, and its successors in such capacity as provided in Section 2.06(i). The Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of the Issuing Bank, in which case the term “Issuing Bank” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

“ITA” means the *Income Tax Act* (Canada), as amended.

“Judgment Currency” has the meaning assigned to such term in Section 9.15(a).

“Judgment Currency Conversion Date” has the meaning assigned to such term in Section 9.15(a).

“LC Disbursement” means a payment made by the Issuing Bank pursuant to a Letter of Credit.



“LC Exposure” means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time plus (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the Borrower at such time. The LC Exposure of any Lender at any time shall be its Applicable Percentage of the total LC Exposure at such time.

“Leased Properties” means each of the properties listed on Schedule 3.05 and “Leased Property” means any one of them.

“Legal Requirement” means with respect to any Person any law, statute, ordinance, decree, requirement, directive, order, judgment, treaty, rule, guideline, bulletin, license, permit, code or regulation having the force of law, or with which it is customary or prudent for a Lender or the Administrative Agent to comply, and any applicable determination, interpretation, ruling, order or decree, of any Governmental Authority or arbitrator, which is legally binding upon the Administrative Agent, any Lender, the Borrower or any Guarantor, whether presently existing or arising in the future, including all Environmental Laws.

“Lenders” means the Persons listed on Schedule 2.01 and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption. Unless the context otherwise requires, the term “Lenders” includes the Swingline Lender.

“Letter of Credit” means any letter of credit issued pursuant to this Agreement.

“LIBO Rate” means, with respect to any Eurodollar Borrowing for any Interest Period, the rate appearing on Page 3750 of the Dow Jones Market Service (or on any successor or substitute page of such Service, or any successor to or substitute for such Service, providing rate quotations comparable to those currently provided on such page of such Service, as determined by the Administrative Agent from time to time for purposes of providing quotations of interest rates applicable to dollar deposits in the London interbank market) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, as the rate for dollar deposits with a maturity comparable to such Interest Period. In the event that such rate is not available at such time for any reason, then the “LIBO Rate” with respect to such Eurodollar Borrowing for such Interest Period shall be the rate at which dollar deposits of \$5,000,000 and for a maturity comparable to such Interest Period are offered by the principal London office of the Administrative Agent in immediately available funds in the London interbank market at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period.

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

“Loans” means the loans made by the Lenders to the Borrower pursuant to this Agreement.

“Loan Documents” means this Agreement, any promissory notes issued pursuant to the Agreement, any Letter of Credit applications, the Collateral Documents, the Loan Guarantees and all other agreements, instruments, security, documents and certificates identified in Section 4.01 executed by or on behalf of any Loan Party and delivered to, or in favour of, the Administrative Agent or any other

Finance Party and including all other pledges, powers of attorney, consents, assignments, contracts, notices, letter of credit agreements and all other written matter whether heretofore, now or hereafter executed by or on behalf of any Loan Party, and delivered to the Administrative Agent or any Lender in connection with the Agreement or the transactions contemplated thereby. Any reference in the Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits or schedules thereto, and all amendments, restatements, supplements or other modifications thereto, and shall refer to the Agreement or such Loan Document as the same may be in effect at any and all times such reference becomes operative.

“Loan Guarantees” means the one or more guarantees to be entered into from time to time by the Guarantors in favour of the Administrative Agent for the benefit of the Finance Parties, each in form and substance satisfactory to the Administrative Agent as the same may be amended, modified, supplemented or replaced from time to time, and pursuant to which the Guarantors shall guarantee the Secured Obligations of the Borrower on a full recourse basis.

“Loan Parties” means (i) the Borrower, (ii) the Guarantors, (iii) any other Significant Subsidiaries in existence as of the Effective Date, (iv) any additional Significant Subsidiary or other Person (including, without limitation, any Subsidiary existing as of the Effective Date), in each case, that becomes a Guarantor, and (v) the successors and assigns of any of the Persons described in clause (i) through (iv) of this definition and “Loan Party” means any one of the Loan Parties.

“Material Adverse Effect” means a material adverse effect on (a) the business, assets, operations, prospects or financial condition of the Borrower and the Subsidiaries taken as a whole, (b) the ability of the Borrower to perform any of its obligations under this Agreement or any other Loan Document or (c) the rights of or benefits available to the Lenders under this Agreement or any other Loan Document.

“Material Contracts” means at any particular time, with respect to the Borrower and its Subsidiaries, any third party Contract (i) existing as of the date hereof producing revenues on an annual basis in an amount which is in excess of 10% of the total revenues of the Borrower on a consolidated basis (based on historical revenues for the previous fiscal year), or (ii) entered into after the date hereof producing revenues on an annual basis in an amount which is in excess of 5% of the total revenues of the Borrower on a consolidated basis (based on historical revenues for the previous fiscal year), or any Contract the breach or default of which would result in a Material Adverse Effect, all such Material Contracts of the Borrower and the Guarantors as of the date hereof being listed on Schedule 3.14, all as may be amended, supplemented, restated or replaced from time to time; and, when used in relation to any Person, the term “Material Contracts” shall mean and refer to Material Contracts to which such Person is a party or by which it is bound or may hereafter become a party or be bound and “Material Contract” means any one thereof.

“Material Indebtedness” means Indebtedness (other than the Loans and Letters of Credit), or obligations in respect of one or more Swap Agreements, of any one or more of the Borrower and its Subsidiaries in an aggregate principal amount exceeding \$25,000,000. For purposes of determining Material Indebtedness, the “principal amount” of the obligations of the Borrower or any Subsidiary in respect of any Swap Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that the Borrower or such Subsidiary would be required to pay if such Swap Agreement were terminated at such time.

“Maturity Date” means June 9, 2012.

“Mississauga Property” means the property located at 7150 Mississauga Road, Mississauga, Ontario L5N

“Moody’s” means Moody’s Investors Service, Inc.

“Mortgaged Property” means 100 LifeSciences Parkway, Steinbach, Manitoba.

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“Net Income” means, for any period, the consolidated net income (or loss) of the Borrower and its Subsidiaries from continuing operations, determined on a consolidated basis in accordance with GAAP; provided that there shall be excluded (a) the income (or deficit) of any Person accrued prior to the date it becomes a Subsidiary or is merged into or consolidated with the Borrower or any of its Subsidiaries, (b) the income (or deficit) of any Person (other than a Subsidiary) in which the Borrower or any of its Subsidiaries has an ownership interest, except to the extent that any such income is actually received by the Borrower or such Subsidiary in the form of dividends or similar distributions and (c) the undistributed earnings of any Subsidiary to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary is not at the time permitted by the terms of any contractual obligation (other than under any Loan Document) or Requirement of Law applicable to such Subsidiary. For the avoidance of doubt, the determination of Net Income will exclude any non-cash write-off or write down of goodwill or other intangible assets in connection with any impairment charge for such period as required by GAAP.

“Non-BA Lender” means a Lender that is not permitted by Applicable Law or by customary market practice to stamp, for purposes of subsequent sale, or accept, a Bankers’ Acceptance or which does not stamp or accept Bankers’ Acceptances from time to time.

“Obligations” means all unpaid principal of and accrued and unpaid interest on the Loans, all LC Exposure, all accrued and unpaid fees and all expenses, reimbursements, indemnities and other obligations of the Loan Parties to each of the Finance Parties or to any indemnified party arising under the Loan Documents, in each case, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred.

“Off-Balance Sheet Liability” of a Person means (a) any repurchase obligation or liability of such Person with respect to accounts or notes receivable sold by such Person, (b) any indebtedness, liability or obligation under any so-called “synthetic lease” transaction entered into by such Person, or (c) any indebtedness, liability or obligation arising with respect to any other transaction which is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the balance sheets of such Person (other than operating leases).

“Other Taxes” means any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

“Participant” has the meaning set forth in Section 9.04.

“Patriot Act” has the meaning set forth in Section 9.17.

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“Permitted Acquisition” means any Acquisition which meets each of the following criteria:

- (a) at the time of and after giving effect to such Acquisition, no Default has occurred and is continuing;
- (b) such Acquisition is not a Hostile Acquisition;
- (c) the Person being acquired or whose assets, division, line of business or business unit is being acquired, is engaged in a line of business in which the Loan Parties are engaged as of, or immediately prior to, the Effective Date, or any similar or related or complementary business, or that is a reasonable extension or expansion thereof, or any business which provides a service and/or supplies products in connection with a line of business in which the Loan Parties are engaged as of, or immediately prior to, the Effective Date;
- (d) the Aggregate Consideration paid by the Loan Parties for such Acquisition (including for this purpose all transaction costs and all Indebtedness (including all fixed deferred payments, but for greater certainty excluding any variable earn out payments or similar obligations) incurred or assumed in connection with such Acquisition) shall not exceed \$250,000,000, except with the prior written consent of the Required Lenders acting reasonably;
- (e) as soon as available, but no later than concurrently with the closing of such Acquisition, the Loan Parties shall submit to the Administrative Agent (A) notice of such Acquisition, (B) copies of all business and financial information reasonably requested by the Administrative Agent, (C) pro forma financial statements which demonstrate, on a pro forma basis, compliance with the Financial Covenants; and (D) a certificate of a Financial Officer certifying that such pro forma financial statements present fairly in all material respects the financial condition of the Borrower and its Subsidiaries on a consolidated basis as of the date thereof after giving effect to such Acquisition and setting forth reasonably detailed calculations demonstrating compliance with the Financial Covenants set forth in clause (C) above, and which shall include a representation and warranty as to compliance with each of the other criteria for a “Permitted Acquisition”;
- (f) if such Acquisition is structured as a merger involving a Loan Party or any Subsidiary and a Person that is not a Subsidiary, such Loan Party or such Subsidiary will be the surviving entity, or otherwise, the surviving entity shall become a Loan Party;
- (g) no Loan Party shall, as a result of or in connection with any such Acquisition, assume or incur any direct or contingent liabilities (whether relating to environmental, tax, litigation, or other matters) that would be reasonably likely to have a Material Adverse Effect; and

- (h) if, as a result of such Acquisition or investment, a Significant Subsidiary is formed or acquired, or any material assets (including any real property) having a value in excess of \$25,000,000 are acquired, the Loan Parties shall comply with all applicable provisions of Section 5.15.

“Permitted Encumbrances” means:

- (a) Liens imposed by law for taxes that are not yet due or are being contested in compliance with Section 5.04;
- (b) landlords’, carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than 30 days or are being contested in compliance with Section 5.04;
- (c) pledges and deposits made in the ordinary course of business in compliance with workers’ compensation, unemployment insurance and other social security laws or regulations;
- (d) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;
- (e) judgment liens in respect of judgments that do not constitute an Event of Default under clause (k) of Article VII; and
- (f) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Borrower or any Subsidiary.

“Permitted Investments” means:

- (a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America or Canada (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America or Canada, as applicable), in each case maturing within one (1) year from the date of acquisition thereof;
- (b) investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, the highest credit rating obtainable from S&P or from Moody’s;
- (c) investments in certificates of deposit, banker’s acceptances and time deposits maturing within 180 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or Canada or any State or Province thereof which has a combined capital and surplus and undivided profits of not less than \$500,000,000;

- (d) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (c) above; and
- (e) money market funds that (i) comply with the criteria set forth in Securities and Exchange Commission Rule 2a-7 under the *Investment Company Act* of 1940, (ii) are rated AAA by S&P and Aaa by Moody's and (iii) have portfolio assets of at least \$5,000,000,000.

"Permitted Lien" means Liens permitted by Section 6.02.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, unlimited liability company, partnership, limited partnership, Governmental Authority or other entity.

"Pharma Pass SA Contracts" means the two contracts between Pharma Pass SA and certain third parties as more particularly described in Schedule 6.21 and any similar contracts entered into from time to time by Pharma Pass SA in respect of the business operations described in Schedule 6.21.

"Plan" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"PPSA" means the *Personal Property Security Act* (Ontario), including the regulations thereto, provided that, if perfection or the effect of perfection or non-perfection or the priority of any Lien created hereunder or under any other Loan Document on the Collateral is governed by the personal property security legislation or other applicable legislation with respect to personal property security in effect in a province or other jurisdiction other than Ontario, "PPSA" means the *Personal Property Security Act* or such other applicable legislation in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

"Prime Rate" means the greater of (a) the variable rate of interest per annum equal to the rate of interest determined by the Administrative Agent from time to time as the prime rate of the Administrative Agent for Canadian dollar loans made by the Administrative Agent in Canada from time to time, being a variable per annum reference rate of interest adjusted automatically upon change by the Administrative Agent, calculated on the basis of a year of 365 days or 366 days in the case of a leap year and (b) the sum of (i) the average rate per annum for Canadian dollar bankers' acceptances for BA Lenders having a term of 30 days that appears on the Reuters Screen CDOR Page as of 10:00 a.m. (Toronto time) on the date of determination, as reported by the Administrative Agent plus (ii) 1% per annum.

"Proceeds of Realization", in respect of the Loan Guarantees and the Collateral Documents or any portion thereof, means all amounts received by the Administrative Agent and any other Finance Party in connection with: (i) any realization thereof, whether occurring as a result of enforcement or otherwise; (ii) any sale, expropriation, loss or damage or other disposition of the Collateral or any portion thereof; and (iii) the dissolution, liquidation, bankruptcy or winding-up of any Loan Party or any other distribution of its assets to creditors.

“Puerto Rico Properties” means the properties located at (i) State Road No 698, Kilometer 0.8, Barrio Mameyal, Dorado, Puerto Rico, 00646, Puerto Rico, (ii) Avenue Iterregui, Street Blot #34, Sabana Abajo Industrial Park, Carolina, Puerto Rico, 00983, and (iii) #51 Villas de Golf Este, Dorado del Mar, Dorado, Puerto Rico 00646.

“Quebec Pension Plan” means the pension benefit plan maintained by the Province of Quebec.

“Register” has the meaning set forth in Section 9.04.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and associates, and the directors, officers, employees, agents and advisors of such Person and of such Person’s Affiliates and associates (the term “associate” having the meaning ascribed thereto in the *Canada Business Corporations Act*).

“Relevant Jurisdictions” means, from time to time, (i) with respect to the Borrower and each Guarantor, the province or territory in Canada or the relevant country or political subdivision in any other country in which the Borrower or such Guarantor has its chief executive office or chief place of business and any province or territory in Canada or any country or relevant political subdivision in any other country in which the Borrower or such Guarantor has, based on the consolidated financial statements for the Borrower’s most recently completed fiscal year, property, assets and undertaking having a book value in excess of \$25,000,000 or generates EBITDA for any annual period in excess of \$25,000,000, including for greater certainty as at the date hereof the jurisdictions set out in Schedule 3.05 in respect of the Borrower and each Guarantor identified therein; and (ii) with respect to any Person in respect of which Liens are to be granted to the Administrative Agent pursuant to Section 5.15, each province, territory or relevant political subdivision where such Liens are registered, filed or recorded.

“Required Lenders” means, at any time, Lenders having Revolving Credit Exposures and unused Commitments representing not less than 51% of the sum of the total Revolving Credit Exposures and unused Commitments at such time.

“Requirements of Health Care Law” means with respect to any Person at any time all Requirements of Law relating to health care, patient care, medical insurance, medical assistance programs, drugs, pharmacies and health care professionals in any Relevant Jurisdiction or any other jurisdiction in which such Person carries on business or has property, assets or undertaking. Without limiting the foregoing, Requirements of Health Care Law shall include:

- (a) in the United States, all (i) federal and state fraud and abuse laws and regulations, including, without limitation, the federal patient referral law, 42 U.S.C. §1395nn, commonly known as “Stark II”, the federal anti-kickback law, 42 U.S.C. §1320a-7b, the federal civil monetary penalty statute 42 U.S. §1320a-7a, federal laws regarding the submission of false claims, false billing, false coding, and similar state laws and regulations; (ii) federal and state laws applicable to reimbursements and reassignment; (iii) the *Health Insurance Portability and Accountability Act of 1996* and its implementing regulations thereto; (iv) federal statutes and regulations affecting the health insurance program for the aged and disabled established by Title XVIII of the *Social Security Act* and any statutes succeeding thereto; (v) federal and state statutes and regulations affecting the Tricare, CHAMPUS, Veterans, and black lung disease programs and any other health care program financed with United States government funds; (vi) all federal and state statutes and regulations affecting the medical assistance

program established by Titles V, XIX, XX, and XXI of the *Social Security Act* and any statutes succeeding thereto, and all state statutes and plans for medical assistance enacted in connection with or related to the federal statutes and regulations; and (vii) any other federal or state law or regulation governing health care, applicable to drugs and pharmacies or which regulate health care professions;

- (b) in Canada, all (i) provincial legislation and regulations applicable to accountability and/or accessibility to health care; (ii) federal and provincial legislation and regulations applicable to drugs and pharmacies; (iii) provincial legislation and regulations which regulate and control health professions; (iv) provincial legislation and regulations affecting health insurance; (v) the *Canada Health Act* and the regulations thereunder; (vi) the *Personal Information Protection and Electronic Documents Act* and regulations thereunder; (vii) provincial legislation and regulations applicable to the privacy of health information and (viii) any other federal or provincial legislation or regulations governing health care; and
- (c) the equivalent of (a) and (b) in any other Relevant Jurisdiction or other jurisdiction where such Person has property or carries on business.

“Requirement of Law” means, as to any Person, the certificate of incorporation, amalgamation or continuance and by laws or other organizational or governing documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in the Borrower or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests in the Borrower or any option, warrant or other right to acquire any such Equity Interests in the Borrower.

“Revolving Credit Exposure” means, with respect to any Lender at any time, without duplication, the sum of the outstanding principal amount of such Lender’s Revolving Loans and its LC Exposure and Swingline Exposure at such time.

“Revolving Loan” means a Loan made pursuant to Section 2.03.

“S&P” means Standard & Poor’s.

“Secured Obligations” means all Obligations, together with all (a) Banking Services Obligations and (b) Swap Obligations owing to any Person that is a Finance Party or an Affiliate thereof, or that was a Finance Party or an Affiliate thereof at the time the relevant Swap Agreement was entered into; provided that the Finance Party party thereto (other than JPMorgan Chase Bank, N.A., Toronto Branch) shall have delivered written notice to the Administrative Agent that such a transaction constitutes a Secured Obligation entitled to the benefits of the Collateral Documents.

“Securities Account” has the meaning assigned to such term in the Securities Transfer Act, 2006 (Ontario) or Article 8 of the UCC, as applicable.



“Security Documents” shall mean the security documents (as the same may be amended, modified, supplemented, restated or replaced from time to time) which, in the reasonable opinion of the Administrative Agent, are required to be entered into from time to time by the Loan Parties in favour of the Administrative Agent for the benefit of the Finance Parties or any Affiliate thereof in order to grant directly or indirectly to the Administrative Agent a Lien on the Collateral as continuing collateral security for the payment and performance of the Secured Obligations, such security documents to be in form and substance satisfactory to the Administrative Agent.

“Significant Subsidiary” means (a) each Subsidiary of the Borrower listed on Schedule 1.01 hereto, (b) any wholly-owned Subsidiary of the Borrower, whether existing as of the Effective Date or formed or acquired thereafter, (i) the revenues of which, as of end of any fiscal quarter, for the period of four consecutive fiscal quarters then ended, was or is reasonably projected to be equal to or greater than 5% of the consolidated revenues of the Borrower and its Subsidiaries for such period, or (ii) the consolidated assets of which, as of end of any fiscal quarter, were or are reasonably projected to be greater than 5% of the consolidated total assets of the Borrower and its Subsidiaries as of the end of such fiscal quarter, in each case as reflected on the most recent annual or quarterly consolidated financial statements of the Borrower and its Subsidiaries and (c) any Subsidiary of the Company that owns directly or indirectly, any equity interests of any Subsidiary described in clause (a) or (b) above.

“Statutory Reserve Rate” means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Administrative Agent or an Affiliate thereof is subject with respect to the Adjusted LIBO Rate, for eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“Steinbach Property” means the property located at 100 LifeSciences Parkway, Steinbach, Manitoba R5G 1Z7.

“Subordinated Indebtedness” of a Person means any Indebtedness of such Person the payment of which is subordinated to payment of the Secured Obligations to the written satisfaction of the Administrative Agent.

“subsidiary” means, with respect to any Person (the “parent”) at any date, any corporation, limited liability company, unlimited liability company, partnership, limited partnership, trust, association or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, unlimited liability company, partnership, limited partnership, trust, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent; provided, however, that any entity, the accounts of which would be consolidated with those of the parent merely due to the application of FIN46(R) of the Financial Accounting Standards Board or any similar accounting principle shall not constitute a subsidiary of the parent.

“Subsidiary” means any subsidiary of the Borrower.

“Swap Agreement” means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrower or the Subsidiaries shall be a Swap Agreement.

“Swap Obligations” of a Person means any and all obligations of such Person, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under (a) any and all Swap Agreements, and (b) any and all cancellations, buy backs, reversals, terminations or assignments of any Swap Agreement transaction.

“Swingline Exposure” means, at any time, the aggregate principal amount of all Swingline Loans outstanding at such time. The Swingline Exposure of any Lender at any time shall be its Applicable Percentage of the total Swingline Exposure at such time.

“Swingline Lender” means JPMorgan Chase Bank, N.A., Toronto Branch, in its capacity as lender of Swingline Loans hereunder.

“Swingline Loan” means a Loan made pursuant to Section 2.05.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Total Debt to EBITDA Ratio” means the ratio of Indebtedness of the Borrower and its Subsidiaries (on a consolidated basis) to EBITDA of the Borrower and its Subsidiaries (on a consolidated basis).

“Transactions” means the execution, delivery and performance by the Borrower of this Agreement, the other Loan Documents, the borrowing of Loans, the use of the proceeds thereof and the issuance of Letters of Credit hereunder.

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate, Alternate Base Rate, CDOR Rate or Prime Rate.

“UCC” means the Uniform Commercial Code as in effect from time to time in the State of New York or any other state the laws of which are required to be applied in connection with the issue of perfection of security interests.

“U.S. Base Rate” means the rate of interest per annum publicly announced from time to time by JPMorgan Chase Bank, N.A., Toronto Branch as its base rate for United States dollar loans made by JPMorgan Chase Bank, N.A., Toronto Branch in Canada from time to time; each change in the U.S. Base Rate shall be effective from and including the date such change is publicly announced as being effective.

“United States” and “US” means the United States of America.

“Usage” means, at any time, the ratio of the aggregate Revolving Credit Exposure of the Lenders at such time to the aggregate amount of the Lenders’ Commitments at such time.

“Usage Fee” means, for any day, with respect to the facility fees payable hereunder (a) 0%, if Usage is greater than or equal to 2/3, (b) 0.25%, if Usage is greater than or equal to 1/3, but less than 2/3 and (c) 0.50%, if Usage is less than 1/3.

“wholly owned” means, with respect to a Subsidiary of any Person, a Subsidiary of such Person, all of the outstanding Equity Interests of which (other than (x) director’s qualifying shares and (y) shares issued to foreign nationals to the extent required by Applicable Law) are owned by such Person and/or by one or more wholly owned Subsidiaries of such Person.

“Withdrawal Liability” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

#### SECTION 1.02    Classification of Loans and Borrowings.

For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a “Revolving Loan”) or by Type (e.g., a “Eurodollar Loan”) or by Class and Type (e.g., a “Eurodollar Revolving Loan”). Borrowings also may be classified and referred to by Class (e.g., a “Revolving Borrowing”) or by Type (e.g., a “Eurodollar Borrowing”) or by Class and Type (e.g., a “Eurodollar Revolving Borrowing”).

#### SECTION 1.03    Terms Generally.

The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights, and (f) the words “fiscal quarter”, “fiscal year” and “fiscal period” shall be construed to refer to a fiscal quarter, a fiscal year and a fiscal period, in each case, of the Borrower.

#### SECTION 1.04    Accounting Terms; GAAP.

Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision

hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

SECTION 1.05    Changes in Accounting Principles.

If any changes in accounting principles, from those used in the preparation of the financial statements of the Borrower or its Subsidiaries for the 2008 fiscal year based on GAAP, occur by reason of any change in the rules, regulations, pronouncements, opinions or other requirements of the Financial Accounting Standards Board (or any successor thereto or agency with similar function), or the adoption by the Borrower or any of its Subsidiaries of the International Financial Reporting Standards (“IFRS”), and such change in accounting principles results in a change in the method or results of calculation of financial covenants or the terms related thereto contained in this Agreement, the Borrower shall, at its option, either (a) furnish to the Administrative Agent, together with each delivery of the financial statements required to be delivered hereby, a written reconciliation setting forth the differences that would have resulted if such financial statements had been prepared utilizing existing GAAP (in which case the method and calculation of financial covenants and the terms related thereto hereunder shall continue to be determined in accordance with existing GAAP) or (b) agree with the Administrative Agent to amend such financial covenants or terms in such manner as the Administrative Agent shall require in order to reflect fairly such changes so that the criteria for evaluating the financial condition of the Borrower and its Subsidiaries shall be the same in commercial effect after, as well as before, such changes are made (in which case the method and calculation of financial covenants and the terms related thereto hereunder shall be determined in the manner so agreed).

SECTION 1.06    Currency Matters.

Principal, interest, reimbursement obligations, fees, and all other amounts payable under this Agreement and the other Loan Documents to the Administrative Agent and the other Finance Parties shall be payable in the currency in which such Obligations are denominated. Unless stated otherwise, all calculations, comparisons, measurements or determinations under this Agreement shall be made in dollars. For the purpose of such calculations, comparisons, measurements or determinations, amounts or proceeds denominated in other currencies shall be converted to the Equivalent Amount of dollars on the date of calculation, comparison, measurement or determination. In particular, without limitation, for purposes of valuations or computations under Article II, Article III, Article V, Article VI and Article VII and calculating Commitments or Revolving Credit Exposure, unless expressly provided otherwise, where a reference is made to a dollar amount, the amount is to be considered as the amount in dollars and, therefore, each other currency shall be converted into the Equivalent Amount thereof in dollars.

SECTION 1.07    Conflict.

In the event of any inconsistency between the provisions of this Agreement and the provisions of any of the other Loan Documents, the provisions of this Agreement shall prevail.

SECTION 1.08    Successor Legislation.

Unless otherwise specifically indicated herein or therein, any statute referred to in this Agreement or in any other Loan Document shall be deemed to include that statute as amended,

supplemented or replaced from time to time, and any successor legislation to the same general intent and effect.

**ARTICLE II**

**The Credits**

**SECTION 2.01    Commitments.**

Subject to the terms and conditions set forth herein, each Lender agrees to make Revolving Loans to the Borrower from time to time during the Availability Period in an aggregate principal amount that will not result in (a) such Lender's Revolving Credit Exposure exceeding such Lender's Commitment or (b) the sum of the total Revolving Credit Exposures exceeding the total Commitments. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Revolving Loans.

**SECTION 2.02    Loans and Borrowings.**

- (a) Each Revolving Loan shall be made as part of a Borrowing consisting of Revolving Loans made by the Lenders rateably in accordance with their respective Commitments. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required.
- (b) Subject to Section 2.14, (i) each Revolving Borrowing shall be comprised of ABR Loans, Prime Rate Loans, BA Loans, BA Equivalent Loans, Eurodollar Loans or the issuance of Letters of Credit as the Borrower may request in accordance herewith. Each Swingline Loan shall be either a Prime Rate Loan or an ABR Loan. Each Lender at its option may make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.
- (c) At the commencement of each Interest Period for any Eurodollar Revolving Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of \$1,000,000 and not less than \$5,000,000. At the time that each ABR Revolving Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of \$1,000,000 and not less than \$5,000,000; provided that an ABR Revolving Borrowing may be in an aggregate amount that is equal to the entire unused balance of the total Commitments or that is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.06(e). At the commencement of each Interest Period for any BA or BA Equivalent Loan, such Borrowing shall be in an aggregate amount that is an integral multiple of C\$1,000,000 and not less than C\$5,000,000. At the time that each Prime Rate Revolving Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of C\$1,000,000 and not less than C\$5,000,000; provided that a Prime Rate Revolving Borrowing may be in an aggregate amount that is equal to the entire unused balance of the total Commitments or that is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.06(e). Each Swingline Loan shall be

in an amount that is an integral multiple of \$500,000 and not less than \$1,000,000. Borrowings of more than one Type and Class may be outstanding at the same time; provided that there shall not at any time be more than an aggregate total of twenty (20) Eurodollar Loans, BA Loans and BA Equivalent Loans outstanding.

- (d) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.
- (e) The Borrower agrees to deliver in favour of each Lender such other agreements and documentation as such Lender may reasonably require (not inconsistent with this Agreement) in respect of such Lender's requirements for the acceptance of Bankers' Acceptances or the issuance of BA Equivalent Notes.

#### SECTION 2.03 Requests for Revolving Borrowings.

To request a Revolving Borrowing, the Borrower shall notify the Administrative Agent of such request by telephone (a) in the case of a Eurodollar Borrowing, not later than 11:00 a.m., Toronto, Ontario time, three Business Days before the date of the proposed Borrowing, (b) in the case of an ABR Borrowing, not later than 11:00 a.m., Toronto, Ontario time, one Business Day before the date of the proposed Borrowing; provided that any such notice of an ABR Revolving Borrowing to finance the reimbursement of an LC Disbursement as contemplated by Section 2.06(e) may be given not later than 10:00 a.m., Toronto, Ontario time, on the date of the proposed Borrowing, (c) in the case of a Borrowing by way of BA Loan or BA Equivalent Loan, not later than 11:00 a.m., Toronto, Ontario time, two Business Days before the date of the proposed Borrowing or (d) in the case of a Prime Rate Borrowing, not later than 11:00 a.m., Toronto, Ontario time, one Business Day before the date of the proposed Borrowing; provided that any such notice of a Prime Rate Revolving Borrowing to finance the reimbursement of an LC Disbursement as contemplated by Section 2.06(e) may be given not later than 10:00 a.m., Toronto, Ontario time, on the date of the proposed Borrowing. Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy to the Administrative Agent of a written Borrowing Request in the form attached as Exhibit B and signed by the Borrower. Each such telephonic and written Borrowing Request shall specify the following information in compliance with Section 2.02:

- (a) the aggregate amount of the requested Borrowing;
- (b) the date of such Borrowing, which shall be a Business Day;
- (c) whether such Borrowing is to be a Prime Rate Borrowing, an ABR Borrowing, a Eurodollar Borrowing or a BA Borrowing;
- (d) in the case of a BA Borrowing or Eurodollar Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period"; and
- (e) the location and number of the Borrower's account to which funds are to be disbursed, which shall comply with the requirements of Section 2.07.

If no election as to the Type of Revolving Borrowing is specified, then the requested Revolving Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any

requested Eurodollar Revolving Borrowing then the Borrower shall be deemed to have selected an Interest Period of one month's duration. If no Interest Period is specified with respect to any requested BA Revolving Borrowing, then the Borrower shall be deemed to have selected an Interest Period of thirty (30) days. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

SECTION 2.04    Bankers' Acceptances.

- (a)    Determinations and Timing. Each determination by the Administrative Agent of the stamping fee and the discounted purchase price applicable to any BA Loan or BA Equivalent Loan shall, in the absence of manifest error, be final, conclusive and binding on the Borrower.
  
- (b)    Criteria for BAs and BA Equivalent Notes. BAs and BA Equivalent Notes presented by the Borrower for purchase by the Lenders pursuant to this Agreement:
  - (i)       shall be denominated in Canadian dollars;
  - (ii)      shall not be less than C\$5,000,000 and shall be in whole integral multiples of C\$1,000,000 in excess thereof;
  - (iii)     shall be drawn or issued on a Business Day;
  - (iv)      shall have a term, subject to availability, of at least 30 days and not more than 180 days excluding days of grace;
  - (v)       shall mature on a Business Day on or before the Maturity Date; and
  - (vi)      shall be in form and substance satisfactory to each Lender, acting in accordance with then customary and accepted practices.
  
- (c)    Lenders Holding BAs and BA Equivalent Notes. BAs and BA Equivalent Notes purchased by the Lenders hereunder may be held by any Lender for its own account until the maturity date of such BA or BA Equivalent Note or sold, rediscounted or otherwise disposed of by it at any time prior thereto, in such Lender's sole discretion.
  
- (d)    Execution of BAs and BA Equivalent Notes. A BA or BA Equivalent Note may be manually signed by any duly authorized officer of the Borrower or the signature of any duly authorized officer of the Borrower on a BA or BA Equivalent Note may be mechanically reproduced in facsimile and BA or BA Equivalent Notes bearing such facsimile signature shall be binding upon the Borrower as if they had been manually signed by such officers. Notwithstanding that any of the individuals whose manual or facsimile signature appears on any BA or BA Equivalent Note as one of such officers may no longer hold office at the date thereof or at the date of its acceptance or purchase by, or issue to, any Lender hereunder or at any time thereafter, any BA or BA Equivalent Note so signed shall be valid and binding upon the Borrower, unless, in the case only of blank forms of BAs and BA Equivalent Notes that have not been completed,

issued, accepted or purchased hereunder, the Borrower has given to the Lender in a timely manner written notice to the contrary.

- (e) Calculations. For the purposes of this Agreement, when calculations are made to determine the outstanding amount, principal amount or unpaid principal amount of any BA Loan or BA Equivalent Loan, the full Face Amount of the BA or BA Equivalent Note related to such BA Loan or BA Equivalent Loan shall be used without deduction or adjustment in respect of applicable stamping fees or any other difference between such Face Amount and the applicable discounted purchase price of such BA or BA Equivalent Note.
- (f) Commitment to Purchase Bankers' Acceptances and BA Equivalent Notes.
  - (i) Each BA Lender which is a bank listed in Schedule I of the *Bank Act* (Canada) agrees to purchase those Bankers' Acceptances which it has accepted, at a discount from the face amount thereof calculated at the CDOR Rate for the relevant period in effect on the issuance date thereof.
  - (ii) Each BA Lender which is a bank listed in Schedule II or Schedule III of the *Bank Act* (Canada) agrees to purchase those Bankers' Acceptances which it has accepted, at a discount from the face amount thereof calculated using a rate not in excess of the CDOR Rate for the relevant period in effect on the issuance date thereof plus up to one-tenth of one percent (0.10%).
  - (iii) Each Non-BA Lender agrees to purchase BA Equivalent Notes issued to it hereunder at a discount from the face amount thereof calculated using a rate not in excess of the CDOR Rate for the relevant period in effect on the issuance date thereof plus up to one-tenth of one percent (0.10%).
- (g) Special Provisions Regarding Bankers' Acceptances. The following provisions are applicable to Bankers' Acceptances issued by the Borrower and accepted by any BA Lender hereunder:
  - (i) Payment of Bankers' Acceptances. The Borrower agrees to provide for each Bankers' Acceptance by payment of the face amount thereof to the Administrative Agent on behalf of the BA Lender on the maturity of the Bankers' Acceptance or, prior to such maturity, on the Maturity Date; and the Administrative Agent shall remit the said amount to such BA Lender and such BA Lender shall in turn remit such amount to the holder of the Bankers' Acceptance. If the Borrower fails to provide for the payment of the Bankers' Acceptance accordingly, any amount not so paid shall be immediately payable by the Borrower to the Administrative Agent on behalf of the BA Lender together with interest on such amount calculated daily and payable monthly at the rate and in the manner applicable to Prime Rate Loans. The Borrower agrees not to claim any days of grace for the payment at maturity of any Bankers' Acceptance and agrees to indemnify and save harmless the BA Lender in connection with all payments made by the BA Lender (or by the Administrative Agent on its behalf) pursuant to Bankers' Acceptances



accepted by the BA Lender, together with all reasonable costs and expenses incurred by the BA Lender in this regard. The Borrower hereby waives any defences to payment which might otherwise exist if for any reason a Bankers' Acceptance is held by the BA Lender for its own account at maturity.

- (ii) Availability of Bankers' Acceptances. If at any time and from time to time the Agent determines, acting reasonably, that there no longer exists a market for Bankers' Acceptances for the term requested by the Borrower, or at all, the Administrative Agent shall so advise the Borrower, and in such event the BA Lenders shall not be obliged to accept and the Borrower shall not be entitled to issue Bankers' Acceptances.
- (iii) Power of Attorney. The Borrower hereby appoints each BA Lender as its true and lawful attorney to complete and issue Bankers' Acceptances on behalf of the Borrower in accordance with written (including facsimile) transmitted instructions provided by the Borrower to the Administrative Agent on behalf of such BA Lender, and the Borrower hereby ratifies all that its said attorney may do by virtue thereof. The Borrower agrees to indemnify and hold harmless the Administrative Agent and the BA Lenders and their respective directors, officers and employees from and against any charges, complaints, costs, damages, expenses, losses or liabilities of any kind or nature which they may incur, sustain or suffer, arising from or by reason of acting, or failing to act, as the case may be, in reliance upon this power of attorney, except to the extent caused by the gross negligence or wilful misconduct of the Administrative Agent or the BA Lender or their respective directors, officers and employees. The Borrower hereby agrees that each Bankers' Acceptance completed and issued and accepted in accordance with this section by a BA Lender on behalf of the Borrower is a valid, binding and negotiable instrument of the Borrower as drawer and endorser. The Borrower agrees that each BA Lender's accounts and records will constitute prima facie evidence of the execution and delivery by the Borrower of Bankers' Acceptances. This power of attorney shall continue in force until written notice of revocation has been served upon the Administrative Agent by the Borrower at the Administrative Agent's address set out in Section 9.01.
- (h) Special Provisions Regarding BA Equivalent Notes. Each Non-BA Lender will not accept Bankers' Acceptances hereunder, and shall instead from time to time make BA Equivalent Loans to the Borrower. Each BA Equivalent Loan shall be evidenced by a non-interest bearing promissory note payable by the Borrower in question to the Non-BA Lender substantially in the form of Exhibit C attached hereto, which will be purchased by the Non-BA Lender. Each BA Equivalent Note shall be negotiable by the Non-BA Lender without notice to or the consent of the Borrower, and the holder thereof shall be entitled to enforce such BA Equivalent Note against the Borrower free of any equities, defences or rights of set-off that may exist between the Borrower and the Non-BA Lender. In this Agreement, all references to a BA Equivalent Note shall mean the loan evidenced thereby if required by the context; and all references to the "issuance"

of a BA Equivalent Note by a Non-BA Lender and similar expressions shall mean the making of a BA Equivalent Loan by the Non-BA Lender which is evidenced by a BA Equivalent Note. The following provisions are applicable to each BA Equivalent Loan made by a Non-BA Lender to the Borrower hereunder:

- (i) Payment of BA Equivalent Notes. The Borrower agrees to provide for each BA Equivalent Note by payment of the face amount thereof to the Administrative Agent on behalf of the Non-BA Lender on the maturity of the BA Equivalent Note or, prior to such maturity, on the Maturity Date; and the Administrative Agent shall remit the said amount to such Non-BA Lender and such Non-BA Lender shall in turn remit such amount to the holder of the BA Equivalent Note. If the Borrower fails to provide for the payment of the BA Equivalent Note accordingly, any amount not so paid shall be immediately payable by the Borrower to the Administrative Agent on behalf of the Non-BA Lender together with interest on such amount calculated daily and payable monthly at the rate and in the manner applicable to Prime Rate Loans. The Borrower agrees not to claim any days of grace for the payment at maturity of any BA Equivalent Note and agrees to indemnify and save harmless the Non-BA Lender in connection with all payments made by the Non-BA Lender (or by the Administrative Agent on its behalf) pursuant to BA Equivalent Notes accepted by the Non-BA Lender, together with all reasonable costs and expenses incurred by the Non-BA Lender in this regard. The Borrower hereby waives any defences to payment which might otherwise exist if for any reason a BA Equivalent Note is held by the Non-BA Lender for its own account at maturity.
- (ii) Availability of BA Equivalent Notes. The Non-BA Lender shall have no obligation to issue BA Equivalent Notes during any period in which the BA Lenders' obligation to issue Bankers' Acceptances is suspended pursuant to the terms of this Agreement.
- (iii) Power of Attorney. The Borrower hereby appoints the Non-BA Lender as its true and lawful attorney to complete BA Equivalent Notes on behalf of the Borrower in accordance with written (including facsimile) transmitted instructions delivered by the Borrower to the Administrative Agent, and the Borrower hereby ratifies all that its said attorney may do by virtue thereof. The Borrower agrees to indemnify and hold harmless the Administrative Agent and the Non-BA Lender and their respective directors, officers and employees from and against any charges, complaints, costs, damages, expenses, losses or liabilities of any kind or nature which they may incur, sustain or suffer, arising from or by reason of acting, or failing to act, as the case may be, in reliance upon this power of attorney except to the extent caused by the negligence or wilful misconduct of the Administrative Agent or the Non-BA Lender or their respective directors, officers and employees. The Borrower hereby agrees that each BA Equivalent Note completed by the Non-BA Lender on behalf of the Borrower is a valid, binding and negotiable instrument of the Borrower as drawer and endorser. The Borrower agrees that the Non-BA Lender's accounts and records will constitute prima facie evidence of the execution and delivery by the Borrower of

BA Equivalent Notes. This power of attorney shall continue in force until written notice of revocation has been served upon the Agent on behalf of the Non-BA Lender by the Borrower at the Administrative Agent's address provided in Section 9.01.

- (i) Liability of Borrower. The Borrower shall be indebted upon the maturity thereof to each Lender in an amount equivalent to the full undiscounted Face Amount of each BA and BA Equivalent Note accepted and purchased by or issued to such Lender and the Borrower's obligations in that regard shall be unconditional and irrevocable and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including, without limitation, the following:
  - (i) any lack of validity or enforceability of any BA or BA Equivalent Note accepted by a Lender; or
  - (ii) the existence of any claim, set-off, defence or other right which the Borrower may have at any time against the holder of a BA or BA Equivalent Note, the Administrative Agent, such Lender or any other Person, whether in connection with this Agreement or otherwise.
- (j) Presigned Drafts. To facilitate the acceptance by the BA Lenders of Bankers' Acceptances as contemplated by this Agreement, the Borrower shall at the request of the Administrative Agent (on behalf of any BA Lender) supply the Administrative Agent for such BA Lenders with such number of BAs as the Administrative Agent on behalf of the BA Lenders may from time to time request, each executed by or on behalf of the Borrower. The Administrative Agent and each BA Lender, to the extent either retain possession thereof, shall exercise such care in the custody and safekeeping of such BAs as it gives to similar property owned by it.
- (k) Prepayments. Subject to Section 2.04(l) and Article VII, no prepayment of any BA or BA Equivalent Note shall be made by the Borrower prior to the maturity date of such BA or BA Equivalent Note. Any amounts paid pursuant to the terms of this Agreement towards the prepayment of amounts to become due with respect to outstanding BAs and BA Equivalent Notes shall be deposited into the Prepayment Account (as defined below). The Administrative Agent shall apply any cash deposited in the Prepayment Account allocable to amounts to become due in respect of any BA or BA Equivalent Note on the last day of its respective Interest Period until all amounts due in respect of outstanding BAs and BA Equivalent Loans have been repaid or until all allocable cash on deposit has been exhausted. For purposes of this Agreement, the term "Prepayment Account" shall mean the Canadian dollar account established by the Borrower with the Administrative Agent and over which the Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal for application in accordance with this Section. The Administrative Agent will, at the request of the Borrower, invest amounts on deposit in the applicable Prepayment Account in short-term, cash equivalent investments selected by the Administrative Agent in consultation with the Borrower that mature on or prior to the last day of the applicable Interest Period of the BA or BA Equivalent Note to be prepaid. Interest or profits, if any, on amounts in the Prepayment Account shall be deposited in the Prepayment Account and reinvested and disbursed as

specified above. If the maturity of the Obligations hereunder has been accelerated pursuant to Article VII, the Administrative Agent may, in its sole discretion, apply all amounts on deposit in the Prepayment Account to satisfy any of the Obligations. The Borrower shall pay all income tax, if any, payable on any such interest or profits in the Prepayment Account.

- (l) Cover for BA Obligations on Default. If an Event of Default shall occur and be continuing and not waived in writing pursuant to the terms hereof, on the Business Day that the Borrower receives notice from the Administrative Agent demanding the deposit of cash collateral pursuant to this Section, the Borrower shall provide Cover to the Administrative Agent, provided that the obligation to provide such Cover shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default described in Section 7.01(i) or Section 7.01(j). The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such Cover. Other than any interest or profits earned on the investment of the deposits comprising Cover, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in the relevant account. Moneys in such account shall be applied by the Administrative Agent to reimburse the Lenders for BA Loans or BA Equivalent Loans due or overdue for which they have not been reimbursed and, if all BA Loans and BA Equivalent Loans have been satisfied and paid in full and there are no outstanding BA Loans or BA Equivalent Loans, any remaining Cover shall be applied by the Administrative Agent to satisfy other Obligations of the Borrower under this Agreement for the benefit of the Lenders. If the Borrower is required to provide an amount of Cover hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within three Business Days after all Events of Default have been cured or waived in writing pursuant to the terms hereof or if no Event of Default is then subsisting promptly following the maturity of the related BA or BA Equivalent Note and satisfaction in full of the relevant BA Loans and BA Equivalent Loans. The Borrower shall pay all income tax, if any, payable on any interest or profits earned on the investment of the deposits comprising Cover.

SECTION 2.05 Swingline Loans.

- (a) Subject to the terms and conditions set forth herein, the Swingline Lender agrees to make Swingline Loans to the Borrower from time to time during the Availability Period, in an aggregate principal amount at any time outstanding that will not result in (i) the aggregate principal amount of outstanding Swingline Loans exceeding \$25,000,000 or (ii) the sum of the total Revolving Credit Exposures exceeding the total Commitments; provided that the Swingline Lender shall not be required to make a Swingline Loan to refinance an outstanding Swingline Loan. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Swingline Loans.
- (b) To request a Swingline Loan, the Borrower shall notify the Administrative Agent of such request by telephone (confirmed by telecopy), not later than 12:00 noon,

Toronto, Ontario time, on the day of a proposed Swingline Loan. Each such notice shall be irrevocable and shall specify (i) the requested date (which shall be a Business Day), (ii) the amount of the requested Swingline Loan and (iii) whether such Swingline Loan is to be an ABR Borrowing or a Prime Rate Borrowing. The Administrative Agent will promptly advise the Swingline Lender of any such notice received from the Borrower. The Swingline Lender shall make each Swingline Loan available to the Borrower by means of a credit to the general deposit account of the Borrower with the Swingline Lender (or, in the case of a Swingline Loan made to finance the reimbursement of an LC Disbursement as provided in Section 2.06(e), by remittance to the Issuing Bank) by 3:00 p.m., Toronto, Ontario time, on the requested date of such Swingline Loan.

- (c) The Swingline Lender may by written notice given to the Administrative Agent not later than 10:00 a.m., Toronto, Ontario time, on any Business Day require the Lenders to acquire participations on such Business Day in all or a portion of the Swingline Loans outstanding. Such notice shall specify the aggregate amount of Swingline Loans in which Lenders will participate. Promptly upon receipt of such notice, the Administrative Agent will give notice thereof to each Lender, specifying in such notice such Lender's Applicable Percentage of such Swingline Loan or Loans. Each Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative Agent, for the account of the Swingline Lender, such Lender's Applicable Percentage of such Swingline Loan or Loans. Each Lender acknowledges and agrees that its obligation to acquire participations in Swingline Loans pursuant to this paragraph is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Lender shall comply with its obligation under this paragraph by wire transfer of immediately available funds, in the same manner as provided in Section 2.07 with respect to Loans made by such Lender (and Section 2.07 shall apply, mutatis mutandis, to the payment obligations of the Lenders), and the Administrative Agent shall promptly pay to the Swingline Lender the amounts so received by it from the Lenders. The Administrative Agent shall notify the Borrower of any participations in any Swingline Loan acquired pursuant to this paragraph, and thereafter payments in respect of such Swingline Loan shall be made to the Administrative Agent and not to the Swingline Lender. Any amounts received by the Swingline Lender from the Borrower (or other party on behalf of the Borrower) in respect of a Swingline Loan after receipt by the Swingline Lender of the proceeds of a sale of participations therein shall be promptly remitted to the Administrative Agent; any such amounts received by the Administrative Agent shall be promptly remitted by the Administrative Agent to the Lenders that shall have made their payments pursuant to this paragraph and to the Swingline Lender, as their interests may appear; provided that any such payment so remitted shall be repaid to the Swingline Lender or to the Administrative Agent, as applicable, if and to the extent such payment is required to be refunded to the Borrower for any reason. The purchase of participations in a Swingline Loan pursuant to this paragraph shall not relieve the Borrower of any default in the payment thereof.

- (a) General. Subject to the terms and conditions set forth herein, the Borrower may request the issuance of Letters of Credit for its own account, in a form reasonably acceptable to the Administrative Agent and the Issuing Bank, at any time and from time to time during the Availability Period. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower to, or entered into by the Borrower with, the Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control.
- (b) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions. To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall hand deliver or telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the Issuing Bank) to the Issuing Bank and the Administrative Agent (reasonably in advance of the requested date of issuance, amendment, renewal or extension) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) of this Section), the amount of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. If requested by the Issuing Bank, the Borrower also shall submit a letter of credit application on the Issuing Bank's standard form in connection with any request for a Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension (i) the LC Exposure shall not exceed \$25,000,000 and (ii) the sum of the total Revolving Credit Exposures shall not exceed the total Commitments.
- (c) Expiration Date. Each Letter of Credit shall expire at or prior to the close of business on the earlier of (i) the date one (1) year after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (ii) the date that is five Business Days prior to the Maturity Date.
- (d) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the Issuing Bank or the Lenders, the Issuing Bank hereby grants to each Lender, and each Lender hereby acquires from the Issuing Bank, a participation in such Letter of Credit equal to such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the Issuing Bank, such Lender's Applicable Percentage of each LC Disbursement made by the Issuing Bank and not reimbursed by the Borrower on the date due as provided in paragraph (e) of this Section, or of any reimbursement payment

required to be refunded to the Borrower for any reason. Each Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

- (e) Reimbursement. If the Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the Borrower shall reimburse such LC Disbursement by paying to the Administrative Agent an amount equal to such LC Disbursement not later than 12:00 noon, Toronto, Ontario time, on the date that such LC Disbursement is made, if the Borrower shall have received notice of such LC Disbursement prior to 10:00 a.m., Toronto, Ontario time, on such date, or, if such notice has not been received by the Borrower prior to such time on such date, then not later than 12:00 noon, Toronto, Ontario time, on (i) the Business Day that the Borrower receives such notice, if such notice is received prior to 10:00 a.m., Toronto, Ontario time, on the day of receipt, or (ii) the Business Day immediately following the day that the Borrower receives such notice, if such notice is not received prior to such time on the day of receipt; provided that the Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 or Section 2.05 that such payment be financed with an ABR Revolving Borrowing, Prime Rate Revolving Borrowing or Swingline Loan in an equivalent amount and, to the extent so financed, the Borrower's obligation to make such payment shall be discharged and replaced by the resulting ABR Revolving Borrowing, Prime Rate Revolving Borrowing or Swingline Loan. If the Borrower fails to make such payment when due, the Administrative Agent shall notify each Lender of the applicable LC Disbursement, the payment then due from the Borrower in respect thereof and such Lender's Applicable Percentage thereof. Promptly following receipt of such notice, each Lender shall pay to the Administrative Agent its Applicable Percentage of the payment then due from the Borrower, in the same manner as provided in Section 2.07 with respect to Loans made by such Lender (and Section 2.07 shall apply, mutatis mutandis, to the payment obligations of the Lenders), and the Administrative Agent shall promptly pay to the Issuing Bank the amounts so received by it from the Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to this paragraph, the Administrative Agent shall distribute such payment to the Issuing Bank or, to the extent that Lenders have made payments pursuant to this paragraph to reimburse the Issuing Bank, then to such Lenders and the Issuing Bank as their interests may appear. Any payment made by a Lender pursuant to this paragraph to reimburse the Issuing Bank for any LC Disbursement (other than the funding of ABR Revolving Loans, Prime Rate Revolving Loans or a Swingline Loan as contemplated above) shall not constitute a Loan and shall not relieve the Borrower of its obligation to reimburse such LC Disbursement.
- (f) Obligations Absolute. The Borrower's obligation to reimburse LC Disbursements as provided in paragraph (e) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i)

any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder. Neither the Administrative Agent, the Lenders nor the Issuing Bank, nor any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the Issuing Bank; provided that the foregoing shall not be construed to excuse the Issuing Bank from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by Applicable Law) suffered by the Borrower that are caused by the Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or wilful misconduct on the part of the Issuing Bank (as finally determined by a court of competent jurisdiction), the Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

- (g) Disbursement Procedures. The Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Issuing Bank shall promptly notify the Administrative Agent and the Borrower by telephone (confirmed by telecopy) of such demand for payment and whether the Issuing Bank has made or will make an LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse the Issuing Bank and the Lenders with respect to any such LC Disbursement.
- (h) Interim Interest. If the Issuing Bank shall make any LC Disbursement, then, unless the Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrower reimburses such LC Disbursement, at the



rate per annum then applicable to Prime Rate Revolving Loans in the event that the LC Disbursement is made in Canadian dollars, and otherwise at the rate per annum then applicable to ABR Revolving Loans; provided that, if the Borrower fails to reimburse such LC Disbursement when due pursuant to paragraph (e) of this Section, then Section 2.13(g) shall apply. Interest accrued pursuant to this paragraph shall be for the account of the Issuing Bank, except that interest accrued on and after the date of payment by any Lender pursuant to paragraph (e) of this Section to reimburse the Issuing Bank shall be for the account of such Lender to the extent of such payment.

- (i) Replacement of the Issuing Bank. The Issuing Bank may be replaced at any time by written agreement among the Borrower, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. The Administrative Agent shall notify the Lenders of any such replacement of the Issuing Bank. At the time any such replacement shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.12(b). From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of the Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term “Issuing Bank” shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.
- (j) Cash Collateralization. If any Event of Default shall occur and be continuing, on the Business Day that the Borrower receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, Lenders with LC Exposure representing greater than 51% of the total LC Exposure) demanding the deposit of cash collateral pursuant to this paragraph, the Borrower shall deposit in an account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Lenders, an amount in cash equal to the LC Exposure as of such date plus any accrued and unpaid interest thereon; provided that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Borrower described in clause (h) or (i) of Article VII. Such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the obligations of the Borrower under this Agreement. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Borrower’s risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse the Issuing Bank for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the

Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of Lenders with LC Exposure representing greater than 51% of the total LC Exposure), be applied to satisfy other obligations of the Borrower under this Agreement. If the Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within three Business Days after all Events of Default have been cured or waived.

SECTION 2.07    Funding of Borrowings.

- (a) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 12:00 noon, Toronto, Ontario time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders; provided that Swingline Loans shall be made as provided in Section 2.05. The Administrative Agent will make such Loans available to the Borrower by promptly crediting the amounts so received, in like funds, to an account of the Borrower maintained with the Administrative Agent in Toronto, Ontario and designated by the Borrower in the applicable Borrowing Request; provided that ABR Revolving Loans or Prime Rate Revolving Loans made to finance the reimbursement of an LC Disbursement as provided in Section 2.06(e) shall be remitted by the Administrative Agent to the Issuing Bank.
- (b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with the provisions of this Agreement concerning funding by Lenders and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender shall pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at a rate determined by the Administrative Agent in accordance with prevailing banking industry practice on interbank compensation. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing. If the Lender does not do so forthwith, the Borrower shall pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon at the interest rate applicable to the Borrowing in question. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that has failed to make such payment to the Administrative Agent.

SECTION 2.08    Interest Elections.

- (a) Each Revolving Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of either a Eurodollar Borrowing, a BA Borrowing or a BA Equivalent Loan, shall have an initial Interest Period as

specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Borrowing, a BA Borrowing or a BA Equivalent Loan, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated rateably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing. This Section shall not apply to Swingline Borrowings, which may not be converted or continued.

- (b) To make an election pursuant to this Section, the Borrower shall notify the Administrative Agent of such election by telephone by the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Revolving Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy to the Administrative Agent of a written Interest Election Request in a form approved by the Administrative Agent and signed by the Borrower.
- (c) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.02:
  - (i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);
  - (ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;
  - (iii) whether the resulting Borrowing is to be an ABR Borrowing, a Prime Rate Borrowing, a BA Borrowing or a Eurodollar Borrowing; and
  - (iv) if the resulting Borrowing is either a Eurodollar Borrowing or a BA Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term “Interest Period”.

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one (1) month’s duration. If any such Interest Election Request requests a BA Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of thirty (30) days.

- (d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender’s portion of each resulting Borrowing.

- (e) If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurodollar Revolving Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing. If the Borrower fails to deliver a timely Interest Election Request with respect to a Revolving Borrowing by way of BAs or BA Equivalent Loans prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to a Prime Rate Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower, then, so long as an Event of Default is continuing (i) no outstanding Revolving Borrowing may be converted to or continued as either a Eurodollar Borrowing or BA Borrowing, (ii) unless repaid, each Eurodollar Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto, and (iii) unless repaid, each Borrowing by way of BAs or BA Equivalent Loans shall be converted to a Prime Rate Borrowing at the end of the Interest Period applicable thereto.

SECTION 2.09 Termination and Reduction of Commitments.

- (a) Unless previously terminated, the Commitments shall terminate on the Maturity Date.
- (b) The Borrower may at any time terminate, or from time to time reduce, the Commitments; provided that (i) each reduction of the Commitments shall be in an amount that is an integral multiple of \$1,000,000 and not less than \$5,000,000 and (ii) the Borrower shall not terminate or reduce the Commitments if, after giving effect to any concurrent prepayment of the Loans in accordance with Section 2.11, the sum of the Revolving Credit Exposures would exceed the total Commitments.
- (c) The Borrower shall notify the Administrative Agent of any election to terminate or reduce the Commitments under paragraph (b) of this Section at least three Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section shall be irrevocable; provided that a notice of termination of the Commitments delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Commitments shall be permanent. Each reduction of the Commitments shall be made rateably among the Lenders in accordance with their respective Commitments.

SECTION 2.10 Repayment of Loans; Evidence of Debt.

- (a) The Borrower hereby unconditionally promises to pay (i) to the Administrative Agent for the account of each Lender the then unpaid principal amount of each

Revolving Loan on the earlier of the Maturity Date and the date of the termination of the Commitments, and (ii) to the Swingline Lender the then unpaid principal amount of each Swingline Loan on the earliest of the Maturity Date, the first date after such Swingline Loan is made that is the fifteenth or last day of a calendar month and is at least two Business Days after such Swingline Loan is made and the date of the termination of the Commitments; provided that on each date that a Revolving Borrowing is made, the Borrower shall repay all Swingline Loans then outstanding.

- (b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.
- (c) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Class and Type thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.
- (d) The entries made in the accounts maintained pursuant to paragraph (b) or (c) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.
- (e) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrower shall prepare, execute and deliver to such Lender a promissory note payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

SECTION 2.11 Prepayment of Loans.

- (a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing (other than Borrowings made by way of BAs, BA Equivalent Loans or LIBOR ) in whole or in part, subject to prior notice in accordance with paragraph (b) of this Section.
- (b) The Borrower shall notify the Administrative Agent (and, in the case of prepayment of a Swingline Loan, the Swingline Lender) by telephone (confirmed by telecopy) of any prepayment hereunder (i) in the case of prepayment of a Eurodollar Borrowing, not later than 11:00 a.m., Toronto, Ontario time, three Business Days before the date of prepayment, (ii) in the case of prepayment of an ABR Revolving Borrowing or a Prime Rate Revolving Borrowing not later than

11:00 a.m., Toronto, Ontario time, one Business Day before the date of prepayment or (iii) in the case of prepayment of a Swingline Loan, not later than 12:00 noon, Toronto, Ontario time, on the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; provided that, if a notice of prepayment is given in connection with a conditional notice of termination of the Commitments as contemplated by Section 2.09, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.09. Promptly following receipt of any such notice relating to a Revolving Borrowing, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Revolving Borrowing shall be in an amount that would be permitted in the case of an advance of a Revolving Borrowing of the same Type as provided in Section 2.02. Each prepayment of a Revolving Borrowing shall be applied rateably to the Loans included in the prepaid Borrowing. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.13.

#### SECTION 2.12 Fees.

- (a) The Borrower agrees to pay to the Administrative Agent for the account of each Lender a facility fee, which shall accrue at the sum of the Applicable Rate plus the Usage Fee on the average daily amount of the Available Revolving Commitment of such Lender during the period from and including the Effective Date to but excluding the date on which such Commitment terminates; provided, if such Lender continues to have any Revolving Credit Exposure after its Commitment terminates, then such facility fee shall continue to accrue on the daily amount of such Lender's Revolving Credit Exposure from and including the date on which its Commitment terminates to but excluding the date on which such Lender ceases to have any Revolving Credit Exposure. Accrued facility fees shall be payable in arrears on the last Business Day of March, June, September and December of each year and on the date on which the Commitments terminate, commencing on the first such date to occur after the date hereof; provided further that any facility fees accruing after the date on which the Commitments terminate shall be payable on demand. All facility fees shall be computed on the basis of a year of 365 days (or 366 days in the case of a leap year) and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).
- (b) The Borrower agrees to pay (i) to the Administrative Agent for the account of each Lender a participation fee with respect to its participations in Letters of Credit, which shall accrue at the same Applicable Rate used to determine the interest rate applicable to Eurodollar Loans on the average daily amount of such Lender's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date on which such Lender's Commitment terminates and the date on which such Lender ceases to have any LC Exposure, and (ii) to the Issuing Bank a fronting fee, which shall accrue at the rate of 0.125% per annum on the average daily amount of the LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date of termination of the Commitments and the date on which there ceases

to be any LC Exposure, as well as the Issuing Bank's standard fees with respect to the issuance, amendment, payment, negotiation, renewal or extension of any Letter of Credit or processing of drawings thereunder. Participation fees and fronting fees accrued through and including the last day of March, June, September and December of each year shall be payable on the third Business Day following such last day, commencing on the first such date to occur after the Effective Date; provided that all such fees shall be payable on the date on which the Commitments terminate and any such fees accruing after the date on which the Commitments terminate shall be payable on demand. Any other fees payable to the Issuing Bank pursuant to this paragraph shall be payable within 10 days after demand. All participation fees and fronting fees shall be computed on the basis of a year of 365 days (or 366 days in the case of a leap year) and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

- (c) The Borrower agrees to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between the Borrower and the Administrative Agent.
- (d) All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent (or to the Issuing Bank, in the case of fees payable to it) for distribution, in the case of facility fees and participation fees, to the Finance Parties. Fees paid shall not be refundable under any circumstances.

SECTION 2.13 Interest.

- (a) The Loans comprising each ABR Borrowing (including each ABR Swingline Loan) shall bear interest at the Alternate Base Rate plus the Applicable Rate.
- (b) The Loans comprising each Prime Rate Borrowing (including each Prime Rate Swingline Loan) shall bear interest at the Prime Rate plus the Applicable Rate.
- (c) The Loans comprising each Eurodollar Borrowing shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate.
- (d) In respect of each Bankers' Acceptance, a stamping fee equal to the Applicable Rate multiplied by the face amount of the Bankers' Acceptance with the product thereof further multiplied by the number of days to maturity of the Bankers' Acceptance and divided by 365, payable at the time of acceptance (and for greater certainty, in addition to paying the said stamping fee, the Borrower acknowledges that the proceeds it will receive upon the issuance of such Bankers' Acceptance will be less than the face amount payable by it to the holder of such Bankers' Acceptance on the maturity thereof, as more particularly provided in Section 2.04);
- (e) In respect of each BA Equivalent Note, a stamping fee equal to the Applicable Rate multiplied by the face amount of the BA Equivalent Note with the product thereof further multiplied by the number of days to maturity of the BA Equivalent Note and divided by 365, payable at the time of acceptance (and for

greater certainty, in addition to paying the said stamping fee, the Borrower acknowledges that the proceeds it will receive upon the issuance of such BA Equivalent Note will be less than the face amount payable by it to the holder of such BA Equivalent Note on the maturity thereof, as more particularly provided in Section 2.04);

- (f) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by the Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, to the fullest extent permitted by Applicable Law, at a rate per annum equal to (i) in the case of overdue principal of any Loan, 2% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section, (ii) in the case of any other amount payable in Canadian dollars, 2% plus the rate applicable to Prime Rate Loans as provided in paragraph (b) of this Section or (iii) in the case of any other amount, 2% plus the rate applicable to ABR Loans as provided in paragraph (a) of this Section.
- (g) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and upon termination of the Commitments; provided that (i) interest accrued pursuant to paragraph (f) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of an ABR Revolving Loan or a Prime Rate Revolving Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurodollar Revolving Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.
- (h) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the U.S. Base Rate and interest computed by reference to the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate, Prime Rate, CDOR Rate, Adjusted LIBO Rate or LIBO Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.
- (i) For purposes of disclosure pursuant to the *Interest Act* (Canada), the annual rates of interest or fees to which the rates of interest or fees provided in this Agreement and the other Loan Documents (and stated herein or therein, as applicable, to be computed on the basis of 360 days or any other period of time less than a calendar year) are equivalent are the rates so determined multiplied by the actual number of days in the applicable calendar year and divided by 360 or such other period of time, respectively.
- (j) If any provision of this Agreement or of any of the other Loan Documents would obligate any Loan Party to make any payment of interest or other amount payable to the Lenders in an amount or calculated at a rate which would be prohibited by



law or would result in a receipt by the Finance Parties of interest at a criminal rate (as such terms are construed under the Criminal Code (Canada)) then, notwithstanding such provisions, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by law or so result in a receipt by the Finance Parties of interest at a criminal rate, such adjustment to be effected, to the extent necessary, as follows: (1) firstly, by reducing the amount or rate of interest required to be paid to the Finance Parties under this Section 2.13, and (2) thereafter, by reducing any fees, commissions, premiums and other amounts required to be paid to the Finance Parties which would constitute "interest" for purposes of Section 347 of the *Criminal Code* (Canada). Notwithstanding the foregoing, and after giving effect to all adjustments contemplated thereby, if the Finance Parties shall have received an amount in excess of the maximum permitted by that section of the *Criminal Code* (Canada), the Loan Parties shall be entitled, by notice in writing to the Administrative Agent, to obtain reimbursement from the Finance Parties in an amount equal to such excess and, pending such reimbursement, such amount shall be deemed to be an amount payable by the Finance Parties to the Borrowers. Any amount or rate of interest referred to in this Section 2.13(j) shall be determined in accordance with generally accepted actuarial practices and principles as an effective annual rate of interest over the term that the applicable Loan remains outstanding on the assumption that any charges, fees or expenses that fall within the meaning of "interest" (as defined in the *Criminal Code* (Canada)) shall, if they relate to a specific period of time, be pro-rated over that period of time and otherwise be pro-rated over the period from the Effective Date to the Maturity Date and, in the event of a dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by the Administrative Agent shall be conclusive for the purposes of such determination.

#### SECTION 2.14 Alternate Rate of Interest.

If the Required Lenders determine that for any reason a market for Bankers' Acceptances does not exist at any time or the Lenders cannot for other reasons, after reasonable efforts, readily sell Bankers' Acceptances or perform their other obligations under this Agreement with respect to Bankers' Acceptances, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, the Borrower's right to request the acceptance of Bankers' Acceptances shall be and remain suspended until the Required Lenders determine and the Administrative Agent notifies the Borrower and each Lender that the condition causing such determination no longer exists. If the Required Lenders determine that for any reason adequate and reasonable means do not exist for determining the Adjusted LIBO Rate for any requested Interest Period with respect to a proposed Eurodollar Loan, or that the Adjusted LIBO Rate for any requested Interest Period with respect to a proposed Eurodollar Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, the obligation of the Lenders to make or maintain Eurodollar Loans shall be suspended until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a borrowing, conversion or continuation of Eurodollar Loans or, failing that, will be deemed to have converted such request into a request for a borrowing of ABR Loans in the amount specified therein.

SECTION 2.15 Increased Costs.

- (a) If any Change in Law shall:
- (i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender or the Issuing Bank; or
  - (ii) subject any Lender to any Tax of any kind whatsoever with respect to this Agreement, any Letter of Credit, any participation in a Letter of Credit or any Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof, except for Indemnified Taxes or Other Taxes covered by Section 2.18 and the imposition, or any change in the rate, of any Excluded Tax payable by such Lender; or
  - (iii) impose on any Lender or the Issuing Bank or the London interbank market any other condition, cost or expense affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein;
- and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or the Issuing Bank of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the Issuing Bank hereunder (whether of principal, interest or otherwise), then upon request of such Lender or the Issuing Bank the Borrower will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank, as the case may be, for such additional costs incurred or reduction suffered.
- (b) If any Lender or the Issuing Bank determines that any Change in Law affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or the Issuing Bank's capital or on the capital of such Lender's or the Issuing Bank's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the Issuing Bank, to a level below that which such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Issuing Bank's policies and the policies of such Lender's or the Issuing Bank's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company for any such reduction suffered.
- (c) A certificate of a Lender or the Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or the Issuing Bank or its holding

company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender or the Issuing Bank, as the case may be, the amount shown as due on any such certificate within ten days after receipt thereof.

- (d) Failure or delay on the part of any Lender or the Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or the Issuing Bank's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender or the Issuing Bank pursuant to this Section for any increased costs or reductions incurred more than 270 days prior to the date that such Lender or the Issuing Bank, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the Issuing Bank's intention to claim compensation therefore, unless the Change in Law giving rise to such increased costs or reductions is retroactive, in which case the 270-day period referred to above shall be extended to include the period of retroactive effect thereof.

#### SECTION 2.16 Illegality.

If any Finance Party determines that any Applicable Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Finance Party or its applicable lending office to make or maintain any Loan (or to maintain its obligation to make any Loan), or to participate in, issue or maintain any Letter of Credit (or to maintain its obligation to participate in or to issue any Letter of Credit), or to determine or charge interest rates based upon any particular rate, then, on notice thereof by such Finance Party to the Borrower through the Administrative Agent, any obligation of such Finance Party with respect to the activity that is unlawful shall be suspended until such Finance Party notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall, upon demand from such Finance Party (with a copy to the Administrative Agent), prepay or, if conversion would avoid the activity that is unlawful, convert any Loans, or take any necessary steps with respect to any Letter of Credit in order to avoid the activity that is unlawful. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted. Each Finance Party agrees to designate a different lending office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Finance Party, otherwise be materially disadvantageous to such Finance Party.

#### SECTION 2.17 Break Funding Payments.

The Borrower shall have no right to prepay the amount of any Borrowing hereunder in the form of a Bankers' Acceptance, a BA Equivalent Loan or a Eurodollar Loan. Subject to the foregoing, in the event of (a) the payment of any principal of any Eurodollar Loan, BA Loan or BA Equivalent Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Loan, BA Loan or BA Equivalent Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Eurodollar Loan, BA Loan or BA Equivalent Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.11(b) and is revoked in accordance therewith), or (d) the assignment of any Eurodollar Loan, BA Loan or BA Equivalent Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.20, then, in any such event, the Borrower shall indemnify and compensate each Lender for the loss, cost and expense attributable to such event and shall be obliged to comply with the provisions of this Section. In the case of a Eurodollar Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the

amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the eurodollar market. In the event of (a) the payment of any Borrowing in the form of a Bankers' Acceptance or BA Equivalent Loan other than on the maturity date of such Bankers' Acceptance or BA Equivalent Loan (including as a result of an Event of Default), (b) the conversion of any Bankers' Acceptance or BA Equivalent Loan other than on the maturity date applicable thereto, (c) the failure to borrow, convert, continue or prepay any Bankers' Acceptance or BA Equivalent Loan on the date specified in any notice delivered pursuant hereto, or (d) the assignment of any Borrowing in the form of a Bankers' Acceptance or BA Equivalent Loan other than on the maturity date of such Bankers' Acceptance or BA Equivalent Loan as a result of a request by the Borrower pursuant to Section 2.20, then, in any such event, the Borrower shall pay to the Administrative Agent that amount equal to the face amount of any and all outstanding Bankers' Acceptances and the principal amount of any and all outstanding BA Equivalent Loans (such payments to include, without limitation, the amount or amounts required to pay (1) on maturity, the undiscounted face amount of all outstanding Bankers' Acceptances which the Finance Parties are required to honour and (2) all unpaid stamping and acceptance fees, if any, owed to the Finance Parties, such amounts (including interest earned thereon) to be held by the Administrative Agent and to be applied by the Administrative Agent to the Borrowers' indebtedness in respect of such Borrowings at the maturity or expiry date thereof. In the event that the Borrower is required to reimburse the Administrative Agent or pay any amount to the Administrative Agent on account of the indemnity contained in this Section as a result of a request by the Borrower to prepay or repay the amount of any Borrowing or otherwise, the Borrower shall be required to pay any and all amounts owing to the Administrative Agent in accordance with this Section on such terms and conditions as the Administrative Agent may reasonably require. A certificate of the Administrative Agent or any Lender setting forth any amount or amounts that such Finance Party is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Finance Party the amount shown as due on any such certificate within ten days after receipt thereof.

SECTION 2.18    Taxes.

- (a)    If the Borrower, any other Loan Party, the Administrative Agent, or any other Finance Party is required by Applicable Law to deduct or pay any Indemnified Taxes (including any Other Taxes) in respect of any payment by or on account of any obligation of a Loan Party hereunder or under any other Loan Document, then (i) the sum payable shall be increased by that Loan Party when payable as necessary so that after making or allowing for all required deductions and payments (including deductions and payments applicable to additional sums payable under this Section) the Administrative Agent or Finance Party, as the case may be, receives an amount equal to the sum it would have received had no such deductions or payments been required, (ii) the Loan Party shall make any such deductions required to be made by it under Applicable Law and (iii) the Loan Party shall timely pay the full amount required to be deducted to the relevant Governmental Authority in accordance with Applicable Law.
  
- (b)    Without limiting the provisions of paragraph (a) above, the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with Applicable Law.

- (c) The Borrower shall indemnify the Administrative Agent, each Lender and the Issuing Bank, within ten days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Administrative Agent, such Lender or the Issuing Bank, as the case may be, on or with respect to any payment by or on account of any obligation of the Borrower hereunder and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender or the Issuing Bank (in each case, with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or the Issuing Bank, shall be conclusive absent manifest error.
- (d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower or other Loan Party to a Governmental Authority, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.
- (e) Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which the Borrower is resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement or under any other Loan Document shall, at the request of the Borrower, deliver to the Borrower (with a copy to the Administrative Agent), at the time or times prescribed by Applicable Law or reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by Applicable Law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, (a) any Lender, if requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to withholding or information reporting requirements, and (b) any Lender that ceases to be, or to be deemed to be, resident in Canada for purposes of Part XIII of the ITA or any successor provision thereto shall within five days thereof notify the Borrower and the Administrative Agent in writing.
- (f) If the Administrative Agent or a Lender determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which a Loan Party has paid additional amounts pursuant to this Section 2.18, or that, because of the payment of such Taxes or Other Taxes, it has benefited from a reduction in Excluded Taxes otherwise payable by it, it shall pay to the Borrower or other Loan Party, as applicable, an amount equal to such refund or reduction (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower or Loan Party under this Section 2.18 with respect to the Taxes or Other Taxes giving rise to such refund or reduction), net of all out-of-pocket expenses of the

Administrative Agent or such Lender, as the case may be, and without interest (other than any net after-tax interest paid by the relevant Governmental Authority with respect to such refund). The Borrower or other Loan Party, as applicable, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to the Borrower or other Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender if the Administrative Agent or such Lender is required to repay such refund or reduction to such Governmental Authority. This paragraph shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes which it deems confidential) to the Borrower or any other Person, to arrange its affairs in any particular manner or to claim any available refund or reduction.

**SECTION 2.19    Payments Generally; Pro Rata Treatment; Sharing of Set-offs.**

- (a) The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.15, Section 2.17 or Section 2.18, or otherwise) prior to 12:00 noon, Toronto, Ontario time, on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices at 200 Bay Street, Suite 1800, Royal Bank Plaza, South Tower, Toronto, Ontario M5J 2J2, except payments to be made directly to the Issuing Bank or Swingline Lender as expressly provided herein and except that payments pursuant to Section 2.15, Section 2.17, Section 2.18, and Section 9.03 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. For greater certainty, stamping fees in respect of Bankers' Acceptances and BA Equivalent Notes shall be received and retained by the respective Lenders which issued or accepted such Bankers' Acceptances and BA Equivalent Notes. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in dollars.
- (b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, rateably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal and unreimbursed LC Disbursements then due hereunder, rateably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed LC Disbursements then due to such parties.

- (c) If any Lender, by exercising any right of set-off or counterclaim or otherwise, obtains any payment or other reduction that might result in such Lender receiving payment or other reduction of a proportion of the aggregate amount of its Revolving Loans and participations in LC Disbursements and Swingline Loans and accrued interest thereon greater than its pro rata share thereof as provided herein, then the lender receiving such payment or other reduction shall (a) notify the Administration Agent of such fact, and (b) purchase (for cash at face value) participations in the Revolving Loans and participations in LC Disbursements and Swingline Loans of other Lenders or make such other adjustments as shall be equitable so that the benefit of all such payments shall be shared by the Lenders rateably in accordance with the aggregate amount of principal of and accrued interest on their respective Revolving Loans and participations in LC Disbursements and Swingline Loans; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, (ii) the provisions of this Section shall not be construed to apply to any payment made by any Loan Party pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements to any assignee or participant, other than to the Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this Section shall apply) and (iii) the provisions of this Section shall not be construed to apply to (w) any payment made while no Event of Default has occurred and is continuing in respect of obligations of the Borrower to such Lender that do not arise under or in connection with the Loan Documents, (x) any payment made in respect of an obligation that is secured by a Permitted Lien or that is otherwise entitled to priority over the Borrower's obligations under or in connection with the Loan Documents, (y) any reduction arising from an amount owing to a Loan Party upon the termination of derivatives entered into between such Loan Party and such Lender, or (z) any payment to which such Lender is entitled as a result of any form of credit protection obtained by such Lender. The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under Applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.
- (d) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Bank hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Bank, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the Issuing Bank, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at a rate determined

by the Administrative Agent in accordance with prevailing banking industry practice on interbank compensation.

- (e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.05(c), Section 2.06(d), Section 2.06(e), Section 2.07(b), Section 2.19(d), or Section 9.03(c), then the Administrative Agent may, in its discretion and notwithstanding any contrary provision hereof, (i) apply any amounts thereafter received by the Administrative Agent for the account of such Lender and for the benefit of the Administrative Agent, the Swingline Lender or the Issuing Bank to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid, and/or (ii) hold any such amounts in a segregated account as cash collateral for, and application to, any future funding obligations of such Lender under such Sections; in the case of each of (i) and (ii) above, in any order as determined by the Administrative Agent in its discretion.

SECTION 2.20 Mitigation Obligations; Replacement of Lenders.

- (a) If any Lender requests compensation under Section 2.15, or requires the Borrower to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.18, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.15 or Section 2.18, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.
- (b) If any Lender requests compensation under Section 2.15, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.18, or if any Lender becomes a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) the Borrower shall have received the prior written consent of the Administrative Agent (and if a Commitment is being assigned, the Issuing Bank), which consent shall not unreasonably be withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in LC Disbursements and Swingline Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.15 or payments required to be made pursuant to Section 2.18, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior



thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

SECTION 2.21 Returned Payments.

If, after receipt of any payment which is applied to the payment of all or any part of the Obligations, the Administrative Agent, the Issuing Bank or any Lender is for any reason compelled to surrender such payment or proceeds to any Person because such payment or application of proceeds is invalidated, declared fraudulent, set aside, determined to be void or voidable as a preference, impermissible setoff, or a diversion of trust funds, or for any other reason, then the Obligations or part thereof intended to be satisfied shall be revived and continued and this Agreement shall continue in full force as if such payment or proceeds had not been received by the Administrative Agent, the Issuing Bank or such Lender. The provisions of this Section 2.21 shall be and remain effective notwithstanding any contrary action which may have been taken by the Administrative Agent, the Issuing Bank or any Lender in reliance upon such payment or application of proceeds. The provisions of this Section 2.21 shall survive the termination of this Agreement.

SECTION 2.22 Defaulting Lenders.

Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

- (a) fees shall cease to accrue on the Available Revolving Commitment of such Defaulting Lender pursuant to Section 2.12(a);
- (b) the Commitment and Revolving Credit Exposure of such Defaulting Lender shall not be included in determining whether all Lenders or the Required Lenders have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to Section 9.02); provided that any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender which affects such Defaulting Lender differently than other affected Lenders shall require the consent of such Defaulting Lender;
- (c) if any Swingline Exposure or LC Exposure exists at the time a Lender becomes a Defaulting Lender then: (i) all or any part of such Swingline Exposure and LC Exposure shall be reallocated among the non-Defaulting Lenders in accordance with their respective Applicable Percentages but only to the extent (x) the sum of all non-Defaulting Lenders' Revolving Credit Exposures plus, without duplication, such Defaulting Lender's Swingline Exposure and LC Exposure, does not exceed the total of all non-Defaulting Lenders' Commitments and (y) the conditions set forth in Section 2.01 are satisfied at such time; (ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the Borrower shall within one Business Day following notice by the Administrative Agent (x) first, prepay such Swingline Exposure and (y) second, cash collateralize such Defaulting Lender's LC Exposure (after giving effect to any partial reallocation pursuant to clause (i) above) in accordance with the procedures set forth in Section 2.06(j) for so long as such LC Exposure is outstanding; (iii) if the Borrower cash collateralizes any portion of such Defaulting Lender's LC Exposure pursuant to this Section 2.22(c), no Borrower shall be required to pay any fees to such Defaulting Lender pursuant to Section

2.12(b) with respect to such Defaulting Lender's LC Exposure during the period such Specified Defaulting Lender's LC Exposure is cash collateralized; (iv) if the LC Exposure of the non-Defaulting Lenders is reallocated pursuant to this Section 2.22(c)), then the fees payable to the Lenders pursuant to Section 2.12(a) and Section 2.12(b) shall be adjusted in accordance with such non-Defaulting Lenders' Applicable Percentages; (v) if any Defaulting Lender's LC Exposure is neither cash collateralized nor reallocated pursuant to this Section 2.22(c), then, without prejudice to any rights or remedies of the Issuing Bank or any Lender hereunder, all facility fees that otherwise would have been payable to such Defaulting Lender (solely with respect to the portion of such Defaulting Lender's Commitment that was utilized by such LC Exposure) and letter of credit fees payable under Section 2.12(b) with respect to such Defaulting Lender's LC Exposure shall be payable to the Issuing Bank until such LC Exposure is cash collateralized and/or reallocated; and (vi) the Administrative Agent shall promptly notify the Lenders of any reallocation described in this Section 2.22(c); and

- (d) so long as any Lender is a Defaulting Lender, the Swingline Lender shall not be required to fund any Swingline Loan and the Issuing Bank shall not be required to issue, extend the expiry date of or increase the amount of any Letter of Credit, unless it is satisfied that the related exposure will be 100% covered by the Commitments of the non-Defaulting Lenders and/or cash collateral will be provided by the Borrowers in accordance with Section 2.22(c), and participating interests in any such newly issued or increased Letter of Credit or newly made Swingline Loan shall be allocated among non-Defaulting Lenders in a manner consistent with Section 2.22(c) (i) (and Defaulting Lenders shall not participate therein); and
- (e) In the event that the Administrative Agent, the Borrower, the Issuing Bank and the Swingline Lender each agrees that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the Swingline Exposure and LC Exposure of the Lenders shall be readjusted to reflect the inclusion of such Lender's Commitments and on such date such Lender shall purchase at par such of the Loans of the other Lenders (other than Swingline Loans) as the Administrative Agent shall determine may be necessary in order for such Lender to hold such Loans in accordance with its Applicable Percentage.

#### SECTION 2.23 Expansion Option.

The Borrower may from time to time elect to request that the Commitments be increased in a minimum amount of \$10,000,000 (unless otherwise agreed by the Administrative Agent) so long as, after giving effect thereto and taking into account any prior increase or increases to the Commitments effected pursuant to this Section 2.23, the Commitments do not exceed \$550,000,000. The Borrower may arrange for any such increase to be provided by one or more Lenders (each Lender so agreeing to an increase in its Commitment, an "Increasing Lender"), or by one or more new banks, financial institutions or other entities acceptable to the Administrative Agent (each such new bank, financial institution or other entity, an "Augmenting Lender"), to increase their existing Revolving Commitments, or extend new Revolving Commitments, as the case may be, provided that (i) each Augmenting Lender shall be reasonably acceptable to the Administrative Agent, (ii) (x) in the case of an Increasing Lender, the Borrower, the Administrative Agent and such Increasing Lender shall execute an agreement substantially

in the form of Exhibit D hereto, and (y) in the case of an Augmenting Lender, the Borrower, the Administrative Agent and such Augmenting Lender shall execute an agreement substantially in the form of Exhibit E hereto, and (iii) any Lender approached to so increase its Commitment may elect or decline, in its sole discretion, to provide any such increase. Increases in Commitments and new Commitments created pursuant to this Section 2.23 shall become effective on the date agreed by the Borrower, the Administrative Agent and the relevant Increasing Lenders or Augmenting Lenders. The Administrative Agent shall notify the Borrower and each Lender of the effective date of any increase in the Commitments. Notwithstanding the foregoing, no increase in the Commitments (or in the Commitment of any Lender), shall become effective under this paragraph unless, (i) on the proposed date of the effectiveness of such increase, the conditions set forth in each paragraph of Section 4.02 shall be satisfied or waived by the Required Lenders and the Administrative Agent shall have received a certificate to that effect dated such date and executed by a Financial Officer of the Borrower, (ii) the Administrative Agent shall have received documents consistent with those delivered on the Effective Date as to the corporate power and authority of the Borrower to borrow hereunder after giving effect to such increase and (iii) the Administrative Agent shall have received written opinions addressed to the Administrative Agent and the Lenders and dated the effective date of such increase of counsel to the Loan Parties in form and substance reasonably satisfactory to the Administrative Agent. On the effective date of any increase in the Commitments, (i) each relevant Increasing Lender and Augmenting Lender shall make available to the Administrative Agent such amounts in immediately available funds as the Administrative Agent shall determine, for the benefit of the other Lenders, as being required in order to cause, after giving effect to such increase and the use of such amounts to make payments to such other Lenders, each Lender's Applicable Percentage of each Class of outstanding Loans is equivalent to such Lender's Applicable Percentage the Commitments and (ii) the Borrower shall be deemed to have repaid and reborrowed all outstanding Revolving Loans as of the date of any increase in the Commitments (with such reborrowing to consist of the Types of Revolving Loans, with related Interest Periods if applicable, specified in a notice delivered by the Borrower in accordance with the requirements of Section 2.03). The deemed payments made pursuant to clause (ii) of the immediately preceding sentence shall be accompanied by payment of all accrued interest on the amount prepaid and, in respect of each Eurodollar Loan, BA Loan and BA Equivalent Loan, shall be subject to indemnification by the Borrower pursuant to the provisions of Section 2.17 if the deemed payment occurs other than on the last day of the related Interest Periods.

**ARTICLE III**

**Representations and Warranties**

The Borrower represents and warrants to the Lenders that:

**SECTION 3.01    Organization; Powers.**

Each of the Loan Parties is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now conducted and, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required.

**SECTION 3.02    Authorization; Enforceability.**

- (a)    The Transactions are within the corporate powers of each of the Loan Parties and have been duly authorized by all necessary corporate and, if required, stockholder action. Each of this Agreement and the other Loan Documents to which it is a party has been duly executed and delivered by each Loan Party and

constitutes a legal, valid and binding obligation of each Loan Party, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

- (b) The choice of governing law provisions contained in this Agreement and each other Loan Document to which any Loan Party is a party are enforceable in the jurisdictions where such Loan Party is organized or incorporated or any Collateral of such Loan Party is located. Any judgment obtained in connection with any Loan Document in the jurisdiction of the governing law of such Loan Document will be recognized and be enforceable in the jurisdictions where such Loan Party is organized or any Collateral is located.
- (c) The Loan Documents to which each Loan Party is a party are in proper legal form under the laws of the jurisdiction in which each such Loan Party is organized or incorporated and existing (i) for the enforcement thereof against each such Loan Party under the laws of each such jurisdiction and (ii) in order to ensure the legality, validity, enforceability, priority or admissibility in evidence of such Loan Documents. It is not necessary to ensure the legality, validity, enforceability, priority or admissibility in evidence of the Loan Documents to which any Loan Party is a party that any such Loan Documents be filed, registered or recorded with, or executed or notarized before, any court or other authority in the jurisdiction in which any such Loan Party is organized or that any registration charge or stamp or similar tax be paid on or in respect of the applicable Loan Documents or any other document, except (i) for any such filing, registration, recording, execution or notarization that is referred to in Section 3.18 or is not required to be made until enforcement of the applicable Loan Document or (ii) to the extent the foregoing have been made or paid.

#### SECTION 3.03 Governmental Approvals; No Conflicts.

The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect, (b) will not violate any Applicable Law or regulation or the articles, by-laws or other organizational documents of the Borrower or any other Loan Party or any order of any Governmental Authority, (c) will not violate or result in a default under any indenture, agreement or other instrument binding upon the Borrower or any other Loan Party or any of their respective assets, or give rise to a right thereunder to require any payment to be made by the Borrower or any other Loan Party, and (d) will not result in the creation or imposition of any Lien on any asset of the Borrower or any other Loan Party (except for Liens created pursuant to the Loan Documents).

#### SECTION 3.04 Financial Condition; No Material Adverse Change.

- (a) The Borrower has heretofore furnished to the Lenders its consolidated balance sheet and statements of income, stockholders equity and cash flows as of and for the fiscal year ended 2008, reported on by Ernst & Young LLP, independent public accountants, certified by its chief financial officer. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower and its consolidated

Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to year-end audit adjustments.

- (b) Since December 31, 2008, there has been no material adverse change in (i) the business, assets, operations, prospects or financial condition of the Borrower and the Subsidiaries taken as a whole, (ii) the ability of the Borrower to perform its obligations under this Agreement or any other Loan Document or (iii) the rights of or benefits available to the Lenders under this Agreement or any other Loan Document

SECTION 3.05 Properties.

- (a) Each of the Borrower and the other Loan Parties has good title to, or valid leasehold interests in, all its real and personal property material to its business, except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes.
- (b) Each of the Borrower and the other Loan Parties owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other Intellectual Property material to its business, and the use thereof by the Borrower and the other Loan Parties does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.
- (c) No Loan Party owns any freehold interest in any real estate other than the parcels which are described by their municipal addresses in Schedule 3.05.
- (d) No Loan Party owns any leasehold interest in any real estate other than the parcels which are described by their municipal addresses in Schedule 3.05.
- (e) Each of the locations at which any Loan Party keeps any Collateral which is tangible personal property with an aggregate value of greater than \$25,000,000 is set forth in Schedule 3.05. The location of each Loan Party (for the purposes of Section 7(3) of the *Personal Property Security Act* (Ontario)) is set forth in Schedule 3.05.

SECTION 3.06 Litigation and Environmental Matters.

- (a) There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrower, threatened against or affecting the Borrower or any of its Subsidiaries (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect (other than the Disclosed Matters) or (ii) that involve this Agreement or the Transactions.
- (b) Except for the Disclosed Matters and except with respect to any other matters that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, neither the Borrower nor any of its Subsidiaries (i) has failed to comply with any Environmental Law or to obtain, maintain or

- comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) knows of any basis for any Environmental Liability.
- (c) All facilities and property (including underlying groundwater) owned, leased, used or operated by the Loan Parties have been, and continue to be, owned, leased, used or operated by the Loan Parties in compliance with all Environmental Laws in effect at the time and from time to time of such ownership, leasing or usage, except where failure to do so could not reasonably be expected to have a Material Adverse Effect.
  - (d) There are no pending or threatened (in writing):
    - (i) claims, complaints, notices or requests for information received by Loan Parties (or any one or more of them) with respect to any alleged violation of any Environmental Law, except such as could not reasonably be expected to have a Material Adverse Effect, or
    - (ii) complaints, notices or inquiries to the Loan Parties (or any one or more of them) regarding potential liability under any Environmental Law which liability could reasonably be expected to have a Material Adverse Effect;
  - (e) There has been no escape, seepage, leakage, spillage, discharge, emission or release of Hazardous Materials at, on, under or from any property now or previously owned, leased, used or operated by the Loan Parties (or any one or more of them) that, singly or in the aggregate, have, or could reasonably be expected to have, a Material Adverse Effect.
  - (f) Each of the Loan Parties has been issued and is in compliance with all Environmental Permits, except where failure to do so could not reasonably be expected to have a Material Adverse Effect.
  - (g) No conditions exist at, on or under any property now or previously owned, leased, used or operated by the Loan Parties (or any one or more of them) which, with the passage of time, or the giving of notice or both, would give rise to liability under any Environmental Law in effect at the time, which liability could reasonably be expected to have a Material Adverse Effect.
  - (h) No Loan Party has within the immediately preceding three (3) years been convicted of an offence for non-compliance with any Environmental Laws, Environmental Permits or Environmental Orders or been fined or otherwise sentenced or settled such prosecution short of conviction.
  - (i) Each of the Loan Parties has in effect a management structure that permit it to effectively manage environmental risk and respond in a timely manner in compliance with the Environmental Laws, Environmental Orders and Environmental Permits in the event of release of Hazardous Materials in, on or under their property.

- (j) Since the date of this Agreement, there has been no change in the status of the Disclosed Matters that, individually or in the aggregate, has resulted in, or materially increased the likelihood of, a Material Adverse Effect.

SECTION 3.07 Compliance with Laws and Agreements.

Each of the Borrower and the other Loan Parties is in compliance with all laws, regulations and orders of any Governmental Authority applicable to it or its property including Requirements of Health Care Law and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. No Default has occurred and is continuing.

SECTION 3.08 Investment Company Status.

Neither the Borrower nor any other Loan Party is an “investment company” as defined in, or subject to regulation under, the *Investment Company Act* of 1940.

SECTION 3.09 Taxes.

Each of the Borrower and its Subsidiaries has timely filed or caused to be filed all Tax returns and reports required to have been filed and has paid, reserved for or caused to be paid all Taxes required to have been paid by it, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which the Borrower or such Subsidiary, as applicable, has set aside on its books adequate reserves or (b) to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.10 ERISA.

No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. The present value of all accumulated benefit obligations under each Plan (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed by more than \$10,000,000 the fair market value of the assets of such Plan, and the present value of all accumulated benefit obligations of all underfunded Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed by more than \$10,000,000 the fair market value of the assets of all such underfunded Plans.

SECTION 3.11 Withholdings.

The Borrower and its Subsidiaries has withheld all employee withholdings and has made all employer contributions to be withheld and made by it pursuant to Applicable Law on account of Canadian Benefit Plans, Canadian Pension Plans, employment insurance and employee income taxes, except for any such withholdings and contributions in an aggregate amount less than \$5,000,000.

SECTION 3.12 Canadian Pension Plan and Benefit Plans.

Schedule 3.12 lists all Canadian Benefit Plans and Canadian Pension Plans currently maintained or contributed or required to be contributed to by the Borrower and its Subsidiaries. No Canadian Pension Plan is a pension plan as that term is defined in the *Pension Benefits Act* (Ontario),

provides defined benefit entitlements to its beneficiaries, is unfunded, or funded through a letter of credit or similar instrument. The Borrower and its Subsidiaries have complied with and performed all of their material obligations under and in respect of the Canadian Benefit Plans and Canadian Pension Plans under the terms thereof, any funding agreements and all Applicable Law (including any fiduciary, funding, investment and administration obligations). All material employer and employee payments, contributions or premiums to be remitted, paid to or in respect of each Canadian Benefit Plan and Canadian Pension Plan have been paid in a timely fashion in accordance with the terms thereof, any funding agreement and all Applicable Law. There have been no material improper withdrawals or applications of the assets of the Canadian Benefit Plans or Canadian Pension Plans. No promises of benefit improvements under the Canadian Benefit Plans or Canadian Pension Plans have been made except where such improvement could not be reasonably expected to have a Material Adverse Effect. All material reports and disclosures relating to the Canadian Pension Plans required by such plans and any Requirement of Law to be filed or distributed have been filed or distributed. There has been no partial termination of any Canadian Pension Plan and no facts or circumstances have occurred or existed that could result or be reasonably anticipated to result in the declaration of a partial termination of any Canadian Pension Plan under Requirements of Law which could reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 3.12, (a) there are no outstanding disputes concerning the assets of the Canadian Benefit Plans and Canadian Pension Plans and (b) all Canadian Benefit Plans are fully insured.

SECTION 3.13    Disclosure.

The Borrower has disclosed to the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. Neither the Information Memorandum nor any of the other reports, financial statements, certificates or other information furnished by or on behalf of the Borrower to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

SECTION 3.14    Material Agreements.

All material agreements and contracts including Material Contracts to which the Borrower and the other Loan Parties is a party or is bound as of the date of this Agreement are listed on Schedule 3.14. Except as could not reasonably be expected to result in a Material Adverse Effect, neither the Borrower nor any other Loan Party is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any material agreement to which it is a party. To the extent requested by the Administrative Agent or any Lender, all consents necessary to the granting of a security interest in the Material Contracts and to the assignment of the Material Contracts upon the occurrence of an Event of Default have been obtained. No Contracts have been entered into by the Borrower or any other Loan Party (except Material Contracts which are already covered by the immediately preceding sentence) which prohibit in accordance with their respective terms the creation of a security interest in the subject Contract, to the extent such Contract would, if terminated, either on its own or together with all other such Contracts of the Borrower and the other Loan Parties, result in the occurrence of a Material Adverse Effect.



SECTION 3.15 Solvency.

- (a) Immediately after the consummation of the Transactions to occur on the Effective Date, (i) the fair value of the assets of the Borrower and its Subsidiaries, at a fair valuation, will exceed its debts and liabilities, subordinated, contingent or otherwise; (ii) the Borrower and its Subsidiaries will be able to pay their respective debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (iii) the Borrower and its Subsidiaries will not have unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted after the Effective Date.
- (b) The Borrower shall not, nor will it permit any of its Subsidiaries to, incur debts beyond its ability to pay such debts as they mature, taking into account the timing of and amounts of cash to be received by it or any such Subsidiary and the timing of the amounts of cash to be payable on or in respect of its Indebtedness or the Indebtedness of any such Subsidiary.

SECTION 3.16 Insurance.

Schedule 3.16 sets forth a description of all insurance maintained by or on behalf of the Borrower and its Subsidiaries as of the Effective Date. As of the Effective Date, all premiums in respect of such insurance have been paid. The Borrower believes that the insurance maintained by it and its Subsidiaries is adequate.

SECTION 3.17 Capitalization and Subsidiaries.

Schedule 3.17 sets forth as of the Effective Date (a) a correct and complete list of the name and relationship to the Borrower of each and all of the Borrower's Subsidiaries, (b) subject to the notes on Schedule 3.17, a true and complete listing of each class of the authorized Equity Interests of each of the Borrowers' Subsidiaries, of which all of such issued shares are validly issued, outstanding, fully paid and non-assessable, and owned beneficially and of record by the Persons identified on Schedule 3.17, and (c) the type of entity of the Borrower and each of its Subsidiaries. All of the issued and outstanding Equity Interests owned by any Loan Party have been (to the extent such concepts are relevant with respect to such ownership interests) duly authorized and issued and is fully paid and non-assessable.

SECTION 3.18 Security Interest in Collateral.

The provisions of this Agreement and the other Loan Documents create legal and valid Liens on all the Collateral in favour of the Administrative Agent, for the benefit of the Finance Parties, and such Liens constitute perfected and continuing Liens on the Collateral, securing the Secured Obligations, enforceable against the applicable Loan Party and all third parties, and having priority over all other Liens on the Collateral except in the case of Liens permitted under Section 6.02 of this Agreement, to the extent any such Liens would have priority over the Liens in favour of the Administrative Agent pursuant to any Applicable Law or agreement.

SECTION 3.19 Employment Matters.

As of the Effective Date, there are no strikes, lockouts or slowdowns against the Borrower or any other Loan Party pending or, to the knowledge of the Borrower, threatened. The hours worked by and payments made to employees of the Borrower and the other Loan Parties have not been in

violation of the *Fair Labor Standards Act*, the *Employee Standards Act* (Ontario) or any other applicable federal, state, provincial, territorial, local or foreign law dealing with such matters. All payments due from the Borrower or any of its Subsidiaries, or for which any claim may be made against the Borrower or any of its Subsidiaries, on account of wages, vacation pay and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of the Borrower or such Subsidiary, except for any such payment and claims in an aggregate amount less than \$5,000,000.

SECTION 3.20    Affiliate Transactions.

Except as set forth on Schedule 3.20, as of the date of this Agreement, there are no existing or proposed agreements, arrangements, understandings, or transactions between any Loan Party and any of the officers, members, managers, directors, stockholders, parents, other interest holders, employees, or Affiliates of any Loan Party or any members of their respective immediate families.

SECTION 3.21    Common Enterprise.

The successful operation and condition of each of the Loan Parties is affected by and benefits from the continued successful performance of the functions of the Borrower and its Subsidiaries (collectively, the “Biovail Group”) and in particular the Loan Parties operating as members of the Biovail Group and consequently the successful operation of each of the Loan Parties is dependent on the successful performance and operation of each other Loan Party. Each Loan Party expects to derive benefit (and its board of directors or other governing body has determined that it may reasonably be expected to derive benefit), directly and indirectly, from being a member of the Biovail Group and therefore from (i) the successful operations of each of the other Loan Parties and (ii) the credit extended by the Lenders to the Borrower hereunder, both in their separate capacities and in the manner described above in this Section 3.21 as members of the Biovail Group. Each Loan Party has determined that execution, delivery, and performance of this Agreement and any other Loan Documents to be executed by such Loan Party is within its purpose, will be of direct and indirect benefit to such Loan Party, and is in its best interest.

SECTION 3.22    Canadian Anti Money Laundering Legislation.

Neither the Borrower nor any other Canadian Loan Party is a charity registered with the Canada Revenue Agency and it does not solicit charitable financial donations from the public and none of the Borrowings under this Agreement and none of the other services and products, if any, to be provided by any of the Finance Parties under or in connection with this Agreement will be used by, on behalf of or for the benefit, of any Person other than the Borrower or any other Loan Party.

SECTION 3.23    Financial Statements.

Each of the financial statements of the Borrower were prepared in accordance with GAAP consistently applied in accordance with past practice. The balance sheets contained in the financial statements of the Borrower fairly present the consolidated financial condition of the Borrower as at the date thereof and the statements of income contained in the financial statements of the Borrower fairly present the consolidated results of operations of the Borrower during the fiscal period covered thereby.

SECTION 3.24    Regulation U or X.

None of the Loan Parties is engaged in the business of extending credit for the purpose of purchasing or carrying margin stock, and no proceeds of any credit obtained hereunder shall be used for a

purpose which violates, or would be inconsistent with, the Board Regulation U or X. Terms for which meanings are provided in the Board Regulation U or X or any regulations substituted therefor, as from time to time in effect, are used in this Section with such meanings.

SECTION 3.25     Default.

There is no Default or Event of Default under this Agreement or any other Loan Document.

SECTION 3.26     Restrictions.

No Loan Party has granted or agreed to grant, or to permit to exist at any time, any express prohibition or restriction which prevents or limits its ability to enter into, and perform its obligations under, this Agreement and the other Loan Documents.

SECTION 3.27     Intellectual Property.

Each Loan Party possesses or has the right to use all Intellectual Property material to the conduct of its business, each of which is in good standing in all material respects, and has the right to use such Intellectual Property without violation or infringement of any rights of others with respect thereto. Schedule 3.27 lists of all such Intellectual Property, including a description of the nature of such rights.

**ARTICLE IV**

**Conditions**

SECTION 4.01     Effective Date.

The obligations of the Lenders to make Loans and of the Issuing Bank to issue Letters of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied (or waived or otherwise modified by the Administrative Agent in its sole discretion):

- (a)     Credit Agreement and Loan Documents. The Administrative Agent (or its counsel) shall have received (x) from each party hereto either (i) a counterpart of this Agreement signed on behalf of such party or (ii) written evidence satisfactory to the Administrative Agent (which may include telecopy transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement and (y) duly executed copies of the Loan Documents and such other certificates, documents, instruments and agreements as the Administrative Agents shall reasonably request in connection with the transactions contemplated by this Agreement and the other Loan Documents.
- (b)     Opinions. The Administrative Agent shall have received favourable written opinions (addressed to the Administrative Agent and the other Finance Parties and dated the Effective Date) of each applicable counsel for the Borrower, covering such matters relating to the Borrower, this Agreement or the Transactions as the Required Lenders shall reasonably request. The Borrower hereby requests such counsel to deliver such opinion.
- (c)     Closing Certificates; Certified Certificate of Incorporation; Good Standing Certificates. The Administrative Agent shall have received (i) a certificate of

each Loan Party, dated the Effective Date and executed by a duly appointed officer of such Loan Party, which shall (A) certify the resolutions of its Board of Directors, members or other body authorizing the execution, delivery and performance of the Loan Documents to which it is a party, (B) identify by name and title and bear the signatures of the Financial Officers and any other officers of such Loan Party authorized to sign the Loan Documents to which it is a party, and (C) contain appropriate attachments, including the certificate or articles of incorporation or organization of each Loan Party certified by the relevant authority of the jurisdiction of organization of such Loan Party, and a true and correct copy of its by-laws, memorandum and articles of association or operating, management or partnership agreement, and (ii) a long form certificate of good standing, status or compliance for each Loan Party from its jurisdiction of organization.

- (d) Lien Searches. The Administrative Agent shall have received the results of recent lien searches in each of the jurisdictions where assets of the Loan Parties are located, and such searches shall reveal no liens on any of the assets of the Loan Parties except for liens permitted by Section 6.02 or discharged on or prior to the Effective Date pursuant to a pay-off letter or other documentation satisfactory to the Administrative Agent.
- (e) Funding Accounts. The Administrative Agent shall have received a notice setting forth the deposit account(s) of the Borrower (the “Funding Accounts”) to which the Lenders are authorized by the Borrower to transfer the proceeds of any Borrowings requested or authorized pursuant to this Agreement.
- (f) Pledged Stock; Stock Powers; Pledged Notes. The Administrative Agent shall have received (i) the certificates representing all certificated Equity Interests pledged pursuant to the Security Documents, together with an undated stock power for each such certificate executed in blank by a duly authorized officer of the pledgor thereof and (ii) each promissory note (if any) pledged to the Administrative Agent pursuant to the Security Documents endorsed (without recourse) in blank (or accompanied by an executed transfer form in blank) by the pledgor thereof.
- (g) Filings, Registrations and Recordings. Each document (including any *Personal Property Security Act* or Uniform Commercial Code financing statement) required by the Collateral Documents or under law or reasonably requested by the Administrative Agent to be filed, registered or recorded in order to create in favour of the Administrative Agent, for the benefit of the other Finance Parties, a perfected Lien on the Collateral described therein, prior and superior in right to any other Person (other than with respect to Liens expressly permitted by Section 6.02), shall be in proper form for filing, registration or recordation.
- (h) Environmental Reports. The Administrative Agent shall have received environmental review reports with respect to the Mortgaged Property from firm(s) reasonably satisfactory to the Administrative Agent, which review reports shall be reasonably acceptable to the Administrative Agent.

- (i) Mortgages, etc. The Administrative Agent shall have received, with respect to each Mortgaged Property, each of the following, in form and substance reasonably satisfactory to the Administrative Agent:
  - (i) a mortgage on such property;
  - (ii) a live ALTA or other mortgagee's title policy;
  - (iii) a survey, site plan or plat acceptable to such title company retained by the Loan Parties as shall be reasonably acceptable to the Administrative Agent for purposes of providing the title policy and endorsements reasonably required by the Administrative Agent;
  - (iv) an opinion of counsel in the jurisdiction in which such parcel of real property is located in form and substance and from counsel reasonably satisfactory to the Administrative Agent; and
  - (v) such other information, documentation, and certifications as may be reasonably required by the Administrative Agent.
- (j) Landlord Waivers. The Administrative Agent shall have received, with respect to each Leased Property, a landlord waiver from the landlord of each such property, in each case, in form and substance satisfactory to the Administrative Agent.
- (k) Insurance. The Administrative Agent shall have received evidence of insurance coverage in form, scope, and substance reasonably satisfactory to the Administrative Agent and otherwise in compliance with the terms of the Loan Documents.
- (l) Letter of Credit Application. The Administrative Agent shall have received a properly completed letter of credit application if the issuance of a Letter of Credit will be required on the Effective Date.
- (m) Know Your Customer. Each Lender shall have received all information necessary to enable such Lender to identify the Borrower and each other Loan Party to the extent required for compliance with the *Patriot Act*, the Proceeds of Crime (Money Laundering) and *Terrorist Financing Act* (Canada) or other "know your customer" and anti-money laundering rules and regulations.
- (n) Other Documents. The Administrative Agent shall have received such other documents as any Finance Party or their counsel may have reasonably requested including, without limitation, information and documents required by Section 9.16.
- (o) No Default Certificate. The Administrative Agent shall have received a certificate, dated the Effective Date and signed by the President, a Vice President or a Financial Officer of the Borrower, confirming compliance with the conditions set forth in paragraphs (a), (b), (c) and (e) of Section 4.02.

- (p) Fees. The Administrative Agent shall have received all fees and other amounts due and payable on or prior to the Effective Date, including, to the extent invoiced, reimbursement or payment of all out-of-pocket expenses required to be reimbursed or paid by the Borrower hereunder.
- (q) Governmental Approvals. The Administrative Agent and its counsel shall be satisfied that all Applicable Laws and Requirements of Health Care Law have been complied with, all material agreements have been entered into and all necessary governmental, corporate and other third party consents and approvals have been obtained with respect to this agreement and the transactions contemplated herein.
- (r) Projections. The Administrative Agent shall have received the Borrower's three (3) year projections, in reasonable detail including anticipated performance, summary balance sheet, income statement and cash flow statement, all in form and substance satisfactory to it.
- (s) Convertible Notes. The Administrative Agent shall be satisfied with the pricing of the Convertible Notes in a minimum amount of \$150,000,000. The Administrative Agent is satisfied that the Convertible Note transaction will close concurrently with the Transactions.

The Administrative Agent shall notify the Borrower and the Lenders of the Effective Date, and such notice shall be conclusive and binding. Notwithstanding the foregoing, the obligations of the Lenders to make Loans and of the Issuing Bank to issue Letters of Credit hereunder shall not become effective unless each of the foregoing conditions is satisfied (or waived pursuant to Section 9.02) at or prior to 3:00 p.m., Toronto, Ontario time, on June 30, 2009 (and, in the event such conditions are not so satisfied or waived, the Commitments shall terminate at such time).

#### SECTION 4.02 Each Credit Event.

The obligation of each Lender to make a Loan on the occasion of any Borrowing, and of the Issuing Bank to issue, amend, renew or extend any Letter of Credit, is subject to the satisfaction of the following conditions:

- (a) The representations and warranties of the Borrower set forth in this Agreement shall be true and correct on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable.
- (b) At the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, no Default shall have occurred and be continuing.
- (c) No third party demands or garnishment orders pursuant to a court order or other Legal Requirement (including, without limitation, pursuant to Section 224.1 of the ITA shall have been served upon or sent to the Administrative Agent or any other Finance Party in respect of the Borrower.
- (d) A duly completed Borrowing Request delivered in accordance with the requirements of this Agreement.

- (e) The making of the requested Loan shall not be prohibited by any Legal Requirement.
- (f) All of the conditions precedent set out in Section 4.01 shall have been satisfied.

Each Borrowing and each issuance, amendment, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in each paragraph of this Section.

## **ARTICLE V**

### **Affirmative Covenants**

Until the Commitments have expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Letters of Credit shall have expired or terminated and all LC Disbursements shall have been reimbursed, the Borrower covenants and agrees with the Finance Parties that:

#### **SECTION 5.01    Financial Statements; Other Information.**

The Borrower will furnish to the Administrative Agent and each other Finance Party:

- (a) within 90 days after the end of each fiscal year of the Borrower, its audited consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by Ernst & Young LLP or other independent public accountants of recognized national standing (without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;
- (b) within 45 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower, its consolidated balance sheet and related statements of operations, shareholders' equity and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by one of its Financial Officers as presenting fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;
- (c) concurrently with any delivery of financial statements under clause (a) or (b) above, a Compliance Certificate of a Financial Officer of the Borrower in the form attached as Exhibit F (i) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) setting forth reasonably detailed

calculations confirming the Borrower's Total Debt to EBITDA Ratio and demonstrating compliance with each of the Financial Covenants, and (iii) stating whether any change in GAAP or in the application thereof has occurred since the date of the audited financial statements referred to in Section 3.04 and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate;

- (d) concurrently with any delivery of financial statements under clause (a) above, a certificate of the accounting firm that reported on such financial statements stating whether they obtained knowledge during the course of their examination of such financial statements of any Default (which certificate may be limited to the extent required by accounting rules or guidelines);
- (e) concurrently as the same become publicly available, copies (or email notice) of all periodic and other reports, proxy statements and other materials, including each 20-F and 6-K, filed by the Borrower or any Subsidiary with the Securities and Exchange Commission, the Ontario Securities Commission or any Governmental Authority succeeding to any or all of the functions of said Commissions, or with any national securities exchange, or distributed by the Borrower to its shareholders generally, as the case may be;
- (f) no later than 30 days following the first day of each fiscal year of the Borrower, the annual consolidated budget of the Borrower as prepared by management of the Borrower and approved by the Borrower's board of directors and in form reasonably satisfactory to the Administrative Agent; and
- (g) promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of the Borrower or any Subsidiary, or compliance with the terms of this Agreement, as the Administrative Agent or any Lender may reasonably request.

#### SECTION 5.02 Notices of Material Events.

following: The Borrower will furnish to the Administrative Agent and each Lender prompt written notice of the

- (a) the occurrence of any Default;
- (b) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting the Borrower or any Affiliate thereof that (i) if adversely determined, could reasonably be expected to result in a Material Adverse Effect, (ii) seeks damages in excess of \$20,000,000, (iii) seeks injunctive relief that could reasonably be expected to result in a Material Adverse Effect, (iv) alleges criminal misconduct by the Borrower or any other Loan Party, (v) alleges the violation of any law regarding, or seeks remedies in connection with, any Environmental Laws which, in any case, could reasonably be expected to result in liabilities or obligations of the Loan Parties in excess of \$20,000,000, or (vi) contests any tax, fee, assessment, or other governmental charge in excess of \$20,000,000;



- (c) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of the Borrower and its Subsidiaries in an aggregate amount exceeding \$20,000,000;
- (d) any Lien (other than Permitted Encumbrances) or claim made or asserted against any Collateral having an aggregate value in excess of \$20,000,000;
- (e) any loss, damage, or destruction to the Collateral in the amount of \$20,000,000 or more, whether or not covered by insurance;
- (f) all material amendments to the Convertible Notes, together with a copy of each such amendment;
- (g) the receipt by any Canadian Loan Party of any notice or directive or order from any Canadian federal or provincial governmental or regulatory authority having jurisdiction over any Canadian Pension Plan regarding a Canadian Pension Plan shortfall, deficiency, insolvency or other matter, together with a copy of any such notice, directive or order (including, without limitation, any Form 7 (summary of contributions/revised summary of contributions) received by any Canadian Loan Party in connection with the *Pension Benefits Act* (Ontario)), in each case to the extent such notice, directive or order could reasonably be expected to result in a Material Adverse Effect;
- (h) the release into the environment of any Hazardous Material that is required by any applicable Environmental Law to be reported to a Governmental Authority or which could reasonably be expected to lead to any material Environmental Liability which, in any case, could reasonably be expected to result in liabilities or obligations of the Loan Parties in excess of \$20,000,000;
- (i) any Loan Party becoming aware of or receiving notice of any of its products resulting in or allegedly resulting in significant adverse effects which could reasonably be expected to result in a Material Adverse Effect;
- (j) the requirement by any regulatory agency or Governmental Authority that the Borrower or any of its Subsidiaries or any of their respective third-party manufacturers to cease or limit production of any drugs or pharmaceuticals at any manufacturing facility to the extent that such requirement could reasonably be expected to result in a Material Adverse Effect; and
- (k) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this Section shall be accompanied by a statement of a Financial Officer or other executive officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

#### SECTION 5.03 Existence; Conduct of Business.

The Borrower will, and will cause each Loan Party to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights,

qualifications, licenses, permits, privileges and franchises material to the conduct of its business; provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 6.03.

SECTION 5.04     Payment of Obligations.

The Borrower will, and will cause each of its Subsidiaries to, pay its obligations, including Tax liabilities, that, if not paid, could reasonably be expected to result in a Material Adverse Effect before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) the Borrower or such Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (c) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.05     Maintenance of Properties.

The Borrower will, and will cause each of its Subsidiaries to, keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted.

SECTION 5.06     Books and Records; Inspection Rights.

The Borrower will, and will cause each of its Subsidiaries to, keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities. The Borrower will, and will cause each of its Subsidiaries to, permit any representatives designated by the Administrative Agent or any Lender, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested.

SECTION 5.07     Compliance with Laws; Agreements.

- (a)     The Borrower will, and will cause each of its Subsidiaries to, (a) comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property including Requirements of Health Care Law, and (b) comply with all indentures, agreements or other instruments binding upon it or its property, except in each case, where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.
- (b)     Canadian Pension Plans and Benefit Plans.
  - (i)     For each existing, or hereafter adopted, Canadian Pension Plan and Canadian Benefit Plan, the Borrower will, and will cause each Subsidiary to, in a timely fashion comply with and perform in all material respects all of its obligations under and in respect of such Canadian Pension Plan or Canadian Benefit Plan, including under any funding agreements and all Applicable Law (including any fiduciary, funding, investment and administration obligations).

- (ii) The Borrower shall deliver to the Administrative Agent on behalf of itself and each of its Subsidiaries (i) if requested by the Administrative Agent, copies of each annual and other return, report or valuation with respect to each Canadian Pension Plan as filed with any applicable Governmental Authority or funding agent; (ii) promptly after receipt thereof, a copy of any direction, order, notice, ruling or opinion that the Borrower or any Subsidiary may receive from any applicable Governmental Authority with respect to any Canadian Pension Plan, in each case to the extent such direction, order, notice, ruling or opinion could reasonably be expected to result in a Material Adverse Effect; (iii) notification within 30 days of any increases having a cost to one or more of the Borrower and its Subsidiaries in excess of \$5,000,000 per annum in the aggregate, in the benefits of any existing Canadian Pension Plan or Canadian Benefit Plan, or the establishment of any new Canadian Pension Plan or Canadian Benefit Plan, or the commencement or requirement to commence contributions to any such plan to which the Borrower or any of its Subsidiaries was not previously contributing; and (iv) notification within 30 days of any voluntary or involuntary termination of, or participation in, a Canadian Pension Plan or a Canadian Benefit Plan.
- (c) Environmental Covenant. The Borrower and each of its Subsidiaries (1) shall be at all times in material compliance with all Environmental Laws, and (2) shall similarly ensure that the assets and operations are in material compliance with all Environmental Laws and that no Hazardous Materials are, contrary to any Environmental Laws, discharged, emitted, released, generated, used, stored, managed, transported or otherwise dealt with.

SECTION 5.08 Use of Proceeds.

The proceeds of the Loans will be used only for the general corporate purposes of the Borrower and its subsidiaries in the ordinary course of business including permitted capital expenditures, permitted acquisitions and refinancing existing indebtedness. No part of the proceeds of any Loan will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations T, U and X.

SECTION 5.09 Insurance.

The Borrower will, and will cause each Subsidiary to, maintain with financially sound and reputable carriers having a financial strength rating reasonably acceptable to the Administrative Agent (a) insurance in such amounts (with no greater risk retention) and against such risks (including loss or damage by fire and loss in transit; product liability; theft, burglary, pilferage, larceny, embezzlement, and other criminal activities; business interruption; and general liability) and such other hazards, as is customarily maintained by companies of established repute engaged in the same or similar businesses operating in the same or similar locations and (b) all insurance required pursuant to the Collateral Documents. The Borrower will furnish to the Lenders, upon request of the Administrative Agent, information in reasonable detail as to the insurance so maintained.

SECTION 5.10 Depository Banks; Control Agreements.

- (a) From and after the date 30 days from the Effective Date or from and after such later date as agreed to by the Administrative Agent in its sole discretion, each of the Loan Parties will at all times maintain a Lender as their principal depository bank, including for the maintenance of operating, administrative, cash management, collection activity, and other Deposit Accounts for the conduct of their business.
- (b) On or before the Effective Date or by such later date as agreed to by the Administrative Agent in its sole discretion, each of the Loan Parties will cause any institution (financial or otherwise) with which it has a Deposit Account or a Securities Account (other than Excluded Accounts) to (i) enter into a Control Agreement or (ii) otherwise establish “control” within the meaning of Section 9-104 of the UCC in favour of the Administrative Agent for the benefit of the Finance Parties, in either case with respect to all Deposit Accounts and Securities Accounts (other than Excluded Accounts) maintained by the Loan Parties as of the Effective Date.
- (c) The Loan Parties will (i) provide prompt written notice to the Administrative Agent of the establishment of any Deposit Account or Securities Account after the Effective Date and (ii) contemporaneous with the establishment of such Deposit Account or Securities Account, obtain a Control Agreement or otherwise establish “control” within the meaning of Section 9-104 of the UCC in favour of the Administrative Agent for the benefit of the Finance Parties, in either case with respect to such Deposit Account or Securities Account.

SECTION 5.11 Intellectual Property.

The Borrower will, and will cause each of its Subsidiaries to:

- (a) maintain all necessary registration and applications for registration for any Intellectual Property which is material for its business in good standing, including without limitation paying all fees and making all such filings as may be required from time to time;
- (b) notify the Administrative Agent if it knows, or has reason to know, of any application or registration relating to any Intellectual Property material to the business of any of the Loan Parties that may expire, become abandoned or dedicated to the public domain, or of any material adverse determination or development (including the institution of, or any such determination in, any proceeding in the Canadian Patent and Trade Mark Offices, the United States Patent and Trade Mark Office or any court or tribunal in any country) regarding the ownership by any Loan Party of any material Intellectual Property or its right to register the same or to keep and maintain the same; and
- (c) report to the Administrative Agent registration, or any application for the registration, of any Intellectual Property material to the business of the Loan Parties taken as a whole with any intellectual property office in any Relevant Jurisdiction within 30 days after the last day of the fiscal quarter of the Borrower

in which such application occurs (whether any such application is made by itself or through any agent, employee, licensee or designee).

SECTION 5.12    Loan Party Assets and Revenues.

The Borrower and the other Loan Parties shall maintain (i) revenues, as of the end of any fiscal quarter, for the period of four consecutive fiscal quarters then ended, equal to or greater than 92.5% of the consolidated revenues of the Borrower and its Subsidiaries for such period, and (ii) assets, as of end of any fiscal quarter, equal to or greater than 92.5% of the consolidated total assets of the Borrower and its Subsidiaries as of the end of such fiscal quarter.

SECTION 5.13    Additional Barbados Security.

Upon the occurrence of a Default, at the request of the Administrative Agent (which request it shall make in its sole discretion), the Borrower shall, and shall cause Hythe Properties Incorporated to, within 10 Business Days from the date requested by the Administrative Agent (or by such later date agreed to by the Administrative Agent in writing in its sole discretion), (a) register, or cause its counsel to register, against title to Barbados Property, a mortgage in form and scope satisfactory to the Administrative Agent (in a principal amount not to exceed the fair market value of such property), (b) to the extent available on commercially reasonable terms, deliver to the Administrative Agent title insurance policies in respect of Barbados Property in form, scope and amount satisfactory to the Administrative Agent and, to the extent such a title insurance policy is not so available, cause its counsel to deliver a title opinion in respect of Barbados Property in form and scope satisfactory to the Administrative Agent, and (c) make, do, execute, and deliver or cause to be made, done, executed and delivered, all such further acts, deeds, certificates, assurances, legal opinions and things as may be necessary in the opinion of the Administrative Agent to perfect its Lien on the Barbados Property.

SECTION 5.14    Additional Mortgages.

If any one or more of the Dublin Property, {\*}† or the Mississauga Property is not sold by the applicable Loan Party on or before August 31, 2009 or by such later date as agreed to by the Administrative Agent in its sole discretion, or if the applicable Loan Party no longer intends to sell any one or more of such properties on or before August 31, 2009, the Borrower will, and will cause the applicable Loan Party to (a) provide to the Administrative Agent each of the items set out in Section 4.01(i) in respect of such property, (b) register, or cause its counsel to register, against title to each of such properties, a mortgage in form and scope satisfactory to the Administrative Agent on or before September 15, 2009 (or by such later date agreed to by the Administrative Agent in writing in its sole discretion, acting reasonably), and (c) to the extent available on commercially reasonable terms, deliver to the Administrative Agent title insurance policies in respect of each of such properties in form, scope and amount satisfactory to the Administrative Agent and, to the extent such a title insurance policy is not so available, cause its counsel to deliver a title opinion in respect of the applicable properties in form and scope satisfactory to the Administrative Agent, in each case, on or before September 15, 2009 (or by such later date agreed to by the Administrative Agent in writing in its sole discretion, acting reasonably).

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† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

SECTION 5.15 Additional Collateral; Further Assurances.

- (a) Subject to Applicable Law, the Borrower shall cause each Significant Subsidiary formed or acquired after the date of this Agreement in accordance with the terms of this Agreement to become a Loan Party by executing a Loan Guarantee (or a joinder agreement to an existing Loan Guarantee) in either case in form and substance satisfactory to the Administrative Agent. Upon execution and delivery thereof, each such Person (i) shall automatically become a Guarantor hereunder and (subject to the terms of this Section 5.15) thereupon shall have all of the rights, benefits, duties, and obligations in such capacity under the Loan Documents and (ii) will grant Liens to the Administrative Agent, for the benefit of the Finance Parties, in any property of such Loan Party which constitutes Collateral.
- (b) The Borrower will cause all of its issued and outstanding Equity Interests in each of its direct and indirect Significant Subsidiaries to be subject at all times to a first priority, perfected Lien in favour of the Administrative Agent as security for the Secured Obligations pursuant to the terms and conditions of the Loan Documents or other Security Documents as the Administrative Agent shall reasonably request.
- (c) Without limiting the foregoing, each Loan Party will, and will cause each Significant Subsidiary to, execute and deliver, or cause to be executed and delivered, to the Administrative Agent such documents, agreements and instruments, and will take or cause to be taken such further actions (including the filing and recording of financing statements, fixture filings, mortgages, deeds of trust and, if reasonably requested by Administrative Agent, other documents and such other actions or deliveries of the type required by Section 4.01, as applicable), which are required by law or which the Administrative Agent may, from time to time, reasonably request to carry out the terms and conditions of this Agreement and the other Loan Documents and to ensure perfection and priority of the Liens created or intended to be created by the Collateral Documents, all at the expense of the Loan Parties.
- (d) If any material assets (including any real property) having a value in excess of \$25,000,000 are acquired by any Loan Party after the Effective Date (other than assets constituting Collateral under the Security Documents that become subject to the Liens in favour of the Administrative Agent upon acquisition thereof), the Borrower will notify the Administrative Agent and the Lenders thereof, and, if requested by the Administrative Agent or the Required Lenders, the Borrower will cause such assets to be subjected to a Lien securing the Secured Obligations and will take, and cause the applicable Loan Party to take, such actions as shall be necessary or reasonably requested by the Administrative Agent to grant and perfect such Liens, including actions described in paragraph (c) of this Section, all at the expense of the Loan Parties.
- (e) Notwithstanding the foregoing paragraphs of this Section 5.15, a Significant Subsidiary referred to above shall not be obliged to deliver a Loan Guarantee or the Security Documents referred to above for so long as it is prohibited by Applicable Law from doing so or if in the good faith opinion of the Administrative Agent the costs of granting such Loan Guarantee and Security

Documents are not reasonable relative to the benefits to be received by the Finance Parties therefrom.

SECTION 5.16 Post Closing Items.

The Loan Parties shall take or cause to be taken each action set forth on Schedule 5.16 and such action is to be completed within the time period set forth on Schedule 5.16 for such action, it being understood that the Administrative Agent may, in its sole discretion, grant extensions to the time period set forth thereon.

**ARTICLE VI**

**Negative Covenants**

Until the Commitments have expired or terminated and the principal of and interest on each Loan and all fees payable hereunder have been paid in full and all Letters of Credit have expired or terminated and all LC Disbursements shall have been reimbursed, the Borrower covenants and agrees with the Lenders that:

SECTION 6.01 Indebtedness.

The Borrower will not, and will not permit any Subsidiary to, create, incur, assume or permit to exist any Indebtedness, except:

- (a) Indebtedness created hereunder;
- (b) Indebtedness existing on the date hereof and set forth in Schedule 6.01 and extensions, renewals and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof;
- (c) Indebtedness of the Borrower to any Subsidiary and of any Subsidiary to the Borrower or any other Subsidiary; provided that (i) Indebtedness of any Subsidiary that is not a Loan Party to the Borrower or any other Loan Party shall be subject to Section 6.04 and (ii) other than the Biovail SA Indebtedness, Indebtedness of the Borrower or any other Loan Party to any Subsidiary that is not a Loan Party shall be subordinated to the Secured Obligations on terms reasonably satisfactory to the Administrative Agent;
- (d) Guarantees by the Borrower of Indebtedness of any Subsidiary and by any Subsidiary of Indebtedness of the Borrower or any other Subsidiary; provided that (i) the Indebtedness so guaranteed is permitted by this Section 6.01, (ii) Guarantees by any Borrower or any other Loan Party of Indebtedness of any Subsidiary that is not a Loan Party shall be subject to Section 6.04 and (iii) Guarantees permitted under this clause (d) shall be subordinated to the Secured Obligations of the applicable Subsidiary on the same terms as the Indebtedness so guaranteed is subordinated to the Secured Obligations;
- (e) Indebtedness of the Borrower or any Subsidiary incurred to finance the acquisition, construction or improvement of any fixed or capital assets, including Capital Lease Obligations and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the

acquisition thereof, and extensions, renewals and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof; provided that (i) such Indebtedness is incurred prior to or within 90 days after such acquisition or the completion of such construction or improvement, and (ii) the aggregate principal amount of Indebtedness permitted by this clause (e) shall not exceed \$40,000,000 at any time outstanding;

- (f) Indebtedness of any Person that becomes a Subsidiary after the date hereof; provided that (i) such Indebtedness exists at the time such Person becomes a Subsidiary and is not created in contemplation of or in connection with such Person becoming a Subsidiary and (ii) the aggregate principal amount of Indebtedness permitted by this clause (f) shall not exceed \$25,000,000 at any time outstanding;
- (g) Indebtedness of the Borrower or any Subsidiary as an account party in respect of trade letters of credit;
- (h) Indebtedness evidenced by the Convertible Notes; and
- (i) any other unsecured Indebtedness including, for greater certainty only, any unsecured and deferred purchase price to be paid in respect of Permitted Acquisitions.

#### SECTION 6.02 Liens.

The Borrower will not, and will not permit any Subsidiary to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof, except:

- (a) Permitted Encumbrances;
- (b) any Lien on any property or asset of the Borrower or any Subsidiary existing on the date hereof and set forth in Schedule 6.02; provided that (i) such Lien shall not apply to any other property or asset of the Borrower or any Subsidiary and (ii) such Lien shall secure only those obligations which it secures on the date hereof and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;
- (c) any Lien existing on any property or asset prior to the acquisition thereof by the Borrower or any Subsidiary or existing on any property or asset of any Person that becomes a Subsidiary after the date hereof prior to the time such Person becomes a Subsidiary; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary, as the case may be, (ii) such Lien shall not apply to any other property or assets of the Borrower or any Subsidiary and (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes a Subsidiary, as the case may be and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof; and



- (d) Liens on fixed or capital assets acquired, constructed or improved by the Borrower or any Subsidiary; provided that (i) such security interests secure Indebtedness permitted by clause (e) of Section 6.01, (ii) such security interests and the Indebtedness secured thereby are incurred prior to or within 90 days after such acquisition or the completion of such construction or improvement, (iii) the Indebtedness secured thereby does not exceed 100% of the cost of acquiring, constructing or improving such fixed or capital assets and (iv) such security interests shall not apply to any other property or assets of the Borrower or any Subsidiary.

Notwithstanding anything to the contrary contained in this Agreement or any Collateral Document (including any provision for, reference to, or acknowledgement of, any Lien or Permitted Lien), nothing herein and no approval by the Administrative Agent or the Lenders of any Lien or Permitted Lien (whether such approval is oral or in writing) shall be construed as or deemed to constitute a subordination by the Administrative Agent or the Lenders of any security interest or other right, interest or Lien in or to the Collateral or any part thereof in favour of any Lien or Permitted Lien or any holder of any Lien or Permitted Lien.

#### SECTION 6.03 Fundamental Changes.

- (a) The Borrower will not, and will not permit any Subsidiary to, amalgamate with, merge into or consolidate with any other Person, or permit any other Person to amalgamate with, merge into or consolidate with it, or sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions) any substantial part of its assets, or all or substantially all of the stock of any of its Subsidiaries (in each case, whether now owned or hereafter acquired), or liquidate or dissolve, except that, if at the time thereof and immediately after giving effect thereto no Default shall have occurred and be continuing (i) with the consent of the Administrative Agent not to be unreasonably withheld, any Guarantor may amalgamate with or merge into the Borrower in a transaction in which the Borrower is the surviving corporation, (ii) with the consent of the Administrative Agent not to be unreasonably withheld, any Guarantor may be continued from one form of jurisdiction to another, (iii) any Guarantor may merge into any other Guarantor in a transaction in which the surviving entity is a Guarantor, provided that any such merger involving a Person that is not a wholly owned Subsidiary immediately prior to such merger shall not be permitted unless also permitted by Section 6.04, (iv) any Person (other than the Borrower or any Guarantor) may amalgamate with or merge into any Subsidiary (other than a Guarantor) in a transaction in which the surviving entity is a Subsidiary, and (v) any Subsidiary may wind up, liquidate or dissolve if (x) the Borrower determines in good faith that such wind up, liquidation or dissolution is in the best interests of the Borrower and is not materially disadvantageous to the Lenders and (y) in connection with any such wind up, liquidation or dissolution of a Loan Party, all the assets of such Loan Party are transferred to another Loan Party.
- (b) The Borrower will not, and will not permit any of its Subsidiaries to, engage to any material extent in any business other than businesses of the type conducted by the Borrower and its Subsidiaries on the date of execution of this Agreement and businesses reasonably related thereto.

SECTION 6.04 Investments, Loans, Advances, Guarantees and Acquisitions.

The Borrower will not, and will not permit any of its Subsidiaries to, purchase, hold or acquire (including pursuant to any merger with any Person that was not a wholly owned Subsidiary prior to such merger) any capital stock, evidences of indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any investment or any other interest in, any other Person, or purchase or otherwise acquire (in one transaction or a series of transactions) any assets of any other Person constituting a business unit, except:

- (a) Permitted Investments;
- (b) Permitted Acquisitions;
- (c) investments by the Borrower in any Guarantor and by any Guarantor in any other Guarantor; provided that the Equity Interests evidencing such investments have been pledged in favour of the Administrative Agent and the certificates evidencing such Equity Interests have been delivered to the Administrative Agent together with stock transfer powers (executed in blank) with respect to same;
- (d) direct and indirect investments existing on the date hereof by the Borrower in any Subsidiary which is not a Guarantor; provided that such investments are identified on Schedule 3.17;
- (e) investments in existence on the date of this Agreement and described in Schedule 6.04;
- (f) loans or advances made by the Borrower to any Subsidiary and made by any Subsidiary to the Borrower or any Subsidiary, provided that (A) in the case of loans or advances from Loan Parties to Subsidiaries that are not Loan Parties, such loans and advances are made in the ordinary course of business and consistent with past practices and (B) the amount of such loans and advances made by Loan Parties to Subsidiaries that are not Loan Parties (together with outstanding Guarantees permitted under the proviso to Section 6.04(g)) shall not exceed \$40,000,000 at any time outstanding (in each case determined without regard to any write-downs or write-offs);
- (g) Guarantees constituting Indebtedness permitted by Section 6.01, provided that (A) in the case of Guarantees by Loan Parties of Indebtedness of Subsidiaries that are not Loan Parties, such Guarantees are entered into in the ordinary course of business and consistent with past practices, and (B) the aggregate principal amount of Indebtedness of Subsidiaries that are not Loan Parties that is guaranteed by any Loan Party shall (together with outstanding intercompany loans permitted under the proviso to Section 6.04(f)) shall not exceed \$40,000,000 at any time outstanding (in each case determined without regard to any write-downs or write-offs);
- (h) investments in the form of Swap Agreements permitted by Section 6.07;
- (i) investments constituting minority equity interests in Persons other than Subsidiaries of the Borrower not exceeding \$25,000,000; and

- (j) other investments not exceeding \$5,000,000 at any time.

SECTION 6.05    Asset Sales.

The Borrower will not, and will not permit any of its Subsidiaries to, sell, transfer, lease or otherwise dispose of any asset, including any Equity Interest owned by it, nor will the Borrower permit any Subsidiary to issue any additional Equity Interest in such Subsidiary (other than to the Borrower or another Subsidiary in compliance with Section 6.04), except:

- (a) sales, transfers, leases, licenses and dispositions of (i) inventory and Intellectual Property in the ordinary course of business and (ii) used, obsolete, worn out, discontinued or surplus equipment or property (including Intellectual Property) in the ordinary course of business;
- (b) sales, transfers, leases and dispositions to any Borrower or any Subsidiary, provided that any such sales, transfers or dispositions involving a Subsidiary that is not a Loan Party shall be made in compliance with Section 6.04 and Section 6.09;
- (c) sales, transfers and dispositions of accounts receivable in connection with the compromise, settlement or collection thereof;
- (d) sales, transfers and dispositions of Permitted Investments;
- (e) sale and leaseback transactions permitted by Section 6.06;
- (f) sales, transfers, leases and other dispositions of assets (other than Equity Interests in a Loan Party) that are not permitted by any other paragraph of this Section, provided that the aggregate fair market value of all assets sold, transferred or otherwise disposed of in reliance upon this paragraph (f) shall not exceed \$25,000,000 during any fiscal year of the Borrower;
- (g) {\*}†; and
- (h) sale of the Dublin Property, {\*}† and the Puerto Rico Properties.

SECTION 6.06    Sale and Leaseback Transactions.

The Borrower will not, and will not permit any of its Subsidiaries to, enter into any arrangement, directly or indirectly, whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property sold or transferred, except for (a) any such sale of any fixed or capital assets by the Borrower or any Subsidiary that is made on commercially reasonable terms and (b) any sale and leaseback of any one or more of the Manitoba Property, the Barbados Property or the Mississauga Property.

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† Represents material which has been redacted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

SECTION 6.07 Swap Agreements.

The Borrower will not, and will not permit any of its Subsidiaries to, enter into any Swap Agreement, except (a) Swap Agreements entered into to hedge or mitigate risks to which the Borrower or any Subsidiary has actual exposure, and (b) Swap Agreements entered into in order to effectively cap, collar or exchange interest rates (from fixed to floating rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of the Borrower or any Subsidiary.

SECTION 6.08 Restricted Payments; Certain Payments of Indebtedness.

- (a) The Borrower will not, and will not permit any of its Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, except (i) the Borrower may declare and pay dividends with respect to its Equity Interests payable in cash or by way of shares of its common stock, (ii) Subsidiaries may declare and pay dividends with respect to their Equity Interests, (iii) the Borrower may make Restricted Payments pursuant to and in accordance with stock option plans or other benefit plans for management or employees of the Borrower and its Subsidiaries, (iv) the Borrower may make Restricted Payments in respect of the Convertible Notes permitted by Section 6.08(b), and (v) the Borrower may purchase for cancellation or retire or otherwise acquire for value in any manner any of its own Equity Interests up to the maximum aggregate amount of \$75,000,000 during any fiscal year of the Borrower, provided that no Default has occurred or could reasonably be expected to occur either before or after the making of such proposed Restricted Payment.
- (b) The Borrower will not, and will not permit any of its Subsidiaries to, make or agree to pay or make, directly or indirectly, any payment or other distribution (whether in cash, securities or other property) of or in respect of principal of or interest on any Indebtedness, or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Indebtedness, except:
  - (i) payment of Indebtedness created under the Loan Documents;
  - (ii) payment of regularly scheduled interest and principal payments as and when due in respect of any Indebtedness, other than payments in respect of the Subordinated Indebtedness prohibited by the subordination provisions thereof;
  - (iii) unless a Default has occurred and is continuing, payment (a) on the surrender of the Convertible Notes as a result of the exercise of a right of conversion of the Convertible Notes by one or more holders thereof, (b) in the event of a fundamental change (as defined in the Information Memorandum), if a holder of Convertible Notes accepts a purchase offer (as defined in the Information Memorandum) of the Borrower with respect to such fundamental change, or (c) provided that the Total Debt to EBITDA Ratio (with EBITDA for such purposes being measured for the most recently completed four fiscal quarter period of the Borrower) is less than or equal to 2.00:1.00, determined both before and after the

making of such proposed redemption, to redeem the Convertible Notes if the Borrower exercises a right of redemption as a result of becoming obligated to pay “additional amounts” (as defined in the Information Memorandum) under the circumstances described in the Information Memorandum which include for greater certainty the obligation of the Borrower to pay to the holders of any Converted Note additional amounts (which are more than a *de minimis* amount) as a result of any change from the date hereof in the laws or any regulations of Canada or any Canadian political subdivision or taxing authority, or any change from the date hereof in an interpretation or application of such laws or regulations by any legislative body, court, governmental agency, taxing authority or regulatory authority (including the enactment of any legislation and the publication of any judicial decision or regulatory or administrative determination) in respect of Canadian withholding tax;

- (iv) refinancings of Indebtedness to the extent permitted by Section 6.01;
- (v) payment of secured Indebtedness that becomes due as a result of the voluntary sale or transfer of, or casualty with respect to, the property or assets securing such Indebtedness;
- (vi) payment of the Biovail SA Indebtedness to Biovail SA on or before July 17, 2009;
- (vii) payment of Indebtedness owed to the Borrower or any Subsidiary of the Company in accordance with the terms of any subordination provisions thereof; and
- (viii) payment of the Convertible Notes with Equity Interests of the Borrower as permitted by and in accordance with the Convertible Notes Indenture or conversion of the Convertible Notes to Equity Interests of the Borrower as permitted by and in accordance with the Convertible Notes Indenture.

#### SECTION 6.09 Transactions with Affiliates.

The Borrower will not, and will not permit any of its Subsidiaries to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) in the ordinary course of business at prices and on terms and conditions not less favourable to the Borrower or such Subsidiary than could be obtained on an arm’s-length basis from unrelated third parties, (b) transactions between or among the Borrower and its wholly owned Subsidiaries not involving any other Affiliate and (c) any Restricted Payment permitted by Section 6.08.

#### SECTION 6.10 Restrictive Agreements.

The Borrower will not, and will not permit any of its Subsidiaries to, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of the Borrower or any Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets, or (b) the ability of any Subsidiary to pay dividends or other distributions with respect to any shares of its capital stock or to make or repay loans or advances to

the Borrower or any other Subsidiary or to Guarantee Indebtedness of the Borrower or any other Subsidiary; provided that (i) the foregoing shall not apply to restrictions and conditions imposed by law or by this Agreement, (ii) the foregoing shall not apply to restrictions and conditions existing on the date hereof identified on Schedule 6.10 (but shall apply to any extension or renewal of, or any amendment or modification expanding the scope of, any such restriction or condition), (iii) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary pending such sale, provided such restrictions and conditions apply only to the Subsidiary that is to be sold and such sale is permitted hereunder, (iv) clause (a) of the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness and (v) clause (a) of the foregoing shall not apply to customary provisions in leases and other contracts restricting the assignment thereof.

SECTION 6.11     Amendment of Material Documents.

The Borrower will not, and will not permit any of its Subsidiaries to, amend, modify or waive any of its rights under (a) any agreement relating to any Subordinated Indebtedness or (b) its certificate of incorporation, articles, by-laws, operating, management or partnership agreement or other organizational documents, in each case, to the extent any such amendment, modification or waiver would not reasonably be expected to be adverse to the Lenders.

SECTION 6.12     Changes in Fiscal Periods.

The Borrower will not, and will not permit any of its Subsidiaries to, permit the fiscal year of such Loan Party to end on a day other than December 31 or change such Loan Party's method of determining fiscal quarters or fiscal months.

SECTION 6.13     Capital of Loan Parties.

The Borrower shall not suffer or permit any of the other Loan Parties to issue further equity securities, unless such equity securities are:

- (a)     issued to (A) the existing equity holder or (B) a Loan Party which has executed and delivered to the Administrative Agent a Security Document; and
- (b)     pledged to the Administrative Agent pursuant to the Security Documents.

SECTION 6.14     Securities to be Pledged with Agent upon Request.

Notwithstanding any inconsistent term and conditions contained in the Security Documents, within five Business Days of a written request of the Administrative Agent, the certificates representing any further equity securities issued by any Loan Party (other than the Borrower) shall be delivered to the Administrative Agent, together with a stock transfer power (executed in blank) with respect to same.

SECTION 6.15     Regulation U or X.

The Borrower shall not, and shall not suffer or permit any Subsidiary to, engage in the business of extending credit for the purpose of purchasing or carrying margin stock. The Borrower shall not use any of the proceeds of any credit extended hereunder to "purchase" or "carry" any "margin stock" as defined in Regulation U of the Board.

SECTION 6.16 Material Contracts.

The Borrower will not, and will not permit any Subsidiary to, cancel or terminate any Material Contract or amend or otherwise modify any Material Contract, or waive any default or breach under any Material Contract, or take any other action in connection with any Material Contract that in any such instance would have a Material Adverse Effect.

SECTION 6.17 Acquisitions.

The Borrower will not, and will not permit any Subsidiary to, make or commit to make any Acquisition other than Permitted Acquisitions.

SECTION 6.18 Change in Control.

The Borrower will not permit a Change in Control to occur except with the prior written consent of the Administrative Agent and the Required Lenders, which consent shall not be unreasonably withheld.

SECTION 6.19 Excluded Subsidiaries.

The Borrower will not, and will not permit any Subsidiary to, permit any Subsidiary that is not a Guarantor to have any assets with an aggregate value of more than \$35,000,000. The Borrower will not, and will not permit any Subsidiary to, sell, transfer, lease or otherwise dispose of the Equity Interests it holds in Biovail Insurance or Biovail Lux.

SECTION 6.20 Biovail Insurance.

The Borrower will not permit Biovail Insurance to (i) carry on any business other than the business of an Exempt Insurance Company as defined under the Exempt Insurance Act of Barbados for the purpose of self-insuring the Borrower and its Subsidiaries or (ii) cancel, terminate or otherwise amend or modify the Biovail Insurance Trust Indenture.

SECTION 6.21 Pharma Pass SA.

Pharma Pass SA shall not (i) engage in any business other than in connection with the Pharma Pass SA Contracts, or (ii) cancel, terminate or amend or otherwise modify the Pharma Pass SA Contracts, or waive any default or breach under any of the Pharma Pass SA contracts, or take any other action in connection with any of the Pharma Pass SA Contracts that in any such instance could reasonably be expected to cause a Material Adverse Effect.

SECTION 6.22 Biovail SA., Biovail Lux and Biovail UK. and Biovail SA Indebtedness.

The Borrower will not permit Biovail SA, Biovail Lux or Biovail UK to engage in any business of any kind, other than the business conducted by each such Subsidiary as of the date hereof. The Borrower will, and will cause Biovail Laboratories International SRL to, repay the Biovail SA Indebtedness to Biovail SA on or before July 17, 2009.

SECTION 6.23 Minimum Interest Coverage Ratio.

The Loan Parties will not permit the ratio of EBITDA of the Borrower and its Subsidiaries (on a consolidated basis) to cash Interest Expense on the last day of any fiscal quarter, determined for any period of four consecutive fiscal quarters ending on the last day of each fiscal quarter, to be less than the ratio of 3.00 to 1.00.

SECTION 6.24 Maximum Total Debt to EBITDA Ratio.

The Loan Parties will not permit the Total Debt to EBITDA Ratio on the last day of any fiscal quarter, determined for any period of four consecutive fiscal quarters ending on the last day of each fiscal quarter, to be greater than the ratio of 2.50 to 1.00.

SECTION 6.25 Minimum Equity.

The Loan Parties will not permit the Adjusted Equity of the Borrower (on a consolidated basis), on the last day of any fiscal quarter, to be less than \$1,000,000,000.

**ARTICLE VII**

**Events of Default**

SECTION 7.01

If any of the following events ("Events of Default") shall occur:

- (a) the Borrower shall fail to pay any principal of any Loan or any reimbursement obligation in respect of any LC Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;
- (b) the Borrower shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Article) payable under this Agreement, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of five (5) Business Days;
- (c) any representation or warranty made or deemed made by or on behalf of the Borrower or any Subsidiary in or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any other Loan Document or any amendment or modification thereof or waiver thereunder, shall prove to have been incorrect when made or deemed made;
- (d) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in Section 5.02, Section 5.03 (with respect to the existence of any Loan Party), Section 5.04, Section 5.07(a) or Section 5.08 or in Article VI;
- (e) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in this Agreement or any other Loan Document (other than those specified in clause (a), (b) or (d) of this Article), and such failure shall



continue unremedied for a period of 30 days after the earlier of any Loan Party's knowledge thereof or notice thereof from the Administrative Agent to the Borrower (which notice will be given at the request of any Lender);

- (f) the Borrower or any Subsidiary shall fail to make any principal payment in respect of any Material Indebtedness, when and as the same shall become due and payable and such failure shall continue unremedied for a period of two (2) Business Days;
- (g) the Borrower or any Subsidiary shall fail to pay any interest, any fee or any other amount (other than an amount referred to in clause (f) above) in an amount greater than \$1,000,000 in respect of any Material Indebtedness, when and as the same shall become due and payable and such failure shall continue unremedied for a period of five (5) Business Days;
- (h) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity and, in each case, such Material Indebtedness is not repaid on the date it becomes due; provided that this clause (h) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness;
- (i) an involuntary case or proceeding (including the filing of any notice of intention in respect thereof) shall be commenced or an involuntary petition shall be filed against any Loan Party or any Subsidiary of any Loan Party under any Insolvency Law, any incorporation law or any other Applicable Law in any jurisdiction in respect of:
  - (i) its bankruptcy, liquidation, winding-up, dissolution or suspension of general operations,
  - (ii) the composition, rescheduling, reorganization, arrangement or readjustment of, or other relief from, or stay of proceedings to enforce, some or all of its debts or obligations,
  - (iii) the appointment of a trustee, interim receiver, receiver, receiver and manager, liquidator, administrator, custodian, sequestrator, agent or other similar official for a Loan Party, or for all or a substantial part of the assets of a Loan Party or any Subsidiary of any Loan Party, or
  - (iv) possession, foreclosure, seizure or retention, sale or other disposition of, or other proceedings to enforce security over, all or any substantial part of the assets, of any Loan Party or any Subsidiary of any Loan Party,

and such case or proceeding shall remain undismissed or unstayed for 60 days or more or such court shall enter a decree or order granting the relief sought in such case or proceeding;

- (j) any Loan Party or any Subsidiary of any Loan Party (i) files a plan of arrangement, proposal, petition or application seeking relief under any Insolvency Law or makes an assignment into bankruptcy, or (ii) commences on a voluntary basis, or fails to contest in a timely and appropriate manner or consents to the institution of any proceeding referred to in paragraph (i) above or to the filing of any such petition or to the appointment of or taking possession by a custodian, receiver, interim receiver, receiver and manager, liquidator, assignee, trustee or sequestrator (or similar official) of such Loan Party or Subsidiary or of all or any substantial part of such Loan Party's or Subsidiary's assets, or (iii) makes an assignment for the benefit of creditors, (iv) takes any action in furtherance of any of the foregoing or of any of the proceedings referred to in paragraph (i), or (v) admits in writing its inability to, or is generally unable to, pay its debts as such debts become due or is otherwise insolvent;
- (k) (i) any Loan Party or any of its Subsidiaries shall, directly or indirectly, terminate or cause to terminate, in whole or in part, or initiate the termination of, in whole or in part, any Canadian Pension Plan so as to result in any liability which could reasonably be expected to have a Material Adverse Effect; (ii) any event or condition exists in respect of any Canadian Pension Plan which could reasonably be expected to have a Material Adverse Effect; (iii) any Loan Party or any of its Subsidiaries shall fail to make minimum required contributions to amortize any funding deficiencies under a Canadian Pension Plan within the time period set out in Requirements of Laws or fail to make a required contribution under any Canadian Pension Plan or Canadian Benefit Plan which could result in the imposition of a Lien upon the assets of any Loan Party or any of its Subsidiaries that could reasonably be expected to have a Material Adverse Effect; or (iv) any Loan Party or any of its Subsidiaries makes any improper withdrawals or applications of assets of a Canadian Pension Plan or Canadian Benefit Plan which could reasonably be expected to have a Material Adverse Effect;
- (l) one or more judgments for the payment of money in an aggregate amount in excess of \$50,000,000 shall be rendered against the Borrower, any Subsidiary or any combination thereof and the same shall remain undischarged for a period of 30 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower or any Subsidiary to enforce any such judgment;
- (m) an ERISA Event shall have occurred that, in the opinion of the Required Lenders, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect;
- (n) any Loan Guarantee shall fail to remain in full force or effect or any action shall be taken to discontinue or to assert the invalidity or unenforceability of any Loan Guarantee, or any Guarantor shall fail to comply with any of the terms or provisions of the Loan Guarantee to which it is a party, or any Guarantor shall deny that it has any further liability under the Loan Guarantee to which it is a party, or shall give notice to such effect;
- (o) any Collateral Document shall for any reason fail to create a valid and perfected first priority security interest in any Collateral purported to be covered thereby, except as permitted by the terms of any Collateral Document, or any Collateral

Document or the perfection thereof shall fail to remain in full force or effect or any action shall be taken to discontinue or to assert the invalidity or unenforceability of any Collateral Document, or any Loan Party shall fail to comply with any of the terms or provisions of any Collateral Document; or

- (p) any material provision of any Loan Document for any reason ceases to be valid, binding and enforceable in accordance with its terms (or any Loan Party shall challenge the enforceability of any Loan Document or shall assert in writing, or engage in any action or inaction based on any such assertion, that any provision of any of the Loan Documents has ceased to be or otherwise is not valid, binding and enforceable in accordance with its terms);

then, and in every such event (other than an event with respect to the Borrower described in clause (h) or (i) of this Article), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; and in case of any event with respect to the Borrower described in clause (h) or (i) of this Article, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower. Upon the occurrence and the continuance of an Event of Default, the Administrative Agent may, and at the request of the Required Lenders shall, exercise any rights and remedies provided to the Administrative Agent under the Loan Documents or at law or equity, including all remedies provided under the UCC and the PPSA.

## **ARTICLE VIII**

### **The Administrative Agent**

Each of the Lenders, the Swingline Lender and the Issuing Bank hereby irrevocably appoints the Administrative Agent as its agent and to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof and thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Bank, and neither the Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions.

The bank serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent, the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity and such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business

with the Borrower or any Subsidiary or other Affiliate thereof as if it were not the Administrative Agent hereunder and without any duty to account to the Lenders.

The Administrative Agent shall not have any duties or obligations except those expressly set forth herein. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) the Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise in writing as directed by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02) but the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or Applicable Law; and (c) except as expressly set forth herein, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Subsidiaries that is communicated to or obtained by the Person serving as Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02) or in the absence of its own gross negligence or wilful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until written notice thereof is given to the Administrative Agent by the Borrower or a Lender, and the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of a Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition specified in this Agreement, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise communicated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the Issuing Bank, the Administrative Agent may presume that such condition is satisfactory to such Lender or the Issuing Bank unless the Administrative Agent shall have received notice to the contrary from such Lender or the Issuing Bank prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Each Lender agrees to indemnify the Administrative Agent and hold it harmless (to the extent not reimbursed by the Borrower), rateably according to its Applicable Percentage (and not jointly or jointly and severally) from and against any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel, which may be incurred by or asserted against the Administrative Agent in any way relating to or arising out of the Loan Documents or

the transactions therein contemplated. However, no Lender shall be liable for any portion of such losses, claims, damages, liabilities and related expenses resulting from the Administrative Agent's gross negligence or wilful misconduct.

The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any of the other Loan Documents by or through any one or more sub-agents appointed by the Administrative Agent from among the Lenders (including the Person serving as Administrative Agent) and their respective Affiliates. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The provisions of this Article and the other provisions of this Agreement for the benefit of the Administrative Agent shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

Notwithstanding any other provision of this Agreement, the Proceeds of Realization of the Loan Guarantees and the Collateral Documents or any portion thereof shall be applied and distributed, and the claims of the Finance Parties shall be deemed to have the relative priorities which would result in the Proceeds of Realization being applied and distributed, as follows:

- (i) firstly, to the payment of all reasonable costs and expenses incurred by or on behalf of the Administrative Agent (including all legal fees and disbursements) in the exercise of all or any of the powers granted to it hereunder or under any of the other Loan Documents and in payment of all of the remuneration of any receiver, interim receiver, receiver and manager or other Person having similar powers or authority appointed by the Administrative Agent or by a court at the instance of the Administrative Agent in respect of the Collateral or any part thereof (a "Receiver") and all costs and expenses properly incurred by such Receiver (including all legal fees and disbursements) in the exercise of all or any powers granted to it under the Loan Guarantees and the Collateral Documents;
- (ii) secondly, in payment of all amounts of money borrowed or advanced by the Administrative Agent or such Receiver pursuant to the Loan Guarantees and the Collateral Documents and any interest thereon;
- (iii) thirdly, to the payment or prepayment of the Secured Obligations (including holding as cash collateral to be applied against Secured Obligations which have not then matured) to the Finance Parties *pro rata* in accordance with the relative amount of the Secured Obligations owing to each of them; and
- (iv) the balance, if any, to the Borrower or otherwise in accordance with Applicable Law.

The Administrative Agent may at any time give notice of its resignation to the Lenders, the Issuing Bank and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a Lender having a Commitment to a revolving credit and having an office in Toronto, Ontario, or an Affiliate of any such Lender with an office in Toronto, Ontario.

If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications specified in the paragraph above, provided that if the Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in the preceding paragraph.

Upon a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the former Administrative Agent, and the former Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided in the preceding paragraph). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the termination of the service of the former Administrative Agent, the provisions of this Article and Section 9.03 shall continue in effect for the benefit of such former Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the former Administrative Agent was acting as Administrative Agent.

Each Lender and the Issuing Bank acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their respective Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their respective Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document, any related agreement or any document furnished hereunder or thereunder.

Each of the Lenders hereby acknowledges that to the extent permitted by Applicable Law, any collateral security and the remedies provided under the Loan Documents to the Lenders are for the benefit of the Lenders collectively and acting together and not severally and further acknowledges that its rights hereunder and under any collateral security are to be exercised not severally, but by the Administrative Agent upon the decision of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for in the Loan Documents). Accordingly, notwithstanding any of the provisions contained herein or in any collateral security, each of the Lenders hereby covenants and agrees that it shall not be entitled to take any action hereunder or thereunder including, without limitation, any declaration of default hereunder or thereunder but that any such action shall be taken only by the Administrative Agent with the prior written agreement of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for in the Loan Documents). Each of the Lenders hereby further covenants and agrees that upon any such written agreement being given, it shall co-operate fully with the Administrative Agent to the extent requested by the Administrative Agent. Notwithstanding the foregoing, in the absence of instructions from the Lenders and where in the sole

opinion of the Administrative Agent, acting reasonably and in good faith, the exigencies of the situation warrant such action, the Administrative Agent may without notice to or consent of the Lenders take such action on behalf of the Lenders as it deems appropriate or desirable in the interest of the Lenders.

Anything herein to the contrary notwithstanding, none of the Bookrunners, Arrangers or holders of similar titles, if any, specified in this Agreement shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent or a Lender hereunder.

**ARTICLE IX**

**Miscellaneous**

**SECTION 9.01    Notices.**

- (a)    Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:
  - (i)    if to the Borrower, to it at 7150 Mississauga Road, Mississauga, Ontario L5N 2M5, Attention of Chief Financial Officer (Telecopy No. 905-286-3319);
  - (ii)   if to the Administrative Agent, to JPMorgan Chase Bank, N.A., Toronto Branch, Loan and Agency Services Group, 200 Bay Street, Fl 18, Toronto, M5J 2J2 Canada, Attention of Indrani Lazarus (Telecopy No. 416-981-9174), with a copy to JPMorgan Chase Bank, N.A., Toronto, Branch, 10 South Dearborn Street, Mail Code: IL1-0364, 9th Floor, Chicago, IL, Attention of Michelle Reese (Telecopy No. 312-325-3153);
  - (iii)   if to the Issuing Bank, to it at 200 Bay Street, Fl 18, Toronto, M5J 2J2 Canada, Attention of Indrani Lazarus (Telecopy No. 416-981-9174), with a copy to JPMorgan Chase Bank, N.A., Toronto, Branch, 10 South Dearborn Street, Mail Code: IL1-0364, 9th Floor, Chicago, IL, Attention of Michelle Reese (Telecopy No. 312-325-3153);
  - (iv)   if to the Swingline Lender, to it at 200 Bay Street, Fl 18, Toronto, M5J 2J2 Canada, Attention of Indrani Lazarus (Telecopy No. 416-981-9174), with a copy to JPMorgan Chase Bank, N.A., Toronto, Branch, 10 South Dearborn Street, Mail Code: IL1-0364, 9th Floor, Chicago, IL, Attention of Michelle Reese (Telecopy No. 312-325-3153); and
  - (v)   if to any other Lender, to it at its address (or telecopy number) set forth in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not

given on a business day between 9:00 a.m. and 5:00 p.m. local time where the recipient is located, shall be deemed to have been given at 9:00 a.m. on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

- (b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Article II unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

- (c) Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

#### SECTION 9.02 Waivers; Amendments.

- (a) No failure or delay by the Administrative Agent, the Issuing Bank or any Lender in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Issuing Bank and the Lenders hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative



Agent, any Lender or the Issuing Bank may have had notice or knowledge of such Default at the time.

- (b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders or by the Borrower and the Administrative Agent with the consent of the Required Lenders; provided that no such agreement shall (i) increase the Commitment of any Lender without the written consent of such Lender, (ii) reduce the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender affected thereby, (iii) postpone the scheduled date of payment of the principal amount of any Loan or LC Disbursement, or any interest thereon, or any fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender affected thereby, (iv) change Section 2.19(b) or Section 2.19(c) in a manner that would alter the pro rata sharing of payments required thereby, without the written consent of each Lender, or (v) change any of the provisions of this Section or the definition of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender; provided further that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, the Issuing Bank or the Swingline Lender hereunder without the prior written consent of the Administrative Agent, the Issuing Bank or the Swingline Lender, as the case may be.
- (c) The Lenders hereby irrevocably authorize the Administrative Agent, at its option and in its sole discretion, to release any Liens granted to the Administrative Agent by the Loan Parties on any Collateral (i) upon the termination of all Commitments, and the payment and satisfaction in full in cash and/or the cash collateralization of all Secured Obligations, (ii) constituting property being sold or disposed of if the Loan Party disposing of such property certifies to the Administrative Agent that the sale or disposition is made in compliance with the terms of this Agreement (and the Administrative Agent may rely conclusively on any such certificate, without further inquiry), and to the extent that the property being sold or disposed of constitutes 100% of the Equity Interest of a Subsidiary, the applicable Administrative Agent is authorized to release any Loan Guaranty provided by such Subsidiary, (iii) constituting property leased to a Loan Party under a lease which has expired or been terminated in a transaction permitted under this Agreement, (iv) as required to effect any sale or other disposition of such Collateral in connection with any exercise of remedies of the Administrative Agent and the Lenders pursuant to Article VII or (v) to otherwise facilitate a transaction expressly permitted by this Agreement. Except as provided in the preceding sentence, the Administrative Agent will not release any Liens on Collateral without the prior written authorization of each of the Lenders, such authorization not to be unreasonably withheld; provided that, the Administrative Agent may in its discretion, release its Liens on Collateral valued in the aggregate not in excess of \$25,000,000 during any calendar year without the prior written authorization of any of the Lenders. Any such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than

those expressly being released) upon (or obligations of the Loan Parties in respect of) all interests retained by the Loan Parties, including the proceeds of any sale, all of which shall continue to constitute part of the Collateral.

SECTION 9.03    Expenses; Indemnity; Damage Waiver.

- (a)    The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates, including the reasonable fees, charges and disbursements of counsel for the Administrative Agent, in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by the Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out-of-pocket expenses incurred by the Administrative Agent, the Issuing Bank or any Lender, including the reasonable fees, charges and disbursements of any counsel for the Administrative Agent, the Issuing Bank or any Lender, in connection with the enforcement or protection of its rights in connection with this Agreement and the other Loan Documents, including its rights under this Section, or in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.
- (b)    The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), the Issuing Bank and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any third party or any Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance or non-performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation or non-consummation of the Transactions or any other transactions contemplated hereby or thereby, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the Issuing Bank to honour a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory whether brought by a third party or by a Loan Party and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a

court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or wilful misconduct of such Indemnatee or (y) result from a claim brought by the Borrower or any other Loan Party against an Indemnatee for breach in bad faith of such Indemnatee's obligations hereunder or under any other Loan Document, if such Loan Party has obtained a final and non-appealable judgment in its favour on such claim as determined by a court of competent jurisdiction.

- (c) To the extent that the Borrower for any reason fails to indefeasibly pay any amount required to be paid by it to the Administrative Agent (or any sub-agent thereof), the Issuing Bank or the Swingline Lender under paragraph (a) or (b) of this Section, each Lender severally agrees to pay to the Administrative Agent (and any sub-agent thereof), the Issuing Bank or the Swingline Lender, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any sub-agent thereof), the Issuing Bank or the Swingline Lender in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or Issuing Bank in connection with such capacity. The obligations of the Lenders under this paragraph (c) are subject to the other provisions of this Agreement concerning several liability of the Lenders.
- (d) To the fullest extent permitted by Applicable Law, neither the Borrower nor any other Loan Party shall assert, and hereby waives, any claim against any Indemnatee, on any theory of liability, for special, indirect, consequential, punitive, aggravated or exemplary damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby (or any breach thereof), the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnatee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.
- (e) All amounts due under this Section shall be payable promptly after written demand therefor. A certificate of the Administrative Agent or a Lender setting forth the amount or amounts owing to the Administrative Agent, Lender or a sub-agent or Related Party, as the case may be, as specified in this Section, including reasonable detail of the basis of calculation of the amount or amounts, and delivered to the Borrower shall be conclusive absent manifest error.

#### SECTION 9.04 Successors and Assigns.

- (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit), except that (i) neither the Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior

written consent of the Administrative Agent and each Lender (and any attempted assignment or transfer by the Borrower or any other Loan Party without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Issuing Bank and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

- (b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld) of:
  - A. the Borrower, provided that no consent of the Borrower shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or, if an Event of Default has occurred and is continuing, any other assignee;
  - B. the Administrative Agent, provided that no consent of the Administrative Agent shall be required for an assignment of any Commitment to an assignee that is a Lender with a Commitment immediately prior to giving effect to such assignment; and
  - C. the Issuing Bank.
- (ii) Assignments shall be subject to the following additional conditions:
  - A. except in the case of an assignment to a Lender or an Affiliate of a Lender or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans of any Class, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$5,000,000 unless each of the Borrower and the Administrative Agent otherwise consent, provided that no such consent of the Borrower shall be required if an Event of Default has occurred and is continuing;
  - B. each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement, provided that this clause shall not be construed to prohibit the assignment of a proportionate part of all the assigning Lender's rights and obligations in respect of one Class of Commitments or Loans;

- C. the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500;
- D. the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more Credit Contacts to whom all syndicate-level information (which may contain material non-public information about the Borrower, the Loan Parties and their related parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and Applicable Law, including federal, provincial, territorial and state securities laws; and
- E. except in the case of an assignment to a Lender, at the request of the Administrative Agent (which request shall be in its sole discretion), the Borrower shall cause its legal counsel to deliver to the assignee either an opinion in form and substance comparable (in the sole discretion of the Administrative Agent and its counsel) to the opinion delivered by the U.S. counsel of the Borrower on the date hereof or a reliance letter in form and substance satisfactory to the Administrative Agent entitling the assignee to rely on such opinion letter.

For the purposes of this Section 9.04(b), the term "Approved Fund" has the following meaning:

"Approved Fund" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

- (iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Section 2.15, Section 2.17, Section 2.18, and Section 9.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.

- (iv) The Administrative Agent, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount of the Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the “Register”). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Administrative Agent, the Issuing Bank and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, the Issuing Bank and any Lender, at any reasonable time and from time to time upon reasonable prior notice.
- (v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee’s completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register; provided that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to Section 2.05(c), Section 2.06(d), Section 2.06(e), Section 2.07(b), Section 2.19(d) or Section 9.03(c), the Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.
- (c) (i) Any Lender may, without the consent of the Borrower, the Administrative Agent, the Issuing Bank or the Swingline Lender, sell participations to one or more banks or other entities (a “Participant”) in all or a portion of such Lender’s rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); provided that (A) such Lender’s obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent, the Issuing Bank and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to

Section 9.02(b) that affects such Participant. Subject to paragraph (c)(ii) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Section 2.15, Section 2.17 and Section 2.18 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.19(c) as though it were a Lender.

- (ii) A Participant shall not be entitled to receive any greater payment under Section 2.15 or Section 2.18 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 2.18 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 2.18(e) as though it were a Lender.
- (d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

#### SECTION 9.05 Survival.

All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, the Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Section 2.15, Section 2.17, Section 2.18 and Section 9.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof.

#### SECTION 9.06 Counterparts; Integration; Effectiveness; Electronic Execution.

- (a) This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees

payable to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or by sending a scanned copy by electronic mail shall be effective as delivery of a manually executed counterpart of this Agreement.

- (b) The words “execution,” “signed,” “signature,” and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including Parts 2 and 3 of the Personal Information Protection and *Electronic Documents Act* (Canada), the *Electronic Commerce Act, 2000* (Ontario) and other similar federal or provincial laws based on the *Uniform Electronic Commerce Act* of the Uniform Law Conference of Canada or its *Uniform Electronic Evidence Act*, as the case may be.

#### SECTION 9.07 Severability.

Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

#### SECTION 9.08 Right of Setoff.

If an Event of Default has occurred and is continuing, each of the Lenders and each of their respective Affiliates is hereby authorized at any time and from time to time to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of any Loan Party against any and all of the obligations of the Borrower now or hereafter existing under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender has made any demand under this Agreement or any other Loan Document and although such obligations of such Loan Party may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each of the Lenders and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff, consolidation of accounts and bankers’ lien) that the Lenders or their respective Affiliates may have. Each Lender agrees to promptly notify the Borrower and the Administrative Agent after any such setoff and application, but the failure to give such notice shall not affect the validity of such setoff and application. If any Affiliate of a Lender exercises any rights under this Section, it shall share the benefit received in accordance with Section 2.19(c) as if the benefit had been received by the Lender of which it is an Affiliate.



SECTION 9.09 Governing Law; Jurisdiction; Consent to Service of Process.

- (a) This Agreement shall be construed and interpreted in accordance with and governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein.
- (b) Each of the Borrower and the other Loan Parties hereby irrevocably and unconditionally submits, for itself and its property, to the non-exclusive jurisdiction of the courts of the Province of Ontario and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any other Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such Ontario court. Each of the parties hereto agrees that a final judgment in any such 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. Nothing in this Agreement or in any other Loan Document shall affect any right that the Administrative Agent, the Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against the Borrower, the other Loan Parties or their respective properties in the courts of any jurisdiction.
- (c) Each of the Borrower and the other Loan Parties hereby irrevocably and unconditionally waives, to the fullest extent permitted by Applicable Law, 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 Agreement or any other Loan Document in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by Applicable Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.
- (d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 9.10 WAIVER OF JURY TRIAL.

**EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.**

SECTION 9.11     Headings.

Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 9.12     Confidentiality.

- (a) Each of the Administrative Agent, the Issuing Bank and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel, representatives and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority), (c) to the extent required by Applicable Law or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap, derivative, credit-linked note or similar transaction relating to the Borrower and its obligations, (g) with the consent of the Borrower or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent, the Issuing Bank or any Lender on a non-confidential basis from a source other than the Borrower. For the purposes of this Section, "Information" means all information received from the Borrower relating to the Borrower or its business, other than any such information that is available to the Administrative Agent, the Issuing Bank or any Lender on a non-confidential basis prior to disclosure by the Borrower; provided that, in the case of information received from the Borrower after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.
- (b) **EACH LENDER ACKNOWLEDGES THAT INFORMATION AS DEFINED IN SECTION 9.12(a) FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE BORROWER AND ITS RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE**

**PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL, PROVINCIAL AND STATE SECURITIES LAWS.**

- (c) **ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS, FURNISHED BY THE BORROWER OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT THE BORROWER, THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS TO THE BORROWER AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW.**

**SECTION 9.13      Several Obligations; Non-reliance; Violation of Law.**

The respective obligations of the Lenders hereunder are several and not joint and the failure of any Lender to make any Loan or perform any of its obligations hereunder shall not relieve any other Lender from any of its obligations hereunder. Each Lender hereby represents that it is not relying on or looking to any margin stock for the repayment of the Borrowings provided for herein. Anything contained in this Agreement to the contrary notwithstanding, neither the Issuing Bank nor any Lender shall be obligated to extend credit to the Borrowers in violation of any Applicable Law.

**SECTION 9.14      Disclosure.**

Each Loan Party and each Lender hereby acknowledges and agrees that the Administrative Agent and/or its Affiliates from time to time may hold investments in, make other loans to or have other relationships with any of the Loan Parties and their respective Affiliates.

**SECTION 9.15      Currency of Payment.**

- (a) All outstanding Borrowings relating to Prime Rate Loans, BA Loans, BA Equivalent Loans and LC Disbursements in respect of letters of credit issued in Canadian Dollars together with all interest and fees and other Obligations relating thereto shall accrue and be payable by the Borrower in Canadian dollars. All outstanding Borrowings relating to ABR Loans, Eurodollar Loans or LC Disbursements in respect of letters of credit issued in any other currency together with all interest and fees and other Obligations relating thereto shall accrue and be payable by the Borrower in dollars. The obligations of the Borrower and the other Loan Parties hereunder and under the other Loan Documents to make payments in dollars or in Canadian dollars, as the case may be (the “Obligation Currency”), shall not be discharged or satisfied by any tender or recovery pursuant to any judgment expressed in or converted into any currency other than the Obligation Currency, except to the extent that such tender or recovery results in the effective receipt by the Administrative Agent or a Lender of the full amount of the Obligation Currency expressed to be payable to the Administrative Agent or Lender under this Agreement or the other Loan Documents. If, for the purpose of obtaining or enforcing judgment against any Loan Party in any court

or in any jurisdiction, it becomes necessary to convert into or from any currency other than the Obligation Currency (such other currency being hereinafter referred to as the “Judgment Currency”) an amount due in the Obligation Currency, the conversion shall be made, at the Administrative Agent’s quoted rate of exchange prevailing, in each case, as of the date immediately preceding the day on which the judgment is given (such Business Day being hereinafter referred to as the “Judgment Currency Conversion Date”).

- (b) If there is a change in the rate of exchange prevailing between the Judgment Currency Conversion Date and the date of actual payment of the amount due, the Loan Parties each covenant and agree to pay, or cause to be paid, such additional amounts, if any (but in any event not a lesser amount), as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of the Obligation Currency which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial award at the rate of exchange prevailing on the Judgment Currency Conversion Date. Any amount due from a Loan Party under this Section 9.15 shall be due as a separate debt and shall not be affected by judgment being obtained for any other amounts due under or in respect of any of the Loan Documents.
- (c) For purposes of determining the prevailing rate of exchange, such amounts shall include any premium and costs payable in connection with the purchase of the Obligation Currency.

SECTION 9.16 Canadian Anti-Money Laundering Legislation.

- (a) The Borrower acknowledges that, pursuant to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada) and other applicable Canadian anti-money laundering, anti-terrorist financing, government sanction and “know your client” laws (collectively, including any guidelines or orders thereunder, “AML Legislation”), the Lenders, the Issuing Bank and the Administrative Agent may be required to obtain, verify and record information regarding the Borrower and its directors, authorized signing officers, direct or indirect shareholders or other Persons in control of the Borrower, and the transactions contemplated hereby and in that regard, without limiting the generality of the foregoing, may require that the authorized signing officers of each of the relevant Loan Parties who will be signing this Agreement, and other Loan Documents (each, a “signatory”) shall have made themselves available to the Administrative Agent in person, and shall have produced to the Administrative Agent a minimum of two unexpired identification documents (at least one of which must be a birth certificate, driver’s license, passport, provincial health insurance card, if permitted by the applicable provincial law, or other government-issued document) and permitted examination and the making of copies of same with a view to the Administrative Agent gathering the full names of, and the dates of birth of each such signatory, the type of identification document examined, the reference numbers of each of the identification documents examined (collectively, the “Personal Information”) and such Personal Information (together with photocopies of each identification document examined) shall have been provided to the Administrative Agent on or prior to the closing date. The Borrower shall promptly provide all such information,

including supporting documentation and other evidence, as may be reasonably requested by any Lender, the Issuing Bank or the Administrative Agent, or any prospective assignee or participant of a Lender, the Issuing Bank or the Administrative Agent, in order to comply with any applicable AML Legislation, whether now or hereafter in existence.

- (b) If the Administrative Agent has ascertained the identity of the Borrower or any authorized signatories of the Borrower for the purposes of applicable AML Legislation, then the Administrative Agent:
  - (i) shall be deemed to have done so as an agent for each Lender and the Issuing Bank (and to hold on behalf of the Lenders and the Issuing Bank for their review upon reasonable request from time to time), and this Agreement shall constitute a “written agreement” in such regard between each Lender, the Issuing Bank and the Administrative Agent within the meaning of the applicable AML Legislation; and
  - (ii) shall provide to each Lender and the Issuing Bank copies of all information obtained in such regard without any representation or warranty as to its accuracy or completeness.

Notwithstanding the preceding sentence and except as may otherwise be agreed in writing, each of the Lenders and the Issuing Bank agrees that the Administrative Agent does not have any obligation to ascertain the identity of the Borrower or any authorized signatories of the Borrower on behalf of any Lender or the Issuing Bank, or to confirm the completeness or accuracy of any information it obtains from the Borrower or any such authorized signatory in doing so.

SECTION 9.17     USA PATRIOT ACT.

Each Lender that is subject to the requirements of the *USA Patriot Act* (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Patriot Act”) hereby notifies the Borrower that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the Patriot Act.

**[The remainder of this page has been intentionally left blank.]**

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

**BIOVAIL CORPORATION**

By: /s/ M J MULLIGAN  
Name: MJ Mulligan  
Title: Chief Financial Officer

By:  
Name:  
Title:

**JPMORGAN CHASE BANK, N.A., TORONTO BRANCH,**  
as Administrative Agent

By: /s/ ROBERT S. SHEPPARD  
Name: Robert S. Sheppard  
Title: Vice President, Mid-Corporate Credit

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**LENDERS**

**JPMORGAN CHASE BANK, N.A., TORONTO BRANCH**

By: /s/ ROBERT S. SHEPPARD  
Name: Robert S. Sheppard  
Title: Vice President, Mid-Corporate Credit

**THE BANK OF NOVA SCOTIA**

By: /s/ JAMES J. RHEE  
Name: James J. Rhee  
Title: Director

By: /s/ CHAD GRAVES  
Name: Chad Graves  
Title: Associate Director

**NATIONAL BANK OF CANADA**

By: /s/ IAN GILLESPIE  
Name: Ian Gillespie  
Title: Managing Director

By: /s/ B. CIALLELLA  
Name: Ben Ciallella  
Title: Director

**HSBC BANK CANADA**

By: /s/ JOHN DAVIS  
Name: John Davis  
Title: Assistant Vice-President, Commercial Banking

By: /s/ DOUGLAS BRANDES  
Name: Douglas Brandes  
Title: Assistant Vice-President, Commercial Banking

**\_\_\_\_\_**

**THE TORONTO-DOMINION BANK**

By: /s/ NIGEL SHARPLEY  
Name: Nigel Sharpley  
Title: Senior Manager

By: /s/ ABDALLAH DAJANI  
Name: Abdallah Dajani  
Title: Associate Vice-President

**EXPORT DEVELOPMENT CANADA**

By: /s/ OLIVER BOUCHARD  
Name: Oliver Bouchard  
Title: Financing Manager

By: /s/ D. GAUTHIER  
Name: David Gauthier  
Title: Financing Manager

**SUNTRUST BANK**

By: /s/ DANA DHALIWAL  
Name: Dana Dhaliwal  
Title: Vice President

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_



**DEUTSCHE-BANK AG NEW YORK BRANCH**

By: /s/ EVELYN THIERRY  
Name: Evelyn Thierry  
Title: Vice President

By: /s/ ERIN MORRISSEY  
Name: Erin Morrissey  
Title: Vice President

**MORGAN STANLEY BANK, N.A.**

By: /s/ MELISSA JAMES  
Name: Melissa James  
Title: Authorized Signatory

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_

SIGNIFICANT SUBSIDIARIES

Biovail Americas Corp.  
Biovail Distribution Corporation  
Biovail Pharmaceuticals LLC  
Biovail Technologies Ltd.  
BTA Pharmaceuticals, Inc.  
Prestwick Pharmaceuticals, Inc.  
Biovail Holdings International SRL  
Biovail Laboratories International SRL

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SCHEDULE 2.01

COMMITMENTS

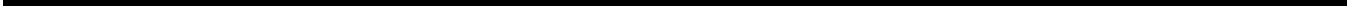
| Lender                                    | Commitment     |
|-------------------------------------------|----------------|
| JPMorgan Chase Bank, N.A., Toronto Branch | \$ 60,000,000  |
| The Bank of Nova Scotia                   | \$ 60,000,000  |
| National Bank of Canada                   | \$ 50,000,000  |
| HSBC Bank Canada                          | \$ 50,000,000  |
| The Toronto-Dominion Bank                 | \$ 50,000,000  |
| Export Development Canada                 | \$ 50,000,000  |
| SunTrust Bank                             | \$ 40,000,000  |
| Deutsche Bank AG New York Branch          | \$ 25,000,000  |
| Morgan Stanley Bank                       | \$ 25,000,000  |
| TOTAL                                     | \$ 410,000,000 |



SCHEDULE 3.05

PROPERTIES

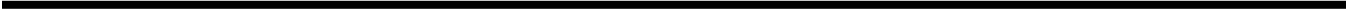
| Property                                                                                                                                                  | Jurisdiction | Ownership<br>(owned/leased/warehouse) |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|---------------------------------------|
| 1. Welches, Christ Church<br>Barbados, BB17154                                                                                                            | Barbados     | Owned                                 |
| 2. 100 LifeSciences Parkway<br>Steinbach, Manitoba, R5G 1Z7                                                                                               | Manitoba     | Owned                                 |
| 3. 460 Comstock Road<br>Scarborough, Ontario, M1L 4R6                                                                                                     | Ontario      | Owned                                 |
| 4. 7150 Mississauga Road<br>Mississauga, Ontario, L5N 8M5                                                                                                 | Ontario      | Owned                                 |
| 5. Avenue Iterregui<br>Street Blot #34<br>Sabano Abaja Industrial Park<br>Caroline, Puerto Rico, 00983                                                    | Puerto Rico  | Owned                                 |
| 6. State Road No. 698<br>Kilometer 0.8, Barrio Mameyal<br>Dorado, Puerto Rico, 00646                                                                      | Puerto Rico  | Owned                                 |
| 7. 51 Villa de Golf Este<br>Dorado del Mar<br>Dorado, Puerto Rico, 00646                                                                                  | Puerto Rico  | Owned                                 |
| 8. Lake Drive<br>Unit 3200<br>Citywest Business Campus<br>Dublin 24, Ireland                                                                              | Ireland      | Owned                                 |
| 9. Marginal Expreso Baldprioty de Castro Km. 11.6<br>Sections 2 & 3 of Lots 11, 12 and 13<br>Sabana Abajo Industrial Park<br>Carolina, Puerto Rico, 00983 | Puerto Rico  | Leased                                |
| 10. 450 Comstock Road<br>Scarborough, Ontario, M1L 4S4                                                                                                    | Ontario      | Leased                                |
| 11. 2488 Dunwin Drive<br>Mississauga, Ontario, L5L 1J9                                                                                                    | Ontario      | Leased                                |



| Property |                                                                                                        | Jurisdiction     | Ownership<br>(owned/leased/warehouse) |
|----------|--------------------------------------------------------------------------------------------------------|------------------|---------------------------------------|
| 12.      | 6120 Midfield Road<br>Mississauga, Ontario, L5P 1B1                                                    | Ontario          | Leased                                |
| 13.      | 689 Warden Avenue<br>Units 1, 1A, 2, 2<br>Scarborough, Ontario, M1L 4R6                                | Ontario          | Leased                                |
| 14.      | 700 US Highway 202/206<br>North Bridgewater, New Jersey<br>USA 08807                                   | New Jersey       | Leased                                |
| 15.      | 3701 Concorde Parkway<br>Suites 100 and 800, Building 6/5A<br>Chantilly, Virginia<br>USA 20151         | Virginia         | Leased                                |
| 16.      | 3725 Concorde Parkway<br>Suit 1500, Building 8<br>Chantilly, Virginia<br>USA 20151                     | Virginia         | Leased                                |
| 17.      | Lynden — CPDN Calgary<br>4441 76 <sup>th</sup> Avenue<br>SE West Building<br>Calgary, Ontario, T2C 2G8 | Alberta          | Warehouse                             |
| 18.      | Lynden — CPDN Delta<br>7403 Progress Way<br>Delta, British Columbia, V4G 1E7                           | British Columbia | Warehouse                             |
| 19.      | UPS SCS, Inc.<br>989-A Keewatin Street<br>Winnipeg, Manitoba, R2X 2X4                                  | Manitoba         | Warehouse                             |
| 20.      | Lynden — CPDN Toronto<br>10 Corinne Court<br>Vaughan, Ontario, L4K 4T7                                 | Ontario          | Warehouse                             |
| 21.      | Contract Pharmaceuticals Limited (CPL)<br>7600 Danbro Crescent<br>Mississauga, Ontario, L5N 6L6        | Ontario          | Warehouse                             |
| 22.      | McKesson Outsource Logistics (MLS)<br>109 Summerlea Road<br>Brampton, Ontario, L6T 4P6                 | Ontario          | Warehouse                             |



| Property |                                                                                                  | Jurisdiction | Ownership<br>(owned/leased/warehouse) |
|----------|--------------------------------------------------------------------------------------------------|--------------|---------------------------------------|
| 23.      | Sharp<br>23 Carland Road<br>Conshohocken, Pennsylvania                                           | Pennsylvania | Warehouse                             |
| 24.      | DDN/Oberfel<br>4580 Mendenhall Road<br>Memphis, Tennessee<br>USA 38151                           | Tennessee    | Warehouse                             |
| 25.      | 1209 Orange Street<br>Wilmington, Delaware<br>USA 19801                                          | Delaware     | Registered address.                   |
| 26.      | 4, rue Marivaux 75002<br>Paris, France                                                           | France       | Registered address.                   |
| 27.      | 8-10 Rue Mathias Hardt<br>L-1717 Luxembourg                                                      | Luxembourg   | Registered address.                   |
| 28.      | C/O Treuhand-und<br>Revisionsgesellschaft Zug,<br>Baarerstrasse 112, CH-6302<br>Zug, Switzerland | Switzerland  | Registered address.                   |



SCHEDULE 3.06  
DISCLOSED MATTERS

| Parties                                                                                                | Court and Case No.                                                                                                              | Date Action Commenced                                                   |
|--------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------|
| <b>PATENT LITIGATION</b>                                                                               |                                                                                                                                 |                                                                         |
| Purdue et al. v. Par Pharmaceuticals, Inc.<br>(Note: Biovail is not a party)                           | United States District Court for the District of Delaware<br><br>C.A. No. 07-255                                                | May 9, 2007                                                             |
| Impax ats. Biovail Corporation<br>(Note: Biovail is not a party)                                       | United States District Court for the District of Delaware<br>Court File No. 08-519 JJF                                          | September 10, 2008                                                      |
| Novopharm Limited and The Minister of Health ats GlaxoSmithKline and The Wellcome Foundation Limited   | Federal Court of Canada<br><br>Court File No. T-505-03 and T-307-04                                                             | March 31, 2003                                                          |
| Novopharm v. Biovail                                                                                   | Federal Court of Canada<br>T-1717-08                                                                                            | November 7, 2008                                                        |
| RhoxalPharma Inc. et al ats. Biovail Corporation et al                                                 | Federal Court of Canada<br><br>Court File No. T-691-04                                                                          | April 1, 2004                                                           |
| Biovail Corporation ats Sandoz Canada Inc. (formerly RhoxalPharma) et al.                              | Federal Court of Canada<br><br>Court File No. T-1245-06                                                                         | 2006                                                                    |
| Biovail Corporation v. Sandoz Canada Inc. (formerly RhoxalPharma) et al                                | Federal Court of Canada<br><br>Court File No. T-214-06                                                                          | August 1, 2006                                                          |
| Biovail Corporation et al v. Apotex Inc. Corporation                                                   | Federal Court of Canada<br>T-118-08                                                                                             | January 23, 2008                                                        |
| Wyeth v. Biovail Corporation et al                                                                     | United States District Court for the District of Delaware<br><br>C.A. No. 08-390                                                | June 27, 2008                                                           |
| Abbott Laboratories et al v Biovail Laboratories International et al and Elan et al. v. Biovail et al. | United States District Court for the District of New Jersey<br><br>Civil Action No. 08 CV 6274 and Civil Action No. 08-CV-05412 | November 3, 2008                                                        |
| Sun Pharmaceuticals ats. Biovail                                                                       | United States District Court District of New Jersey<br>Court File No.: 2:08-04005-SDW                                           | August 8, 2008                                                          |
| AstraZeneca v. Biovail                                                                                 | United States District Court District of New Jersey                                                                             | January 9, 2009                                                         |
| <b>REGULATORY INVESTIGATIONS &amp; RELATED SECURITIES LITIGATION</b>                                   |                                                                                                                                 |                                                                         |
| EDNY Investigation                                                                                     | None                                                                                                                            | N/A                                                                     |
| Office of Inspector General Investigation/USAO proceeding<br><br>Re: P.L.A.C.E. Program                | U.S. Attorney’s Office for the District of Massachusetts                                                                        | July 24, 2003<br>(Note: Matter is settled. Plea hearing in August 2009) |

GENERAL LITIGATION MATTERS

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                |                                                             |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|-------------------------------------------------------------|
| Biovail Corporation v. S.A.C. Capital Management LLC, S.A.C. Capital Advisors, LLC, S.A.C. Capital Associates LLC, S.A.C. Healthco Funds, LLC, Sigma Capital Management, LLC, Steven A. Cohen, Arthur Cohen, Joseph Healey, Timothy McCarthy, David Maris, Gradient Analytics, Inc., Camelback Research Alliance, In., James Carr Bettis, Donn Vickrey, Pinnacle Investment Advisors, LLC, Helios Equity Fund, LLC, Hallmark Funds, Gerson Lehrman Group, Gerson Lehrman Group Brokerage Services, LLC, Thomas Lehrman, Patrick Duff, and James Lyle and does 1 through 50 | Superior Court, Essex County, New Jersey<br><br>Case File No. L-1583-06                        | February 22, 2006                                           |
| HSU, Tom<br>v. Biovail Corporation et al                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | The Supreme Court of British Columbia<br><br>Court File No. S051052 Vancouver Registry         | February 23, 2005                                           |
| Various Counties in New York State, City of New York, State of Alabama, State of Mississippi                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | In the Plaintiffs’ respective jurisdictions                                                    | Various                                                     |
| Forth Worth Employees’ Retirement Fund et al<br>v. Biovail Corporation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | United States District Court Southern District of New York<br><br>Civil Action No. 08 CIV 8592 | October 1, 2008<br>(Note: Matter dismissed with prejudice.) |
| Axxonis v. Prestwick                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | German Arbitral Proceedings                                                                    | February 26, 2007                                           |

ANTI-TRUST LITIGATION

|                                        |                                                           |                                |
|----------------------------------------|-----------------------------------------------------------|--------------------------------|
| <u>Nifedipine MDL Class Actions</u>    | United States District Court for the District of Columbia | August 7, 2003<br>July 2, 2002 |
| <u>(Adalat MDL Class Actions):</u>     | Multidistrict Litigation No.1515                          | October 11, 2002               |
| A.F. of L. - A.G.C. et al              | Civil Action No.                                          | October 1, 2002                |
| v. Biovail et al (“BC”)                | 03MS00223 RJL                                             | June 20 2003                   |
| Meijer Inc. et al v. BC                | Civil Action Nos.                                         | July 3, 2002                   |
| SAJ Distributors, Inc.et al v. BC      | 1:02 CV 01343,                                            | November 14, 2002              |
| Independent Drug Co. et al v. BC       | 02 7852,                                                  | February 5, 2003               |
| Rochester Drug Cooperative et al v. BC | 1:02 CV 01931,                                            | March 21, 2006                 |
| CVS Meridian, Inc. et al v. BC         | 1:03 CV 01354,                                            |                                |
| Walgreen Co. et al v. BC               | 1:03 CV 01473,                                            |                                |
| Maxi Drug, Inc. d/b/a/                 | 1:02 CV 9089,                                             |                                |
| Borroks Pharmacy v. BC                 | 1:03 CV 0836,                                             |                                |
|                                        | 1:06-cv-00532-RSL.                                        |                                |

Wellbutrin XL Anti-trust Class Actions:A8





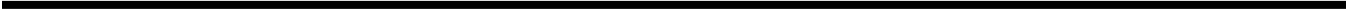
|                                                                                                                                                 |                                                       |                                        |
|-------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------|----------------------------------------|
| Meijer, Inc. et al v. Biovail Corporation et al (LEAD DIRECT PURCHASER CONSOLIDATED CASE)                                                       | Eastern District of Pennsylvania 2:08-cv-02431-BWK    | May 23, 2008                           |
| American Sales Company, Inc. v. Biovail Corporation et al<br>WBXL Anti-trust Class Action                                                       | Eastern District of Pennsylvania 2:08-cv-02464-BWK    | May 28, 2008                           |
| Rochester Drug Co-operative Inc. v. Biovail Corporation et al                                                                                   | Eastern District of Pennsylvania 2:08-cv-02462-BWK    | May 27, 2008                           |
| Plumbers & Pipefitters Local 572 Health & Welfare Fund v. Biovail Corporation et al (LEAD INDIRECT PURCHASER CONSOLIDATED CASE)                 | Eastern District of Pennsylvania 2:08-cv-02433-BWK    | May 23, 2008                           |
| IBEW-NECA Local 505 Health & Welfare Plan v. Biovail Corporation et al                                                                          | Eastern District of Pennsylvania 2:08-cv-02686-BWK    | June 9, 2008                           |
| Painters District Council No. 30 Health & Welfare Fund v. Biovail Corporation et al                                                             | Eastern District of Pennsylvania 2:08-cv-02688-BWK    | June 10, 2008                          |
| Bricklayers et al v. Biovail et al.                                                                                                             | Eastern District of Pennsylvania 2:08-cv-03404-BWK    | June 30, 2005                          |
| Mechanical Contractors - United Association Local 119 Health & Welfare Plan v. Biovail Corporation et al                                        | Eastern District of Pennsylvania 2:08-cv-02712-BWK    | June 11, 2008                          |
| United States Environmental Protection Agency (SEPAL) Investigation (Carolina Facility) and related extrajudicial claim of Gillette and Biovail | N/A<br>Matter related to Puerto Rico facility         | Extrajudicial claims asserted in 2000. |
| PETRIK, Ruth                                                                                                                                    | N/A<br><br>Demand letter received from patient's son. | N/A                                    |
| CANN, Mary                                                                                                                                      | N/A. Demand letter received from counsel.             | March 1, 2007                          |
| LEDERER, Philip                                                                                                                                 | Demand letter                                         | N/A                                    |



CANADIAN BENEFIT PLANS AND CANADIAN PENSION PLANS

Canadian Benefit Plans

| Site(s)                                    | Health Care & Prescription Drugs | Dental                                                                                                 | Vision                                                                                         | Life & AD&D                                                     | Disability (Short & Long Term)                                                               |
|--------------------------------------------|----------------------------------|--------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|----------------------------------------------------------------------------------------------|
| Canada (Mississauga, Steinbach, BPC & CRD) | 80% coverage, no deductible      | Basic Services — 80% for Preventive & Restorative services, Major services — 50% reimbursement         | One exam per 24 month period; 100% reimbursement for supplies to maximum \$200 every 24 months | Employee Basic — 2X annual salary to maximum \$1,000,000        | STD — 100% salary continuance for 17 weeks                                                   |
| Employees                                  | 80% prescription coverage        | Annual maximum \$2,000 each. Orthodontics for dependent children only — 50% to \$3,000 maximum benefit |                                                                                                | AD&D — same coverage level as above                             | LTD 66.7% of monthly earnings to maximum of \$10,000 per month; 119 elimination period       |
| Canada (Mississauga, Steinbach, BPC & CRD) | 100% coverage, no deductible     | Basic services — 100% for Preventative and Restorative services, Major services — 50% reimbursement    | One exam per 24 month period; 100% reimbursement for supplies to maximum \$200 every 24 months | Executive Basic Life — 3 X annual salary to maximum \$1,000,000 | STD — 100% salary continuance for 17 weeks                                                   |
| Executives                                 | 100% prescription coverage       | Annual maximum \$2,000 each. Orthodontics for dependent children only — 50% to \$3,000 maximum benefit |                                                                                                | AD&D — same coverage level as above                             | LTD — 66.7% of monthly earnings to maximum of \$10,000 per month; 119 day elimination period |



**Canadian Pension Plans**

**Group Retirement Savings Plan**

Immediate eligibility  
Voluntary participation  
Immediate vesting  
Employee contributions up to the tax limit

**Deferred Profit Sharing Plan**

Immediate eligibility  
Automatic participation when enrolled in the Group RSP  
50% match (to a maximum of 2% of earnings) with service < 2 years  
100% match (to a maximum of 4% of earnings ) with service > 2 years  
Vesting upon 2 years of plan membership

**Non-insured Canadian Benefit Plans**

- Short-term disability coverage is self-insured
  - All medical, extended health, dental and vision plans are paid for on a claims incurred plus administrative charge basis
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SCHEDULE 3.14

MATERIAL CONTRACTS

1. Teva Exclusive Distribution Agreement dated December 15, 1997 between Biovail Laboratories Incorporated (now Biovail Laboratories International SRL) and Teva Pharmaceuticals (Falfalo N.V.) together with amendments dated November 17, 1999, December 20, 1999 and July 28, 2003.
  2. Asset Purchase Agreement and Letter Agreement dated September 30, 2004 between Biovail Laboratories Incorporated and Teva Pharmaceuticals Curacao N.V.
  3. Cardizem agreements:
    - a. Amended and Restated Cardizem Rights Agreement dated December 31, 2000 by and among Aventis Pharmaceuticals Inc., TWFC Inc., Aventis Pharma Inc. and Biovail Laboratories Incorporated;
    - b. Cardizem Products Manufacturing Agreement dated December 28, 2000 between Aventis Pharmaceuticals, Inc., Aventis Pharma Inc. and Biovail Laboratories Incorporated, as amended July 1, 2004;
    - c. Second Cardizem Products Manufacturing Agreement date June 1, 2006 between sanofi-aventis U.S. LLC (successor to Aventis Pharmaceuticals Inc.), sanofi-aventis Canada Inc. (successor to Aventis Pharma Inc.) and Biovail Laboratories Internaitonal SRL.
    - d. Technical Services Agreement dated December 28, 2000 between Aventis Pharmaceuticals, Inc., Aventis Pharma Inc. and Biovail Laboratories Incorporated.
    - e. Transition Services Agreement dated December 28, 2000 between Aventis Pharmaceuticals, Inc., Aventis Pharma Inc. and Biovail Laboratories Incorporated.

US Rights and Obligations under the Cardizem Rights Agreements and Cardizem Manufacturing Agreement assigned to Biovail Laboratories International SRL December 31, 2004.
  4. Amended and Restated Distribution Rights Agreement between SmithKline Beecham Corporation and Biovail Laboratories Incorporated, dated October 26, 2001 (re: Zovirax), as amended May 1, 2005, October 12, 2005 and December 18, 2006. Assigned to Biovail Laboratories International SRL December 31, 2004.
  5. Second Amended and Restated License Agreement dated May 14, 2009 between Glaxo Group Limited and Biovail Laboratories International SRL.
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6. Asset Purchase and Trademark Assignment Agreement (Vasotec®/Vaseretic®) dated April 1, 2002 between Merck & Co. Inc. and Biovail Laboratories Incorporated (now Biovail Laboratories International SRL).
  7. Asset Purchase Agreement dated May 30, 2003 between Wyeth Pharmaceuticals Inc. and Biovail Laboratories Incorporated (now Biovail Laboratories International SRL).
  8. Distribution and Supply Agreement for Tramadol HCI — Once Daily Extended Release Tablet, between Biovail Laboratories International SRL and Ortho-McNeil, Inc., dated November 3, 2005.
  9. Notice of assignment effective November 4, 2005 by Biovail Laboratories International SRL and Biovail Distribution Corporation to Ortho-McNeil, Inc.
  10. Asset Purchase Agreement between Biovail Laboratories International SRL and SmithKline Beecham Corporation d/b/a GlaxoSmithKline dated May 6, 2009 (re: Wellbutrin XL in the United States).
  11. Trademark License Agreement between SmithKline Beecham Corporation and Biovail Laboratories International SRL dated May 14, 2009 (re: Wellbutrin XL).
  12. Distribution and Inventory Management Services Agreement entered into as of December 7, 2004 between Biovail Pharmaceuticals, Inc. (now BTA Pharmaceuticals, Inc.) and Cardinal Health, as amended March 28, 2007 and January 1, 2008.
  13. Core Distribution Agreement entered into as of October 1, 2004 between Biovail Pharmaceuticals, Inc. (now BTA Pharmaceuticals, Inc.) and McKesson Corporation, as amended December 20, 2005.
  14. Distribution Services Agreement made as of December 31, 2004 between Biovail Pharmaceuticals, Inc. (now BTA Pharmaceuticals, Inc.) and AmerisourceBergen Drug Corporation.
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SCHEDULE 3.16

INSURANCE

[See attached.]

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CAPITALIZATION AND SUBSIDIARIES

**GUARANTORS**

| Entity                                 | Issued and Outstanding Shares                                                                                          | Shareholder                        |
|----------------------------------------|------------------------------------------------------------------------------------------------------------------------|------------------------------------|
| Biovail Holdings International SRL     | 1,000 quotas (certificate no. 1)<br>4,600,000,000 quotas (certificate no. 2)<br>330,000,000 quotas (certificate no. 3) | Biovail Corporation                |
| Biovail Laboratories International SRL | 1,000 quotas (certificate no. 1)<br>4,600,000,000 quotas (certificate no. 2)<br>330,000,000 quotas (certificate no. 3) | Biovail Holdings International SRL |
| Hythe Property Incorporated            | 3,150,000 shares (certificate no. 1)                                                                                   | Biovail Corporation                |
| Biovail Americas Corp.                 | 17,736 shares (no certificate number)<br>1 share (certificate no. 3)                                                   | Biovail Corporation                |
| Biovail Distribution Corporation       | 100 shares (certificate no. 1)                                                                                         | Biovail Americas Corp.             |
| BTA Pharmaceuticals Inc.               | 1,000 shares (certificate no. 1)                                                                                       | Biovail Americas Corp.             |
| Biovail Technologies Ltd.              | 1,000 shares (certificate no. 1)                                                                                       | Biovail Americas Corp.             |
| Prestwick Pharmaceuticals, Inc.        | 100 shares (no certificate number)                                                                                     | Biovail Americas Corp.             |
| Biovail Pharmaceuticals LLC            | one membership interest<br>(non-certificated)                                                                          | BTA Pharmaceuticals, Inc.          |

**REGULATED SUBSIDIARY**

| Entity                         | Issued and Outstanding Shares                                                | Shareholder         |
|--------------------------------|------------------------------------------------------------------------------|---------------------|
| Biovail Insurance Incorporated | 2,000,000 shares (certificate no. 1)<br>2,000,000 shares (certificate no. 2) | Biovail Corporation |

**IMMATERIAL SUBSIDIARIES**

| Entity                                 | Issued and Outstanding Shares    | Shareholder                            |
|----------------------------------------|----------------------------------|----------------------------------------|
| Biovail International S.à.r.l.         | 500 shares (non-certificated)    | Biovail Corporation                    |
| Biovail International Holdings Limited | 2 shares (no certificate number) | Biovail International S.à.r.l.         |
| Biovail Technologies (Ireland) Limited | 2 shares (no certificate number) | Biovail International Holdings Limited |
| Biovail Technologies West Ltd.         | 1 share (certificate no. 1)      | Biovail Corporation                    |

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|                                       |                                |                                    |
|---------------------------------------|--------------------------------|------------------------------------|
| Pharma Pass SA                        | 2,500 (non-certificated)       | Biovail International S.à.r.l.     |
| Biovail SA                            | 500 shares (non-certificated)  | Biovail Corporation<br>Jurg Schoch |
| Prestwick Pharmaceuticals Canada Inc. | 100 shares (certificate no. 2) | Prestwick Pharmaceuticals, Inc.    |

**INACTIVE SUBSIDIARIES**

| Entity                              | Issued and Outstanding Shares   | Shareholder                            |
|-------------------------------------|---------------------------------|----------------------------------------|
| Biovail NTI Inc.                    | 1000 shares (certificate no. 1) | Biovail Americas Corp.                 |
| Biovail U.K. Ltd.                   | 2 shares (non-certificated)     | Biovail Laboratories International SRL |
| Fuisz Technologies Properties, Inc. | 1000 shares (non-certificated)  | Biovail Technologies Ltd.              |





## SCHEDULE 3.20

### AFFILIATE TRANSACTIONS

1. Election notice dated September 5, 2008 by Lloyd Segal (in connection with Deferred Share Unit Plan for Canadian Directors approved May 3, 2005 and amended March 14, 2007)
  2. Election notice dated August 15, 2008 by Serge Gouin (in connection with Deferred Share Unit Plan for Canadian Directors approved May 3, 2005 and amended March 14, 2007)
  3. Election notice dated August 8, 2008 by David Laidley (in connection with Deferred Share Unit Plan for Canadian Directors approved May 3, 2005 and amended March 14, 2007)
  4. Election notice dated August 14, 2008 by Spencer Lanthier (in connection with Deferred Share Unit Plan for Canadian Directors approved May 3, 2005 and amended March 14, 2007)
  5. Election notice dated August 15, 2008 by Michael Van Every (in connection with Deferred Share Unit Plan for Canadian Directors approved May 3, 2005 and amended March 14, 2007)
  6. Election notice dated July 26, 2008 by Mark Parrish (in connection with Deferred Share Unit Plan for US Directors approved May 3, 2005 and amended March 14, 2007)
  7. Election notice dated July 25, 2008 by Laurence Paul (in connection with Deferred Share Unit Plan for US Directors approved May 3, 2005 and amended March 14, 2007)
  8. Election notice dated July 13, 2008 by Robert Power (in connection with Deferred Share Unit Plan for US Directors approved May 3, 2005 and amended March 14, 2007)
  9. Indemnity Agreement dated December 7, 2007 between Biovail Corporation and Lloyd Segal
  10. Indemnity Agreement dated August 8, 2008 between Biovail Corporation and Serge Gouin
  11. Indemnity Agreement dated May 26, 2008 between Biovail Corporation and David Laidley
  12. Indemnity Agreement dated August 8, 2008 between Biovail Corporation and Spencer Lanthier
  13. Indemnity Agreement dated April 19, 2005 between Biovail Corporation and Michael Van Every
  14. Indemnity Agreement dated August 8, 2008 between Biovail Corporation and Mark Parrish
  15. Indemnity Agreement dated April 22, 2005 between Biovail Corporation and Laurence Paul
  16. Indemnity Agreement dated August 8, 2008 between Biovail Corporation and Robert Power
  17. Indemnity Agreement dated June 28, 2005 between Biovail Corporation and William Wells
  18. Indemnity Agreement dated April 19, 2005 between Biovail Corporation and Douglas Squires
  19. Settlement Agreement dated May 25, 2009 between Eugene Melnyk & EM Holdings B.V. and Biovail Corporation
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SCHEDULE 3.27

INTELLECTUAL PROPERTY

[see attached]

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| Biovail<br>Case<br>Reference | Title                                                    | Country<br>/Region | Filing<br>Date | Filing Number | Grant<br>Date  | Grant Number | Expiration<br>Date | Current<br>Status | Registered<br>Owners                         | Notes |
|------------------------------|----------------------------------------------------------|--------------------|----------------|---------------|----------------|--------------|--------------------|-------------------|----------------------------------------------|-------|
| P003-BR-PCT                  | MODIFIED RELEASE TABLET<br>OF BUPROPION<br>HYDROCHLORIDE | Brazil             | 08 Aug<br>2003 | PI0318456-0   |                |              | 08 Aug 2023        | Pending           | Biovail<br>Laboratories<br>International SRL |       |
| P003-CA-PCT                  | MODIFIED RELEASE TABLET<br>OF BUPROPION<br>HYDROCHLORIDE | Canada             | 08 Aug<br>2003 | 2,524,300     | 28 Oct<br>2008 | 2,524,300    | 08 Aug 2023        | Granted           | Biovail<br>Laboratories<br>International SRL |       |
| P003-CL-REV                  | MODIFIED RELEASE TABLET<br>OF BUPROPION<br>HYDROCHLORIDE | Chile              | 03 Oct<br>2005 | 2581-2005     |                |              | 03 Oct 2025        | Pending           | Biovail<br>Laboratories<br>International SRL |       |
| P003-CN-PCT                  | MODIFIED RELEASE TABLET<br>OF BUPROPION<br>HYDROCHLORIDE | China              | 08 Aug<br>2003 | 03826750.0    |                |              | 08 Aug 2023        | Pending           | Biovail<br>Laboratories<br>International SRL |       |
| P003-CO-PCT                  | MODIFIED RELEASE TABLET<br>OF BUPROPION<br>HYDROCHLORIDE | Colombia           | 08 Aug<br>2003 | 05122667      |                |              | 08 Aug 2023        | Pending           | Biovail<br>Laboratories<br>International SRL |       |
| P003-CR-PCT                  | MODIFIED RELEASE TABLET<br>OF BUPROPION<br>HYDROCHLORIDE | Costa Rica         | 08 Aug<br>2003 | 8056          |                |              | 08 Aug 2023        | Pending           | Biovail<br>Laboratories<br>International SRL |       |
| P003-DZ-PCT                  | MODIFIED RELEASE TABLET<br>OF BUPROPION<br>HYDROCHLORIDE | Algeria            | 08 Aug<br>2003 | 050516        |                |              | 08 Aug 2023        | Pending           | Biovail<br>Laboratories<br>International SRL |       |

| Biovail<br>Case<br>Reference | Title                                                    | Country<br>/Region                 | Filing<br>Date | Filing Number    | Grant<br>Date  | Grant Number | Expiration<br>Date | Current<br>Status | Registered<br>Owners                         | Notes |
|------------------------------|----------------------------------------------------------|------------------------------------|----------------|------------------|----------------|--------------|--------------------|-------------------|----------------------------------------------|-------|
| P003-EA-EAT                  | MODIFIED RELEASE TABLET<br>OF BUPROPION<br>HYDROCHLORIDE | Eurasian<br>Procedure              | 08 Aug<br>2003 | 200600206        |                |              | 08 Aug 2023        | Pending           | Biovail<br>Laboratories<br>International SRL |       |
| P003-EC-PCT                  | MODIFIED RELEASE TABLET<br>OF BUPROPION<br>HYDROCHLORIDE | Ecuador                            | 08 Aug<br>2003 | SP-05-6216       |                |              | 08 Aug 2023        | Pending           | Biovail<br>Laboratories<br>International SRL |       |
| P003-EG-PCT                  | MODIFIED RELEASE TABLET<br>OF BUPROPION<br>HYDROCHLORIDE | Egypt                              | 08 Jan<br>2003 | PCT/NA2006/00015 |                |              | 08 Jan 2026        | Pending           | Biovail<br>Laboratories<br>International SRL |       |
| P003-EP-EPT                  | MODIFIED RELEASE TABLET<br>OF BUPROPION<br>HYDROCHLORIDE | European<br>Procedure<br>(Patents) | 08 Aug<br>2003 | 03818223.4       |                |              | 08 Aug 2023        | Pending           | Biovail<br>Laboratories<br>International SRL |       |
| P003-GE-PCT                  | MODIFIED RELEASE TABLET<br>OF BUPROPION<br>HYDROCHLORIDE | Georgia                            | 08 Aug<br>2003 | AP2003009205     | 07 Nov<br>2006 | P4128        | 08 Aug 2023        | Granted           | Biovail<br>Laboratories<br>International SRL |       |
| P003-GH-AFT                  | MODIFIED RELEASE TABLET<br>OF BUPROPION<br>HYDROCHLORIDE | Ghana                              |                |                  | 31 Oct<br>2008 | AP 1899      | 08 Aug 2023        | Granted           | Biovail<br>Laboratories<br>International SRL |       |
| P003-GM-AFT                  | MODIFIED RELEASE TABLET<br>OF BUPROPION<br>HYDROCHLORIDE | Gambia                             |                |                  | 31 Oct<br>2008 | AP1899       | 08 Aug 2023        | Granted           | Biovail<br>Laboratories<br>International SRL |       |





| Biovail<br>Case<br>Reference | Title                                                    | Country<br>/Region        | Filing<br>Date | Filing<br>Number | Grant<br>Date  | Grant<br>Number | Expiration<br>Date | Current<br>Status | Registered<br>Owners                         | Notes |
|------------------------------|----------------------------------------------------------|---------------------------|----------------|------------------|----------------|-----------------|--------------------|-------------------|----------------------------------------------|-------|
| P003-KS-NP                   | MODIFIED RELEASE TABLET<br>OF BUPROPION<br>HYDROCHLORIDE | Kosovo                    | 08 Aug<br>2003 | P-035            |                |                 | 08 Aug 2023        | Pending           | Biovail<br>Laboratories<br>International SRL |       |
| P003-KW-NP                   | MODIFIED RELEASE TABLET<br>OF BUPROPION<br>HYDROCHLORIDE | Kuwait                    | 20 Dec<br>2005 | 152/2005         |                |                 | 20 Dec 2025        | Pending           | Biovail<br>Laboratories<br>International SRL |       |
| P003-LK-PCT                  | MODIFIED RELEASE TABLET<br>OF BUPROPION<br>HYDROCHLORIDE | Sri Lanka                 | 08 Aug<br>2003 | 13981            |                |                 | 08 Aug 2023        | Pending           | Biovail<br>Laboratories<br>International SRL |       |
| P003-LS-AFT                  | MODIFIED RELEASE TABLET<br>OF BUPROPION<br>HYDROCHLORIDE | Lesotho                   |                |                  | 31 Oct<br>2008 | AP1899          | 08 Aug 2023        | Granted           | Biovail<br>Laboratories<br>International SRL |       |
| P003-LY-NP                   | MODIFIED RELEASE TABLET<br>OF BUPROPION<br>HYDROCHLORIDE | Libyan Arab<br>Jamahiriya | 12 Mar<br>2006 | 3360/2006        |                |                 | 12 Mar 2021        | Pending           | Biovail<br>Laboratories<br>International SRL |       |
| P003-MA-PCT                  | MODIFIED RELEASE TABLET<br>OF BUPROPION<br>HYDROCHLORIDE | Morocco                   | 08 Aug<br>2003 | PV28772          |                |                 | 08 Aug 2023        | Pending           | Biovail<br>Laboratories<br>International SRL |       |
| P003-ME-PCT                  | MODIFIED RELEASE TABLET<br>OF BUPROPION<br>HYDROCHLORIDE | Montenegro                | 08 Aug<br>2003 | P-36/08          |                |                 | 08 Aug 2023        | Pending           | Biovail<br>Laboratories<br>International SRL |       |







| Biovail<br>Case<br>Reference | Title                                                    | Country<br>/Region | Filing<br>Date | Filing Number    | Grant<br>Date  | Grant Number         | Expiration<br>Date | Current<br>Status | Registered<br>Owners                         | Notes |
|------------------------------|----------------------------------------------------------|--------------------|----------------|------------------|----------------|----------------------|--------------------|-------------------|----------------------------------------------|-------|
| P003-PL-PCT                  | MODIFIED RELEASE TABLET<br>OF BUPROPION<br>HYDROCHLORIDE | Poland             | 08 Aug<br>2003 | P-378539         | 18 Jun<br>2007 | PAT-196544           | 08 Aug 2023        | Granted           | Biovail<br>Laboratories<br>International SRL |       |
| P003-QA-CN                   | MODIFIED RELEASE TABLET<br>OF BUPROPION<br>HYDROCHLORIDE | Qatar              |                | Cationary Notice |                |                      |                    | Pending           | Biovail<br>Laboratories<br>International SRL |       |
| P003-SA-NP                   | MODIFIED RELEASE TABLET<br>OF BUPROPION<br>HYDROCHLORIDE | Saudi Arabia       | 17 Jan<br>2006 | 06270142         |                |                      | 17 Jan 2026        | Pending           | Biovail<br>Laboratories<br>International SRL |       |
| P003-SC-PCT                  | MODIFIED RELEASE TABLET<br>OF BUPROPION<br>HYDROCHLORIDE | Seychelles         | 08 Aug<br>2003 | PCT2003/024700   | 08<br>May 2008 | PCT2003/024700       | 08 Aug 2023        | Granted           | Biovail<br>Laboratories<br>International SRL |       |
| P003-SD-AFT                  | MODIFIED RELEASE TABLET<br>OF BUPROPION<br>HYDROCHLORIDE | Sudan              |                |                  | 31 Oct<br>2008 | API1899              | 08 Aug 2023        | Granted           | Biovail<br>Laboratories<br>International SRL |       |
| P003-SG-PCT                  | MODIFIED RELEASE TABLET<br>OF BUPROPION<br>HYDROCHLORIDE | Singapore          | 08 Aug<br>2003 | 200600214-1      | 30 Jan<br>2009 | 131136[WO2005016318] | 08 Aug 2023        | Granted           | Biovail<br>Laboratories<br>International SRL |       |
| P003-SL-AFT                  | MODIFIED RELEASE TABLET<br>OF BUPROPION<br>HYDROCHLORIDE | Sierra Leone       |                |                  | 31 Oct<br>2008 | API1899              | 08 Aug 2023        | Granted           | Biovail<br>Laboratories<br>International SRL |       |

| Biovail<br>Case<br>Reference | Title                                                    | Country<br>/Region                  | Filing<br>Date | Filing Number   | Grant<br>Date  | Grant Number | Expiration<br>Date                                          | Current<br>Status               | Registered<br>Owners                         | Notes |
|------------------------------|----------------------------------------------------------|-------------------------------------|----------------|-----------------|----------------|--------------|-------------------------------------------------------------|---------------------------------|----------------------------------------------|-------|
| P003-SZ-AFT                  | MODIFIED RELEASE TABLET<br>OF BUPROPION<br>HYDROCHLORIDE | Swaziland                           |                |                 | 31 Oct<br>2008 | AP1899       | 08 Aug 2023                                                 | Granted                         | Biovail<br>Laboratories<br>International SRL |       |
| P003-TN-PCT                  | MODIFIED RELEASE TABLET<br>OF BUPROPION<br>HYDROCHLORIDE | Tunisia                             | 08 Aug<br>2003 | SN06.016        |                |              | 08 Aug 2023                                                 | Pending                         | Biovail<br>Laboratories<br>International SRL |       |
| P003-TT-PCT                  | MODIFIED RELEASE TABLET<br>OF BUPROPION<br>HYDROCHLORIDE | Trinidad And<br>Tobago              | 08 Aug<br>2003 | TT/A/2006/00014 |                |              | 08 Aug 2023                                                 | Pending                         | Biovail<br>Laboratories<br>International SRL |       |
| P003-TZ-AFT                  | MODIFIED RELEASE TABLET<br>OF BUPROPION<br>HYDROCHLORIDE | Tanzania<br>(United<br>Republic Of) |                |                 | 31 Oct<br>2008 | AP1899       | 08 Aug 2023                                                 | Granted                         | Biovail<br>Laboratories<br>International SRL |       |
| P003-UA-PCT                  | MODIFIED RELEASE TABLET<br>OF BUPROPION<br>HYDROCHLORIDE | Ukraine                             | 08 Aug<br>2003 | a200601245      |                |              | 08 Aug 2023                                                 | Pending                         | Biovail<br>Laboratories<br>International SRL |       |
| P003-UG-AFT                  | MODIFIED RELEASE TABLET<br>OF BUPROPION<br>HYDROCHLORIDE | Uganda                              |                |                 | 31 Oct<br>2008 | AP1899       | 08 Aug 2023                                                 | Granted                         | Biovail<br>Laboratories<br>International SRL |       |
| P003-US-CNT                  | MODIFIED RELEASE TABLET<br>OF BUPROPION<br>HYDROCHLORIDE | United States<br>Of America         | 13 Jun<br>2006 | 11/451,496      |                |              | 08 Aug 2023<br>+ 302 days<br>PTA as per<br>35 USC<br>154(b) | To grant on<br>May 26,<br>2009. | Biovail<br>Laboratories<br>International SRL |       |



| Biovail<br>Case<br>Reference | Title                                                         | Country<br>/Region | Filing<br>Date | Filing Number  | Grant<br>Date | Grant Number | Expiration<br>Date | Current<br>Status | Registered<br>Owners                         | Notes |
|------------------------------|---------------------------------------------------------------|--------------------|----------------|----------------|---------------|--------------|--------------------|-------------------|----------------------------------------------|-------|
| P048-AR-NP                   | BUPROPION HYDROBROMIDE<br>AND MEDICAMENTS AND<br>USES THEREOF | Argentina          | 19 Dec<br>2007 | P070105745     |               |              | 19 Dec 2027        | Pending           | Biovail<br>Laboratories<br>International SRL |       |
| P048-AU-PCT                  | BUPROPION HYDROBROMIDE<br>AND MEDICAMENTS AND<br>USES THEREOF | Australia          | 27 Jun<br>2006 | 2006261788     |               |              | 27 Jun 2026        | Pending           | Biovail<br>Laboratories<br>International SRL |       |
| P048-CA-PCT                  | BUPROPION HYDROBROMIDE<br>AND MEDICAMENTS AND<br>USES THEREOF | Canada             | 27 Jun<br>2006 | 2,578,626      |               |              | 27 Jun 2026        | Pending           | Biovail<br>Laboratories<br>International SRL |       |
| P048-CA-PCT[2]               | BUPROPION HYDROBROMIDE<br>AND MEDICAMENTS AND<br>USES THEREOF | Canada             | 27 Jun<br>2006 | not yet known  |               |              | 27 Jun 2026        | Pending           | Biovail<br>Laboratories<br>International SRL |       |
| P048-CN-PCT                  | BUPROPION HYDROBROMIDE<br>AND MEDICAMENTS AND<br>USES THEREOF | China              | 27 Jun<br>2006 | 200680023265.7 |               |              | 27 Jun 2026        | Pending           | Biovail<br>Laboratories<br>International SRL |       |
| P048-CO-PCT                  | BUPROPION HYDROBROMIDE<br>AND MEDICAMENTS AND<br>USES THEREOF | Colombia           | 27 Jun<br>2006 | 07136836       |               |              | 27 Jun 2026        | Pending           | Biovail<br>Laboratories<br>International SRL |       |
| P048-CR-PCT                  | BUPROPION HYDROBROMIDE<br>AND MEDICAMENTS AND<br>USES THEREOF | Costa Rica         | 27 Jun<br>2006 | 9609           |               |              | 27 Jun 2026        | Pending           | Biovail<br>Laboratories<br>International SRL |       |

| Biovail<br>Case<br>Reference | Title                                                   | Country<br>/Region              | Filing<br>Date | Filing Number   | Grant<br>Date | Grant Number | Expiration<br>Date | Current<br>Status | Registered<br>Owners                   | Notes |
|------------------------------|---------------------------------------------------------|---------------------------------|----------------|-----------------|---------------|--------------|--------------------|-------------------|----------------------------------------|-------|
| P048-EC-PCT                  | BUPROPION HYDROBROMIDE AND MEDICAMENTS AND USES THEREOF | Ecuador                         | 27 Jun 2006    | SP-07-7999      |               |              | 11 Dec 2027        | Pending           | Biovail Laboratories International SRL |       |
| P048-EP-EPT                  | BUPROPION HYDROBROMIDE AND MEDICAMENTS AND USES THEREOF | European Procedure (Patents)    | 27 Jun 2006    | 06774022.5      |               |              | 27 Jun 2026        | Pending           | Biovail Laboratories International SRL |       |
| P048-EP-EPT[2]               | BUPROPION HYDROBROMIDE AND MEDICAMENTS AND USES THEREOF | European Procedure (Patents)    | 26 Jun 2007    | 07736118.6      |               |              | 26 Jun 2027        | Pending           | Biovail Laboratories International SRL |       |
| P048-IL-PCT                  | BUPROPION HYDROBROMIDE AND MEDICAMENTS AND USES THEREOF | Israel                          | 27 Jun 2006    | 185760          |               |              | 27 Jun 2026        | Pending           | Biovail Laboratories International SRL |       |
| P048-IN-PCT                  | BUPROPION HYDROBROMIDE AND MEDICAMENTS AND USES THEREOF | India                           | 27 Jun 2006    | 8974/DELNP/2007 |               |              | 27 Jun 2026        | Pending           | Biovail Laboratories International SRL |       |
| P048-JP-PCT                  | BUPROPION HYDROBROMIDE AND MEDICAMENTS AND USES THEREOF | Japan                           | 27 Jun 2006    | 2008-519460     |               |              | 27 Jun 2026        | Pending           | Biovail Laboratories International SRL |       |
| P048-KR-PCT                  | BUPROPION HYDROBROMIDE AND MEDICAMENTS AND USES THEREOF | South Korea / Republic of Korea | 27 Jun 2006    | 2007-7028784    |               |              | 27 Jun 2026        | Pending           | Biovail Laboratories International SRL |       |

| Biovail<br>Case<br>Reference | Title                                                         | Country<br>/Region          | Filing<br>Date | Filing Number    | Grant<br>Date | Grant Number | Expiration<br>Date | Current<br>Status | Registered<br>Owners                         | Notes |
|------------------------------|---------------------------------------------------------------|-----------------------------|----------------|------------------|---------------|--------------|--------------------|-------------------|----------------------------------------------|-------|
| P048-MX-PCT                  | BUPROPION HYDROBROMIDE<br>AND MEDICAMENTS AND<br>USES THEREOF | Mexico                      | 27 Jun<br>2006 | MX/a/2007/015016 |               |              | 27 Jun 2026        | Pending           | Biovail<br>Laboratories<br>International SRL |       |
| P048-MY-NP                   | BUPROPION HYDROBROMIDE<br>AND MEDICAMENTS AND<br>USES THEREOF | Malaysia                    | 19 Sep<br>2007 | PI20071571       |               |              | 19 Sep 2027        | Pending           | Biovail<br>Laboratories<br>International SRL |       |
| P048-NI-PCT                  | BUPROPION HYDROBROMIDE<br>AND MEDICAMENTS AND<br>USES THEREOF | Nicaragua                   | 27 Jun<br>2006 | 2007/03221       |               |              | 27 Jun 2026        | Pending           | Biovail<br>Laboratories<br>International SRL |       |
| P048-NZ-PCT                  | BUPROPION HYDROBROMIDE<br>AND MEDICAMENTS AND<br>USES THEREOF | New Zealand                 | 27 Jun<br>2006 | 561375           |               |              | 27 Jun 2026        | Pending           | Biovail<br>Laboratories<br>International SRL |       |
| P048-RU-PCT                  | BUPROPION HYDROBROMIDE<br>AND MEDICAMENTS AND<br>USES THEREOF | Russian<br>Federation       | 27 Jun<br>2006 | 2007147343       |               |              | 27 Jun 2026        | Pending           | Biovail<br>Laboratories<br>International SRL |       |
| P048-SG-PCT                  | BUPROPION HYDROBROMIDE<br>AND MEDICAMENTS AND<br>USES THEREOF | Singapore                   | 27 Jun<br>2006 | 200706599-8      |               |              | 27 Jun 2026        | Pending           | Biovail<br>Laboratories<br>International SRL |       |
| P048-US-CIP                  | BUPROPION HYDROBROMIDE<br>AND MEDICAMENTS AND<br>USES THEREOF | United States<br>Of America | 07 Aug<br>2007 | 11/834,848       |               |              | 27 Jun 2025        | Pending           | Biovail<br>Laboratories<br>International SRL |       |



| Biovail<br>Case<br>Reference | Title                                                         | Country<br>/Region          | Filing<br>Date | Filing Number | Grant<br>Date | Grant Number | Expiration<br>Date | Current<br>Status                                                  | Registered<br>Owners                            | Notes |
|------------------------------|---------------------------------------------------------------|-----------------------------|----------------|---------------|---------------|--------------|--------------------|--------------------------------------------------------------------|-------------------------------------------------|-------|
| P048-US-CIP[2]               | BUPROPION HYDROBROMIDE<br>AND MEDICAMENTS AND<br>USES THEREOF | United States<br>Of America | 31 Oct<br>2007 | 11/930,644    |               |              | 31 Oct 2027        | Pending                                                            | Biovail<br>Laboratories<br>International<br>SRL |       |
| P048-US-CNT                  | BUPROPION HYDROBROMIDE<br>AND MEDICAMENTS AND<br>USES THEREOF | United States<br>Of America | 22<br>May 2007 | 11/751,768    |               |              | 27 Jun 2026        | <b>Notice of<br/>Allowance<br/>Received<br/>March 24,<br/>2009</b> | Biovail<br>Laboratories<br>International<br>SRL |       |
| P048-US-CNT[10]              | BUPROPION HYDROBROMIDE<br>AND MEDICAMENTS AND<br>USES THEREOF | United States<br>Of America | 21 Jun<br>2007 | 11/766,239    |               |              | 27 Jun 2026        | Pending                                                            | Biovail<br>Laboratories<br>International<br>SRL |       |
| P048-US-CNT[11]              | BUPROPION HYDROBROMIDE<br>AND MEDICAMENTS AND<br>USES THEREOF | United States<br>Of America | 21 Jun<br>2007 | 11/766,251    |               |              | 27 Jun 2026        | Pending                                                            | Biovail<br>Laboratories<br>International<br>SRL |       |
| P048-US-CNT[12]              | BUPROPION HYDROBROMIDE<br>AND MEDICAMENTS AND<br>USES THEREOF | United States<br>Of America | 06 Jul<br>2007 | 11/774,109    |               |              | 27 Jun 2026        | Pending                                                            | Biovail<br>Laboratories<br>International<br>SRL |       |
| P048-US-CNT[2]               | BUPROPION HYDROBROMIDE<br>AND MEDICAMENTS AND<br>USES THEREOF | United States<br>Of America | 22<br>May 2007 | 11/751,785    |               |              | 27 Jun 2026        | <b>Notice of<br/>Allowance<br/>Received<br/>March 13,<br/>2009</b> | Biovail<br>Laboratories<br>International<br>SRL |       |
| P048-US-CNT[3]               | BUPROPION HYDROBROMIDE<br>AND MEDICAMENTS AND<br>USES THEREOF | United States<br>Of America | 31<br>May 2007 | 11/755,946    |               |              | 27 Jun 2026        | <b>Notice of<br/>Allowance<br/>Received<br/>Feb 25,<br/>2009</b>   | Biovail<br>Laboratories<br>International<br>SRL |       |

| Biovail<br>Case<br>Reference | Title                                                         | Country<br>/Region          | Filing<br>Date | Filing Number | Grant<br>Date  | Grant Number | Expiration<br>Date | Current<br>Status                                                  | Registered<br>Owners                         | Notes |
|------------------------------|---------------------------------------------------------------|-----------------------------|----------------|---------------|----------------|--------------|--------------------|--------------------------------------------------------------------|----------------------------------------------|-------|
| P048-US-CNT[4]               | BUPROPION HYDROBROMIDE<br>AND MEDICAMENTS AND<br>USES THEREOF | United States<br>Of America | 07 Jun<br>2007 | 11/759,413    |                |              | 27 Jun 2026        | Pending                                                            | Biovail<br>Laboratories<br>International SRL |       |
| P048-US-CNT[5]               | BUPROPION HYDROBROMIDE<br>AND MEDICAMENTS AND<br>USES THEREOF | United States<br>Of America | 13 Jun<br>2007 | 11/762,368    |                |              | 27 Jun 2026        | Pending                                                            | Biovail<br>Laboratories<br>International SRL |       |
| P048-US-CNT[6]               | BUPROPION HYDROBROMIDE<br>AND MEDICAMENTS AND<br>USES THEREOF | United States<br>Of America | 13 Jun<br>2007 | 11/762,343    |                |              | 27 Jun 2026        | Pending                                                            | Biovail<br>Laboratories<br>International SRL |       |
| P048-US-CNT[7]               | BUPROPION HYDROBROMIDE<br>AND MEDICAMENTS AND<br>USES THEREOF | United States<br>Of America | 14 Jun<br>2007 | 11/762,820    |                |              | 27 Jun 2026        | <b>Notice of<br/>Allowance<br/>Received<br/>March 18,<br/>2009</b> | Biovail<br>Laboratories<br>International SRL |       |
| P048-US-CNT[8]               | BUPROPION HYDROBROMIDE<br>AND MEDICAMENTS AND<br>USES THEREOF | United States<br>Of America | 14 Jun<br>2007 | 11/762,840    |                |              | 27 Jun 2026        | <b>Notice of<br/>Allowance<br/>Received<br/>May 12,<br/>2009</b>   | Biovail<br>Laboratories<br>International SRL |       |
| P048-US-CNT[9]               | BUPROPION HYDROBROMIDE<br>AND MEDICAMENTS AND<br>USES THEREOF | United States<br>Of America | 21 Jun<br>2007 | 11/766,213    |                |              | 27 Jun 2026        | Pending                                                            | Biovail<br>Laboratories<br>International SRL |       |
| P048-US-NP                   | BUPROPION HYDROBROMIDE<br>AND MEDICAMENTS AND<br>USES THEREOF | United States<br>Of America | 27 Jun<br>2006 | 11/475,252    | 10 Jul<br>2007 | 7,241,805    | 27 Jun 2025        | Granted                                                            | Biovail<br>Laboratories<br>International SRL |       |

| Biovail<br>Case<br>Reference                                                                                                                              | Title                                                                   | Country<br>/Region                 | Filing<br>Date | Filing Number     | Grant<br>Date  | Grant Number | Expiration<br>Date | Current<br>Status | Registered<br>Owners                            | Notes |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------|------------------------------------|----------------|-------------------|----------------|--------------|--------------------|-------------------|-------------------------------------------------|-------|
| P048-US-PCT                                                                                                                                               | BUPROPION<br>HYDROBROMIDE AND<br>MEDICAMENTS AND USES<br>THEREOF        | United States<br>Of America        | 27 Jun<br>2006 | 11/993,723        |                |              | 27 Jun 2026        | Pending           | Biovail<br>Laboratories<br>International<br>SRL |       |
| P048-WO-PCT[3]                                                                                                                                            | BUPROPION<br>HYDROBROMIDE AND<br>MEDICAMENTS AND USES<br>THEREOF        | International<br>Procedure         | 06 Aug<br>2008 | PCT/EP2008/060361 |                |              |                    | Pending           | Biovail<br>Laboratories<br>International<br>SRL |       |
| P048-WO-PCT[4]                                                                                                                                            | BUPROPION<br>HYDROBROMIDE AND<br>MEDICAMENTS AND USES<br>THEREOF        | International<br>Procedure         | 28 Oct<br>2008 | PCT/EP2008/064619 |                |              |                    | Pending           | Biovail<br>Laboratories<br>International<br>SRL |       |
| P048-ZA-PCT                                                                                                                                               | BUPROPION<br>HYDROBROMIDE AND<br>MEDICAMENTS AND USES<br>THEREOF        | South Africa                       | 27 Jun<br>2006 | 2007/11123        |                |              | 27 Jun 2026        | Pending           | Biovail<br>Laboratories<br>International<br>SRL |       |
| <b>P049 family relates to <i>ULTRAM ER</i> in the US and RALIVIA in Canada. Only P048-US-PCT, P048-US-CNT1 and P048-US-CIP have been licensed to OMI.</b> |                                                                         |                                    |                |                   |                |              |                    |                   |                                                 |       |
| P049-AU-PCT                                                                                                                                               | MODIFIED RELEASE<br>FORMULATIONS OF AT<br>LEAST ONE FORM OF<br>TRAMADOL | Australia                          | 21 Feb<br>2003 | 2003211145        | 01 Nov<br>2007 | 2003211145   | 21 Feb 2023        | Granted           | Biovail<br>Laboratories<br>International<br>SRL |       |
| P049-CA-PCT                                                                                                                                               | MODIFIED RELEASE<br>FORMULATIONS OF AT<br>LEAST ONE FORM OF<br>TRAMADOL | Canada                             | 21 Feb<br>2003 | 2476201           |                |              | 21 Feb 2023        | Pending           | Biovail<br>Laboratories<br>International<br>SRL |       |
| P049-EP-EPT                                                                                                                                               | MODIFIED RELEASE<br>FORMULATIONS OF AT<br>LEAST ONE FORM OF<br>TRAMADOL | European<br>Procedure<br>(Patents) | 21 Feb<br>2003 | 03743147.5        |                |              | 21 Feb 2023        | Pending           | Biovail<br>Laboratories<br>International<br>SRL |       |

| Biovail<br>Case<br>Reference | Title                                                          | Country<br>/Region       | Filing<br>Date | Filing Number    | Grant<br>Date | Grant Number | Expiration<br>Date | Current<br>Status | Registered<br>Owners                   | Notes                                                                        |
|------------------------------|----------------------------------------------------------------|--------------------------|----------------|------------------|---------------|--------------|--------------------|-------------------|----------------------------------------|------------------------------------------------------------------------------|
|                              |                                                                |                          |                |                  |               |              |                    |                   |                                        |                                                                              |
| P049-IN-PCT                  | MODIFIED RELEASE FORMULATIONS OF AT LEAST ONE FORM OF TRAMADOL | India                    | 21 Feb 2003    | 1187/KOLNP/2004  |               |              | 21 Feb 2023        | Pending           | Biovail Laboratories International SRL |                                                                              |
| P049-JP-PCT                  | MODIFIED RELEASE FORMULATIONS OF AT LEAST ONE FORM OF TRAMADOL | Japan                    | 21 Feb 2003    | 2003-570772      |               |              | 21 Feb 2023        | Pending           | Biovail Laboratories Inc.              | Pending Registration of Assignment to Biovail Laboratories International SRL |
| P049-MX-PCT                  | MODIFIED RELEASE FORMULATIONS OF AT LEAST ONE FORM OF TRAMADOL | Mexico                   | 21 Feb 2003    | PA/a/2004/008100 | 20 Feb 2008   | 254912       | 21 Feb 2023        | Granted           | Biovail Laboratories International SRL |                                                                              |
| P049-NO-PCT                  | MODIFIED RELEASE FORMULATIONS OF AT LEAST ONE FORM OF TRAMADOL | Norway                   | 21 Feb 2003    | 20043913         |               |              | 21 Feb 2023        | Pending           | Biovail Laboratories International SRL |                                                                              |
| P049-NZ-PCT                  | MODIFIED RELEASE FORMULATIONS OF AT LEAST ONE FORM OF TRAMADOL | New Zealand              | 21 Feb 2003    | 535456           | 14 Dec 2006   | 535456       | 21 Feb 2023        | Granted           | Biovail Laboratories International SRL |                                                                              |
| P049-US-CIP1                 | MODIFIED RELEASE FORMULATIONS OF AT LEAST ONE FORM OF TRAMADOL | United States Of America | 03 Sep 2004    | 10/933479        |               |              | 21 Feb 2023        | Pending           | Biovail Laboratories International SRL |                                                                              |

| Biovail Case Reference                                                                                                                                                                             | Title                                                          | Country /Region              | Filing Date | Filing Number   | Grant Date  | Grant Number | Expiration Date | Current Status | Registered Owners                      | Notes |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------|------------------------------|-------------|-----------------|-------------|--------------|-----------------|----------------|----------------------------------------|-------|
| P049-US-CNT                                                                                                                                                                                        | MODIFIED RELEASE FORMULATIONS OF AT LEAST ONE FORM OF TRAMADOL | United States Of America     | 30 Oct 2007 | 11/928,908      |             |              | 21 Feb 2023     | Pending        | Biovail Laboratories International SRL |       |
| P049-US-PCT                                                                                                                                                                                        | MODIFIED RELEASE FORMULATIONS OF AT LEAST ONE FORM OF TRAMADOL | United States Of America     | 11 Oct 2005 | 10/517809       |             |              | 11 Oct 2025     | Pending        | Biovail Laboratories International SRL |       |
| P050 family relates to our AQ drug delivery technology platform. P050-US-NP, P050-US-CNT and P050-US-CIP cover the 1000mg GLUMETZA product in the US and Canada. The US IP is licensed to Depomed. |                                                                |                              |             |                 |             |              |                 |                |                                        |       |
| P050-AU-PCT                                                                                                                                                                                        | CONTROLLED RELEASE DOSAGE FORMS                                | Australia                    | 21 Feb 2003 | 2003211146      | 01 Nov 2007 | 2003211146   | 21 Feb 2023     | Granted        | Biovail Laboratories International SRL |       |
| P050-CA-PCT                                                                                                                                                                                        | CONTROLLED RELEASE DOSAGE FORMS                                | Canada                       | 21 Feb 2003 | 2476496         |             |              | 21 Feb 2023     | Pending        | Biovail Laboratories International SRL |       |
| P050-EP-EPT                                                                                                                                                                                        | CONTROLLED RELEASE DOSAGE FORMS                                | European Procedure (Patents) | 21 Feb 2003 | 03743148.3      |             |              | 21 Feb 2023     | Pending        | Biovail Laboratories International SRL |       |
| P050-IN-PCT                                                                                                                                                                                        | CONTROLLED RELEASE DOSAGE FORMS                                | India                        | 21 Feb 2003 | 1193/KOLNP/2004 | 11 Jun 2008 | 220994       | 21 Feb 2023     | Granted        | Biovail Laboratories International SRL |       |

| Biovail Case Reference                                   | Title                           | Country /Region          | Filing Date | Filing Number    | Grant Date  | Grant Number | Expiration Date | Current Status | Registered Owners                      | Notes                                                                        |
|----------------------------------------------------------|---------------------------------|--------------------------|-------------|------------------|-------------|--------------|-----------------|----------------|----------------------------------------|------------------------------------------------------------------------------|
| P050-JP-PCT                                              | CONTROLLED RELEASE DOSAGE FORMS | Japan                    | 21 Feb 2003 | 2003-570835      |             |              | 21 Feb 2023     | Pending        | Biovail Laboratories Inc.              | Pending Registration of Assignment to Biovail Laboratories International SRL |
| P050-MX-PCT                                              | CONTROLLED RELEASE DOSAGE FORMS | Mexico                   | 21 Feb 2003 | PA/a/2004/008164 | 15 Aug 2007 | 248063       | 21 Feb 2023     | Granted        | Biovail Laboratories International SRL |                                                                              |
| P050-NZ-PCT                                              | CONTROLLED RELEASE DOSAGE FORMS | New Zealand              | 21 Feb 2003 | 535455           |             |              | 21 Feb 2023     | Pending        | Biovail Laboratories International SRL |                                                                              |
| P050-US-CIP                                              | CONTROLLED RELEASE DOSAGE FORMS | United States Of America | 05 Dec 2008 | 12/328,828       |             |              | 21 Feb 2023     | Pending        | Biovail Laboratories International SRL |                                                                              |
| P050-US-CNT                                              | CONTROLLED RELEASE DOSAGE FORMS | United States Of America | 09 Jul 2008 | 12/169,852       |             |              | 21 Feb 2023     | Pending        | Biovail Laboratories International SRL |                                                                              |
| P050-US-NP                                               | CONTROLLED RELEASE DOSAGE FORMS | United States Of America | 21 Feb 2003 | 10/370109        |             |              | 21 Feb 2023     | Pending        | Biovail Laboratories International SRL |                                                                              |
| P051 covers CARDIZEM-LA, but NOT for approved indication |                                 |                          |             |                  |             |              |                 |                |                                        |                                                                              |

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| Biovail<br>Case<br>Reference                                                                                                                                         | Title                                                                            | Country<br>/Region                 | Filing<br>Date | Filing Number | Grant<br>Date  | Grant Number | Expiration<br>Date | Current<br>Status | Registered<br>Owners                         | Notes |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------|------------------------------------|----------------|---------------|----------------|--------------|--------------------|-------------------|----------------------------------------------|-------|
| P051-US-CNT                                                                                                                                                          | CHRONOTHERAPEUTIC<br>DILTIAZEM FORMULATIONS<br>AND THE ADMINISTRATION<br>THEREOF | United States<br>Of America        | 07 Dec<br>2007 | 11/952,343    |                |              | 09 Sep 2023        | Pending           | Biovail<br>Laboratories<br>International SRL | .     |
| P051-US-NP                                                                                                                                                           | CHRONOTHERAPEUTIC<br>DILTIAZEM FORMULATIONS<br>AND THE ADMINISTRATION<br>THEREOF | United States<br>Of America        | 09 Sep<br>2003 | 10/657752     | 25 Mar<br>2008 | 7,348,028    | 09 Sep 2023        | Granted           | Biovail<br>Laboratories<br>International SRL |       |
| <b>P052 covers an alternative embodiment to GLUMETZA, which embodiment is NOT being commercialized nor are there any plans to commercialize thisP052 embodiment.</b> |                                                                                  |                                    |                |               |                |              |                    |                   |                                              |       |
| P052-AU-PCT                                                                                                                                                          | Extended Release Tablet of<br>Metformin                                          | Australia                          | 04 Dec<br>2002 | 2002359582    | 03<br>May 2007 | 2002359582   | 04 Dec 2022        | Granted           | Biovail<br>Laboratories<br>International SRL |       |
| P052-CA-PCT                                                                                                                                                          | Extended Release Tablet of<br>Metformin                                          | Canada                             | 04 Dec<br>2002 | 2470747       |                |              | 04 Dec 2022        | Pending           | Biovail<br>Laboratories<br>International SRL |       |
| P052-EP-EPT                                                                                                                                                          | Extended Release Tablet of<br>Metformin                                          | European<br>Procedure<br>(Patents) | 02 Dec<br>2002 | 02794129.3    |                |              | 02 Dec 2022        | Pending           | Biovail<br>Laboratories<br>International SRL |       |
| P052-HU-PCT                                                                                                                                                          | Extended Release Tablet of<br>Metformin                                          | Hungary                            | 04 Dec<br>2002 | P0500004      |                |              | 04 Dec 2022        | Pending           | Biovail<br>Laboratories<br>International SRL |       |







| Biovail<br>Case<br>Reference                                                                                                                           | Title                                                                                                         | Country<br>/Region          | Filing<br>Date | Filing<br>Number | Grant<br>Date  | Grant Number | Expiration<br>Date | Current<br>Status | Registered<br>Owners                         | Notes |
|--------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|-----------------------------|----------------|------------------|----------------|--------------|--------------------|-------------------|----------------------------------------------|-------|
| P063-US-CNT                                                                                                                                            | DELAYED RELEASE TABLET<br>OF BUPROPION<br>HYDROCHLORIDE                                                       | United States<br>Of America | 13 Dec<br>1999 | 09/459459        | 07 Nov<br>2000 | 6143327      | 30 Oct 2018        | Granted           | Biovail<br>Laboratories<br>International SRL |       |
| P063-US-NP                                                                                                                                             | DELAYED RELEASE TABLET<br>OF BUPROPION<br>HYDROCHLORIDE                                                       | United States<br>Of America | 30 Oct<br>1998 | 09/184091        | 01 Aug<br>2000 | 6096341      | 30 Oct 2018        | Granted           | Biovail<br>Laboratories<br>International SRL |       |
| <b>P066 is specific to Canada only and does NOT cover any commercialized produc, but is material to WELLBUTRIN XL in Canada as a defensive patent.</b> |                                                                                                               |                             |                |                  |                |              |                    |                   |                                              |       |
| P066-CA-PCT                                                                                                                                            | PHARMACEUTICAL<br>COMPOSITION CONTAINING<br>BUPROPION<br>HYDROCHLORIDE AND AN<br>INORGANIC ACID<br>STABILIZER | Canada                      | 23 Dec<br>1998 | 2316985          | 12 Jun<br>2007 | 2316985      | 23 Dec 2018        | Granted           | Biovail<br>Laboratories<br>International SRL |       |
| <b>P068 is specific to Canada only and does NOT cover any commercialized produc, but is material to WELLBUTRIN XL in Canada as a defensive patent.</b> |                                                                                                               |                             |                |                  |                |              |                    |                   |                                              |       |
| P068-CA-PCT                                                                                                                                            | BUPROPION<br>HYDROCHLORIDE/ORGANIC<br>ACID STABILIZER                                                         | Canada                      | 23 Dec<br>1998 | 2316981          | 07 Aug<br>2007 | 2,316,981    | 23 Dec 2018        | Granted           | Biovail<br>Laboratories<br>International SRL |       |
| <b>P070 family MAY be relevant to our undisclosed BVF-045 product.</b>                                                                                 |                                                                                                               |                             |                |                  |                |              |                    |                   |                                              |       |
| P070-CA-NP                                                                                                                                             | MODIFIED RELEASE SSRI<br>FORMULATIONS                                                                         | Canada                      | 24 Dec<br>2002 | 2415154          |                |              | 24 Dec 2022        | Pending           | Biovail<br>Laboratories<br>International SRL |       |

| Biovail<br>Case<br>Reference                                      | Title                                                                      | Country<br>/Region           | Filing<br>Date | Filing<br>Number | Grant<br>Date | Grant<br>Number | Expiration<br>Date | Current<br>Status | Registered<br>Owners                   | Notes |
|-------------------------------------------------------------------|----------------------------------------------------------------------------|------------------------------|----------------|------------------|---------------|-----------------|--------------------|-------------------|----------------------------------------|-------|
| P070-EP-EPT                                                       | MODIFIED RELEASE SSRI FORMULATIONS                                         | European Procedure (Patents) | 19 Dec 2003    | 03788728.8       |               |                 | 19 Dec 2023        | Pending           | Biovail Laboratories International SRL |       |
| P070-US-PCT                                                       | MODIFIED RELEASE SSRI FORMULATIONS                                         | United States Of America     | 19 Dec 2003    | 10/556,492       |               |                 | 19 Dec 2023        | Pending           | Biovail Laboratories International SRL |       |
| <b>P098 family covers CARDIZEM CD in the US.</b>                  |                                                                            |                              |                |                  |               |                 |                    |                   |                                        |       |
| P098-US-CNT                                                       | DILTIAZEM FORMULATION                                                      | United States Of America     | 06 May 1993    | 08/058,534       | 15 Feb 1994   | 5,286,497       | 20 May 2011        | Granted           | Biovail Laboratories International SRL |       |
| P098-US-CNT[2]                                                    | DILTIAZEM FORMULATION                                                      | United States Of America     | 27 Feb 1995    | 08/394,573       | 28 Nov 1995   | 5,470,584       | 28 Nov 2012        | Granted           | Biovail Laboratories International SRL |       |
| P098-US-CNT1                                                      | DILTIAZEM FORMULATION                                                      | United States Of America     | 08 Dec 1993    | 08/164,062       | 08 Aug 1995   | 5,439,689       | 08 Aug 2012        | Granted           | Biovail Laboratories International SRL |       |
| <b>P100 family covers CARDIZEM LA for the allowed indication.</b> |                                                                            |                              |                |                  |               |                 |                    |                   |                                        |       |
| P100-CA-DIV                                                       | CHRONOTHERAPEUTIC FORMULATIONS OF DILTIAZEM AND THE ADMINISTRATION THEREOF | Canada                       | 22 Nov 2006    | 2,566,590        | 15 Apr 2008   | 2,566,590       | 04 May 2020        | Granted           | Biovail Laboratories International SRL |       |

| Biovail<br>Case<br>Reference                              | Title                                                                      | Country<br>/Region           | Filing<br>Date | Filing Number  | Grant<br>Date | Grant Number | Expiration<br>Date | Current<br>Status | Registered<br>Owners                   | Notes |
|-----------------------------------------------------------|----------------------------------------------------------------------------|------------------------------|----------------|----------------|---------------|--------------|--------------------|-------------------|----------------------------------------|-------|
| P100-CA-NP1                                               | CHRONOTHERAPEUTIC FORMULATIONS OF DILTIAZEM AND THE ADMINISTRATION THEREOF | Canada                       | 04 May 2000    | 2,307,547      | 14 Aug 2007   | 2,307,547    | 04 May 2020        | Granted           | Biovail Laboratories International SRL |       |
| P100-EP-EPT                                               | CHRONOTHERAPEUTIC FORMULATIONS OF DILTIAZEM AND THE ADMINISTRATION THEREOF | European Procedure (Patents) | 23 May 2000    | 00930909.7     |               |              | 23 May 2020        | Pending           | Biovail Laboratories International SRL |       |
| P100-JP-PCT                                               | CHRONOTHERAPEUTIC FORMULATIONS OF DILTIAZEM AND THE ADMINISTRATION THEREOF | Japan                        | 23 May 2000    | PCT/CA00/00593 |               |              | 23 May 2020        | Pending           | Biovail Laboratories International SRL |       |
| P100-US-NP1                                               | CHRONOTHERAPEUTIC FORMULATIONS OF DILTIAZEM AND THE ADMINISTRATION THEREOF | United States Of America     | 08 May 2000    | 09/567,451     | 19 Sep 2006   | 7,108,866    | 08 May 2020        | Granted           | Biovail Laboratories International SRL |       |
| <b>P112 covers an alternative embodiment for GLUMETZA</b> |                                                                            |                              |                |                |               |              |                    |                   |                                        |       |
| P112-US-NP                                                | EXTENDED RELEASE METFORMIN HYDROCHLORIDE FORMULATIONS                      | United States Of America     | 01 May 2001    | 09/845,496     | 13 Jan 2004   | 6,676,966    | 09 May 2020        | Granted           | Biovail Laboratories International SRL |       |
| <b>P144 covers BVF045</b>                                 |                                                                            |                              |                |                |               |              |                    |                   |                                        |       |
| P144-US-NP                                                | PHARMACEUTICAL COMPOSITIONS                                                | United States Of America     | 28 Jan 2009    | 12/360,673     |               |              | 28 Jan 2029        | Pending           | Biovail Laboratories International SRL |       |



BIOVAIL TRADEMARK PORTFOLIO

| -Biovail Case Reference | Trademark                       | Country                         | Filing Date | Filing Number   | Registration Date | Registration Number | Current Status | Registered Owners                      | Notes |
|-------------------------|---------------------------------|---------------------------------|-------------|-----------------|-------------------|---------------------|----------------|----------------------------------------|-------|
| T005-US-NF              | A (A Tablet design - Apex down) | United States Of America        | 31 May 1983 | 73428249        | 26 Jun 1984       | 1283003             | Registration   | Biovail Laboratories International SRL |       |
| T006-US-NF              | A (A Tablet design - Apex Up)   | United States Of America        | 24 Dec 1981 | 73343230        | 18 Oct 1983       | 1254277             | Registration   | Biovail Laboratories International SRL |       |
| T094-CA-NF              | APLENZIN                        | Canada                          | 24 Oct 2007 | 1,369,029       |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T101-AR-NF              | APLENZIN                        | Argentina                       | 28 Jan 2009 | 2890864         |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T101-AU-NF              | APLENZIN                        | Australia                       | 27 Nov 2008 | 1274549         |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T101-BB-NF              | APLENZIN                        | Barbados                        | 31 Jul 2008 | 81/24871        |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T101-CN-NF              | APLENZIN                        | China                           | 08 Dec 2008 | 7100795         |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T101-CO-NF              | APLENZIN                        | Colombia                        | 09 Dec 2008 | 08-130235       |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T101-CR-NF              | APLENZIN                        | Costa Rica                      | 15 Jan 2009 | 2009-000281     |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T101-EC-NF              | APLENZIN                        | Ecuador                         | 01 Dec 2008 | 207982          |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T101-EU-CTM             | APLENZIN                        | European Union                  | 01 Dec 2008 | 7462799         |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T101-IL-NF              | APLENZIN                        | Israel                          | 30 Nov 2008 | 216969          |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T101-IN-NF              | APLENZIN                        | India                           | 15 Jan 2009 | 1774270         |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T101-JP-NF              | APLENZIN                        | Japan                           | 02 Dec 2008 | 2008-097001     |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T101-KR-NF              | APLENZIN                        | South Korea / Republic of Korea | 29 Jan 2009 | 40-2009-0003901 |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T101-MX-NF              | APLENZIN                        | Mexico                          | 20 Jan 2009 | 984765          |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T101-MY-NF              | APLENZIN                        | Malaysia                        | 16 Dec 2008 | 2008/24684      |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T101-NI-NF              | APLENZIN                        | Nicaragua                       | 09 Dec 2008 | 2008/04292      |                   |                     | Pending        | Biovail Laboratories International SRL |       |

| -Biovail Case Reference | Trademark               | Country                  | Filing Date | Filing Number | Registration Date | Registration Number | Current Status | Registered Owners                      | Notes |
|-------------------------|-------------------------|--------------------------|-------------|---------------|-------------------|---------------------|----------------|----------------------------------------|-------|
| T101-NZ-NF              | APLENZIN                | New Zealand              | 27 Nov 2008 | 799614        |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T101-RU-NF              | APLENZIN                | Russian Federation       | 13 Jan 2009 | 2009700282    |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T101-SG-NF              | APLENZIN                | Singapore                | 10 Dec 2008 | T08171421     |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T101-ZA-NF              | APLENZIN                | South Africa             | 03 Dec 2008 | 2008/28353    |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T009-CA-NF              | ASOLZA                  | Canada                   | 29 Sep 2006 | 1318519       |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T009-US-NF              | ASOLZA                  | United States Of America | 31 Mar 2006 | 78851378      |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T008-US-NF              | ATIVAN                  | United States Of America | 12 Jan 1968 | 72288666      | 19 Aug 1969       | 875020              | Registration   | Biovail Laboratories International SRL |       |
| T055-CA-NF              | ATTENADE                | Canada                   | 09 Jul 2003 | 1183835       |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T004-EU-CTM             | BIOVAIL                 | European Union           | 11 Jan 2005 | 4,238,515     | 04 May 2007       | 4,238,515           | Registration   | Biovail Corporation                    |       |
| T010-US-NF              | BIOVAIL                 | United States Of America | 03 Feb 1994 | 74486021      | 07 Nov 1995       | 1934059             | Registration   | Biovail Corporation                    |       |
| T060-CA-NF              | BIOVAIL                 | Canada                   | 15 Jun 1992 | 0707106       | 02 Sep 1994       | 432688              | Registration   | Biovail Corporation                    |       |
| T076-HK-NF              | BIOVAIL                 | Hong Kong                | 14 May 2007 | 300870462     |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T079-TW-NF              | BIOVAIL                 | Taiwan                   | 15 Jun 2007 | 096028733     |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T081-CN-NF              | BIOVAIL                 | China                    | 18 Jun 2007 | 6114267       |                   |                     | Pending        | Biovail Corporation                    |       |
| T089-AU-NF              | BIOVAIL                 | Australia                | 19 Jul 2007 | 1187911       | 13 Oct 2008       | 1187911             | Registration   | Biovail Corporation                    |       |
| T091-NZ-NF              | BIOVAIL                 | New Zealand              | 19 Jul 2007 | 772422        | 19 Jul 2007       | 772422              | Registration   | Biovail Corporation                    |       |
| T097-CN-NF              | BIOVAIL                 | China                    | 14 Jan 2008 | 6508227       |                   |                     | Pending        | Biovail Corporation                    |       |
| T082-CN-NF              | BIOVAIL                 | China                    | 18 Jun 2007 | 6114266       |                   |                     | Pending        | Biovail Corporation                    |       |
| T011-EU-CTM             | BIOVAIL & SWOOSH DESIGN | European Union           | 30 Oct 2003 | 3,518,404     | 21 Jun 2005       | 3,518,404           | Registration   | Biovail Corporation                    |       |
| T011-US-NF              | BIOVAIL & SWOOSH DESIGN | United States Of America | 05 May 2003 | 76513954      | 28 Sep 2004       | 2888510             | Registration   | Biovail Corporation                    |       |

| -Biovail Case Reference | Trademark                         | Country                  | Filing Date | Filing Number | Registration Date | Registration Number | Current Status | Registered Owners                      |  | Notes                                     |
|-------------------------|-----------------------------------|--------------------------|-------------|---------------|-------------------|---------------------|----------------|----------------------------------------|--|-------------------------------------------|
|                         |                                   |                          |             |               |                   |                     |                |                                        |  |                                           |
| T062-CA-NF              | BIOVAIL & SWOOSH DESIGN           | Canada                   | 07 Nov 2003 | 1195529       | 03 May 2005       | 638951              | Registration   | Biovail Corporation                    |  |                                           |
| T058-CA-NF              | BIOVAIL (Design)                  | Canada                   | 15 Jun 1992 | 0707104       | 02 Sep 1994       | 432687              | Registration   | Biovail Corporation                    |  |                                           |
| T063-CA-NF              | BIOVAIL (Word Mark)               | Canada                   | 07 Feb 2006 | 1289048       | 23 Apr 2007       | 686430              | Registration   | Biovail Corporation                    |  |                                           |
| T059-CA-NF              | BIOVAIL CORPORATION INTERNATIONAL | Canada                   | 15 Jun 1992 | 0707105       | 26 Aug 1994       | 432238              | Registration   | Biovail Corporation                    |  |                                           |
| T012-US-NF              | BPI                               | United States Of America | 13 Jun 2003 | 78262407      |                   |                     | Pending        | Biovail Laboratories Inc.              |  |                                           |
| T013-US-NF              | BPI                               | United States Of America | 13 Jun 2003 | 78976515      | 27 Dec 2005       | 3036881             | Registration   | Biovail Laboratories Inc.              |  |                                           |
| T014-US-NF              | BVF                               | United States Of America | 21 May 2003 | 78252577      | 12 Jul 2005       | 2966250             | Registration   | Biovail Laboratories International SRL |  |                                           |
| T072-US-NF              | CARDISENSE                        | United States Of America | 16 May 2007 | 77/182237     |                   |                     | Pending        | Biovail Laboratories International SRL |  |                                           |
| T083-CN-NF              | CARDISENSE                        | China                    | 18 Jun 2007 | 6114269       |                   |                     | Pending        | Biovail Laboratories International SRL |  |                                           |
| T084-CN-NF              | CARDISENSE                        | China                    | 18 Jun 2007 | 6114270       |                   |                     | Pending        | Biovail Laboratories International SRL |  |                                           |
| T085-CN-NF              | CARDISENSE                        | China                    | 18 Jun 2007 | 6114271       |                   |                     | Pending        | Biovail Laboratories International SRL |  |                                           |
| T073-BB-NF              | CARDISENSE (16)                   | Barbados                 | 10 Apr 2007 | 81/22924      |                   |                     | Pending        | Biovail Laboratories International SRL |  |                                           |
| T074-BB-NF              | CARDISENSE (41)                   | Barbados                 | 10 Apr 2007 | 81/22925      |                   |                     | Pending        | Biovail Laboratories International SRL |  |                                           |
| T072-BB-NF              | CARDISENSE (9)                    | Barbados                 | 10 Apr 2007 | 81/22923      |                   |                     | Pending        | Biovail Laboratories International SRL |  |                                           |
| T072-CA-NF              | CARDISENSE (9)                    | Canada                   | 17 May 2007 | 1,347,905     |                   |                     | Pending        | Biovail Laboratories International SRL |  |                                           |
| T073-HK-NF              | CARDISENSE (English)              | Hong Kong                | 15 Jun 2007 | 300893511     | 15 Jun 2007       | 300893511           | Registration   | Biovail Laboratories International SRL |  |                                           |
| T015-CA-NF              | CARDIZEM                          | Canada                   | 16 Nov 1981 | 0478379       | 13 May 1983       | TMA279505           | Registration   | sanofi-aventis U.S. LLC                |  | Pending Registration of Assignment to BLS |
| T015-US-NF              | CARDIZEM                          | United States Of America | 22 Jan 1981 | 73293970      | 26 Jul 1983       | 1246194             | Registration   | Biovail Laboratories International SRL |  |                                           |



| -Biovail Case Reference | Trademark                     | Country                  | Filing Date | Filing Number | Registration Date | Registration Number | Current Status | Registered Owners                      | Notes |
|-------------------------|-------------------------------|--------------------------|-------------|---------------|-------------------|---------------------|----------------|----------------------------------------|-------|
| T016-US-NF              | CARDIZEM                      | United States Of America | 04 Dec 1986 | 73633651      | 30 Jun 1987       | 1444842             | Registration   | Biovail Laboratories International SRL |       |
| T086-CN-NF              | CARDIZEM                      | China                    | 18 Jun 2007 | 6114268       |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T077-HK-NF              | CARDIZEM (Chinese characters) | Hong Kong                | 15 Jun 2007 | 300893520     | 15 Jun 2007       | 300893520           | Registration   | Biovail Laboratories International SRL |       |
| T078-HK-NF              | CARDIZEM (Chinese characters) | Hong Kong                | 15 Jun 2007 | 300893520     |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T087-CN-NF              | CARDIZEM (Chinese Characters) | China                    | 18 Jun 2007 | 6114272       |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T077-HK-NF[2]           | CARDIZEM (English)            | Hong Kong                | 13 Jun 2007 | 300891469     | 13 Jun 2007       | 300891469           | Registration   | Biovail Laboratories International SRL |       |
| T099-EU-CTM             | CEFORM                        | European Union           | 30 Jul 1998 | 000892398     | 20 Jan 2001       | 000892398           | Registration   | Biovail Laboratories International SRL |       |
| T065-CA-NF              | CRYSTAAL CORPORATION & DESIGN | Canada                   | 23 May 1997 | 0845838       | 28 Sep 2000       | 533783              | Registration   | Biovail Corporation                    |       |
| T064-EU-CTM             | CRYSTAAL PHARMACEUTICALS      | European Union           | 23 Mar 2006 | 4975819       | 14 May 2007       | 4975819             | Registration   | Biovail Corporation                    |       |
| T056-CA-NF              | DiTECH                        | Canada                   | 29 Dec 2004 | 1242140       |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T102-EU-CTM             | EAZY                          | European Union           | 16 Oct 1998 | 000957548     | 17 Oct 2000       | 000957548           | Registration   | Fuizs Technologies Ltd.                |       |
| T019-AT-NF              | FLASHDOSE                     | Austria                  | 05 Sep 1994 | AM4460/94     | 07 Jun 1995       | 158046              | Registration   | Biovail Laboratories Inc.              |       |
| T019-AU-NF              | FLASHDOSE                     | Australia                | 29 Aug 1994 | 639069        | 29 Aug 1994       | 639069              | Registration   | Biovail Laboratories International SRL |       |
| T019-BX-NF              | FLASHDOSE                     | Benelux                  | 29 Aug 1994 | 832,881       | 31 Aug 2004       | 559011              | Registration   | Biovail Laboratories Inc.              |       |
| T019-CA-NF              | FLASHDOSE                     | Canada                   | 01 Sep 1994 | 763119        | 24 May 1996       | 457855              | Registration   | Biovail Laboratories Inc.              |       |
| T019-CH-NF              | FLASHDOSE                     | Switzerland              | 02 Sep 1994 | 5988/1994.4   | 05 Jun 1996       | 423.579             | Registration   | Biovail Laboratories Inc.              |       |
| T019-DK-NF              | FLASHDOSE                     | Denmark                  | 31 Aug 1994 | V/A 06.044/94 | 04 Nov 1994       | VR 07.515 1994      | Registration   | Biovail Laboratories Inc.              |       |
| T019-ES-NF              | FLASHDOSE                     | Spain                    | 06 Sep 1994 | 1920089       | 05 Apr 1995       | 1920089             | Registration   | Biovail Laboratories Inc.              |       |
| T019-EU-CTM             | FLASHDOSE                     | European Union           | 22 Jun 2005 | 004512364     | 07 Aug 2006       | 004512364           | Registration   | Biovail Laboratories International SRL |       |

| -Biovail Case Reference | Trademark   | Country                  | Filing Date | Filing Number | Registration Date | Registration Number | Current Status | Registered Owners                      | Notes |
|-------------------------|-------------|--------------------------|-------------|---------------|-------------------|---------------------|----------------|----------------------------------------|-------|
| T019-FI-NF              | FLASHDOSE   | Finland                  | 02 Sep 1994 | 4395/94       | 06 Nov 1995       | 140650              | Registration   | Biovail Laboratories Inc.              |       |
| T019-FR-NF              | FLASHDOSE   | France                   | 07 Sep 1994 | 94/535213     | 10 Jan 1995       | 94/535213           | Registration   | Biovail Laboratories International SRL |       |
| T019-GB-NF              | FLASHDOSE   | United Kingdom           | 31 Aug 1994 | 1583283       | 08 Mar 1994       | B1583283            | Registration   | Biovail Laboratories International SRL |       |
| T019-HU-NF              | FLASHDOSE   | Hungary                  | 30 Aug 1994 | M9403209      | 30 Aug 1994       | 143976              | Registration   | Biovail Laboratories International SRL |       |
| T019-IE-NF              | FLASHDOSE   | Ireland                  | 30 Aug 1994 | 5459/94       | 08 Mar 1994       | 164335              | Registration   | Biovail Laboratories Inc.              |       |
| T019-IL-NF              | FLASHDOSE   | Israel                   | 29 Aug 1994 | 94414         | 01 Apr 1996       | 94414               | Registration   | Fuisz Technologies Ltd.                |       |
| T019-IT-NF              | FLASHDOSE   | Italy                    | 09 Sep 1994 | 94C008064     | 24 Dec 1996       | 00698703            | Registration   | Fuisz Technologies Ltd.                |       |
| T019-JP-NF              | FLASHDOSE   | Japan                    | 08 Sep 1994 | 6-091584      | 13 Mar 1997       | 08/128428           | Registration   | Biovail Laboratories Inc.              |       |
| T019-NO-NF              | FLASHDOSE   | Norway                   | 01 Sep 1994 | 94.4857       | 27 Jun 1996       | 174604              | Registration   | Biovail Laboratories International SRL |       |
| T019-PL-NF              | FLASHDOSE   | Poland                   | 30 Aug 1994 | Z137503       | 19 May 2000       | 120909              | Registration   | Biovail Laboratories International SRL |       |
| T019-PT-NF              | FLASHDOSE   | Portugal                 | 31 Oct 1994 | 50096         | 01 Sep 1995       | 303113              | Registration   | Fuisz Technologies Ltd.                |       |
| T019-SE-NF              | FLASHDOSE   | Sweden                   | 06 Sep 1994 | 94-08948      | 02 Jun 1995       | 302,578             | Registration   | Biovail Laboratories International SRL |       |
| T019-TW-NF              | FLASHDOSE   | Taiwan                   | 01 Sep 1994 | 83-56299      | 01 Nov 1995       | 694584              | Registration   | Biovail Laboratories International SRL |       |
| T019-US-NF              | FLASHDOSE   | United States Of America | 08 Mar 1994 | 74498162      | 25 Mar 1997       | 2048066             | Registration   | Biovail Laboratories Inc.              |       |
| T020-US-NF              | FLASHDOSE   | United States Of America | 07 Jan 2005 | 78543928      |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T054-BB-NF              | FLASHDOSE   | Barbados                 | 24 Oct 2006 | 81/22348      |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T066-CA-NF              | FLASHDOSE   | Canada                   | 01 Sep 1994 | 763119        | 24 May 1996       | 457855              | Registration   | Biovail Laboratories International SRL |       |
| T021-CA-NF              | GLUMETZA    | Canada                   | 16 Apr 2004 | 1213583       | 25 Sep 2006       | 673214              | Registration   | Biovail Laboratories International SRL |       |
| T021-US-NF              | GLUMETZA    | United States Of America | 12 Dec 2003 | 78340355      | 08 Jan 2008       | 3,366,577           | Registration   | Biovail Laboratories International SRL |       |
| T022-US-NF              | HEALTHBURST | United States Of America | 20 Jun 2003 | 78265254      |                   |                     | Pending        | Biovail Laboratories International SRL |       |

| -Biovail Case Reference | Trademark | Country                  | Filing Date | Filing Number | Registration Date | Registration Number | Current Status | Registered Owners                      | Notes           |
|-------------------------|-----------|--------------------------|-------------|---------------|-------------------|---------------------|----------------|----------------------------------------|-----------------|
| T023-US-NF              | INSTATAB  | United States Of America | 17 Jul 2006 | 78931095      |                   |                     | Pending        | Biovail Laboratories International SRL |                 |
| T049-BB-NF              | INSTATAB  | Barbados                 | 15 Aug 2006 | 81/22115      |                   |                     | Pending        | Biovail Laboratories International SRL |                 |
| T026-PR-NF              | ISORDIL   | Porto Rico               | 13 Mar 1962 | 12102         | 13 Mar 1962       | 12102               | Registration   | AMERICAN HOME PRODUCTS (WYETH)         | Licensed to BLS |
| T026-US-NF              | ISORDIL   | United States Of America | 23 Sep 1959 | 72081865      | 03 May 1960       | 0697014             | Registration   | Biovail Laboratories International SRL |                 |
| T024-CA-NF              | JOVOLA    | Canada                   | 29 Sep 2006 | 1318521       |                   |                     | Pending        | Biovail Laboratories International SRL |                 |
| T024-US-NF              | JOVOLA    | United States Of America | 17 Apr 2006 | 78862891      |                   |                     | Pending        | Biovail Laboratories International SRL |                 |
| T027-CA-NF              | JUBLIA    | Canada                   | 29 Sep 2006 | 1318522       |                   |                     | Pending        | Biovail Laboratories International SRL |                 |
| T027-US-NF              | JUBLIA    | United States Of America | 17 Apr 2006 | 78862951      |                   |                     | Pending        | Biovail Laboratories International SRL |                 |
| T028-CA-NF              | MIVURA    | Canada                   | 29 Sep 2006 | 1318515       |                   |                     | Pending        | Biovail Laboratories International SRL |                 |
| T028-US-NF              | MIVURA    | United States Of America | 21 Mar 2006 | 78851363      |                   |                     | Pending        | Biovail Laboratories International SRL |                 |
| T029-CA-NF              | ONELZA    | Canada                   | 29 Sep 2006 | 1318518       |                   |                     | Pending        | Biovail Laboratories International SRL |                 |
| T029-US-NF              | ONELZA    | United States Of America | 31 Mar 2006 | 78851346      |                   |                     | Pending        | Biovail Laboratories International SRL |                 |
| T031-BB-NF              | ONEXTEN   | Barbados                 | 10 Sep 2008 | 81/25090      |                   |                     | Pending        | Biovail Laboratories International SRL |                 |
| T031-US-NF[2]           | ONEXTEN   | United States Of America | 24 Oct 2008 | 77599980      |                   |                     | Pending        | Biovail Laboratories International SRL |                 |
| T032-US-NF              | ORAMELT   | United States Of America | 08 Aug 2002 | 76439672      |                   |                     | Pending        | Biovail Laboratories International SRL |                 |
| T051-BB-NF              | ORAMELT   | Barbados                 | 28 Aug 2006 | 81/22151      |                   |                     | Pending        | Biovail Laboratories International SRL |                 |
| T100-US-NF              | ORAMELT   | United States Of America | 11 Aug 2008 | 77/543,711    |                   |                     | Pending        | Biovail Laboratories International SRL |                 |
| T030-CA-NF              | PALVATA   | Canada                   | 29 Sep 2006 | 1318525       |                   |                     | Pending        | Biovail Laboratories International SRL |                 |
| T030-US-NF              | PALVATA   | United States Of America | 17 Apr 2006 | 78862931      |                   |                     | Pending        | Biovail Laboratories International SRL |                 |

| -Biovail Case Reference | Trademark                               | Country                  | Filing Date | Filing Number | Registration Date | Registration Number | Current Status | Registered Owners                      | Notes |
|-------------------------|-----------------------------------------|--------------------------|-------------|---------------|-------------------|---------------------|----------------|----------------------------------------|-------|
| T103-CA-NF              | PRESTWICK PHARMACEUTICALS (with design) | Canada                   | 15 Apr 2005 | 1254921       |                   |                     | Pending        | PRESTWICK PHARMACEUTICALS, INC         |       |
| T103-EU-CTM             | PRESTWICK PHARMACEUTICALS (with design) | European Union           | 15 Apr 2005 | 004390738     | 16 Mar 2006       | 004390738           | Registration   | PRESTWICK PHARMACEUTICALS, INC         |       |
| T103-US-NF              | PRESTWICK PHARMACEUTICALS (with design) | United States Of America | 15 Oct 2004 | 78/500,310    |                   |                     | Pending        | PRESTWICK PHARMACEUTICALS, INC         |       |
| T103-US-NF[2]           | PRESTWICK PHARMACEUTICALS (with design) | United States Of America | 30 Mar 2009 | 77701890      |                   |                     | Pending        | PRESTWICK PHARMACEUTICALS, INC         |       |
| T053-BB-NF              | RALIVIA                                 | Barbados                 | 30 Aug 2006 | 81/22157      |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T053-CA-NF              | RALIVIA                                 | Canada                   | 12 Sep 2006 | 1316182       | 04 Dec 2008       | 730180              | Registration   | Biovail Laboratories International SRL |       |
| T096-BB-NF              | SHEARFORM                               | Barbados                 | 05 Feb 2008 | 81/24155      |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T096-CA-NF              | SHEARFORM                               | Canada                   | 29 Jul 2008 | 1405335       |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T096-US-NF              | SHEARFORM                               | United States Of America | 06 Feb 2008 | 77/390719     |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T035-US-NF              | SMARTCOAT                               | United States Of America | 08 Sep 2003 | 78297563      |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T050-BB-NF              | SMARTCOAT                               | Barbados                 | 28 Aug 2006 | 81/22150      |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T025-CA-NF              | SOLBRI                                  | Canada                   | 29 Sep 2006 | 1318526       |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T025-US-NF              | SOLBRI                                  | United States Of America | 17 Apr 2006 | 78862981      |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T037-CA-NF              | TESIVEE                                 | Canada                   | 29 Sep 2006 | 1318513       |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T037-US-NF              | TESIVEE                                 | United States Of America | 31 Mar 2006 | 78851273      |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T038-US-NF              | TIAZAC                                  | United States Of America | 05 Nov 1993 | 74454789      | 23 Jul 1996       | 1988853             | Registration   | Biovail Laboratories International SRL |       |
| T061-CA-NF              | TIAZAC                                  | Canada                   | 17 May 1995 | 0783048       | 25 Nov 1997       | 486200              | Registration   | Biovail Laboratories International SRL |       |
| T075-HK-NF              | TIAZAC                                  | Hong Kong                | 23 May 2007 | 300875700     |                   |                     | Pending        | Biovail Laboratories International SRL |       |

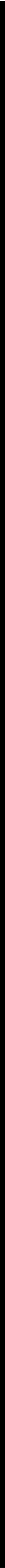
| -Biovail Case Reference | Trademark | Country                  | Filing Date | Filing Number | Registration Date | Registration Number | Current Status | Registered Owners                      | Notes |
|-------------------------|-----------|--------------------------|-------------|---------------|-------------------|---------------------|----------------|----------------------------------------|-------|
| T088-CN-NF              | TIAZAC    | China                    | 18 Jun 2007 | 6114273       |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T092-CO-NF              | TIAZAC    | Colombia                 | 04 Oct 2007 | 07-104259     |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T095-TW-NF              | TIAZAC    | Taiwan                   | 31 May 2007 | 096025872     |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T098-US-NF              | TITRADOSE | United States Of America | 13 Feb 2008 | 77396172      | 31 Mar 2009       | 3597399             | Registration   | Biovail Laboratories International SRL |       |
| T039-US-NF              | TOVALT    | United States Of America | 04 Apr 2003 | 76504006      |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T052-BB-NF              | TOVALT    | Barbados                 | 30 Aug 2006 | 81/22158      |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T067-CA-NF              | TOVALT    | Canada                   | 12 Sep 2006 | 1316184       |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T090-US-NF              | TOVALT    | United States Of America | 14 Aug 2007 | 77254549      |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T040-US-NF              | UPZIMIA   | United States Of America | 04 Apr 2003 | 76504005      |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T093-BB-NF              | UPZIMIA   | Barbados                 | 21 Aug 2007 | 81/23563      |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T093-CA-NF              | UPZIMIA   | Canada                   | 21 Feb 2008 | 1384285       |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T093-US-NF              | UPZIMIA   | United States Of America | 30 Jan 2008 | 77/383919     |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T041-US-NF              | UPZIVA    | United States Of America | 04 Apr 2003 | 76504007      |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T042-US-NF              | VASERETIC | United States Of America | 09 Oct 1984 | 73503117      | 14 May 1985       | 1335085             | Registration   | Biovail Laboratories International SRL |       |
| T043-US-NF              | VASOCARD  | United States Of America | 20 Aug 2004 | 78471082      |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T044-US-NF              | VASOTEC   | United States Of America | 15 Feb 1984 | 73465852      | 16 Jul 1985       | 1348858             | Registration   | Biovail Laboratories International SRL |       |
| T045-CA-NF              | VEMRETA   | Canada                   | 29 Sep 2006 | 1318514       |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T045-US-NF              | VEMRETA   | United States Of America | 31 Mar 2006 | 78851392      |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T046-CA-NF              | VOLZELO   | Canada                   | 29 Sep 2006 | 1318520       |                   |                     | Pending        | Biovail Laboratories International SRL |       |
| T046-US-NF              | VOLZELO   | United States Of America | 31 Mar 2006 | 78851320      |                   |                     | Pending        | Biovail Laboratories International SRL |       |

| -Biovail Case Reference | Trademark | Country                  | Filing Date | Filing Number | Registration Date | Registration Number | Current Status | Registered Owners                      | Notes |
|-------------------------|-----------|--------------------------|-------------|---------------|-------------------|---------------------|----------------|----------------------------------------|-------|
| T017-US-NF              | ZILERAN   | United States Of America | 17 Nov 2004 | 78518422      |                   |                     | Pending        | Biovail Laboratories International SRL |       |



BIOVAIL MATERIAL LICENSED PATENT PORTFOLIO

| Case Reference                                                   | TITLE                                                 | Country                      | Filing Date | Filing Number | Grant Date  | Grant Number | Legal Owners                                 | Owned/Licensed                                     |
|------------------------------------------------------------------|-------------------------------------------------------|------------------------------|-------------|---------------|-------------|--------------|----------------------------------------------|----------------------------------------------------|
| P148 licensed-In for RALIVIA in Canada                           |                                                       |                              |             |               |             |              |                                              |                                                    |
| P148-CA-NP                                                       | CONTROLLED RELEASE FORMULATION                        | Canada                       | 9-May-94    | 2123160       | 29-Apr-2003 |              | EURO-CELTIQUE, S.A - NAPP Associated Company | Licensed to Biovail Laboratories International SRL |
| P121 licensed in for wax beads used in CARDIZEM LA and TIAZAC XC |                                                       |                              |             |               |             |              |                                              |                                                    |
| P121-US-PCT                                                      | CUSHIONING WAX BEADS FOR MAKING SOLID SHAPED ARTICLES | United States Of America     | 24-Jul-01   | 09/831,422    | 2-Aug-05    | 6,923,984    | Universiteit Gent                            | Licensed to Biovail Laboratories International SRL |
| P121-CA-PCT                                                      | CUSHIONING WAX BEADS FOR MAKING SOLID SHAPED ARTICLES | Canada                       | 26-Jul-00   | 2,348,953     | 7-Jun-05    | 2,348,953    | Universiteit Gent                            | Licensed to Biovail Laboratories International SRL |
| P121-EP-EPT                                                      | CUSHIONING WAX BEADS FOR MAKING SOLID SHAPED ARTICLES | European Procedure (Patents) | 26-Jul-00   | 953096.5      | 20-Apr-05   | EP1131057    | Universiteit Gent                            | Licensed to Biovail Laboratories International SRL |







| Case Reference | TITLE                                                                                   | Country        | Filing Date | Filing Number | Grant Date | Grant Number | Legal Owners  | Owned/Licensed                                     |
|----------------|-----------------------------------------------------------------------------------------|----------------|-------------|---------------|------------|--------------|---------------|----------------------------------------------------|
| P156           | GASTRIC-RETENTIVE ORAL DRUG DOSAGE FORMS FOR CONTROLLED RELEASE OF HIGHLY SOLUBLE DRUGS | Switzerland    | 5-Jun-98    | 98931204.6    | 24-Aug-05  | EP0998271    | Depomed, Inc. | Licensed to Biovail Laboratories International SRL |
| P156           | GASTRIC-RETENTIVE ORAL DRUG DOSAGE FORMS FOR CONTROLLED RELEASE OF HIGHLY SOLUBLE DRUGS | Germany        | 5-Jun-98    | 98931204.6    | 24-Aug-05  | EP0998271    | Depomed, Inc. | Licensed to Biovail Laboratories International SRL |
| P156           | GASTRIC-RETENTIVE ORAL DRUG DOSAGE FORMS FOR CONTROLLED RELEASE OF HIGHLY SOLUBLE DRUGS | Spain          | 5-Jun-98    | 98931204.6    | 24-Aug-05  | EP0998271    | Depomed, Inc. | Licensed to Biovail Laboratories International SRL |
| P156           | GASTRIC-RETENTIVE ORAL DRUG DOSAGE FORMS FOR CONTROLLED RELEASE OF HIGHLY SOLUBLE DRUGS | France         | 5-Jun-98    | 98931204.6    | 24-Aug-05  | EP0998271    | Depomed, Inc. | Licensed to Biovail Laboratories International SRL |
| P156           | GASTRIC-RETENTIVE ORAL DRUG DOSAGE FORMS FOR CONTROLLED RELEASE OF HIGHLY SOLUBLE DRUGS | United Kingdom | 5-Jun-98    | 98931204.6    | 24-Aug-05  | EP0998271    | Depomed, Inc. | Licensed to Biovail Laboratories International SRL |
| P156           | GASTRIC-RETENTIVE ORAL DRUG DOSAGE FORMS FOR CONTROLLED RELEASE OF HIGHLY SOLUBLE DRUGS | Greece         | 5-Jun-98    | 98931204.6    | 24-Aug-05  | EP0998271    | Depomed, Inc. | Licensed to Biovail Laboratories International SRL |

| Case Reference | TITLE                                                                                   | Country     | Filing Date | Filing Number | Grant Date | Grant Number | Legal Owners  | Owned/Licensed                                     |
|----------------|-----------------------------------------------------------------------------------------|-------------|-------------|---------------|------------|--------------|---------------|----------------------------------------------------|
| P156           | GASTRIC-RETENTIVE ORAL DRUG DOSAGE FORMS FOR CONTROLLED RELEASE OF HIGHLY SOLUBLE DRUGS | Italy       | 5-Jun-98    | 98931204.6    | 24-Aug-05  | EP0998271    | Depomed, Inc. | Licensed to Biovail Laboratories International SRL |
| P156           | GASTRIC-RETENTIVE ORAL DRUG DOSAGE FORMS FOR CONTROLLED RELEASE OF HIGHLY SOLUBLE DRUGS | Netherlands | 5-Jun-98    | 98931204.6    | 24-Aug-05  | EP0998271    | Depomed, Inc. | Licensed to Biovail Laboratories International SRL |
| P156           | GASTRIC-RETENTIVE ORAL DRUG DOSAGE FORMS FOR CONTROLLED RELEASE OF HIGHLY SOLUBLE DRUGS | Portugal    | 5-Jun-98    | 98931204.6    | 24-Aug-05  | EP0998271    | Depomed, Inc. | Licensed to Biovail Laboratories International SRL |
| P156           | GASTRIC-RETENTIVE ORAL DRUG DOSAGE FORMS FOR CONTROLLED RELEASE OF HIGHLY SOLUBLE DRUGS | Sweden      | 5-Jun-98    | 98931204.6    | 24-Aug-05  | EP0998271    | Depomed, Inc. | Licensed to Biovail Laboratories International SRL |
| P156           | GASTRIC-RETENTIVE ORAL DRUG DOSAGE FORMS FOR CONTROLLED RELEASE OF HIGHLY SOLUBLE DRUGS | Ireland     | 5-Jun-98    | 98931204.6    | 24-Aug-05  | EP0998271    | Depomed, Inc. | Licensed to Biovail Laboratories International SRL |
| P156           | GASTRIC-RETENTIVE ORAL DRUG DOSAGE FORMS FOR CONTROLLED RELEASE OF HIGHLY SOLUBLE DRUGS | Australia   | 5-Jun-98    | 81386/98      | 17-May-01  | 729529       | Depomed, Inc. | Licensed to Biovail Laboratories International SRL |



| Case Reference | TITLE                                                                                        | Country                  | Filing Date | Filing Number | Grant Date | Grant Number | Legal Owners  | Owned/Licensed                                     |
|----------------|----------------------------------------------------------------------------------------------|--------------------------|-------------|---------------|------------|--------------|---------------|----------------------------------------------------|
| P158-US-NP     | TABLET SHAPES TO ENHANCE GASTRIC RETENTION OF SWELLABLE CONTROLLED-RELEASE ORAL DOSAGE FORMS | United States Of America | 20-Jun-00   | 09/598,061    | 3-Dec-02   | 6,488,962    | Depomed, Inc. | Licensed to Biovail Laboratories International SRL |
| P158           | TABLET SHAPES TO ENHANCE GASTRIC RETENTION OF SWELLABLE CONTROLLED-RELEASE ORAL DOSAGE FORMS | Austria                  | 26-Feb-01   | 114515        | 17-Dec-03  | EP129463     | Depomed, Inc. | Licensed to Biovail Laboratories International SRL |
| P158           | TABLET SHAPES TO ENHANCE GASTRIC RETENTION OF SWELLABLE CONTROLLED-RELEASE ORAL DOSAGE FORMS | Belgium                  | 26-Feb-01   | 114515        | 17-Dec-03  | EP129463     | Depomed, Inc. | Licensed to Biovail Laboratories International SRL |
| P158           | TABLET SHAPES TO ENHANCE GASTRIC RETENTION OF SWELLABLE CONTROLLED-RELEASE ORAL DOSAGE FORMS | Switzerland              | 26-Feb-01   | 114515        | 17-Dec-03  | EP129463     | Depomed, Inc. | Licensed to Biovail Laboratories International SRL |
| P158           | TABLET SHAPES TO ENHANCE GASTRIC RETENTION OF SWELLABLE CONTROLLED-RELEASE ORAL DOSAGE FORMS | Denmark                  | 26-Feb-01   | 114515        | 17-Dec-03  | EP129463     | Depomed, Inc. | Licensed to Biovail Laboratories International SRL |
| P158           | TABLET SHAPES TO ENHANCE GASTRIC RETENTION OF SWELLABLE CONTROLLED-RELEASE ORAL DOSAGE FORMS | Germany                  | 26-Feb-01   | 114515        | 17-Dec-03  | EP129463     | Depomed, Inc. | Licensed to Biovail Laboratories International SRL |

| Case Reference | TITLE                                                                                        | Country        | Filing Date | Filing Number | Grant Date | Grant Number | Legal Owners  | Owned/Licensed                                     |
|----------------|----------------------------------------------------------------------------------------------|----------------|-------------|---------------|------------|--------------|---------------|----------------------------------------------------|
| P158           | TABLET SHAPES TO ENHANCE GASTRIC RETENTION OF SWELLABLE CONTROLLED-RELEASE ORAL DOSAGE FORMS | Spain          | 26-Feb-01   | 114515        | 17-Dec-03  | EP129463     | Depomed, Inc. | Licensed to Biovail Laboratories International SRL |
| P158           | TABLET SHAPES TO ENHANCE GASTRIC RETENTION OF SWELLABLE CONTROLLED-RELEASE ORAL DOSAGE FORMS | France         | 26-Feb-01   | 114515        | 17-Dec-03  | EP129463     | Depomed, Inc. | Licensed to Biovail Laboratories International SRL |
| P158           | TABLET SHAPES TO ENHANCE GASTRIC RETENTION OF SWELLABLE CONTROLLED-RELEASE ORAL DOSAGE FORMS | United Kingdom | 26-Feb-01   | 114515        | 17-Dec-03  | EP129463     | Depomed, Inc. | Licensed to Biovail Laboratories International SRL |
| P158           | TABLET SHAPES TO ENHANCE GASTRIC RETENTION OF SWELLABLE CONTROLLED-RELEASE ORAL DOSAGE FORMS | Italy          | 26-Feb-01   | 114515        | 17-Dec-03  | EP129463     | Depomed, Inc. | Licensed to Biovail Laboratories International SRL |
| P158           | TABLET SHAPES TO ENHANCE GASTRIC RETENTION OF SWELLABLE CONTROLLED-RELEASE ORAL DOSAGE FORMS | Netherlands    | 26-Feb-01   | 114515        | 17-Dec-03  | EP129463     | Depomed, Inc. | Licensed to Biovail Laboratories International SRL |
| P158           | TABLET SHAPES TO ENHANCE GASTRIC RETENTION OF SWELLABLE CONTROLLED-RELEASE ORAL DOSAGE FORMS | Portugal       | 26-Feb-01   | 114515        | 17-Dec-03  | EP129463     | Depomed, Inc. | Licensed to Biovail Laboratories International SRL |

| Case Reference | TITLE                                                                                        | Country | Filing Date | Filing Number | Grant Date | Grant Number | Legal Owners  | Owned/Licensed                                     |
|----------------|----------------------------------------------------------------------------------------------|---------|-------------|---------------|------------|--------------|---------------|----------------------------------------------------|
| P158           | TABLET SHAPES TO ENHANCE GASTRIC RETENTION OF SWELLABLE CONTROLLED-RELEASE ORAL DOSAGE FORMS | Sweden  | 26-Feb-01   | 114515        | 17-Dec-03  | EP129463     | Depomed, Inc. | Licensed to Biovail Laboratories International SRL |
| P158           | TABLET SHAPES TO ENHANCE GASTRIC RETENTION OF SWELLABLE CONTROLLED-RELEASE ORAL DOSAGE FORMS | Ireland | 26-Feb-01   | 114515        | 17-Dec-03  | EP129463     | Depomed, Inc. | Licensed to Biovail Laboratories International SRL |
| P158           | TABLET SHAPES TO ENHANCE GASTRIC RETENTION OF SWELLABLE CONTROLLED-RELEASE ORAL DOSAGE FORMS | Korea   | 26-Feb-01   | 1.02003E+12   |            |              | Depomed, Inc. | Licensed to Biovail Laboratories International SRL |
| P158           | TABLET SHAPES TO ENHANCE GASTRIC RETENTION OF SWELLABLE CONTROLLED-RELEASE ORAL DOSAGE FORMS | Mexico  | 26-Feb-01   | MX2012614     |            |              | Depomed, Inc. | Licensed to Biovail Laboratories International SRL |
| P158           | TABLET SHAPES TO ENHANCE GASTRIC RETENTION OF SWELLABLE CONTROLLED-RELEASE ORAL DOSAGE FORMS | Israel  | 26-Feb-01   | 153464        |            |              | Depomed, Inc. | Licensed to Biovail Laboratories International SRL |
| P158           | TABLET SHAPES TO ENHANCE GASTRIC RETENTION OF SWELLABLE CONTROLLED-RELEASE ORAL DOSAGE FORMS | Japan   | 26-Feb-01   | 2002503260    |            |              | Depomed, Inc. | Licensed to Biovail Laboratories International SRL |









| Case Reference | TITLE                          | Country                  | Filing Date | Filing Number     | Grant Date | Grant Number  | Legal Owners          | Owned/Licensed                                     |
|----------------|--------------------------------|--------------------------|-------------|-------------------|------------|---------------|-----------------------|----------------------------------------------------|
| P165-NZ-PCT    | METHOD OF DELAYING EJACULATION | New Zealand              | 15-Mar-02   | 528935            | 10-Feb-05  | 528935        | DMI Biosciences, Inc. | Licensed to Biovail Laboratories International SRL |
| P165-PH-PCT    | METHOD OF DELAYING EJACULATION | Philippines              | 15-Mar-02   | 1-2003-500893     | 19-Oct-07  | 1-2003-500893 | DMI Biosciences, Inc. | Licensed to Biovail Laboratories International SRL |
| P165-ZA-PCT    | METHOD OF DELAYING EJACULATION | South Africa             | 15-Mar-02   | 20030867          |            |               | DMI Biosciences, Inc. | Licensed to Biovail Laboratories International SRL |
| P165-US-NP     | METHOD OF DELAYING EJACULATION | United States Of America | 15-Mar-02   | 10/098,826        | 13-Dec-05  | 674839        | DMI Biosciences, Inc. | Licensed to Biovail Laboratories International SRL |
| P165-HK-PCT    | METHOD OF DELAYING EJACULATION | Hong Kong                | 15-Mar-02   | 510107.2          |            |               | DMI Biosciences, Inc. | Licensed to Biovail Laboratories International SRL |
| P165-MX-PCT    | METHOD OF DELAYING EJACULATION | Mexico                   | 15-Mar-02   | PA/a/2003-7012090 |            |               | DMI Biosciences, Inc. | Licensed to Biovail Laboratories International SRL |



| Case Reference                           | TITLE                                   | Country                  | Filing Date | Filing Number     | Grant Date | Grant Number | Legal Owners          | Owned/Licensed                                                               |
|------------------------------------------|-----------------------------------------|--------------------------|-------------|-------------------|------------|--------------|-----------------------|------------------------------------------------------------------------------|
| P167-US-NP                               | REDUCING SIDE EFFECTS OF TRAMADOL       | United States Of America | 12-Feb-08   | 12/029/973        |            |              | DMI Biosciences, Inc. | Licensed to Biovail Laboratories International SRL                           |
| P167-WO-PCT                              | REDUCING SIDE EFFECTS OF TRAMADOL       | PCT                      | 12-Feb-08   | PCT/US2008/053722 |            |              | DMI Biosciences, Inc. | Licensed to Biovail Laboratories International SRL                           |
| <b>Licensed-in via OMI for ULTRAM ER</b> |                                         |                          |             |                   |            |              |                       |                                                                              |
|                                          | CONTROLLED RELEASE TRAMADOL             | United States Of America | 10-Jul-96   | 08/677,798        | 3-Jul-01   | 6254887      | Euro-Celtique S.A.    | Licensed to via Biovail Laboratories International SRL via Ortho-McNeil Inc. |
|                                          | CONTROLLED RELEASE TRAMADOL FORMULATION | United States Of America | 6-Mar-01    | 09/800,204        | 11-Jul-06  | 7074430      | Euro-Celtique S.A.    | Licensed to via Biovail Laboratories International SRL via Ortho-McNeil Inc. |
|                                          | CONTROLLED RELEASE FORMULATION          | United States Of America | 10-May-94   | 08/241,129        | 7-Jan-97   | 5591452      | Euro-Celtique S.A.    | Licensed to via Biovail Laboratories International SRL via Ortho-McNeil Inc. |

| Case Reference | TITLE                                                      | Country                  | Filing Date | Filing Number | Grant Date | Grant Number | Legal Owners       | Owned/Licensed                                                          |
|----------------|------------------------------------------------------------|--------------------------|-------------|---------------|------------|--------------|--------------------|-------------------------------------------------------------------------|
|                | CONTROLLED RELEASE FORMULATION                             | United States Of America | 24-May-95   | 08/449,772    | 4-Dec-01   | 6326027      | Euro-Celtique S.A. | Licensed to via Biovail Laboratories International SRL via Ortho-McNeil |
|                | MULTILAYERED CONTROLLED RELEASE PHARMACEUTICAL DOSAGE FORM | United States Of America | 23-Mar-94   | 08/217,331    | 7-Mar-95   | 5395626      | Euro-Celtique S.A. | Licensed to via Biovail Laboratories International SRL via Ortho-McNeil |
|                | MULTILAYERED CONTROLLED RELEASE PHARMACEUTICAL DOSAGE FORM | United States Of America | 6-Oct-94    | 08/319,186    | 12-Dec-95  | 5474786      | Euro-Celtique S.A. | Licensed to via Biovail Laboratories International SRL via Ortho-McNeil |
|                | MULTILAYERED CONTROLLED RELEASE PHARMACEUTICAL DOSAGE FORM | United States Of America | 7-Dec-95    | 08/568,907    | 8-Jul-97   | 5645858      | Euro-Celtique S.A. | Licensed to via Biovail Laboratories International SRL via Ortho-McNeil |
|                | STABILIZED SUSTAINED RELEASE TRAMADOL FORMULATIONS         | United States Of America | 19-Oct-01   | 10/052,844    | 11-Nov-03  | 6,645,527    | Euro-Celtique S.A. | Licensed to via Biovail Laboratories International SRL via Ortho-McNeil |
|                | STABILIZED SUSTAINED RELEASE TRAMADOL FORMULATIONS         | United States Of America | 2-Jul-98    | 09/109,615    | 23-Oct-01  | 6306438      | Euro-Celtique S.A. | Licensed to via Biovail Laboratories International SRL via Ortho-McNeil |

| Case Reference                      | TITLE                                                                                                                                                    | Country                  | Filing Date | Filing Number     | Grant Date | Grant Number | Legal Owners                | Owned/Licensed                                     |
|-------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|-------------|-------------------|------------|--------------|-----------------------------|----------------------------------------------------|
| <b>Licensed-in for Pimavanserin</b> |                                                                                                                                                          |                          |             |                   |            |              |                             |                                                    |
|                                     | AZACYCLIC COMPOUNDS                                                                                                                                      | United States Of America | 6-Mar-01    | 09/800,096        | 9-Nov-04   | 6,815,458    | Acadia Pharmaceuticals, Inc | Licensed to Biovail Laboratories International SRL |
|                                     | AZACYCLIC COMPOUNDS                                                                                                                                      | United States Of America | 7-Apr-03    | 10/409,782        | 29-Jun-04  | 6,756,393    | Acadia Pharmaceuticals, Inc | Licensed to Biovail Laboratories International SRL |
|                                     | AZACYCLIC COMPOUNDS                                                                                                                                      | United States Of America | 21-Jan-09   | 12/355737         |            |              | Acadia Pharmaceuticals, Inc | Licensed to Biovail Laboratories International SRL |
|                                     | AZACYCLIC COMPOUNDS FOR USE IN THE TREATMENT OF SEROTONIN RELATED DISEASES                                                                               | Canada                   | 6-Mar-01    | 2397981           |            |              | Acadia Pharmaceuticals, Inc | Licensed to Biovail Laboratories International SRL |
|                                     | SYNTHESIS OF N-(4-FLUOROBENZYL)-N-(1-METHYLPIPERIDIN-4-YL)-N'-(4-(2-METHYLPROPYLOXY)PHENYL METHYL) CARBAMIDE AND ITS TARTRATE SALT AND CRYSTALLINE FORMS | WO                       | 13-May-08   | PCT/US2008/063555 |            |              | Acadia Pharmaceuticals, Inc | Licensed to Biovail Laboratories International SRL |

| Case Reference | TITLE                                                                                              | Country                  | Filing Date | Filing Number | Grant Date | Grant Number | Legal Owners                | Owned/Licensed                                     |
|----------------|----------------------------------------------------------------------------------------------------|--------------------------|-------------|---------------|------------|--------------|-----------------------------|----------------------------------------------------|
|                | SELECTIVE SEROTONIN 2A/2C RECEPTOR INVERSE AGONISTS AS THERAPEUTICS FOR NEURODEGENERATIVE DISEASES | United States Of America | 15-Jan-04   | 10/759,561    |            |              | Acadia Pharmaceuticals, Inc | Licensed to Biovail Laboratories International SRL |
|                | SELECTIVE SEROTONIN 2A/2C RECEPTOR INVERSE AGONISTS AS THERAPEUTICS FOR NEURODEGENERATIVE DISEASES | United States Of America | 3-May-06    | 11/416,527    |            |              | Acadia Pharmaceuticals, Inc | Licensed to Biovail Laboratories International SRL |
|                | SELECTIVE SEROTONIN 2A/2C RECEPTOR INVERSE AGONISTS AS THERAPEUTICS FOR NEURODEGENERATIVE DISEASES | United States Of America | 3-May-06    | 11/416,855    |            |              | Acadia Pharmaceuticals, Inc | Licensed to Biovail Laboratories International SRL |
|                | SELECTIVE SEROTONIN 2A/2C RECEPTOR INVERSE AGONISTS AS THERAPEUTICS FOR NEURODEGENERATIVE DISEASES | United States Of America | 3-May-06    | 11/416,594    |            |              | Acadia Pharmaceuticals, Inc | Licensed to Biovail Laboratories International SRL |
|                | SELECTIVE SEROTONIN 2A/2C RECEPTOR INVERSE AGONISTS AS THERAPEUTICS FOR NEURODEGENERATIVE DISEASES | Canada                   | 15-Jan-04   | 2512639       |            |              | Acadia Pharmaceuticals, Inc | Licensed to Biovail Laboratories International SRL |
|                | SELECTIVE SEROTONIN 2A/2C RECEPTOR INVERSE AGONISTS AS THERAPEUTICS FOR NEURODEGENERATIVE DISEASES | PCT                      | 15-Jan-04   | 2004206886    |            |              | Acadia Pharmaceuticals, Inc | Licensed to Biovail Laboratories International SRL |

| Case Reference | TITLE                                                                      | Country                  | Filing Date | Filing Number    | Grant Date | Grant Number | Legal Owners                | Owned/Licensed                                     |
|----------------|----------------------------------------------------------------------------|--------------------------|-------------|------------------|------------|--------------|-----------------------------|----------------------------------------------------|
|                | SELECTIVE SEROTONIN RECEPTOR INVERSE AGONISTS AS THERAPEUTICS FOR DISEASE  | United States Of America | 21-May-04   | 10/850,819       |            |              | Acadia Pharmaceuticals, Inc | Licensed to Biovail Laboratories International SRL |
|                | SELECTIVE SEROTONIN RECEPTOR INVERSE AGONISTS AS THERAPEUTICS FOR DISEASE  | United States Of America | 24-May-04   | 10/854,035       |            |              | Acadia Pharmaceuticals, Inc | Licensed to Biovail Laboratories International SRL |
|                | AZACYCLIC COMPOUNDS                                                        | United States Of America | 11-Feb-09   | 12/378,385       |            |              | Acadia Pharmaceuticals, Inc | Licensed to Biovail Laboratories International SRL |
|                | SELECTIVE SEROTONIN RECEPTOR INVERSE AGONISTS AS THERAPEUTICS FOR DISEASE  | United States Of America | 20-May-05   | 11/134,769       |            |              | Acadia Pharmaceuticals, Inc | Licensed to Biovail Laboratories International SRL |
|                | AZACYCLIC COMPOUNDS                                                        | WO                       | 20-May-05   | PCT/US05/17808   |            |              | Acadia Pharmaceuticals, Inc | Licensed to Biovail Laboratories International SRL |
|                | AZACYCLIC COMPOUNDS FOR USE IN THE TREATMENT OF SEROTONIN RELATED DISEASES | WO                       | 6-Mar-01    | PCT/US2001/07187 |            |              | Acadia Pharmaceuticals, Inc | Licensed to Biovail Laboratories International SRL |



| Case Reference | TITLE                                                                                                                                                  |  | Country                  | Filing Date | Filing Number | Grant Date | Grant Number | Legal Owners              | Owned/Licensed                                     |
|----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|--|--------------------------|-------------|---------------|------------|--------------|---------------------------|----------------------------------------------------|
|                |                                                                                                                                                        |  |                          |             |               |            |              |                           |                                                    |
|                | SELECTIVE SEROTONIN RECEPTOR INVERSE AGONISTS AS THERAPEUTICS FOR DISEASE                                                                              |  | Canada                   | 20-May-05   | 2567704       |            |              | Acadia Pharmaceutical Inc | Licensed to Biovail Laboratories International SRL |
|                | SELECTIVE SEROTONIN RECEPTOR INVERSE AGONISTS AS THERAPEUTICS FOR DISEASE                                                                              |  | WO                       | 20-May-05   | PCT/US2005/   |            |              | Acadia Pharmaceutical Inc | Licensed to Biovail Laboratories International SRL |
|                | SYNTHESIS OF N-(4-FLUOROBENZYL)-N-(1-METHYLPYPERIDIN-4-YL)-N'-(4-(2-METHYLPROPYLOXY)PHENYLMETHYL)CARBAMIDE AND ITS TARTRATE SALT AND CRYSTALLINE FORMS |  | United States Of America | 26-Sep-05   | 11/235,558    |            |              | Acadia Pharmaceutical Inc | Licensed to Biovail Laboratories International SRL |
|                | SALTS OF N-(4-FLUOROBENZYL)-N-(1-METHYLPYPERIDIN-4-YL)-N'-(4-(2-METHYLPROPYLOXY)PHENYLMETHYL)CARBAMIDE AND THEIR PREPARATION                           |  | United States Of America | 26-Sep-05   | 11/235,381    |            |              | Acadia Pharmaceutical Inc | Licensed to Biovail Laboratories International SRL |
|                | SYNTHESIS OF N-(4-FLUOROBENZYL)-N-(1-METHYLPYPERIDIN-4-YL)-N'-(4-(2-METHYLPROPYLOXY)PHENYLMETHYL)CARBAMIDE AND ITS TARTRATE SALT AND CRYSTALLINE FORMS |  | United States Of America | 3-May-06    | 11/418,341    |            |              | Acadia Pharmaceutical Inc | Licensed to Biovail Laboratories International SRL |
|                | SYNTHESIS OF N-(4-FLUOROBENZYL)-N-(1-METHYLPYPERIDIN-4-YL)-N'-(4-(2-METHYLPROPYLOXY)PHEN                                                               |  | United States Of America | 3-May-06    | 11/417,447    |            |              | Acadia Pharmaceutical Inc | Licensed to Biovail Laboratories International SRL |

| Case Reference | TITLE                                                                                                                                                   | Country                  | Filing Date | Filing Number     | Grant Date | Grant Number | Legal Owners                | Owned/Licensed                                     |
|----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|-------------|-------------------|------------|--------------|-----------------------------|----------------------------------------------------|
|                | SYNTHESIS OF N-(4-FLUOROBENZYL)-N-(1-METHYLPIPERIDIN-4-YL)-N'-(4-(2-METHYLPROPYLOXY)PHENYL METHYL)CARBAMIDE AND ITS TARTRATE SALT AND CRYSTALLINE FORMS | United States Of America | 15-May-07   | 11/749,115        |            |              | Acadia Pharmaceuticals, Inc | Licensed to Biovail Laboratories International SRL |
|                | SYNTHESIS OF N-(4-FLUOROBENZYL)-N-(1-METHYLPIPERIDIN-4-YL)-N'-(4-(2-METHYLPROPYLOXY)PHENYL METHYL)CARBAMIDE AND ITS TARTRATE SALT AND CRYSTALLINE FORMS | Canada                   | 26-Sep-05   | 2580136           |            |              | Acadia Pharmaceuticals, Inc | Licensed to Biovail Laboratories International SRL |
|                | AZACYCLIC COMPOUNDS                                                                                                                                     | Canada                   | 28-Sep-05   | Unknown           |            |              | Acadia Pharmaceuticals, Inc | Licensed to Biovail Laboratories International SRL |
|                | SYNTHESIS OF N-(4-FLUOROBENZYL)-N-(1-METHYLPIPERIDIN-4-YL)-N'-(4-(2-METHYLPROPYLOXY)PHENYL METHYL)CARBAMIDE AND ITS TARTRATE SALT AND CRYSTALLINE FORMS | WO                       | 26-Sep-05   | PCT/US2005/034813 |            |              | Acadia Pharmaceuticals, Inc | Licensed to Biovail Laboratories International SRL |
|                | SALTS OF N-(4-FLUOROBENZYL)-N-(1-METHYLPIPERIDIN-4-YL)-N'-(4-(2-METHYLPROPYLOXY)PHENYL METHYL)CARBAMIDE AND THEIR PREPARATION                           | WO                       | 26-Sep-05   | PCT/US2005/034376 |            |              | Acadia Pharmaceuticals, Inc | Licensed to Biovail Laboratories International SRL |
|                | AZACYCLIC COMPOUNDS                                                                                                                                     | RU                       | 26-Sep-05   | 2007115886        |            |              | Acadia Pharmaceuticals, Inc | Licensed to Biovail Laboratories International SRL |

| Case Reference | TITLE                                                                       | Country                  | Filing Date | Filing Number     | Grant Date | Grant Number | Legal Owners                | Owned/Licensed                                     |
|----------------|-----------------------------------------------------------------------------|--------------------------|-------------|-------------------|------------|--------------|-----------------------------|----------------------------------------------------|
|                | USE OF 4-AMINO-PIPERIDINES FOR TREATING SLEEP DISORDERS                     | United States Of America | 18-Apr-07   | 11/737,097        |            |              | Acadia Pharmaceuticals, Inc | Licensed to Biovail Laboratories International SRL |
|                | USE OF 4-AMINO-PIPERIDINES FOR TREATING SLEEP DISORDERS                     | PCT                      | 18-Apr-07   | PCT/US2007/009804 |            |              | Acadia Pharmaceuticals, Inc | Licensed to Biovail Laboratories International SRL |
|                | PHARMACEUTICAL FORMULATIONS OF PIMAVANSERIN                                 | United States Of America | 15-May-07   | 11/749,110        |            |              | Acadia Pharmaceuticals, Inc | Licensed to Biovail Laboratories International SRL |
|                | PHARMACEUTICAL FORMULATIONS OF PIMAVANSERIN                                 | Canada                   | 15-Nov-08   | Unknown           |            |              | Acadia Pharmaceuticals, Inc | Licensed to Biovail Laboratories International SRL |
|                | PHARMACEUTICAL FORMULATIONS OF PIMAVANSERIN                                 | PCT                      | 15-May-07   | PCT/US2007/011720 |            |              | Acadia Pharmaceuticals, Inc | Licensed to Biovail Laboratories International SRL |
|                | COMBINATIONS OF 5-HT2A INVERSE AGONISTS AND ANTAGONISTS WITH ANTIPSYCHOTICS | United States Of America | 19-Mar-08   | 12/051,807        |            |              | Acadia Pharmaceuticals, Inc | Licensed to Biovail Laboratories International SRL |

| Case Reference | TITLE                                                                    | Country                  | Filing Date | Filing Number     | Grant Date | Grant Number | Legal Owners                | Owned/Licensed                                     |
|----------------|--------------------------------------------------------------------------|--------------------------|-------------|-------------------|------------|--------------|-----------------------------|----------------------------------------------------|
|                | COMBINATIONS OF 5-HT2A INVERSE AGONISTS AND AGONISTS WITH ANTIPSYCHOTICS | WO                       | 19-Mar-08   | PCT/US08/57557    |            |              | Acadia Pharmaceuticals, Inc | Licensed to Biovail Laboratories International SRL |
|                | USE AND ADMINISTRATION OF PIMAVANSERIN                                   | WO                       | 19-May-08   | PCT/US2008/064154 |            |              | Acadia Pharmaceuticals, Inc | Licensed to Biovail Laboratories International SRL |
|                | N-SUBSTITUTED PIPERIDINE DERIVATIVES AS SEROTONIN RECEPTOR AGENTS        | United States Of America | 19-Sep-08   | 12/234,582        |            |              | Acadia Pharmaceuticals, Inc | Licensed to Biovail Laboratories International SRL |
|                | N-SUBSTITUTED PIPERIDINE DERIVATIVES AS SEROTONIN RECEPTOR AGENTS        | PCT                      | 19-Sep-08   | PCT/US08/77140    |            |              | Acadia Pharmaceuticals, Inc | Licensed to Biovail Laboratories International SRL |
|                | CO-ADMINISTRATION OF PIMAVANSERIN WITH OTHER AGENTS                      | United States Of America | 19-Sep-08   | 12/234,573        |            |              | Acadia Pharmaceuticals, Inc | Licensed to Biovail Laboratories International SRL |
|                | CO-ADMINISTRATION OF PIMAVANSERIN WITH OTHER AGENTS                      | PCT                      | 19-Sep-08   | PCT/US08/77139    |            |              | Acadia Pharmaceuticals, Inc | Licensed to Biovail Laboratories International SRL |

| Case Reference | TITLE               | Country | Filing Date | Filing Number | Grant Date | Grant Number | Legal Owners                | Owned/Licensed                                     |
|----------------|---------------------|---------|-------------|---------------|------------|--------------|-----------------------------|----------------------------------------------------|
|                | AZACYCLIC COMPOUNDS | US      | 25-Mar-09   | 61/163,439    |            |              | Acadia Pharmaceuticals, Inc | Licensed to Biovail Laboratories International SRL |

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SCHEDULE 5.16  
POST CLOSING ITEMS  
**[FMC to provide.]**

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SCHEDULE 6.01

EXISTING INDEBTEDNESS

| Credit Facility                                                                                                                                                                     | Amount         |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|
| Third amended and restated credit agreement dated as of June 2, 2008 with The Bank of Nova Scotia, as administrative agent, and the banks and financial institutions named therein. | \$290 million. |

SCHEDULE 6.02

EXISTING LIENS

[see attached]

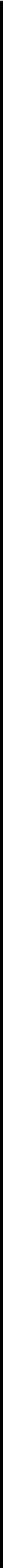
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ONTARIO

Personal Property Security Act (Ontario) Current to May 19, 2009 [NTD: TO BE UPDATED FOLLOWING JPMORGAN REGISTRATIONS]

| Secured Party                                                                                                           | File Number | Registration Number     | Collateral Classification |   |   |   |   | Collateral Description | VI N | Term (Years) | Debtor                                 |
|-------------------------------------------------------------------------------------------------------------------------|-------------|-------------------------|---------------------------|---|---|---|---|------------------------|------|--------------|----------------------------------------|
|                                                                                                                         |             |                         | C                         | I | E | A | O |                        |      |              |                                        |
| 1. JPMorgan Chase Bank, N.A., Toronto Branch, as Administrative Agent - and - JPMorgan Chase Bank, N.A., Toronto Branch | 654037569   | 20090608 1526 1590 6724 |                           | X | X | X | X | X                      |      | 4 years      | Biovail Laboratories International SRL |
| 2. JPMorgan Chase Bank, N.A., Toronto Branch, as Administrative Agent - and - JPMorgan Chase Bank, N.A., Toronto Branch | 654028902   | 20090608 1439 1590 6714 |                           | X | X | X | X | X                      |      | 4 years      | Biovail Technologies Ltd.              |
| 3. JPMorgan Chase Bank, N.A., Toronto Branch, as Administrative Agent - and - JPMorgan Chase Bank, N.A., Toronto Branch | 654028875   | 20090608 1438 1590 6713 |                           | X | X | X | X | X                      |      | 4 years      | Prestwick Pharmaceuticals, Inc.        |



| Secured Party                                                                                                           | File Number | Registration Number                                                         | Collateral Classification |   |   |   |   | Collateral Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | VI N | Term (Years) | Debtor                                                |
|-------------------------------------------------------------------------------------------------------------------------|-------------|-----------------------------------------------------------------------------|---------------------------|---|---|---|---|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|--------------|-------------------------------------------------------|
|                                                                                                                         |             |                                                                             | C                         | I | E | A | O |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |      |              |                                                       |
| 4. JPMorgan Chase Bank, N.A., Toronto Branch, as Administrative Agent - and - JPMorgan Chase Bank, N.A., Toronto Branch | 654002046   | 20090605 1601 1590 6660                                                     |                           | X | X | X | X | X                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |      | 4 years      | Biovail Corporation                                   |
| 5. Roy Foss Motors Ltd.                                                                                                 | 652785993   | 20090416 1629 2677 1931                                                     | X                         |   |   |   | X | 2009 Dodge, Journey SE 4DR FWD VIN: 3D4GG47B59T585153                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | X    | 4 years      | Biovail Corporation                                   |
| 6. Xerox Canada Ltd.                                                                                                    | 652495212   | 20090402 1702 1462 8414                                                     |                           |   | X |   | X |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |      | 6 years      | Biovail Corporation - and - Biovail Contract Research |
| 7. GE Canada Leasing Services Company                                                                                   | 652342203   | 20090327 1149 5064 8888, as amended by registration 20090402 1230 5064 9002 |                           | X | X | X | X | One 1981 Mystere Falcon Model 50 bearing manufacturer's serial number 48 and Canadian registration mark C-FBVF together with three (3) Garrett Model TFE731- 3- 1C engines bearing manufacturer's serial numbers P-76270, P-76281 and P-76273 and any airframe replacing the foregoig airframe and any engine replacing any of the foregoig engines, together with all modules, appliances, parts, components, instruments, appurtenances, accessories, furnishings, navigational and communications equipment and other goods and equipment of whatever nature (other than a complete engine) whether now owned or hereafter |      | 12 years     | Biovail Corporation                                   |

| Secured Party | File Number | Registration Number | Collateral Classification |   |   |   |   | Collateral Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | VI N | Term (Years) | Debtor |
|---------------|-------------|---------------------|---------------------------|---|---|---|---|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|--------------|--------|
|               |             |                     | C                         | I | E | A | O | M                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |      |              |        |
|               |             |                     |                           |   |   |   |   | <p>acquired by lessee which may from time to time be incorporated or installed in or attached to such aircraft or engine or, after removal therefrom, and all records, logs, manuals, training aids, computer software and other material and data required to be maintained with respect to such aircraft pursuant to any aeronautics laws and as required by the CAA or the FAA and all other modification, maintenance, repair, overhaul and use records required by the manufacturer's maintenance program and which, when taken together will provide a complete and continuous history of all maintenance, overhauls and repairs to such aircraft from the date of manufacture thereof, and any property substituted for any of the foregoing.</p> <p>All of the debtor right, title and interest in and to (I) the aircraft services agreement dated February 20, 2007 entered into between the debtor and Skyservice Aviation Inc. with respect to the aircraft, as same was amended or will be amended on April 3, 2009 (the "Services Agreement"), (II) all rentals and other amounts due to debtor under the Services Agreement, (III) any and all proceeds of insurance required by the Services Agreement, and (IV) all proceeds of the foregoing.</p> |      |              |        |

|    |                                    |           |                         |   |   |                                                                                                            |          |                     |
|----|------------------------------------|-----------|-------------------------|---|---|------------------------------------------------------------------------------------------------------------|----------|---------------------|
| 8. | GE Canada Leasing Services Company | 652218579 | 20090323 1211 5064 8830 | X | X | One 1981 Mystere Falcon Model 50 bearing manufacturer's serial number 48 and Canadian registration mark C- | 12 years | Biovail Corporation |
|----|------------------------------------|-----------|-------------------------|---|---|------------------------------------------------------------------------------------------------------------|----------|---------------------|







| Secured Party            | File Number | Registration Number     | Collateral Classification |   |   |   |   | Collateral Description                                    | VI N | Term (Years) | Debtor              |
|--------------------------|-------------|-------------------------|---------------------------|---|---|---|---|-----------------------------------------------------------|------|--------------|---------------------|
|                          |             |                         | C                         | I | E | A | O |                                                           |      |              |                     |
| 9. Roy Foss Motors Ltd.  | 652020111   | 20090312 1212 2677 0250 | X                         |   |   |   | X | 2009 Dodge, Journey SE 4DR FWD<br>VIN: 3D4GG47B09T583441  | X    | 3 years      | Biovail Corporation |
| 10. Roy Foss Motors Ltd. | 651799323   | 20090302 1557 2677 0214 | X                         |   |   |   | X | 2009 Dodge, Journey SE 4DR FWD<br>VIN: 3D4GG47B29T583439  | X    | 3 years      | Biovail Corporation |
| 11. Roy Foss Motors Ltd. | 651799332   | 20090302 1557 2677 0215 | X                         |   |   |   | X | 2009 Dodge, Journey SE 4DR FWD<br>VIN: 3D4GG47B99T583440  | X    | 3 years      | Biovail Corporation |
| 12. Roy Foss Motors Ltd. | 651690774   | 20090224 1651 2677 0152 | X                         |   |   |   | X | 2009 Toyota, Camry LE 4DR Sedan<br>VIN: 4T1BE46K29U384472 | X    | 3 years      | Biovail Corporation |
| 13. Roy Foss Motors Ltd. | 651690819   | 20090224 1652 2677 0156 | X                         |   |   |   | X | 2009 Dodge, Journey SE 4DR FWD<br>VIN: 3D4GG47B69T578809  | X    | 3 years      | Biovail Corporation |
| 14. Roy Foss Motors Ltd. | 651690837   | 20090224 1652 2677 0157 | X                         |   |   |   | X | 2009 Dodge, Journey SE 4DR FWD<br>VIN: 3D4GG47B29T578807  | X    | 3 years      | Biovail Corporation |
| 15. Roy Foss Motors Ltd. | 651690855   | 20090224 1652 2677 0158 | X                         |   |   |   | X | 2009 Dodge, Journey SE 4DR FWD<br>VIN: 3D4GG47B29T578810  | X    | 3 years      | Biovail Corporation |
| 16. Roy Foss Motors Ltd. | 651690873   | 20090224 1652 2677 0159 | X                         |   |   |   | X | 2009 Dodge, Journey SE 4DR FWD<br>VIN: 3D4GG47B59T578798  | X    | 3 years      | Biovail Corporation |
| 17. Roy Foss Motors Ltd. | 651690927   | 20090224 1653 2677 0162 | X                         |   |   |   | X | 2009 Dodge, Journey SE 4DR FWD<br>VIN: 3D4GG47B19T580273  | X    | 3 years      | Biovail Corporation |
| 18. Roy Foss Motors Ltd. | 651224187   | 20090127 1144 2677 0068 | X                         |   |   |   | X | 2009 Dodge, Journey FWD 4DR SXT<br>VIN: 3D4GG57B19T578805 | X    | 3 years      | Biovail Corporation |
| 19. Roy Foss Motors Ltd. | 651053718   | 20090116 1018 2677 0024 | X                         |   |   |   | X | 2009 Dodge, Journey SE 4DR FWD<br>VIN: 3D4GG47B09T578806  | X    | 3 years      | Biovail Corporation |
| 20. Roy Foss Motors Ltd. | 649494504   | 20081027 0916 2677 9719 | X                         |   |   |   | X | 2008 Dodge, Grand Caravan SE<br>VIN: 1D8HN44H08B190413    | X    | 3 years      | Biovail Corporation |

|                          |           |                         |   |   |                                                            |   |         |                     |
|--------------------------|-----------|-------------------------|---|---|------------------------------------------------------------|---|---------|---------------------|
| 21. Roy Foss Motors Ltd. | 647622099 | 20080811 1415 2677 9428 | X | X | 2008 Nissan, Altima 2.5 S 4DR SE<br>VIN: 1N4AL21E88C205518 | X | 3 years | Biovail Corporation |
| 22. Roy Foss Motors Ltd. | 646671411 | 20080707 1449 2677 9196 | X | X | 2008 Ford, Escape XL T (400A) 4X<br>VIN: 1FMCU93Z38KE72480 | X | 3 years | Biovail Corporation |

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| Secured Party            | File Number | Registration Number     | Collateral Classification |   |   |   |   | Collateral Description                                     | VIN | Term (Years) | Debtor              |
|--------------------------|-------------|-------------------------|---------------------------|---|---|---|---|------------------------------------------------------------|-----|--------------|---------------------|
|                          |             |                         | C                         | I | E | A | O |                                                            |     |              |                     |
| 23. Roy Foss Motors Ltd. | 645960348   | 20080610 1647 2677 9017 | X                         |   |   |   | X | 2008 Ford, Escape XLT (400A) 4X<br>VIN: 1FMCU93Z18KE07837  | X   | 3 years      | Biovail Corporation |
| 24. Roy Foss Motors Ltd. | 645720606   | 20080603 1133 2677 8971 | X                         |   |   |   | X | 2008 Ford, Escape XLT (400A) 4X<br>VIN: 1FMCU93Z18KE17834  | X   | 3 years      | Biovail Corporation |
| 25. Roy Foss Motors Ltd. | 644516298   | 20080424 1555 2677 8633 | X                         |   |   |   | X | 2008 Dodge, Grand Caravan SE<br>VIN: 2D8HN44H408R742722    | X   | 3 years      | Biovail Corporation |
| 26. Roy Foss Motors Ltd. | 644211189   | 20080415 1328 2677 8536 | X                         |   |   |   | X | 2008 Dodge, Grand Caravan SE<br>VIN: 2D8HN44H48R754713     | X   | 3 years      | Biovail Corporation |
| 27. Roy Foss Motors Ltd. | 644008194   | 20080408 1641 2677 8477 | X                         |   |   |   | X | 2008 Ford, Escape XLT (400A) 4X<br>VIN: 1FMCU93Z28KD29049  | X   | 3 years      | Biovail Corporation |
| 28. Roy Foss Motors Ltd. | 644008212   | 20080408 1641 2677 8478 | X                         |   |   |   | X | 2008 Ford, Escape XLT (400A) 4X<br>VIN: 1FMCU93Z98KD28609  | X   | 3 years      | Biovail Corporation |
| 29. Roy Foss Motors Ltd. | 644008329   | 20080408 1642 2677 8485 | X                         |   |   |   | X | 2008 Dodge, Grand Caravan SE<br>VIN: 2D8HN44H08R742770     | X   | 3 years      | Biovail Corporation |
| 30. Roy Foss Motors Ltd. | 644008356   | 20080408 1642 2677 8486 | X                         |   |   |   | X | 2008 Dodge, Grand Caravan SE<br>VIN: 2D8HN44H68R715735     | X   | 3 years      | Biovail Corporation |
| 31. Roy Foss Motors Ltd. | 644008419   | 20080408 1643 2677 8490 | X                         |   |   |   | X | 2008 Nissan, Altima 2.5 S 4DR SE<br>VIN: 1N4AL21E38C216491 | X   | 3 years      | Biovail Corporation |
| 32. Roy Foss Motors Ltd. | 643201911   | 20080307 0958 2677 8315 | X                         |   |   |   | X | 2008 Nissan, Altima 2.5 S 4DR SE<br>VIN: 1N4AL21E68C211401 | X   | 3 years      | Biovail Corporation |
| 33. Roy Foss Motors Ltd. | 643095927   | 20080304 1000 2677 8247 | X                         |   |   |   | X | 2008 Dodge, Charger Base 4DR SE<br>VIN: 2B3KA43R58H193066  | X   | 2 years      | Biovail Corporation |
| 34. Roy Foss Motors Ltd. | 643095945   | 20080304 1000 2677 8248 | X                         |   |   |   | X | 2008 Nissan, Altima 2.5 S 4DR SE<br>VIN: 1N4AL21E28C167509 | X   | 2 years      | Biovail Corporation |

|                          |           |                         |   |   |   |                                                            |   |         |                     |
|--------------------------|-----------|-------------------------|---|---|---|------------------------------------------------------------|---|---------|---------------------|
| 35. Roy Foss Motors Ltd. | 643096071 | 20080304 1003 2677 8259 | X | X | X | 2008 Nissan, Altima 2.5 S 4DR SE<br>VIN: 1N4AL21E38C173674 | X | 2 years | Biovail Corporation |
|--------------------------|-----------|-------------------------|---|---|---|------------------------------------------------------------|---|---------|---------------------|



| Secured Party                         | File Number | Registration Number                                                        | Collateral Classification |   |   |   |   |   | Collateral Description                                     | VI N | Term (Years) | Debtor                                                    |
|---------------------------------------|-------------|----------------------------------------------------------------------------|---------------------------|---|---|---|---|---|------------------------------------------------------------|------|--------------|-----------------------------------------------------------|
|                                       |             |                                                                            | C                         | I | E | A | O | M |                                                            |      |              |                                                           |
| 36. Roy Foss Motors Ltd.              | 643096089   | 20080304 1003 2677 8260                                                    | X                         |   |   |   |   | X | 2008 Nissan, Altima 2.5 S 4DR SE<br>VIN: 1N4AL21E08C138316 | X    | 2 years      | Biovail Corporation                                       |
| 37. Roy Foss Motors Ltd.              | 642631536   | 20080211 1149 2677 7981                                                    | X                         |   |   |   |   | X | 2008 Ford, Escape XLT (400A) 4X<br>VIN: 1FMCU93Z78KC61315  | X    | 2 years      | Biovail Corporation                                       |
| 38. Xerox Canada Ltd.                 | 623866158   | 20060331 1408 1462 3652                                                    |                           |   | X |   | X |   |                                                            |      | 5 years      | Biovail Corporation - and - Bioval[sic] Contract Research |
| 39. Roy Foss Motors Ltd.              | 615722913   | 20050602 1809 8028 6030                                                    |                           |   | X |   | X | X |                                                            |      | 5 years      | Biovail Corporation                                       |
| 40. Xerox Canada Ltd.                 | 609515649   | 20041004 1404 1462 1024                                                    |                           |   | X |   | X |   |                                                            |      | 6 years      | Biovail Corporation                                       |
| 41. Xerox Canada Ltd.                 | 608190633   | 20040816 1704 1462 5000                                                    |                           |   | X |   | X |   |                                                            |      | 6 years      | Biovail Corporation                                       |
| 42. The Bank of Nova Scotia, as Agent | 868496382   | 20001220 1044 1529 3989 as amended by registration 20020903 1057 1529 2211 |                           | X | X | X | X | X |                                                            |      | 10 years     | Biovail Corporation - and - Crystaal                      |
| 43. Xerox Canada Ltd.                 | 631845873   | 20070103 1703 1462 3348                                                    |                           |   | X |   | X |   |                                                            |      | 6 years      | Biovail Coporation[sic] - and - Biovail Contract Research |

**C** means Consumer Goods, **I** means Inventory, **E** means Equipment, **A** means Accounts, **O** means Other, **M** means Motor Vehicle Included, **Collateral Description** intends to be an abridgement; see search printout for full collateral description, **VIN** means one or more specific motor vehicles have been set out in the Motor Vehicle Section; see search printout for vehicle identification numbers, **Other Comments** intends to capture amendments, partial discharges, etc.,. The first eight digits of the Registration Number denote the year, month and day of registration

**BRITISH COLUMBIA** - current to May 27, 2009

**Collateral Description** intends to be an abridgement; see search printout for full collateral description (including serial numbers and itemized collateral)  
**VIN** means one or more serial numbered goods have been set out in the serial numbered goods section — see search printout for serial numbers  
**Other Comments** intends to capture amendments, partial discharges, etc.

| Secured Party                                                                                                                 | Date Filed        | Registration Number | Collateral Description                                                | VIN | Registration Period | Debtor              |
|-------------------------------------------------------------------------------------------------------------------------------|-------------------|---------------------|-----------------------------------------------------------------------|-----|---------------------|---------------------|
| 1. JPMorgan Chase Bank, N.A., Toronto Branch, as Administrative Agent<br>- and -<br>JPMorgan Chase Bank, N.A., Toronto Branch | June 5, 2009      | 008677F             | All of the present and after-acquired personal property of the debtor |     | 4 years             | Biovail Corporation |
| 2. Roy Foss Motors Ltd                                                                                                        | February 29, 2008 | 216333E             | Amount Secured \$23498                                                | X   | 3 years             | Biovail Corporation |
| 3. Roy Foss Motors Ltd                                                                                                        | May 29, 2008      | 390187E             | Amount Secured \$24983                                                | X   | 3 years             | Biovail Corporation |
| 4. Roy Foss Motors Ltd                                                                                                        | December 30, 2008 | 762516E             | Amount Secured \$22607                                                | X   | 3 years             | Biovail Corporation |

**ALBERTA** - current to May 27, 2009

**Collateral Description** intends to be an abridgement; see search printout for full collateral description (including serial numbers and itemized collateral)  
**VIN** means one or more serial numbered goods have been set out in the serial numbered goods section — see search printout for serial numbers  
**Other Comments** intends to capture amendments, partial discharges, etc.

| Secured Party                                                                                                                 | Date Filed   | Registration Number | Collateral Description                                           | VIN | Registration Period | Debtor              |
|-------------------------------------------------------------------------------------------------------------------------------|--------------|---------------------|------------------------------------------------------------------|-----|---------------------|---------------------|
| 1. JPMorgan Chase Bank, N.A., Toronto Branch, as Administrative Agent<br>- and -<br>JPMorgan Chase Bank, N.A., Toronto Branch | June 5, 2009 | 09060523643         | All of the debtor's present and after-acquired personal property |     | 4 years             | Biovail Corporation |

| Secured Party          | Date Filed        | Registration Number | Collateral Description | VIN | Registration Period | Debtor              |
|------------------------|-------------------|---------------------|------------------------|-----|---------------------|---------------------|
| 2. Roy Foss Motors Ltd | January 14, 2008  | 08011417663         | Amount Secured \$28888 | X   | 3 years             | Biovail Corporation |
| 3. Roy Foss Motors Ltd | February 26, 2009 | 09022623203         | Amount Secured \$21296 | X   | 3 years             | Biovail Corporation |
| 4. Roy Foss Motors Ltd | March 19, 2009    | 09031928132         | Amount Secured \$20740 | X   | 3 years             | Biovail Corporation |
| 5. Roy Foss Motors Ltd | March 26, 2009    | 09032607601         | Amount Secured \$20518 | X   | 3 years             | Biovail Corporation |

**MANITOBA** - current to May 22, 2009

**Collateral Description** intends to be an abridgement; see search printout for full collateral description (including serial numbers and itemized collateral)  
**VIN** means one or more serial numbered goods have been set out in the serial numbered goods section — see search printout for serial numbers  
**Other Comments** intends to capture amendments, partial discharges, etc.

| Secured Party                                                                                                           | Date Filed        | Registration Number | Collateral Description                                                                             | VIN | Registration Period | Debtor                               |
|-------------------------------------------------------------------------------------------------------------------------|-------------------|---------------------|----------------------------------------------------------------------------------------------------|-----|---------------------|--------------------------------------|
| 1. JPMorgan Chase Bank, N.A., Toronto Branch, as Administrative Agent - and - JPMorgan Chase Bank, N.A., Toronto Branch | June 5, 2009      | 200909500400        | The security interest is taken in all of the debtor's present and after-acquired personal property |     | 4 years             | Biovail Corporation                  |
| 2. Roy Foss Motors Ltd                                                                                                  | April 20, 2009    | 200905965807        | Amount Secured \$19098                                                                             | X   | 3 years             | Biovail Corporation                  |
| 3. Roy Foss Motors Ltd                                                                                                  | February 23, 2009 | 200902736505        | Amount Secured \$20520                                                                             | X   | 3 years             | Biovail Corporation                  |
| 4. Roy Foss Motors Ltd                                                                                                  | February 23, 2009 | 200902736300        | Amount Secured \$20640                                                                             | X   | 3 years             | Biovail Corporation                  |
| 5. Roy Foss Motors Ltd                                                                                                  | July 2, 2008      | 200812644601        | Amount Secured \$21284                                                                             | X   | 3 years             | Biovail Corporation                  |
| 6. The Bank of Nova Scotia, as agent                                                                                    | December 21, 2000 | 200007875800        | The security interest is taken in all of the debtor's present and after-acquired personal property |     | 10 years            | Biovail Corporation - and - Crystaal |
| 7. The Bank of Nova Scotia, as agent                                                                                    | March 17, 2005    | 200504311600        | The security interest is taken in all of the debtor's present and after-                           |     | 10 years            | Biovail Technologies West Ltd.       |

| Secured Party              | Date Filed | Registration Number | Collateral Description | VIN | Registration Period | Debtor |
|----------------------------|------------|---------------------|------------------------|-----|---------------------|--------|
| acquired personal property |            |                     |                        |     |                     |        |

UNITED STATES

| Secured Party                         | Initial<br>(or Continuation)<br>Filing Date | Initial Filing Number | Collateral Description | Filing<br>Jurisdiction | Debtor                           |
|---------------------------------------|---------------------------------------------|-----------------------|------------------------|------------------------|----------------------------------|
| 8. Citicorp Vendor Finance, Inc.      | June 17, 2004                               | 41797671              | Equipment              | Delaware               | Biovail Technologies Ltd.        |
| 9. Xerox Corporation                  | June 8, 2007                                | 2007 2158862          | Equipment              | Delaware               | Biovail Technologies Ltd.        |
| 10. IOS Capital                       | April 18, 2005                              | 5128978 5             | Equipment              | Delaware               | Biovail Pharmaceuticals LLC      |
| 11. Xerox Corporation                 | April 30, 2009                              | 2009 1374740          | Equipment              | Delaware               | Biovail Pharmaceuticals LLC      |
| 12. Cisco Systems Capital Corp.       | March 21, 2007                              | 2007 1143600          | Equipment and software | Delaware               | Prestwick Pharmaceuticals, Inc.  |
| 13. The Bank of Nova Scotia, as Agent | June 28, 2005 (continuation)                | 0090153               | All assets             | Delaware               | Biovail Americas Corp.           |
| 14. The Bank of Nova Scotia, as Agent | May 10, 2005                                | 5143689 9             | All assets             | Delaware               | Biovail Americas Corp.           |
| 15. The Bank of Nova Scotia, as Agent | May 10, 2005                                | 5143690 7             | All assets             | Delaware               | Biovail Americas Corp.           |
| 16. The Bank of Nova Scotia, as Agent | January 28, 2005                            | 5031731 4             | All assets             | Delaware               | Biovail Distribution Corporation |
| 17. The Bank of Nova Scotia, as Agent | October 2, 2008                             | 2008 3344734          | All assets             | Delaware               | BTA Pharmaceuticals, Inc.        |
| 18. The Bank of Nova Scotia, as Agent | June 28, 2005                               | 0090157               | All assets             | Delaware               | Biovail Technologies Ltd.        |
| 19. The Bank of Nova Scotia, as Agent | December 16, 2008 (continuation)            | 3331761 0             | All assets             | Delaware               | Biovail Technologies Ltd.        |
| 20. The Bank of Nova Scotia, as Agent | June 28, 2005 (continuation)                | 0090171               | All assets             | Delaware               | Biovail Pharmaceuticals LLC      |
| 21. The Bank of Nova Scotia, as Agent | January 28, 2009                            | 2009 0291713          | All assets             | Delaware               | Biovail Pharmaceuticals LLC      |

**BARBADOS**

|                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|---------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Name of Society:</b>                                                                                             | <b>BIOVAIL HOLDINGS INTERNATIONAL SRL</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Date of Organisation:</b>                                                                                        | 21 December 2004                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Society No.:</b>                                                                                                 | 444                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Licences:</b>                                                                                                    | International Society with Restricted Liability                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Registered Office:</b>                                                                                           | Welches, Christ Church, Barbados                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Charges entered against the property and assets of the Society pursuant to section 237 of the Companies Act:</b> | <p>A search conducted at the Registry of Corporate Affairs and Intellectual Property, Bridgetown, Barbados, revealed the following encumbrances, liens or charges registered against the property and assets of the Company:</p> <p>1. Volume 48 Page 76 - Charge by way of a General Security Agreement dated January 28, 2005, registered in favour of the Bank of Nova Scotia to secure the sum of US\$600,000,000 together with interest thereon.</p> <p>2. Volume 48 Page 78 - Charge by way of a Debenture dated January 28, 2005, registered in favour of the Bank of Nova Scotia to secure the sum of US\$600,000,000 together with interest thereon.</p> |

|                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|---------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Name of Society:</b>                                                                                             | <b>BIOVAIL LABORATORIES INTERNATIONAL SRL</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Date of Organisation:</b>                                                                                        | 21 December 2004                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Society No.:</b>                                                                                                 | 443                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Licences:</b>                                                                                                    | International Society with Restricted Liability                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Registered Office:</b>                                                                                           | Welches, Christ Church, Barbados                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Charges entered against the property and assets of the Society pursuant to section 237 of the Companies Act:</b> | <p>A search conducted at the Registry of Corporate Affairs and Intellectual Property, Bridgetown, Barbados, revealed the following encumbrances, liens or charges registered against the property and assets of the Company:</p> <p>1. Volume 48 Page 75 - Charge by way of a General Security Agreement dated January 28, 2005, registered in favour of the Bank of Nova Scotia to secure the sum of US\$600,000,000 together with interest thereon.</p> <p>2. Volume 48 Page 77 - Charge by way of a Debenture dated January 28, 2005, registered in favour of the Bank of Nova Scotia to secure the sum of US\$600,000,000 together with interest thereon.</p> |

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SCHEDULE 6.04

INVESTMENTS

Biovail Technologies West—10,000 Class A limited partnership units in Western Life Services Ventures Fund Limited Partnership of a total of 31,400 Class A limited partnership units issued and outstanding.

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SCHEDULE 6.10  
RESTRICTIVE AGREEMENTS

None.

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SCHEDULE 6.21

PHARMA PASS SA CONTRACTS

1. Agreement dated December 30, 1994 between Pharma Pass SA and Ratiopharm GmbH for the development of Nifedipine product, as amended on September 24, 1997, November 17, 1997 and January 12, 1998; and
  2. Agreement dated November 22, 1996 between Pharma Pass SA and Les Laboratoires Fournier S.A. for the development of Fenofibrate product.
-

ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (the “Assignment and Assumption”) is dated as of the Effective Date set forth below and is entered into by and between **[Insert name of Assignor]** (the “Assignor”) and **[Insert name of Assignee]** (the “Assignee”). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, the “Credit Agreement”), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of the Assignor’s rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including any letters of credit, guarantees, and swingline loans included in such facilities) and (ii) to the extent permitted to be assigned under Applicable Law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as the “Assigned Interest”). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor:
2. Assignee:

[and is an Affiliate/Approved Fund of [identify Lender](1) ]
3. Borrower(s):
4. Administrative Agent: , as the administrative agent under the Credit Agreement.
5. Credit Agreement: Credit Agreement dated as of June <>, 2009 among Biovail Corporation, the Lenders party thereto, and JPMorgan Chase Bank, N.A., Toronto Branch, as Administrative Agent.

(1) Select as applicable.

---

6. Assigned Interest:

| Facility<br>Assigned(2) | Aggregate Amount of<br>Commitment/Loans for all<br>Lenders | Amount of<br>Commitment/Loans<br>Assigned | Percentage Assigned of<br>Commitment/Loans(3) |
|-------------------------|------------------------------------------------------------|-------------------------------------------|-----------------------------------------------|
|                         | \$                                                         | \$                                        | %                                             |
|                         | \$                                                         | \$                                        | %                                             |
|                         | \$                                                         | \$                                        | %                                             |

Effective Date: , 20 [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The Assignee agrees to deliver to the Administrative Agent a completed Administrative Questionnaire in which the Assignee designates one or more Credit Contacts to whom all syndicate-level information (which may contain material non-public information about the Borrower[**the Loan Parties**] and [its] [their] Related Parties or their respective securities) will be made available and who may receive such information in accordance with the Assignee’s compliance procedures and Applicable Law, including Federal and state securities laws.

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR

[NAME OF ASSIGNOR]

By: \_\_\_\_\_  
Title:

(2) Fill in the appropriate terminology for the types of facilities under the Credit Agreement that are being assigned under this Assignment (e.g. “Revolving Commitment”).

(3) Set forth, to at least 9 decimals, as percentage of the Commitment/Loans of all Lenders thereunder.

\_\_\_\_\_

ASSIGNEE

[NAME OF ASSIGNEE]

By: \_\_\_\_\_  
Title:

[Consented to and](4) Accepted:

[NAME OF ADMINISTRATIVE AGENT], as  
Administrative Agent

By \_\_\_\_\_  
Title:

[Consented to:](5)

[NAME OF RELEVANT PARTY]

By \_\_\_\_\_  
Title:

\_\_\_\_\_  
(4) To be added only if the consent of the Administrative Agent is required by the terms of the Credit Agreement.

(5) To be added only if the consent of the Borrower and/or other parties (e.g. Swingline Lender, Issuing Bank) is required by the terms of the Credit Agreement.

\_\_\_\_\_

ANNEX 1

Credit Agreement between Biovail Corporation, JPMorgan Chase Bank, N.A., Toronto Branch and the lenders party thereto from time to time dated as of June <>, 2009

STANDARD TERMS AND CONDITIONS FOR  
ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2 Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it satisfies the requirements, if any, specified in the Credit Agreement that are required to be satisfied by it in order to acquire the Assigned Interest and become a Lender, (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section        thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Lender, and (v) if it is a Foreign Lender, attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date. The Assignor and the Assignee shall make all appropriate adjustments in payments by the Administrative Agent for periods prior to the Effective Date or with respect to the making of this assignment directly between themselves.

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3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by facsimile or by sending a scanned copy by electronic mail shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed and interpreted in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.
-



EXHIBIT B

BORROWING REQUEST

BIOVAIL CORPORATION

JPMorgan Chase Bank, N.A., Toronto Branch, as Administrative Agent  
200 Bay Street  
Royal Bank Plaza, Floor 18  
Toronto M57 2J2 Canada  
Attn:

, 20

Re:      *Borrowing Request under Credit Agreement*

Ladies and Gentlemen:

Reference is hereby made to the Credit Agreement dated as of June      , 2009 (as in effect from time to time, the “Credit Agreement”) between Biovail Corporation (the “Borrower”), the Lenders from time to time party thereto, JPMorgan Chase Bank, N.A., Toronto Branch, as Administrative Agent (the “Administrative Agent”) and the other agents and arrangers party thereto. In accordance with Section 2.03 of the Credit Agreement, the Borrower hereby requests the following Borrowing be made:

**Revolving Loan:**

- (1) Aggregate Amount requested: \$
- (U.S.\$/C\$)
- (2) The effective date of the Borrowing:
- (3) The Type of Borrowing shall be:
- (4) The Interest Period of such Borrowing shall be (if applicable):

The Borrower certifies that all other conditions precedent provided for in the Credit Agreement to the granting or making of the Borrowing(s) requested herein have been satisfied.

[The remainder of this page has been intentionally left blank.]



Capitalized terms used above in this Borrowing Request are as defined in the Credit Agreement.

**BIOVAIL CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_

EXHIBIT C  
BA EQUIVALENT NOTE

[insert date]

FOR VALUE RECEIVED, the undersigned hereby promises to pay to the order of **[name of Non-BA Lender]** at its office at **[insert address from Credit Agreement]**, the sum of \_\_\_\_\_ Dollars  
(\$ \_\_\_\_\_) in lawful money of Canadian on **[insert date of maturity]**.

BIOVAIL CORPORATION

by: \_\_\_\_\_  
Name:  
Title:

by: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_

EXHIBIT D

FORM OF INCREASING LENDER SUPPLEMENT

INCREASING LENDER SUPPLEMENT, dated \_\_\_\_\_, 20\_\_\_\_ (this “Supplement”), to the Credit Agreement, dated as of June \_\_\_\_\_, 2009 (as may be amended, restated, supplemented or otherwise modified from time to time, the “Credit Agreement”), among Biovail Corporation (the “Borrower”), the Loan Parties party thereto, the Lenders party thereto, and JPMorgan Chase Bank, N.A., Toronto Branch, as administrative agent for the Lenders (the “Administrative Agent”).

W I T N E S S E T H

WHEREAS, pursuant to Section 2.23 of the Credit Agreement, the Borrower has the right, subject to the terms and conditions thereof, to effectuate from time to time an increase in the aggregate Commitments under the Credit Agreement by requesting one or more Lenders to increase the amount of its Commitment;

WHEREAS, the Borrower has given notice to the Administrative Agent of its intention to increase the aggregate Commitments pursuant to such Section 2.23; and

WHEREAS, pursuant to Section 2.23 of the Credit Agreement, the undersigned Increasing Lender now desires to increase the amount of its Commitment under the Credit Agreement by executing and delivering to the Borrower and the Administrative Agent this Supplement;

NOW, THEREFORE, each of the parties hereto hereby agrees as follows:

1. The undersigned Increasing Lender agrees, subject to the terms and conditions of the Credit Agreement, that on the date of this Supplement (a) the Increasing Lender shall have its Commitment increased by \$[ ] (the “Commitment Increase”), thereby making the aggregate amount of its total Commitments equal to \$[ ]. Schedule I attached hereto sets forth with respect to the Increasing Lender (after giving effect to this Supplement): (A) the amount of the Increasing Lender’s Commitment Increase, (B) the aggregate amount of the Increasing Lender’s Commitments, and (C) the Increasing Lender’s Applicable Percentage of all Loans and Commitments.

2. The Borrower hereby represents and warrants that no Default or Event of Default has occurred and is continuing on and as of the date hereof.

3. Terms defined in the Credit Agreement shall have their defined meanings when used herein. Except as expressly modified and supplemented by this Supplement, the terms and provisions of the Credit Agreement are ratified and confirmed and shall continue in full force and effect. The Borrower, the Increasing Lender and the Administrative Agent (on behalf of the Lenders) agree that the Credit Agreement, as supplemented hereby, shall continue to be legal, valid, binding and enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors’ rights generally and subject to general principals of equity, regardless of whether considered in a proceeding in equity or at law. Any and all agreements, documents, or instruments now or hereafter executed and delivered pursuant to the terms hereof or pursuant to the terms of the Credit Agreement, as modified and supplemented hereby, are hereby amended so that any reference in such documents to the Credit Agreement shall mean a reference to the Credit Agreement, as modified and supplemented hereby. The Borrower hereby acknowledges and agrees that the obligations,

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indebtedness and liabilities of the Borrower arising as a result of the increase in the Commitments contemplated hereby constitute “Obligations” and “Secured Obligations” as defined in the Credit Agreement, and are secured by and entitled to the benefits of the Credit Agreement and the Loan Documents. The Borrower hereby further ratifies and confirms the grant of the liens and security interests in the Collateral of the Borrower in favour of the Administrative Agent, for the benefit of itself, and the Finance Parties, pursuant to the Collateral Documents as security for the Secured Obligations.

5. This Supplement shall be governed by, and construed in accordance with, the laws of the Province of Ontario.

6. This Supplement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same document.

---

IN WITNESS WHEREOF, each of the undersigned has caused this Supplement to be executed and delivered by a duly authorized officer on the date first above written.

[INSERT NAME OF INCREASING LENDER]

By: \_\_\_\_\_  
Name:  
Title:

Accepted and agreed to as of the date first written above.

**BORROWER:**  
**BIOVAIL CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**ADMINISTRATIVE AGENT:**  
**JPMORGAN CHASE BANK, N.A., TORONTO**  
**BRANCH, Individually as Administrative Agent,**  
**as Issuing Bank and as Swingline Lender**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_

SCHEDULE I

| NAME OF<br>INCREASING<br>LENDER | AMOUNT OF<br>COMMITMENT<br>INCREASE | AGGREGATE<br>AMOUNT OF<br>COMMITMENTS OF<br>SUCH INCREASING<br>LENDER | PERCENTAGE<br>OF LOANS AND<br>COMMITMENTS |
|---------------------------------|-------------------------------------|-----------------------------------------------------------------------|-------------------------------------------|
|                                 |                                     |                                                                       |                                           |
|                                 |                                     |                                                                       |                                           |
|                                 |                                     |                                                                       |                                           |

CONSENT OF GUARANTORS

Each of the undersigned Guarantors: (i) consents and agrees to this Supplement; (ii) agrees that the terms and provisions of the Credit Agreement, and the terms and provisions of the Loan Documents to which it is a party are in full force and effect, continue to be its legal, valid and binding obligation enforceable in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors’ rights generally and subject to general principals of equity, regardless of whether considered in a proceeding in equity or at law, and are hereby ratified and confirmed; (iii) agrees that the obligations, indebtedness and liabilities of the Borrower arising as a result of the increase in the Commitments contemplated hereby constitute “Secured Obligations” (as defined in the Credit Agreement) guarantied by and entitled to the benefits of the Credit Agreement and secured by and entitled to the benefits of the Security Documents and the other Loan Documents; and (iv) ratifies and confirms the grant of the liens and security interests in the Collateral of such Guarantor in favour of the Administrative Agent, for the benefit of itself and the other Finance Parties, pursuant to the Loan Documents, as security for the Secured Obligations (as defined in the Credit Agreement).

BIOVAIL AMERICAS CORP.

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

BIOVAIL TECHNOLOGIES LTD.

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_



**BIOVAIL DISTRIBUTION CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**BTA PHARMACEUTICALS, INC.**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**BIOVAIL PHARMACEUTICALS LLC**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**PRESTWICK PHARMACEUTICALS, INC.**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_

**BIOVAIL HOLDINGS INTERNATIONAL SRL**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**BIOVAIL LABORATORIES INTERNATIONAL SRL**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**HYPHE PROPERTY INCORPORATED**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**[OTHER GUARANTORS]**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_

EXHIBIT E

FORM OF AUGMENTING LENDER SUPPLEMENT

AUGMENTING LENDER SUPPLEMENT, dated \_\_\_\_\_, 20\_\_\_\_ (this “Supplement”), to the Credit Agreement, dated as of June \_\_\_\_\_, 2009 (as may be amended, restated, supplemented or otherwise modified from time to time, the “Credit Agreement”), among Biovail Corporation (the “Borrower”), the Loan Parties party thereto, the Lenders party thereto, and JPMorgan Chase Bank, N.A., Toronto Branch, as administrative agent for the Lenders (the “Administrative Agent”).

W I T N E S S E T H

WHEREAS, the Credit Agreement provides in Section 2.23 thereof that any bank, financial institution or other entity may extend Commitments under the Credit Agreement subject to the approval of the Borrower and the Administrative Agent, by executing and delivering to the Borrower and the Administrative Agent a supplement to the Credit Agreement in substantially the form of this Supplement; and

WHEREAS, the undersigned Augmenting Lender was not an original party to the Credit Agreement but now desires to become a party thereto;

NOW, THEREFORE, each of the parties hereto hereby agrees as follows:

1. The undersigned Augmenting Lender agrees to be bound by the provisions of the Credit Agreement and agrees that it shall, on the date of this Supplement, become a Lender for all purposes of the Credit Agreement to the same extent as if originally a party thereto, with a Commitment of \$[\_\_\_\_\_] thereby making the aggregate amount of its total Commitments equal to \$[\_\_\_\_\_]. Schedule I attached hereto sets forth with respect to the Augmenting Lender (after giving effect to this Supplement): (A) the amount of the Augmenting Lender’s Commitment, and (B) the Augmenting Lender’s Applicable Percentage of all Loans and Commitments.

2. The undersigned Augmenting Lender (a) represents and warrants that it has full power and authority, and has taken all action necessary, to execute and deliver this Supplement and to consummate the transactions contemplated hereby and by the Credit Agreement and to become a Lender under the Credit Agreement; (b) confirms that it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 5.01 thereof, as applicable, and has reviewed such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Supplement; (c) agrees that it will, independently and without reliance upon the Administrative Agent or any other Finance Party and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Agreement or any other instrument or document furnished pursuant hereto or thereto; (d) appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers and discretion under the Credit Agreement or any other instrument or document furnished pursuant hereto or thereto as are delegated to the Administrative Agent by the terms thereof, together with such powers as are incidental thereto; (e) agrees that it will be bound by the provisions of the Credit Agreement and will perform in accordance with its terms all the obligations which by the terms of the Credit Agreement are required to be performed by it as a Lender; and (f) if it is a Foreign Lender, attached to this Supplement is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the undersigned.

---

3. The undersigned's address for notices for the purposes of the Credit Agreement is as follows:

[ ]

4. The Borrower hereby represents and warrants that no Default or Event of Default has occurred and is continuing on and as of the date hereof.

5. Terms defined in the Credit Agreement shall have their defined meanings when used herein. Except as expressly modified and supplemented by this Supplement, the terms and provisions of the Credit Agreement are ratified and confirmed and shall continue in full force and effect. The Borrower, the Augmenting Lender and the Administrative Agent (on behalf of the Lenders) agree that the Credit Agreement, as supplemented hereby, shall continue to be legal, valid, binding and enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law. Any and all agreements, documents, or instruments now or hereafter executed and delivered pursuant to the terms hereof or pursuant to the terms of the Credit Agreement, as modified and supplemented hereby, are hereby amended so that any reference in such documents to the Credit Agreement shall mean a reference to the Credit Agreement, as modified and supplemented hereby. The Borrower hereby acknowledges and agrees that the obligations, indebtedness and liabilities of the Borrower arising as a result of the increase in the Commitments contemplated hereby constitute "Obligations" and "Secured Obligations" as defined in the Credit Agreement, and are secured by and entitled to the benefits of the Credit Agreement and the Loan Documents. The Borrower hereby further ratifies and confirms the grant of the liens and security interests in the Collateral of the Borrower in favour of the Administrative Agent, for the benefit of itself and the Finance Parties, pursuant to the Collateral Documents as security for the Secured Obligations.

6. This Supplement shall be governed by, and construed in accordance with, the laws of the Province of Ontario.

7. This Supplement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same document.

[remainder of this page intentionally left blank]

IN WITNESS WHEREOF, each of the undersigned has caused this Supplement to be executed and delivered by a duly authorized officer on the date first above written.

[INSERT NAME OF AUGMENTING LENDER]

By: \_\_\_\_\_  
Name:  
Title:

Accepted and agreed to as of the date first written above.

**BORROWER:**  
**BIOVAIL CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**ADMINISTRATIVE AGENT:**  
**JPMORGAN CHASE BANK, N.A., TORONTO**  
**BRANCH, Individually as Administrative Agent,**  
**as Issuing Bank and as Swingline Lender**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_

SCHEDULE 1

| NAME OF<br>AUGMENTING<br>LENDER | AMOUNT OF<br>COMMITMENT | PERCENTAGE<br>OF LOANS AND<br>COMMITMENTS |
|---------------------------------|-------------------------|-------------------------------------------|
|                                 |                         |                                           |
|                                 |                         |                                           |
|                                 |                         |                                           |

CONSENT OF GUARANTORS

Each of the undersigned Guarantors: (i) consents and agrees to this Supplement; (ii) agrees that the terms and provisions of the Credit Agreement, and the terms and provisions of the Loan Documents to which it is a party are in full force and effect, continue to be its legal, valid and binding obligation enforceable in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors’ rights generally and subject to general principals of equity, regardless of whether considered in a proceeding in equity or at law, and are hereby ratified and confirmed; (iii) agrees that the obligations, indebtedness and liabilities of the Borrower arising as a result of the increase in the Commitments contemplated hereby constitute “Secured Obligations” (as defined in the Credit Agreement) guarantied by and entitled to the benefits of the Credit Agreement and secured by and entitled to the benefits of the Security Documents and the other Loan Documents; and (iv) ratifies and confirms the grant of the liens and security interests in the Collateral of such Guarantor in favour of the Administrative Agent, for the benefit of itself and the other Finance Parties, pursuant to the Loan Documents, as security for the Secured Obligations (as defined in the Credit Agreement).

BIOVAIL AMERICAS CORP.

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

BIOVAIL TECHNOLOGIES LTD.

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_

**BIOVAIL DISTRIBUTION CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**BTA PHARMACEUTICALS, INC.**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**BIOVAIL PHARMACEUTICALS LLC**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**PRESTWICK PHARMACEUTICALS, INC.**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_



**BIOVAIL HOLDINGS INTERNATIONAL SRL**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**BIOVAIL LABORATORIES INTERNATIONAL SRL**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**HYPHE PROPERTY INCORPORATED**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**[OTHER GUARANTORS]**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

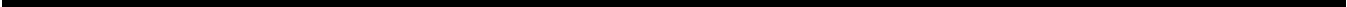


EXHIBIT F

COMPLIANCE CERTIFICATE

TO: JP Morgan Chase Bank, N.A., Toronto Branch, as administrative agent under the Credit Agreement (as such term is defined below) (the “Administrative Agent”)

RE: Credit Agreement dated as of June 9, 2009 between Biovail Corporation (the “Borrower”), as borrower, the Administrative Agent, and the Finance Parties from time to time party thereto (the “Credit Agreement”)

I, <>, being a Financial Officer of the Borrower and having knowledge of the matters hereinafter set forth, hereby certify without personal liability on behalf of the Borrower as follows:

- 1. Capitalized terms used herein and not otherwise defined shall have the meanings respectively ascribed to them in the Credit Agreement.
- 2. I have read the provisions of the Credit Agreement which are relevant to this Certificate and have made investigations or examinations as are reasonably necessary to enable me to express an informed opinion on the matters contained in this Certificate.
- 3. As of the date hereof, no Default had occurred and is continuing under the Credit Agreement. [Note to Draft: If a Default has occurred, please specify the details thereof and the actions taken or proposed to be taken with respect to such Default.]
- 4. The Borrower has duly and properly caused to be completed the calculations in Appendix “A”, for the purpose of confirming and demonstrating compliance with each of the Financial Covenants.
- 5. As of the Borrower’s fiscal quarter ending , 20 (the “Fiscal Quarter”):
  - (a) the ratio of EBITDA of the Borrower and its Subsidiaries (on a consolidated basis) to cash Interest Expense on the last day of the Fiscal Quarter, determined for the Borrower’s last four fiscal quarters ending on the last day of the Fiscal Quarter, was:

| Actual Ratio | Minimum Permitted Ratio |
|--------------|-------------------------|
| <>:1.00      | 3.00:1.00               |

- (b) the Total Debt to EBITDA Ratio on the last day of the Fiscal Quarter, determined for the Borrower’s last four fiscal quarters ending on the last day of the Fiscal Quarter, was:

| Actual Ratio | Maximum Permitted Ratio |
|--------------|-------------------------|
| <>:1.00      | 2.50:1.00               |

- (c) the Adjusted Equity of the Borrower (on a consolidated basis), on the last day of the Fiscal Quarter, was:

| Actual Amount | Minimum Permitted Amount |
|---------------|--------------------------|
| \$<>          | \$1,000,000,000.         |

- (d) the Borrower is in compliance with each of the Financial Covenants as reflected in the schedule of calculations attached as Appendix "A".
6. Since December 31, 2008, there has been no change in GAAP or in the application thereof. **[Note to Draft: If any such change has occurred, please specify the details thereof and the effects of such change on the financial statements accompanying this Certificate.]**
7. As at the end of the Fiscal Quarter, all representations and warranties of the Borrower contained in the Credit Agreement were true and correct in all material respects as if made on and as of such date, except any representation and warranty made as of a specified date in which case such representation and warranty was true and correct in all material respects as of such specified date.
8. All registrations, and all applications for the registration, of any Intellectual Property material to the business of the Loan Parties taken as a whole with any intellectual property office in any Relevant Jurisdiction (whether any such application is made by a Loan Party or through any agent, employee, licensee or designee of a Loan Party) which were made during the Fiscal Quarter are listed on Appendix "B" attached hereto.
9. As of the date hereof, each Significant Subsidiary is a Guarantor.
10. As at the end of the Fiscal Quarter, the Borrower and the other Loan Parties maintained (a) revenues, for the period of four consecutive fiscal quarters then ended, equal to or greater than 92.5% of the consolidated revenues of the Borrower and its Subsidiaries for such period and (b) assets equal to or greater than 92.5% of the consolidated total assets of the Borrower and its Subsidiaries as at the end of the Fiscal Quarter.
11. The material assets acquired by any Loan Party during the Fiscal Quarter having a value in excess of \$25,000,000 is as follows: **[none/describe assets]**.
12. The particulars of the Material Contracts of the Borrower and its Subsidiaries entered into during the Fiscal Quarter are as follows: **[none/describe material contracts]**. **[A certified copy of each such Material Contract is attached hereto as Appendix "C".]**
13. The Borrower or any other Loan Party has registered, or applied to register, the following Intellectual Property material to the business of the Loan Parties taken as a whole with any intellectual property office in a Relevant Jurisdiction during the Fiscal Quarter: **[none/describe Intellectual Property]**.
14. The Borrower has made the following Restricted Payments in respect of the Convertible Notes permitted by Section 6.08(b) of the Credit Agreement during the Fiscal Quarter: **[none/describe Restricted Payment]**. The Borrower has purchased for cancellation or retired or otherwise acquired for value in any manner its own Equity Interests during the Fiscal Quarter in the aggregate amount of \$<>.
15. As at the end of the Fiscal Quarter, the Borrower had Swap Obligations in the amount of \$<>.
16. As at the end of the Fiscal Quarter, the sum of loans and advances made by Loan Parties to Subsidiaries that are not Loan Parties plus the aggregate principal amount of Indebtedness of Subsidiaries that are not Loan Parties that is guaranteed by a Loan Party is \$<>.

DATED this                      day of                      .

\_\_\_\_\_  
Name:  
Title:

20

\_\_\_\_\_

Appendix “A”

Biovail Corporation  
\$410MM — Revolving Credit Facility  
Compliance Ratios and Covenants (\$000s)

|                                                            | <u>Actual</u> | <u>Actual</u> | <u>Actual</u> | <u>Actual</u> | <u>Actual</u> |
|------------------------------------------------------------|---------------|---------------|---------------|---------------|---------------|
| <b>Total Debt : EBITDA</b>                                 |               |               |               |               |               |
| Total Debt                                                 |               |               |               |               |               |
| Rolling 4 quarter EBITDA                                   |               |               |               |               |               |
| Multiple of Total Debt : EBITDA                            |               |               |               |               |               |
| Covenant maximum                                           | 2.50          | 2.50          | 2.50          | 2.50          | 2.50          |
| <b>Interest Coverage</b>                                   |               |               |               |               |               |
| Rolling 4 quarter EBITDA                                   |               |               |               |               |               |
| Rolling 4 Quarter Interest Expense                         |               |               |               |               |               |
| Interest Coverage                                          |               |               |               |               |               |
| Covenant minimum                                           | 3.00          | 3.00          | 3.00          | 3.00          | 3.00          |
| <b>Minimum Shareholders’ equity</b>                        |               |               |               |               |               |
| Adjusted Equity                                            |               |               |               |               |               |
| Covenant minimum                                           | 1,000,000     | 1,000,000     | 1,000,000     | 1,000,000     | 1,000,000     |
| <b>Maximum Amount of Share Repurchases per Fiscal Year</b> |               |               |               |               |               |
| Covenant maximum                                           | 75,000        | 75,000        | 75,000        | 75,000        | 75,000        |
| Amount repurchased                                         |               |               |               |               |               |
| Amount Remaining                                           | 75,000        | 75,000        | 75,000        | 75,000        | 75,000        |



Appendix “B”

Intellectual Property Registrations/Applications

[list/nil.]

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Appendix “C”

Material Contract Particulars

[list/nil.]

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**CHAIRMAN AGREEMENT**

**THIS CHAIRMAN AGREEMENT** (the “**Agreement**”), is entered into as of May 1, 2008 by and between Biovail Corporation (the “**Company**”) and Douglas John Paul Squires, Ph.D (“**Dr. Squires**”).

**BACKGROUND**

**WHEREAS**, the Board of Directors of the Company (the “**Board**”) has appointed Dr. Squires as Chairman of the Board effective May 1, 2008; and

**WHEREAS**, the parties now wish to enter into this Agreement to evidence the terms of Dr. Squires’ role as Chairman of the Board.

**NOW, THEREFORE**, in consideration of the mutual promises hereinafter set forth, and intending to be legally bound hereby, the Company and Dr. Squires hereby agree as follows:

1. **Term.** The term of this Agreement shall begin on May 1, 2008 and shall continue until June 1, 2009, unless terminated sooner pursuant to Section 7 below, or extended by mutual agreement of the parties (the “**Term**”).
  2. **Services to be Provided.** During the Term, Dr. Squires shall serve as the Chairman of the Board and among Dr. Squires’ duties shall be presiding over meetings of the Board, calling special meetings of the Board, receiving Board and officer resignations, and such other specific duties that are normal and customary to such position and as may reasonably be assigned to the Chairman from time to time by the Board. The scope of Dr. Squires’ activities and his committee memberships shall be determined by the Board, acting in its sole discretion. Dr. Squires shall report to the Board and coordinate his activities with the Board and the Company. The foregoing duties of Dr. Squires as Chairman of the Board shall be referred to for purposes of this Agreement as the “**Services**.” In addition, in connection with the Company’s retention of a new Chief Executive Officer, Dr. Squires has agreed to perform such reasonable transition services as shall be mutually agreed upon by Dr. Squires and the Chief Executive Officer (the “**Transition Services**”).
  3. **Compensation; Benefits.**
    - (a) *Compensation.* As compensation for Dr. Squires’ performance of the Services under this Agreement during the Term, (i) following the commencement of the Term, the Company shall pay to Dr. Squires a payment of US \$23,014.00, representing the prorated amount of the annual retainer payment (described in (ii) below) due to Dr. Squires for Services to be provided during the period between May 1, 2008 and June 25, 2008 (the scheduled date for the Company’s annual general meeting of shareholders), to be paid in a lump sum within 30 days of the date of this Agreement; and (ii) following Dr. Squires’ election to the Board at the Company’s annual general meeting of shareholders to be held on June 25, 2008, the Company shall pay to Dr. Squires an annual retainer payment of US \$150,000.00, to be paid in a lump sum within 30 days of the date of such annual meeting. In addition, in connection with Dr. Squires’ performance of the Transition Services, the Company shall pay to Dr. Squires a fee of \$282,740.00, to be paid within 30 days of the date of this Agreement. The Company shall
-



reimburse Dr. Squires for all reasonable expenses incurred by Dr. Squires in connection with the performance of the Services in accordance with the Company's expense reimbursement policies for directors.

(b) *Equity Compensation.* In addition to the annual retainer payments described above, Dr. Squires shall also be entitled to grants of deferred share units ("DSUs") as compensation for Dr. Squires' performance of the Services under this Agreement during the Term, as follows: (i) within 30 days of the date of this Agreement, the Company shall grant to Dr. Squires DSUs representing a number of shares of common stock of the Company equivalent in value to US \$23,014.00 as of the date of grant, representing the prorated amount of the annual DSU grant (described in (ii) below) due to Dr. Squires for Services to be provided during the period between May 1, 2008 and June 25, 2008 (the scheduled date for the Company's annual general meeting of shareholders); and (ii) following Dr. Squires' election to the Board at the Company's annual general meeting of shareholders to be held on June 25, 2008, the Company shall grant to Dr. Squires DSUs representing a number of shares of common stock of the Company equivalent in value to US \$150,000.00 as of the date of grant. The DSUs granted to Dr. Squires shall be governed by the terms of the Deferred Share Unit Plan for US Directors.

(c) *Office, Secretarial Support and Corporate Aircraft.* To assist Dr. Squires in providing the Transition Services and the Services, an office and secretarial support will be provided in the Company offices in Bridgewater, New Jersey and Mississauga, Ontario for the Term. The corporate aircraft will reasonably be made available for transport between New Jersey/Toronto/Barbados and other locales as requested by the Chief Executive Officer.

(d) *No Additional Compensation.* Other than the compensation set out above in Sections 3(a), 3(b) and 3(c), Dr. Squires shall not be entitled to any other compensation in respect of his service as Chairman or member of the Board during the Term, unless otherwise agreed to by the parties. For greater certainty, Dr. Squires shall not be entitled to receive meeting fees, committee retainers or other payments made by the Company to its non-management directors to the extent they differ from the amounts set out herein.

(e) *Independent Contractor Status.* This Agreement is not an employment agreement. With the exception of the equity compensation referenced in Section 3(b) above, the items referenced in Section 3(c) above and any and all benefit plans from time to time in effect for members of the Board generally, Dr. Squires is not entitled, as Chairman, to any of the benefits that the Company provides to its employees. In the event that the Director is reclassified as an employee of the Company, Dr. Squires shall not be eligible for any form of employee benefits unless and until the Company expressly provides for such participation.

(f) *Tax Reporting.* Dr. Squires shall be solely responsible for taxes and other wage deductions incurred as a result of performing Services or Transition Services under this Agreement. Unless required to do so by applicable law, the Company shall not pay or withhold federal, state or foreign government payroll taxes of any kind, including but not limited to FICA and FUTA, with respect to its payments to Dr. Squires.

4. **Restrictive Covenants.**

(a) ***Confidentiality.*** Dr. Squires acknowledges and agrees that he has read and understands and agrees that he remains bound by the terms of the confidentiality agreement (the “**Confidentiality Agreement**”) dated December 5, 2007, which Confidentiality Agreement has been read, understood and executed by Dr. Squires and is attached hereto as Schedule A and which is incorporated by reference into this Agreement.

(b) ***Restrictive Covenants.*** Dr. Squires acknowledges and agrees that he remains bound by the terms of Article Four of that certain amended and restated executive employment agreement by and between the Company and Dr. Squires effective as of September 1, 2007 and executed December 5, 2007 (the “**Employment Agreement**”).

(c) ***Standards of Business Conduct.*** Dr. Squires acknowledges and agrees that he has read and understands and agrees that he remains bound by the Company’s Standards of Business Conduct, which are attached hereto as Schedule B.

5. **Return of Company Property.** Promptly upon the expiration or sooner termination of the Term, and earlier if requested by the Company at any time, Dr. Squires shall promptly deliver to the Company all copies and embodiments, in whatever form or medium, of all Confidential Information or Intellectual Property (within the meaning of such terms under the Confidentiality Agreement and Article Four of the Employment Agreement) in Dr. Squires’ possession or within his control (including written records, notes, photographs, manuals, notebooks, documentation, program listings, flow charts, magnetic media, disks, diskettes, tapes and all other materials containing any Confidential Information or Intellectual Property) irrespective of the location or form of such material and, if requested by the Company, shall provide the Company with written confirmation that to the best of his knowledge all such materials have been delivered to the Company. This provision shall not prevent Dr. Squires from retaining his personal property, including his personal information contained on any electronic device.

6. **Indemnification.** The Company agrees to indemnify and hold Dr. Squires harmless to the fullest extent permitted by applicable law, as in effect at the time of the subject act or omission. In connection therewith, Dr. Squires shall be entitled to the protection of any insurance policies which the Company elects to maintain generally for the benefit of the Company’s directors and officers, against all costs, charges and expenses whatsoever incurred or sustained by Dr. Squires in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a director, officer or employee of the Company. This provision shall survive any termination of Dr. Squires’ service hereunder.

7. **Termination.** Notwithstanding the provisions of Section 3, the Company may terminate the Term (a) for any reason upon 60 days’ prior written notice to Dr. Squires, and (b) immediately upon written notice to Dr. Squires, in the event of termination for Cause. Dr. Squires may terminate the Term for any reason upon 60 days’ prior written notice to the Company. The Term shall automatically terminate if Dr. Squires is not elected to the Board at the Company’s annual general meeting of shareholders scheduled to be held on June 25, 2008. In the event of any termination of the Term, the Company shall only be responsible for any incurred but unreimbursed expenses and any accrued but unpaid payments, subject to the terms set forth in Section 3. For greater certainty, if Dr. Squires is not elected to the Board at the Company’s

annual general meeting scheduled to be held on June 25, 2008, then the Company shall not be responsible for the annual retainer payment described in Section 3(a)(ii) above or the annual DSU grant described in Section 3(b)(ii) above. For purposes of this Agreement, the term “Cause” includes:

(i) Dr. Squires’ conviction, or his entering of a guilty plea or a plea of no contest, with respect to a felony, any crime involving fraud, larceny or embezzlement or any other crime involving moral turpitude which subjects, or if generally known, would damage the business interests or reputation of the Company or any of its affiliates;

(ii) any act of fraud, misappropriation, material dishonesty, embezzlement or similar conduct committed by Dr. Squires involving the Company or any affiliates;

(iii) a material breach by Dr. Squires of his duties hereunder (other than as a result of incapacity due to physical or mental impairment) which is demonstrably willful and deliberate on the part of Dr. Squires or which is committed in bad faith or without reasonable belief that such breach is in the best interests of the Company;

(iv) a material breach by Dr. Squires of his duties hereunder (other than as a result of incapacity due to physical or mental impairment), except as identified in Section 7(iii) above, which breach is not remedied by Dr. Squires within 30 days after receipt of written notice from the Company specifying such breach; or

(v) Dr. Squires’ failure to comply in any material way with any of the provisions of this Agreement.

8. **Entire Agreement, Amendment and Assignment.** This Agreement (including the schedules hereto) is the sole agreement between Dr. Squires and the Company with respect to the Services to be performed hereunder and it supersedes all prior agreements and understandings with respect thereto, whether oral or written, except that certain Confidential Separation Agreement and General Release by and between the Company and Dr. Squires to be dated as of May 6, 2008 and Article Four of the Employment Agreement. No modification to any provision of this Agreement shall be binding unless in writing and signed by both Dr. Squires and the Company. No waiver of any rights under this Agreement shall be effective unless in writing signed by the party to be charged. All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto, except that the duties and responsibilities of Dr. Squires hereunder are of a personal nature and shall not be assignable or delegable in whole or in part by Dr. Squires.

9. **Governing Law.** This Agreement shall be deemed to have been made in and shall be construed in accordance with the laws of the State of New Jersey and all legal proceedings contemplated in this Agreement shall be brought in, and be governed by, the laws of the State of New Jersey, without regard to principles of conflicts of law.

10. **Notices.** All notices, demands or other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given when delivered personally to the recipient, two (2) business days after the date when sent to the recipient by reputable express courier service (charges prepaid) or four (4) business days after the date when mailed to the recipient by certified or registered mail, return receipt

requested and postage prepaid. Such notices, demands and other communications shall be sent to Dr. Squires and to the Company at the addresses set forth below,

|                    |                                                                                                       |
|--------------------|-------------------------------------------------------------------------------------------------------|
| If to Dr. Squires: | To the last address delivered to the Company by Dr. Squires in the manner set forth herein.           |
| If to the Company: | Biovail Corporation<br>7150 Mississauga Road<br>Mississauga, Ontario L59 8M5<br>Attn: General Counsel |

or to such other address or to the attention of such other person as the recipient party has specified by prior written notice to the sending party.

11. **Counterparts.** This Agreement shall become binding when any one or more counterparts hereof, individually or taken together, shall bear the signatures of Dr. Squires and the Company. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument.

12. **Severability.** If any provision of this Agreement or application thereof to anyone or under any circumstances is adjudicated to be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect any other provision or application of this Agreement which can be given effect without the invalid or unenforceable provision or application and shall not invalidate or render unenforceable such provision or application in any other jurisdiction.

13. **Survival.** Sections 5 through 14 shall survive and continue in full force in accordance with their terms notwithstanding any termination of the Term, and the Agreement shall otherwise remain in full force to the extent necessary to enforce any rights and obligations arising hereunder during the Term.

14. **Application of Section 409A.**

(a) This Agreement is intended to comply with the applicable provisions of section 409A of the Code and shall be interpreted to avoid any penalty sanctions under section 409A of the Code. If any payment or benefit cannot be provided or made at the time specified herein without incurring sanctions under section 409A of the Code, then such benefit or payment shall be provided in full at the earliest time thereafter when such sanctions shall not be imposed. In no event shall Dr. Squires, directly or indirectly, designate the calendar year of payment.

(b) All reimbursements and in kind benefits provided under this Agreement shall be made or provided in accordance with the requirements of section 409A of the Code, including, where applicable, the requirement that (i) any reimbursement is for expenses incurred during Dr. Squires’ lifetime (or during a shorter period of time specified in this Agreement), (ii) the amount of expenses eligible for reimbursement, or in kind benefits provided, during a calendar year may not affect the expenses eligible for reimbursement, or in kind benefits to be provided, in any other calendar year, (iii) the reimbursement of an eligible expense shall be made on or before the last day of the calendar year following the year in which the expense is incurred, and (iv) the

right to reimbursement or in kind benefits is not subject to liquidation or exchange for another benefit.

15. **Independent Legal Advice**. Dr. Squires agrees to the terms and conditions of this Agreement having had the opportunity to receive independent legal advice. The legal fees for the independent advice shall be reimbursed by the Company.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, the undersigned, intending to be legally bound, has duly executed this Agreement as of the date first above written.

**BIOVAIL CORPORATION**

By: /s/ Wendy Kelley  
Name: Wendy Kelley  
Title: Senior Vice-President, General Counsel and  
Corporate Secretary

**IN WITNESS WHEREOF**, the undersigned, intending to be legally bound, has duly executed this Agreement as of the date first above written.

**CHAIRMAN**

**SIGNED, SEALED AND DELIVERED  
in the presence of:**

/s/ Douglas John Paul Squires  
Douglas John Paul Squires, Ph.D

/s/ Mark A. Durham  
Witness

**SCHEDULE A**  
**CONFIDENTIALITY AGREEMENT**

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**BIOVAIL CORPORATION**  
**(and its Subsidiaries, Divisions, and Affiliates)**

**CONFIDENTIALITY AGREEMENT**

As an employee of Biovail Corporation (the "Corporation"), I acknowledge that I may acquire or have disclosed to me by the Corporation or by any affiliate, associate, or technology partner of the Corporation, either directly or indirectly, in writing, conversation, or through observation, various information about the business of the Corporation which is not in the public domain and which the Corporation does not wish to be divulged to other persons, companies, or third parties. I further understand that the Corporation's Confidential Information (as defined below) is essential to its competitive advantage and to its ability to be financially viable. I further understand that the unauthorized disclosure of such Confidential Information may cause the Corporation irreparable injury that may not be rectified in the future.

Therefore, as a condition and in consideration of my employment with the Corporation, I understand and agree that while employed with the Corporation and thereafter (as more particularly described below), I am required to hold confidential and not to disclose to anyone without the written authority from the Corporation any knowledge, information, or facts concerning the Corporation's:

- research and development activities
- technological plans, advances, applications and inventions
- technical specifications, designs and plans
- materials and sources of supply
- discoveries, inventions, trade secrets, patents
- financial affairs, contracts, licensing agreements, customer lists, pricing practices, marketing strategies
- any other information regarding the Corporation, its products and their development which is not in the public domain

All of the foregoing shall hereinafter collectively be referred to as the "Confidential Information".

I shall keep confidential any and all Confidential Information which has been disclosed to me in writing or through oral communications and shall not divulge in any manner whatsoever any such information to any person, firm, corporation, partnership or similar entities without the Corporation's written authority.

Should I breach or threaten to breach this Agreement, I shall be liable to the Corporation in equity and/or in law for damages that may be suffered by the Corporation as a result of the breach or threatened breach. I understand that a breach of this Agreement may result in irreparable harm to the Corporation such as to warrant the entitlement by the Corporation to an interlocutory and/or

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permanent injunction or other equitable relief against me, and an award of damages including punitive, exemplary and aggravated damages, together with legal costs and expense and I specifically agree that I will not argue the adequacy of damages or the Corporation's ability to seek equitable relief in any such proceeding.

All Confidential Information supplied by the Corporation to me during the course of my employment and any rights related thereto, including but not limited to rights of know how, patent, trademark and copyright, with respect to existing products or those that are developed during or after my employment, are and remain the exclusive and absolute property of the Corporation.

I shall not, except as and to the extent required to enable me to carry out my duties with the Corporation, make any copies or reproduce the Confidential Information nor shall I remove or cause to have removed from the premises of the Corporation during my employment any Confidential Information unless required to do so in order to fulfill my duties with the Corporation. Such copies or reproductions shall be strictly subject to the terms and conditions of this Agreement. I shall take such steps as are necessary to restrict access to and protect the confidentiality of such copies or reproductions of the Confidential Information. Any such copies or reproductions made shall become the exclusive and absolute property of the Corporation.

Upon request of the Corporation, I agree to immediately surrender to the Corporation all documentation and information - notes, drawings, recordings, manuals, letters, correspondence, computer data and programs, records, books or any other materials relating to the Confidential Information which is in my possession without my retaining any copies or duplicates thereof.

I agree that this Agreement shall be construed in accordance with the laws of the Province of Ontario and I agree that the applicable courts of the Province of Ontario shall have exclusive jurisdiction with respect to any dispute or breach herein and I hereby attorn to the exclusive jurisdiction of the courts of the Province of Ontario.

This Agreement shall enure to the benefit of and shall be binding upon my successors, heirs and attorneys.

The disclosure or divulging of any Confidential Information contrary to this Agreement, or the violation of this Agreement in any way shall result in my immediate termination of employment, in addition to which I may be subject to criminal prosecution and civil liability.

I acknowledge and agree that I have executed this Agreement freely and with the benefit of independent legal advice and the terms herein are fair and reasonable.

I acknowledge and agree to the foregoing.

Employee Signature: /s/ Douglas John Paul Squires

Date: December 5, 2007

Witness Signature: /s/ Michelle Garraway

Date: December 5, 2007

**SCHEDULE B**  
**STANDARDS OF BUSINESS CONDUCT**

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**BIOVAIL CORPORATION  
(and its Subsidiaries, Divisions, and Affiliates)**

**STANDARDS OF BUSINESS CONDUCT**

Biovail Corporation ("Biovail"), together with its subsidiaries, divisions and affiliates, places great importance on conducting its business activities in an ethical and appropriate manner. Each employee, officer and director is a reflection of Biovail, and as such, the activities and actions of every individual within Biovail must be undertaken in accordance with a high standard of ethics and integrity. As such, Biovail expects each employee, officer and director to comply with, and adhere to, these Standards of Business Conduct (the "Standards").

**CONFLICTS OF INTEREST**

Employees, officers and directors of Biovail must avoid situations where their private interests could conflict with, or even appear to conflict with, the interests of Biovail and its stockholders.

Conflicts of interest arise when an individual's position or responsibilities with Biovail present an opportunity for personal gain apart from the normal rewards of employment. They also arise when the private interests of an employee, officer or director are inconsistent with those of Biovail or create conflicting loyalties. Such conflicting loyalties can cause an employee, officer or director to give preference to private interests in situations where corporate responsibilities should come first. Employees, officers and directors must perform the responsibilities of their positions on the basis of what is in the best interests of Biovail and free from the influence of personal considerations and relationships.

In the event that any potential conflict of interest arises, the individual involved must immediately notify his or her immediate supervisor. If such individual is an officer or director of Biovail, the Executive Chairman ("Chairman"), Chief Executive Officer ("CEO") and the General Counsel, or in the absence of a General Counsel the Vice President, Associate General Counsel ("SLO") of Biovail must also be immediately notified and no further action may be taken unless authorized in writing by the Chairman and/or the CEO.

While it is not possible to detail every situation where conflicts of interest may arise, the following policies cover the areas that have the greatest potential for conflict:

**A. Trading in Biovail Securities and Use of Inside Information**

There are numerous laws in Canada and the United States (federal, provincial and state laws), to regulate transactions in corporate securities (stocks and bonds) and the securities industry. Violation of these laws may lead to civil and criminal actions against the individual and Biovail.

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- i. Any employee, officer, director or other insider or anyone (family member, etc.) who knows of any material information (as defined below) about Biovail that has not been disclosed to the public (commonly known as “insider information”) may not engage in any transaction in Biovail’s securities until such information is disclosed to the public (whether or not there is a formal trading “black out” in place). This rule applies equally to transactions in securities of other companies. In addition, employees, officers and directors must not provide insider information to others (“tippees”) who may trade in either the securities of Biovail or the securities of other companies.

“Material information” is any information relating to the business and affairs of Biovail that would reasonably be expected to result in a change in the market price or value of Biovail’s securities. Generally speaking, material information is a matter to which an average prudent investor should be reasonably informed before a decision is made to buy or sell the security involved. Examples of such information would include annual or quarterly financial results; significant changes in management; significant shifts in operating or financial circumstances, such as major write-offs and changes in earnings projections; borrowing of a significant amount of funds; acquisitions of, or mergers with, other companies; significant new contracts or loss of business; and major new products, services or patents. This list provides examples only; many other matters may be considered material information.

Employees, officers, directors and other insiders who have questions that relate to the sale or purchase of a security under circumstances where these laws and regulations might apply should consult with the SLO, who may refer them to outside legal counsel.

- ii. In addition to the prohibition against the use of “insider” information which applies to all employees, officers and directors, the various securities laws that apply in the jurisdiction and countries in which Biovail does business place definite restrictions on the manners in which employees, officers and directors of Biovail, and their family members, their associates, etc., may engage in transactions involving the securities of Biovail. Employees, officers and directors shall comply with all laws, rules and regulations that prohibit or restrict insider trading.

Whenever there is any doubt as to whether any transactions involving Biovail’s securities would violate securities laws, employees, officers and directors should consult the SLO of Biovail. Within the framework of the foregoing policies and laws, the final decision of each employee, officer or director, with respect to securities transactions, must be his or her own.

- iii. Employees, officers, directors and other insiders shall maintain the confidentiality of information entrusted to them by Biovail or its customers (except where disclosure is authorized or legally mandated) and shall not, without proper authority, give or release to anyone not employed by Biovail, data or information of a confidential nature concerning Biovail. Disclosure of confidential information can be harmful to Biovail and could be the basis for legal action against Biovail and the individual disclosing the information. Confidential information includes all non-public information that might be of use to competitors, or harmful to Biovail or its customers, if disclosed.

- iv. Employees, officers, directors and other insiders shall not acquire any property, security or any business interest that they know Biovail has an interest in acquiring. Moreover, based on such advance information, employees, officers and directors shall not acquire any property, security or business interest for speculation or investment.
- v. Employees, officers, directors and other insiders must follow Biovail policies regarding “Blackout Periods” when Biovail’s stock may not be traded. Such policies will be communicated by the SLO from time to time and must be adhered to by all employees, officers and directors.

**B. Personal Financial Interest**

Employees, officers and directors should avoid any outside financial interests that might influence decisions or actions they have been empowered to make on behalf of Biovail. An employee, officer or director performing duties in conformity with this policy shall not have a financial interest in, indebtedness to, or a personal contract or understanding with any concern with which he or she does business on behalf of Biovail.

- i. Employees, officers or directors whose corporate duties bring them into business dealings with an organization in which they, or a member of their family, have a financial interest or to which they, or a member of their family, have any indebtedness, or a business employing a relative or close friend, must immediately notify their immediate supervisor. The employee, officer or director, in turn, cannot complete a transaction on behalf of Biovail with this organization unless properly authorized in writing from their supervisor after full disclosure of the relationship.
- ii. An employee, officer or director may not perform work or services, outside the course of their normal employment by Biovail, for an organization doing or seeking to do business with Biovail without appropriate prior written approval of their supervisor or the Board of Directors. An employee, officer or director may not be a director, officer, partner or consultant of an organization doing or seeking to do business with Biovail, nor may any of them permit their names to be used in any way indicating a business connection with such an organization, without appropriate prior written approval of their supervisor or the Board.
- iii. An employee, officer or director shall not accept for himself or herself, or for the benefit of any relative or friend, any payments, loans, services, favors involving more than ordinary social amenity, or gifts of more than nominal value from any organization doing or seeking to do business with Biovail.
- iv. The requirement of freedom from conflict of interest applies with equal force to the spouse, children and other close relatives of each employee, officer and director. This policy applies to all employees, officers and directors of Biovail with respect to all of the affairs of Biovail.

- v. Employees, officers and directors shall not (a) take for themselves personally opportunities that are discovered through the use of corporate property, information or position; (b) use corporate property, information, or position for personal gain; (c) compete with Biovail. Employees, officers and directors owe a duty to Biovail to advance its legitimate interests when the opportunity to do so arises.
- vi. Biovail may not make loans to any employee, officer or director.

**C. Outside Activities**

Employees, officers and directors should avoid outside employment or activities which would impair the effective performances of their responsibilities to Biovail, either because of excessive demands on their time, or because the outside commitments can be contrary to their obligations to Biovail

**D. Protection and Proper Use of Biovail's Assets**

All employees, officers and directors should protect Biovail's assets and ensure their efficient use. Theft, carelessness and waste have a direct impact on Biovail's profitability. All of Biovail's assets should be used only for legitimate business purposes.

**E. Fair Dealing**

Each employee, officer and director shall endeavor to deal fairly with Biovail's customers, suppliers, competitors and employees. None should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other unfair-dealing practice.

**2. COMPETITIVE PRACTICES**

The management of Biovail firmly believes that fair competition is fundamental to continuation of the free-enterprise system. Biovail complies with, and supports, laws of all countries that prohibit restraints of trade, unfair practices, or abuse of economic power.

Biovail will not enter into arrangements that unlawfully restrict its ability to compete with other businesses, or the ability of any other business organization to compete freely with Biovail. Biovail policy also prohibits employees, officers and directors from entering into, or even discussing, any unlawful arrangement or understanding which may affect its pricing policies, terms upon which its products and services are sold, or which might be construed as dividing customers or sales territories with a competitor.

These principles of fair competition are basic to all Biovail operations. They are integral parts of the following sections that cover Biovail's dealings with suppliers, customers and public officials.

**3. DEALING WITH SUPPLIERS**

Biovail is a valuable customer for many suppliers of goods, services and facilities. People who want to do business, or to continue to do business, with Biovail must understand that all purchases by Biovail will be made in accordance with its purchasing policy and exclusively on the basis of price, quality, service and suitability to Biovail’s needs.

**A. Reciprocity**

Biovail considers reciprocity a harmful practice and a hindrance to assuring purchase of the best available materials or services at the lowest possible prices. It will not be practiced or allowed.

Suppliers of goods and services to Biovail will not be asked to buy goods and services from Biovail in order to become or continue as a supplier.

Biovail will not attempt to influence its suppliers to purchase from customers of Biovail. When Biovail makes purchases it will not favor firms who are customers of Biovail or any of its affiliates.

**B. “Kickbacks” and Rebates**

Purchases or sales of goods and services by Biovail must not lead to employees, officers or directors, or their families, receiving any type of personal kickbacks or rebates. Employees, officers, directors, and their families, must not accept any form of “under-the-table” payment.

**C. Receipt of Gifts and Entertainment**

Even when gifts and entertainment are exchanged out of the purest motives of personal friendship, they can be misunderstood. They can appear to be attempts to bribe Biovail’s employees, officers or directors into directing business of Biovail to a particular supplier. To avoid both the reality and the appearance of improper relations with suppliers or potential suppliers, the following standards will apply to the receipt of gifts and entertainment by employees, officers and directors of Biovail:

**Gifts**

- i) Employees, officers and directors are prohibited from soliciting gifts, gratuities, or any other personal benefit or favor of any kind from suppliers or potential suppliers. Gifts include not only merchandise and products but also personal services, and tickets to theatrical and sports events. Employees, officers and directors should exercise good judgment when accepting unsolicited gifts. Employees, officers and directors are prohibited from accepting gifts of money.
- ii) Employees, officers and directors may accept unsolicited non-money gifts provided:
  - (1) They are items of nominal intrinsic value; or
  - (2) They are advertising and promotional materials, clearly marked with Biovail or brand names of the giver.



- iii) Any gift of more than nominal intrinsic value must be reported to the SLO to determine whether it can be accepted. Some gifts may be perishable so as to make their return impractical. Supervisors can permit acceptance of such gifts, but should require employees, officers and directors to tactfully inform givers that such gifts are discouraged.
- iv) In the transaction of some international business, it is lawful and customary for business leaders in some countries to give unsolicited gifts to employees, officers or directors of Biovail. These gifts can be of more than nominal value. Moreover, under the circumstances, returning the gifts or payment for them may constitute an affront to the giver. In such cases, the gift must be reported to the SLO who may permit the retaining of the gifts.
- v) In all other instances where gifts cannot be returned or may adversely affect Biovail's continuing business relationships, the SLO must be notified. They can require employees, officers and directors to transfer ownership of such gifts to Biovail.

#### **Entertainment**

- i) Employees, officers and directors shall not encourage or solicit entertainment from any individual or company with whom Biovail does business. Entertainment includes, but is not limited to, activities such as dinner parties, theater parties, and sporting events.
- ii) From time to time employees, officers and directors may accept unsolicited entertainment, but only under the following conditions:
  - (1) The entertainment occurs infrequently;
  - (2) It arises out of the ordinary course of business;
  - (3) It involves reasonable, not lavish expenditures (the amounts involved should be ones employees, officers and directors are accustomed to normally spending for their own business or personal entertainment); and
  - (4) The entertainment takes place in settings that also are reasonable, appropriate, and fitting to employees, officers and directors, their hosts, and their business at hand.

**4. DEALINGS WITH CUSTOMERS AND POTENTIAL CUSTOMERS**

Employees, officers and directors must keep all dealings with customers and potential customers fair and above board. Biovail gets business and keeps it because of the quality of its goods and services. Biovail does not give unethical or illegal rebates, kickbacks, under-the-table payments, or other similar improper favors to customers or their representatives.

The boundary line between ethical and unethical competition, or legal and illegal conduct, is not always well defined, particularly in international activities where differing local laws, customs, and practices come into play. Therefore, the following standards will serve as guides:

- a) All employees, officers and directors should make themselves aware of and fully comply with all laws, rules and regulations, whether federal, state, local or foreign, including laws governing relations with customers as well as competitors.
- b) All employees, officers and directors engaged in negotiations and contracts with foreign governments, the United States or any political subdivision thereof must also know and abide by the specific rules and regulations covering relations with such governments and their agencies.
- c) Employees, officers and directors may not give gifts to customers except items of nominal value, which fit the legal, normal, and customary pattern of Biovail's sales efforts for a particular market. Exceptions to this policy can occur in international trades where it can be legal, customary, and appropriate business practice to exchange gifts with customers. Only the CEO can authorize the giving, receiving, or exchanging of such gifts. Any gifts received by employees, officers or directors in such an exchange must be reported to the CEO for determination as to the disposition of the gifts.
- d) Entertainment for any customer must fit regular business practices. The place and type of entertainment and the money spent must be reasonable and appropriate.

**5. DEALING WITH PUBLIC OFFICIALS**

Domestic and foreign laws and regulations require Biovail to be in contact with public officials on a wide variety of matters. Employees, officers and directors who regularly make these contacts have special responsibilities for upholding Biovail's good name. The following standards relate to these special responsibilities:

- a) All employees, officers and directors who contact public officials must be familiar with lobbying laws and public disclosure requirements, particularly those that apply to registrations and filings.
- b) No employee shall make any form of payment, direct or indirect, to any public official as an inducement to procuring or keeping business or having a law or regulation enacted, defeated, or violated. This is bribery, pure and simple. It will not be tolerated.

It should be acknowledged that inherent in the current health-care regulatory environment, the definition of “form of payment” may include seemingly trivial gifts and/or favors (e.g. buying lunches, coffee, etc.).

- c) When not prohibited by law, employees, officers and directors are allowed to give to public officials gifts where the presentation and acceptance of gifts is an established custom and a normal business practice. All such gifts shall be of reasonable value and the presentation approved in advance by the CEO. Moreover, such gifts must be presented in a manner that clearly identifies Biovail and the occasion that warrants the presentation.
- d) Employees, officers and directors are also allowed to give public officials gifts in the form of product models and pictures provided the models and pictures are part of Biovail’s general marketing and public relations programs (except as noted in clause (b) above).
- e) On special ceremonial occasions, officers of Biovail may publicly give gifts of more than nominal value to public institutions and public bodies. Such gifts can commemorate special events or milestones in Biovail’s history.

These may be transmitted through public officials but the gifts are given to the public institutions and public groups they represent, not to the officials personally.

- f) From time to time employees, officers and directors may entertain public officials, but only under the following conditions:
  - i. It is legal and permitted by the entity represented by the official;
  - ii. The entertainment is not solicited by the public official;
  - iii. The entertainment occurs infrequently;
  - iv. It arises out of the ordinary course of business;
  - v. It does not involve lavish expenditures, considering the circumstances;
  - vi. The settings and types of entertainment are reasonable, appropriate and fitting to our employees, officers or directors, their guests, and the business at hand.

## **6. POLITICAL ACTIVITIES AND CONTRIBUTIONS**

### **A. Canada and the United States**

Employees, officers and directors who participate in partisan political activities must make every effort to ensure that they do not leave the impression that they speak or act for Biovail.

Biovail encourages its employees, officers and directors to participate in political activities in their own time and at their sole expense. No corporate action, direct or indirect, will be allowed

that infringes on the right of any employee individually to decide whether, to whom, and in what amount, they will make personal political contributions. The same is true of volunteer political donations of personal service time, so long as it does not interfere with the working status of employees, officers or directors.

**B. Outside Canada and the United States**

No employees, officers and directors are permitted to use Biovail’s funds, facilities, or other assets, to support either directly or indirectly any political candidates or political parties, without advance authorization in writing from their immediate supervisor and the General Counsel. The policy of Biovail is that employees, officers and directors and employees should not participate in political activities in countries of which they are not nationals. However, such persons, of course, are free to participate in political activities in countries of which they are nationals in their own time and at their own expense.

**7. DISCLOSURE**

Biovail has formed a Disclosure Committee to promote consistent practices aimed at informative, timely and broadly disseminated disclosure of Material Information to the market, external stakeholder groups and employees in accordance with all applicable legal, regulatory and stock-exchange requirements.

It is essential that the Disclosure Committee be fully apprised of all material corporate developments to be able to determine whether there is information that should be publicly disclosed, and what the appropriate timing is for release of that information. In some cases, the Disclosure Committee may determine that the information should remain confidential. If that is the case, the Disclosure Committee will determine how that information will be controlled so that it is not inadvertently released. Therefore any employee who becomes aware of information that he/she believes might be material to Biovail and/or any of its affiliates and subsidiaries he/she should advise their manager or supervisor or a member of the Disclosure Committee. Current membership of the Disclosure Committee is posted on the Biovail.com website.

This applies throughout the year, but is particularly critical when annual or quarterly financial statements and Management Discussion and Analysis (MD&A) or regulatory filings are being prepared (e.g. regulatory filings, such as the U.S. Securities and Exchange Commission, Form 20-F).

**8. PUBLIC COMMUNICATIONS**

Given the importance placed on confidentiality and the appropriate disclosures of information regarding Biovail, it is important for employees, officers and directors to ensure that care be taken with any communication regarding Biovail or its activities outside of Biovail.

**A. Designated Spokespersons**

Biovail has designated official spokespersons who are authorized to speak on behalf of Biovail, and answer questions from the news media and the investment community, about Biovail and its activities. Employees, officers and directors who have not been designated as spokespersons for Biovail are not permitted to speak on behalf of the Company to the news media or to the investment community.

**B. Media or Analyst Inquiries**

Any employee who is approached by any person asking for comment on the activities of Biovail must direct any and all such inquiries to a member of the Disclosure Committee or to a member of the Company’s Stakeholder Relations team (Corporate Communications, Investor Relations) so that an appropriate spokesperson can respond to the inquiry on behalf of Biovail.

**C. Conferences**

The Disclosure Committee should be advised of any request to present at any conference or public meeting. Certain materials prepared for any such presentation may be required to be reviewed by the Company’s Stakeholder Relations group.

**D. Electronic Communications**

Care must be taken in all instances in the use of e-mail, and other devices (e.g., Blackberrys) in communications relating to Biovail’s business. While users tend to resort to shorthand communication using these kinds of tools, those communications do form a record of those communications that may be subject to later review and disclosure. A more fulsome policy regarding electronic communications is in place (found in the Human Resources Management System Policy Binder) and should be adhered to by all employees, officers and directors.

**E. The Internet**

Biovail has instituted policies regarding the use of, and access to the Internet by employees, officers and directors. These policies include a prohibition against anyone participating in any chat rooms dedicated to Biovail or its operations or the industry at large. If any employee, officer or director becomes aware that any such chat room exists, they are asked to report the address of such site to the SLO so that it may be monitored and appropriate action may be taken.

**9. EQUAL OPPORTUNITY**

Biovail supports the principle that every individual must be accorded an equal opportunity to participate in the free-enterprise system and to develop their ability to achieve their full potential within that system.

There shall be no discrimination against any employee or applicant because of race, religion, color, sex, age, sexual orientation, national or ethnic origin, or disability (as required by law) or any other consideration prohibited by local law. All employees, officers and directors will be treated with equality during their employment without regard to their race, religion, color, sex, age, national or ethnic origin, or physical handicap, in all matters, including employment, upgrading, promotion, transfer, layoff, termination, rates of pay, selection for training and

recruitment. Biovail will maintain a work environment free of discriminatory practice of any kind.

No employee shall have any authority to engage in any action or course of conduct or to condone any action or course of conduct by any other person which shall in any manner, directly or indirectly, discriminate or result in discrimination in the course of one’s employment, termination of employment, or any related matter where such discrimination is, directly or indirectly, based upon race, religion, color, sex, age, sexual orientation, national or ethnic origin, disability, or any other consideration prohibited by law.

**10. HEALTH, SAFETY, AND ENVIRONMENTAL PROTECTION**

It is Biovail’s policy to pay due regard to the health and safety of its employees, officers, directors and others, and to the state of the environment. There are federal, provincial, state and local workplace safety and environmental laws which through various governmental agencies regulate both physical safety of employees, officers and directors and their exposure to conditions in the workplace. Should you be faced with an environmental health issue or have a concern about workplace safety, you should contact your Health and Safety Committee representative or notify Biovail management immediately.

Many countries and their regional and local governments now have complex legislation to protect the health and safety of employees, or the general public, and to prevent pollution and protect the environment. In case of violation, these laws often provide penalties for both the company involved and its executive personnel. Biovail’s SLO should always be consulted when necessary to understand or comply with such laws.

**11. WORK ENVIRONMENT**

Employees, officers and directors must treat each other with professional courtesy and respect at all times. Employees, officers and directors shall not subject any other employee to unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct which might be construed as sexual in nature, or harass others on the basis of race, disability, gender, sexual orientation or any other consideration prohibited by law. Such conduct may constitute sexual harassment or harassment under federal, provincial and state law and may be the basis for legal action against the offending employee and/or Biovail.

Employees are encouraged to report all conduct that they believe in good faith to be violations of local anti-harassment policies. To the extent permissible under local law the identity of the employees, officers or directors involved will be kept strictly confidential, and will not be revealed by Biovail’s management without the employee’s permission. The alleged harassment will be thoroughly investigated by Biovail and appropriate action will be taken. Biovail has an appropriate policy to protect employees against discrimination or retaliation as a result of such a complaint.

**12. INTEGRITY OF RECORDS AND FINANCIAL REPORTS**

It is of critical importance that Biovail’s filings with the appropriate regulatory authorities (e.g. U.S. Securities and Exchange Commission) be accurate and timely. Depending on their position with Biovail, an employee, officer or director may be called upon to provide necessary information to ensure that Biovail’s public reports are complete, fair and understandable. Biovail expects employees, officers and directors to take this responsibility very seriously and to provide prompt accurate answers to inquiries related to Biovail’s public disclosure requirements.

The integrity of Biovail’s record keeping systems will be respected at all times. Employees, officers and directors are forbidden to use, authorize, or condone the use of “off-the-books” bookkeeping, secret accounts, unrecorded bank accounts, “slush” funds, falsified books, or any other devices that could be utilized to distort records or reports of Biovail’s true operating results and financial conditions or could otherwise result in the improper recordation of funds or transactions.

**13. USE OF AGENTS AND NON-EMPLOYEES, OFFICERS AND DIRECTORS**

Agents or other non-employees cannot be used to circumvent the law. Employees, officers and directors will not retain agents or other representatives to engage in practices that run contrary to the Standards of Business Conduct or applicable laws.

**14. INTERNATIONAL OPERATIONS**

Employees, officers and directors operating outside of Canada and the United States have a special responsibility to know and obey the laws and regulations of countries where they act for Biovail. Customs vary throughout the world, but all employees, officers and directors must uphold the integrity of Biovail in other nations diligently.

**15. STANDARDS OF BUSINESS CONDUCT**

**A. Initial Distribution**

- i. Employees, officers and directors designated to receive these Standards will receive their copies immediately after publication.
- ii. Future employees, officers and directors designated to receive these Standards will receive their copies at the time they are hired.

**B. Initial Verification**

Upon receiving their copy of the Standards, employees, officers and directors current and future will:

- i. Become thoroughly familiar with the Standards.
- ii. Resolve any doubts or questions about the Standards with their supervisors.
- iii. Inform their supervisors of any existing holdings or activities that might be, or appear to be, inconsistent with, or in violation of, the Standards.
- iv. Prepare written disclosures of such information, if requested, by supervisors.
- v. Take steps to correct existing situations and bring holdings and activities into full compliance with the Standards. Such steps will be approved in writing by supervisors and will be based on the written disclosure submitted by employees, officers or directors.
- vi. Sign the verification and return it to their supervisors who will make it part of employee’s permanent corporate records.

**C. Maintaining Compliance**

- i. Employees, officers and directors have the responsibility to maintain their understanding of the Standards of Business Conduct and for following them.
- ii. Supervisors have the responsibility to maintain an awareness on the part of their employees, officers and directors of the importance of their adhering to the Standards of Business Conduct and for reporting deviations to Management.
- iii. As requested by the Board of Directors or senior management, employees, officers and directors will be asked to re-verify their understanding of the Standards of Business Conduct and their compliance with them every year as a part of Biovail’s annual reporting.
- iv. Employees, officers and directors must inform their supervisors of any changes in their holdings or activities that might be, or appear to be in non-compliance with the Standards of Business Conduct.
- v. Employees, officers and directors must prepare written disclosure of such information, if requested, by supervisors.
- vi. Employees, officers and directors must take steps to correct any such changes, if necessary, to bring holdings and activities into full compliance. Such steps will be approved in writing by supervisors and Management and will be based on the written disclosures submitted by employees, officers and directors.



**D. Audits of Compliance**

Regular audits of Biovail will include procedures to test compliance with the Standards of Business Conduct.

**16. VIOLATIONS OF STANDARDS**

Employees, officers and directors must immediately report any violations of the Standards or any violation of any applicable law, rule or regulation. Failure to do so can have serious consequences for the employees, officers or directors and for Biovail.

Employees, officers and directors, should report violations to their supervisors and/or to the Human Resources department and to the SLO or to any secure reporting hotline the company may have contracted with. When in doubt, employees should talk to their supervisors or other appropriate personnel to determine the best course of action in a particular situation.

Supervisors and the Human Resources group have the responsibility to promptly and thoroughly investigate all reports, and to report violations to the SLO.

After a violation is investigated, appropriate action will be taken promptly. Management has the right to determine the appropriate disciplinary action for a violation up to and including termination of employment. All proposed disciplinary action is subject to review by senior Management, Human Resources and the SLO.

Employees, officers and directors should be aware that, in addition to any disciplinary action taken by Biovail, violations of certain Standards may require restitution and may lead to civil or criminal action against individual employees, officers and directors and any corporation involved.

Supervisors have the responsibility of taking remedial steps to correct any operating procedures that may contribute to violations of Standards.

Retaliation in any form against an individual who reports a violation of these Standards of Business Conduct or of any law, rule or regulation in good faith, or who assists in the investigation of a reported violation, is itself a serious violation of this policy. Acts of retaliation will be disciplined appropriately and should be reported immediately to your supervisor or Human Resources.

**17. CONTINUANCE OF EXISTING PERSONNEL POLICIES, RULES AND PERFORMANCE STANDARDS**

Biovail has codified numerous personnel policies, rules and standards of employee performance, which continue in force. These Standards of Business Conduct are intended to supplement and amplify those established personnel policies, rules and standards.

It continues to be the responsibility of all employees to comply with all such policies, rules and performance standards. Additionally, all members of management are to continue making certain that employees reporting to them are made aware of established policies, rules and performance standards and comply with them.

**18. AMENDMENT, MODIFICATION AND WAIVER**

Biovail will periodically review these Standards of Business Conduct. These Standards may be amended, modified or waived by the Board of Directors and waivers may also be granted by the Nominating & Governance Committee, subject to the disclosure and other provisions of the Securities Exchange Act of 1934, and the rules there under and the applicable rules of the Toronto Stock Exchange/New York Stock Exchange. Employees, officers and directors will be fully informed of any revisions to the Standards of Business Conduct.

Any waiver of these Standards for any employee other than a director or an executive officer, may only be made by the Executive Chairman or the CEO. Any waiver of these Standards for director or an executive officer may be made only the Board of Directors or the Compensation, Nominating and Corporate Governance Committee and will be promptly disclosed to Biovail’s stockholders.

**VERIFICATION AND RECEIPT OF UNDERSTANDING**

I have received a copy of Standards of Business Conduct for BIOVAIL CORPORATION and its subsidiaries, divisions and affiliates. I understand how the Standards apply to me. I acknowledge that my receiving the Standards obligates me to follow them and I agree to abide by their conditions.

May 6, 2008  
Date

Douglas John Paul Squires  
Name

/s/ Douglas John Paul Squires  
Signature

**CONFIDENTIAL SEPARATION AGREEMENT AND GENERAL RELEASE**

This Confidential Separation Agreement and General Release (this “Agreement”) is made and entered into by and between Biovail Corporation (“Biovail” or the Company”) and Douglas John Paul Squires, Ph.D (“Dr. Squires”).

WHEREAS, Dr. Squires has been employed by Biovail as its Chief Executive Officer pursuant to the terms of that certain amended and restated executive employment agreement effective as of September 1, 2007 and executed December 5, 2007 (the “Employment Agreement”); and

WHEREAS, Dr. Squires also served as interim Chairman of the Board of Directors of Biovail (the “Board”); and

WHEREAS, in connection with Biovail’s retention of a new Chief Executive Officer, effective as of May 1, 2008, Dr. Squires ceased to serve as Chief Executive Officer of the Company and effective as of May 6, 2008 (the “Termination Date”), Biovail involuntarily terminated Dr. Squires’ employment without cause in accordance with the applicable provisions of the Employment Agreement; and

WHEREAS, in connection with Biovail’s termination of Dr. Squires’ employment he is entitled to certain separation payment and benefits pursuant to the terms of his Employment Agreement, and in addition, Biovail desires to provide Dr. Squires with certain additional benefits with respect to his equity compensation awards, in each case, subject to Dr. Squires’ continued compliance with the restrictive covenants set forth in Article Four of the Employment Agreement and his execution and

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non-revocation of a written waiver and release of all claims, demands and causes of action against Biovail, as limited in paragraph 3 hereof; and

WHEREAS, although Dr. Squires' employment has been terminated, Dr. Squires was appointed by the Board as Chairman of the Board effective May 1, 2008.

IT IS HEREBY AGREED, by and between Dr. Squires and Biovail, as follows:

1. In consideration of Dr. Squires' execution and non-revocation of this Agreement, Dr. Squires' agreement to be legally bound by its terms, and Dr. Squires' undertakings as set forth herein, Biovail agrees, in accordance with the terms of the Employment Agreement, to provide Dr. Squires the following payments and benefits, subject to Dr. Squires' continued compliance with the restrictive covenants set forth in Article Four of the Employment Agreement and Dr. Squires' execution and non-revocation of this Agreement:

(a) a lump sum payment of US \$2,869,622.00 (which amount represents twenty-four (24) months of the Executive's base salary plus two (2) times Dr. Squires' target level of annual compensation under Biovail's Short Term Incentive Plan for 2007) minus applicable withholdings and deductions, within sixty (60) days of the Termination Date (subject to the requirements of Section 10(f) below);

(b) a lump sum payment of US \$352,500.00 (which amount represents a pro-rated portion of the Executive's target level of annual incentive compensation under the Short Term Incentive Plan for 2008 based on his employment for the period January 1, 2008 through May 6, 2008 (rounded to the next highest number for a partial month)), minus applicable withholdings and deductions, within thirty (30) days of the Termination Date (subject to the requirements of Section 10(f) below).

(c) until the earlier of (i) the end of the two (2) year period following Dr. Squires' Termination Date or (ii) the date, or dates, Dr. Squires is eligible to receive benefits under the same type of plan of a subsequent employer (the "Benefit Period"), the Company shall pay to Dr. Squires (minus applicable withholdings and deductions), on the first payroll date of each month, the amount of the COBRA premium less the amount of the active employee contribution for such coverage for the Benefit Period. The foregoing payments shall begin on the first payroll date following the Termination Date and shall continue until the end of the Benefit Period.

(d) With respect to the restricted stock unit ("RSU") grants held by Dr. Squires immediately prior to the Termination Date that vest based upon the attainment of performance criteria as listed on Schedule A (the "Performance RSUs"), in connection with Dr. Squires' termination of employment, 40,000 of such Performance RSUs shall remain outstanding and shall vest on November 26, 2012 (the original vesting date for such Performance RSUs), as if Dr. Squires had remained employed by the Company through that date, subject to the attainment of the applicable performance criteria, as set out in the Performance RSU agreement evidencing the terms of such Performance RSUs. The remaining amount of such Performance RSUs shall be cancelled and forfeited on the Termination Date. Notwithstanding any provision of the Performance RSU agreement evidencing the terms of such Performance RSUs or Biovail's 2007 Equity Compensation Plan (the "2007 Equity Compensation Plan") to the contrary, in no event shall Dr. Squires be entitled to dividend equivalents under Section 5.5 of the 2007 Equity Compensation Plan, nor shall any of the provisions of Sections 5.7, 5.8 or 5.9 of the 2007 Equity Compensation Plan apply to the Performance RSUs described in this subparagraph (d).

Except as provided in this subparagraph (d), the Performance RSUs shall remain subject to the terms of the 2007 Equity Compensation Plan in all respects.

(e) With respect to the RSU grants held by Dr. Squires immediately prior to the Termination Date that vest based upon the passage of time as listed on Schedule A (the "Time-Based RSUs"), in connection with Dr. Squires' termination of employment, the Board shall cause all outstanding Time-Based RSUs to become fully vested as of the Termination Date and such Time-Based RSUs shall be paid within 30 days of the Termination Date in accordance with the terms of the 2007 Equity Compensation Plan and the Time-Based RSU agreements evidencing the terms of such Times-Based RSUs.

(f) All outstanding options held by Dr. Squires immediately prior to the date of this Agreement as listed on Schedule A hereto (the "Options") shall remain outstanding and shall continue to be governed by the terms of the Option agreements evidencing their terms and the terms of the Option plan pursuant to which they were granted. Notwithstanding anything to the contrary in such Option agreements and such Option plans, in connection with Dr. Squires' termination of employment, the Board has caused (i) all outstanding Options that would have vested during the period beginning on the Termination Date through June 1, 2010 to become fully vested and exercisable as of the Termination Date, (ii) Dr. Squires to be treated as having "retired" (within the meaning of such term under the applicable Option plan pursuant to which the Options were granted) as of the Termination Date and (iii) the post-termination exercise period under the Options to extend from the Termination Date through June 1, 2010. Any

Options that are not vested as of the Termination Date in accordance with the foregoing provisions of this paragraph 1(f) shall be forfeited.

2. Except as set forth in this paragraph 2 and except for payments and benefits to which he is entitled as set forth in paragraph 1 above, Dr. Squires expressly agrees that he has been paid all remuneration owed to him as a result of Dr. Squires' employment with Biovail, or the termination of that employment. Whether or not Dr. Squires executes this Agreement, Dr. Squires shall be paid for any accrued but unused vacation days, and for previously submitted un-reimbursed business expenses (in accordance with usual Company guidelines and practices), to the extent not theretofore paid. In addition, following the Termination Date, Dr. Squires shall be entitled to receive vested amounts payable to him under the Company's 401(k) plan and other retirement and deferred compensation plans, if any, in accordance with the terms of such plans and applicable law. Except as specifically set forth herein, Dr. Squires' participation in all Biovail employee benefit plans and programs shall remain subject to the terms and conditions of such plans as in effect from time to time and Dr. Squires agrees that such terms and conditions are binding on himself and Biovail.

3. Dr. Squires, on behalf of himself, and Dr. Squires' heirs, executors, administrators, and/or assigns, does hereby **RELEASE AND FOREVER DISCHARGE** Biovail, together with its parents, subsidiaries, affiliates, predecessors, and successor corporations and business entities, past, present and future, and its and their agents, directors, members, officers, employees, shareholders, insurers and reinsurers, and employee benefit plans (and the trustees, administrators, fiduciaries, insurers, and reinsurers of such plans) past, present and future, and their heirs, executors,



administrators, predecessors, successors, and assigns (collectively, the “**RELEASEES**”), of and from any and all legally waivable claims, causes of actions, suits, lawsuits, debts, and demands whatsoever in law or in equity, known or unknown, suspected or unsuspected, which Dr. Squires ever had, now has or which Dr. Squires’ heirs, executors administrators, or assigns hereafter may have from the beginning of time to the date Dr. Squires executes this Agreement, and including, without limitation, any claims arising from or relating to Dr. Squires’ employment relationship with Biovail, and the termination of such relationship, including, without limitation, any claims arising under the Age Discrimination in Employment Act (“ADEA”), Title VII of the Civil Rights Act of 1964 (“Title VII”), the Americans with Disabilities Act (“ADA”), the Employee Retirement Income Security Act (“ERISA”), the Family and Medical Leave Act (“FMLA”), Section 806 of the Sarbanes-Oxley Act (“SOX”), the New Jersey Law Against Discrimination (“NJLAD”), the Conscientious Employee Protection Act (“CEPA”), the New Jersey Family Leave Act, the New Jersey Equal Pay Act, the New Jersey Wage and Hour Law, the New Jersey Wage Payment Act, the New Jersey Constitution, the common law of the State of New Jersey, and any and all other federal, state, provincial or local constitutional, statutory, regulatory, or common law causes of action now or hereafter recognized, and any claims for attorneys’ fees and costs; provided that the foregoing release shall not apply to any claims Dr. Squires may have to enforce his rights under this Agreement and may have to indemnification as an officer, director or employee of Biovail (or any affiliate thereof) pursuant to the articles of incorporation or by-laws (or other governing instruments) of Biovail (or any affiliate thereof) or any vested benefits to which Dr. Squires may be entitled under any employee benefit plan of

Biovail (or any affiliate thereof). Nothing in this Agreement shall waive rights or claims that may arise after the date this Agreement is executed by Dr. Squires.

4. Dr. Squires hereby agrees and recognizes that Dr. Squires’ employment relationship with Biovail has been completely severed as of the Termination Date, and that neither Biovail nor the Releasees has any obligation, contractual or otherwise, to hire, rehire or re-employ Dr. Squires in the future. The parties acknowledge that the Board has appointed Dr. Squires as Chairman of the Board.

5. Dr. Squires represents that Dr. Squires does not have any lawsuits, claims, or charges pending against any of the Releasees. This Agreement is expressly conditioned upon and contingent on the truth of Dr. Squires’ representations in this Agreement.

6. Dr. Squires agrees and acknowledges that this Agreement is not, and shall not be construed to be, an admission of any violation of any federal, state, provincial or local statute, ordinance or regulation, or of any duty owed by Releasees to Dr. Squires, or of any wrongdoing to Dr. Squires by Releasees.

7. Except as set forth herein, Dr. Squires agrees not to make written or oral statements about Biovail or Releasees that are negative or disparaging. Nothing in this Agreement shall preclude Dr. Squires from communicating or testifying truthfully (a) to the extent required or protected by law, (b) to any federal, state, provincial or local governmental agency, (c) in response to a subpoena to testify issued by a court of competent jurisdiction, or (d) in any action to challenge or enforce the terms of this Agreement.

8. Dr. Squires agrees, covenants and promises that Dr. Squires has not communicated or disclosed, and shall not hereafter communicate or disclose, the terms of this Agreement, or the terms of the negotiations leading up to this Agreement, to any persons with the exception of: (a) members of Dr. Squires' immediate family, Dr. Squires' attorneys, accountants, tax, or financial advisors, each of whom shall be informed of this confidentiality obligation and shall agree to be bound by its terms; (b) to the Internal Revenue Service or state or local taxing authority; (c) as is expressly required or protected by law; or (d) in any action to challenge or enforce the terms of this Agreement provided that such disclosure is protected from public disclosure by an appropriate confidentiality order to the maximum extent permitted by applicable authority. Dr. Squires agrees to be liable for any breach of this Paragraph by the individuals identified in clause (a) above. In the event that Dr. Squires is required to disclose information protected by this Paragraph pursuant to clause (c) above, Dr. Squires agrees to notify via facsimile and U.S. Mail, and to provide a copy of any subpoena, order or written inquiry to, Biovail, 7150 Mississauga Road, Mississauga, Ontario, L5N 8M5, Attn: General Counsel, within three (3) business days of becoming aware of the need for such disclosure.

9. This Agreement constitutes the entire agreement between Dr. Squires and Biovail with respect to the subject matter hereof and supersedes all prior negotiations and agreements, whether written or oral, relating to the subject matter hereof including the Employment Agreement, except for that certain Standards of Business Conduct Agreement by and between Biovail and Dr. Squires dated December 5, 2007, that certain Confidentiality Agreement by and between Biovail and Dr. Squires dated December 5,

2007, the Chairman Agreement between Biovail and Dr. Squires dated as of May 1, 2008 and Article Four of the Employment Agreement, which Dr. Squires hereby acknowledges and agrees survive the termination of the Employment Agreement and his employment with Biovail. Dr. Squires acknowledges that neither Biovail, the Releasees, nor their agents or attorneys have made any promise, representation or warranty whatsoever, express or implied, written or oral, other than the express written representations herein. Dr. Squires agrees that this Agreement may not be altered, amended, modified, or otherwise changed in any respect except by another written agreement signed by both Dr. Squires and Biovail.

10. Dr. Squires further certifies and acknowledges that:

(a) Dr. Squires has read the terms of this Agreement and understands its terms and effects, including the fact that Dr. Squires has agreed to RELEASE AND FOREVER DISCHARGE the RELEASEES from any and all claims as set forth in Paragraph 3;

(b) Dr. Squires has signed this Agreement voluntarily and knowingly in exchange for the consideration described herein, which Dr. Squires acknowledges is adequate and satisfactory;

(c) the payments, benefits, promises and undertakings performed, and to be performed, as set forth herein exceed and are greater than the payments and benefits, if any, to which Dr. Squires would have been entitled had Dr. Squires not executed this Agreement;

(d) Releasees have advised Dr. Squires, through this document, to consult with an attorney concerning this Agreement prior to signing this Agreement;

(e) Dr. Squires has the right to consider this Agreement for a period of twenty-one (21) days from receipt prior to entering into this Agreement and Dr. Squires has signed on the date indicated below after concluding that the Agreement is satisfactory; and

(f) Dr. Squires has the right to revoke this Agreement for a period of seven (7) calendar days following Dr. Squires' execution of this Agreement by giving written notice to Biovail, 7150 Mississauga Road, Mississauga, Ontario, L5N 8M5, Attn: General Counsel, and that this Agreement shall not be effective or enforceable until this seven-day period has expired. In the event that Dr. Squires revokes this Agreement pursuant to the terms of this Section 10(f), Dr. Squires shall be required to repay to Biovail any amounts paid to Dr. Squires pursuant to Sections 1(a) and (b) within five (5) business days of the date Dr. Squires revokes this Agreement.

11. This Agreement is intended to comply with the applicable provisions of section 409A of the Code and shall be interpreted to avoid any penalty sanctions under section 409A of the Code. If any payment or benefit cannot be provided or made at the time specified herein without incurring sanctions under section 409A of the Code, then such benefit or payment shall be provided in full at the earliest time thereafter when such sanctions shall not be imposed. For purposes of section 409A of the Code, all payments to be made upon a termination of employment under this Agreement may only be made upon a "separation from service" under section 409A of the Code, each payment made under this Agreement shall be treated as a separate payment and the right to a series of installment payments under this Agreement shall be treated as a right to a series of

separate payments. In no event shall Dr. Squires, directly or indirectly, designate the calendar year of payment.

Notwithstanding the provisions of paragraph 1 above, if at the time of the Squires’ “separation from service” (as such term is defined in section 409A of the Code) the Company has securities which are publicly-traded on an established securities market and Dr. Squires is a “specified employee” (as such term is defined in section 409A of the Code) and it is necessary to postpone the commencement of any severance payments otherwise payable pursuant to this Agreement as a result of such separation from service to prevent any accelerated or additional tax under section 409A of the Code, then the Company shall postpone the commencement of the payment of any such payments or benefits hereunder (without any reduction in such payments or benefits ultimately paid or provided to Dr. Squires) that are not otherwise paid within the “short-term deferral exception” under Treas. Reg. section 1.409A-1(b)(4) and/or the “separation pay exception” under Treas. Reg. section 1.409A-1(b)(9)(iii), until the first payroll date that occurs after the date that is six (6) months following Dr. Squires’ separation from service with the Company. If any payments are postponed due to such requirements, such postponed amounts shall be paid in a lump sum to Dr. Squires, and any installment payments due to Dr. Squires shall recommence, on the first payroll date that occurs after the date that is six (6) months following the Dr. Squires’ “separation from service” with the Company. If Dr. Squires dies during the postponement period prior to the payment of the postponed amount, the amounts postponed on account of section 409A of the Code shall be paid to the personal representative of Dr. Squires’ estate within sixty (60) days after the date of the Dr. Squires’ death.

All reimbursements and in kind benefits provided under this Agreement shall be made or provided in accordance with the requirements of section 409A of the Code, including, where applicable, the requirement that (i) any reimbursement is for expenses incurred during Dr. Squires’ lifetime (or during a shorter period of time specified in this Agreement), (ii) the amount of expenses eligible for reimbursement, or in kind benefits provided, during a calendar year may not affect the expenses eligible for reimbursement, or in kind benefits to be provided, in any other calendar year, (iii) the reimbursement of an eligible expense shall be made on or before the last day of the calendar year following the year in which the expense is incurred, and (iv) the right to reimbursement or in kind benefits is not subject to liquidation or exchange for another benefit.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, and intending to be legally bound hereby, Biovail hereby executes the foregoing Confidential Separation Agreement and General Release.

BIOVAIL CORPORATION

/s/ Wendy Kelley  
Name: Wendy Kelley  
Title: Senior Vice-President, General  
Counsel and Corporate Secretary  
  
Date: May 6, 2008

IN WITNESS WHEREOF, and intending to be legally bound hereby, Dr. Squires hereby executes the foregoing Confidential Separation Agreement and General Release.

SIGNED, SEALED AND DELIVERED  
in the presence of:

/s/ Douglas John Paul Squires  
Douglas John Paul Squires  
  
Date: May 6, 2008

/s/ Mark A. Durham  
Witness  
  
Date: May 6, 2008



**SCHEDULE A**

**LIST OF PERFORMANCE RSUs, TIME-BASED RSUs AND OPTIONS**

Performance RSUs – 129,174 outstanding

Time-Based RSUs – 9,688 outstanding

Options – 612,550 outstanding

**BIOVAIL CORPORATION**  
**EXECUTIVE EMPLOYMENT AGREEMENT**

THIS AGREEMENT is effective the 1<sup>st</sup> day of May, 2008.

**BETWEEN:**

**Biovail Corporation**  
(hereinafter called the “Corporation”)

**OF THE FIRST PART**

- and -

**William M. Wells**  
(hereinafter called the “Executive”)

**OF THE SECOND PART**

**WHEREAS** the Corporation, and the Executive wish to enter into this Employment Agreement which provides, among other things, that the Executive devote substantially all his time and attention during normal business hours to the performance of his duties hereunder upon the terms and conditions hereinafter set forth;

**NOW THEREFORE IN CONSIDERATION** of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, the parties hereto agree as follows:

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**ARTICLE ONE – GENERAL DUTIES AND TERM**

**Employment Services**

1.01               The Corporation, through its Barbadian subsidiary, Biovail Laboratories International SRL, hereby employs the Executive as Chief Executive Officer. The Executive agrees to provide such employment services on the terms and conditions as herein provided. Except as otherwise set forth herein, this Agreement supersedes all existing oral or written agreements between the Corporation and the Executive. For purposes of this Agreement, all references to the Corporation shall also include the Corporation’s subsidiaries and affiliates.

**General Duties and Obligations of Executive**

- 1.02               The Executive:
- (a)           shall well and faithfully serve the Corporation to the best of his ability;
  - (b)           acknowledges that his employment by the Corporation shall, unless otherwise mutually agreed to in writing, be his only occupation and that he shall devote substantially all his working time and attention during normal business hours to the performance of his duties and the observing of all reasonable instructions given to the Executive, provided, however, that the Executive may serve on the board of directors of another publicly traded company as long as such service does not impair his ability to perform his duties for the Corporation or put the Executive in conflict with respect to such duties. In addition, the Executive may serve on civic, educational, philanthropic or charitable boards or committees, or, with the prior written consent of the Board of Directors of Biovail Corporation (the “Board”), other outside corporate boards, in each case, as long as such service does not impair his ability to perform his duties for the Corporation or put the Executive in conflict with respect to such duties;
  - (c)           shall reasonably use his best efforts to promote the success of the business of the Corporation (the “Business”) now or hereafter conducted by the Corporation; and
  - (d)           shall not engage in any activity that would impair his ability to perform his duties or that shall put the Executive in conflict with respect to such duties.

## **Term of Agreement**

1.03 This Agreement shall continue in full force and effect indefinitely and until terminated by either the Executive or the Corporation pursuant to the terms hereof. The period of the Executive's employment under this Agreement, which employment commenced May 1, 2008, shall be referred to as the "Employment Term".

## **ARTICLE TWO – TERMINATION AND RESIGNATION**

### **Involuntary Termination – Either by the Corporation Without Cause or By the Executive for Good Reason**

2.01 If the Executive incurs an involuntary termination from employment with the Corporation on account of a termination by the Corporation without Cause or by the Executive for Good Reason, then, in addition to any benefits or compensation accrued, earned and due to the Executive but not yet paid as of the date that is designated by the Corporation or the Executive, as applicable, as the last day of the Executive's employment or term of office with the Corporation (the "Termination Date"), the Executive shall be eligible for the severance payments and benefits as described in this Section 2.01; provided that (i) the Executive continues to comply with the Restrictive Covenants (as defined below); and (ii) the Executive executes, and does not revoke, a written waiver and release of all claims, demands and causes of action against the Corporation and related parties in a form prescribed by the Corporation, as limited by Section 2.08 ("Release"):

(a) The Executive shall be paid a lump sum severance payment within 60 days of the Executive's Termination Date, equal to two (2) times the Executive's base salary (calculated using the Executive's annual base salary in the year in which the Executive's Termination Date occurs) plus two (2) times the Executive's target level of annual incentive compensation under the Short Term Incentive Plan (as defined in Section 3.01.B below) for the fiscal year prior to the fiscal year in which the Executive's Termination Date occurs; provided that if the Executive's termination occurs in 2008 or 2009, the foregoing calculation shall be made using the Executive's 2008 guaranteed bonus amount;

(b) The Executive shall be entitled to a pro-rated portion of the Executive's target level of annual incentive compensation under the Short Term Incentive Plan for the fiscal year in which the Executive's Termination Date occurs, based on the number of months (rounded to the next highest number for a partial month) of the fiscal year elapsed prior to the Executive's Termination Date and calculated and paid in accordance with the terms of the Short Term Incentive Plan; and

(c) Until the earlier of (i) the end of the two (2) year period following the Executive's Termination Date, or (ii) the date, or dates, the Executive is eligible to receive benefits under the same type of plan of a subsequent employer (the "Benefit Period"), the Corporation shall pay to the Executive a monthly payment on the first payroll date of each month equal to the COBRA cost of continued medical and dental coverage for the Executive and the Executive's covered dependents under the medical and dental plans of the Corporation pursuant to section 4980B of the Internal Revenue Code of 1986, as amended (the "Code"), less the amount that the Executive would be required to contribute for medical and dental coverage if the Executive were an active employee. These payments shall commence on the Corporation's first payroll date after the Executive's Termination Date and shall continue until the end of the Benefit Period (but not longer than the Benefit Period).

(d) On or after the first anniversary of this Agreement, if the Executive's termination or resignation, as applicable, under this Section 2.01 occurs within the twelve (12) month period following a Change in Control (as defined in Section 2.06(b)), any unvested equity compensation awards held by the Executive as of his Termination Date shall automatically accelerate and become one hundred percent (100%) vested and, as applicable, exercisable, as of the Executive's Termination Date; provided that any unvested equity compensation awards that vest based upon the attainment of performance criteria shall remain subject to the attainment of such performance criteria, unless the Board determines otherwise in accordance with the terms of the Equity Compensation Plan (as defined below) (or any successor plan thereto).

#### **Involuntary Termination By The Corporation For Cause Or Voluntary Resignation Without Good Reason**

2.02 If the Executive is involuntarily terminated by the Corporation for Cause or the Executive voluntarily resigns from employment without Good Reason, then the Executive shall forfeit the Executive's right to receive any salary, Short Term Incentive Plan compensation, Equity Compensation Plan compensation or other compensation that has not been fully accrued at the time the Executive's employment terminates; provided, however, that the Executive shall be entitled to receive any benefits or compensation accrued, earned and due to the Executive but not yet paid as of the Executive's Termination Date.

#### **Death or Disability**

2.03 Subject to the requirements of applicable law, the Corporation may terminate the Executive's employment if the Executive has been unable to perform the essential functions of the Executive's position with the Corporation, with or without reasonable accommodation, by reason of physical or mental incapacity for a period of six consecutive months ("Disability"). The Executive agrees, in the event of a dispute

under this Section 2.03 relating to the Executive’s Disability, to submit to a physical examination by a licensed physician mutually agreed between the Executive and the Board. Nothing herein is intended to circumvent or abridge the Corporation’s short-term disability policy or long-term disability plan. In the event the Corporation terminates the Executive’s employment pursuant to the terms of this Section 2.03, the Executive or the Executive’s estate, as applicable, shall be entitled to receive any salary, benefits or other amounts accrued, earned and due to the Executive but not yet paid as of the Executive’s Termination Date.

**Cause**

2.04 For purposes of this Agreement, Cause includes:

- (a) conviction of the Executive, or entering of a guilty plea or a plea of no contest by the Executive, with respect to a felony, any crime involving fraud, larceny or embezzlement or any other crime involving moral turpitude which subjects, or if generally known, would damage the business interests or reputation of the Corporation or any of its affiliates;
- (b) any act of fraud, misappropriation, material dishonesty, embezzlement or similar conduct involving the Corporation or any affiliates;
- (c) a material breach by the Executive of the Executive’s duties hereunder (other than as a result of Disability) which is demonstrably willful and deliberate on the part of the Executive or which is committed in bad faith or without reasonable belief that such breach is in the best interests of the Corporation;
- (d) a material breach by the Executive of the Executive’s duties hereunder (other than as a result of Disability), except as identified in Section 3.04(c) above, which breach is not remedied by the Executive within 30 days after receipt of written notice from the Corporation specifying such breach; or
- (e) the Executive’s willful failure to substantially perform his duties with the Corporation (other than any such failure resulting from the Executive’s Disability), after a written demand for substantial performance is delivered to the Executive that specifically identifies the manner in which the Corporation believes that the Executive has not substantially performed his duties, and the Executive has failed to remedy the situation within fifteen (15) business days of such written notice from the Corporation;
- (f) gross negligence in the performance of the Executive’s duties which results in material financial harm to the Corporation;
- (g) the Executive’s willful engagement in conduct that is demonstrably and materially injurious to the Corporation, monetarily or otherwise;

(h) the Executive's failure to comply in any material way with any of the provisions of this Agreement, including a failure to comply with the terms of the documents attached hereto as Schedule A and Schedule B.

#### **Good Reason**

2.05 For purposes of this Agreement, a voluntary resignation by the Executive shall be deemed to be a termination for Good Reason if:

- (a) The Corporation makes: (i) any assignment to the Executive of any duties which are materially inconsistent with the Executive's position; (ii) any material reduction in the Executive's authority, responsibilities or status; or (iii) a material reduction to the Executive's base salary;
- (b) The Executive notifies the Corporation in writing of the Executive's belief that the Corporation has taken an action identified in Section 2.05(a) within thirty (30) days of the event at issue;
- (c) The Corporation has not remedied the situation within thirty (30) days after receipt of written notice from the Executive; and
- (d) The Executive provides a Notice of Termination within thirty (30) days after the Corporation's opportunity to remedy the situation has expired.

#### **Change in Control**

- 2.06 (a) If a Change in Control (as defined below) occurs prior to the first anniversary of the date of this Agreement, the Corporation shall provide to the Executive, in addition to any benefits or compensation accrued, earned and due to the Executive but not yet paid as of the Change in Control, (a) a lump sum severance payment of two (2) times the Executive's base salary (calculated using the Executive's annual base salary in the year in which the Change in Control occurs) plus two (2) times the Executive's target level of annual incentive compensation under the Short Term Incentive Plan for the fiscal year in which the Change in Control occurs, payable within thirty (30) days of the Change in Control (provided that if the Change in Control occurs in 2008 or 2009 (and in any event, prior to the first anniversary of the date of this Agreement), the foregoing calculation shall be made using the Executive's 2008 guaranteed bonus amount), and, (b) any unvested equity compensation awards held by the Executive shall automatically accelerate and become one hundred percent (100%) vested and, as applicable, exercisable, as of the Change in Control; provided that any unvested equity compensation awards that vest based upon the attainment of performance criteria shall remain subject to the attainment of such performance criteria, unless the Board determines otherwise in accordance

with the terms of the Equity Compensation Plan (or any successor plan thereto). If the Executive incurs an involuntary termination from employment with the Corporation on account of a termination by the Corporation without Cause or by the Executive for Good Reason within six (6) months of the Change in Control, payment under this Section 2.06 shall be in lieu of any payments or benefits to which the Executive may be entitled under Section 2.01 above. This Section 2.06(a) shall expire on the first anniversary of the date of this Agreement.

(b) For purposes of this Agreement, “Change in Control” means the happening of any of the following events:

- (i) the completion of a transaction pursuant to which (A) the Corporation goes out of existence or (B) any person, or any Associate (as such terms defined in National Instrument 45-106 - *Prospectus and Registration Exemptions*, as amended from time to time, or such other successor rules, instruments or policies from time to time of Canadian provincial securities regulatory authorities which may govern trades of securities to employees, officers, directors or consultants (“NI45-106”)) or Related Entity (as such term is defined in NI45-106) of such person (other than the Corporation, any trustee or other fiduciary holding securities under any employee benefit plan of the Corporation or a Related Entity, or any company owned, directly or indirectly, by the shareholders of the Corporation in substantially the same proportions as their ownership of common shares of the Corporation) hereafter acquires the direct or indirect “beneficial ownership” (as defined by the *Canada Business Corporations Act*) of securities of the Corporation representing 50% or more of the aggregate voting power of all of the Corporation’s then issued and outstanding securities;
- (ii) the lease, exchange, license, sale or other similar disposition of all or substantially all of the Corporation’s assets in one transaction or a series of related transactions to a person, or any Associate or Related Entity of such person (other than an Associate or Related Entity of the Corporation, any trustee or other fiduciary holding securities under any employee benefit plan of the Corporation or a Related Entity, or any company owned, directly or indirectly, by the shareholders of the Corporation in substantially the same proportions as their ownership of common shares of the Corporation);
- (iii) the dissolution or liquidation of the Corporation except in connection with the distribution of assets of the Corporation to one or more persons which were Related Entities prior to such event;
- (iv) during any period of 24 consecutive months beginning on or after the date of this Agreement, the persons who were members of the Board



immediately before the beginning of such period (the “Incumbent Directors”) cease (for any reason other than death) to constitute at least a majority of the Board or the board of directors of any successor to the Corporation, provided that any director who was not a director as of the date of the Equity Compensation Plan shall be deemed to be an Incumbent Director if such director is elected to the Board by, or on the recommendation of or with the approval of, at least two-thirds of the directors who then qualified as Incumbent Directors either actually or by prior operation of the foregoing unless such election, recommendation or approval occurs as a result of an actual or threatened election contest or other actual or threatened solicitation of proxies or contests by or on behalf of a person other than a member of the Board; or

(v) a merger, amalgamation, arrangement or consolidation of the Corporation with any other corporation other than a merger, amalgamation, arrangement or consolidation that would result in the voting securities of the Corporation outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 50% of the combined voting power of the voting securities of the Corporation or such surviving entity outstanding immediately after such merger, amalgamation, arrangement or consolidation; provided, however, that a merger, amalgamation, arrangement or consolidation effected to implement a recapitalization of the Corporation (or similar transaction) in which no person (other than those covered by the exceptions in (i) above) acquires more than 50% of the combined voting power of the Corporation’s then outstanding securities shall not constitute a Change in Control.

(c) In the event any payments or benefits made to the Executive upon a Change of Control are deemed “excess parachute payments” within the meaning of Section 280G of the Code, and the Executive is subject to excise tax under Section 4999 of the Code (the “Excise Tax”) with respect to such payments, the Executive shall receive, in addition to any other payments and benefits to which he is entitled under the Agreement, an amount which, after imposition of any income, employment, excise or other taxes on such amount (including any income, employment, excise or other taxes paid on any amount due under this Section), equals the difference between the amount he actually receives after payment of all taxes including all Excise Tax and the after-tax amount he would receive if no Excise Tax were imposed on him. Notwithstanding any provision of Section 2.06 to the contrary, in accordance with the requirements of section 409A of the Code, any additional payment payable to the Executive hereunder shall be paid not later than the end of the calendar year next following the calendar year in which the Executive or the Corporation (as applicable) remits the taxes for which the additional payment is being paid.

(d) In the event a Change in Control occurs prior to the first anniversary of the date of this Agreement, the Corporation (or any successor thereto) shall establish an irrevocable rabbi trust or a similar arrangement based generally on the Internal Revenue Service’s model rabbi trust as provided in Revenue Procedure 92-64 and contribute to such trust immediately prior to the consummation of the Change in Control, an amount sufficient to cover the amounts payable to the Executive under Section 2.06(a) above, as well as the amount of any expenses (as estimated by the trustee in good faith) expected to be incurred by the trustee of such trust following the occurrence of the Change in Control.

**Notice of Termination**

2.07 Any termination of employment by the Corporation or by the Executive shall be communicated by notice of termination to the other party hereto given in accordance with Section 5.10 (a “Notice of Termination”). For purposes of this Agreement, Notice of Termination means a written notice which (a) identifies the specific termination provision in the Agreement relied upon, and (b) to the extent applicable, sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive’s employment under the provision identified, and (c)(i) in the case of a termination by the Corporation, specifies the Executive’s Termination Date which shall not be less than fifteen (15) nor more than sixty (60) days after the giving of such notice; or (ii) in the case of a termination by the Executive without Good Reason, shall not be less than ninety (90) days (but may be shorter if approved by the Corporation) after the giving of such notice.

On the date of termination or resignation, as applicable, the Executive agrees to resign all positions, including as an officer and, if applicable, as a director or member of a board of directors or committee, related to the Corporation.

**Release**

2.08 The Release identified in Section 2.01 shall not require the Executive to release any right the Executive may have to indemnification as an officer, director or employee of the Corporation (or any affiliate thereof) pursuant to the articles of incorporation or bylaws (or other governing instruments) of the Corporation (or any affiliate thereof) or any vested benefits to which the Executive may be entitled under any employee benefit plan.

**ARTICLE THREE - REMUNERATION**

**Remuneration and Perquisites**

3.01 A. Salary. For services to be rendered hereunder, the Executive shall receive an annual base salary of USD\$860,000. The Executive shall be considered

annually for increases in base salary in accordance with Corporation policy and subject to review by the Compensation, Nominating and Corporate Governance Committee and approval by the independent members of the Board of Directors.

B. Annual Bonus. For 2008, the Executive shall not participate in the Corporation’s short term annual incentive compensation plan as such plan may be amended from time to time (the “Short Term Incentive Plan”) but shall instead receive a guaranteed cash bonus of 100% of the Executive’s base salary for 2008. For 2009 and thereafter, the Executive shall be eligible to participate in the Short Term Incentive Plan, subject in all respects to the terms of the Short Term Incentive Plan. The Executive’s target level of cash bonus under the Short Term Incentive Compensation Plan shall be 100% of base salary. Subsequent adjustment to target levels shall subject to review by the Compensation, Nominating and Corporate Governance Committee and approval by the independent members of the Board of Directors. Any bonus earned and otherwise payable to the Executive shall be paid on or after January 1, but not later than March 15 of the fiscal year following the fiscal year for which the bonus is earned, in accordance with the Corporation’s Short Term Incentive Plan.

C. Additional Compensation. To the extent the Executive’s previous employer requires the Executive to repay an amount previously paid to him by such previous employer, in connection with such Executive’s termination of employment, the Corporation shall reimburse the Executive with a one-time payment for such amount; provided, however, that the Executive shall be required to repay to the Corporation one-half of the amount of the reimbursement if the Executive voluntarily resigns from employment with the Corporation or is terminated by the Corporation for Cause pursuant to this Agreement within the one (1) year period following the date of this Agreement.

D. Relocation Expenses. The Executive shall receive USD\$100,000 for expenses relating to the Executive’s relocation.

E. Housing Allowance. The Corporation shall provide for the lease of appropriate accommodation for the Executive.

F. Corporate Vehicle. During the Executive’s employment, the Corporation shall pay the Executive a monthly car allowance, in an amount sufficient to cover the lease and insurance costs of an automobile selected and leased by the Executive.

G. Access to Corporate Jet and Travel Benefits. The Executive shall have access to the Corporation’s jet as needed and the Executive’s spouse shall be permitted to accompany the Executive on trips as deemed appropriate, with the understanding that the foregoing may result in taxable income to the Executive.

H. Tax Support. The Corporation shall reimburse the Executive for costs incurred by the Executive in connection with tax preparation furnished by such advisors as chosen by the Executive.

I. Immigration Support. The Corporation shall reimburse the Executive for all legal expenses incurred by the Executive in connection with his immigration status and/or right to work in Barbados, to be furnished by such advisors as chosen by the Corporation.

J. Security Personnel. The Corporation shall provide security personnel to the Executive on terms to be mutually agreed by the parties.

**Expenses and Perquisites**

3.02 The Executive shall be reimbursed for reasonable out of pocket business expenses, including travel and entertainment expenses actually and properly incurred by the Executive in the course of performing his services hereunder, upon furnishing to the Corporation reasonable supporting statements and vouchers provided that where, in any financial year, the Corporation has provided to the Executive an approved budget, such expenses must not exceed the amount so budgeted without the prior written approval from the Corporation.

**Vacation**

3.03 The Executive shall be entitled to six weeks paid vacation annually. In addition, the Executive and his family shall be eligible for one home leave annually (with such home leave counting toward the Executive’s six (6) weeks of annual paid vacation). In connection with such home leave, the Corporation shall reimburse the Executive in accordance with its expense reimbursement policies for actual and reasonable transportation costs for round-trip airfare for the Executive and his family to travel to and from Barbados by the most direct route. The Executive shall be responsible for living expenses during home leave.

**Group Life and Health Benefits**

3.04 Group Life and Health Benefits shall be provided to the Executive in accordance with the Corporation’s Group Life and Health Benefits Plan and policies, a copy of which has been provided to the Executive, as these apply to Senior Executives. The Executive shall be eligible for Corporation-paid life insurance coverage equal to three times his base salary, as of January 1<sup>st</sup> of each year, rounded to the next \$1,000, to a maximum of USD\$1,000,000. In addition, while traveling on business of the Corporation, the Executive shall have insurance coverage for accident or injury resulting in specified bodily harm or death. Should the Executive’s death occur due to an

accident while traveling on business of the Corporation, the Executive’s designated beneficiary shall receive a benefit in the amount of USD\$1,000,000.

**Equity Compensation**

3.05           The Executive shall be eligible to participate in the Corporation’s 2007 Equity Compensation Plan, as such plan may be amended or supplemented from time to time (the “Equity Compensation Plan”), in accordance with the terms of the Equity Compensation Plan, except as may be otherwise indicated in this Agreement. Contemporaneously with the date of this Agreement, the Executive shall be granted a non-qualified stock option to purchase 150,000 shares of common stock of the Corporation, subject in all respects to the terms of the Equity Compensation Plan and the agreement evidencing the terms of the stock option grant. The Executive’s annual target under the Equity Compensation Plan shall be 112,550 stock options and 9,375 RSUs, or a substantially equivalent award. In addition the Executives’ eligibility for such annual awards, the Executive shall be entitled to additional equity compensation awards under the Equity Compensation Plan as follows: (i) in 2008, 125,000 Restricted Share Units (“RSUs “), (ii) in 2009, 62,500 RSUs, and (iii) 2010, 62,500 RSUs, in each case subject to the performance criteria and performance period approved by the Compensation, Nominating and Corporate Governance Committee or by the independent members of the Board of Directors, as applicable.

**Retirement Benefits**

3.06           The Executive shall be eligible to participate in the Biovail Pharmaceuticals, Inc. 401(k) Plan pursuant to its terms and conditions. Nothing in this Agreement shall preclude the Corporation from terminating or amending any employee benefit plan or program from time to time after the date of this Agreement.

**ARTICLE FOUR – EXECUTIVE’S OBLIGATIONS**

**Confidentiality**

4.01           Contemporaneously with the execution of this Agreement, the Executive agrees to execute and be bound by the terms of the confidentiality agreement attached hereto as Schedule A and which is incorporated by reference into this Agreement (the “Confidentiality Agreement”), which Confidentiality Agreement has been read, understood and executed by the Executive.

**Non-Competition**

4.02           The Executive acknowledges that the Corporation currently conducts Business activities in North America, Ireland, Barbados and Puerto Rico (the “Territory”). The Executive further acknowledges that, in the future, the Business

activities are expected to substantially expand territorially. Accordingly, the Executive hereby agrees and covenants that he shall not during the term of this Agreement and for a period of one (1) year following the Executive's termination from employment for any reason, directly or in any manner or in any capacity whatsoever, including without limitation, either individually, in partnership, jointly or in conjunction with any other individual, partnership, corporation, unincorporated organization, trust, joint venture, the Crown or any agency or instrumentality thereof of any juridical entity, in the Territory (excluding, as applicable, any portions of the Territory in which the Corporation is no longer carrying on business at the relevant time) or in any other regions or countries where the Corporation may be carrying on business at the relevant time:

- (a) carry on, be engaged in, take part in or be a party to any Competitive Activity, directly or indirectly; or
- (b) consult, advise, render services to, lend money, guarantee the debts or obligations of or permit the use of his name or any part thereof for any Competitive Activity.

For the purposes of this Section 4.02, a "Competitive Activity" shall be defined as any business: (i) that competes with or plans to actively compete with the Business activities of the Corporation through, but not limited to, the formulation, clinical testing, registration, manufacturing or marketing of specialty pharmaceuticals and/or drug delivery technologies in the therapeutic categories on which the Corporation is focused, which include central nervous system disorders, pain management, cardiovascular disease, type II diabetes, and any other category in which the Corporation is focused in the future and excludes areas in which the Corporation is not actively engaged at the relevant time, (ii) with which the Corporation has a product(s) licensing agreement, (iii) in which the Corporation has a minority equity interest, or (iv) with which the Corporation is at the time actively negotiating a commercial relationship.

During the continuance of his employment, the Executive shall not (other than solely as a holder of not more than three per cent (3%) of the issued and outstanding voting shares of any public corporation or as a shareholder of the Corporation, without the written approval of the board of directors of the Corporation, directly or indirectly, either individually or in partnership or in conjunction with any Person or Persons, firm, association, syndicate, company or corporation as principal, agent, director, manager, servant, shareholder or in any other manner whatsoever) carry on or be engaged in or be concerned with or interested in any business or vocation whatsoever which would be reasonably judged to be a Competitive Activity or would impede the Executive in performing his duties as outlined herein.

The Executive may at any time, or from time to time, request the Corporation to advise the Executive in writing whether or not the Corporation considers a specified business to be a Competitive Activity. Any such request shall be made by written notice to the Corporation that includes: (i) the name of the specific business unit for which the

Executive proposes to provide services; (ii) the name or names of any parent companies of such business unit; (iii) a description of the specific services which the Executive proposes to perform for such business unit; (iv) a statement as to why the Executive believes that the performance of such services shall not adversely affect the Corporation’s legitimate interests.

**Non-Solicitation and Hiring**

4.03           The Executive hereby covenants and agrees that he shall not during the term of this Agreement and for a period of one (1) year thereafter, either directly or indirectly, solicit or endeavour to solicit from the Corporation’s employees, customers or suppliers for the pharmaceutical compounds used by Biovail, and shall not for a period of one (1) year from the end of the term of this Agreement hire any of the foregoing on his own behalf or on behalf of any other entity.

**Role of CEO**

4.04           The Executive acknowledges that he shall fully abide by the provisions of this Article 4.

**Injunctive Relief**

4.05           The Executive acknowledges and agrees that the agreements and covenants in this Article Four are essential to protect the business and goodwill of the Corporation and that a breach by the Executive of the covenants in Sections 4.01, 4.02 and 4.03 hereof could result in irreparable harm to the Corporation for which the Corporation could not be adequately compensated in damages and that, accordingly, the Corporation may have no adequate remedy at law if the Executive breaches such provisions. Consequently, if the Executive breaches any of such provisions, the Corporation shall have, in addition to and not in lieu of, any other rights and remedies available to it under any law or in equity, the right to obtain injunctive relief to restrain any breach or threatened breach thereof and to have such provisions specifically enforced by any court of competent jurisdiction.

**Severability of Covenants in Full or in Part**

4.06           The parties acknowledge that the provisions of Article Four hereof (the “Restrictive Covenants”) are reasonable and valid in geographic and temporal scope and in all other respects. If any court of competent jurisdiction determines that any of the Restrictive Covenants or any part thereof, is or are invalid or unenforceable, the Executive and the Corporation agree that the remainder of the Restrictive Covenants shall not be affected by the deemed invalid portions. If any court of competent jurisdiction determines that any of the Restrictive Covenants or any part thereof is unenforceable because of the duration or geographical scope of such provision, the parties hereto agree that such court shall have the power to reduce the duration or

scope of such provision, as the case may be, and in its reduced form such provision shall then be enforceable.

**Assignment of IP**

4.07           The Executive shall disclose to the Corporation any and all Intellectual Property (as described in the Confidentiality Agreement) which he may make solely, jointly, or in common with other employees during the term of his employment within the Corporation and which relates to the Business. Any Intellectual Property coming within the scope of the Business made and/or developed by the Executive while in the employ of the Corporation, whether or not conceived or made during regular working hours, and whether or not the Executive is specifically instructed to make or develop same, shall be for the benefit of the Corporation and shall be regarded as work made in the course of employment for the purposes of the *Copyright Act* (Canada) and the equivalent regulations in the United States and/or the State of New Jersey. The Executive shall assign, set over and transfer to the Corporation his entire right, title and interest in and to any and all of the Intellectual Property and to all letters patent and applications for letters patent which may be, or may have been filed and/or issued by or to him or on his behalf and the Executive agrees to execute and deliver to the Corporation any and all instruments necessary or desirable to accomplish the foregoing and, in addition, to do all lawful acts which may be necessary or desirable to assist the Corporation to obtain and enforce protection of the Intellectual Property. To the extent of any rights Executive may have with respect to the Intellectual Property which are not assignable, including but not limited to moral rights, the Executive hereby waives same. The Executive shall execute and deliver to the Corporation or its successors and assigns, such other and further assignments, instruments and documents as the Corporation from time to time reasonably may request for the purpose of establishing, evidencing, and enforcing or defending its complete, exclusive, perpetual, and world-wide ownership of all rights, titles, and copyrights, in and to the Intellectual Property, and

Executive constitutes and appoints the Corporation as agent and attorney-in-fact, with full power of substitution, to execute and deliver such assignments, instruments, documents as Executive may fail to refuse to execute and deliver, this power and agency being coupled with an interest and being irrevocable.

**Standards of Business Conduct**

4.08           The Executive acknowledges and agrees that he has read and understood and agrees to be bound by the Corporation’s Standards of Business Conduct, which is attached hereto as Schedule B.



**Human Resources Management**

4.09           The Executive acknowledges receipt of the Human Resources Management System and agrees to be bound by all of the terms, policies and procedures contained therein.

**No Conflicting Obligations**

- 4.10           The Executive warrants to the Corporation that:
- (a)           the performance of the Executive’s duties as an employee of the Corporation shall not breach any agreement or other obligation to keep confidential the Confidential Information of any third party; and
  - (b)           the Executive is not bound by any agreement with or obligation to any third party that conflicts with the Executive’s obligations as an employee of the Corporation.

**ARTICLE FIVE - INTERPRETATION AND ENFORCEMENT**

**Section 409A**

5.01           This Agreement shall be interpreted to avoid any penalty sanctions under section 409A of the Code. If any payment or benefit cannot be provided or made at the time specified herein without incurring sanctions under section 409A of the Code, then such benefit or payment shall be provided in full (to extent not paid in part at earlier date) at the earliest time thereafter when such sanctions shall not be imposed. For purposes of section 409A of the Code, all payments to be made upon a termination of employment under this Agreement may only be made upon the Executive’s “separation from service” (within the meaning of such term under section 409A of the Code), each payment made under this Agreement shall be treated as a separate payment, and the right to a series of installment payments under this Agreement shall be treated as a right to a series of separate payments. In no event shall the Executive, directly or indirectly, designate the calendar year of payment, except as permitted under section 409A of the Code.

Notwithstanding anything herein to the contrary, if, at the time of the Executive’s termination of employment with the Corporation, the Corporation has securities which are publicly traded on an established securities market and the Executive is a “specified employee” (as such term is defined in section 409A of the Code) and it is necessary to postpone the commencement of any payments or benefits otherwise payable under this Agreement as a result of such termination of employment to prevent any accelerated or additional tax under section 409A of the Code, then the Corporation shall postpone the commencement of the payment of any such payments or benefits hereunder (without

any reduction in such payments or benefits ultimately paid or provided to the Executive) that are not otherwise paid within the ‘short-term deferral exception’ under Treas. Reg. section 1.409A-1(b)(4) and/or the ‘separation pay exception’ under Treas. Reg. section 1.409A-1(b)(9)(iii), until the first payroll date that occurs after the date that is six months following the Executive’s “separation of service” with the Corporation. If any payments are postponed due to such requirements, such postponed amounts shall be paid in a lump sum to the Executive on the first payroll date that occurs after the date that is six months following Executive’s “separation of service” with the Corporation. If the Executive dies during the postponement period prior to the payment of postponed amount, the amounts withheld on account of section 409A of the Code shall be paid to the personal representative of the Executive’s estate within 60 days after the date of the Executive’s death.

All reimbursements and in-kind benefits provided under this Agreement shall be made or provided in accordance with the requirements of section 409A of the Code, including, where applicable, the requirement that (1) any reimbursement shall be for expenses incurred during the Executive’s lifetime (or during a shorter period of time specified in this Agreement), (2) the amount of expenses eligible for reimbursement, or in kind benefits provided, during a calendar year may not affect the expenses eligible for reimbursement, or in kind benefits to be provided, in any other calendar year, (3) the reimbursement of an eligible expense shall be made on or before the last day of the calendar year following the year in which the expense is incurred and (4) the right to reimbursement or in kind benefits is not subject to liquidation or exchange for another benefit.

**Independent Legal Advice**

5.02               The Executive agrees to the terms and conditions of this Agreement having had the opportunity to receive independent legal advice.

**Severability**

5.03               The parties further acknowledge that if any provision contained in this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof shall continue in full force and effect.

**Sections and Headings**

5.04               The parties further acknowledge that if any provision contained in this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof shall continue in full force and effect.

5.05           The division of this Agreement into Articles and Sections and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Agreement.

**Number**

5.06           In this Agreement words importing the singular number only shall include the plural and vice versa and words importing the masculine gender shall include the feminine and neuter genders and vice versa.

**Entire Agreement**

5.07           This Agreement and all the Schedules hereto constitute the entire Agreement between the parties with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the parties with respect thereto. There are no representations, warranties, forms, conditions, undertakings or collateral Agreements, express, implied or statutory between the parties other than as expressly set forth in this Agreement.

**Amendments and Waivers**

5.08           No amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by both parties. No waiver of any breach of any term or provision of this Agreement shall be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided in written waiver, shall be limited to the specific breach waived.

**Governing Law**

5.09           This Agreement shall be deemed to have been made in and shall be construed in accordance with the laws of the State of New Jersey and all legal proceedings contemplated in this Agreement shall be brought in, and be governed by, the laws of the State of New Jersey, without regard to principles of conflicts of law.

**Notices**

5.10 Any demand, notice or other communication (hereinafter in this section 5.10 referred to as a “Communication”) to be made or given in connection with this Agreement shall be made or given in writing and may be made or given by personal delivery or by registered mail addressed respectively to the recipients:

|                     |                                                          |
|---------------------|----------------------------------------------------------|
| To the Executive:   | William M. Wells<br>xxx                                  |
| To the Corporation: | 7150 Mississauga Road<br>Mississauga, Ontario<br>L5N 8M5 |
|                     | Attn: General Counsel                                    |

or such other address or individual as may be designed by notice by either party to the other. Any communication made or given by personal delivery shall be conclusively deemed to have been given on the day of the actual delivery thereof and, if made or given by registered mail, on the third business day following the deposit thereof in the mail. If the party giving any Communication knows or ought reasonably to know of any difficulties with the postal system which might affect the delivery of the mail, any such Communication shall not be mailed but shall be made or given by personal delivery.

**Benefit of Agreement**

5.11 This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, legal personal representatives, successors and assigns.

**Assignment**

5.12 The Executive may not assign his or its rights or obligations under this Agreement without the prior written consent of the Corporation which consent may be unreasonably withheld. The Corporation may unilaterally assign this agreement to an affiliate without consent but on notice to the Executive.

**Execution of Agreement**

5.13           The Executive acknowledges that he has executed this Agreement freely; that he has reviewed his Agreement thoroughly; that he agrees with its contents; that he has been given the opportunity to obtain the benefit of independent legal advice; and that the terms herein are reasonable for the fair protection of both the Executive and the Corporation.

**[SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF** the Corporation has executed this amended and restated Agreement on the 21<sup>st</sup> day of April, 2008 at the City of Mississauga, Ontario.

**BIOVAIL CORPORATION**

Per: /s/ Wendy Kelley  
Name: Wendy Kelley  
Title: Senior Vice-President, General  
Counsel and Corporate Secretary

**IN WITNESS WHEREOF** the Executive has executed this Agreement on the 21<sup>st</sup> day of April, 2008 at the City of Mississauga, Ontario.

**SIGNED, SEALED AND DELIVERED  
in the presence of:**

/s/ William M. Wells  
William M. Wells

/s/ Michelle Garraway  
Witness

**“SCHEDULE A”**  
**CONFIDENTIALITY AGREEMENT**

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**BIOVAIL CORPORATION**  
**(and its Subsidiaries, Divisions, and Affiliates)**

**CONFIDENTIALITY AGREEMENT**

As an employee of Biovail Corporation (the "Corporation"), I acknowledge that I may acquire or have disclosed to me by the Corporation or by any affiliate, associate, or technology partner of the Corporation, either directly or indirectly, in writing, conversation, or through observation, various information about the business of the Corporation which is not in the public domain and which the Corporation does not wish to be divulged to other persons, companies, or third parties. I further understand that the Corporation's Confidential Information (as defined below) is essential to its competitive advantage and to its ability to be financially viable. I further understand that the unauthorized disclosure of such Confidential Information may cause the Corporation irreparable injury that may not be rectified in the future.

Therefore, as a condition and in consideration of my employment with the Corporation, I understand and agree that while employed with the Corporation and for a period of time thereafter (as more particularly described below), I am required to hold confidential and not to disclose to anyone without the written authority from the Corporation any knowledge, information, or facts concerning the Corporation's:

- research and development activities
- technological plans, advances, applications and inventions
- technical specifications, designs and plans
- materials and sources of supply
- discoveries, inventions, trade secrets, patents
- financial affairs, contracts, licensing agreements, customer lists, pricing practices, marketing strategies
- any other information regarding the Corporation, its products and their development which is not in the public domain

All of the foregoing shall hereinafter collectively be referred to as the "Confidential Information".

For a period commencing on the date I commenced my employment with the Corporation and ending ten (10) years from the date of the termination of my employment with the Corporation, I shall keep confidential any and all Confidential Information which has been disclosed to me in writing or through oral communications and shall not divulge in any manner whatsoever any such information to any person, firm, corporation, partnership or similar entities without the Corporation's written authority.

Should I breach or threaten to breach this Agreement, I shall be liable to the Corporation in equity and/or in law for damages that may be suffered by the Corporation as a result of the breach or threatened breach. I understand that a breach of this Agreement may result in irreparable harm to the Corporation such as to warrant the entitlement by the Corporation to an interlocutory and/or permanent injunction or other equitable relief against me, and an award of damages including punitive, exemplary and aggravated damages, together with legal costs and expense and I specifically agree that I will not argue the adequacy of damages or the Corporation's ability to seek equitable relief in any such proceeding.

All Confidential Information supplied by the Corporation to me during the course of my employment and any rights related thereto, including but not limited to rights of know how, patent, trademark and

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copyright, with respect to existing products or those that are developed during or after my employment, are and remain the exclusive and absolute property of the Corporation.

I shall not, except as and to the extent required to enable me to carry out my duties with the Corporation, make any copies or reproduce the Confidential Information nor shall I remove or cause to have removed from the premises of the Corporation during my employment any Confidential Information unless required to do so in order to fulfill my duties with the Corporation. Such copies or reproductions shall be strictly subject to the terms and conditions of this Agreement. I shall take such steps as are necessary to restrict access to and protect the confidentiality of such copies or reproductions of the Confidential Information. Any such copies or reproductions made shall become the exclusive and absolute property of the Corporation.

Upon request of the Corporation, I agree to immediately surrender to the Corporation all documentation and information - notes, drawings, recordings, manuals, letters, correspondence, computer data and programs, records, books or any other materials relating to the Confidential Information which is in my possession without my retaining any copies or duplicates thereof.

I agree that this Agreement shall be construed in accordance with the laws of the Province of Ontario and I agree that the applicable courts of the Province of Ontario shall have exclusive jurisdiction with respect to any dispute or breach herein and I hereby attorn to the exclusive jurisdiction of the courts of the Province of Ontario.

This Agreement shall enure to the benefit of and shall be binding upon my successors, heirs and attorneys.

The disclosure or divulging of any Confidential Information contrary to this Agreement, or the violation of this Agreement in any way shall result in my immediate termination of employment, in addition to which I may be subject to criminal prosecution and civil liability.

I acknowledge and agree that I have executed this Agreement freely and with the benefit of independent legal advice and the terms herein are fair and reasonable.

I acknowledge and agree to the foregoing.

Employee Signature: /s/ William M. Wells Date: April 21, 2008

Witness Signature: /s/ Michelle Garraway Date: April 21, 2008

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**“SCHEDULE B”**

**STANDARDS OF BUSINESS CONDUCT**

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**BIOVAIL CORPORATION  
(and its Subsidiaries, Divisions, and Affiliates)**

**STANDARDS OF BUSINESS CONDUCT**

Biovail Corporation (“Biovail”), together with its subsidiaries, divisions and affiliates, places great importance on conducting its business activities in an ethical and appropriate manner. Each employee, officer and director is a reflection of Biovail, and as such, the activities and actions of every individual within Biovail must be undertaken in accordance with a high standard of ethics and integrity. As such, Biovail expects each employee, officer and director to comply with, and adhere to, these Standards of Business Conduct (the “Standards”).

**CONFLICTS OF INTEREST**

Employees, officers and directors of Biovail must avoid situations where their private interests could conflict with, or even appear to conflict with, the interests of Biovail and its stockholders.

Conflicts of interest arise when an individual’s position or responsibilities with Biovail present an opportunity for personal gain apart from the normal rewards of employment. They also arise when the private interests of an employee, officer or director are inconsistent with those of Biovail or create conflicting loyalties. Such conflicting loyalties can cause an employee, officer or director to give preference to private interests in situations where corporate responsibilities should come first. Employees, officers and directors must perform the responsibilities of their positions on the basis of what is in the best interests of Biovail and free from the influence of personal considerations and relationships.

In the event that any potential conflict of interest arises, the individual involved must immediately notify his or her immediate supervisor. If such individual is an officer or director of Biovail, the Executive Chairman (“Chairman”), Chief Executive Officer (“CEO”) and the General Counsel, or in the absence of a General Counsel the Vice President, Associate General Counsel (“SLO”) of Biovail must also be immediately notified and no further action may be taken unless authorized in writing by the Chairman and/or the CEO.

While it is not possible to detail every situation where conflicts of interest may arise, the following policies cover the areas that have the greatest potential for conflict:

**A. Trading in Biovail Securities and Use of Inside Information**

There are numerous laws in Canada and the United States (federal, provincial and state laws), to regulate transactions in corporate securities (stocks and bonds) and the securities industry. Violation of these laws may lead to civil and criminal actions against the individual and Biovail.

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- i. Any employee, officer, director or other insider or anyone (family member, etc.) who knows of any material information (as defined below) about Biovail that has not been disclosed to the public (commonly known as “insider information”) may not engage in any transaction in Biovail’s securities until such information is disclosed to the public (whether or not there is a formal trading “black out” in place). This rule applies equally to transactions in securities of other companies. In addition, employees, officers and directors must not provide insider information to others (“tippees”) who may trade in either the securities of Biovail or the securities of other companies.

“Material information” is any information relating to the business and affairs of Biovail that would reasonably be expected to result in a change in the market price or value of Biovail’s securities. Generally speaking, material information is a matter to which an average prudent investor should be reasonably informed before a decision is made to buy or sell the security involved. Examples of such information would include annual or quarterly financial results; significant changes in management; significant shifts in operating or financial circumstances, such as major write-offs and changes in earnings projections; borrowing of a significant amount of funds; acquisitions of, or mergers with, other companies; significant new contracts or loss of business; and major new products, services or patents. This list provides examples only; many other matters may be considered material information.

Employees, officers, directors and other insiders who have questions that relate to the sale or purchase of a security under circumstances where these laws and regulations might apply should consult with the SLO, who may refer them to outside legal counsel.

- ii. In addition to the prohibition against the use of “insider” information which applies to all employees, officers and directors, the various securities laws that apply in the jurisdiction and countries in which Biovail does business place definite restrictions on the manners in which employees, officers and directors of Biovail, and their family members, their associates, etc., may engage in transactions involving the securities of Biovail. Employees, officers and directors shall comply with all laws, rules and regulations that prohibit or restrict insider trading.

Whenever there is any doubt as to whether any transactions involving Biovail’s securities would violate securities laws, employees, officers and directors should consult the SLO of Biovail. Within the framework of the foregoing policies and laws, the final decision of each employee, officer or director, with respect to securities transactions, must be his or her own.

- iii. Employees, officers, directors and other insiders shall maintain the confidentiality of information entrusted to them by Biovail or its customers (except where disclosure is authorized or legally mandated) and shall not, without proper authority, give or release to anyone not employed by Biovail, data or information of a confidential nature concerning Biovail. Disclosure of confidential information can be harmful to Biovail and could be the basis for legal action against Biovail and the individual disclosing the information. Confidential information includes all non-public information that might be of use to competitors, or harmful to Biovail or its customers, if disclosed.
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- iv. Employees, officers, directors and other insiders shall not acquire any property, security or any business interest that they know Biovail has an interest in acquiring. Moreover, based on such advance information, employees, officers and directors shall not acquire any property, security or business interest for speculation or investment.
- v. Employees, officers, directors and other insiders must follow Biovail policies regarding “Blackout Periods” when Biovail’s stock may not be traded. Such policies will be communicated by the SLO from time to time and must be adhered to by all employees, officers and directors.

**B. Personal Financial Interest**

Employees, officers and directors should avoid any outside financial interests that might influence decisions or actions they have been empowered to make on behalf of Biovail. An employee, officer or director performing duties in conformity with this policy shall not have a financial interest in, indebtedness to, or a personal contract or understanding with any concern with which he or she does business on behalf of Biovail.

- i. Employees, officers or directors whose corporate duties bring them into business dealings with an organization in which they, or a member of their family, have a financial interest or to which they, or a member of their family, have any indebtedness, or a business employing a relative or close friend, must immediately notify their immediate supervisor. The employee, officer or director, in turn, cannot complete a transaction on behalf of Biovail with this organization unless properly authorized in writing from their supervisor after full disclosure of the relationship.
  - ii. An employee, officer or director may not perform work or services, outside the course of their normal employment by Biovail, for an organization doing or seeking to do business with Biovail without appropriate prior written approval of their supervisor or the Board of Directors. An employee, officer or director may not be a director, officer, partner or consultant of an organization doing or seeking to do business with Biovail, nor may any of them permit their names to be used in any way indicating a business connection with such an organization, without appropriate prior written approval of their supervisor or the Board.
  - iii. An employee, officer or director shall not accept for himself or herself, or for the benefit of any relative or friend, any payments, loans, services, favors involving more than ordinary social amenity, or gifts of more than nominal value from any organization doing or seeking to do business with Biovail.
  - iv. The requirement of freedom from conflict of interest applies with equal force to the spouse, children and other close relatives of each employee, officer and director. This policy applies to all employees, officers and directors of Biovail with respect to all of the affairs of Biovail.
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- v. Employees, officers and directors shall not (a) take for themselves personally opportunities that are discovered through the use of corporate property, information or position; (b) use corporate property, information, or position for personal gain; (c) compete with Biovail. Employees, officers and directors owe a duty to Biovail to advance its legitimate interests when the opportunity to do so arises.
- vi. Biovail may not make loans to any employee, officer or director.

**C. Outside Activities**

Employees, officers and directors should avoid outside employment or activities which would impair the effective performances of their responsibilities to Biovail, either because of excessive demands on their time, or because the outside commitments can be contrary to their obligations to Biovail

**D. Protection and Proper Use of Biovail's Assets**

All employees, officers and directors should protect Biovail's assets and ensure their efficient use. Theft, carelessness and waste have a direct impact on Biovail's profitability. All of Biovail's assets should be used only for legitimate business purposes.

**E. Fair Dealing**

Each employee, officer and director shall endeavor to deal fairly with Biovail's customers, suppliers, competitors and employees. None should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other unfair-dealing practice.

**2. COMPETITIVE PRACTICES**

The management of Biovail firmly believes that fair competition is fundamental to continuation of the free-enterprise system. Biovail complies with, and supports, laws of all countries that prohibit restraints of trade, unfair practices, or abuse of economic power.

Biovail will not enter into arrangements that unlawfully restrict its ability to compete with other businesses, or the ability of any other business organization to compete freely with Biovail. Biovail policy also prohibits employees, officers and directors from entering into, or even discussing, any unlawful arrangement or understanding which may affect its pricing policies, terms upon which its products and services are sold, or which might be construed as dividing customers or sales territories with a competitor.

These principles of fair competition are basic to all Biovail operations. They are integral parts of the following sections that cover Biovail's dealings with suppliers, customers and public officials.

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**3. DEALING WITH SUPPLIERS**

Biovail is a valuable customer for many suppliers of goods, services and facilities. People who want to do business, or to continue to do business, with Biovail must understand that all purchases by Biovail will be made in accordance with its purchasing policy and exclusively on the basis of price, quality, service and suitability to Biovail’s needs.

**A. Reciprocity**

Biovail considers reciprocity a harmful practice and a hindrance to assuring purchase of the best available materials or services at the lowest possible prices. It will not be practiced or allowed.

Suppliers of goods and services to Biovail will not be asked to buy goods and services from Biovail in order to become or continue as a supplier.

Biovail will not attempt to influence its suppliers to purchase from customers of Biovail. When Biovail makes purchases it will not favor firms who are customers of Biovail or any of its affiliates.

**B. “Kickbacks” and Rebates**

Purchases or sales of goods and services by Biovail must not lead to employees, officers or directors, or their families, receiving any type of personal kickbacks or rebates. Employees, officers, directors, and their families, must not accept any form of “under-the-table” payment.

**C. Receipt of Gifts and Entertainment**

Even when gifts and entertainment are exchanged out of the purest motives of personal friendship, they can be misunderstood. They can appear to be attempts to bribe Biovail’s employees, officers or directors into directing business of Biovail to a particular supplier. To avoid both the reality and the appearance of improper relations with suppliers or potential suppliers, the following standards will apply to the receipt of gifts and entertainment by employees, officers and directors of Biovail:

**Gifts**

- i) Employees, officers and directors are prohibited from soliciting gifts, gratuities, or any other personal benefit or favor of any kind from suppliers or potential suppliers. Gifts include not only merchandise and products but also personal services, and tickets to theatrical and sports events. Employees, officers and directors should exercise good judgment when accepting unsolicited gifts. Employees, officers and directors are prohibited from accepting gifts of money.
  - ii) Employees, officers and directors may accept unsolicited non-money gifts provided:
    - (1) They are items of nominal intrinsic value; or
    - (2) They are advertising and promotional materials, clearly marked with Biovail or brand names of the giver.
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- iii) Any gift of more than nominal intrinsic value must be reported to the SLO to determine whether it can be accepted. Some gifts may be perishable so as to make their return impractical. Supervisors can permit acceptance of such gifts, but should require employees, officers and directors to tactfully inform givers that such gifts are discouraged.
- iv) In the transaction of some international business, it is lawful and customary for business leaders in some countries to give unsolicited gifts to employees, officers or directors of Biovail. These gifts can be of more than nominal value. Moreover, under the circumstances, returning the gifts or payment for them may constitute an affront to the giver. In such cases, the gift must be reported to the SLO who may permit the retaining of the gifts.
- v) In all other instances where gifts cannot be returned or may adversely affect Biovail's continuing business relationships, the SLO must be notified. They can require employees, officers and directors to transfer ownership of such gifts to Biovail.

#### **Entertainment**

- i) Employees, officers and directors shall not encourage or solicit entertainment from any individual or company with whom Biovail does business. Entertainment includes, but is not limited to, activities such as dinner parties, theater parties, and sporting events.
  - ii) From time to time employees, officers and directors may accept unsolicited entertainment, but only under the following conditions:
    - (1) The entertainment occurs infrequently;
    - (2) It arises out of the ordinary course of business;
    - (3) It involves reasonable, not lavish expenditures (the amounts involved should be ones employees, officers and directors are accustomed to normally spending for their own business or personal entertainment); and
    - (4) The entertainment takes place in settings that also are reasonable, appropriate, and fitting to employees, officers and directors, their hosts, and their business at hand.
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**4. DEALINGS WITH CUSTOMERS AND POTENTIAL CUSTOMERS**

Employees, officers and directors must keep all dealings with customers and potential customers fair and above board. Biovail gets business and keeps it because of the quality of its goods and services. Biovail does not give unethical or illegal rebates, kickbacks, under-the-table payments, or other similar improper favors to customers or their representatives.

The boundary line between ethical and unethical competition, or legal and illegal conduct, is not always well defined, particularly in international activities where differing local laws, customs, and practices come into play. Therefore, the following standards will serve as guides:

- a) All employees, officers and directors should make themselves aware of and fully comply with all laws, rules and regulations, whether federal, state, local or foreign, including laws governing relations with customers as well as competitors.
- b) All employees, officers and directors engaged in negotiations and contracts with foreign governments, the United States or any political subdivision thereof must also know and abide by the specific rules and regulations covering relations with such governments and their agencies.
- c) Employees, officers and directors may not give gifts to customers except items of nominal value, which fit the legal, normal, and customary pattern of Biovail’s sales efforts for a particular market. Exceptions to this policy can occur in international trades where it can be legal, customary, and appropriate business practice to exchange gifts with customers. Only the CEO can authorize the giving, receiving, or exchanging of such gifts. Any gifts received by employees, officers or directors in such an exchange must be reported to the CEO for determination as to the disposition of the gifts.
- d) Entertainment for any customer must fit regular business practices. The place and type of entertainment and the money spent must be reasonable and appropriate.

**5. DEALING WITH PUBLIC OFFICIALS**

Domestic and foreign laws and regulations require Biovail to be in contact with public officials on a wide variety of matters. Employees, officers and directors who regularly make these contacts have special responsibilities for upholding Biovail’s good name. The following standards relate to these special responsibilities:

- a) All employees, officers and directors who contact public officials must be familiar with lobbying laws and public disclosure requirements, particularly those that apply to registrations and filings.
  - b) No employee shall make any form of payment, direct or indirect, to any public official as an inducement to procuring or keeping business or having a law or regulation enacted, defeated, or violated. This is bribery, pure and simple. It will not be tolerated.
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It should be acknowledged that inherent in the current health-care regulatory environment, the definition of “form of payment” may include seemingly trivial gifts and/or favors (e.g. buying lunches, coffee, etc.).

- c) When not prohibited by law, employees, officers and directors are allowed to give to public officials gifts where the presentation and acceptance of gifts is an established custom and a normal business practice. All such gifts shall be of reasonable value and the presentation approved in advance by the CEO. Moreover, such gifts must be presented in a manner that clearly identifies Biovail and the occasion that warrants the presentation.
- d) Employees, officers and directors are also allowed to give public officials gifts in the form of product models and pictures provided the models and pictures are part of Biovail’s general marketing and public relations programs (except as noted in clause (b) above).
- e) On special ceremonial occasions, officers of Biovail may publicly give gifts of more than nominal value to public institutions and public bodies. Such gifts can commemorate special events or milestones in Biovail’s history.

These may be transmitted through public officials but the gifts are given to the public institutions and public groups they represent, not to the officials personally.

- f) From time to time employees, officers and directors may entertain public officials, but only under the following conditions:
  - i. It is legal and permitted by the entity represented by the official;
  - ii. The entertainment is not solicited by the public official;
  - iii. The entertainment occurs infrequently;
  - iv. It arises out of the ordinary course of business;
  - v. It does not involve lavish expenditures, considering the circumstances;
  - vi. The settings and types of entertainment are reasonable, appropriate and fitting to our employees, officers or directors, their guests, and the business at hand.

## **6. POLITICAL ACTIVITIES AND CONTRIBUTIONS**

### **A. Canada and the United States**

Employees, officers and directors who participate in partisan political activities must make every effort to ensure that they do not leave the impression that they speak or act for Biovail.

Biovail encourages its employees, officers and directors to participate in political activities in their own time and at their sole expense. No corporate action, direct or indirect, will be allowed

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that infringes on the right of any employee individually to decide whether, to whom, and in what amount, they will make personal political contributions. The same is true of volunteer political donations of personal service time, so long as it does not interfere with the working status of employees, officers or directors.

**B. Outside Canada and the United States**

No employees, officers and directors are permitted to use Biovail’s funds, facilities, or other assets, to support either directly or indirectly any political candidates or political parties, without advance authorization in writing from their immediate supervisor and the General Counsel. The policy of Biovail is that employees, officers and directors and employees should not participate in political activities in countries of which they are not nationals. However, such persons, of course, are free to participate in political activities in countries of which they are nationals in their own time and at their own expense.

**7. DISCLOSURE**

Biovail has formed a Disclosure Committee to promote consistent practices aimed at informative, timely and broadly disseminated disclosure of Material Information to the market, external stakeholder groups and employees in accordance with all applicable legal, regulatory and stock-exchange requirements.

It is essential that the Disclosure Committee be fully apprised of all material corporate developments to be able to determine whether there is information that should be publicly disclosed, and what the appropriate timing is for release of that information. In some cases, the Disclosure Committee may determine that the information should remain confidential. If that is the case, the Disclosure Committee will determine how that information will be controlled so that it is not inadvertently released. Therefore any employee who becomes aware of information that he/she believes might be material to Biovail and/or any of its affiliates and subsidiaries he/she should advise their manager or supervisor or a member of the Disclosure Committee. Current membership of the Disclosure Committee is posted on the Biovail.com website.

This applies throughout the year, but is particularly critical when annual or quarterly financial statements and Management Discussion and Analysis (MD&A) or regulatory filings are being prepared (e.g. regulatory filings, such as the U.S. Securities and Exchange Commission, Form 20-F).

**8. PUBLIC COMMUNICATIONS**

Given the importance placed on confidentiality and the appropriate disclosures of information regarding Biovail, it is important for employees, officers and directors to ensure that care be taken with any communication regarding Biovail or its activities outside of Biovail.

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**A. Designated Spokespersons**

Biovail has designated official spokespersons who are authorized to speak on behalf of Biovail, and answer questions from the news media and the investment community, about Biovail and its activities. Employees, officers and directors who have not been designated as spokespersons for Biovail are not permitted to speak on behalf of the Company to the news media or to the investment community.

**B. Media or Analyst Inquiries**

Any employee who is approached by any person asking for comment on the activities of Biovail must direct any and all such inquiries to a member of the Disclosure Committee or to a member of the Company’s Stakeholder Relations team (Corporate Communications, Investor Relations) so that an appropriate spokesperson can respond to the inquiry on behalf of Biovail.

**C. Conferences**

The Disclosure Committee should be advised of any request to present at any conference or public meeting. Certain materials prepared for any such presentation may be required to be reviewed by the Company’s Stakeholder Relations group.

**D. Electronic Communications**

Care must be taken in all instances in the use of e-mail, and other devices (e.g., Blackberrys) in communications relating to Biovail’s business. While users tend to resort to shorthand communication using these kinds of tools, those communications do form a record of those communications that may be subject to later review and disclosure. A more fulsome policy regarding electronic communications is in place (found in the Human Resources Management System Policy Binder) and should be adhered to by all employees, officers and directors.

**E. The Internet**

Biovail has instituted policies regarding the use of, and access to the Internet by employees, officers and directors. These policies include a prohibition against anyone participating in any chat rooms dedicated to Biovail or its operations or the industry at large. If any employee, officer or director becomes aware that any such chat room exists, they are asked to report the address of such site to the SLO so that it may be monitored and appropriate action may be taken.

**9. EQUAL OPPORTUNITY**

Biovail supports the principle that every individual must be accorded an equal opportunity to participate in the free-enterprise system and to develop their ability to achieve their full potential within that system.

There shall be no discrimination against any employee or applicant because of race, religion, color, sex, age, sexual orientation, national or ethnic origin, or disability (as required by law) or any other consideration prohibited by local law. All employees, officers and directors will be treated with equality during their employment without regard to their race, religion, color, sex, age, national or ethnic origin, or physical handicap, in all matters, including employment, upgrading, promotion, transfer, layoff, termination, rates of pay, selection for training and



recruitment. Biovail will maintain a work environment free of discriminatory practice of any kind.

No employee shall have any authority to engage in any action or course of conduct or to condone any action or course of conduct by any other person which shall in any manner, directly or indirectly, discriminate or result in discrimination in the course of one’s employment, termination of employment, or any related matter where such discrimination is, directly or indirectly, based upon race, religion, color, sex, age, sexual orientation, national or ethnic origin, disability, or any other consideration prohibited by law.

**10. HEALTH, SAFETY, AND ENVIRONMENTAL PROTECTION**

It is Biovail’s policy to pay due regard to the health and safety of its employees, officers, directors and others, and to the state of the environment. There are federal, provincial, state and local workplace safety and environmental laws which through various governmental agencies regulate both physical safety of employees, officers and directors and their exposure to conditions in the workplace. Should you be faced with an environmental health issue or have a concern about workplace safety, you should contact your Health and Safety Committee representative or notify Biovail management immediately.

Many countries and their regional and local governments now have complex legislation to protect the health and safety of employees, or the general public, and to prevent pollution and protect the environment. In case of violation, these laws often provide penalties for both the company involved and its executive personnel. Biovail’s SLO should always be consulted when necessary to understand or comply with such laws.

**11. WORK ENVIRONMENT**

Employees, officers and directors must treat each other with professional courtesy and respect at all times. Employees, officers and directors shall not subject any other employee to unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct which might be construed as sexual in nature, or harass others on the basis of race, disability, gender, sexual orientation or any other consideration prohibited by law. Such conduct may constitute sexual harassment or harassment under federal, provincial and state law and may be the basis for legal action against the offending employee and/or Biovail.

Employees are encouraged to report all conduct that they believe in good faith to be violations of local anti-harassment policies. To the extent permissible under local law the identity of the employees, officers or directors involved will be kept strictly confidential, and will not be revealed by Biovail’s management without the employee’s permission. The alleged harassment will be thoroughly investigated by Biovail and appropriate action will be taken. Biovail has an appropriate policy to protect employees against discrimination or retaliation as a result of such a complaint.

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**12. INTEGRITY OF RECORDS AND FINANCIAL REPORTS**

It is of critical importance that Biovail’s filings with the appropriate regulatory authorities (e.g. U.S. Securities and Exchange Commission) be accurate and timely. Depending on their position with Biovail, an employee, officer or director may be called upon to provide necessary information to ensure that Biovail’s public reports are complete, fair and understandable. Biovail expects employees, officers and directors to take this responsibility very seriously and to provide prompt accurate answers to inquiries related to Biovail’s public disclosure requirements.

The integrity of Biovail’s record keeping systems will be respected at all times. Employees, officers and directors are forbidden to use, authorize, or condone the use of “off-the-books” bookkeeping, secret accounts, unrecorded bank accounts, “slush” funds, falsified books, or any other devices that could be utilized to distort records or reports of Biovail’s true operating results and financial conditions or could otherwise result in the improper recordation of funds or transactions.

**13. USE OF AGENTS AND NON-EMPLOYEES, OFFICERS AND DIRECTORS**

Agents or other non-employees cannot be used to circumvent the law. Employees, officers and directors will not retain agents or other representatives to engage in practices that run contrary to the Standards of Business Conduct or applicable laws.

**14. INTERNATIONAL OPERATIONS**

Employees, officers and directors operating outside of Canada and the United States have a special responsibility to know and obey the laws and regulations of countries where they act for Biovail. Customs vary throughout the world, but all employees, officers and directors must uphold the integrity of Biovail in other nations diligently.

**15. STANDARDS OF BUSINESS CONDUCT**

**A. Initial Distribution**

- i. Employees, officers and directors designated to receive these Standards will receive their copies immediately after publication.
  - ii. Future employees, officers and directors designated to receive these Standards will receive their copies at the time they are hired.
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**B. Initial Verification**

Upon receiving their copy of the Standards, employees, officers and directors current and future will:

- i. Become thoroughly familiar with the Standards.
- ii. Resolve any doubts or questions about the Standards with their supervisors.
- iii. Inform their supervisors of any existing holdings or activities that might be, or appear to be, inconsistent with, or in violation of, the Standards.
- iv. Prepare written disclosures of such information, if requested, by supervisors.
- v. Take steps to correct existing situations and bring holdings and activities into full compliance with the Standards. Such steps will be approved in writing by supervisors and will be based on the written disclosure submitted by employees, officers or directors.
- vi. Sign the verification and return it to their supervisors who will make it part of employee’s permanent corporate records.

**C. Maintaining Compliance**

- i. Employees, officers and directors have the responsibility to maintain their understanding of the Standards of Business Conduct and for following them.
  - ii. Supervisors have the responsibility to maintain an awareness on the part of their employees, officers and directors of the importance of their adhering to the Standards of Business Conduct and for reporting deviations to Management.
  - iii. As requested by the Board of Directors or senior management, employees, officers and directors will be asked to re-verify their understanding of the Standards of Business Conduct and their compliance with them every year as a part of Biovail’s annual reporting.
  - iv. Employees, officers and directors must inform their supervisors of any changes in their holdings or activities that might be, or appear to be in non-compliance with the Standards of Business Conduct.
  - v. Employees, officers and directors must prepare written disclosure of such information, if requested, by supervisors.
  - vi. Employees, officers and directors must take steps to correct any such changes, if necessary, to bring holdings and activities into full compliance. Such steps will be approved in writing by supervisors and Management and will be based on the written disclosures submitted by employees, officers and directors.
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**D. Audits of Compliance**

Regular audits of Biovail will include procedures to test compliance with the Standards of Business Conduct.

**16. VIOLATIONS OF STANDARDS**

Employees, officers and directors must immediately report any violations of the Standards or any violation of any applicable law, rule or regulation. Failure to do so can have serious consequences for the employees, officers or directors and for Biovail.

Employees, officers and directors, should report violations to their supervisors and/or to the Human Resources department and to the SLO or to any secure reporting hotline the company may have contracted with. When in doubt, employees should talk to their supervisors or other appropriate personnel to determine the best course of action in a particular situation.

Supervisors and the Human Resources group have the responsibility to promptly and thoroughly investigate all reports, and to report violations to the SLO.

After a violation is investigated, appropriate action will be taken promptly. Management has the right to determine the appropriate disciplinary action for a violation up to and including termination of employment. All proposed disciplinary action is subject to review by senior Management, Human Resources and the SLO.

Employees, officers and directors should be aware that, in addition to any disciplinary action taken by Biovail, violations of certain Standards may require restitution and may lead to civil or criminal action against individual employees, officers and directors and any corporation involved.

Supervisors have the responsibility of taking remedial steps to correct any operating procedures that may contribute to violations of Standards.

Retaliation in any form against an individual who reports a violation of these Standards of Business Conduct or of any law, rule or regulation in good faith, or who assists in the investigation of a reported violation, is itself a serious violation of this policy. Acts of retaliation will be disciplined appropriately and should be reported immediately to your supervisor or Human Resources.

**17. CONTINUANCE OF EXISTING PERSONNEL POLICIES, RULES AND PERFORMANCE STANDARDS**

Biovail has codified numerous personnel policies, rules and standards of employee performance, which continue in force. These Standards of Business Conduct are intended to supplement and amplify those established personnel policies, rules and standards.

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It continues to be the responsibility of all employees to comply with all such policies, rules and performance standards. Additionally, all members of management are to continue making certain that employees reporting to them are made aware of established policies, rules and performance standards and comply with them.

**18. AMENDMENT, MODIFICATION AND WAIVER**

Biovail will periodically review these Standards of Business Conduct. These Standards may be amended, modified or waived by the Board of Directors and waivers may also be granted by the Nominating & Governance Committee, subject to the disclosure and other provisions of the Securities Exchange Act of 1934, and the rules there under and the applicable rules of the Toronto Stock Exchange/New York Stock Exchange. Employees, officers and directors will be fully informed of any revisions to the Standards of Business Conduct.

Any waiver of these Standards for any employee other than a director or an executive officer, may only be made by the Executive Chairman or the CEO. Any waiver of these Standards for director or an executive officer may be made only the Board of Directors or the Compensation, Nominating and Corporate Governance Committee and will be promptly disclosed to Biovail’s stockholders.

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**VERIFICATION AND RECEIPT OF UNDERSTANDING**

I have received a copy of Standards of Business Conduct for BIOVAIL CORPORATION and its subsidiaries, divisions and affiliates. I understand how the Standards apply to me. I acknowledge that my receiving the Standards obligates me to follow them and I agree to abide by their conditions.

April 21, 2008  
Date

William M. Wells  
Name

/s/ William M. Wells  
Signature

\_\_\_\_\_

**BIOVAIL CORPORATION  
EXECUTIVE EMPLOYMENT AGREEMENT**

THIS AGREEMENT is made by and between Biovail Corporation (hereinafter the “Corporation”) and Margaret Mulligan (hereinafter the “Executive”).

**ARTICLE ONE – GENERAL DUTIES AND TERM**

**Scope of Employment / Duties**

1.01 The Corporation will employ the Executive as **Senior Vice President & Chief Financial Officer**. The Executive will serve as an officer of the Corporation. During the Employment Term (as defined below), the Executive will devote substantially all of the Executive’s business efforts and time to the Corporation. The Executive agrees, during the Employment Term, not to actively engage in any other employment, occupation or consulting activity for any direct or indirect compensation without the prior approval of the Chief Executive Officer of the Corporation (the “CEO”); provided, however, that the Executive may (a) serve on the boards of directors of other companies (subject to reasonable approval of the CEO) and boards of trade associations or charitable organizations; (b) engage in charitable activities and community affairs; and (c) manage the Executive’s personal investments and affairs, as long as such activities do not violate Section 4.02 and do not materially interfere with the Executive’s duties and responsibilities for the Corporation.

1.02 The Corporation reserves the right to establish the employment relationship with the Executive directly with the Corporation or with any of its affiliates or subsidiaries, or to change such employment relationship over time, as it deems necessary or appropriate to comply with legal requirements or for ease of administration of employee benefits programs or other matters.

1.03 Notwithstanding 1.02, the Corporation acknowledges and agrees that the Executive’s principal residence is and shall remain Mississauga, Ontario, Canada.

**Term of Agreement**

1.04 The Corporation hereby agrees to employ the Executive and the Executive hereby accepts employment, in accordance with the terms and conditions of this Agreement, commencing on September 3, 2008 (the “Employment Commencement Date”). The period of the Executive’s employment under this Agreement will be referred to as the “Employment Term.” Subject to the Corporation’s obligation to provide severance benefits and the parties’ obligation to provide a Notice of Termination (as defined below), the Executive and the Corporation acknowledge that this employment relationship may be terminated at any time and for any or no cause or reason at the option of either the Executive or the Corporation.

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## ARTICLE TWO – COMPENSATION

### Base Salary

2.01 As of the Employment Commencement Date, the Executive’s annualized base salary will be \$410,000 (USD), payable in accordance with the Corporation’s normal payroll practices for employees generally, and will be subject to annual review in accordance with the Corporation’s normal review process for other similarly situated senior executives. The Executive’s base salary shall be converted and paid in Canadian currency. The conversion into Canadian currently shall be made at the beginning of every quarter at a rate equal to the average exchange rate for the previous quarter (as furnished by the Controller of the Corporation).

### Incentive Compensation

2.02 The Executive will be eligible to participate in the Corporation’s short term annual incentive compensation plan as such plan may be amended from time to time (the “Short Term Incentive Plan”) in accordance with the terms of the Short Term Incentive Plan. For the Executive’s year of hire, the Executive’s target will be fifty percent (50%) of the Executive’s annual base salary.

### Equity Compensation

2.03 Eligibility and Terms.

The Executive will be eligible to participate in the Corporation’s equity compensation plan, as such plan may be amended from time to time (the “Equity Compensation Plan”), in accordance with the terms of the Equity Compensation Plan, except as may be otherwise indicated in this Agreement. The Executive’s annual target under the Equity Compensation Plan shall be 75,000 stock options and 6,250 Restricted Share Units (“RSUs”), or a substantially equivalent award. The ECP awards for the 2008 plan year will not be prorated.

### Employee Benefits

2.04 During the Employment Term, the Executive will be eligible to participate in employee benefit plans and programs that are offered to the Corporation’s other similarly-situated senior executives in accordance with the terms of such plans as they may change from time to time. Nothing in this Agreement shall preclude the Corporation or any affiliate of the Corporation from terminating or amending any employee benefit plan or program from time to time after the Employment Commencement Date.

**Expenses**

2.05 The Executive shall be reimbursed for reasonable out of pocket business expenses, including travel and entertainment expenses, actually and properly incurred by the Executive in the course of performing the Executive’s services hereunder, upon furnishing to the Corporation reasonable supporting statements and vouchers; provided, however, that in any financial year in which the Corporation has provided to the Executive an approved budget, such expenses must not exceed the amount so budgeted without the prior written approval from the CEO.

**Vacation**

2.06 The Executive will be eligible for five (5) weeks of vacation annually, to be taken in accordance with the terms of the Corporation’s Vacation Policy, without regard to any lesser amount of vacation time set forth therein. Notwithstanding the foregoing, the Executive’s eligibility for vacation in the year of hire will be pro-rated in the manner specified in the Corporation’s Vacation Policy.

**ARTICLE THREE – TERMINATION AND RESIGNATION**

**Involuntary Termination - Either By The Corporation Without Cause or By The Executive For Good Reason**

3.01 If the Executive incurs an involuntary termination from employment with the Corporation on account of a termination by the Corporation without Cause or by the Executive for Good Reason, then, in addition to any benefits or compensation accrued, earned and due to the Executive but not yet paid as of the date that is designated by the Corporation or the Executive, as applicable, as the last day of the Executive’s employment or term of office with the Corporation (the “Termination Date”), the Executive will be eligible for the severance payments and benefits as described in this Section 3.01; provided that (i) the Executive continues to comply with the Restrictive Covenants (as defined below); and (ii) the Executive executes, and does not revoke, a written waiver and release of all claims, demands and causes of action against the Corporation and related parties in a form prescribed by the Corporation, as limited by Section 3.09 (“Release”):

- (a) The Executive will be paid a lump sum severance payment within 60 days of the Executive’s Termination Date, equal to one (1) times the Executive’s base salary (calculated using the Executive’s highest annual base salary in the three years prior to the Executive’s Termination Date) plus one (1) times the Executive’s target level of annual incentive compensation for the year prior to the year in which the Executive’s Termination Date occurs;
- (b) The Executive will be entitled to a pro-rated portion of the Executive’s target level of annual incentive compensation () for the year in which the Executive’s Termination Date occurs, based on the number of months (rounded to the next highest number for a partial month) of the calendar year elapsed prior to the Executive’s

Termination Date and calculated and paid in accordance with the terms of the Corporation’s Short Term Incentive Plan; and

(c) Until the earlier of (i) the end of the one (1) year period following the Executive’s Termination Date, or (ii) the date, or dates, the Executive is eligible to receive benefits under the same type of plan of a subsequent employer (the “Benefit Period”), the Corporation will pay to the Executive a monthly payment on the first payroll date of each month equal to the cost of continued medial and dental coverage for the Executive and the Executive’s covered dependents under the medical and dental plans of the Corporation less the amount that the Executive would be required to contribute for medical and dental coverage if the Executive were an active employee. These payments will commence on the Corporation’s first payroll date after the Executive’s Termination Date and will continue until the end of the Benefit Period (but not longer than the Benefit Period).

**Involuntary Termination By The Corporation For Cause Or Voluntary Resignation Without Good Reason**

3.02 If the Executive is involuntarily terminated by the Corporation for Cause or the Executive voluntarily resigns from employment without Good Reason, then the Executive will forfeit the Executive’s right to receive any salary, Short Term Incentive Plan compensation, Equity Compensation Plan compensation or other compensation that has not been fully accrued at the time the Executive’s employment terminates; provided, however, that the Executive will be entitled to receive any benefits or compensation accrued, earned and due to the Executive but not yet paid as of the Executive’s Termination Date.

**Death or Disability**

3.03 The Executive’s employment will terminate automatically upon the Executive’s death. The Corporation may terminate the Executive’s employment if illness, disease, or physical or mental incapacity render the Executive generally incapable of performing the Executive’s duties or unfit to advance or represent the Corporation on a daily basis for a period of twelve (12) consecutive months and within such twelve (12) months, the Executive fails to produce to the Corporation a medical opinion indicating a reasonable time for the return of the Executive to the full-time assumption of the Executive’s past duties and responsibilities. Nothing herein is intended to circumvent or abridge the Corporation’s short-term disability policy or long-term disability plan. In the event of termination pursuant to the terms of this Section 3.03, the Executive or the Executive’s estate, as applicable, will be entitled to receive any salary, benefits or other amounts accrued, earned and due to the Executive but not yet paid as of the Executive’s Termination Date.

**Cause**

3.04 For purposes of this Agreement, Cause includes:

- (a) conviction of the Executive, or entering of a guilty plea or a plea of no contest by the Executive, with respect to, a felony, any crime involving fraud, larceny or embezzlement or any other crime involving moral turpitude which subjects, or if generally known, would damage the business interests or reputation of the Corporation or any of its affiliates;
- (b) any act of fraud, misappropriation, material dishonesty, embezzlement or similar conduct involving the Corporation or any affiliates;
- (c) a material breach by the Executive of the Executive's duties hereunder (other than as a result of incapacity due to physical or mental impairment) which is demonstrably willful and deliberate on the part of the Executive or which is committed in bad faith or without reasonable belief that such breach is in the best interests of the Corporation;
- (d) a material breach by the Executive of the Executive's duties hereunder (other than as a result of incapacity due to physical or mental impairment), except as identified in Section 3.04(c) above, which breach is not remedied by the Executive within 30 days after receipt of written notice from the Corporation specifying such breach; or
- (e) the Executive's failure to comply in any material way with any of the provisions of this Agreement.

**Good Reason**

3.05 For purposes of this Agreement, a voluntary resignation by the Executive will be deemed to be a termination for Good Reason if:

- (a) The Corporation makes: (i) any assignment to the Executive of any duties which are materially inconsistent with the Executive's position; (ii) any material reduction in the Executive's authority, responsibilities or status; or (iii) a material reduction to the Executive's base salary;
- (b) The Executive notifies the Corporation in writing of the Executive's belief that the Corporation has taken an action identified in Section 3.05(a) within thirty (30) days of the event at issue;
- (c) The Corporation has not remedied the situation within thirty (30) days after receipt of written notice from the Executive; and
- (d) The Executive provides a Notice of Termination within thirty (30) days after the Corporation's opportunity to remedy the situation has expired.

**Change in Control**

3.06 (a) The Corporation shall provide the payments and benefits described in Section 3.06(b) below only if: (i) the Executive continues to comply with the Restrictive Covenants (as such term is defined below); and (b) the Executive executes, and does not revoke, a Release (as defined above).

(b) Upon a Change in Control (as defined below), and an involuntary termination of the Executive's employment either by the Corporation without Cause or by the Executive for Good Reason, which termination occurs within a period of twelve (12) months following the Change in Control, the Corporation shall provide to the Executive, in addition to any benefits or compensation accrued, earned and due to the Executive but not yet paid as of the Executive's Termination Date, but in lieu of any payments or benefits to which the Executive may be entitled under Section 3.01 above, (a) a lump sum severance payment of two (2) times the Executive's base salary (calculated using the Executive's highest annual base salary in the three years prior to the Executive's Termination Date) plus two (2) times the Executive's target level of annual incentive compensation under the Short Term Incentive Plan for the year prior to the year in which the Executive's Termination Date occurs, payable within thirty (30) days of the Executive's Termination Date and, (b) any unvested equity compensation awards held by the Executive shall automatically accelerate and become one hundred percent (100%) vested and, as applicable, exercisable, as of the Executive's Termination Date.

(c) For the purpose of this Section 3.06, "Change in Control" means the happening of any of the following events:

- (i) the completion of a transaction pursuant to which (A) the Corporation goes out of existence or (B) any person, or any Associate (as such terms defined in National Instrument 45-106 - *Prospectus and Registration Exemptions*, as amended from time to time, or such other successor rules, instruments or policies from time to time of Canadian provincial securities regulatory authorities which may govern trades of securities to employees, officers, directors or consultants ("NI45-106")) or Related Entity (as such term is defined in NI45-106) of such person (other than the Corporation, any trustee or other fiduciary holding securities under any employee benefit plan of the Corporation or a Related Entity, or any company owned, directly or indirectly, by the shareholders of the Corporation in substantially the same proportions as their ownership of common shares of the Corporation) hereafter acquires the direct or indirect "beneficial ownership" (as defined by the *Canada Business Corporations Act*) of securities of the Corporation representing 50% or more of the aggregate voting power of all of the Corporation's then issued and outstanding securities;



- (ii) the lease, exchange, license, sale or other similar disposition of all or substantially all of the Corporation's assets in one transaction or a series of related transactions to a person, or any Associate or Related Entity of such person (other than an Associate or Related Entity of the Corporation, any trustee or other fiduciary holding securities under any employee benefit plan of the Corporation or a Related Entity, or any company owned, directly or indirectly, by the shareholders of the Corporation in substantially the same proportions as their ownership of common shares of the Corporation);
- (iii) the dissolution or liquidation of the Corporation except in connection with the distribution of assets of the Corporation to one or more persons which were Related Entities prior to such event;
- (iv) during any period of 24 consecutive months beginning on or after the date of the Equity Compensation Plan, the persons who were members of the Board immediately before the beginning of such period (the "Incumbent Directors") cease (for any reason other than death) to constitute at least a majority of the Board or the board of directors of any successor to the Corporation, provided that any director who was not a director as of the date of the Equity Compensation Plan shall be deemed to be an Incumbent Director if such director is elected to the Board by, or on the recommendation of or with the approval of, at least two-thirds of the directors who then qualified as Incumbent Directors either actually or by prior operation of the foregoing unless such election, recommendation or approval occurs as a result of an actual or threatened election contest or other actual or threatened solicitation of proxies or contests by or on behalf of a person other than a member of the Board; or
- (v) a merger, amalgamation, arrangement or consolidation of the Corporation with any other corporation other than a merger, amalgamation, arrangement or consolidation that would result in the voting securities of the Corporation outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 50% of the combined voting power of the voting securities of the Corporation or such surviving entity outstanding immediately after such merger, amalgamation, arrangement or consolidation; provided, however, that a merger, amalgamation, arrangement or consolidation effected to implement a recapitalization of the Corporation (or similar transaction) in which no person (other than those covered by the exceptions in (i) above) acquires more than 50% of the combined

voting power of the Corporation's then outstanding securities shall not constitute a Change in Control.

### **Notice of Termination**

3.07 Any termination of employment by the Corporation or by the Executive shall be communicated by notice of termination to the other party hereto given in accordance with Section 5.09 (a "Notice of Termination"). For purposes of this Agreement, Notice of Termination means a written notice which (a) identifies the specific termination provision in the Agreement relied upon, and (b) to the extent applicable, sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive's employment under the provision identified, and (c)(i) in the case of a termination by the Corporation, specifies the Executive's Termination Date which shall not be less than fifteen (15) nor more than sixty (60) days after the giving of such notice; or (ii) in the case of a termination by the Executive without Good Reason, shall not be less than ninety (90) days after the giving of such notice.

### **Payments After Termination of Employment**

3.08 Payments made by the Corporation to the Executive pursuant to this Agreement after the Executive's Termination Date will be made by courier delivery service to the last address provided for notices to the Executive pursuant to Section 5.09 of this Agreement.

### **Release**

3.09 The Release identified in Sections 3.01 and 3.06 will not require the Executive to release any right the Executive may have to indemnification as an officer, director or employee of the Corporation (or any affiliate thereof) pursuant to the articles of incorporation or bylaws (or other governing instruments) of the Corporation (or any affiliate thereof) or any vested benefits to which the Executive may be entitled under any employee benefit plan.

## **ARTICLE FOUR – EXECUTIVE'S OBLIGATIONS**

### **Confidentiality**

4.01 The Executive agrees to be bound by the terms of the confidentiality agreement (the "Confidentiality Agreement") dated the date hereof, which Confidentiality Agreement has been read, understood and executed by the Executive and is attached hereto as Schedule A and which is incorporated by reference into this Agreement. In the event of a conflict between the terms of this Agreement and the terms of the Confidentiality Agreement, the terms of this Agreement shall govern.

**Non-Competition**

4.02 The Executive acknowledges that the Corporation currently conducts Business activities in, among other jurisdictions, Canada and the United States (the “Territory”). Accordingly, the Executive hereby agrees and covenants that the Executive shall not, during the term of this Agreement, and for a period of twelve (12) months following the Executive’s Termination Date for involuntary termination by the Corporation for Cause, voluntary termination by the Executive, or a termination following a Change in Control to which the provisions of Section 3.06 apply, directly or in any manner whatsoever, including without limitation, either individually, in partnership, jointly or in conjunction with any other individual, partnership, corporation, unincorporated organization, trust, joint venture, the Crown or any agency or instrumentality thereof of any juridical entity (a “Person”), in the Territory:

- (a) carry on, be engaged in, take part in or be a party to any undertaking, directly or indirectly; or
- (b) consult, advise, render services to lend money, guarantee the debts or obligations of or permit the use of the Executive’s name or any part thereof by any Person with respect to a business carried on by that Person,

which actively competes directly with the Corporation’s business objects or could be judged to be causing or potentially be causing through competitive acts, material harm to the Corporation.

For the purposes of this Section 4.02, as of the date of this Agreement, a Person shall include, but not be limited to, Abbott Laboratories, Andrx Group, Apotex Inc., Bayer Inc., Elan Corporation, Ethypharm S.A., Flamel Technologies, S.A., Forest Laboratories Inc., Johnson & Johnson, King Pharmaceuticals, Inc., Lundbeck Canada Inc., Pfizer Inc., Novopharm Limited, GlaxoSmithKline, Reliant Pharmaceuticals, Inc., Teva Pharmaceutical Industries Ltd., Wyeth Pharmaceuticals and any of their affiliates and subsidiaries which are in the same or a competitive business and, in addition, shall include any pharmaceutical entity with which the Corporation has a product(s) licensing agreement, any entity in which the Corporation has a minority equity interest and any entity with which the Corporation is at the time actively negotiating a commercial relationship.

During the continuance of the Executive’s employment, the Executive shall not (other than solely as a holder of not more than three per cent (3%) of the issued and outstanding voting shares of any public corporation or as a shareholder of the Corporation, without the written approval of the board of directors of the Corporation, directly or indirectly, either individually or in partnership or in conjunction with any Person or Persons, firm, association, syndicate, company or corporation as principal, agent, director, manager, servant, shareholder or in any other manner whatsoever,) carry on or be engaged in or be concerned with or interested in any business or vocation whatsoever which would be reasonably judged to be competitive to the

Business or would impede the Executive in performing the Executive’s duties as outlined herein.

**Non-Solicitation**

4.03 The Executive hereby covenants and agrees that the Executive shall not, during the term of this Agreement and for a period of twelve (12) months thereafter, solicit or contact, either directly or indirectly, any of the Customers, Prospective Customers or any suppliers of the pharmaceutical compounds used by the Corporation on the Executive’s own behalf, or on behalf of any entity, by which the Executive is hired or retained. “Customers” means customers of the Corporation with which the Executive had personal contact or had supervision over the efforts of those who had direct personal contact with such customers during the last two (2) years of the Employment Term. “Prospective Customer” means any organizations or entities which had been actively contacted and solicited for their business by representatives of the Corporation, and with whom the Executive had contact, both during the last two (2) years of the Employment Term.

**Non-Hiring**

4.04 The Executive hereby covenants and agrees that the Executive shall not, during the term of this Agreement and for a period of twelve (12) months thereafter, either directly or indirectly, solicit or endeavour to solicit from the Corporation any of its employees, and shall not for a period twelve (12) months from the end of the term of this Agreement hire any of the foregoing on the Executive’s own behalf or on behalf of any entity for which the Executive is hired or retained. Notwithstanding the foregoing, the Executive shall not be considered in breach of this section should the Executive solicit for hiring such Executive’s Administrative Assistant.

**Injunctive Relief**

4.05 The Executive acknowledges and agrees that the agreements and covenants in this Article Four are essential to protect the business and goodwill of the Corporation and that a breach by the Executive of the covenants in Sections 4.01, 4.02, 4.03 and 4.04 hereof could result in irreparable harm to the Corporation for which the Corporation could not be adequately compensated in damages and that, accordingly, the Corporation may have no adequate remedy at law if the Executive breaches such provisions. Consequently, if the Executive breaches any of such provisions, the Corporation shall have, in addition to and not in lieu of, any other rights and remedies available to it under any law or in equity, the right to obtain injunctive relief to restrain any breach or threatened breach thereof and to have such provisions specifically enforced by any court of competent jurisdiction.

**Severability of Covenants in Full or in Part**

4.06 The parties acknowledge that the provisions of Article Four hereof (the “Restrictive Covenants”) are reasonable and valid in geographic and temporal scope

and in all other respects. If any court of competent jurisdiction determines that any of the Restrictive Covenants or any part thereof, is or are invalid or unenforceable, the Executive and the Corporation agree that the remainder of the Restrictive Covenants shall not be affected by the deemed invalid portions.

**Assignment of IP**

4.07 The Executive shall disclose to the Corporation any and all Intellectual Property (as defined in the Confidentiality Agreement) which the Executive may make solely, jointly, or in common with other employees during the term of the Executive's employment within the Corporation and which relates to the business. Any Intellectual Property coming within the scope of the business made and/or developed by the Executive while in the employ of the Corporation, whether or not conceived or made during regular working hours, and whether or not the Executive is specifically instructed to make or develop same, shall be for the benefit of the Corporation and shall be regarded as work made in the course of employment for the purposes of the *Copyright Act* (Canada). The Executive shall assign, set over and transfer to the Corporation the Executive's entire right, title and interest in and to any and all of the Intellectual Property and to all letters patent and applications for letters patent which may be, or may have been filed and/or issued by or to the Executive or on the Executive's behalf and the Executive agrees to execute and deliver to the Corporation any and all instruments necessary or desirable to accomplish the foregoing and, in addition, to do all lawful acts which may be necessary or desirable to assist the Corporation to obtain and enforce protection of the Intellectual Property. To the extent of any rights Executive may have with respect to the Intellectual Property which are not assignable, including but not limited to moral rights, the Executive hereby waives same. The Executive will execute and deliver to the Corporation or its successors and assigns, such other and further assignments, instruments and documents as the Corporation from time to time reasonably may request for the purpose of establishing, evidencing, and enforcing or defending its complete, exclusive, perpetual, and world-wide ownership of all rights, titles, and copyrights, in and to the Intellectual Property, and Executive constitutes and appoints the Corporation as agent and attorney-in-fact, with full power of substitution, to execute and deliver such assignments, instruments, documents as Executive may fail to or refuse to execute and deliver, this power and agency being coupled with an interest and being irrevocable.

**Standards of Business Conduct**

4.08 The Executive acknowledges and agrees that the Executive has read and understood and agrees to be bound by the Corporation's Standards of Business Conduct, which is attached hereto as Schedule B.

**No Conflicting Obligations**

4.09 The Executive warrants to the Corporation that:

- (a) the performance of the Executive’s duties as an employee of the Corporation will not breach any agreement or other obligation to keep confidential the Confidential Information of any third party; and
- (b) the Executive is not bound by any agreement with or obligation to any third party that conflicts with the Executive’s obligations as an employee of the Corporation.

**ARTICLE FIVE - INTERPRETATION AND ENFORCEMENT**

**Section 409A**

5.01 This Agreement shall be interpreted to avoid any penalty sanctions under Internal Revenue Code section 409A. If any payment or benefit cannot be provided or made at the time specified herein without incurring sanctions under section 409A, then such benefit or payment shall be provided in full at the earliest time thereafter when such sanctions will not be imposed.

Notwithstanding any provision of this Agreement to the contrary, if the Executive is a key employee of a publicly traded corporation under section 409A at the time of the Executive’s separation from service and if payment of any amount under this Agreement is required to be delayed for a period of six (6) months after separation from service pursuant to section 409A, payment of such amount shall be delayed as required by section 409A, and the accumulated postponed amount shall be paid in a lump sum payment within ten (10) days after the end of the six-month period. If the Executive dies during the postponement period prior to the payment of postponed amount, the amounts withheld on account of section 409A shall be paid to the personal representative of the Executive’s estate within 60 days after the date of the Executive’s death. A “key employee” shall mean an employee who, at any time during the twelve (12) month period ending on the identification date, is a “specified employee” under section 409A of the Internal Revenue Code, as determined by the Board. The determination of key employees, including the number and identity of persons considered key employees and the identification date, shall be made by the Board in accordance with the provisions of sections 416(i) and 409A and the regulations issued thereunder.

For purposes of section 409A, the right to any series of installment payments under this Agreement shall be treated as a right to a series of separate payments. All reimbursements and in kind benefits provided under this Agreement shall be made or provided in accordance with the requirements of section 409A, including, where applicable, the requirement that (i) any reimbursement shall be for expenses incurred during the Executive’s lifetime (or during a shorter period of time specified in this Agreement), (ii) the amount of expenses eligible for reimbursement, or in kind benefits, provided during a calendar year may not affect the expenses eligible for reimbursement, or in kind benefits to be provided, in any other calendar year, (iii) the reimbursement of an eligible expense will be made on or before the last day of the calendar year following the year in which the expense is incurred, and (iv) the right to

reimbursement or in kind benefits is not subject to liquidation or exchange for another benefit.

**Independent Legal Advice**

5.02 The Executive agrees to the terms and conditions of this Agreement having had the opportunity to receive independent legal advice, for which the Executive has been reimbursed by the Corporation.

**Severability**

5.03 The parties further acknowledge that if any provision contained in this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof shall continue in full force and effect.

**Sections and Headings**

5.04 The division of this Agreement into Articles and Sections and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Agreement.

**Number and Gender**

5.05 In this Agreement words importing the singular number only shall include the plural and vice versa and words importing the masculine gender shall include the feminine and neuter genders and vice versa.

**Entire Agreement**

5.06 This Agreement and all the Schedules hereto constitute the entire Agreement between the parties with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the parties with respect thereto. There are no representations, warranties, forms, conditions, undertakings or collateral Agreements, express, implied or statutory between the parties other than as expressly set forth in this Agreement.

**Amendments and Waivers**

5.07 No amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by both parties. No waiver of any breach of any term or provision of this Agreement shall be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided in written waiver, shall be limited to the specific breach waived.

**Governing Law**

5.08 This Agreement shall be deemed to have been made in and shall be construed in accordance with the laws of the Province of Ontario and all legal proceedings contemplated in this Agreement shall be brought in, and be governed by, the laws of the Province of Ontario, without regard to principles of conflicts of law.

**Notices**

5.09 Any demand, notice or other communication (hereinafter in this Section 5.09 referred to as a “Communication”) to be made or given in connection with this Agreement shall be made or given in writing and may be made or given by personal delivery addressed respectively to the recipients:

To the Executive:

Margaret Mulligan  
\* \* \*

To the Corporation:

7150 Mississauga Road  
Mississauga, ON L5N 8M5  
Attn: Chief Executive Officer

or such other address or individual as may be designated by notice by either party to the other. Any communication made or given by personal delivery shall be conclusively deemed to have been given on the day of the actual delivery thereof.

**Benefit of Agreement**

5.10 This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, legal personal representatives, successors and assigns.

**Assignment**

5.11 The Executive may not assign the Executive’s rights or obligations under this Agreement without the prior written consent of the Corporation which consent may be unreasonably withheld. The Corporation may unilaterally assign this agreement to an affiliate without consent but on notice to the Executive.

**Execution of Agreement**

5.12 The Executive acknowledges that the Executive has executed this Agreement freely; that the Executive has reviewed this Agreement thoroughly; that the Executive



agrees with its contents; and that the terms herein are reasonable for the fair protection of both the Executive and the Corporation.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the dates identified below at **Mississauga, Ontario**:

BIOVAIL CORPORATION

EXECUTIVE

By: /s/ Mark Durham  
Name: Mark Durham  
Title: Senior Vice President  
Corporate Human Resources

/s/ Margaret Mulligan  
Margaret Mulligan

Date: August 21, 2008

Date: August 21, 2008

“SCHEDULE A”

BIOVAIL CORPORATION  
(and its Subsidiaries, Divisions, and Affiliates)

CONFIDENTIALITY AGREEMENT

As an employee of Biovail Corporation (the “Corporation”), I acknowledge that I may acquire or have disclosed to me by the Corporation or by any affiliate, associate, or technology partner of the Corporation, either directly or indirectly, in writing, conversation, or through observation, various information about the business of the Corporation which is not in the public domain and which the Corporation does not wish to be divulged to other persons, companies, or third parties. I further understand that the Corporation’s Confidential Information (as defined below) is essential to its competitive advantage and to its ability to be financially viable. I further understand that the unauthorized disclosure of such Confidential Information may cause the Corporation irreparable injury that may not be rectified in the future.

Therefore, as a condition and in consideration of my employment with the Corporation, I understand and agree that while employed with the Corporation and for a period of time thereafter (as more particularly described below), I am required to hold confidential and not to disclose to anyone without the written authority from the Corporation any knowledge, information, or facts concerning the Corporation’s:

- research and development activities
- technological plans, advances, applications and inventions
- technical specifications, designs and plans
- materials and sources of supply
- discoveries, inventions, trade secrets, patents
- financial affairs, contracts, licensing agreements, customer lists, pricing practices, marketing strategies
- any other information regarding the Corporation, its products and their development which is not in the public domain

All of the foregoing shall hereinafter collectively be referred to as the “Confidential Information”.

For a period commencing on the date I commenced my employment with the Corporation and ending ten (10) years from the date of the termination of my employment with the Corporation, I shall keep confidential any and all Confidential Information which has been disclosed to me in writing or through oral communications and shall not divulge in any manner whatsoever any such information to any person, firm, corporation, partnership or similar entities without the Corporation’s written authority.

Should I breach or threaten to breach this Agreement, I shall be liable to the Corporation in equity and/or in law for damages that may be suffered by the Corporation as a result of the breach or threatened breach. I understand that a breach of this Agreement may result in irreparable harm to the Corporation such as to warrant the entitlement by the Corporation to an interlocutory and/or permanent injunction or other equitable relief against me, and an award of damages including punitive, exemplary and aggravated damages, together with legal costs and expense and I specifically agree that I will not argue the adequacy of damages or the Corporation’s ability to seek equitable relief in any such proceeding.

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All Confidential Information supplied by the Corporation to me during the course of my employment and any rights related thereto, including but not limited to rights of know how, patent, trademark and copyright, with respect to existing products or those that are developed during or after my employment, are and remain the exclusive and absolute property of the Corporation.

I shall not, except as and to the extent required to enable me to carry out my duties with the Corporation, make any copies or reproduce the Confidential Information nor shall I remove or cause to have removed from the premises of the Corporation during my employment any Confidential Information unless required to do so in order to fulfill my duties with the Corporation. Such copies or reproductions shall be strictly subject to the terms and conditions of this Agreement. I shall take such steps as are necessary to restrict access to and protect the confidentiality of such copies or reproductions of the Confidential Information. Any such copies or reproductions made shall become the exclusive and absolute property of the Corporation.

Upon request of the Corporation, I agree to immediately surrender to the Corporation all documentation and information - notes, drawings, recordings, manuals, letters, correspondence, computer data and programs, records, books or any other materials relating to the Confidential Information which is in my possession without my retaining any copies or duplicates thereof.

I agree that this Agreement shall be construed in accordance with the laws of the Province of Ontario and I agree that the applicable courts of the Province of Ontario shall have exclusive jurisdiction with respect to any dispute or breach herein and I hereby attorn to the exclusive jurisdiction of the courts of the Province of Ontario.

This Agreement shall enure to the benefit of and shall be binding upon my successors, heirs and attorneys.

The disclosure or divulging of any Confidential Information contrary to this Agreement, or the violation of this Agreement in any way shall result in my immediate termination of employment, in addition to which I may be subject to criminal prosecution and civil liability.

I acknowledge and agree that I have executed this Agreement freely and with the benefit of independent legal advice and the terms herein are fair and reasonable.

I acknowledge and agree to the foregoing, effective the 21<sup>st</sup> day of August, 2008.

Employee Signature: /s/ Margaret J. Mulligan

Witness  
Signature: /s/ Genevieve Carasco

## **“SCHEDULE B”**

### **BIOVAIL CORPORATION (and its Subsidiaries, Divisions, and Affiliates)**

#### **STANDARDS OF BUSINESS CONDUCT**

Biovail Corporation (“Biovail”), together with its subsidiaries, divisions and affiliates, places great importance on conducting its business activities in an ethical and appropriate manner. Each employee, officer and director is a reflection of Biovail, and as such, the activities and actions of every individual within Biovail must be undertaken in accordance with a high standard of ethics and integrity. As such, Biovail expects each employee, officer and director to comply with, and adhere to, these Standards of Business Conduct (the “Standards”).

#### **CONFLICTS OF INTEREST**

Employees, officers and directors of Biovail must avoid situations where their private interests could conflict with, or even appear to conflict with, the interests of Biovail and its stockholders.

Conflicts of interest arise when an individual’s position or responsibilities with Biovail present an opportunity for personal gain apart from the normal rewards of employment. They also arise when the private interests of an employee, officer or director are inconsistent with those of Biovail or create conflicting loyalties. Such conflicting loyalties can cause an employee, officer or director to give preference to private interests in situations where corporate responsibilities should come first. Employees, officers and directors must perform the responsibilities of their positions on the basis of what is in the best interests of Biovail and free from the influence of personal considerations and relationships.

In the event that any potential conflict of interest arises, the individual involved must immediately notify his or her immediate supervisor. If such individual is an officer or director of Biovail, the Executive Chairman (“Chairman”), Chief Executive Officer (“CEO”) and the General Counsel, or in the absence of a General Counsel the Vice President, Associate General Counsel (“SLO”) of Biovail must also be immediately notified and no further action may be taken unless authorized in writing by the Chairman and/or the CEO.

While it is not possible to detail every situation where conflicts of interest may arise, the following policies cover the areas that have the greatest potential for conflict:

##### **A. Trading in Biovail Securities and Use of Inside Information**

There are numerous laws in Canada and the United States (federal, provincial and state laws), to regulate transactions in corporate securities (stocks and bonds) and the securities industry. Violation of these laws may lead to civil and criminal actions against the individual and Biovail.

- i. Any employee, officer, director or other insider or anyone (family member, etc.) who knows of any material information (as defined below) about Biovail that has not been disclosed to the public (commonly known as “insider information”) may not engage in any transaction in Biovail’s securities until such information is disclosed to the public (whether or not there is a formal trading “black out” in place). This rule applies equally to transactions in securities of other companies. In addition, employees, officers and directors must not provide insider information to others (“tippees”) who may trade in either the securities of Biovail or the securities of other companies.

“Material information” is any information relating to the business and affairs of Biovail that would reasonably be expected to result in a change in the market price or value of Biovail’s securities. Generally speaking, material information is a matter to which an average prudent investor should be reasonably informed before a decision is made to buy or sell the security involved. Examples of such information would include annual or quarterly financial results; significant changes in management; significant shifts in operating or financial circumstances, such as major write-offs and changes in earnings projections; borrowing of a significant amount of funds; acquisitions of, or mergers with, other companies; significant new contracts or loss of business; and major new products, services or patents. This list provides examples only; many other matters may be considered material information.

Employees, officers, directors and other insiders who have questions that relate to the sale or purchase of a security under circumstances where these laws and regulations might apply should consult with the SLO, who may refer them to outside legal counsel.

- ii. In addition to the prohibition against the use of “insider” information which applies to all employees, officers and directors, the various securities laws that apply in the jurisdiction and countries in which Biovail does business place definite restrictions on the manners in which employees, officers and directors of Biovail, and their family members, their associates, etc., may engage in transactions involving the securities of Biovail. Employees, officers and directors shall comply with all laws, rules and regulations that prohibit or restrict insider trading.

Whenever there is any doubt as to whether any transactions involving Biovail’s securities would violate securities laws, employees, officers and directors should consult the SLO of Biovail. Within the framework of the foregoing policies and laws, the final decision of each employee, officer or director, with respect to securities transactions, must be his or her own.

- iii. Employees, officers, directors and other insiders shall maintain the confidentiality of information entrusted to them by Biovail or its customers (except where disclosure is authorized or legally mandated) and shall not, without proper authority, give or release to anyone not employed by Biovail, data or information of a confidential nature concerning Biovail. Disclosure of confidential information can be harmful to Biovail and could be the basis for legal action against Biovail and the individual disclosing the information. Confidential information includes all non-public information that might be of use to competitors, or harmful to Biovail or its customers, if disclosed.

- iv. Employees, officers, directors and other insiders shall not acquire any property, security or any business interest that they know Biovail has an interest in acquiring. Moreover, based on such advance information, employees, officers and directors shall not acquire any property, security or business interest for speculation or investment.
- v. Employees, officers, directors and other insiders must follow Biovail policies regarding “Blackout Periods” when Biovail’s stock may not be traded. Such policies will be communicated by the SLO from time to time and must be adhered to by all employees, officers and directors.

**B. Personal Financial Interest**

Employees, officers and directors should avoid any outside financial interests that might influence decisions or actions they have been empowered to make on behalf of Biovail. An employee, officer or director performing duties in conformity with this policy shall not have a financial interest in, indebtedness to, or a personal contract or understanding with any concern with which he or she does business on behalf of Biovail.

- i. Employees, officers or directors whose corporate duties bring them into business dealings with an organization in which they, or a member of their family, have a financial interest or to which they, or a member of their family, have any indebtedness, or a business employing a relative or close friend, must immediately notify their immediate supervisor. The employee, officer or director, in turn, cannot complete a transaction on behalf of Biovail with this organization unless properly authorized in writing from their supervisor after full disclosure of the relationship.
- ii. An employee, officer or director may not perform work or services, outside the course of their normal employment by Biovail, for an organization doing or seeking to do business with Biovail without appropriate prior written approval of their supervisor or the Board of Directors. An employee, officer or director may not be a director, officer, partner or consultant of an organization doing or seeking to do business with Biovail, nor may any of them permit their names to be used in any way indicating a business connection with such an organization, without appropriate prior written approval of their supervisor or the Board.
- iii. An employee, officer or director shall not accept for himself or herself, or for the benefit of any relative or friend, any payments, loans, services, favors involving more than ordinary social amenity, or gifts of more than nominal value from any organization doing or seeking to do business with Biovail.
- iv. The requirement of freedom from conflict of interest applies with equal force to the spouse, children and other close relatives of each employee, officer and director. This policy applies to all employees, officers and directors of Biovail with respect to all of the affairs of Biovail.
- v. Employees, officers and directors shall not (a) take for themselves personally opportunities that are discovered through the use of corporate property, information or position; (b) use corporate property, information, or position for personal gain; (c) compete with Biovail. Employees, officers and directors owe a

duty to Biovail to advance its legitimate interests when the opportunity to do so arises.

- vi. Biovail may not make loans to any employee, officer or director.

#### **C. Outside Activities**

Employees, officers and directors should avoid outside employment or activities which would impair the effective performances of their responsibilities to Biovail, either because of excessive demands on their time, or because the outside commitments can be contrary to their obligations to Biovail

#### **D. Protection and Proper Use of Biovail's Assets**

All employees, officers and directors should protect Biovail's assets and ensure their efficient use. Theft, carelessness and waste have a direct impact on Biovail's profitability. All of Biovail's assets should be used only for legitimate business purposes.

#### **E. Fair Dealing**

Each employee, officer and director shall endeavor to deal fairly with Biovail's customers, suppliers, competitors and employees. None should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other unfair-dealing practice.

### **2. COMPETITIVE PRACTICES**

The management of Biovail firmly believes that fair competition is fundamental to continuation of the free-enterprise system. Biovail complies with, and supports, laws of all countries that prohibit restraints of trade, unfair practices, or abuse of economic power.

Biovail will not enter into arrangements that unlawfully restrict its ability to compete with other businesses, or the ability of any other business organization to compete freely with Biovail. Biovail policy also prohibits employees, officers and directors from entering into, or even discussing, any unlawful arrangement or understanding which may affect its pricing policies, terms upon which its products and services are sold, or which might be construed as dividing customers or sales territories with a competitor.

These principles of fair competition are basic to all Biovail operations. They are integral parts of the following sections that cover Biovail's dealings with suppliers, customers and public officials.

### **3. DEALING WITH SUPPLIERS**

Biovail is a valuable customer for many suppliers of goods, services and facilities. People who want to do business, or to continue to do business, with Biovail must understand that all purchases by Biovail will be made in accordance with its purchasing policy and exclusively on the basis of price, quality, service and suitability to Biovail's needs.



**A. Reciprocity**

Biovail considers reciprocity a harmful practice and a hindrance to assuring purchase of the best available materials or services at the lowest possible prices. It will not be practiced or allowed.

Suppliers of goods and services to Biovail will not be asked to buy goods and services from Biovail in order to become or continue as a supplier.

Biovail will not attempt to influence its suppliers to purchase from customers of Biovail. When Biovail makes purchases it will not favor firms who are customers of Biovail or any of its affiliates.

**B. “Kickbacks” and Rebates**

Purchases or sales of goods and services by Biovail must not lead to employees, officers or directors, or their families, receiving any type of personal kickbacks or rebates. Employees, officers, directors, and their families, must not accept any form of “under-the-table” payment.

**C. Receipt of Gifts and Entertainment**

Even when gifts and entertainment are exchanged out of the purest motives of personal friendship, they can be misunderstood. They can appear to be attempts to bribe Biovail’s employees, officers or directors into directing business of Biovail to a particular supplier. To avoid both the reality and the appearance of improper relations with suppliers or potential suppliers, the following standards will apply to the receipt of gifts and entertainment by employees, officers and directors of Biovail:

**Gifts**

- i) Employees, officers and directors are prohibited from soliciting gifts, gratuities, or any other personal benefit or favor of any kind from suppliers or potential suppliers. Gifts include not only merchandise and products but also personal services, and tickets to theatrical and sports events. Employees, officers and directors should exercise good judgment when accepting unsolicited gifts. Employees, officers and directors are prohibited from accepting gifts of money.
- ii) Employees, officers and directors may accept unsolicited non-money gifts provided:
  - (1) They are items of nominal intrinsic value; or
  - (2) They are advertising and promotional materials, clearly marked with Biovail or brand names of the giver.

- iii) Any gift of more than nominal intrinsic value must be reported to the SLO to determine whether it can be accepted. Some gifts may be perishable so as to make their return impractical. Supervisors can permit acceptance of such gifts, but should require employees, officers and directors to tactfully inform givers that such gifts are discouraged.
- iv) In the transaction of some international business, it is lawful and customary for business leaders in some countries to give unsolicited gifts to employees, officers or directors of Biovail. These gifts can be of more than nominal value. Moreover, under the circumstances, returning the gifts or payment for them may constitute an affront to the giver. In such cases, the gift must be reported to the SLO who may permit the retaining of the gifts.
- v) In all other instances where gifts cannot be returned or may adversely affect Biovail's continuing business relationships, the SLO must be notified. They can require employees, officers and directors to transfer ownership of such gifts to Biovail.

#### **Entertainment**

- i) Employees, officers and directors shall not encourage or solicit entertainment from any individual or company with whom Biovail does business. Entertainment includes, but is not limited to, activities such as dinner parties, theater parties, and sporting events.
- ii) From time to time employees, officers and directors may accept unsolicited entertainment, but only under the following conditions:
  - (1) The entertainment occurs infrequently;
  - (2) It arises out of the ordinary course of business;
  - (3) It involves reasonable, not lavish expenditures (the amounts involved should be ones employees, officers and directors are accustomed to normally spending for their own business or personal entertainment); and
  - (4) The entertainment takes place in settings that also are reasonable, appropriate, and fitting to employees, officers and directors, their hosts, and their business at hand.

#### **4. DEALINGS WITH CUSTOMERS AND POTENTIAL CUSTOMERS**

Employees, officers and directors must keep all dealings with customers and potential customers fair and above board. Biovail gets business and keeps it because of the quality of its goods and services. Biovail does not give unethical or illegal rebates, kickbacks, under-the-table payments, or other similar improper favors to customers or their representatives.

The boundary line between ethical and unethical competition, or legal and illegal conduct, is not always well defined, particularly in international activities where differing

local laws, customs, and practices come into play. Therefore, the following standards will serve as guides:

- a) All employees, officers and directors should make themselves aware of and fully comply with all laws, rules and regulations, whether federal, state, local or foreign, including laws governing relations with customers as well as competitors.
- b) All employees, officers and directors engaged in negotiations and contracts with foreign governments, the United States or any political subdivision thereof must also know and abide by the specific rules and regulations covering relations with such governments and their agencies.
- c) Employees, officers and directors may not give gifts to customers except items of nominal value, which fit the legal, normal, and customary pattern of Biovail's sales efforts for a particular market. Exceptions to this policy can occur in international trades where it can be legal, customary, and appropriate business practice to exchange gifts with customers. Only the CEO can authorize the giving, receiving, or exchanging of such gifts. Any gifts received by employees, officers or directors in such an exchange must be reported to the CEO for determination as to the disposition of the gifts.
- d) Entertainment for any customer must fit regular business practices. The place and type of entertainment and the money spent must be reasonable and appropriate.

**5. DEALING WITH PUBLIC OFFICIALS**

Domestic and foreign laws and regulations require Biovail to be in contact with public officials on a wide variety of matters. Employees, officers and directors who regularly make these contacts have special responsibilities for upholding Biovail's good name. The following standards relate to these special responsibilities:

- a) All employees, officers and directors who contact public officials must be familiar with lobbying laws and public disclosure requirements, particularly those that apply to registrations and filings.
- b) No employee shall make any form of payment, direct or indirect, to any public official as an inducement to procuring or keeping business or having a law or regulation enacted, defeated, or violated. This is bribery, pure and simple. It will not be tolerated.

It should be acknowledged that inherent in the current health-care regulatory environment, the definition of "form of payment" may include seemingly trivial gifts and/or favors (e.g. buying lunches, coffee, etc.).

- c) When not prohibited by law, employees, officers and directors are allowed to give to public officials gifts where the presentation and acceptance of gifts is an established custom and a normal business practice. All such gifts shall be of reasonable value and the presentation approved in advance by the CEO. Moreover, such gifts must be presented in a manner that clearly identifies Biovail and the occasion that warrants the presentation.

- d) Employees, officers and directors are also allowed to give public officials gifts in the form of product models and pictures provided the models and pictures are part of Biovail's general marketing and public relations programs (except as noted in clause (b) above).
- e) On special ceremonial occasions, officers of Biovail may publicly give gifts of more than nominal value to public institutions and public bodies. Such gifts can commemorate special events or milestones in Biovail's history.

These may be transmitted through public officials but the gifts are given to the public institutions and public groups they represent, not to the officials personally.

- f) From time to time employees, officers and directors may entertain public officials, but only under the following conditions:
  - i. It is legal and permitted by the entity represented by the official;
  - ii. The entertainment is not solicited by the public official;
  - iii. The entertainment occurs infrequently;
  - iv. It arises out of the ordinary course of business;
  - v. It does not involve lavish expenditures, considering the circumstances;
  - vi. The settings and types of entertainment are reasonable, appropriate and fitting to our employees, officers or directors, their guests, and the business at hand.

**6. POLITICAL ACTIVITIES AND CONTRIBUTIONS**

**A. Canada and the United States**

Employees, officers and directors who participate in partisan political activities must make every effort to ensure that they do not leave the impression that they speak or act for Biovail.

Biovail encourages its employees, officers and directors to participate in political activities in their own time and at their sole expense. No corporate action, direct or indirect, will be allowed that infringes on the right of any employee individually to decide whether, to whom, and in what amount, they will make personal political contributions. The same is true of volunteer political donations of personal service time, so long as it does not interfere with the working status of employees, officers or directors.

**B. Outside Canada and the United States**

No employees, officers and directors are permitted to use Biovail’s funds, facilities, or other assets, to support either directly or indirectly any political candidates or political parties, without advance authorization in writing from their immediate supervisor and the General Counsel. The policy of Biovail is that employees, officers and directors and employees should not participate in political activities in countries of which they are not nationals. However, such persons, of course, are free to participate in political activities in countries of which they are nationals in their own time and at their own expense.

**7. DISCLOSURE**

Biovail has formed a Disclosure Committee to promote consistent practices aimed at informative, timely and broadly disseminated disclosure of Material Information to the market, external stakeholder groups and employees in accordance with all applicable legal, regulatory and stock-exchange requirements.

It is essential that the Disclosure Committee be fully apprised of all material corporate developments to be able to determine whether there is information that should be publicly disclosed, and what the appropriate timing is for release of that information. In some cases, the Disclosure Committee may determine that the information should remain confidential. If that is the case, the Disclosure Committee will determine how that information will be controlled so that it is not inadvertently released. Therefore any employee who becomes aware of information that he/she believes might be material to Biovail and/or any of its affiliates and subsidiaries he/she should advise their manager or supervisor or a member of the Disclosure Committee. Current membership of the Disclosure Committee is posted on the Biovail.com website.

This applies throughout the year, but is particularly critical when annual or quarterly financial statements and Management Discussion and Analysis (MD&A) or regulatory filings are being prepared (e.g. regulatory filings, such as the U.S. Securities and Exchange Commission, Form 20-F).

**8. PUBLIC COMMUNICATIONS**

Given the importance placed on confidentiality and the appropriate disclosures of information regarding Biovail, it is important for employees, officers and directors to ensure that care be taken with any communication regarding Biovail or its activities outside of Biovail.

**A. Designated Spokespersons**

Biovail has designated official spokespersons who are authorized to speak on behalf of Biovail, and answer questions from the news media and the investment community, about Biovail and its activities. Employees, officers and directors who have not been designated as spokespersons for Biovail are not permitted to speak on behalf of the Company to the news media or to the investment community.

**B. Media or Analyst Inquiries**

Any employee who is approached by any person asking for comment on the activities of Biovail must direct any and all such inquiries to a member of the Disclosure Committee or to a member of the Company’s Stakeholder Relations team (Corporate Communications, Investor Relations) so that an appropriate spokesperson can respond to the inquiry on behalf of Biovail.

**C. Conferences**

The Disclosure Committee should be advised of any request to present at any conference or public meeting. Certain materials prepared for any such presentation may be required to be reviewed by the Company’s Stakeholder Relations group.

**D. Electronic Communications**

Care must be taken in all instances in the use of e-mail, and other devices (e.g., Blackberrys) in communications relating to Biovail’s business. While users tend to resort to shorthand communication using these kinds of tools, those communications do form a record of those communications that may be subject to later review and disclosure. A more fulsome policy regarding electronic communications is in place (found in the Human Resources Management System Policy Binder) and should be adhered to by all employees, officers and directors.

**E. The Internet**

Biovail has instituted policies regarding the use of, and access to the Internet by employees, officers and directors. These policies include a prohibition against anyone participating in any chat rooms dedicated to Biovail or its operations or the industry at large. If any employee, officer or director becomes aware that any such chat room exists, they are asked to report the address of such site to the SLO so that it may be monitored and appropriate action may be taken.

**9. EQUAL OPPORTUNITY**

Biovail supports the principle that every individual must be accorded an equal opportunity to participate in the free-enterprise system and to develop their ability to achieve their full potential within that system.

There shall be no discrimination against any employee or applicant because of race, religion, color, sex, age, sexual orientation, national or ethnic origin, or disability (as required by law) or any other consideration prohibited by local law. All employees, officers and directors will be treated with equality during their employment without regard to their race, religion, color, sex, age, national or ethnic origin, or physical handicap, in all matters, including employment, upgrading, promotion, transfer, layoff, termination, rates of pay, selection for training and recruitment. Biovail will maintain a work environment free of discriminatory practice of any kind.

No employee shall have any authority to engage in any action or course of conduct or to condone any action or course of conduct by any other person which shall in any manner, directly or indirectly, discriminate or result in discrimination in the course of one's employment, termination of employment, or any related matter where such discrimination is, directly or indirectly, based upon race, religion, color, sex, age, sexual orientation, national or ethnic origin, disability, or any other consideration prohibited by law.

**10. HEALTH, SAFETY, AND ENVIRONMENTAL PROTECTION**

It is Biovail's policy to pay due regard to the health and safety of its employees, officers, directors and others, and to the state of the environment. There are federal, provincial, state and local workplace safety and environmental laws which through various governmental agencies regulate both physical safety of employees, officers and directors and their exposure to conditions in the workplace. Should you be faced with an environmental health issue or have a concern about workplace safety, you should contact your Health and Safety Committee representative or notify Biovail management immediately.

Many countries and their regional and local governments now have complex legislation to protect the health and safety of employees, or the general public, and to prevent pollution and protect the environment. In case of violation, these laws often provide penalties for both the company involved and its executive personnel. Biovail's SLO should always be consulted when necessary to understand or comply with such laws.

**11. WORK ENVIRONMENT**

Employees, officers and directors must treat each other with professional courtesy and respect at all times. Employees, officers and directors shall not subject any other employee to unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct which might be construed as sexual in nature, or harass others on the basis of race, disability, gender, sexual orientation or any other consideration prohibited by law. Such conduct may constitute sexual harassment or harassment under federal, provincial and state law and may be the basis for legal action against the offending employee and/or Biovail.

Employees are encouraged to report all conduct that they believe in good faith to be violations of local anti-harassment policies. To the extent permissible under local law the identity of the employees, officers or directors involved will be kept strictly confidential, and will not be revealed by Biovail's management without the employee's permission. The alleged harassment will be thoroughly investigated by Biovail and appropriate action will be taken. Biovail has an appropriate policy to protect employees against discrimination or retaliation as a result of such a complaint.

**12. INTEGRITY OF RECORDS AND FINANCIAL REPORTS**

It is of critical importance that Biovail’s filings with the appropriate regulatory authorities (e.g. U.S. Securities and Exchange Commission) be accurate and timely. Depending on their position with Biovail, an employee, officer or director may be called upon to provide necessary information to ensure that Biovail’s public reports are complete, fair and understandable. Biovail expects employees, officers and directors to take this responsibility very seriously and to provide prompt accurate answers to inquiries related to Biovail’s public disclosure requirements.

The integrity of Biovail’s record keeping systems will be respected at all times. Employees, officers and directors are forbidden to use, authorize, or condone the use of “off-the-books” bookkeeping, secret accounts, unrecorded bank accounts, “slush” funds, falsified books, or any other devices that could be utilized to distort records or reports of Biovail’s true operating results and financial conditions or could otherwise result in the improper recordation of funds or transactions.

**13. USE OF AGENTS AND NON-EMPLOYEES, OFFICERS AND DIRECTORS**

Agents or other non-employees cannot be used to circumvent the law. Employees, officers and directors will not retain agents or other representatives to engage in practices that run contrary to the Standards of Business Conduct or applicable laws.

**14. INTERNATIONAL OPERATIONS**

Employees, officers and directors operating outside of Canada and the United States have a special responsibility to know and obey the laws and regulations of countries where they act for Biovail. Customs vary throughout the world, but all employees, officers and directors must uphold the integrity of Biovail in other nations diligently.

**15. STANDARDS OF BUSINESS CONDUCT**

**A. Initial Distribution**

- i. Employees, officers and directors designated to receive these Standards will receive their copies immediately after publication.
- ii. Future employees, officers and directors designated to receive these Standards will receive their copies at the time they are hired.



**B. Initial Verification**

Upon receiving their copy of the Standards, employees, officers and directors current and future will:

- i. Become thoroughly familiar with the Standards.
- ii. Resolve any doubts or questions about the Standards with their supervisors.
- iii. Inform their supervisors of any existing holdings or activities that might be, or appear to be, inconsistent with, or in violation of, the Standards.
- iv. Prepare written disclosures of such information, if requested, by supervisors.
- v. Take steps to correct existing situations and bring holdings and activities into full compliance with the Standards. Such steps will be approved in writing by supervisors and will be based on the written disclosure submitted by employees, officers or directors.
- vi. Sign the verification and return it to their supervisors who will make it part of employee's permanent corporate records.

**C. Maintaining Compliance**

- i. Employees, officers and directors have the responsibility to maintain their understanding of the Standards of Business Conduct and for following them.
- ii. Supervisors have the responsibility to maintain an awareness on the part of their employees, officers and directors of the importance of their adhering to the Standards of Business Conduct and for reporting deviations to Management.
- iii. As requested by the Board of Directors or senior management, employees, officers and directors will be asked to re-verify their understanding of the Standards of Business Conduct and their compliance with them every year as a part of Biovail's annual reporting.
- iv. Employees, officers and directors must inform their supervisors of any changes in their holdings or activities that might be, or appear to be in non-compliance with the Standards of Business Conduct.
- v. Employees, officers and directors must prepare written disclosure of such information, if requested, by supervisors.
- vi. Employees, officers and directors must take steps to correct any such changes, if necessary, to bring holdings and activities into full compliance. Such steps will be approved in writing by supervisors and Management and will be based on the written disclosures submitted by employees, officers and directors.

**D. Audits of Compliance**

Regular audits of Biovail will include procedures to test compliance with the Standards of Business Conduct.

**16. VIOLATIONS OF STANDARDS**

Employees, officers and directors must immediately report any violations of the Standards or any violation of any applicable law, rule or regulation. Failure to do so can have serious consequences for the employees, officers or directors and for Biovail.

Employees, officers and directors, should report violations to their supervisors and/or to the Human Resources department and to the SLO or to any secure reporting hotline the company may have contracted with. When in doubt, employees should talk to their supervisors or other appropriate personnel to determine the best course of action in a particular situation.

Supervisors and the Human Resources group have the responsibility to promptly and thoroughly investigate all reports, and to report violations to the SLO.

After a violation is investigated, appropriate action will be taken promptly. Management has the right to determine the appropriate disciplinary action for a violation up to and including termination of employment. All proposed disciplinary action is subject to review by senior Management, Human Resources and the SLO.

Employees, officers and directors should be aware that, in addition to any disciplinary action taken by Biovail, violations of certain Standards may require restitution and may lead to civil or criminal action against individual employees, officers and directors and any corporation involved.

Supervisors have the responsibility of taking remedial steps to correct any operating procedures that may contribute to violations of Standards.

Retaliation in any form against an individual who reports a violation of these Standards of Business Conduct or of any law, rule or regulation in good faith, or who assists in the investigation of a reported violation, is itself a serious violation of this policy. Acts of retaliation will be disciplined appropriately and should be reported immediately to your supervisor or Human Resources.

**17. CONTINUANCE OF EXISTING PERSONNEL POLICIES, RULES AND PERFORMANCE STANDARDS**

Biovail has codified numerous personnel policies, rules and standards of employee performance, which continue in force. These Standards of Business Conduct are intended to supplement and amplify those established personnel policies, rules and standards.

It continues to be the responsibility of all employees to comply with all such policies, rules and performance standards. Additionally, all members of management are to

continue making certain that employees reporting to them are made aware of established policies, rules and performance standards and comply with them.

**18. AMENDMENT, MODIFICATION AND WAIVER**

Biovail will periodically review these Standards of Business Conduct. These Standards may be amended, modified or waived by the Board of Directors and waivers may also be granted by the Nominating & Governance Committee, subject to the disclosure and other provisions of the Securities Exchange Act of 1934, and the rules there under and the applicable rules of the Toronto Stock Exchange/New York Stock Exchange. Employees, officers and directors will be fully informed of any revisions to the Standards of Business Conduct.

Any waiver of these Standards for any employee other than a director or an executive officer, may only be made by the Executive Chairman or the CEO. Any waiver of these Standards for director or an executive officer may be made only the Board of Directors or the Compensation, Nominating and Corporate Governance Committee and will be promptly disclosed to Biovail’s stockholders.

**VERIFICATION AND RECEIPT OF UNDERSTANDING**

I have received a copy of Standards of Business Conduct for BIOVAIL CORPORATION and its subsidiaries, divisions and affiliates. I understand how the Standards apply to me. I acknowledge that my receiving the Standards obligates me to follow them and I agree to abide by their conditions, effective the 21<sup>st</sup> day of August, 2008.

Margaret J. Mulligan  
\_\_\_\_\_  
Name

/s/ Margaret J. Mulligan  
\_\_\_\_\_  
Signature

**BIOVAIL CORPORATION  
EXECUTIVE EMPLOYMENT AGREEMENT**

THIS AGREEMENT is made by and between Biovail Corporation (hereinafter the “Corporation”) and Gilbert Godin (hereinafter the “Executive”).

**ARTICLE ONE — GENERAL DUTIES AND TERM**

**Scope of Employment / Duties**

1.01 The Corporation will employ the Executive as Executive VP & Chief Operating Officer. The Executive will serve as an officer of the Corporation. During the Employment Term (as defined below), the Executive will devote substantially all of the Executive’s business efforts and time to the Corporation. The Executive agrees, during the Employment Term, not to actively engage in any other employment, occupation or consulting activity for any direct or indirect compensation without the prior approval of the Chief Executive Officer of the Corporation (the “CEO”); provided, however, that the Executive may (a) serve on the boards of directors of other companies (subject to reasonable approval of the CEO) and boards of trade associations or charitable organizations; (b) engage in charitable activities and community affairs; and (c) manage the Executive’s personal investments and affairs, as long as such activities do not violate Section 4.02 and do not materially interfere with the Executive’s duties and responsibilities for the Corporation.

1.02 The Corporation reserves the right to establish the employment relationship with the Executive directly with the Corporation or with any of its affiliates or subsidiaries, or to change such employment relationship over time, as it deems necessary or appropriate to comply with legal requirements or for ease of administration of employee benefits programs or other matters.

1.03 Notwithstanding 1.02, the Corporation acknowledges and agrees that the Executive’s principal residence is and shall remain in the United States of America.

**Term of Agreement**

1.04 The Executive has been employed by the Corporation since May 2, 2006 (the “Employment Commencement Date”). The Corporation hereby agrees to continue to employ the Executive and the Executive hereby accepts such continued employment, in accordance with the terms and conditions of this Agreement, commencing on July 3, 2009. The period of the Executive’s employment under this Agreement will be referred to as the “Employment Term.” Subject to the Corporation’s obligation to provide severance benefits and the parties’ obligation to provide a Notice of Termination (as defined below), the Executive and the Corporation acknowledge that this employment relationship may be terminated at any time and for any or no cause or reason at the option of either the Executive or the Corporation.

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## ARTICLE TWO — COMPENSATION

### Base Salary

2.01 As of the Employment Commencement Date, the Executive's annualized base salary will be \$500,000.02 USD, payable in accordance with the Corporation's normal payroll practices for employees generally, and will be subject to annual review in accordance with the Corporation's normal review process for other similarly situated senior executives.

### Incentive Compensation

2.02 The Executive will be eligible to participate in the Corporation's short term annual incentive compensation plan as such plan may be amended from time to time (the "Short Term Incentive Plan") in accordance with the terms of the Short Term Incentive Plan. As of the date of this Agreement, the Executive's target will be 60% of the Executive's annual base salary.

### Equity Compensation

2.03 Eligibility and Terms.

The Executive will be eligible to participate in the Corporation's equity compensation plan, as such plan may be amended from time to time (the "Equity Compensation Plan"), in accordance with the terms of the Equity Compensation Plan, except as may be otherwise indicated in this Agreement. The Executive's annual target under the Equity Compensation Plan shall be 90,000 stock options and 7,500 Restricted Share Units ("RSUs"), or a substantially equivalent award. Subject to the approval of the Board of Directors, the Executive will be eligible in 2009 for a special one-time grant of 75,000 RSUs subject to performance goals.

### Employee Benefits

2.04 During the Employment Term, the Executive will be eligible to participate in employee benefit plans and programs that are offered to the Corporation's other similarly-situated senior executives in accordance with the terms of such plans as they may change from time to time. Nothing in this Agreement shall preclude the Corporation or any affiliate of the Corporation from terminating or amending any employee benefit plan or program from time to time after the Employment Commencement Date.

### Expenses

2.05 The Executive shall be reimbursed for reasonable out of pocket business expenses, including travel and entertainment expenses, actually and properly incurred by the Executive in the course of performing the Executive's services hereunder, upon furnishing to the Corporation reasonable supporting statements and vouchers; provided, however, that in any financial year in which the Corporation has provided to the Executive an approved budget, such expenses must not exceed the amount so budgeted without the prior written approval from the CEO.

### Vacation

2.06 The Executive will be eligible for 5 weeks of vacation annually, to be taken in accordance with the terms of the Corporation's Vacation Policy, without regard to any lesser

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amount of vacation time set forth therein. Notwithstanding the foregoing, the Executive’s eligibility for vacation in the year of hire will be pro-rated in the manner specified in the Corporation’s Vacation Policy.

**ARTICLE THREE — TERMINATION AND RESIGNATION**

**Involuntary Termination - Either By The Corporation Without Cause or By The Executive For Good Reason**

3.01 If the Executive incurs an involuntary termination from employment with the Corporation on account of a termination by the Corporation without Cause or by the Executive for Good Reason, then, in addition to any benefits or compensation accrued, earned and due to the Executive but not yet paid as of the date that is designated by the Corporation or the Executive, as applicable, as the last day of the Executive’s employment or term of office with the Corporation (the “Termination Date”), the Executive will be eligible for the severance payments and benefits as described in this Section 3.01; provided that (i) the Executive continues to comply with the Restrictive Covenants (as defined below); and (ii) the Executive executes, and does not revoke, a written waiver and release of all claims, demands and causes of action against the Corporation and related parties in a form prescribed by the Corporation, as limited by Section 3.09 (“Release”):

- (a) The Executive will be paid a lump sum severance payment within 60 days of the Executive’s Termination Date, equal to one (1) times the Executive’s base salary (calculated using the Executive’s highest annual base salary in the three years prior to the Executive’s Termination Date) plus one (1) times the Executive’s target level of annual incentive compensation for the year prior to the year in which the Executive’s Termination Date occurs;
  - (b) The Executive will be entitled to a pro-rated portion of the Executive’s target level of annual incentive compensation for the year in which the Executive’s Termination Date occurs, based on the number of months (rounded to the next highest number for a partial month) of the calendar year elapsed prior to the Executive’s Termination Date and calculated and paid in accordance with the terms of the Corporation’s Short Term Incentive Plan; and
  - (c) Until the earlier of (i) the end of the one (1) year period following the Executive’s Termination Date, or (ii) the date, or dates, the Executive is eligible to receive benefits under the same type of plan of a subsequent employer (the “Benefit Period”), the Corporation will pay to the Executive a monthly payment on the first payroll date of each month equal to the COBRA cost of continued medial and dental coverage for the Executive and the Executive’s covered dependents under the medical and dental plans of the Corporation pursuant to section 4980B of the Internal Revenue Code, less the amount that the Executive would be required to contribute for medical and dental coverage if the Executive were an active employee. These payments will commence on the Corporation’s first payroll date after the Executive’s Termination Date and will continue until the end of the Benefit Period (but not longer than the Benefit Period).
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**Involuntary Termination By The Corporation For Cause Or Voluntary Resignation Without Good Reason**

3.02 If the Executive is involuntarily terminated by the Corporation for Cause or the Executive voluntarily resigns from employment without Good Reason, then the Executive will forfeit the Executive’s right to receive any salary, Short Term Incentive Plan compensation, Equity Compensation Plan compensation or other compensation that has not been fully accrued at the time the Executive’s employment terminates; provided, however, that the Executive will be entitled to receive any benefits or compensation accrued, earned and due to the Executive but not yet paid as of the Executive’s Termination Date.

**Death or Disability**

3.03 The Executive’s employment will terminate automatically upon the Executive’s death. The Corporation may terminate the Executive’s employment if illness, disease, or physical or mental incapacity render the Executive generally incapable of performing the Executive’s duties or unfit to advance or represent the Corporation on a daily basis for a period of twelve (12) consecutive months and within such twelve (12) months, the Executive fails to produce to the Corporation a medical opinion indicating a reasonable time for the return of the Executive to the full-time assumption of the Executive’s past duties and responsibilities. Nothing herein is intended to circumvent or abridge the Corporation’s short-term disability policy or long-term disability plan. In the event of termination pursuant to the terms of this Section 3.03, the Executive or the Executive’s estate, as applicable, will be entitled to receive any salary, benefits or other amounts accrued, earned and due to the Executive but not yet paid as of the Executive’s Termination Date.

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**Cause**

3.04 For purposes of this Agreement, Cause includes:

- (a) conviction of the Executive, or entering of a guilty plea or a plea of no contest by the Executive, with respect to, a felony, any crime involving fraud, larceny or embezzlement or any other crime involving moral turpitude which subjects, or if generally known, would damage the business interests or reputation of the Corporation or any of its affiliates;
- (b) any act of fraud, misappropriation, material dishonesty, embezzlement or similar conduct involving the Corporation or any affiliates;
- (c) a material breach by the Executive of the Executive’s duties hereunder (other than as a result of incapacity due to physical or mental impairment) which is demonstrably willful and deliberate on the part of the Executive or which is committed in bad faith or without reasonable belief that such breach is in the best interests of the Corporation;
- (d) a material breach by the Executive of the Executive’s duties hereunder (other than as a result of incapacity due to physical or mental impairment), except as identified in Section 3.04(c) above, which breach is not remedied by the Executive within 30 days after receipt of written notice from the Corporation specifying such breach; or
- (e) the Executive’s failure to comply in any material way with any of the provisions of this Agreement.

**Good Reason**

3.05 For purposes of this Agreement, a voluntary resignation by the Executive will be deemed to be a termination for Good Reason if:

- (a) The Corporation makes: (i) any assignment to the Executive of any duties which are materially inconsistent with the Executive’s position; (ii) any material reduction in the Executive’s authority, responsibilities or status; or (iii) a material reduction to the Executive’s base salary;
  - (b) The Executive notifies the Corporation in writing of the Executive’s belief that the Corporation has taken an action identified in Section 3.05(a) within thirty (30) days of the event at issue;
  - (c) The Corporation has not remedied the situation within thirty (30) days after receipt of written notice from the Executive; and
  - (d) The Executive provides a Notice of Termination within thirty (30) days after the Corporation’s opportunity to remedy the situation has expired.
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**Change in Control**

3.06 (a) The Corporation shall provide the payments and benefits described in Section 3.06(b) below only if: (i) the Executive continues to comply with the Restrictive Covenants (as such term is defined below); and (b) the Executive executes, and does not revoke, a Release (as defined above).

(b) Upon a Change in Control (as defined below), and an involuntary termination of the Executive's employment either by the Corporation without Cause or by the Executive for Good Reason, which termination occurs within a period of twelve (12) months following the Change in Control, the Corporation shall provide to the Executive, in addition to any benefits or compensation accrued, earned and due to the Executive but not yet paid as of the Executive's Termination Date, but in lieu of any payments or benefits to which the Executive may be entitled under Section 3.01 above, (a) a lump sum severance payment of two (2) times the Executive's base salary (calculated using the Executive's highest annual base salary in the three years prior to the Executive's Termination Date) plus two (2) times the Executive's target level of annual incentive compensation under the Short Term Incentive Plan for the year prior to the year in which the Executive's Termination Date occurs, payable within thirty (30) days of the Executive's Termination Date and, (b) any unvested equity compensation awards held by the Executive shall automatically accelerate and become one hundred percent (100%) vested and, as applicable, exercisable, as of the Executive's Termination Date.

(c) For the purpose of this Section 3.06, "Change in Control" means the happening of any of the following events:

- (i) the completion of a transaction pursuant to which (A) the Corporation goes out of existence or (B) any person, or any Associate (as such terms defined in National Instrument 45-106 - *Prospectus and Registration Exemptions*, as amended from time to time, or such other successor rules, instruments or policies from time to time of Canadian provincial securities regulatory authorities which may govern trades of securities to employees, officers, directors or consultants ("NI45-106")) or Related Entity (as such term is defined in NI45-106) of such person (other than the Corporation, any trustee or other fiduciary holding securities under any employee benefit plan of the Corporation or a Related Entity, or any company owned, directly or indirectly, by the shareholders of the Corporation in substantially the same proportions as their ownership of common shares of the Corporation) hereafter acquires the direct or indirect "beneficial ownership" (as defined by the *Canada Business Corporations Act*) of securities of the Corporation representing 50% or more of the aggregate voting power of all of the Corporation's then issued and outstanding securities;
  - (ii) the lease, exchange, license, sale or other similar disposition of all or substantially all of the Corporation's assets in one transaction or a series of related transactions to a person, or any Associate or Related Entity of such person (other than an Associate or Related Entity of the Corporation, any trustee or other fiduciary holding securities under any employee
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benefit plan of the Corporation or a Related Entity, or any company owned, directly or indirectly, by the shareholders of the Corporation in substantially the same proportions as their ownership of common shares of the Corporation);

- (iii) the dissolution or liquidation of the Corporation except in connection with the distribution of assets of the Corporation to one or more persons which were Related Entities prior to such event;
- (iv) during any period of 24 consecutive months beginning on or after the date of the Equity Compensation Plan, the persons who were members of the Board immediately before the beginning of such period (the “Incumbent Directors”) cease (for any reason other than death) to constitute at least a majority of the Board or the board of directors of any successor to the Corporation, provided that any director who was not a director as of the date of the Equity Compensation Plan shall be deemed to be an Incumbent Director if such director is elected to the Board by, or on the recommendation of or with the approval of, at least two-thirds of the directors who then qualified as Incumbent Directors either actually or by prior operation of the foregoing unless such election, recommendation or approval occurs as a result of an actual or threatened election contest or other actual or threatened solicitation of proxies or contests by or on behalf of a person other than a member of the Board; or
- (v) a merger, amalgamation, arrangement or consolidation of the Corporation with any other corporation other than a merger, amalgamation, arrangement or consolidation that would result in the voting securities of the Corporation outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 50% of the combined voting power of the voting securities of the Corporation or such surviving entity outstanding immediately after such merger, amalgamation, arrangement or consolidation; provided, however, that a merger, amalgamation, arrangement or consolidation effected to implement a recapitalization of the Corporation (or similar transaction) in which no person (other than those covered by the exceptions in (i) above) acquires more than 50% of the combined voting power of the Corporation’s then outstanding securities shall not constitute a Change in Control.

(d) In the event any payments or benefits made to the Executive upon a Change of Control are deemed “excess parachute payments” within the meaning of Section 280G of the U.S. Internal Revenue Code, and the Executive is subject to excise tax under Section 4999 of the U.S. Internal Revenue Code (the “Excise Tax”) with respect to such payments, the Executive shall receive, in addition to any other payments and benefits to which the Executive is entitled under the Agreement, an amount which, after imposition of any income, employment, excise or other taxes on such amount (including any income, employment, excise or other taxes

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paid on any amount due under this Section), equals the difference between the amount the Executive actually receives after payment of all taxes including all Excise Tax and the after-tax amount the Executive would receive if no Excise Tax were imposed on him. Any additional payment received under this Section 2.06(d) shall be called the Gross-Up Payment. Notwithstanding any provisions of this Section 2.06(d) to the contrary, in accordance with the requirements of section 409A of the Code, any Gross-Up Payment payable hereunder shall be paid not later than the end of the Executive’s taxable year next following the Executive’s taxable year in which the Executive or the Company, as the case may be, remits the taxes for which the Gross-Up Payment is being paid.

**Notice of Termination**

3.07 Any termination of employment by the Corporation or by the Executive shall be communicated by notice of termination to the other party hereto given in accordance with Section 5.09 (a “Notice of Termination”). For purposes of this Agreement, Notice of Termination means a written notice which (a) identifies the specific termination provision in the Agreement relied upon, and (b) to the extent applicable, sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive’s employment under the provision identified, and (c)(i) in the case of a termination by the Corporation, specifies the Executive’s Termination Date which shall not be less than fifteen (15) nor more than sixty (60) days after the giving of such notice; or (ii) in the case of a termination by the Executive without Good Reason, shall not be less than ninety (90) days after the giving of such notice.

**Payments After Termination of Employment**

3.08 Payments made by the Corporation to the Executive pursuant to this Agreement after the Executive’s Termination Date will be made by courier delivery service to the last address provided for notices to the Executive pursuant to Section 5.09 of this Agreement.

**Release**

3.09 The Release identified in Sections 3.01 and 3.06 will not require the Executive to release any right the Executive may have to indemnification as an officer, director or employee of the Corporation (or any affiliate thereof) pursuant to the articles of incorporation or bylaws (or other governing instruments) of the Corporation (or any affiliate thereof) or any vested benefits to which the Executive may be entitled under any employee benefit plan.

**ARTICLE FOUR — EXECUTIVE’S OBLIGATIONS**

**Confidentiality**

4.01 The Executive agrees to be bound by the terms of the confidentiality agreement (the “Confidentiality Agreement”) dated the date hereof, which Confidentiality Agreement has been read, understood and executed by the Executive and is attached hereto as Schedule A and which

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is incorporated by reference into this Agreement. In the event of a conflict between the terms of this Agreement and the terms of the Confidentiality Agreement, the terms of this Agreement shall govern.

**Non-Competition**

4.02 The Executive acknowledges that the Corporation currently conducts business activities in North America and Barbados (the “Territory”). The Executive further acknowledges that, in the future, the business activities are expected to substantially expand territorially. Accordingly, the Executive hereby agrees and covenants that he shall not during the term of this Agreement and for a period of one (1) year following the Executive’s Termination Date for involuntary termination by the Corporation for Cause, voluntary termination by the Executive, or termination following a Change in Control, directly or in any manner whatsoever, including without limitation, either individually, in partnership, jointly or in conjunction with any other individual, partnership, corporation, unincorporated organization, trust, joint venture, the Crown or any agency or instrumentality thereof of any juridical entity, in the Territory (excluding, as applicable, any portions of the Territory in which the Corporation is no longer carrying on business at the relevant time) or in any other regions or countries where the Corporation may be carrying on business at the relevant time:

- (a) carry on, be engaged in, take part in or be a party to any Competitive Activity, directly or indirectly; or
- (b) consult, advise, render services to lend money, guarantee the debts or obligations of or permit the use of his name or any part thereof for any Competitive Activity.

For the purposes of this Section 4.02, a Competitive Activity shall be defined as any business: (i) that competes with or plans to actively compete with the business activities of the Corporation through, but not limited to, the formulation, clinical testing, registration, manufacturing or marketing of specialty pharmaceuticals and/or drug delivery technologies in the therapeutic categories on which the Corporation is focused, which include central nervous system disorders, pain management, cardiovascular disease, type II diabetes, and any other category in which the Corporation is focused in the future and excludes areas in which the Corporation is not actively engaged at the relevant time, (ii) with which the Corporation has a product(s) licensing agreement, (iii) in which the Corporation has a minority equity interest, and (iv) with which the Corporation is at the time actively negotiating a commercial relationship.

During the continuance of his employment, the Executive shall not (other than solely as a holder of not more than three per cent (3%) of the issued and outstanding voting shares of any public corporation or as a shareholder of the Corporation, without the written approval of the board of directors of the Corporation, directly or indirectly, either individually or in partnership or in conjunction with any person or persons, firm, association, syndicate, company or corporation as principal, agent, director, manager, servant, shareholder or in any other manner whatsoever) carry on or be engaged in or be concerned with or interested in any business or vocation whatsoever which would be reasonably judged to be a Competitive Activity or would impede the Executive in performing his duties as outlined herein.

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The Executive may at any time, or from time to time, request the Corporation to advise the Executive in writing whether or not the Corporation considers a specified business to be Competitive Activity. Any such request shall be made by written notice to the Corporation that includes: (i) the name of the specific business unit which the Executive proposes to provide services; (ii) the name or names of any parent companies of such business unit; (iii) a description of the specific services which the Executive proposes to perform for such business unit; (iv) a statements as to why the Executive believes that the performance of such services will not adversely affect the Corporation’s legitimate interests.

**Non-Solicitation**

4.03 The Executive hereby covenants and agrees that the Executive shall not, during the term of this Agreement and for a period of twelve (12) months thereafter, solicit or contact, either directly or indirectly, any of the Customers, Prospective Customers or any suppliers of the pharmaceutical compounds used by the Corporation on the Executive’s own behalf, or on behalf of any entity, by which the Executive is hired or retained. “Customers” means customers of the Corporation with which the Executive had personal contact or had supervision over the efforts of those who had direct personal contact with such customers during the last two (2) years of the Executive’s employment with the Corporation. “Prospective Customer” means any organizations or entities which had been actively contacted and solicited for their business by representatives of the Corporation, and with whom the Executive had contact, both during the last two (2) years of the Executive’s employment with the Corporation.

**Non-Hiring**

4.04 The Executive hereby covenants and agrees that the Executive shall not, during the term of this Agreement and for a period of twelve (12) months thereafter, either directly or indirectly, solicit or endeavour to solicit from the Corporation any of its employees, and shall not for a period twelve (12) months from the end of the term of this Agreement hire any of the foregoing on the Executive’s own behalf or on behalf of any entity for which the Executive is hired or retained. Notwithstanding the foregoing, the Executive shall not be considered in breach of this section should the Executive solicit for hiring such Executive’s Administrative Assistant.

**Injunctive Relief**

4.05 The Executive acknowledges and agrees that the agreements and covenants in this Article Four are essential to protect the business and goodwill of the Corporation and that a breach by the Executive of the covenants in Sections 4.01, 4.02, 4.03 and 4.04 hereof could result in irreparable harm to the Corporation for which the Corporation could not be adequately compensated in damages and that, accordingly, the Corporation may have no adequate remedy at law if the Executive breaches such provisions. Consequently, if the Executive breaches any of such provisions, the Corporation shall have, in addition to and not in lieu of, any other rights and remedies available to it under any law or in equity, the right to obtain injunctive relief to restrain any breach or threatened breach thereof and to have such provisions specifically enforced by any court of competent jurisdiction.

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**Severability of Covenants in Full or in Part**

4.06 The parties acknowledge that the provisions of Article Four hereof (the “Restrictive Covenants”) are reasonable and valid in geographic and temporal scope and in all other respects. If any court of competent jurisdiction determines that any of the Restrictive Covenants or any part thereof, is or are invalid or unenforceable, the Executive and the Corporation agree that the remainder of the Restrictive Covenants shall not be affected by the deemed invalid portions.

**Assignment of IP**

4.07 The Executive shall disclose to the Corporation any and all Intellectual Property (as defined in the Confidentiality Agreement) which the Executive may make solely, jointly, or in common with other employees during the term of the Executive’s employment within the Corporation and which relates to the business. Any Intellectual Property coming within the scope of the business made and/or developed by the Executive while in the employ of the Corporation, whether or not conceived or made during regular working hours, and whether or not the Executive is specifically instructed to make or develop same, shall be for the benefit of the Corporation and shall be regarded as work made in the course of employment for the purposes of the *Copyright Act* (Canada). The Executive shall assign, set over and transfer to the Corporation the Executive’s entire right, title and interest in and to any and all of the Intellectual Property and to all letters patent and applications for letters patent which may be, or may have been filed and/or issued by or to the Executive or on the Executive’s behalf and the Executive agrees to execute and deliver to the Corporation any and all instruments necessary or desirable to accomplish the foregoing and, in addition, to do all lawful acts which may be necessary or desirable to assist the Corporation to obtain and enforce protection of the Intellectual Property. To the extent of any rights the Executive may have with respect to the Intellectual Property which are not assignable, including but not limited to moral rights, the Executive hereby waives same. The Executive will execute and deliver to the Corporation or its successors and assigns, such other and further assignments, instruments and documents as the Corporation from time to time reasonably may request for the purpose of establishing, evidencing, and enforcing or defending its complete, exclusive, perpetual, and world-wide ownership of all rights, titles, and copyrights, in and to the Intellectual Property, and the Executive constitutes and appoints the Corporation as agent and attorney-in-fact, with full power of substitution, to execute and deliver such assignments, instruments, documents as the Executive may fail to or refuse to execute and deliver, this power and agency being coupled with an interest and being irrevocable.

**Standards of Business Conduct**

4.08 The Executive acknowledges and agrees that the Executive has read and understood and agrees to be bound by the Corporation’s Standards of Business Conduct, which is attached hereto as Schedule B.

**No Conflicting Obligations**

4.09 The Executive warrants to the Corporation that:

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- (a) the performance of the Executive’s duties as an employee of the Corporation will not breach any agreement or other obligation to keep confidential the Confidential Information of any third party; and
- (b) the Executive is not bound by any agreement with or obligation to any third party that conflicts with the Executive’s obligations as an employee of the Corporation.

ARTICLE FIVE - INTERPRETATION AND ENFORCEMENT

Section 409A

5.01 This Agreement shall be interpreted to avoid any penalty sanctions under Internal Revenue Code section 409A. If any payment or benefit cannot be provided or made at the time specified herein without incurring sanctions under section 409A, then such benefit or payment shall be provided in full at the earliest time thereafter when such sanctions will not be imposed.

Notwithstanding any provision of this Agreement to the contrary, if the Executive is a key employee of a publicly traded corporation under section 409A at the time of the Executive’s separation from service and if payment of any amount under this Agreement is required to be delayed for a period of six (6) months after separation from service pursuant to section 409A, payment of such amount shall be delayed as required by section 409A, and the accumulated postponed amount shall be paid in a lump sum payment within ten (10) days after the end of the six-month period. If the Executive dies during the postponement period prior to the payment of postponed amount, the amounts withheld on account of section 409A shall be paid to the personal representative of the Executive’s estate within 60 days after the date of the Executive’s death. A “key employee” shall mean an employee who, at any time during the twelve (12) month period ending on the identification date, is a “specified employee” under section 409A of the Internal Revenue Code, as determined by the Board. The determination of key employees, including the number and identity of persons considered key employees and the identification date, shall be made by the Board in accordance with the provisions of sections 416(i) and 409A and the regulations issued thereunder.

For purposes of section 409A, the right to any series of installment payments under this Agreement shall be treated as a right to a series of separate payments. All reimbursements and in kind benefits provided under this Agreement shall be made or provided in accordance with the requirements of section 409A, including, where applicable, the requirement that (i) any reimbursement shall be for expenses incurred during the Executive’s lifetime (or during a shorter period of time specified in this Agreement), (ii) the amount of expenses eligible for reimbursement, or in kind benefits, provided during a calendar year may not affect the expenses eligible for reimbursement, or in kind benefits to be provided, in any other calendar year, (iii) the reimbursement of an eligible expense will be made on or before the last day of the calendar year following the year in which the expense is incurred, and (iv) the right to reimbursement or in kind benefits is not subject to liquidation or exchange for another benefit.

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**Independent Legal Advice**

5.02 The Executive agrees to the terms and conditions of this Agreement having had the opportunity to receive independent legal advice, for which the Executive has been reimbursed by the Corporation.

**Severability**

5.03 The parties further acknowledge that if any provision contained in this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof shall continue in full force and effect.

**Sections and Headings**

5.04 The division of this Agreement into Articles and Sections and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Agreement.

**Number and Gender**

5.05 In this Agreement words importing the singular number only shall include the plural and vice versa and words importing the masculine gender shall include the feminine and neuter genders and vice versa.

**Entire Agreement**

5.06 This Agreement and all the Schedules hereto constitute the entire Agreement between the parties with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the parties with respect thereto (including, but not limited to, the Executive’s employment agreement dated December 23, 2008). There are no representations, warranties, forms, conditions, undertakings or collateral Agreements, express, implied or statutory between the parties other than as expressly set forth in this Agreement.

**Amendments and Waivers**

5.07 No amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by both parties. No waiver of any breach of any term or provision of this Agreement shall be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided in written waiver, shall be limited to the specific breach waived.

**Governing Law**

5.08 This Agreement shall be deemed to have been made in and shall be construed in accordance with the laws of the State of New Jersey and all legal proceedings contemplated in this Agreement shall be brought in, and be governed by, the laws of the State of New Jersey, without regard to principles of conflicts of law.

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**Notices**

5.09 Any demand, notice or other communication (hereinafter in this Section 5.09 referred to as a “Communication”) to be made or given in connection with this Agreement shall be made or given in writing and may be made or given by personal delivery addressed respectively to the recipients:

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To the Executive:

Gilbert Godin  
xxx

To the Corporation:

7150 Mississauga Road  
Mississauga, ON L5N 8M5  
Attn: Chief Executive Officer

or such other address or individual as may be designated by notice by either party to the other. Any communication made or given by personal delivery shall be conclusively deemed to have been given on the day of the actual delivery thereof.

**Benefit of Agreement**

5.10 This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, legal personal representatives, successors and assigns.

**Assignment**

5.11 The Executive may not assign the Executive’s rights or obligations under this Agreement without the prior written consent of the Corporation which consent may be unreasonably withheld. The Corporation may unilaterally assign this agreement to an affiliate without consent but on notice to the Executive.

**Execution of Agreement**

5.12 The Executive acknowledges that the Executive has executed this Agreement freely; that the Executive has reviewed this Agreement thoroughly; that the Executive agrees with its contents; and that the terms herein are reasonable for the fair protection of both the Executive and the Corporation.

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**IN WITNESS WHEREOF**, the parties have executed this Agreement on the dates identified below at **Bridgewater, New Jersey**:

BIOVAIL CORPORATION

EXECUTIVE

By: /s/ W. WELLS  
Name: William Wells  
Title: Chief Executive Officer

/s/ GILBERT GODIN  
Gilbert Godin  
Executive VP & COO

Date: 8/04/09

Date: 8 . 04 . 09

**\_\_\_\_\_**

**SCHEDULE A**  
**BIOVAIL CORPORATION**  
**(and its Subsidiaries, Divisions, and Affiliates)**  
**CONFIDENTIALITY AGREEMENT**

As an employee of Biovail Corporation (the “Corporation”), I acknowledge that I may acquire or have disclosed to me by the Corporation or by any affiliate, associate, or technology partner of the Corporation, either directly or indirectly, in writing, conversation, or through observation, various information about the business of the Corporation which is not in the public domain and which the Corporation does not wish to be divulged to other persons, companies, or third parties. I further understand that the Corporation’s Confidential Information (as defined below) is essential to its competitive advantage and to its ability to be financially viable. I further understand that the unauthorized disclosure of such Confidential information may cause the Corporation irreparable injury that may not be rectified in the future.

Therefore, as a condition and in consideration of my employment with the Corporation, I understand and agree that while employed with the Corporation and thereafter (as more particularly described below). I am required to hold confidential and not to disclose to anyone without the written authority from the Corporation any knowledge, information, or facts concerning the Corporation’s:

- research and development activities
- technological plans, advances, applications and inventions
- technical specifications, designs and plans
- materials and sources of supply
- discoveries, inventions, trade secrets, patents
- financial affairs, contracts, licensing agreements, customer lists, pricing practices, marketing strategies
- any other information regarding the Corporation, its products and their development which is not in the public domain

All of the foregoing shall hereinafter collectively be referred to as the “Confidential Information”.

I shall keep confidential any and all Confidential Information which has been disclosed to me in writing or through oral communications and shall not divulge in any manner whatsoever any such information to any person, firm, corporation, partnership or similar entities without the Corporation’s written authority.

Should I breach or threaten to breach this Agreement, I shall be liable to the Corporation in equity and/or in law for damages that may be suffered by the Corporation as a result of the breach or threatened breach. I understand that a breach of this Agreement may result in irreparable harm to the Corporation such as to warrant the entitlement by the

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Corporation to an interlocutory and/or permanent injunction or other equitable relief against me, and an award of damages including punitive, exemplary and aggravated damages, together with legal costs and expense and I specifically agree that I will not argue the adequacy of damages or the Corporation's ability to seek equitable relief in any such proceeding.

All Confidential Information supplied by the Corporation to me during the course of my employment and any rights related thereto, including but not limited to rights of know how, patent, trademark and copyright, with respect to existing products or those that are developed during or after my employment, are and remain the exclusive and absolute property of the Corporation.

I shall not, except as and to the extent required to enable me to carry out my duties with the Corporation, make any copies or reproduce the Confidential Information nor shall I remove or cause to have removed from the premises of the Corporation during my employment any Confidential Information unless required to do so in order to fulfill my duties with the Corporation. Such copies or reproductions shall be strictly subject to the terms and conditions of this Agreement. I shall take such steps as are necessary to restrict access to and protect the confidentiality of such copies or reproductions of the Confidential Information. Any such copies or reproductions made shall become the exclusive and absolute property of the Corporation.

Upon request of the Corporation, I agree to immediately surrender to the Corporation all documentation and information - notes, drawings, recordings, manuals, letters, correspondence, computer data and programs, records, books or any other materials relating to the Confidential Information which is in my possession without my retaining any copies or duplicates thereof.

I agree that this Agreement shall be construed in accordance with the laws of the Province of Ontario and I agree that the applicable courts of the Province of Ontario shall have exclusive jurisdiction with respect to any dispute or breach herein and I hereby attorn to the exclusive jurisdiction of the courts of the Province of Ontario.

This Agreement shall enure to the benefit of and shall be binding upon my successors, heirs and attorneys.

The disclosure or divulging of any Confidential Information contrary to this Agreement, or the violation of this Agreement in any way shall result in my immediate termination of employment, in addition to which I may be subject to criminal prosecution and civil liability.

I acknowledge and agree that I have executed this Agreement freely and with the benefit of independent legal advice and the terms herein are fair and reasonable.

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I acknowledge and agree to the foregoing.

Employee Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Witness Signature: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_

## SCHEDULE B



### **BIOVAIL CORPORATION (and its Subsidiaries, Divisions, and Affiliates)**

#### **STANDARDS OF BUSINESS CONDUCT**

Biovail Corporation ("Biovail"), together with its subsidiaries, divisions and affiliates, places great importance on conducting its business activities in an ethical and appropriate manner. Each employee, officer and director is a reflection of Biovail, and as such, the activities and actions of every individual within Biovail must be undertaken in accordance with a high standard of ethics and integrity. As such, Biovail expects each employee, officer and director to comply with, and adhere to, these Standards of Business Conduct (the "Standards").

#### **1. CONFLICTS OF INTEREST**

Employees, officers and directors of Biovail must avoid situations where their private interests could conflict with, or even appear to conflict with, the interests of Biovail and its stockholders.

Conflicts of interest arise when an individual's position or responsibilities with Biovail present an opportunity for personal gain apart from the normal rewards of employment. They also arise when the private interests of an employee, officer or director are inconsistent with those of Biovail or create conflicting loyalties. Such conflicting loyalties can cause an employee, officer or director to give preference to private interests in situations where corporate responsibilities should come first. Employees, officers and directors must perform the responsibilities of their positions on the basis of what is in the best interests of Biovail and free from the influence of personal considerations and relationships.

In the event that any potential conflict of interest arises, the individual involved must immediately notify his or her immediate supervisor. If such individual is an officer or director of Biovail, the Executive Chairman ("Chairman"), Chief Executive Officer ("CEO") and the General Counsel, or in the absence of a General Counsel the Vice President, Associate General Counsel ("SLO") of Biovail must also be immediately notified and no further action may be taken unless authorized in writing by the Chairman and/or the CEO.

While it is not possible to detail every situation where conflicts of interest may arise, the following policies cover the areas that have the greatest potential for conflict:

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**A. Trading in Biovail Securities and Use of Inside Information**

There are numerous laws in Canada and the United States (federal, provincial and state laws), to regulate transactions in corporate securities (stocks and bonds) and the securities industry. Violation of these laws may lead to civil and criminal actions against the individual and Biovail.

- i. Any employee, officer, director or other insider or anyone (family member, etc.) who knows of any material information (as defined below) about Biovail that has not been disclosed to the public (commonly known as “insider information”) may not engage in any transaction in Biovail’s securities until such information is disclosed to the public (whether or not there is a formal trading “black out” in place). This rule applies equally to transactions in securities of other companies. In addition, employees, officers and directors must not provide insider information to others (“tippees”) who may trade in either the securities of Biovail or the securities of other companies.  
  
“Material information” is any information relating to the business and affairs of Biovail that would reasonably be expected to result in a change in the market price or value of Biovail’s securities. Generally speaking, material information is a matter to which an average prudent investor should be reasonably informed before a decision is made to buy or sell the security involved. Examples of such information would include annual or quarterly financial results; significant changes in management; significant shifts in operating or financial circumstances, such as major write-offs and changes in earnings projections; borrowing of a significant amount of funds; acquisitions of, or mergers with, other companies; significant new contracts or loss of business; and major new products, services or patents. This list provides examples only; many other matters may be considered material information.  
  
Employees, officers, directors and other insiders who have questions that relate to the sale or purchase of a security under circumstances where these laws and regulations might apply should consult with the SLO, who may refer them to outside legal counsel.
- ii. In addition to the prohibition against the use of “insider” information which applies to all employees, officers and directors, the various securities laws that apply in the jurisdiction and countries in which Biovail does business place definite restrictions on the manners in which employees, officers and directors of Biovail, and their family members, their associates, etc., may

engage in transactions involving the securities of Biovail. Employees, officers and directors shall comply with all laws, rules and regulations that prohibit or restrict insider trading.

Whenever there is any doubt as to whether any transactions involving Biovail’s securities would violate securities laws, employees, officers and directors should consult the SLO of Biovail. Within the framework of the foregoing policies and laws, the final decision of each employee, officer or director, with respect to securities transactions, must be his or her own.

- iii. Employees, officers, directors and other insiders shall maintain the confidentiality of information entrusted to them by Biovail or its customers (except where disclosure is authorized or legally mandated) and shall not, without proper authority, give or release to anyone not employed by Biovail, data or information of a confidential nature concerning Biovail. Disclosure of confidential information can be harmful to Biovail and could be the basis for legal action against Biovail and the individual disclosing the information. Confidential information includes all non-public information that might be of use to competitors, or harmful to Biovail or its customers, if disclosed.
- iv. Employees, officers, directors and other insiders shall not acquire any property, security or any business interest that they know Biovail has an interest in acquiring. Moreover, based on such advance information, employees, officers and directors shall not acquire any property, security or business interest for speculation or investment.
- v. Employees, officers, directors and other insiders must follow Biovail policies regarding “Blackout Periods” when Biovail’s stock may not be traded. Such policies will be communicated by the SLO from time to time and must be adhered to by all employees, officers and directors.

**B. Personal Financial Interest**

Employees, officers and directors should avoid any outside financial interests that might influence decisions or actions they have been empowered to make on behalf of Biovail. An employee, officer or director performing duties in conformity with this policy shall not have a financial interest in, indebtedness to, or a personal contract or understanding with any concern with which he or she does business on behalf of Biovail.

- i. Employees, officers or directors whose corporate duties bring them into business dealings with an organization in which they, or a member of their family, have a financial interest or to which they, or a

member of their family, have any indebtedness, or a business employing a relative or close friend, must immediately notify their immediate supervisor. The employee, officer or director, in turn, cannot complete a transaction on behalf of Biovail with this organization unless properly authorized in writing from their supervisor after full disclosure of the relationship.

- ii. An employee, officer or director may not perform work or services, outside the course of their normal employment by Biovail, for an organization doing or seeking to do business with Biovail without appropriate prior written approval of their supervisor or the Board of Directors. An employee, officer or director may not be a director, officer, partner or consultant of an organization doing or seeking to do business with Biovail, nor may any of them permit their names to be used in any way indicating a business connection with such an organization, without appropriate prior written approval of their supervisor or the Board.
- iii. An employee, officer or director shall not accept for himself or herself, or for the benefit of any relative or friend, any payments, loans, services, favors involving more than ordinary social amenity, or gifts of more than nominal value from any organization doing or seeking to do business with Biovail.
- iv. The requirement of freedom from conflict of interest applies with equal force to the spouse, children and other close relatives of each employee, officer and director. This policy applies to all employees, officers and directors of Biovail with respect to all of the affairs of Biovail.
- v. Employees, officers and directors shall not (a) take for themselves personally opportunities that are discovered through the use of corporate property, information or position; (b) use corporate property information, or position for personal gain; (c) compete with Biovail. Employees, officers and directors owe a duty to Biovail to advance its legitimate interests when the opportunity to do so arises.
- vi. Biovail may not make loans to any employee, officer or director.

### **C. Outside Activities**

Employees, officers and directors should avoid outside employment or activities which would impair the effective performances of their responsibilities to Biovail, either

because of excessive demands on their time, or because the outside commitments can be contrary to their obligations to Biovail

**D. Protection and Proper Use of Biovail’s Assets**

All employees, officers and directors should protect Biovail’s assets and ensure their efficient use. Theft, carelessness and waste have a direct impact on Biovail’s profitability. All of Biovail’s assets should be used only for legitimate business purposes.

**E. Fair Dealing**

Each employee, officer and director shall endeavor to deal fairly with Biovail’s customers, suppliers, competitors and employers. None should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other unfair-dealing practice,

**2. COMPETITIVE PRACTICES**

The management of Biovail firmly believes that fair competition is fundamental to continuation of the free-enterprise system. Biovail complies with, and supports, laws of all countries that prohibit restraints of trade, unfair practices, or abuse of economic power.

Biovail will not enter into arrangements that unlawfully restrict its ability to compete with other businesses, or the ability of any other business organization to compete freely with Biovail. Biovail policy also prohibits employees, officers and directors from entering into, or even discussing, any unlawful arrangement or understanding which may affect its pricing policies, terms upon which its products and services are sold, or which might be construed as dividing customers or sales territories with a competitor.

These principles of fair competition are basic to all Biovail operations. They are integral parts of the following sections that cover Biovail’s dealings with suppliers, customers and public officials.

**3. DEALING WITH SUPPLIERS**

Biovail is a valuable customer for many suppliers of goods, services and facilities. People who want to do business, or to continue to do business, with Biovail must understand that all purchases by Biovail will be made in accordance with its purchasing policy and exclusively on the basis of price, quality, service and suitability to Biovail’s needs.

**A. Reciprocity**

Biovail considers reciprocity a harmful practice and a hindrance to assuring purchase of the best available materials or services at the lowest possible prices. It will not be practiced or allowed.

Suppliers of goods and services to Biovail will not be asked to buy goods and services from Biovail in order to become or continue as a supplier.

Biovail will not attempt to influence its suppliers to purchase from customers of Biovail. When Biovail makes purchases it will not favor firms who are customers of Biovail or any of its affiliates.

**B. “Kickbacks” and Rebates**

Purchases or sales of goods and services by Biovail must not lead to employees, officers or directors, or their families, receiving any type of personal kickbacks or rebates. Employees, officers, directors, and their families, must not accept any form of “under-the-table” payment.

**C. Receipt of Gifts and Entertainment**

Even when gifts and entertainment are exchanged out of the purest motives of personal friendship, they can be misunderstood. They can appear to be attempts to bribe Biovail’s employees, officers or directors into directing business of Biovail to a particular supplier. To avoid both the reality and the appearance of improper relations with suppliers or potential suppliers, the following standards will apply to the receipt of gifts and entertainment by employees, officers and directors of Biovail:

**Gifts**

- i) Employees, officers and directors are prohibited from soliciting gifts, gratuities, or any other personal benefit or favor of any kind from suppliers or potential suppliers. Gifts include not only merchandise and products but also personal services, and tickets to theatrical and sports events. Employees, officers and directors should exercise good judgment when accepting unsolicited gifts. Employees, officers and directors are prohibited from accepting gifts of money.
- ii) Employees, officers and directors may accept unsolicited non-money gifts provided:
  - (1) They are items of nominal intrinsic value; or
  - (2) They are advertising and promotional materials, clearly marked with Biovail or brand names of the giver.
- iii) Any gift of more than nominal intrinsic value must be reported to the SLO to determine whether it can be accepted. Some gifts may be perishable so as to make their return impractical. Supervisors can permit acceptance of such gifts, but should require employees, officers and directors to tactfully inform givers that such gifts are discouraged.

- iv) In the transaction of some international business, it is lawful and customary for business leaders in some countries to give unsolicited gifts to employees, officers or directors of Biovail. These gifts can be of more than nominal value. Moreover, under the circumstances, returning the gifts or payment for them may constitute an affront to the giver. In such cases, the gift must be reported to the SLO who may permit the retaining of the gifts.
- v) In all other instances where gifts cannot be returned or may adversely affect Biovail's continuing business relationships, the SLO must be notified. They can require employees, officers and directors to transfer ownership of such gifts to Biovail.

#### **Entertainment**

- i) Employees, officers and directors shall not encourage or solicit entertainment from any individual or company with whom Biovail does business. Entertainment includes, but is not limited to, activities such as dinner parties, theater parties, and sporting events.
- ii) From time to time employees, officers and directors may accept unsolicited entertainment, but only under the following conditions:
  - (1) The entertainment occurs infrequently;
  - (2) It arises out of the ordinary course of business;
  - (3) It involves reasonable, not lavish expenditures (the amounts involved should be ones employees, officers and directors are accustomed to normally spending for their own business or personal entertainment); and
  - (4) The entertainment takes place in settings that also are reasonable, appropriate, and fitting to employees, officers and directors, their hosts, and their business at hand.

#### **4. DEALINGS WITH CUSTOMERS AND POTENTIAL CUSTOMERS**

Employees, officers and directors must keep all dealings with customers and potential customers fair and above board. Biovail gets business and keeps it because of the quality of its goods and services. Biovail does not give unethical or illegal rebates, kickbacks, under-the-table payments, or other similar improper favors to customers or their representatives.

The boundary line between ethical and unethical competition, or legal and illegal conduct, is not always well defined, particularly in international activities where differing

local laws, custom; and practices come into play. Therefore, the following standards will serve as guides:

- a) All employees, officers and directors should make themselves aware of and fully comply with all laws, rules and regulations, whether federal, state, local or foreign, including laws governing relations with customers as well as competitors.
- b) All employees, officers and directors engaged in negotiations and contracts with foreign governments, the United States or any political subdivision thereof must also know and abide by the specific rules and regulations covering relations with such governments and their agencies.
- c) Employees, officers and directors may not give gifts to customers except items of nominal value, which fit the legal, normal, and customary pattern of Biovail’s sales efforts for a particular market. Exceptions to this policy can occur in international trades where it can be legal, customary, and appropriate business practice to exchange gifts with customers. Only the CEO can authorize the giving, receiving, or exchanging of such gifts. Any gifts received by employees, officers or directors in such an exchange must be reported to the CEO for determination as to the disposition of the gifts.
- d) Entertainment for any customer must fit regular business practices. The place and type of entertainment and the money spent must be reasonable and appropriate.

**5. DEALING WITH PUBLIC OFFICIALS**

Domestic and foreign laws and regulations require Biovail to be in contact with public officials on a wide variety of matters. Employees, officers and directors who regularly make these contacts have special responsibilities for upholding Biovail’s good name. The following standards relate to these special responsibilities:

- a) All employees, officers and directors who contact public officials must be familiar with lobbying laws and public disclosure requirements, particularly those that apply to registrations and filings.
- b) No employee shall make any form of payment, direct or indirect, to any public official as an inducement to procuring or keeping business or having a law or regulation enacted, defeated, or violated. This is bribery, pure and simple. It will not be tolerated.

It should be acknowledged that inherent in the current health-care regulatory environment, the definition of “form of payment” may include seemingly trivial gifts and/or favors (e.g. buying lunches, coffee, etc.).

- c) When not prohibited by law, employees, officers and directors are allowed to give to public officials gifts where the presentation and acceptance of gifts is an established custom and a normal business practice. All such gifts shall be of reasonable value and the presentation approved in advance by the CEO. Moreover, such gifts must be presented in a manner that clearly identifies Biovail and the occasion that warrants the presentation.
- d) Employees, officers and directors are also allowed to give public officials gifts in the form of product models and pictures provided the models and pictures are part of Biovail's general marketing and public relations programs (except as noted in clause (b) above).
- e) On special ceremonial occasions, officers of Biovail may publicly give gifts of more than nominal value to public institutions and public bodies. Such gifts can commemorate special events or milestones in Biovail's history.

These may be transmitted through public officials but the gifts are given to the public institutions and public groups they represent, not to the officials personally.
- f) From time to time employees, officers and directors may entertain public officials, but only under the following conditions:
  - i. It is legal and permitted by the entity represented by the official;
  - ii. The entertainment is not solicited by the public official;
  - iii. The entertainment occurs infrequently;
  - iv. It arises out of the ordinary course of business;
  - v. It does not involve lavish expenditures, considering the circumstances;
  - vi. The settings and types of entertainment are reasonable, appropriate and fitting to our employees, officers or directors, their guests, and the business at hand.

## **6. POLITICAL ACTIVITIES AND CONTRIBUTIONS**

### **A. Canada and the United States**

Employees, officers and directors who participate in partisan political activities must make every effort to ensure that they do not leave the impression that they speak or act for Biovail.



Biovail encourages its employees, officers and directors to participate in political activities in their own time and at their sole expense. No corporate action, direct or indirect, will be allowed that infringes on the right of any employee individually to decide whether, to whom, and in what amount, they will make personal political contributions. The same is true of volunteer political donations of personal service time, so long as it does not interfere with the working status of employees, officers or directors.

**B. Outside Canada and the United States**

No employees, officers and directors are permitted to use Biovail’s funds, facilities, or other assets, to support either directly or indirectly any political candidates or political parties, without advance authorization in writing from their immediate supervisor and the General Counsel. The policy of Biovail is that employees, officers and directors and employees should not participate in political activities in countries of which they are not nationals. However, such persons, of course, are free to participate in political activities in countries of which they are nationals in their own time and at their own expense.

**7. DISCLOSURE**

Biovail has formed a Disclosure Committee to promote consistent practices aimed at informative, timely and broadly disseminated disclosure of Material Information to the market, external stakeholder groups and employees in accordance with all applicable legal, regulatory and stock-exchange requirements.

It is essential that the Disclosure Committee be fully apprised of all material corporate developments to be able to determine whether there is information that should be publicly disclosed, and what the appropriate timing is for release of that information. In some cases, the Disclosure Committee may determine that the information should remain confidential. If that is the case, the Disclosure Committee will determine how that information will be controlled so that it is not inadvertently released. Therefore any employee who becomes aware of information that he/she believes might be material to Biovail and/or any of its affiliates and subsidiaries he/she should advise their manager or supervisor or a member of the Disclosure Committee. Current membership of the Disclosure Committee is posted on the Biovail.com website.

This applies throughout the year, but is particularly critical when annual or quarterly financial statements and Management Discussion and Analysis (MD&A) or regulatory filings are being prepared (e.g. regulatory filings, such as the U.S. Securities and Exchange Commission, Form 20-F).

**8. PUBLIC COMMUNICATIONS**

Given the importance placed on confidentiality and the appropriate disclosures of information regarding Biovail, it is important for employees, officers and directors to ensure that care be taken with any communication regarding Biovail or its activities outside of Biovail.

**A. Designated Spokespersons**

Biovail has designated official spokespersons who are authorized to speak on behalf of Biovail, and answer questions from the news media and the investment community, about Biovail and its activities. Employees, officers and directors who have not been designated as spokespersons for Biovail are not permitted to speak on behalf of the Company to the news media or to the investment community.

**B. Media or Analyst Inquiries**

Any employee who is approached by any person asking for comment on the activities of Biovail must direct any and all such inquiries to a member of the Disclosure Committee or to a member of the Company’s Stakeholder Relations team (Corporate Communications, Investor Relations) so that an appropriate spokesperson can respond to the inquiry on behalf of Biovail.

**C. Conferences**

The Disclosure Committee should be advised of any request to present at any conference or public meeting. Certain materials prepared for any such presentation may be required to be reviewed by the Company’s Stakeholder Relations group.

**D. Electronic Communications**

Care must be taken in all instances in the use of e-mail, and other devices (e.g., Blackberry’s) in communications relating to Biovail’s business. While users tend to resort to shorthand communication using these kinds of tools, those communications do form a record of those communications that may be subject to later review and disclosure. A more fulsome policy regarding electronic communications is in place (found in the Human Resources Management System Policy Binder) and should be adhered to by all employees, officers and directors.

**E. The Internet**

Biovail has instituted policies regarding the use of, and access to the Internet by employees, officers and directors. These policies include a prohibition against anyone participating in any chat rooms dedicated to Biovail or its operations or the industry at large. If any employee, officer or director becomes aware that any such chat room exists, they are asked to report the address of such site to the SLO so that it may be monitored and appropriate action may be taken.

**9. EQUAL OPPORTUNITY**

Biovail supports the principle that every individual must be accorded an equal opportunity to participate in the free-enterprise system and to develop their ability to achieve their full potential within that system.

There shall be no discrimination against any employee or applicant because of race, religion, color, sex, age, sexual orientation, national or ethnic origin, or disability (as required by law) or any other consideration prohibited by local law. All employees, officers and directors will be treated with equality during their employment without regard to their race, religion, color, sex, age, national or ethnic origin, or physical handicap, in all matters, including employment, upgrading, promotion, transfer, layoff, termination, rates of pay, selection for training and recruitment. Biovail will maintain a work environment free of discriminatory practice of any kind.

No employee shall have any authority to engage in any action or course of conduct or to condone any action or course of conduct by any other person which shall in any manner, directly or indirectly, discriminate or result in discrimination in the course of one’s employment, termination of employment, or any related matter where such discrimination is, directly or indirectly, based upon race, religion, color, sex, age, sexual orientation, national or ethnic origin, disability, or any other consideration prohibited by law.

**10. HEALTH, SAFETY, AND ENVIRONMENTAL PROTECTION**

It is Biovail’s policy to pay due regard to the health and safety of its employees, officers, directors and others, and to the state of the environment. There are federal, provincial, state and local workplace safety and environmental laws which through various governmental agencies regulate both physical safety of employees, officers and directors and their exposure to conditions in the workplace. Should you be faced with an environmental health issue or have a concern about workplace safety, you should contact your Health and Safety Committee representative or notify Biovail management immediately.

Many countries and their regional and local governments now have complex legislation to protect the health and safety of employees, or the general public, and to prevent pollution and protect the environment. In case of violation, these laws often provide penalties for both the company involved and its executive personnel. Biovail’s SLO should always be consulted when necessary to understand or comply with such laws.

**11. WORK ENVIRONMENT**

Employees, officers and directors must treat each other with professional courtesy and respect at all times. Employees, officers and directors shall not subject any other employee to unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct which might be construed as sexual in nature, or harass others on the basis of race, disability, gender, sexual orientation or any other consideration prohibited by law. Such conduct may constitute sexual harassment or harassment under federal, provincial and state law and may be the basis for legal action against the offending employee and/or Biovail.

Employees are encouraged to report all conduct that they believe in good faith to be violations of local anti-harassment policies. To the extent permissible under local law the identity of the employees, officers or directors involved will be kept strictly confidential, and will not be revealed by Biovail’s management without the employee’s permission. The alleged harassment will be thoroughly investigated by Biovail and appropriate action will be taken. Biovail has an appropriate policy to protect employees against discrimination or retaliation as a result of such a complaint.

**12. INTEGRITY OF RECORDS AND FINANCIAL REPORTS**

It is of critical importance that Biovail’s filings with the appropriate regulatory authorities (e.g. U.S. Securities and Exchange Commission) be accurate and timely. Depending on their position with Biovail, an employee, officer or director may be called upon to provide necessary information to ensure that Biovail’s public reports are complete, fair and understandable. Biovail expects employees, officers and directors to take this responsibility very seriously and to provide prompt accurate answers to inquiries related to Biovail’s public disclosure requirements.

The integrity of Biovail’s record keeping systems will be respected at all times. Employees, officers and directors are forbidden to use, authorize, or condone the use of “off-the-books” bookkeeping, secret accounts, unrecorded bank accounts, “slush” funds, falsified books, or any other devices that could be utilized to distort records or reports of Biovail’s true operating results and financial conditions or could otherwise result in the improper recordation of funds or transactions.

**13. USE OLD AGENTS AND NON-EMPLOYEES, OFFICERS AND DIRECTORS**

Agents or other non-employees cannot be used to circumvent the law. Employees, officers and directors will not retain agents or other representatives to engage in practices that run contrary to the Standards of Business Conduct or applicable laws.

**14. INTERNATIONAL OPERATIONS**

Employees, officers and directors operating outside of Canada and the United States have a special responsibility to know and obey the laws and regulations of countries where they act for Biovail. Customs vary throughout the world, but all employees, officers and directors must uphold the integrity of Biovail in other nations diligently.

**15. STANDARDS OF BUSINESS CONDUCT**

**A. Initial Distribution**

- i. Employees, officers and directors designated to receive these Standards will receive their copies immediately after publication.

- ii. Future employees, officers and directors designated to receive these Standards will receive their copies at the time they are hired.

**B. Initial Verification**

Upon receiving their copy of the Standards, employees, officers and directors current and future will:

- i. Become thoroughly familiar with the Standards.
- ii. Resolve any doubts or questions about the Standards with their supervisors.
- iii. Inform their supervisors of any existing holdings or activities that might be, or appear to be, inconsistent with, or in violation of, the Standards.
- iv. Prepare written disclosures of such information, if requested, by supervisors.
- v. Take steps to correct existing situations and bring holdings and activities into full compliance with the Standards. Such steps will be approved in writing by supervisors and will be based on the written disclosure submitted by employees, officers or directors.
- vi. Sign the verification and return it to their supervisors who will make it part of employee's permanent corporate records.

**C. Maintaining Compliance**

- i. Employees, officers and directors have the responsibility to maintain their understanding of the Standards of Business Conduct and for following them.
- ii. Supervisors have the responsibility to maintain an awareness on the part of their employees, officers and directors of the importance of their adhering to the Standards of Business Conduct and for reporting deviations to Management.
- iii. As requested by the Board of Directors or senior management, employees, officers and directors will be asked to re-verify their understanding of the Standards of Business Conduct and their compliance with them every year as a part of Biovail's annual reporting.

- iv. Employees, officers and directors must inform their supervisors of any changes in their holdings or activities that might be, or appear to be in non-compliance with the Standards of Business Conduct.
- v. Employees, officers and directors must prepare written disclosure of such information, if requested, by supervisors.
- vi. Employees, officers and directors must take steps to correct any such changes, if necessary, to bring holdings and activities into full compliance. Such steps will be approved in writing by supervisors and Management and will be based on the written disclosures submitted by employees, officers and directors.

#### **D. Audits of Compliance**

Regular audits of Biovail will include procedures to test compliance with the Standards of Business Conduct.

#### **16. VIOLATIONS OF STANDARDS**

Employees, officers and directors must immediately report any violations of the Standards or any violation of any applicable law, rule or regulation. Failure to do so can have serious consequences for the employees, officers or directors and for Biovail.

Employees, officers and directors, should report violations to their supervisors and/or to the Human Resources department and to the SLO or to any secure reporting hotline the company may have contracted with. When in doubt, employees should talk to their supervisors or other appropriate personnel to determine the best course of action in a particular situation.

Supervisors and the Human Resources group have the responsibility to promptly and thoroughly investigate all reports, and to report violations to the SLO.

After a violation is investigated, appropriate action will be taken promptly. Management has the right to determine the appropriate disciplinary action for a violation up to and including termination of employment. All proposed disciplinary action is subject to review by senior Management, Human Resources and the SLO.

Employees, officers and directors should be aware that, in addition to any disciplinary action taken by Biovail, violations of certain Standards may require restitution and may lead to civil or criminal action against individual employees, officers and directors and any corporation involved.

Supervisors have the responsibility of taking remedial steps to correct any operating procedures that may contribute to violations of Standards.

Retaliation in any form against an individual who reports a violation of these Standards of Business Conduct or of any law, rule or regulation in good faith, or who assists in the investigation of a reported violation, is itself a serious violation of this policy. Acts of retaliation will be disciplined appropriately and should be reported immediately to your supervisor or Human Resources.

**17. CONTINUANCE OF EXISTING PERSONNEL POLICIES, RULES AND PERFORMANCE STANDARDS**

Biovail has codified numerous personnel policies, rules and standards of employee performance, which continue in force. These Standards of Business Conduct are intended to supplement and amplify those established personnel policies, rules and standards.

It continues to be the responsibility of all employees to comply with all such policies, rules and performance standards. Additionally, all members of management are to continue making certain that employees reporting to them are made aware of established policies, rules and performance standards and comply with them.

**18. AMENDMENT, MODIFICATION AND WAIVER**

Biovail will periodically review these Standards of Business Conduct. These Standards may be amended, modified or waived by the Board of Directors and waivers may also be granted by the Nominating & Governance Committee, subject to the disclosure and other provisions of the Securities Exchange Act of 1934, and the rules there under and the applicable rules of the Toronto Stock Exchange/New York Stock Exchange. Employees, officers and directors will be fully informed of any revisions to the Standards of Business Conduct.

Any waiver of these Standards for any employee other than a director or an executive officer, may only be made by the Executive Chairman or the CEO. Any waiver of these Standards for director or an executive officer may be made only by the Board of Directors or the Compensation, Nominating and Corporate Governance Committee and will be promptly disclosed to Biovail's stockholders.

**VERIFICATION AND RECEIPT OF UNDERSTANDING**

I have received a copy of Standards of Business Conduct for BIOVAIL CORPORATION and its subsidiaries, divisions and affiliates. I understand how the Standards apply to me. I acknowledge that my receiving the Standards obligates me to follow them and I agree to abide by their conditions.

\_\_\_\_\_

Date

\_\_\_\_\_

Name

\_\_\_\_\_

Signature

*Employee's Copy*



**VERIFICATION AND RECEIPT OF UNDERSTANDING**

I have received a copy of Standards of Business Conduct for BIOVAIL CORPORATION and its subsidiaries, divisions and affiliates. I understand how the Standards apply to me. I acknowledge that my receiving the Standards obligates me to follow them and I agree to abide by their conditions.

\_\_\_\_\_

Date

\_\_\_\_\_

Name

\_\_\_\_\_

Signature

*HR File Copy*

**BIOVAIL CORPORATION  
EXECUTIVE EMPLOYMENT AGREEMENT**

THIS AGREEMENT is made by and between Biovail Corporation (hereinafter the “Corporation”) and Gregory Gubitzi (hereinafter the “Executive”).

**ARTICLE ONE — GENERAL DUTIES AND TERM**

**Scope of Employment / Duties**

1.01 The Corporation will employ the Executive as Sr. VP, Corporate Development. The Executive will serve as an officer of the Corporation. During the Employment Term (as defined below), the Executive will devote substantially all of the Executive’s business efforts and time to the Corporation. The Executive agrees, during the Employment Term, not to actively engage in any other employment, occupation or consulting activity for any direct or indirect compensation without the prior approval of the Chief Executive Officer of the Corporation (the “CEO”); provided, however, that the Executive may (a) serve on the boards of directors of other companies (subject to reasonable approval of the CEO) and boards of trade associations or charitable organizations; (b) engage in charitable activities and community affairs; and (c) manage the Executive’s personal investments and affairs, as long as such activities do not violate Section 4.02 and do not materially interfere with the Executive’s duties and responsibilities for the Corporation.

1.02 The Corporation reserves the right to establish the employment relationship with the Executive directly with the Corporation or with any of its affiliates or subsidiaries, or to change such employment relationship over time, as it deems necessary or appropriate to comply with legal requirements or for ease of administration of employee benefits programs or other matters.

1.03 Notwithstanding 1.02, the Corporation acknowledges and agrees that the Executive’s principal residence is and shall remain in Canada.

**Term of Agreement**

1.04 The Executive has been employed by the Corporation since March 15, 2006 (the “Employment Commencement Date”). The Corporation hereby agrees to continue to employ the Executive and the Executive hereby accepts such continued employment, in accordance with the terms and conditions of this Agreement, commencing on July 3, 2009. The period of the Executive’s employment under this Agreement will be referred to as the “Employment Term.” Subject to the Corporation’s obligation to provide severance benefits and the parties’ obligation to provide a Notice of Termination (as defined below), the Executive and the Corporation acknowledge that this employment relationship may be terminated at any time and for any or no cause or reason at the option of either the Executive or the Corporation.

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## ARTICLE TWO — COMPENSATION

### Base Salary

2.01 As of the Employment Commencement Date, the Executive's annualized base salary will be \$416,000.00 USD, payable in accordance with the Corporation's normal payroll practices for employees generally, and will be subject to annual review in accordance with the Corporation's normal review process for other similarly situated senior executives. The Executive's base salary shall be converted and paid in Canadian currency. The conversion into Canadian currency shall be made at the beginning of every quarter at a rate equal to the average exchange rate for the previous quarter (as furnished by the Controller of the Corporation).

### Incentive Compensation

2.02 The Executive will be eligible to participate in the Corporation's short term annual incentive compensation plan as such plan may be amended from time to time (the "Short Term Incentive Plan") in accordance with the terms of the Short Term Incentive Plan. As of the date of this Agreement, the Executive's target will be 50% of the Executive's annual base salary.

### Equity Compensation

2.03 Eligibility and Terms.

The Executive will be eligible to participate in the Corporation's equity compensation plan, as such plan may be amended from time to time (the "Equity Compensation Plan"), in accordance with the terms of the Equity Compensation Plan, except as may be otherwise indicated in this Agreement. The Executive's annual target under the Equity Compensation Plan shall be 75,000 stock options and 6,250 Restricted Share Units ("RSUs"), or a substantially equivalent award. Subject to the approval of the Board of Directors, the Executive will be eligible in 2009 for a special one-time grant of 50,000 RSUs subject to performance goals.

### Employee Benefits

2.04 During the Employment Term, the Executive will be eligible to participate in employee benefit plans and programs that are offered to the Corporation's other similarly-situated senior executives in accordance with the terms of such plans as they may change from time to time. Nothing in this Agreement shall preclude the Corporation or any affiliate of the Corporation from terminating or amending any employee benefit plan or program from time to time after the Employment Commencement Date.

### Expenses

2.05 The Executive shall be reimbursed for reasonable out of pocket business expenses, including travel and entertainment expenses, actually and properly incurred by the Executive in the course of performing the Executive's services hereunder, upon furnishing to the Corporation

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reasonable supporting statements and vouchers; provided, however, that in any financial year in which the Corporation has provided to the Executive an approved budget, such expenses must not exceed the amount so budgeted without the prior written approval from the CEO.

**Vacation**

2.06 The Executive will be eligible for 4 weeks of vacation annually, to be taken in accordance with the terms of the Corporation’s Vacation Policy, without regard to any lesser amount of vacation time set forth therein. Notwithstanding the foregoing, the Executive’s eligibility for vacation in the year of hire will be pro-rated in the manner specified in the Corporation’s Vacation Policy.

**ARTICLE THREE — TERMINATION AND RESIGNATION**

**Involuntary Termination - Either By The Corporation Without Cause or By The Executive For Good Reason**

3.01 If the Executive incurs an involuntary termination from employment with the Corporation on account of a termination by the Corporation without Cause or by the Executive for Good Reason, then, in addition to any benefits or compensation accrued, earned and due to the Executive but not yet paid as of the date that is designated by the Corporation or the Executive, as applicable, as the last day of the Executive’s employment or term of office with the Corporation (the “Termination Date”), the Executive will be eligible for the severance payments and benefits as described in this Section 3.01; provided that (i) the Executive continues to comply with the Restrictive Covenants (as defined below); and (ii) the Executive executes, and does not revoke, a written waiver and release of all claims, demands and causes of action against the Corporation and related parties in a form prescribed by the Corporation, as limited by Section 3.09 (“Release”):

- (a) The Executive will be paid a lump sum severance payment within 60 days of the Executive’s Termination Date, equal to one (1) times the Executive’s base salary (calculated using the Executive’s highest annual base salary in the three years prior to the Executive’s Termination Date) plus one (1) times the Executive’s target level of annual incentive compensation for the year prior to the year in which the Executive’s Termination Date occurs;
  - (b) The Executive will be entitled to a pro-rated portion of the Executive’s target level of annual incentive compensation for the year in which the Executive’s Termination Date occurs, based on the number of months (rounded to the next highest number for a partial month) of the calendar year elapsed prior to the Executive’s Termination Date and calculated and paid in accordance with the terms of the Corporation’s Short Term Incentive Plan; and
  - (c) Until the earlier of (i) the end of the one (1) year period following the Executive’s Termination Date, or (ii) the date, or dates, the Executive is eligible to receive benefits under the same type of plan of a subsequent employer (the “Benefit Period”), the Corporation will pay to the Executive a monthly payment on the first payroll date of each month equal to the cost of continued medial and dental coverage for the Executive and the Executive’s covered
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dependents under the medical and dental plans of the Corporation less the amount that the Executive would be required to contribute for medical and dental coverage if the Executive were an active employee. These payments will commence on the Corporation's first payroll date after the Executive's Termination Date and will continue until the end of the Benefit Period (but not longer than the Benefit Period).

**Involuntary Termination By The Corporation For Cause Or Voluntary Resignation Without Good Reason**

3.02 If the Executive is involuntarily terminated by the Corporation for Cause or the Executive voluntarily resigns from employment without Good Reason, then the Executive will forfeit the Executive's right to receive any salary, Short Term Incentive Plan compensation, Equity Compensation Plan compensation or other compensation that has not been fully accrued at the time the Executive's employment terminates; provided, however, that the Executive will be entitled to receive any benefits or compensation accrued, earned and due to the Executive but not yet paid as of the Executive's Termination Date.

**Death or Disability**

3.03 The Executive's employment will terminate automatically upon the Executive's death. The Corporation may terminate the Executive's employment if illness, disease, or physical or mental incapacity render the Executive generally incapable of performing the Executive's duties or unfit to advance or represent the Corporation on a daily basis for a period of twelve (12) consecutive months and within such twelve (12) months, the Executive fails to produce to the Corporation a medical opinion indicating a reasonable time for the return of the Executive to the full-time assumption of the Executive's past duties and responsibilities. Nothing herein is intended to circumvent or abridge the Corporation's short-term disability policy or long-term disability plan. In the event of termination pursuant to the terms of this Section 3.03, the Executive or the Executive's estate, as applicable, will be entitled to receive any salary, benefits or other amounts accrued, earned and due to the Executive but not yet paid as of the Executive's Termination Date.

**Cause**

3.04 For purposes of this Agreement, Cause includes:

- (a) conviction of the Executive, or entering of a guilty plea or a plea of no contest by the Executive, with respect to, a felony, any crime involving fraud, larceny or embezzlement or any other crime involving moral turpitude which subjects, or if generally known, would damage the business interests or reputation of the Corporation or any of its affiliates;
  - (b) any act of fraud, misappropriation, material dishonesty, embezzlement or similar conduct involving the Corporation or any affiliates;
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- (c) a material breach by the Executive of the Executive's duties hereunder (other than as a result of incapacity due to physical or mental impairment) which is demonstrably willful and deliberate on the part of the Executive or which is committed in bad faith or without reasonable belief that such breach is in the best interests of the Corporation;
- (d) a material breach by the Executive of the Executive's duties hereunder (other than as a result of incapacity due to physical or mental impairment), except as identified in Section 3.04(c) above, which breach is not remedied by the Executive within 30 days after receipt of written notice from the Corporation specifying such breach; or
- (e) the Executive's failure to comply in any material way with any of the provisions of this Agreement.

**Good Reason**

3.05 For purposes of this Agreement, a voluntary resignation by the Executive will be deemed to be a termination for Good Reason if:

- (a) The Corporation makes: (i) any assignment to the Executive of any duties which are materially inconsistent with the Executive's position; (ii) any material reduction in the Executive's authority, responsibilities or status; or (iii) a material reduction to the Executive's base salary;
- (b) The Executive notifies the Corporation in writing of the Executive's belief that the Corporation has taken an action identified in Section 3.05(a) within thirty (30) days of the event at issue;
- (c) The Corporation has not remedied the situation within thirty (30) days after receipt of written notice from the Executive; and
- (d) The Executive provides a Notice of Termination within thirty (30) days after the Corporation's opportunity to remedy the situation has expired.

**Change in Control**

3.06 (a) The Corporation shall provide the payments and benefits described in Section 3.06(b) below only if: (i) the Executive continues to comply with the Restrictive Covenants (as such term is defined below); and (b) the Executive executes, and does not revoke, a Release (as defined above).

(b) Upon a Change in Control (as defined below), and an involuntary termination of the Executive's employment either by the Corporation without Cause or by the Executive for Good Reason, which termination occurs within a period of twelve (12) months following the Change in Control, the Corporation shall provide to the Executive, in addition to any benefits or compensation accrued, earned and due to the Executive but not yet paid as of the Executive's Termination Date, but in lieu of any payments or benefits to which the Executive may be entitled under Section 3.01 above, (a) a lump sum severance payment of two (2) times the

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Executive's base salary (calculated using the Executive's highest annual base salary in the three years prior to the Executive's Termination Date) plus two (2) times the Executive's target level of annual incentive compensation under the Short Term Incentive Plan for the year prior to the year in which the Executive's Termination Date occurs, payable within thirty (30) days of the Executive's Termination Date and, (b) any unvested equity compensation awards held by the Executive shall automatically accelerate and become one hundred percent (100%) vested and, as applicable, exercisable, as of the Executive's Termination Date.

- (c) For the purpose of this Section 3.06, "Change in Control" means the happening of any of the following events:
- (i) the completion of a transaction pursuant to which (A) the Corporation goes out of existence or (B) any person, or any Associate (as such terms defined in National Instrument 45-106 - *Prospectus and Registration Exemptions*, as amended from time to time, or such other successor rules, instruments or policies from time to time of Canadian provincial securities regulatory authorities which may govern trades of securities to employees, officers, directors or consultants ("NI45-106")) or Related Entity (as such term is defined in NI45-106) of such person (other than the Corporation, any trustee or other fiduciary holding securities under any employee benefit plan of the Corporation or a Related Entity, or any company owned, directly or indirectly, by the shareholders of the Corporation in substantially the same proportions as their ownership of common shares of the Corporation) hereafter acquires the direct or indirect "beneficial ownership" (as defined by the *Canada Business Corporations Act*) of securities of the Corporation representing 50% or more of the aggregate voting power of all of the Corporation's then issued and outstanding securities;
  - (ii) the lease, exchange, license, sale or other similar disposition of all or substantially all of the Corporation's assets in one transaction or a series of related transactions to a person, or any Associate or Related Entity of such person (other than an Associate or Related Entity of the Corporation, any trustee or other fiduciary holding securities under any employee benefit plan of the Corporation or a Related Entity, or any company owned, directly or indirectly, by the shareholders of the Corporation in substantially the same proportions as their ownership of common shares of the Corporation);
  - (iii) the dissolution or liquidation of the Corporation except in connection with the distribution of assets of the Corporation to one or more persons which were Related Entities prior to such event;
  - (iv) during any period of 24 consecutive months beginning on or after the date of the Equity Compensation Plan, the persons who were members of the Board immediately before the beginning of such period (the "Incumbent Directors") cease (for any reason other than death) to
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constitute at least a majority of the Board or the board of directors of any successor to the Corporation, provided that any director who was not a director as of the date of the Equity Compensation Plan shall be deemed to be an Incumbent Director if such director is elected to the Board by, or on the recommendation of or with the approval of, at least two-thirds of the directors who then qualified as Incumbent Directors either actually or by prior operation of the foregoing unless such election, recommendation or approval occurs as a result of an actual or threatened election contest or other actual or threatened solicitation of proxies or contests by or on behalf of a person other than a member of the Board; or

- (v) a merger, amalgamation, arrangement or consolidation of the Corporation with any other corporation other than a merger, amalgamation, arrangement or consolidation that would result in the voting securities of the Corporation outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 50% of the combined voting power of the voting securities of the Corporation or such surviving entity outstanding immediately after such merger, amalgamation, arrangement or consolidation; provided, however, that a merger, amalgamation, arrangement or consolidation effected to implement a recapitalization of the Corporation (or similar transaction) in which no person (other than those covered by the exceptions in (i) above) acquires more than 50% of the combined voting power of the Corporation's then outstanding securities shall not constitute a Change in Control.

### **Notice of Termination**

3.07 Any termination of employment by the Corporation or by the Executive shall be communicated by notice of termination to the other party hereto given in accordance with Section 5.09 (a "Notice of Termination"). For purposes of this Agreement, Notice of Termination means a written notice which (a) identifies the specific termination provision in the Agreement relied upon, and (b) to the extent applicable, sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive's employment under the provision identified, and (c)(i) in the case of a termination by the Corporation, specifies the Executive's Termination Date which shall not be less than fifteen (15) nor more than sixty (60) days after the giving of such notice; or (ii) in the case of a termination by the Executive without Good Reason, shall not be less than ninety (90) days after the giving of such notice.

### **Payments After Termination of Employment**

3.08 Payments made by the Corporation to the Executive pursuant to this Agreement after the Executive's Termination Date will be made by courier delivery service to the last address provided for notices to the Executive pursuant to Section 5.09 of this Agreement.

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**Release**

3.09 The Release identified in Sections 3.01 and 3.06 will not require the Executive to release any right the Executive may have to indemnification as an officer, director or employee of the Corporation (or any affiliate thereof) pursuant to the articles of incorporation or bylaws (or other governing instruments) of the Corporation (or any affiliate thereof) or any vested benefits to which the Executive may be entitled under any employee benefit plan.

**ARTICLE FOUR — EXECUTIVE’S OBLIGATIONS**

**Confidentiality**

4.01 The Executive agrees to be bound by the terms of the confidentiality agreement (the “Confidentiality Agreement”) dated the date hereof, which Confidentiality Agreement has been read, understood and executed by the Executive and is attached hereto as Schedule A and which is incorporated by reference into this Agreement. In the event of a conflict between the terms of this Agreement and the terms of the Confidentiality Agreement, the terms of this Agreement shall govern.

**Non-Competition**

4.02 The Executive acknowledges that the Corporation currently conducts business activities in North America and Barbados (the “Territory”). The Executive further acknowledges that, in the future, the business activities are expected to substantially expand territorially. Accordingly, the Executive hereby agrees and covenants that he shall not during the term of this Agreement and for a period of one (1) year following the Executive’s Termination Date for involuntary termination by the Corporation for Cause, voluntary termination by the Executive, or termination following a Change in Control, directly or in any manner whatsoever, including without limitation, either individually, in partnership, jointly or in conjunction with any other individual, partnership, corporation, unincorporated organization, trust, joint venture, the Crown or any agency or instrumentality thereof of any juridical entity, in the Territory (excluding, as applicable, any portions of the Territory in which the Corporation is no longer carrying on business at the relevant time) or in any other regions or countries where the Corporation may be carrying on business at the relevant time.

- (a) carry on, be engaged in, take part in or be a party to any Competitive Activity, directly or indirectly; or
- (b) consult, advise, render services to lend money, guarantee the debts or obligations of or permit the use of his name or any part thereof for any Competitive Activity.

For the purposes of this Section 4.02, a Competitive Activity shall be defined as any business: (i) that competes with or plans to actively compete with the business activities of the Corporation through, but not limited to, the formulation, clinical testing, registration, manufacturing or marketing of specialty pharmaceuticals and/or drug delivery technologies in the therapeutic categories on which the Corporation is focused, which include central nervous system disorders, pain management, cardiovascular disease, type II diabetes, and any other

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category in which the Corporation is focused in the future and excludes areas in which the Corporation is not actively engaged at the relevant time, (ii) with which the Corporation has a product(s) licensing agreement, (iii) in which the Corporation has minority equity interest, and (iv) with which the Corporation is at the time actively negotiating a commercial relationship.

During the continuance of his employment, the Executive shall not (other than solely as a holder of not more than three per cent (3%) of the issued and outstanding voting shares of any public corporation or as a shareholder of the Corporation, without the written approval of the board of directors of the Corporation, directly or indirectly, either individually or in partnership or in conjunction with any person or persons, firm, association, syndicate, company or corporation as principal, agent, director, manager, servant, shareholder or in any other manner whatsoever) carry on or be engaged in or be concerned with or interested in any business or vocation whatsoever which would be reasonably judged to be a Competitive Activity or would impede the Executive in performing his duties as outlined herein.

The Executive may at any time, or from time to time, request the Corporation to advise the Executive in writing whether or not the Corporation considers a specified business to be Competitive Activity. Any such request shall be made by written notice to the Corporation that includes: (i) the name of the specific business unit for which the Executive proposes to provide services; (ii) the name or names of any parent companies of such business unit; (iii) a description of the specific services which the Executive proposes to perform for such business unit; (iv) a statement as to why the Executive believes that the performance of such services will not adversely affect the Corporation's legitimate interests.

**Non-Solicitation**

4.03 The Executive hereby covenants and agrees that the Executive shall not, during the term of this Agreement and for a period of twelve (12) months thereafter, solicit or contact, either directly or indirectly, any of the Customers, Prospective Customers or any suppliers of the pharmaceutical compounds used by the Corporation on the Executive's own behalf, or on behalf of any entity, by which the Executive is hired or retained. "Customers" means customers of the Corporation with which the Executive had personal contact or had supervision over the efforts of those who had direct personal contact with such customers during the last two (2) years of the Executive's employment with the Corporation. "Prospective Customer" means any organizations or entities which had been actively contacted and solicited for their business by representatives of the Corporation, and with whom the Executive had contact, both during the last two (2) years of the Executive's employment with the Corporation.

**Non-Hiring**

4.04 The Executive hereby covenants and agrees that the Executive shall not, during the term of this Agreement and for a period of twelve (12) months thereafter, either directly or indirectly, solicit or endeavour to solicit from the Corporation any of its employees, and shall not for a period twelve (12) months from the end of the term of this Agreement hire any of the foregoing on the Executive's own behalf or on behalf of any entity for which the Executive is hired or retained. Notwithstanding the foregoing, the Executive shall not be considered in breach of this section should the Executive solicit for hiring such Executive's Administrative Assistant.

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**Injunctive Relief**

4.05 The Executive acknowledges and agrees that the agreements and covenants in this Article Four are essential to protect the business and goodwill of the Corporation and that a breach by the Executive of the covenants in Sections 4.01, 4.02, 4.03 and 4.04 hereof could result in irreparable harm to the Corporation for which the Corporation could not be adequately compensated in damages and that, accordingly, the Corporation may have no adequate remedy at law if the Executive breaches such provisions. Consequently, if the Executive breaches any of such provisions, the Corporation shall have, in addition to and not in lieu of, any other rights and remedies available to it under any law or in equity, the right to obtain injunctive relief to restrain any breach or threatened breach thereof and to have such provisions specifically enforced by any court of competent jurisdiction.

**Severability of Covenants in Full or in Part**

4.06 The parties acknowledge that the provisions of Article Four hereof (the “Restrictive Covenants”) are reasonable and valid in geographic and temporal scope and in all other respects. If any court of competent jurisdiction determines that any of the Restrictive Covenants or any part thereof, is or are invalid or unenforceable, the Executive and the Corporation agree that the remainder of the Restrictive Covenants shall not be affected by the deemed invalid portions.

**Assignment of IP**

4.07 The Executive shall disclose to the Corporation any and all Intellectual Property (as defined in the Confidentiality Agreement) which the Executive may make solely, jointly, or in common with other employees during the term of the Executive’s employment within the Corporation and which relates to the business. Any Intellectual Property coming within the scope of the business made and/or developed by the Executive while in the employ of the Corporation, whether or not conceived or made during regular working hours, and whether or not the Executive is specifically instructed to make or develop same, shall be for the benefit of the Corporation and shall be regarded as work made in the course of employment for the purposes of the *Copyright Act* (Canada). The Executive shall assign, set over and transfer to the Corporation the Executive’s entire right, title and interest in and to any and all of the Intellectual Property and to all letters patent and applications for letters patent which may be, or may have been filed and/or issued by or to the Executive or on the Executive’s behalf and the Executive agrees to execute and deliver to the Corporation any and all instruments necessary or desirable to accomplish the foregoing and, in addition, to do all lawful acts which may be necessary or desirable to assist the Corporation to obtain and enforce protection of the Intellectual Property. To the extent of any rights the Executive may have with respect to the Intellectual Property which are not assignable, including but not limited to moral rights, the Executive hereby waives same. The Executive will execute and deliver to the Corporation or its successors and assigns, such other and further assignments, instruments and documents as the Corporation from time to time reasonably may request for the purpose of establishing, evidencing,

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and enforcing or defending its complete, exclusive, perpetual, and world-wide ownership of all rights, titles, and copyrights, in and to the Intellectual Property, and the Executive constitutes and appoints the Corporation as agent and attorney-in-fact, with full power of substitution, to execute and deliver such assignments, instruments, documents as Executive may fail to or refuse to execute and deliver, this power and agency being coupled with an interest and being irrevocable.

**Standards of Business Conduct**

4.08 The Executive acknowledges and agrees that the Executive has read and understood and agrees to be bound by the Corporation’s Standards of Business Conduct, which is attached hereto as Schedule B.

**No Conflicting Obligations**

- 4.09 The Executive warrants to the Corporation that:
- (a) the performance of the Executive’s duties as an employee of the Corporation will not breach any agreement or other obligation to keep confidential the Confidential Information of any third party; and
  - (b) the Executive is not bound by any agreement with or obligation to any third party that conflicts with the Executive’s obligations as an employee of the Corporation.

**ARTICLE FIVE - INTERPRETATION AND ENFORCEMENT**

**Independent Legal Advice**

5.02 The Executive agrees to the terms and conditions of this Agreement having had the opportunity to receive independent legal advice, for which the Executive has been reimbursed by the Corporation.

**Severability**

5.03 The parties further acknowledge that if any provision contained in this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof shall continue in full force and effect.

**Sections and Headings**

5.04 The division of this Agreement into Articles and Sections and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Agreement.

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**Number and Gender**

5.05 In this Agreement words importing the singular number only shall include the plural and vice versa and words importing the masculine gender shall include the feminine and neuter genders and vice versa.

**Entire Agreement**

5.06 This Agreement and all the Schedules hereto constitute the entire Agreement between the parties with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the parties with respect thereto (including, but not limited to, the Executive’s employment agreement dated February 16, 2006 and the amendment thereto dated January 14, 2008). There are no representations, warranties, forms, conditions, undertakings or collateral Agreements, express, implied or statutory between the parties other than as expressly set forth in this Agreement.

**Amendments and Waivers**

5.07 No amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by both parties. No waiver of any breach of any term or provision of this Agreement shall be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided in written waiver, shall be limited to the specific breach waived.

**Governing Law**

5.08 This Agreement shall be deemed to have been made in and shall be construed in accordance with the laws of the Province of Ontario and all legal proceedings contemplated in this Agreement shall be brought in, and be governed by, the laws of the Province of Ontario, without regard to principles of conflicts of law.

**Notices**

5.09 Any demand, notice or other communication (hereinafter in this Section 5.09 referred to as a “Communication”) to be made or given in connection with this Agreement shall be made or given in writing and may be made or given by personal delivery addressed respectively to the recipients:

To the Executive:

Gregory Gubit  
xxx



To the Corporation:

7150 Mississauga Road  
Mississauga, ON L5N 8M5  
Attn: Chief Executive Officer

or such other address or individual as may be designated by notice by either party to the other. Any communication made or given by personal delivery shall be conclusively deemed to have been given on the day of the actual delivery thereof.

**Benefit of Agreement**

5.10 This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, legal personal representatives, successors and assigns.

**Assignment**

5.11 The Executive may not assign the Executive’s rights or obligations under this Agreement without the prior written consent of the Corporation which consent may be unreasonably withheld. The Corporation may unilaterally assign this agreement to an affiliate without consent but on notice to the Executive.

**Execution of Agreement**

5.12 The Executive acknowledges that the Executive has executed this Agreement freely; that the Executive has reviewed this Agreement thoroughly; that the Executive agrees with its contents; and that the terms herein are reasonable for the fair protection of both the Executive and the Corporation.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the dates identified below at **Mississauga, Ontario**:

BIOVAIL CORPORATION

EXECUTIVE

By: /s/ W. WELLS  
Name: William Wells  
Title: Chief Executive Officer

/s/ GREGORY GUBITZ  
Gregory Gubitzi  
Sr. VP, Corporate Development

Date: \_\_\_\_\_

Date: Aug 4 / 09

\_\_\_\_\_

**SCHEDULE A**  
**BIOVAIL CORPORATION**  
**(and its Subsidiaries, Divisions, and Affiliates)**  
**CONFIDENTIALITY AGREEMENT**

As an employee of Biovail Corporation (the “Corporation”), I acknowledge that I may acquire or have disclosed to me by the Corporation or by any affiliate, associate, or technology partner of the Corporation, either directly or indirectly, in writing, conversation, or through observation, various information about the business of the Corporation which is not in the public domain and which the Corporation does not wish to be divulged to other persons, companies, or third parties. I further understand that the Corporation’s Confidential Information (as defined below) is essential to its competitive advantage and to its ability to be financially viable. I further understand that the unauthorized disclosure of such Confidential information may cause the Corporation irreparable injury that may not be rectified in the future.

Therefore, as a condition and in consideration of my employment with the Corporation, I understand and agree that while employed with the Corporation and thereafter (as more particularly described below). I am required to hold confidential and not to disclose to anyone without the written authority from the Corporation any knowledge, information, or facts concerning the Corporation’s:

- research and development activities
- technological plans, advances, applications and inventions
- technical specifications, designs and plans
- materials and sources of supply
- discoveries, inventions, trade secrets, patents
- financial affairs, contracts, licensing agreements, customer lists, pricing practices, marketing strategies
- any other information regarding the Corporation, its products and their development which is not in the public domain

All of the foregoing shall hereinafter collectively be referred to as the “Confidential Information”.

I shall keep confidential any and all Confidential Information which has been disclosed to me in writing or through oral communications and shall not divulge in any manner whatsoever any such information to any person, firm, corporation, partnership or similar entities without the Corporation’s written authority.

Should I breach or threaten to breach this Agreement, I shall be liable to the Corporation in equity and/or in law for damages that may be suffered by the Corporation as a result of the breach or threatened breach. I understand that a breach of this Agreement may result in irreparable harm to the Corporation such as to warrant the entitlement by the

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Corporation to an interlocutory and/or permanent injunction or other equitable relief against me, and an award of damages including punitive, exemplary and aggravated damages, together with legal costs and expense and I specifically agree that I will not argue the adequacy of damages or the Corporation's ability to seek equitable relief in any such proceeding.

All Confidential Information supplied by the Corporation to me during the course of my employment and any rights related thereto, including but not limited to rights of know how, patent, trademark and copyright, with respect to existing products or those that are developed during or after my employment, are and remain the exclusive and absolute property of the Corporation.

I shall not, except as and to the extent required to enable me to carry out my duties with the Corporation, make any copies or reproduce the Confidential Information nor shall I remove or cause to have removed from the premises of the Corporation during my employment any Confidential Information unless required to do so in order to fulfill my duties with the Corporation. Such copies or reproductions shall be strictly subject to the terms and conditions of this Agreement. I shall take such steps as are necessary to restrict access to and protect the confidentiality of such copies or reproductions of the Confidential Information. Any such copies or reproductions made shall become the exclusive and absolute property of the Corporation.

Upon request of the Corporation, I agree to immediately surrender to the Corporation all documentation and information - notes, drawings, recordings, manuals, letters, correspondence, computer data and programs, records, books or any other materials relating to the Confidential Information which is in my possession without my retaining any copies or duplicates thereof.

I agree that this Agreement shall be construed in accordance with the laws of the Province of Ontario and I agree that the applicable courts of the Province of Ontario shall have exclusive jurisdiction with respect to any dispute or breach herein and I hereby attorn to the exclusive jurisdiction of the courts of the Province of Ontario.

This Agreement shall enure to the benefit of and shall be binding upon my successors, heirs and attorneys.

The disclosure or divulging of any Confidential Information contrary to this Agreement, or the violation of this Agreement in any way shall result in my immediate termination of employment, in addition to which I may be subject to criminal prosecution and civil liability.

I acknowledge and agree that I have executed this Agreement freely and with the benefit of independent legal advice and the terms herein are fair and reasonable.

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I acknowledge and agree to the foregoing.

Employee Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Witness Signature: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_

## SCHEDULE B



### **BIOVAIL CORPORATION (and its Subsidiaries, Divisions, and Affiliates)**

#### **STANDARDS OF BUSINESS CONDUCT**

Biovail Corporation ("Biovail"), together with its subsidiaries, divisions and affiliates, places great importance on conducting its business activities in an ethical and appropriate manner. Each employee, officer and director is a reflection of Biovail, and as such, the activities and actions of every individual within Biovail must be undertaken in accordance with a high standard of ethics and integrity. As such, Biovail expects each employee, officer and director to comply with, and adhere to, these Standards of Business Conduct (the "Standards").

#### **1. CONFLICTS OF INTEREST**

Employees, officers and directors of Biovail must avoid situations where their private interests could conflict with, or even appear to conflict with, the interests of Biovail and its stockholders.

Conflicts of interest arise when an individual's position or responsibilities with Biovail present an opportunity for personal gain apart from the normal rewards of employment. They also arise when the private interests of an employee, officer or director are inconsistent with those of Biovail or create conflicting loyalties. Such conflicting loyalties can cause an employee, officer or director to give preference to private interests in situations where corporate responsibilities should come first. Employees, officers and directors must perform the responsibilities of their positions on the basis of what is in the best interests of Biovail and free from the influence of personal considerations and relationships.

In the event that any potential conflict of interest arises, the individual involved must immediately notify his or her immediate supervisor. If such individual is an officer or director of Biovail, the Executive Chairman ("Chairman"), Chief Executive Officer ("CEO") and the General Counsel, or in the absence of a General Counsel the Vice President, Associate General Counsel ("SLO") of Biovail must also be immediately notified and no further action may be taken unless authorized in writing by the Chairman and/or the CEO.

While it is not possible to detail every situation where conflicts of interest may arise, the following policies cover the areas that have the greatest potential for conflict:

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**A. Trading in Biovail Securities and Use of Inside Information**

There are numerous laws in Canada and the United States (federal, provincial and state laws), to regulate transactions in corporate securities (stocks and bonds) and the securities industry. Violation of these laws may lead to civil and criminal actions against the individual and Biovail.

- i. Any employee, officer, director or other insider or anyone (family member, etc.) who knows of any material information (as defined below) about Biovail that has not been disclosed to the public (commonly known as “insider information”) may not engage in any transaction in Biovail’s securities until such information is disclosed to the public (whether or not there is a formal trading “black out” in place). This rule applies equally to transactions in securities of other companies. In addition, employees, officers and directors must not provide insider information to others (“tippees”) who may trade in either the securities of Biovail or the securities of other companies.

“Material information” is any information relating to the business and affairs of Biovail that would reasonably be expected to result in a change in the market price or value of Biovail’s securities. Generally speaking, material information is a matter to which an average prudent investor should be reasonably informed before a decision is made to buy or sell the security involved. Examples of such information would include annual or quarterly financial results; significant changes in management; significant shifts in operating or financial circumstances, such as major write-offs and changes in earnings projections; borrowing of a significant amount of funds; acquisitions of, or mergers with, other companies; significant new contracts or loss of business; and major new products, services or patents. This list provides examples only; many other matters may be considered material information.

Employees, officers, directors and other insiders who have questions that relate to the sale or purchase of a security under circumstances where these laws and regulations might apply should consult with the SLO, who may refer them to outside legal counsel.

- ii. In addition to the prohibition against the use of “insider” information which applies to all employees, officers and directors, the various securities laws that apply in the jurisdiction and countries in which Biovail does business place definite restrictions on the manners in which employees, officers and directors of Biovail, and their family members, their associates, etc., may engage in transactions involving the securities of Biovail. Employees, officers and directors shall comply with all laws, rules and regulations that prohibit or restrict insider trading.

Whenever there is any doubt as to whether any transactions involving Biovail's securities would violate securities laws, employees, officers and directors should consult the SLO of Biovail. Within the framework of the foregoing policies and laws, the final decision of each employee, officer or director, with respect to securities transactions, must be his or her own.

- iii. Employees, officers, directors and other insiders shall maintain the confidentiality of information entrusted to them by Biovail or its customers (except where disclosure is authorized or legally mandated) and shall not, without proper authority, give or release to anyone not employed by Biovail, data or information of a confidential nature concerning Biovail. Disclosure of confidential information can be harmful to Biovail and could be the basis for legal action against Biovail and the individual disclosing the information. Confidential information includes all non-public information that might be of use to competitors, or harmful to Biovail or its customers, if disclosed.
- iv. Employees, officers, directors and other insiders shall not acquire any property, security or any business interest that they know Biovail has an interest in acquiring. Moreover, based on such advance information, employees, officers and directors shall not acquire any property, security or business interest for speculation or investment.
- v. Employees, officers, directors and other insiders must follow Biovail policies regarding "Blackout Periods" when Biovail's stock may not be traded. Such policies will be communicated by the SLO from time to time and must be adhered to by all employees, officers and directors.

## **B. Personal Financial Interest**

Employees, officers and directors should avoid any outside financial interests that might influence decisions or actions they have been empowered to make on behalf of Biovail. An employee, officer or director performing duties in conformity with this policy shall not have a financial interest in, indebtedness to, or a personal contract or understanding with any concern with which he or she does business on behalf of Biovail.

- i. Employees, officers or directors whose corporate duties bring them into business dealings with an organization in which they, or a member of their family, have a financial interest or to which they, or a member of their family, have any indebtedness, or a business employing a relative or close friend, must immediately notify their immediate supervisor. The employee, officer or director, in turn, cannot complete a transaction on behalf of Biovail with this organization unless properly authorized in writing from their supervisor after full disclosure of the relationship.

- ii. An employee, officer or director may not perform work or services, outside the course of their normal employment by Biovail, for an organization doing or seeking to do business with Biovail without appropriate prior written approval of their supervisor or the Board of Directors. An employee, officer or director may not be a director, officer, partner or consultant of an organization doing or seeking to do business with Biovail, nor may any of them permit their names to be used in any way indicating a business connection with such an organization, without appropriate prior written approval of their supervisor or the Board.
- iii. An employee, officer or director shall not accept for himself or herself, or for the benefit of any relative or friend, any payments, loans, services, favors involving more than ordinary social amenity, or gifts of more than nominal value from any organization doing or seeking to do business with Biovail.
- iv. The requirement of freedom from conflict of interest applies with equal force to the spouse, children and other close relatives of each employee, officer and director. This policy applies to all employees, officers and directors of Biovail with respect to all of the affairs of Biovail.
- v. Employees, officers and directors shall not (a) take for themselves personally opportunities that are discovered through the use of corporate property, information or position; (b) use corporate property information, or position for personal gain; (c) compete with Biovail. Employees, officers and directors owe a duty to Biovail to advance its legitimate interests when the opportunity to do so arises.
- vi. Biovail may not make loans to any employee, officer or director.

#### **C. Outside Activities**

Employees, officers and directors should avoid outside employment or activities which would impair the effective performances of their responsibilities to Biovail, either because of excessive demands on their time, or because the outside commitments can be contrary to their obligations to Biovail

#### **D. Protection and Proper Use of Biovail's Assets**

All employees, officers and directors should protect Biovail's assets and ensure their efficient use. Theft, carelessness and waste have a direct impact on Biovail's profitability. All of Biovail's assets should be used only for legitimate business purposes.

**E. Fair Dealing**

Each employee, officer and director shall endeavor to deal fairly with Biovail’s customers, suppliers, competitors and employers. None should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other unfair-dealing practice,

**2. COMPETITIVE PRACTICES**

The management of Biovail firmly believes that fair competition is fundamental to continuation of the free-enterprise system. Biovail complies with, and supports, laws of all countries that prohibit restraints of trade, unfair practices, or abuse of economic power.

Biovail will not enter into arrangements that unlawfully restrict its ability to compete with other businesses, or the ability of any other business organization to compete freely with Biovail. Biovail policy also prohibits employees, officers and directors from entering into, or even discussing, any unlawful arrangement or understanding which may affect its pricing policies, terms upon which its products and services are sold, or which might be construed as dividing customers or sales territories with a competitor.

These principles of fair competition are basic to all Biovail operations. They are integral parts of the following sections that cover Biovail’s dealings with suppliers, customers and public officials.

**3. DEALING WITH SUPPLIERS**

Biovail is a valuable customer for many suppliers of goods, services and facilities. People who want to do business, or to continue to do business, with Biovail must understand that all purchases by Biovail will be made in accordance with its purchasing policy and exclusively on the basis of price, quality, service and suitability to Biovail’s needs.

**A. Reciprocity**

Biovail considers reciprocity a harmful practice and a hindrance to assuring purchase of the best available materials or services at the lowest possible prices. It will not be practiced or allowed.

Suppliers of goods and services to Biovail will not be asked to buy goods and services from Biovail in order to become or continue as a supplier.

Biovail will not attempt to influence its suppliers to purchase from customers of Biovail. When Biovail makes purchases it will not favor firms who are customers of Biovail or any of its affiliates.

**B. “Kickbacks” and Rebates**

Purchases or sales of goods and services by Biovail must not lead to employees, officers or directors, or their families, receiving any type of personal kickbacks or rebates. Employees, officers, directors, and their families, must not accept any form of “under-the-table” payment.

**C. Receipt of Gifts and Entertainment**

Even when gifts and entertainment are exchanged out of the purest motives of personal friendship, they can be misunderstood. They can appear to be attempts to bribe Biovail’s employees, officers or directors into directing business of Biovail to a particular supplier. To avoid both the reality and the appearance of improper relations with suppliers or potential suppliers, the following standards will apply to the receipt of gifts and entertainment by employees, officers and directors of Biovail:

**Gifts**

- i) Employees, officers and directors are prohibited from soliciting gifts, gratuities, or any other personal benefit or favor of any kind from suppliers or potential suppliers. Gifts include not only merchandise and products but also personal services, and tickets to theatrical and sports events. Employees, officers and directors should exercise good judgment when accepting unsolicited gifts. Employees, officers and directors are prohibited from accepting gifts of money.
- ii) Employees, officers and directors may accept unsolicited non-money gifts provided:
  - (1) They are items of nominal intrinsic value; or
  - (2) They are advertising and promotional materials, clearly marked with Biovail or brand names of the giver.
- iii) Any gift of more than nominal intrinsic value must be reported to the SLO to determine whether it can be accepted. Some gifts may be perishable so as to make their return impractical. Supervisors can permit acceptance of such gifts, but should require employees, officers and directors to tactfully inform givers that such gifts are discouraged.
- iv) In the transaction of some international business, it is lawful and customary for business leaders in some countries to give unsolicited gifts to employees, officers or directors of Biovail. These gifts can be of more than nominal value. Moreover, under the circumstances, returning the gifts or payment for them may constitute an affront to the giver. In such cases, the gift must be reported to the SLO who may permit the retaining of the gifts.

- v) In all other instances where gifts cannot be returned or may adversely affect Biovail's continuing business relationships, the SLO must be notified. They can require employees, officers and directors to transfer ownership of such gifts to Biovail.

#### **Entertainment**

- i) Employees, officers and directors shall not encourage or solicit entertainment from any individual or company with whom Biovail does business. Entertainment includes, but is not limited to, activities such as dinner parties, theater parties, and sporting events.
- ii) From time to time employees, officers and directors may accept unsolicited entertainment, but only under the following conditions:
  - (1) The entertainment occurs infrequently;
  - (2) It arises out of the ordinary course of business;
  - (3) It involves reasonable, not lavish expenditures (the amounts involved should be ones employees, officers and directors are accustomed to normally spending for their own business or personal entertainment); and
  - (4) The entertainment takes place in settings that also are reasonable, appropriate, and fitting to employees, officers and directors, their hosts, and their business at hand.

#### **4. DEALINGS WITH CUSTOMERS AND POTENTIAL CUSTOMERS**

Employees, officers and directors must keep all dealings with customers and potential customers fair and above board. Biovail gets business and keeps it because of the quality of its goods and services. Biovail does not give unethical or illegal rebates, kickbacks, under-the-table payments, or other similar improper favors to customers or their representatives.

The boundary line between ethical and unethical competition, or legal and illegal conduct, is not always well defined, particularly in international activities where differing local laws, custom; and practices come into play. Therefore, the following standards will serve as guides:

- a) All employees, officers and directors should make themselves aware of and fully comply with all laws, rules and regulations, whether federal, state, local or foreign, including laws governing relations with customers as well as competitors.
- b) All employees, officers and directors engaged in negotiations and contracts with foreign governments, the United States or any political subdivision thereof must



also know and abide by the specific rules and regulations covering relations with such governments and their agencies.

- c) Employees, officers and directors may not give gifts to customers except items of nominal value, which fit the legal, normal, and customary pattern of Biovail's sales efforts for a particular market. Exceptions to this policy can occur in international trades where it can be legal, customary, and appropriate business practice to exchange gifts with customers. Only the CEO can authorize the giving, receiving, or exchanging of such gifts. Any gifts received by employees, officers or directors in such an exchange must be reported to the CEO for determination as to the disposition of the gifts.
- d) Entertainment for any customer must fit regular business practices. The place and type of entertainment and the money spent must be reasonable and appropriate.

## 5. DEALING WITH PUBLIC OFFICIALS

Domestic and foreign laws and regulations require Biovail to be in contact with public officials on a wide variety of matters. Employees, officers and directors who regularly make these contacts have special responsibilities for upholding Biovail's good name. The following standards relate to these special responsibilities:

- a) All employees, officers and directors who contact public officials must be familiar with lobbying laws and public disclosure requirements, particularly those that apply to registrations and filings.
- b) No employee shall make any form of payment, direct or indirect, to any public official as an inducement to procuring or keeping business or having a law or regulation enacted, defeated, or violated. This is bribery, pure and simple. It will not be tolerated.  
  
It should be acknowledged that inherent in the current health-care regulatory environment, the definition of "form of payment" may include seemingly trivial gifts and/or favors (e.g. buying lunches, coffee, etc.).
- c) When not prohibited by law, employees, officers and directors are allowed to give to public officials gifts where the presentation and acceptance of gifts is an established custom and a normal business practice. All such gifts shall be of reasonable value and the presentation approved in advance by the CEO. Moreover, such gifts must be presented in a manner that clearly identifies Biovail and the occasion that warrants the presentation.
- d) Employees, officers and directors are also allowed to give public officials gifts in the form of product models and pictures provided the models and pictures are

part of Biovail's general marketing and public relations programs (except as noted in clause (b) above).

- e) On special ceremonial occasions, officers of Biovail may publicly give gifts of more than nominal value to public institutions and public bodies. Such gifts can commemorate special events or milestones in Biovail's history.

These may be transmitted through public officials but the gifts are given to the public institutions and public groups they represent, not to the officials personally.

- f) From time to time employees, officers and directors may entertain public officials, but only under the following conditions:
  - i. It is legal and permitted by the entity represented by the official;
  - ii. The entertainment is not solicited by the public official;
  - iii. The entertainment occurs infrequently;
  - iv. It arises out of the ordinary course of business;
  - v. It does not involve lavish expenditures, considering the circumstances;
  - vi. The settings and types of entertainment are reasonable, appropriate and fitting to our employees, officers or directors, their guests, and the business at hand.

## **6. POLITICAL ACTIVITIES AND CONTRIBUTIONS**

### **A. Canada and the United States**

Employees, officers and directors who participate in partisan political activities must make every effort to ensure that they do not leave the impression that they speak or act for Biovail.

Biovail encourages its employees, officers and directors to participate in political activities in their own time and at their sole expense. No corporate action, direct or indirect, will be allowed that infringes on the right of any employee individually to decide whether, to whom, and in what amount, they will make personal political contributions. The same is true of volunteer political donations of personal service time, so long as it does not interfere with the working status of employees, officers or directors.

### **B. Outside Canada and the United States**

No employees, officers and directors are permitted to use Biovail's funds, facilities, or other assets, to support either directly or indirectly any political candidates or political parties,

without advance authorization in writing from their immediate supervisor and the General Counsel. The policy of Biovail is that employees, officers and directors and employees should not participate in political activities in countries of which they are not nationals. However, such persons, of course, are free to participate in political activities in countries of which they are nationals in their own time and at their own expense.

**7. DISCLOSURE**

Biovail has formed a Disclosure Committee to promote consistent practices aimed at informative, timely and broadly disseminated disclosure of Material Information to the market, external stakeholder groups and employees in accordance with all applicable legal, regulatory and stock-exchange requirements.

It is essential that the Disclosure Committee be fully apprised of all material corporate developments to be able to determine whether there is information that should be publicly disclosed, and what the appropriate timing is for release of that information. In some cases, the Disclosure Committee may determine that the information should remain confidential. If that is the case, the Disclosure Committee will determine how that information will be controlled so that it is not inadvertently released. Therefore any employee who becomes aware of information that he/she believes might be material to Biovail and/or any of its affiliates and subsidiaries he/she should advise their manager or supervisor or a member of the Disclosure Committee. Current membership of the Disclosure Committee is posted on the Biovail.com website.

This applies throughout the year, but is particularly critical when annual or quarterly financial statements and Management Discussion and Analysis (MD&A) or regulatory filings are being prepared (e.g. regulatory filings, such as the U.S. Securities and Exchange Commission, Form 20-F).

**8. PUBLIC COMMUNICATIONS**

Given the importance placed on confidentiality and the appropriate disclosures of information regarding Biovail, it is important for employees, officers and directors to ensure that care be taken with any communication regarding Biovail or its activities outside of Biovail.

**A. Designated Spokespersons**

Biovail has designated official spokespersons who are authorized to speak on behalf of Biovail, and answer questions from the news media and the investment community, about Biovail and its activities. Employees, officers and directors who have not been designated as spokespersons for Biovail are not permitted to speak on behalf of the Company to the news media or to the investment community.

**B. Media or Analyst Inquiries**

Any employee who is approached by any person asking for comment on the activities of Biovail must direct any and all such inquiries to a member of the Disclosure Committee or to a member of the Company’s Stakeholder Relations team (Corporate Communications, Investor Relations) so that an appropriate spokesperson can respond to the inquiry on behalf of Biovail.

**C. Conferences**

The Disclosure Committee should be advised of any request to present at any conference or public meeting. Certain materials prepared for any such presentation may be required to be reviewed by the Company’s Stakeholder Relations group.

**D. Electronic Communications**

Care must be taken in all instances in the use of e-mail, and other devices (e.g., Blackberry’s) in communications relating to Biovail’s business. While users tend to resort to shorthand communication using these kinds of tools, those communications do form a record of those communications that may be subject to later review and disclosure. A more fulsome policy regarding electronic communications is in place (found in the Human Resources Management System Policy Binder) and should be adhered to by all employees, officers and directors.

**E. The Internet**

Biovail has instituted policies regarding the use of, and access to the Internet by employees, officers and directors. These policies include a prohibition against anyone participating in any chat rooms dedicated to Biovail or its operations or the industry at large. If any employee, officer or director becomes aware that any such chat room exists, they are asked to report the address of such site to the SLO so that it may be monitored and appropriate action may be taken.

**9. EQUAL OPPORTUNITY**

Biovail supports the principle that every individual must be accorded an equal opportunity to participate in the free-enterprise system and to develop their ability to achieve their full potential within that system.

There shall be no discrimination against any employee or applicant because of race, religion, color, sex, age, sexual orientation, national or ethnic origin, or disability (as required by law) or any other consideration prohibited by local law. All employees, officers and directors will be treated with equality during their employment without regard to their race, religion, color, sex, age, national or ethnic origin, or physical handicap, in all matters, including employment, upgrading, promotion, transfer, layoff, termination, rates of pay, selection for training and recruitment. Biovail will maintain a work environment free of discriminatory practice of any kind.

No employee shall have any authority to engage in any action or course of conduct or to condone any action or course of conduct by any other person which shall in any manner, directly or indirectly, discriminate or result in discrimination in the course of one's employment, termination of employment, or any related matter where such discrimination is, directly or indirectly, based upon race, religion, color, sex, age, sexual orientation, national or ethnic origin, disability, or any other consideration prohibited by law.

**10. HEALTH, SAFETY, AND ENVIRONMENTAL PROTECTION**

It is Biovail's policy to pay due regard to the health and safety of its employees, officers, directors and others, and to the state of the environment. There are federal, provincial, state and local workplace safety and environmental laws which through various governmental agencies regulate both physical safety of employees, officers and directors and their exposure to conditions in the workplace. Should you be faced with an environmental health issue or have a concern about workplace safety, you should contact your Health and Safety Committee representative or notify Biovail management immediately.

Many countries and their regional and local governments now have complex legislation to protect the health and safety of employees, or the general public, and to prevent pollution and protect the environment. In case of violation, these laws often provide penalties for both the company involved and its executive personnel. Biovail's SLO should always be consulted when necessary to understand or comply with such laws.

**11. WORK ENVIRONMENT**

Employees, officers and directors must treat each other with professional courtesy and respect at all times. Employees, officers and directors shall not subject any other employee to unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct which might be construed as sexual in nature, or harass others on the basis of race, disability, gender, sexual orientation or any other consideration prohibited by law. Such conduct may constitute sexual harassment or harassment under federal, provincial and state law and may be the basis for legal action against the offending employee and/or Biovail.

Employees are encouraged to report all conduct that they believe in good faith to be violations of local anti-harassment policies. To the extent permissible under local law the identity of the employees, officers or directors involved will be kept strictly confidential, and will not be revealed by Biovail's management without the employee's permission. The alleged harassment will be thoroughly investigated by Biovail and appropriate action will be taken. Biovail has an appropriate policy to protect employees against discrimination or retaliation as a result of such a complaint.

**12. INTEGRITY OF RECORDS AND FINANCIAL REPORTS**

It is of critical importance that Biovail's filings with the appropriate regulatory authorities (e.g. U.S. Securities and Exchange Commission) be accurate and timely. Depending on their position

with Biovail, an employee, officer or director may be called upon to provide necessary information to ensure that Biovail’s public reports are complete, fair and understandable. Biovail expects employees, officers and directors to take this responsibility very seriously and to provide prompt accurate answers to inquiries related to Biovail’s public disclosure requirements.

The integrity of Biovail’s record keeping systems will be respected at all times. Employees, officers and directors are forbidden to use, authorize, or condone the use of “off-the-books” bookkeeping, secret accounts, unrecorded bank accounts, “slush” funds, falsified books, or any other devices that could be utilized to distort records or reports of Biovail’s true operating results and financial conditions or could otherwise result in the improper recordation of funds or transactions.

**13. USE OLD AGENTS AND NON-EMPLOYEES, OFFICERS AND DIRECTORS**

Agents or other non-employees cannot be used to circumvent the law. Employees, officers and directors will not retain agents or other representatives to engage in practices that run contrary to the Standards of Business Conduct or applicable laws.

**14. INTERNATIONAL OPERATIONS**

Employees, officers and directors operating outside of Canada and the United States have a special responsibility to know and obey the laws and regulations of countries where they act for Biovail. Customs vary throughout the world, but all employees, officers and directors must uphold the integrity of Biovail in other nations diligently.

**15. STANDARDS OF BUSINESS CONDUCT**

**A. Initial Distribution**

- i. Employees, officers and directors designated to receive these Standards will receive their copies immediately after publication.
- ii. Future employees, officers and directors designated to receive these Standards will receive their copies at the time they are hired.

**B. Initial Verification**

Upon receiving their copy of the Standards, employees, officers and directors current and future will:

- i. Become thoroughly familiar with the Standards.
- ii. Resolve any doubts or questions about the Standards with their supervisors.

- iii. Inform their supervisors of any existing holdings or activities that might be, or appear to be, inconsistent with, or in violation of, the Standards.
- iv. Prepare written disclosures of such information, if requested, by supervisors.
- v. Take steps to correct existing situations and bring holdings and activities into full compliance with the Standards. Such steps will be approved in writing by supervisors and will be based on the written disclosure submitted by employees, officers or directors.
- vi. Sign the verification and return it to their supervisors who will make it part of employee's permanent corporate records.

**C. Maintaining Compliance**

- i. Employees, officers and directors have the responsibility to maintain their understanding of the Standards of Business Conduct and for following them.
- ii. Supervisors have the responsibility to maintain an awareness on the part of their employees, officers and directors of the importance of their adhering to the Standards of Business Conduct and for reporting deviations to Management.
- iii. As requested by the Board of Directors or senior management, employees, officers and directors will be asked to re-verify their understanding of the Standards of Business Conduct and their compliance with them every year as a part of Biovail's annual reporting.
- iv. Employees, officers and directors must inform their supervisors of any changes in their holdings or activities that might be, or appear to be in non-compliance with the Standards of Business Conduct.
- v. Employees, officers and directors must prepare written disclosure of such information, if requested, by supervisors.
- vi. Employees, officers and directors must take steps to correct any such changes, if necessary, to bring holdings and activities into full compliance. Such steps will be approved in writing by supervisors and Management and will be based on the written disclosures submitted by employees, officers and directors.

**D. Audits of Compliance**

Regular audits of Biovail will include procedures to test compliance with the Standards of Business Conduct.

**16. VIOLATIONS OF STANDARDS**

Employees, officers and directors must immediately report any violations of the Standards or any violation of any applicable law, rule or regulation. Failure to do so can have serious consequences for the employees, officers or directors and for Biovail.

Employees, officers and directors, should report violations to their supervisors and/or to the Human Resources department and to the SLO or to any secure reporting hotline the company may have contracted with. When in doubt, employees should talk to their supervisors or other appropriate personnel to determine the best course of action in a particular situation.

Supervisors and the Human Resources group have the responsibility to promptly and thoroughly investigate all reports, and to report violations to the SLO.

After a violation is investigated, appropriate action will be taken promptly. Management has the right to determine the appropriate disciplinary action for a violation up to and including termination of employment. All proposed disciplinary action is subject to review by senior Management, Human Resources and the SLO.

Employees, officers and directors should be aware that, in addition to any disciplinary action taken by Biovail, violations of certain Standards may require restitution and may lead to civil or criminal action against individual employees, officers and directors and any corporation involved.

Supervisors have the responsibility of taking remedial steps to correct any operating procedures that may contribute to violations of Standards.

Retaliation in any form against an individual who reports a violation of these Standards of Business Conduct or of any law, rule or regulation in good faith, or who assists in the investigation of a reported violation, is itself a serious violation of this policy. Acts of retaliation will be disciplined appropriately and should be reported immediately to your supervisor or Human Resources.

**17. CONTINUANCE OF EXISTING PERSONNEL POLICIES, RULES AND PERFORMANCE STANDARDS**

Biovail has codified numerous personnel policies, rules and standards of employee performance, which continue in force. These Standards of Business Conduct are intended to supplement and amplify those established personnel policies, rules and standards.



It continues to be the responsibility of all employees to comply with all such policies, rules and performance standards. Additionally, all members of management are to continue making certain that employees reporting to them are made aware of established policies, rules and performance standards and comply with them.

**18. AMENDMENT, MODIFICATION AND WAIVER**

Biovail will periodically review these Standards of Business Conduct. These Standards may be amended, modified or waived by the Board of Directors and waivers may also be granted by the Nominating & Governance Committee, subject to the disclosure and other provisions of the Securities Exchange Act of 1934, and the rules there under and the applicable rules of the Toronto Stock Exchange/New York Stock Exchange. Employees, officers and directors will be fully informed of any revisions to the Standards of Business Conduct.

Any waiver of these Standards for any employee other than a director or an executive officer, may only be made by the Executive Chairman or the CEO. Any waiver of these Standards for director or an executive officer may be made only by the Board of Directors or the Compensation, Nominating and Corporate Governance Committee and will be promptly disclosed to Biovail's stockholders.

**VERIFICATION AND RECEIPT OF UNDERSTANDING**

I have received a copy of Standards of Business Conduct for BIOVAIL CORPORATION and its subsidiaries, divisions and affiliates. I understand how the Standards apply to me. I acknowledge that my receiving the Standards obligates me to follow them and I agree to abide by their conditions.

\_\_\_\_\_

Date

\_\_\_\_\_

Name

\_\_\_\_\_

Signature

*Employee's Copy*

**VERIFICATION AND RECEIPT OF UNDERSTANDING**

I have received a copy of Standards of Business Conduct for BIOVAIL CORPORATION and its subsidiaries, divisions and affiliates. I understand how the Standards apply to me. I acknowledge that my receiving the Standards obligates me to follow them and I agree to abide by their conditions.

\_\_\_\_\_

Date

\_\_\_\_\_

Name

\_\_\_\_\_

Signature

*HR File Copy*

**BIOVAIL CORPORATION  
EXECUTIVE EMPLOYMENT AGREEMENT**

THIS AGREEMENT is made by and between Biovail Corporation (hereinafter the “Corporation”) and Mark Durham (hereinafter the “Executive”).

**ARTICLE ONE — GENERAL DUTIES AND TERM**

**Scope of Employment / Duties**

1.01 The Corporation will employ the Executive as Sr. VP, HR & Shared Services. The Executive will serve as an officer of the Corporation. During the Employment Term (as defined below), the Executive will devote substantially all of the Executive’s business efforts and time to the Corporation. The Executive agrees, during the Employment Term, not to actively engage in any other employment, occupation or consulting activity for any direct or indirect compensation without the prior approval of the Chief Executive Officer of the Corporation (the “CEO”); provided, however, that the Executive may (a) serve on the boards of directors of other companies (subject to reasonable approval of the CEO) and boards of trade associations or charitable organizations; (b) engage in charitable activities and community affairs; and (c) manage the Executive’s personal investments and affairs, as long as such activities do not violate Section 4.02 and do not materially interfere with the Executive’s duties and responsibilities for the Corporation.

1.02 The Corporation reserves the right to establish the employment relationship with the Executive directly with the Corporation or with any of its affiliates or subsidiaries, or to change such employment relationship over time, as it deems necessary or appropriate to comply with legal requirements or for ease of administration of employee benefits programs or other matters.

1.03 Notwithstanding 1.02, the Corporation acknowledges and agrees that the Executive’s principal residence is and shall remain in the United States of America.

**Term of Agreement**

1.04 The Executive has been employed by the Corporation since February 17, 2003 (the “Employment Commencement Date”). The Corporation hereby agrees to continue to employ the Executive and the Executive hereby accepts such continued employment, in accordance with the terms and conditions of this Agreement, commencing on July 3, 2009. The period of the Executive’s employment under this Agreement will be referred to as the “Employment Term.” Subject to the Corporation’s obligation to provide severance benefits and the parties’ obligation to provide a Notice of Termination (as defined below), the Executive and the Corporation acknowledge that this employment relationship may be terminated at any time and for any or no cause or reason at the option of either the Executive or the Corporation.

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## ARTICLE TWO — COMPENSATION

### Base Salary

2.01 As of the Employment Commencement Date, the Executive's annualized base salary will be \$361,179.26 USD, payable in accordance with the Corporation's normal payroll practices for employees generally, and will be subject to annual review in accordance with the Corporation's normal review process for other similarly situated senior executives.

### Incentive Compensation

2.02 The Executive will be eligible to participate in the Corporation's short term annual incentive compensation plan as such plan may be amended from time to time (the "Short Term Incentive Plan") in accordance with the terms of the Short Term Incentive Plan. As of the date of this Agreement, the Executive's target will be 50% of the Executive's annual base salary.

### Equity Compensation

2.03 Eligibility and Terms.

The Executive will be eligible to participate in the Corporation's equity compensation plan, as such plan may be amended from time to time (the "Equity Compensation Plan"), in accordance with the terms of the Equity Compensation Plan, except as may be otherwise indicated in this Agreement. The Executive's annual target under the Equity Compensation Plan shall be 75,000 stock options and 6,250 Restricted Share Units ("RSUs"), or a substantially equivalent award. Subject to the approval of the Board of Directors, the Executive will be eligible in 2009 for a special one-time grant of 50,000 RSUs subject to performance goals.

### Employee Benefits

2.04 During the Employment Term, the Executive will be eligible to participate in employee benefit plans and programs that are offered to the Corporation's other similarly-situated senior executives in accordance with the terms of such plans as they may change from time to time. Nothing in this Agreement shall preclude the Corporation or any affiliate of the Corporation from terminating or amending any employee benefit plan or program from time to time after the Employment Commencement Date.

### Expenses

2.05 The Executive shall be reimbursed for reasonable out of pocket business expenses, including travel and entertainment expenses, actually and properly incurred by the Executive in the course of performing the Executive's services hereunder, upon furnishing to the Corporation reasonable supporting statements and vouchers; provided, however, that in any financial year in which the Corporation has provided to the Executive an approved budget, such expenses must not exceed the amount so budgeted without the prior written approval from the CEO.

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**Vacation**

2.06 The Executive will be eligible for 5 weeks of vacation annually, to be taken in accordance with the terms of the Corporation’s Vacation Policy, without regard to any lesser amount of vacation time set forth therein. Notwithstanding the foregoing, the Executive’s eligibility for vacation in the year of hire will be pro-rated in the manner specified in the Corporation’s Vacation Policy.

**ARTICLE THREE — TERMINATION AND RESIGNATION**

**Involuntary Termination - Either By The Corporation Without Cause or By The Executive For Good Reason**

3.01 If the Executive incurs an involuntary termination from employment with the Corporation on account of a termination by the Corporation without Cause or by the Executive for Good Reason, then, in addition to any benefits or compensation accrued, earned and due to the Executive but not yet paid as of the date that is designated by the Corporation or the Executive, as applicable, as the last day of the Executive’s employment or term of office with the Corporation (the “Termination Date”), the Executive will be eligible for the severance payments and benefits as described in this Section 3.01; provided that (i) the Executive continues to comply with the Restrictive Covenants (as defined below); and (ii) the Executive executes, and does not revoke, a written waiver and release of all claims, demands and causes of action against the Corporation and related parties in a form prescribed by the Corporation, as limited by Section 3.09 (“Release”);

(a) The Executive will be paid a lump sum severance payment within 60 days of the Executive’s Termination Date, equal to one (1) times the Executive’s base salary (calculated using the Executive’s highest annual base salary in the three years prior to the Executive’s Termination Date) plus one (1) times the Executive’s target level of annual incentive compensation for the year prior to the year in which the Executive’s Termination Date occurs;

(b) The Executive will be entitled to a pro-rated portion of the Executive’s target level of annual incentive compensation for the year in which the Executive’s Termination Date occurs, based on the number of months (rounded to the next highest number for a partial month) of the calendar year elapsed prior to the Executive’s Termination Date and calculated and paid in accordance with the terms of the Corporation’s Short Term Incentive Plan; and

(c) Until the earlier of (i) the end of the one (1) year period following the Executive’s Termination Date, or (ii) the date, or dates, the Executive is eligible to receive benefits under the same type of plan of a subsequent employer (the “Benefit Period”), the Corporation will pay to the Executive a monthly payment on the first payroll date of each month equal to the COBRA cost of continued medial and dental coverage for the Executive and the Executive’s covered dependents under the medical and dental plans of the Corporation pursuant to section 4980B of the Internal Revenue Code, less the amount that the Executive would be required to contribute for medical and dental coverage if the Executive were an active employee. These payments will commence on the Corporation’s first payroll date after the Executive’s

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Termination Date and will continue until the end of the Benefit Period (but not longer than the Benefit Period).

**Involuntary Termination By The Corporation For Cause Or Voluntary Resignation Without Good Reason**

3.02 If the Executive is involuntarily terminated by the Corporation for Cause or the Executive voluntarily resigns from employment without Good Reason, then the Executive will forfeit the Executive's right to receive any salary, Short Term Incentive Plan compensation, Equity Compensation Plan compensation or other compensation that has not been fully accrued at the time the Executive's employment terminates; provided, however, that the Executive will be entitled to receive any benefits or compensation accrued, earned and due to the Executive but not yet paid as of the Executive's Termination Date.

**Death or Disability**

3.03 The Executive's employment will terminate automatically upon the Executive's death. The Corporation may terminate the Executive's employment if illness, disease, or physical or mental incapacity render the Executive generally incapable of performing the Executive's duties or unfit to advance or represent the Corporation on a daily basis for a period of twelve (12) consecutive months and within such twelve (12) months, the Executive fails to produce to the Corporation a medical opinion indicating a reasonable time for the return of the Executive to the full-time assumption of the Executive's past duties and responsibilities. Nothing herein is intended to circumvent or abridge the Corporation's short-term disability policy or long-term disability plan. In the event of termination pursuant to the terms of this Section 3.03, the Executive or the Executive's estate, as applicable, will be entitled to receive any salary, benefits or other amounts accrued, earned and due to the Executive but not yet paid as of the Executive's Termination Date.

**Cause**

3.04 For purposes of this Agreement, Cause includes:

- (a) conviction of the Executive, or entering of a guilty plea or a plea of no contest by the Executive, with respect to, a felony, any crime involving fraud, larceny or embezzlement or any other crime involving moral turpitude which subjects, or if generally known, would damage the business interests or reputation of the Corporation or any of its affiliates;
  - (b) any act of fraud, misappropriation, material dishonesty, embezzlement or similar conduct involving the Corporation or any affiliates;
  - (c) a material breach by the Executive of the Executive's duties hereunder (other than as a result of incapacity due to physical or mental impairment) which is demonstrably willful and deliberate on the part of the Executive or which is committed in bad faith or without reasonable belief that such breach is in the best interests of the Corporation;
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- (d) a material breach by the Executive of the Executive's duties hereunder (other than as a result of incapacity due to physical or mental impairment), except as identified in Section 3.04(c) above, which breach is not remedied by the Executive within 30 days after receipt of written notice from the Corporation specifying such breach; or
- (e) the Executive's failure to comply in any material way with any of the provisions of this Agreement.

**Good Reason**

3.05 For purposes of this Agreement, a voluntary resignation by the Executive will be deemed to be a termination for Good Reason if:

- (a) The Corporation makes: (i) any assignment to the Executive of any duties which are materially inconsistent with the Executive's position; (ii) any material reduction in the Executive's authority, responsibilities or status; or (iii) a material reduction to the Executive's base salary;
- (b) The Executive notifies the Corporation in writing of the Executive's belief that the Corporation has taken an action identified in Section 3.05(a) within thirty (30) days of the event at issue;
- (c) The Corporation has not remedied the situation within thirty (30) days after receipt of written notice from the Executive; and
- (d) The Executive provides a Notice of Termination within thirty (30) days after the Corporation's opportunity to remedy the situation has expired.

**Change in Control**

3.06 (a) The Corporation shall provide the payments and benefits described in Section 3.06(b) below only if: (i) the Executive continues to comply with the Restrictive Covenants (as such term is defined below); and (b) the Executive executes, and does not revoke, a Release (as defined above).

(b) Upon a Change in Control (as defined below), and an involuntary termination of the Executive's employment either by the Corporation without Cause or by the Executive for Good Reason, which termination occurs within a period of twelve (12) months following the Change in Control, the Corporation shall provide to the Executive, in addition to any benefits or compensation accrued, earned and due to the Executive but not yet paid as of the Executive's Termination Date, but in lieu of any payments or benefits to which the Executive may be entitled under Section 3.01 above, (a) a lump sum severance payment of two (2) times the Executive's base salary (calculated using the Executive's highest annual base salary in the three years prior to the Executive's Termination Date) plus two (2) times the Executive's target level of annual incentive compensation under the Short Term Incentive Plan for the year prior to the year in which the Executive's Termination Date occurs, payable within thirty (30) days of the Executive's Termination Date and, (b) any unvested equity compensation awards held by the

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Executive shall automatically accelerate and become one hundred percent (100%) vested and, as applicable, exercisable, as of the Executive's Termination Date.

- (c) For the purpose of this Section 3.06, "Change in Control" means the happening of any of the following events:
- (i) the completion of a transaction pursuant to which (A) the Corporation goes out of existence or (B) any person, or any Associate (as such terms defined in National Instrument 45-106 - *Prospectus and Registration Exemptions*, as amended from time to time, or such other successor rules, instruments or policies from time to time of Canadian provincial securities regulatory authorities which may govern trades of securities to employees, officers, directors or consultants ("NI45-106")) or Related Entity (as such term is defined in NI45-106) of such person (other than the Corporation, any trustee or other fiduciary holding securities under any employee benefit plan of the Corporation or a Related Entity, or any company owned, directly or indirectly, by the shareholders of the Corporation in substantially the same proportions as their ownership of common shares of the Corporation) hereafter acquires the direct or indirect "beneficial ownership" (as defined by the *Canada Business Corporations Act*) of securities of the Corporation representing 50% or more of the aggregate voting power of all of the Corporation's then issued and outstanding securities;
  - (ii) the lease, exchange, license, sale or other similar disposition of all or substantially all of the Corporation's assets in one transaction or a series of related transactions to a person, or any Associate or Related Entity of such person (other than an Associate or Related Entity of the Corporation, any trustee or other fiduciary holding securities under any employee benefit plan of the Corporation or a Related Entity, or any company owned, directly or indirectly, by the shareholders of the Corporation in substantially the same proportions as their ownership of common shares of the Corporation);
  - (iii) the dissolution or liquidation of the Corporation except in connection with the distribution of assets of the Corporation to one or more persons which were Related Entities prior to such event;
  - (iv) during any period of 24 consecutive months beginning on or after the date of the Equity Compensation Plan, the persons who were members of the Board immediately before the beginning of such period (the "Incumbent Directors") cease (for any reason other than death) to constitute at least a majority of the Board or the board of directors of any successor to the Corporation, provided that any director who was not a director as of the date of the Equity Compensation Plan shall be deemed to be an Incumbent Director if such director is elected to the Board by, or
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on the recommendation of or with the approval of, at least two-thirds of the directors who then qualified as Incumbent Directors either actually or by prior operation of the foregoing unless such election, recommendation or approval occurs as a result of an actual or threatened election contest or other actual or threatened solicitation of proxies or contests by or on behalf of a person other than a member of the Board; or

- (v) a merger, amalgamation, arrangement or consolidation of the Corporation with any other corporation other than a merger, amalgamation, arrangement or consolidation that would result in the voting securities of the Corporation outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 50% of the combined voting power of the voting securities of the Corporation or such surviving entity outstanding immediately after such merger, amalgamation, arrangement or consolidation; provided, however, that a merger, amalgamation, arrangement or consolidation effected to implement a recapitalization of the Corporation (or similar transaction) in which no person (other than those covered by the exceptions in (i) above) acquires more than 50% of the combined voting power of the Corporation's then outstanding securities shall not constitute a Change in Control.

(d) In the event any payments or benefits made to the Executive upon a Change of Control are deemed "excess parachute payments" within the meaning of Section 280G of the U.S. Internal Revenue Code, and the Executive is subject to excise tax under Section 4999 of the U.S. Internal Revenue Code (the "Excise Tax") with respect to such payments, the Executive shall receive, in addition to any other payments and benefits to which he is entitled under the Agreement, an amount which, after imposition of any income, employment, excise or other taxes on such amount (including any income, employment, excise or other taxes paid on any amount due under this Section), equals the difference between the amount he actually receives after payment of all taxes including all Excise Tax and the after-tax amount he would receive if no Excise Tax were imposed on him. Any additional payment received under this Section 3.06(d) shall be called the Gross-Up Payment. Notwithstanding any provisions of this Section 3.06(d) to the contrary, in accordance with the requirements of section 409A of the Code, any Gross-Up Payment payable hereunder shall be paid not later than the end of the Executive's taxable year next following the Executive's taxable year in which the Executive or the Company, as the case may be, remits the taxes for which the Gross-Up Payment is being paid.

#### **Notice of Termination**

3.07 Any termination of employment by the Corporation or by the Executive shall be communicated by notice of termination to the other party hereto given in accordance with Section 5.09 (a "Notice of Termination"). For purposes of this Agreement, Notice of Termination means a written notice which (a) identifies the specific termination provision in the Agreement relied upon, and (b) to the extent applicable, sets forth in reasonable detail the facts

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and circumstances claimed to provide a basis for termination of the Executive’s employment under the provision identified, and (c)(i) in the case of a termination by the Corporation, specifies the Executive’s Termination Date which shall not be less than fifteen (15) nor more than sixty (60) days after the giving of such notice; or (ii) in the case of a termination by the Executive without Good Reason, shall not be less than ninety (90) days after the giving of such notice.

**Payments After Termination of Employment**

3.08 Payments made by the Corporation to the Executive pursuant to this Agreement after the Executive’s Termination Date will be made by courier delivery service to the last address provided for notices to the Executive pursuant to Section 5.09 of this Agreement.

**Release**

3.09 The Release identified in Sections 3.01 and 3.06 will not require the Executive to release any right the Executive may have to indemnification as an officer, director or employee of the Corporation (or any affiliate thereof) pursuant to the articles of incorporation or bylaws (or other governing instruments) of the Corporation (or any affiliate thereof) or any vested benefits to which the Executive may be entitled under any employee benefit plan.

**ARTICLE FOUR — EXECUTIVE’S OBLIGATIONS**

**Confidentiality**

4.01 The Executive agrees to be bound by the terms of the confidentiality agreement (the “Confidentiality Agreement”) dated the date hereof, which Confidentiality Agreement has been read, understood and executed by the Executive and is attached hereto as Schedule A and which is incorporated by reference into this Agreement. In the event of a conflict between the terms of this Agreement and the terms of the Confidentiality Agreement, the terms of this Agreement shall govern.

**Non-Competition**

4.02 The Executive acknowledges that the Corporation currently conducts business activities in, North America and Barbados (the “Territory”). The Executive further acknowledges that, in the future, the business activities are expected to substantially expand territorially. Accordingly, the Executive hereby agrees and covenants that he shall not during the term of this Agreement and for a period of one (1) year following the Executive’s Termination Date for involuntary termination by the Corporation for Cause, voluntary termination by the Executive, or a termination following a Change in Control, directly or in any manner whatsoever, including without limitation, either individually, in partnership, jointly or in conjunction with any other individual, partnership, corporation, unincorporated organization, trust, joint venture, the Crown or any agency or instrumentality thereof of any juridical entity, in the Territory (excluding, as applicable, any portions of the Territory in which the Corporation is no longer carrying on

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business at the relevant time) or in any other regions or countries where the Corporation may be carrying on business at the relevant time:

- (a) carry on, be engaged in, take part in or be a party to any Competitive Activity, directly or indirectly; or
- (b) consult, advise, render services to lend money, guarantee the debts or obligations of or permit the use of his name or any part thereof for any Competitive Activity.

For the purposes of this Section 4.02, a Competitive Activity shall be defined as any business: (i) that competes with or plans to actively compete with the business activities of the Corporation through, but not limited to, the formulation, clinical testing, registration, manufacturing or marketing of specialty pharmaceuticals and/or drug delivery technologies in the therapeutic categories on which the Corporation is focused, which include central nervous system disorders, pain management, cardiovascular disease, type II diabetes, and any other category in which the Corporation is focused in the future and excludes areas in which the Corporation is not actively engaged at the relevant time, (ii) with which the Corporation has a product(s) licensing agreement, (iii) in which the Corporation has minority equity interest, and (iv) with which the Corporation is at the time actively negotiating a commercial relationship.

During the continuance of his employment, the Executive shall not (other than solely as a holder of not more than three per cent (3%) of the issued and outstanding voting shares of any public corporation or as a shareholder of the Corporation, without the written approval of the board of directors of the Corporation, directly or indirectly, either individually or in partnership or in conjunction with any person or persons, firm, association, syndicate, company or corporation as principal, agent, director, manager, servant, shareholder or in any other manner whatsoever) carry on or be engaged in or be concerned with or interested in any business or vocation whatsoever which would be reasonably judged to be a Competitive Activity or would impede the Executive in performing his duties as outlined herein.

The Executive may at any time, or from time to time, request the Corporation to advise the Executive in writing whether or not the Corporation considers a specified business to be Competitive Activity. Any such request shall be made by written notice to the Corporation that includes: (i) the name of the specific business unit for which the Executive proposes to provide services; (ii) the name or names of any parent companies of such business unit; (iii) a description of the specific services which the Executive proposes to perform for such business unit; (iv) a statement as to why the Executive believes that the performance of such services will not adversely affect the Corporation’s legitimate interests.

**Non-Solicitation**

4.03 The Executive hereby covenants and agrees that the Executive shall not, during the term of this Agreement and for a period of twelve (12) months thereafter, solicit or contact, either directly or indirectly, any of the Customers, Prospective Customers or any suppliers of the pharmaceutical compounds used by the Corporation on the Executive’s own behalf, or on behalf of any entity, by which the Executive is hired or retained. “Customers” means customers of the

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Corporation with which the Executive had personal contact or had supervision over the efforts of those who had direct personal contact with such customers during the last two (2) years of the Executive's employment with the Corporation. "Prospective Customer" means any organizations or entities which had been actively contacted and solicited for their business by representatives of the Corporation, and with whom the Executive had contact, both during the last two (2) years of the Executive's employment with the Corporation.

**Non-Hiring**

4.04 The Executive hereby covenants and agrees that the Executive shall not, during the term of this Agreement and for a period of twelve (12) months thereafter, either directly or indirectly, solicit or endeavour to solicit from the Corporation any of its employees, and shall not for a period twelve (12) months from the end of the term of this Agreement hire any of the foregoing on the Executive's own behalf or on behalf of any entity for which the Executive is hired or retained. Notwithstanding the foregoing, the Executive shall not be considered in breach of this section should the Executive solicit for hiring such Executive's Administrative Assistant.

**Injunctive Relief**

4.05 The Executive acknowledges and agrees that the agreements and covenants in this Article Four are essential to protect the business and goodwill of the Corporation and that a breach by the Executive of the covenants in Sections 4.01, 4.02, 4.03 and 4.04 hereof could result in irreparable harm to the Corporation for which the Corporation could not be adequately compensated in damages and that, accordingly, the Corporation may have no adequate remedy at law if the Executive breaches such provisions. Consequently, if the Executive breaches any of such provisions, the Corporation shall have, in addition to and not in lieu of, any other rights and remedies available to it under any law or in equity, the right to obtain injunctive relief to restrain any breach or threatened breach thereof and to have such provisions specifically enforced by any court of competent jurisdiction.

**Severability of Covenants in Full or in Part**

4.06 The parties acknowledge that the provisions of Article Four hereof (the "Restrictive Covenants") are reasonable and valid in geographic and temporal scope and in all other respects. If any court of competent jurisdiction determines that any of the Restrictive Covenants or any part thereof, is or are invalid or unenforceable, the Executive and the Corporation agree that the remainder of the Restrictive Covenants shall not be affected by the deemed invalid portions.

**Assignment of IP**

4.07 The Executive shall disclose to the Corporation any and all Intellectual Property (as defined in the Confidentiality Agreement) which the Executive may make solely, jointly, or in common with other employees during the term of the Executive's employment within the Corporation and which relates to the business. Any Intellectual Property coming within the scope of the business made and/or developed by the Executive while in the employ of the

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Corporation, whether or not conceived or made during regular working hours, and whether or not the Executive is specifically instructed to make or develop same, shall be for the benefit of the Corporation and shall be regarded as work made in the course of employment for the purposes of the *Copyright Act* (Canada). The Executive shall assign, set over and transfer to the Corporation the Executive’s entire right, title and interest in and to any and all of the Intellectual Property and to all letters patent and applications for letters patent which may be, or may have been filed and/or issued by or to the Executive or on the Executive’s behalf and the Executive agrees to execute and deliver to the Corporation any and all instruments necessary or desirable to accomplish the foregoing and, in addition, to do all lawful acts which may be necessary or desirable to assist the Corporation to obtain and enforce protection of the Intellectual Property. To the extent of any rights the Executive may have with respect to the Intellectual Property which are not assignable, including but not limited to moral rights, the Executive hereby waives same. The Executive will execute and deliver to the Corporation or its successors and assigns, such other and further assignments, instruments and documents as the Corporation from time to time reasonably may request for the purpose of establishing, evidencing, and enforcing or defending its complete, exclusive, perpetual, and world-wide ownership of all rights, titles, and copyrights, in and to the Intellectual Property, and the Executive constitutes and appoints the Corporation as agent and attorney-in-fact, with full power of substitution, to execute and deliver such assignments, instruments, documents as Executive may fail to or refuse to execute and deliver, this power and agency being coupled with an interest and being irrevocable.

**Standards of Business Conduct**

4.08 The Executive acknowledges and agrees that the Executive has read and understood and agrees to be bound by the Corporation’s Standards of Business Conduct, which is attached hereto as Schedule B.

**No Conflicting Obligations**

- 4.09 The Executive warrants to the Corporation that:
- (a) the performance of the Executive’s duties as an employee of the Corporation will not breach any agreement or other obligation to keep confidential the Confidential Information of any third party; and
  - (b) the Executive is not bound by any agreement with or obligation to any third party that conflicts with the Executive’s obligations as an employee of the Corporation.

**ARTICLE FIVE - INTERPRETATION AND ENFORCEMENT**

**Section 409A**

5.01 This Agreement shall be interpreted to avoid any penalty sanctions under Internal Revenue Code section 409A. If any payment or benefit cannot be provided or made at the time

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specified herein without incurring sanctions under section 409A, then such benefit or payment shall be provided in full at the earliest time thereafter when such sanctions will not be imposed.

Notwithstanding any provision of this Agreement to the contrary, if the Executive is a key employee of a publicly traded corporation under section 409A at the time of the Executive’s separation from service and if payment of any amount under this Agreement is required to be delayed for a period of six (6) months after separation from service pursuant to section 409A, payment of such amount shall be delayed as required by section 409A, and the accumulated postponed amount shall be paid in a lump sum payment within ten (10) days after the end of the six-month period. If the Executive dies during the postponement period prior to the payment of postponed amount, the amounts withheld on account of section 409A shall be paid to the personal representative of the Executive’s estate within 60 days after the date of the Executive’s death. A “key employee” shall mean an employee who, at any time during the twelve (12) month period ending on the identification date, is a “specified employee” under section 409A of the Internal Revenue Code, as determined by the Board. The determination of key employees, including the number and identity of persons considered key employees and the identification date, shall be made by the Board in accordance with the provisions of sections 416(i) and 409A and the regulations issued thereunder.

For purposes of section 409A, the right to any series of installment payments under this Agreement shall be treated as a right to a series of separate payments. All reimbursements and in kind benefits provided under this Agreement shall be made or provided in accordance with the requirements of section 409A, including, where applicable, the requirement that (i) any reimbursement shall be for expenses incurred during the Executive’s lifetime (or during a shorter period of time specified in this Agreement), (ii) the amount of expenses eligible for reimbursement, or in kind benefits, provided during a calendar year may not affect the expenses eligible for reimbursement, or in kind benefits to be provided, in any other calendar year, (iii) the reimbursement of an eligible expense will be made on or before the last day of the calendar year following the year in which the expense is incurred, and (iv) the right to reimbursement or in kind benefits is not subject to liquidation or exchange for another benefit.

**Independent Legal Advice**

5.02 The Executive agrees to the terms and conditions of this Agreement having had the opportunity to receive independent legal advice, for which the Executive has been reimbursed by the Corporation.

**Severability**

5.03 The parties further acknowledge that if any provision contained in this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof shall continue in full force and effect.

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**Sections and Headings**

5.04 The division of this Agreement into Articles and Sections and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Agreement.

**Number and Gender**

5.05 In this Agreement words importing the singular number only shall include the plural and vice versa and words importing the masculine gender shall include the feminine and neuter genders and vice versa.

**Entire Agreement**

5.06 This Agreement and all the Schedules hereto constitute the entire Agreement between the parties with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the parties with respect thereto (including, but not limited to, the Executive’s employment agreement dated December 20, 2007 and the amendment thereto dated December 10, 2008). There are no representations, warranties, forms, conditions, undertakings or collateral Agreements, express, implied or statutory between the parties other than as expressly set forth in this Agreement.

**Amendments and Waivers**

5.07 No amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by both parties. No waiver of any breach of any term or provision of this Agreement shall be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided in written waiver, shall be limited to the specific breach waived.

**Governing Law**

5.08 This Agreement shall be deemed to have been made in and shall be construed in accordance with the laws of the State of New Jersey and all legal proceedings contemplated in this Agreement shall be brought in, and be governed by, the laws of the State of New Jersey, without regard to principles of conflicts of law.

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**Notices**

5.09 Any demand, notice or other communication (hereinafter in this Section 5.09 referred to as a “Communication”) to be made or given in connection with this Agreement shall be made or given in writing and may be made or given by personal delivery addressed respectively to the recipients:

To the Executive:

Mark Durham  
xxx

To the Corporation:

7150 Mississauga Road  
Mississauga, ON L5N 8M5  
Attn: Chief Executive Officer

or such other address or individual as may be designated by notice by either party to the other. Any communication made or given by personal delivery shall be conclusively deemed to have been given on the day of the actual delivery thereof.

**Benefit of Agreement**

5.10 This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, legal personal representatives, successors and assigns.

**Assignment**

5.11 The Executive may not assign the Executive’s rights or obligations under this Agreement without the prior written consent of the Corporation which consent may be unreasonably withheld. The Corporation may unilaterally assign this agreement to an affiliate without consent but on notice to the Executive.

**Execution of Agreement**

5.12 The Executive acknowledges that the Executive has executed this Agreement freely; that the Executive has reviewed this Agreement thoroughly; that the Executive agrees with its contents; and that the terms herein are reasonable for the fair protection of both the Executive and the Corporation.

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**IN WITNESS WHEREOF**, the parties have executed this Agreement on the dates identified below at **Bridgewater, New Jersey**:

BIOVAIL CORPORATION

EXECUTIVE

By: /s/ W. WELLS  
Name: William Wells  
Title: Chief Executive Officer

/s/ MARK DURHAM  
Mark Durham  
Sr. VP, HR & Shared Services

Date: 8-4-09

Date: 8-4-09

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**SCHEDULE A**  
**BIOVAIL CORPORATION**  
**(and its Subsidiaries, Divisions, and Affiliates)**  
**CONFIDENTIALITY AGREEMENT**

As an employee of Biovail Corporation (the “Corporation”), I acknowledge that I may acquire or have disclosed to me by the Corporation or by any affiliate, associate, or technology partner of the Corporation, either directly or indirectly, in writing, conversation, or through observation, various information about the business of the Corporation which is not in the public domain and which the Corporation does not wish to be divulged to other persons, companies, or third parties. I further understand that the Corporation’s Confidential Information (as defined below) is essential to its competitive advantage and to its ability to be financially viable. I further understand that the unauthorized disclosure of such Confidential information may cause the Corporation irreparable injury that may not be rectified in the future.

Therefore, as a condition and in consideration of my employment with the Corporation, I understand and agree that while employed with the Corporation and thereafter (as more particularly described below). I am required to hold confidential and not to disclose to anyone without the written authority from the Corporation any knowledge, information, or facts concerning the Corporation’s:

- research and development activities
- technological plans, advances, applications and inventions
- technical specifications, designs and plans
- materials and sources of supply
- discoveries, inventions, trade secrets, patents
- financial affairs, contracts, licensing agreements, customer lists, pricing practices, marketing strategies
- any other information regarding the Corporation, its products and their development which is not in the public domain

All of the foregoing shall hereinafter collectively be referred to as the “Confidential Information”.

I shall keep confidential any and all Confidential Information which has been disclosed to me in writing or through oral communications and shall not divulge in any manner whatsoever any such information to any person, firm, corporation, partnership or similar entities without the Corporation’s written authority.

Should I breach or threaten to breach this Agreement, I shall be liable to the Corporation in equity and/or in law for damages that may be suffered by the Corporation as a result of the breach or threatened breach. I understand that a breach of this Agreement may result in irreparable harm to the Corporation such as to warrant the entitlement by the Corporation to an interlocutory and/or permanent injunction or other equitable relief

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against me, and an award of damages including punitive, exemplary and aggravated damages, together with legal costs and expense and I specifically agree that I will not argue the adequacy of damages or the Corporation's ability to seek equitable relief in any such proceeding.

All Confidential Information supplied by the Corporation to me during the course of my employment and any rights related thereto, including but not limited to rights of know how, patent, trademark and copyright, with respect to existing products or those that are developed during or after my employment, are and remain the exclusive and absolute property of the Corporation.

I shall not, except as and to the extent required to enable me to carry out my duties with the Corporation, make any copies or reproduce the Confidential Information nor shall I remove or cause to have removed from the premises of the Corporation during my employment any Confidential Information unless required to do so in order to fulfill my duties with the Corporation. Such copies or reproductions shall be strictly subject to the terms and conditions of this Agreement. I shall take such steps as are necessary to restrict access to and protect the confidentiality of such copies or reproductions of the Confidential Information. Any such copies or reproductions made shall become the exclusive and absolute property of the Corporation.

Upon request of the Corporation, I agree to immediately surrender to the Corporation all documentation and information - notes, drawings, recordings, manuals, letters, correspondence, computer data and programs, records, books or any other materials relating to the Confidential Information which is in my possession without my retaining any copies or duplicates thereof.

1 agree that this Agreement shall be construed in accordance with the laws of the Province of Ontario and I agree that the applicable courts of the Province of Ontario shall have exclusive jurisdiction with respect to any dispute or breach herein and 1 hereby attorn to the exclusive jurisdiction of the courts of the Province of Ontario.

This Agreement shall enure to the benefit of and shall be binding upon my successors, heirs and attorneys.

The disclosure or divulging of any Confidential Information contrary to this Agreement, or the violation of this Agreement in any way shall result in my immediate termination of employment, in addition to which I may be subject to criminal prosecution and civil liability.

I acknowledge and agree that I have executed this Agreement freely and with the benefit of independent legal advice and the terms herein are fair and reasonable.

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I acknowledge and agree to the foregoing.

Employee Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Witness Signature: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_

## SCHEDULE B



### **BIOVAIL CORPORATION (and its Subsidiaries, Divisions, and Affiliates)**

#### **STANDARDS OF BUSINESS CONDUCT**

Biovail Corporation (“Biovail”), together with its subsidiaries, divisions and affiliates, places great importance on conducting its business activities in an ethical and appropriate manner. Each employee, officer and director is a reflection of Biovail, and as such, the activities and actions of every individual within Biovail must be undertaken in accordance with a high standard of ethics and integrity. As such, Biovail expects each employee, officer and director to comply with, and adhere to, these Standards of Business Conduct (the “Standards”).

#### **1. CONFLICTS OF INTEREST**

Employees, officers and directors of Biovail must avoid situations where their private interests could conflict with, or even appear to conflict with, the interests of Biovail and its stockholders.

Conflicts of interest arise when an individual’s position or responsibilities with Biovail present an opportunity for personal gain apart from the normal rewards of employment. They also arise when the private interests of an employee, officer or director are inconsistent with those of Biovail or create conflicting loyalties. Such conflicting loyalties can cause an employee, officer or director to give preference to private interests in situations where corporate responsibilities should come first. Employees, officers and directors must perform the responsibilities of their positions on the basis of what is in the best interests of Biovail and free from the influence of personal considerations and relationships.

In the event that any potential conflict of interest arises, the individual involved must immediately notify his or her immediate supervisor. If such individual is an officer or director of Biovail, the Executive Chairman (“Chairman”), Chief Executive Officer (“CEO”) and the General Counsel, or in the absence of a General Counsel the Vice President, Associate General Counsel (“SLO”) of Biovail must also be immediately notified and no further action may be taken unless authorized in writing by the Chairman and/or the CEO.

While it is not possible to detail every situation where conflicts of interest may arise, the following policies cover the areas that have the greatest potential for conflict:

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**A. Trading in Biovail Securities and Use of Inside Information**

There are numerous laws in Canada and the United States (federal, provincial and state laws), to regulate transactions in corporate securities (stocks and bonds) and the securities industry. Violation of these laws may lead to civil and criminal actions against the individual and Biovail.

- i. Any employee, officer, director or other insider or anyone (family member, etc.) who knows of any material information (as defined below) about Biovail that has not been disclosed to the public (commonly known as “insider information”) may not engage in any transaction in Biovail’s securities until such information is disclosed to the public (whether or not there is a formal trading “black out” in place). This rule applies equally to transactions in securities of other companies. In addition, employees, officers and directors must not provide insider information to others (“tippees”) who may trade in either the securities of Biovail or the securities of other companies.  
  
“Material information” is any information relating to the business and affairs of Biovail that would reasonably be expected to result in a change in the market price or value of Biovail’s securities. Generally speaking, material information is a matter to which an average prudent investor should be reasonably informed before a decision is made to buy or sell the security involved. Examples of such information would include annual or quarterly financial results; significant changes in management; significant shifts in operating or financial circumstances, such as major write-offs and changes in earnings projections; borrowing of a significant amount of funds; acquisitions of, or mergers with, other companies; significant new contracts or loss of business; and major new products, services or patents. This list provides examples only; many other matters may be considered material information.  
  
Employees, officers, directors and other insiders who have questions that relate to the sale or purchase of a security under circumstances where these laws and regulations might apply should consult with the SLO, who may refer them to outside legal counsel.
- ii. In addition to the prohibition against the use of “insider” information which applies to all employees, officers and directors, the various securities laws that apply in the jurisdiction and countries in which Biovail does business place definite restrictions on the manners in which employees, officers and directors of Biovail, and their family members, their associates, etc., may engage in transactions involving the securities of Biovail.

Employees, officers and directors shall comply with all laws, rules and regulations that prohibit or restrict insider trading.

Whenever there is any doubt as to whether any transactions involving Biovail's securities would violate securities laws, employees, officers and directors should consult the SLO of Biovail. Within the framework of the foregoing policies and laws, the final decision of each employee, officer or director, with respect to securities transactions, must be his or her own.

- iii. Employees, officers, directors and other insiders shall maintain the confidentiality of information entrusted to them by Biovail or its customers (except where disclosure is authorized or legally mandated) and shall not, without proper authority, give or release to anyone not employed by Biovail, data or information of a confidential nature concerning Biovail. Disclosure of confidential information can be harmful to Biovail and could be the basis for legal action against Biovail and the individual disclosing the information. Confidential information includes all non-public information that might be of use to competitors, or harmful to Biovail or its customers, if disclosed.
- iv. Employees, officers, directors and other insiders shall not acquire any property, security or any business interest that they know Biovail has an interest in acquiring. Moreover, based on such advance information, employees, officers and directors shall not acquire any property, security or business interest for speculation or investment.
- v. Employees, officers, directors and other insiders must follow Biovail policies regarding "Blackout Periods" when Biovail's stock may not be traded. Such policies will be communicated by the SLO from time to time and must be adhered to by all employees, officers and directors.

## **B. Personal Financial Interest**

Employees, officers and directors should avoid any outside financial interests that might influence decisions or actions they have been empowered to make on behalf of Biovail. An employee, officer or director performing duties in conformity with this policy shall not have a financial interest in, indebtedness to, or a personal contract or understanding with any concern with which he or she does business on behalf of Biovail.

- i. Employees, officers or directors whose corporate duties bring them into business dealings with an organization in which they, or a member of their family, have a financial interest or to which they, or a member of their family, have any indebtedness, or a business



employing a relative or close friend, must immediately notify their immediate supervisor. The employee, officer or director, in turn, cannot complete a transaction on behalf of Biovail with this organization unless properly authorized in writing from their supervisor after full disclosure of the relationship.

- ii. An employee, officer or director may not perform work or services, outside the course of their normal employment by Biovail, for an organization doing or seeking to do business with Biovail without appropriate prior written approval of their supervisor or the Board of Directors. An employee, officer or director may not be a director, officer, partner or consultant of an organization doing or seeking to do business with Biovail, nor may any of them permit their names to be used in any way indicating a business connection with such an organization, without appropriate prior written approval of their supervisor or the Board.
- iii. An employee, officer or director shall not accept for himself or herself, or for the benefit of any relative or friend, any payments, loans, services, favors involving more than ordinary social amenity, or gifts of more than nominal value from any organization doing or seeking to do business with Biovail.
- iv. The requirement of freedom from conflict of interest applies with equal force to the spouse, children and other close relatives of each employee, officer and director. This policy applies to all employees, officers and directors of Biovail with respect to all of the affairs of Biovail.
- v. Employees, officers and directors shall not (a) take for themselves personally opportunities that are discovered through the use of corporate property, information or position; (b) use corporate property information, or position for personal gain; (c) compete with Biovail. Employees, officers and directors owe a duty to Biovail to advance its legitimate interests when the opportunity to do so arises.
- vi. Biovail may not make loans to any employee, officer or director.

### **C. Outside Activities**

Employees, officers and directors should avoid outside employment or activities which would impair the effective performances of their responsibilities to Biovail, either because of excessive demands on their time, or because the outside commitments can be contrary to their obligations to Biovail

**D. Protection and Proper Use of Biovail’s Assets**

All employees, officers and directors should protect Biovail’s assets and ensure their efficient use. Theft, carelessness and waste have a direct impact on Biovail’s profitability. All of Biovail’s assets should be used only for legitimate business purposes.

**E. Fair Dealing**

Each employee, officer and director shall endeavor to deal fairly with Biovail’s customers, suppliers, competitors and employers. None should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other unfair-dealing practice,

**2. COMPETITIVE PRACTICES**

The management of Biovail firmly believes that fair competition is fundamental to continuation of the free-enterprise system. Biovail complies with, and supports, laws of all countries that prohibit restraints of trade, unfair practices, or abuse of economic power.

Biovail will not enter into arrangements that unlawfully restrict its ability to compete with other businesses, or the ability of any other business organization to compete freely with Biovail. Biovail policy also prohibits employees, officers and directors from entering into, or even discussing, any unlawful arrangement or understanding which may affect its pricing policies, terms upon which its products and services are sold, or which might be construed as dividing customers or sales territories with a competitor.

These principles of fair competition are basic to all Biovail operations. They are integral parts of the following sections that cover Biovail’s dealings with suppliers, customers and public officials.

**3. DEALING WITH SUPPLIERS**

Biovail is a valuable customer for many suppliers of goods, services and facilities. People who want to do business, or to continue to do business, with Biovail must understand that all purchases by Biovail will be made in accordance with its purchasing policy and exclusively on the basis of price, quality, service and suitability to Biovail’s needs.

**A. Reciprocity**

Biovail considers reciprocity a harmful practice and a hindrance to assuring purchase of the best available materials or services at the lowest possible prices. It will not be practiced or allowed.

Suppliers of goods and services to Biovail will not be asked to buy goods and services from Biovail in order to become or continue as a supplier.

Biovail will not attempt to influence its suppliers to purchase from customers of Biovail. When Biovail makes purchases it will not favor firms who are customers of Biovail or any of its affiliates.

**B. “Kickbacks” and Rebates**

Purchases or sales of goods and services by Biovail must not lead to employees, officers or directors, or their families, receiving any type of personal kickbacks or rebates. Employees, officers, directors, and their families, must not accept any form of “under-the-table” payment.

**C. Receipt of Gifts and Entertainment**

Even when gifts and entertainment are exchanged out of the purest motives of personal friendship, they can be misunderstood. They can appear to be attempts to bribe Biovail’s employees, officers or directors into directing business of Biovail to a particular supplier. To avoid both the reality and the appearance of improper relations with suppliers or potential suppliers, the following standards will apply to the receipt of gifts and entertainment by employees, officers and directors of Biovail:

**Gifts**

- i) Employees, officers and directors are prohibited from soliciting gifts, gratuities, or any other personal benefit or favor of any kind from suppliers or potential suppliers. Gifts include not only merchandise and products but also personal services, and tickets to theatrical and sports events. Employees, officers and directors should exercise good judgment when accepting unsolicited gifts. Employees, officers and directors are prohibited from accepting gifts of money.
- ii) Employees, officers and directors may accept unsolicited non-money gifts provided:
  - (1) They are items of nominal intrinsic value; or
  - (2) They are advertising and promotional materials, clearly marked with Biovail or brand names of the giver.
- iii) Any gift of more than nominal intrinsic value must be reported to the SLO to determine whether it can be accepted. Some gifts may be perishable so as to make their return impractical. Supervisors can permit acceptance of such gifts, but should require employees, officers and directors to tactfully inform givers that such gifts are discouraged.
- iv) In the transaction of some international business, it is lawful and customary for business leaders in some countries to give unsolicited gifts to employees, officers or directors of Biovail. These gifts can be of more

than nominal value. Moreover, under the circumstances, returning the gifts or payment for them may constitute an affront to the giver. In such cases, the gift must be reported to the SLO who may permit the retaining of the gifts.

- v) In all other instances where gifts cannot be returned or may adversely affect Biovail's continuing business relationships, the SLO must be notified. They can require employees, officers and directors to transfer ownership of such gifts to Biovail.

#### **Entertainment**

- i) Employees, officers and directors shall not encourage or solicit entertainment from any individual or company with whom Biovail does business. Entertainment includes, but is not limited to, activities such as dinner parties, theater parties, and sporting events.
- ii) From time to time employees, officers and directors may accept unsolicited entertainment, but only under the following conditions:
  - (1) The entertainment occurs infrequently;
  - (2) It arises out of the ordinary course of business;
  - (3) It involves reasonable, not lavish expenditures (the amounts involved should be ones employees, officers and directors are accustomed to normally spending for their own business or personal entertainment); and
  - (4) The entertainment takes place in settings that also are reasonable, appropriate, and fitting to employees, officers and directors, their hosts, and their business at hand.

#### **4. DEALINGS WITH CUSTOMERS AND POTENTIAL CUSTOMERS**

Employees, officers and directors must keep all dealings with customers and potential customers fair and above board. Biovail gets business and keeps it because of the quality of its goods and services. Biovail does not give unethical or illegal rebates, kickbacks, under-the-table payments, or other similar improper favors to customers or their representatives.

The boundary line between ethical and unethical competition, or legal and illegal conduct, is not always well defined, particularly in international activities where differing local laws, custom; and practices come into play. Therefore, the following standards will serve as guides:

- a) All employees, officers and directors should make themselves aware of and fully comply with all laws, rules and regulations, whether federal,

state, local or foreign, including laws governing relations with customers as well as competitors.

- b) All employees, officers and directors engaged in negotiations and contracts with foreign governments, the United States or any political subdivision thereof must also know and abide by the specific rules and regulations covering relations with such governments and their agencies.
- c) Employees, officers and directors may not give gifts to customers except items of nominal value, which fit the legal, normal, and customary pattern of Biovail's sales efforts for a particular market. Exceptions to this policy can occur in international trades where it can be legal, customary, and appropriate business practice to exchange gifts with customers. Only the CEO can authorize the giving, receiving, or exchanging of such gifts. Any gifts received by employees, officers or directors in such an exchange must be reported to the CEO for determination as to the disposition of the gifts.
- d) Entertainment for any customer must fit regular business practices. The place and type of entertainment and the money spent must be reasonable and appropriate.

## 5. DEALING WITH PUBLIC OFFICIALS

Domestic and foreign laws and regulations require Biovail to be in contact with public officials on a wide variety of matters. Employees, officers and directors who regularly make these contacts have special responsibilities for upholding Biovail's good name. The following standards relate to these special responsibilities:

- a) All employees, officers and directors who contact public officials must be familiar with lobbying laws and public disclosure requirements, particularly those that apply to registrations and filings.
- b) No employee shall make any form of payment, direct or indirect, to any public official as an inducement to procuring or keeping business or having a law or regulation enacted, defeated, or violated. This is bribery, pure and simple. It will not be tolerated.  
  
It should be acknowledged that inherent in the current health-care regulatory environment, the definition of "form of payment" may include seemingly trivial gifts and/or favors (e.g. buying lunches, coffee, etc.).
- c) When not prohibited by law, employees, officers and directors are allowed to give to public officials gifts where the presentation and acceptance of gifts is an established custom and a normal business practice. All such gifts shall be of reasonable value and the presentation approved in advance by the CEO. Moreover, such gifts must be presented in a manner

that clearly identifies Biovail and the occasion that warrants the presentation.

- d) Employees, officers and directors are also allowed to give public officials gifts in the form of product models and pictures provided the models and pictures are part of Biovail's general marketing and public relations programs (except as noted in clause (b) above).
- e) On special ceremonial occasions, officers of Biovail may publicly give gifts of more than nominal value to public institutions and public bodies. Such gifts can commemorate special events or milestones in Biovail's history.

These may be transmitted through public officials but the gifts are given to the public institutions and public groups they represent, not to the officials personally.

- f) From time to time employees, officers and directors may entertain public officials, but only under the following conditions:
  - i. It is legal and permitted by the entity represented by the official;
  - ii. The entertainment is not solicited by the public official;
  - iii. The entertainment occurs infrequently;
  - iv. It arises out of the ordinary course of business;
  - v. It does not involve lavish expenditures, considering the circumstances;
  - vi. The settings and types of entertainment are reasonable, appropriate and fitting to our employees, officers or directors, their guests, and the business at hand.

## **6. POLITICAL ACTIVITIES AND CONTRIBUTIONS**

### **A. Canada and the United States**

Employees, officers and directors who participate in partisan political activities must make every effort to ensure that they do not leave the impression that they speak or act for Biovail.

Biovail encourages its employees, officers and directors to participate in political activities in their own time and at their sole expense. No corporate action, direct or indirect, will be allowed that infringes on the right of any employee individually to decide whether, to whom, and in what amount, they will make personal political

contributions. The same is true of volunteer political donations of personal service time, so long as it does not interfere with the working status of employees, officers or directors.

**B. Outside Canada and the United States**

No employees, officers and directors are permitted to use Biovail’s funds, facilities, or other assets, to support either directly or indirectly any political candidates or political parties, without advance authorization in writing from their immediate supervisor and the General Counsel. The policy of Biovail is that employees, officers and directors and employees should not participate in political activities in countries of which they are not nationals. However, such persons, of course, are free to participate in political activities in countries of which they are nationals in their own time and at their own expense.

**7. DISCLOSURE**

Biovail has formed a Disclosure Committee to promote consistent practices aimed at informative, timely and broadly disseminated disclosure of Material Information to the market. external stakeholder groups and employees in accordance with all applicable legal, regulatory and stock-exchange requirements.

It is essential that the Disclosure Committee be fully apprised of all material corporate developments to be able to determine whether there is information that should be publicly disclosed, and what the appropriate timing is for release of that information. In some cases, the Disclosure Committee may determine that the information should remain confidential. If that is the case, the Disclosure Committee will determine how that information will be controlled so that it is not inadvertently released. Therefore any employee who becomes aware of information that he/she believes might be material to Biovail and/or any of its affiliates and subsidiaries he/she should advise their manager or supervisor or a member of the Disclosure Committee. Current membership of the Disclosure Committee is posted on the Biovail.com website.

This applies throughout the year, but is particularly critical when annual or quarterly financial statements and Management Discussion and Analysis (MD&A) or regulatory filings are being prepared (e.g. regulatory filings, such as the U.S. Securities and Exchange Commission, Form 20-F).

**8. PUBLIC COMMUNICATIONS**

Given the importance placed on confidentiality and the appropriate disclosures of information regarding Biovail, it is important for employees, officers and directors to ensure that care be taken with any communication regarding Biovail or its activities outside of Biovail.

**A. Designated Spokespersons**

Biovail has designated official spokespersons who are authorized to speak on behalf of Biovail, and answer questions from the news media and the investment community, about

Biovail and its activities. Employees, officers and directors who have not been designated as spokespersons for Biovail are not permitted to speak on behalf of the Company to the news media or to the investment community.

**B. Media or Analyst Inquiries**

Any employee who is approached by any person asking for comment on the activities of Biovail must direct any and all such inquiries to a member of the Disclosure Committee or to a member of the Company’s Stakeholder Relations team (Corporate Communications, Investor Relations) so that an appropriate spokesperson can respond to the inquiry on behalf of Biovail.

**C. Conferences**

The Disclosure Committee should be advised of any request to present at any conference or public meeting. Certain materials prepared for any such presentation may be required to be reviewed by the Company’s Stakeholder Relations group.

**D. Electronic Communications**

Care must be taken in all instances in the use of e-mail, and other devices (e.g., Blackberry’s) in communications relating to Biovail’s business. While users tend to resort to shorthand communication using these kinds of tools, those communications do form a record of those communications that may be subject to later review and disclosure. A more fulsome policy regarding electronic communications is in place (found in the Human Resources Management System Policy Binder) and should be adhered to by all employees, officers and directors.

**E. The Internet**

Biovail has instituted policies regarding the use of, and access to the Internet by employees, officers and directors. These policies include a prohibition against anyone participating in any chat rooms dedicated to Biovail or its operations or the industry at large. If any employee, officer or director becomes aware that any such chat room exists, they are asked to report the address of such site to the SLO so that it may be monitored and appropriate action may be taken.

**9. EQUAL OPPORTUNITY**

Biovail supports the principle that every individual must be accorded an equal opportunity to participate in the free-enterprise system and to develop their ability to achieve their full potential within that system.

There shall be no discrimination against any employee or applicant because of race, religion, color, sex, age, sexual orientation, national or ethnic origin, or disability (as required by law) or any other consideration prohibited by local law. All employees, officers and directors will be treated with equality during their employment without



regard to their race, religion, color, sex, age, national or ethnic origin, or physical handicap, in all matters, including employment, upgrading, promotion, transfer, layoff, termination, rates of pay, selection for training and recruitment. Biovail will maintain a work environment free of discriminatory practice of any kind.

No employee shall have any authority to engage in any action or course of conduct or to condone any action or course of conduct by any other person which shall in any manner, directly or indirectly, discriminate or result in discrimination in the course of one's employment, termination of employment, or any related matter where such discrimination is, directly or indirectly, based upon race, religion, color, sex, age, sexual orientation, national or ethnic origin, disability, or any other consideration prohibited by law.

**10. HEALTH, SAFETY, AND ENVIRONMENTAL PROTECTION**

It is Biovail's policy to pay due regard to the health and safety of its employees, officers, directors and others, and to the state of the environment. There are federal, provincial, state and local workplace safety and environmental laws which through various governmental agencies regulate both physical safety of employees, officers and directors and their exposure to conditions in the workplace. Should you be faced with an environmental health issue or have a concern about workplace safety, you should contact your Health and Safety Committee representative or notify Biovail management immediately.

Many countries and their regional and local governments now have complex legislation to protect the health and safety of employees, or the general public, and to prevent pollution and protect the environment. In case of violation, these laws often provide penalties for both the company involved and its executive personnel. Biovail's SLO should always be consulted when necessary to understand or comply with such laws.

**11. WORK ENVIRONMENT**

Employees, officers and directors must treat each other with professional courtesy and respect at all times. Employees, officers and directors shall not subject any other employee to unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct which might be construed as sexual in nature, or harass others on the basis of race, disability, gender, sexual orientation or any other consideration prohibited by law. Such conduct may constitute sexual harassment or harassment under federal, provincial and state law and may be the basis for legal action against the offending employee and/or Biovail.

Employees are encouraged to report all conduct that they believe in good faith to be violations of local anti-harassment policies. To the extent permissible under local law the identity of the employees, officers or directors involved will be kept strictly confidential, and will not be revealed by Biovail's management without the employee's permission. The alleged harassment will be thoroughly investigated by Biovail and appropriate action

will be taken. Biovail has an appropriate policy to protect employees against discrimination or retaliation as a result of such a complaint.

**12. INTEGRITY OF RECORDS AND FINANCIAL REPORTS**

It is of critical importance that Biovail’s filings with the appropriate regulatory authorities (e.g. U.S. Securities and Exchange Commission) be accurate and timely. Depending on their position with Biovail, an employee, officer or director may be called upon to provide necessary information to ensure that Biovail’s public reports are complete, fair and understandable. Biovail expects employees, officers and directors to take this responsibility very seriously and to provide prompt accurate answers to inquiries related to Biovail’s public disclosure requirements.

The integrity of Biovail’s record keeping systems will be respected at all times. Employees, officers and directors are forbidden to use, authorize, or condone the use of “off-the-books” bookkeeping, secret accounts, unrecorded bank accounts, “slush” funds, falsified books, or any other devices that could be utilized to distort records or reports of Biovail’s true operating results and financial conditions or could otherwise result in the improper recordation of funds or transactions.

**13. USE OLD AGENTS AND NON-EMPLOYEES, OFFICERS AND DIRECTORS**

Agents or other non-employees cannot be used to circumvent the law. Employees, officers and directors will not retain agents or other representatives to engage in practices that run contrary to the Standards of Business Conduct or applicable laws.

**14. INTERNATIONAL OPERATIONS**

Employees, officers and directors operating outside of Canada and the United States have a special responsibility to know and obey the laws and regulations of countries where they act for Biovail. Customs vary throughout the world, but all employees, officers and directors must uphold the integrity of Biovail in other nations diligently.

**15. STANDARDS OF BUSINESS CONDUCT**

**A. Initial Distribution**

- i. Employees, officers and directors designated to receive these Standards will receive their copies immediately after publication.
- ii. Future employees, officers and directors designated to receive these Standards will receive their copies at the time they are hired.

**B. Initial Verification**

Upon receiving their copy of the Standards, employees, officers and directors current and future will:

- i. Become thoroughly familiar with the Standards.
- ii. Resolve any doubts or questions about the Standards with their supervisors.
- iii. Inform their supervisors of any existing holdings or activities that might be, or appear to be, inconsistent with, or in violation of, the Standards.
- iv. Prepare written disclosures of such information, if requested, by supervisors.
- v. Take steps to correct existing situations and bring holdings and activities into full compliance with the Standards. Such steps will be approved in writing by supervisors and will be based on the written disclosure submitted by employees, officers or directors.
- vi. Sign the verification and return it to their supervisors who will make it part of employee's permanent corporate records.

**C. Maintaining Compliance**

- i. Employees, officers and directors have the responsibility to maintain their understanding of the Standards of Business Conduct and for following them.
- ii. Supervisors have the responsibility to maintain an awareness on the part of their employees, officers and directors of the importance of their adhering to the Standards of Business Conduct and for reporting deviations to Management.
- iii. As requested by the Board of Directors or senior management, employees, officers and directors will be asked to re-verify their understanding of the Standards of Business Conduct and their compliance with them every year as a part of Biovail's annual reporting.
- iv. Employees, officers and directors must inform their supervisors of any changes in their holdings or activities that might be, or appear to be in non-compliance with the Standards of Business Conduct.
- v. Employees, officers and directors must prepare written disclosure of such information, if requested, by supervisors.
- vi. Employees, officers and directors must take steps to correct any such changes, if necessary, to bring holdings and activities into full compliance. Such steps will be approved in writing by supervisors

and Management and will be based on the written disclosures submitted by employees, officers and directors.

**D. Audits of Compliance**

Regular audits of Biovail will include procedures to test compliance with the Standards of Business Conduct.

**16. VIOLATIONS OF STANDARDS**

Employees, officers and directors must immediately report any violations of the Standards or any violation of any applicable law, rule or regulation. Failure to do so can have serious consequences for the employees, officers or directors and for Biovail.

Employees, officers and directors, should report violations to their supervisors and/or to the Human Resources department and to the SLO or to any secure reporting hotline the company may have contracted with. When in doubt, employees should talk to their supervisors or other appropriate personnel to determine the best course of action in a particular situation.

Supervisors and the Human Resources group have the responsibility to promptly and thoroughly investigate all reports, and to report violations to the SLO.

After a violation is investigated, appropriate action will be taken promptly. Management has the right to determine the appropriate disciplinary action for a violation up to and including termination of employment. All proposed disciplinary action is subject to review by senior Management, Human Resources and the SLO.

Employees, officers and directors should be aware that, in addition to any disciplinary action taken by Biovail, violations of certain Standards may require restitution and may lead to civil or criminal action against individual employees, officers and directors and any corporation involved.

Supervisors have the responsibility of taking remedial steps to correct any operating procedures that may contribute to violations of Standards.

Retaliation in any form against an individual who reports a violation of these Standards of Business Conduct or of any law, rule or regulation in good faith, or who assists in the investigation of a reported violation, is itself a serious violation of this policy. Acts of retaliation will be disciplined appropriately and should be reported immediately to your supervisor or Human Resources.

**17. CONTINUANCE OF EXISTING PERSONNEL POLICIES, RULES AND PERFORMANCE STANDARDS**

Biovail has codified numerous personnel policies, rules and standards of employee performance, which continue in force. These Standards of Business Conduct are intended to supplement and amplify those established personnel policies, rules and standards.

It continues to be the responsibility of all employees to comply with all such policies, rules and performance standards. Additionally, all members of management are to continue making certain that employees reporting to them are made aware of established policies, rules and performance standards and comply with them.

**18. AMENDMENT, MODIFICATION AND WAIVER**

Biovail will periodically review these Standards of Business Conduct. These Standards may be amended, modified or waived by the Board of Directors and waivers may also be granted by the Nominating & Governance Committee, subject to the disclosure and other provisions of the Securities Exchange Act of 1934, and the rules there under and the applicable rules of the Toronto Stock Exchange/New York Stock Exchange. Employees, officers and directors will be fully informed of any revisions to the Standards of Business Conduct.

Any waiver of these Standards for any employee other than a director or an executive officer, may only be made by the Executive Chairman or the CEO. Any waiver of these Standards for director or an executive officer may be made only by the Board of Directors or the Compensation, Nominating and Corporate Governance Committee and will be promptly disclosed to Biovail's stockholders.

**VERIFICATION AND RECEIPT OF UNDERSTANDING**

I have received a copy of Standards of Business Conduct for BIOVAIL CORPORATION and its subsidiaries, divisions and affiliates. I understand how the Standards apply to me. I acknowledge that my receiving the Standards obligates me to follow them and I agree to abide by their conditions.

\_\_\_\_\_

Date

\_\_\_\_\_

Name

\_\_\_\_\_

Signature

*Employee's Copy*

**VERIFICATION AND RECEIPT OF UNDERSTANDING**

I have received a copy of Standards of Business Conduct for BIOVAIL CORPORATION and its subsidiaries, divisions and affiliates. I understand how the Standards apply to me. I acknowledge that my receiving the Standards obligates me to follow them and I agree to abide by their conditions.

\_\_\_\_\_

Date

\_\_\_\_\_

Name

\_\_\_\_\_

Signature

*HR File Copy*

**BIOVAIL LABORATORIES INTERNATIONAL SRL  
EXECUTIVE EMPLOYMENT AGREEMENT**

THIS AGREEMENT is made by and between Biovail Laboratories International SRL (hereinafter referred to as “Biovail”) and **Dr. Christian Fibiger** (hereinafter the “Executive”).

**ARTICLE ONE — GENERAL DUTIES AND TERM**

**Scope of Employment / Duties**

1.01 Biovail Laboratories International SRL hereby employs the Executive as **Chief Scientific Officer**. The Executive will serve as an officer of Biovail. During the Employment Term (as defined below), the Executive will devote substantially all of the Executive’s business efforts and time to Biovail. The Executive agrees, during the Employment Term, not to actively engage in any other employment, occupation or consulting activity for any direct or indirect compensation without the prior approval of the Chief Executive Officer of Biovail (the “CEO”); provided, however, that the Executive may (a) serve on the boards of directors of other companies (subject to reasonable approval of the CEO) and boards of trade associations or charitable organizations; (b) engage in charitable activities and community affairs; and (c) manage the Executive’s personal investments and affairs, as long as such activities do not violate Section 4.02 and do not materially interfere with the Executive’s duties and responsibilities for Biovail.

1.02 Biovail reserves the right to establish the employment relationship with the Executive directly with Biovail or with any of its affiliates or subsidiaries, or to change such employment relationship over time, as it deems necessary or appropriate to comply with legal requirements or for ease of administration of employee benefits programs or other matters.

**Term of Agreement**

1.03 Biovail hereby agrees to employ the Executive and the Executive hereby accepts employment, in accordance with the terms and conditions of this Agreement, commencing on November 24, 2008 (the “Employment Commencement Date”). The period of the Executive’s employment under this Agreement will be for a period of four (4) years, ending November 23, 2012 and will be referred to as the “Employment Term.” This Agreement will expire automatically on November 23, 2012 without any requirement for notice, pay in lieu of notice or severance pay. Subject to Biovail’s obligation to provide severance benefits and the parties’ obligation to provide a Notice of Termination (as defined below), the Executive and Biovail acknowledge that this employment relationship may be terminated at any time and for any or no cause or reason at the option of either the Executive or Biovail prior to its expiry.

**Extension of Agreement**

1.04 Both parties may mutually agree in writing to extend the Employment Term for one or more successive periods of 12 months each. Either party may give written notice to the other of its wish to extend the Employment Term within 120 days of the end of the then current Employment Term. If no notice of a wish to extend is provided or if no mutual agreement is

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reached, this Agreement will terminate at the conclusion of the then current Employment Term without any requirement for notice, pay in lieu of notice or severance pay except as may be required by applicable employment standards legislation. “Employment Term” includes the initial 4 - year term hereof and any 12 - month extensions which are agreed upon.

**ARTICLE TWO — COMPENSATION**

**Base Salary**

2.01 As of the Employment Commencement Date, the Executive’s annualized base salary will be \$450,000(USD), payable in accordance with Biovail’s normal payroll practices for employees generally, and will be subject to annual review in accordance with Biovail’s normal review process for other similarly situated senior executives.

**Incentive Compensation**

2.02 For 2008, the Executive shall not participate in Biovail’s short term annual incentive compensation plan. For 2009 and thereafter the Executive will be eligible to participate in Biovail’s short term annual incentive compensation plan as such plan may be amended from time to time (the “Short Term Incentive Plan”) in accordance with the terms of the Short Term Incentive Plan. The Executive’s target incentive level will be 60% of his base salary earnings in the performance period.

**Sign-on Bonus**

2.03 The Executive will be paid a one time lump sum sign-on bonus of \$100,000 (USD) after commencement of employment. In the event the Executive voluntarily resigns or is terminated with cause before the completion of 24 months of employment, this bonus is to be reimbursed to Biovail in full within 30 days of the last day of employment.

**Equity Compensation**

2.04 Eligibility and Terms.

The Executive will be eligible for a one time grant of 13,000 Restricted Share Units (RSUs) and 150,000 Stock Options subject to the terms and conditions outlined in the 2007 Equity Compensation Plan (ECP). In addition, the Executive will be eligible for participation in a performance option grant of 220,000 options which will vest in 2012, based on the attainment of performance criteria.

**Employee Benefits**

2.05 During the Employment Term, the Executive will be eligible to participate in employee benefit plans and programs that are offered to Biovail’s other similarly-situated senior executives in accordance with the terms of such plans as they may change from time to time. Nothing in this Agreement shall preclude Biovail or any affiliate of Biovail from terminating or amending

any employee benefit plan or program from time to time after the Employment Commencement Date.

**Housing Allowance**

2.06 For the duration of the assignment in Barbados, Biovail will provide for the lease of appropriate accommodation up to the amount of \$7,500 USD per month.

**Travel Allowance**

2.07 While on assignment in Barbados, the Executive and spouse or significant other will be provided with reimbursement of reasonable and customary expenses associated with four (4) home leave trips per year.

**Car**

2.08 During the Executive’s employment, Biovail will provide the Executive with a vehicle and reimbursement of associated expenses.

**Expenses**

2.09 The Executive shall be reimbursed for reasonable out of pocket business expenses, including travel and entertainment expenses, actually and properly incurred by the Executive in the course of performing the Executive’s services hereunder, upon furnishing to Biovail reasonable supporting statements and vouchers; provided, however, that in any financial year in which Biovail has provided to the Executive an approved budget, such expenses must not exceed the amount so budgeted without the prior written approval from the CEO.

**Vacation**

2.10 The Executive will be eligible for five (5) weeks of vacation annually, to be taken in accordance with the terms of Biovail’s Vacation Policy, without regard to any lesser amount of vacation time set forth therein. Notwithstanding the foregoing, the Executive’s eligibility for vacation in the year of hire will be pro-rated in the manner specified in Biovail’s Vacation Policy.

**Tax Preparation Services**

2.11 Biovail shall reimburse the Executive for costs incurred by the Executive in connection with tax preparation services furnished by such advisors as chosen by Biovail.

**Immigration Support**

2.12 Biovail shall reimburse the Executive for all legal expenses incurred by the Executive in connection with his immigration status and/or eligibility to work in Barbados, to be furnished by such advisors as chosen by Biovail.

**Relocation**

2.13 The Executive will be reimbursed for reasonable and customary expenses associated with his relocation to Barbados.

**ARTICLE THREE — TERMINATION AND RESIGNATION PRIOR TO EXPIRY OF EMPLOYMENT TERM**

**Involuntary Termination - Either By Biovail Without Cause or By The Executive For Good Reason**

3.01 If the Executive incurs an involuntary termination from employment with Biovail on account of a termination by Biovail without Cause or by the Executive for Good Reason, then, in addition to any benefits or compensation accrued, earned and due to the Executive but not yet paid as of the date that is designated by Biovail or the Executive, as applicable, as the last day of the Executive’s employment or term of office with Biovail (the “Termination Date”), the Executive will be eligible for the severance payments and benefits as described in this Section 3.01; provided that (i) the Executive continues to comply with the Restrictive Covenants (as defined below); and (ii) the Executive executes, and does not revoke, a written waiver and release of all claims, demands and causes of action against Biovail and related parties in a form prescribed by Biovail, as limited by Section 3.09 (“Release”):

- (a) The Executive will be paid a lump sum severance payment within 60 days of the Executive’s Termination Date, equal to
  - (i) the remainder of the base salary that would be payable for the remainder of the Employment Term as if employment had not been terminated. The base salary rate that will be applied is that in place on the Termination Date;
  - (ii) the Executive’s target level of annual incentive compensation that would be payable for the remainder of the Employment Term as if employment had not been terminated. The incentive compensation that will be applied is that which was paid for the year prior to the year in which the Termination Date occurs. In the event that the Executive has not completed a prior year at the time of the Termination Date, incentive compensation will be paid at the same rate as the average rate paid out to Biovail’s Senior Vice Presidents in the prior year.
- (b) The Executive will be entitled to a pro-rated portion of the Executive’s target level of annual incentive compensation under the Short Term Incentive Plan for the year in which the Executive’s Termination Date occurs, based on the number of months (rounded to the next highest number for a partial month) of the calendar year elapsed prior to the Executive’s Termination Date and calculated and paid in accordance with the terms of Biovail’s Short Term Incentive Plan; and

(c) Until the earlier of (i) the end of the remainder of the Employment Term, or (ii) the date, or dates, the Executive is eligible to receive benefits under the same type of plan of a subsequent employer (the “Benefit Period”), Biovail will pay to the Executive a monthly payment on the first payroll date of each month equal to the COBRA cost of continued medial and dental coverage for the Executive and the Executive’s covered dependents under the medical and dental plans of Biovail pursuant to section 4980B of the Internal Revenue Code, less the amount that the Executive would be required to contribute for medical and dental coverage if the Executive were an active employee. These payments will commence on Biovail’s first payroll date after the Executive’s Termination Date and will continue until the end of the Benefit Period (but not longer than the Benefit Period).

**Involuntary Termination By Biovail For Cause Or Voluntary Resignation Without Good Reason**

3.02 If the Executive is involuntarily terminated by Biovail for Cause or the Executive voluntarily resigns from employment without Good Reason, then the Executive will forfeit the Executive’s right to receive any salary, Short Term Incentive Plan compensation, Equity Compensation Plan compensation or other compensation that has not been fully accrued at the time the Executive’s employment terminates; provided, however, that the Executive will be entitled to receive any benefits or compensation accrued, earned and due to the Executive but not yet paid as of the Executive’s Termination Date.

**Death or Disability**

3.03 The Executive’s employment will terminate automatically upon the Executive’s death. Biovail may terminate the Executive’s employment if illness, disease, or physical or mental incapacity render the Executive generally incapable of performing the Executive’s duties or unfit to advance or represent Biovail on a daily basis for a period of twelve (12) consecutive months and within such twelve (12) months, the Executive fails to produce to Biovail a medical opinion indicating a reasonable time for the return of the Executive to the full-time assumption of the Executive’s past duties and responsibilities. Nothing herein is intended to circumvent or abridge Biovail’s short-term disability policy or long-term disability plan. In the event of termination pursuant to the terms of this Section 3.03, the Executive or the Executive’s estate, as applicable, will be entitled to receive any salary, benefits or other amounts accrued, earned and due to the Executive but not yet paid as of the Executive’s Termination Date.

**Cause**

3.04 For purposes of this Agreement, Cause includes:

- (a) conviction of the Executive, or entering of a guilty plea or a plea of no contest by the Executive, with respect to, a felony, any crime involving fraud, larceny or embezzlement or any other crime involving moral turpitude which subjects, or if generally known, would damage the business interests or reputation of Biovail or any of its affiliates;
- (b) any act of fraud, misappropriation, material dishonesty, embezzlement or similar conduct involving Biovail or any affiliates;

- (c) a material breach by the Executive of the Executive’s duties hereunder (other than as a result of incapacity due to physical or mental impairment) which is demonstrably willful and deliberate on the part of the Executive or which is committed in bad faith or without reasonable belief that such breach is in the best interests of Biovail;
- (d) a material breach by the Executive of the Executive’s duties hereunder (other than as a result of incapacity due to physical or mental impairment), except as identified in Section 3.04(c) above, which breach is not remedied by the Executive within 30 days after receipt of written notice from Biovail specifying such breach; or
- (e) the Executive’s failure to comply in any material way with any of the provisions of this Agreement.

**Good Reason**

3.05 For purposes of this Agreement, a voluntary resignation by the Executive will be deemed to be a termination for Good Reason if:

- (a) Biovail makes: (i) any assignment to the Executive of any duties which are materially inconsistent with the Executive’s position; (ii) any material reduction in the Executive’s authority, responsibilities or status; or (iii) a material reduction to the Executive’s base salary;
- (b) The Executive notifies Biovail in writing of the Executive’s belief that Biovail has taken an action identified in Section 3.05(a) within thirty (30) days of the event at issue;
- (c) Biovail has not remedied the situation within thirty (30) days after receipt of written notice from the Executive; and
- (d) The Executive provides a Notice of Termination within thirty (30) days after Biovail’s opportunity to remedy the situation has expired.

**Change in Control**

3.06 (a) Biovail shall provide the payments and benefits described in Section 3.06(b) below only if: (i) the Executive continues to comply with the Restrictive Covenants (as such term is defined below); and (b) the Executive executes, and does not revoke, a Release (as defined above).

(b) Upon a Change in Control (as defined below), and an involuntary termination of the Executive’s employment either by Biovail without Cause or by the Executive for Good Reason, which termination occurs within a period of twelve (12) months following the Change in Control, Biovail shall provide to the Executive, in addition to any benefits or compensation accrued, earned and due to the Executive but not yet paid as of the Executive’s Termination Date, but in lieu of any payments or benefits to which the Executive may be entitled under Section 3.01 above, (a) a lump sum severance payment of two times the Executive’s base salary (calculated using the Executive’s highest annual base salary in the three years prior to the Executive’s Termination Date) plus two times the Executive’s target level of annual incentive compensation under the Short Term Incentive Plan for the year prior to the year in which the

Executive's Termination Date occurs, payable within thirty (30) days of the Executive's Termination Date and, (b) any unvested equity compensation awards held by the Executive shall automatically accelerate and become one hundred percent (100%) vested and, as applicable, exercisable, as of the Executive's Termination Date.

(c) For the purpose of this Section 3.06, "Change in Control" means the happening of any of the following events:

- (i) the completion of a transaction pursuant to which (A) Biovail Corporation goes out of existence or (B) any person, or any Associate (as such terms defined in National Instrument 45-106 - *Prospectus and Registration Exemptions*, as amended from time to time, or such other successor rules, instruments or policies from time to time of Canadian provincial securities regulatory authorities which may govern trades of securities to employees, officers, directors or consultants ("NI45-106")) or Related Entity (as such term is defined in NI45-106) of such person (other than Biovail Corporation, any trustee or other fiduciary holding securities under any employee benefit plan of Biovail Corporation or a Related Entity, or any company owned, directly or indirectly, by the shareholders of Biovail Corporation in substantially the same proportions as their ownership of common shares of Biovail Corporation) hereafter acquires the direct or indirect "beneficial ownership" (as defined by the *Canada Business Corporations Act*) of securities of Biovail Corporation representing 50% or more of the aggregate voting power of all of Biovail Corporation's then issued and outstanding securities;
- (ii) the lease, exchange, license, sale or other similar disposition of all or substantially all of Biovail Corporation's assets in one transaction or a series of related transactions to a person, or any Associate or Related Entity of such person (other than an Associate or Related Entity of Biovail Corporation, any trustee or other fiduciary holding securities under any employee benefit plan of Biovail Corporation or a Related Entity, or any company owned, directly or indirectly, by the shareholders of Biovail Corporation in substantially the same proportions as their ownership of common shares of Biovail Corporation);
- (iii) the dissolution or liquidation of Biovail Corporation except in connection with the distribution of assets of Biovail Corporation to one or more persons which were Related Entities prior to such event;
- (iv) during any period of 24 consecutive months beginning on or after the date of the Equity Compensation Plan, the persons who were members of the Board immediately before the beginning of such period (the "Incumbent Directors") cease (for any reason other than death) to constitute at least a majority of the Board or the board of directors of any successor to Biovail Corporation, provided that any director who was not a director as of the date of the Equity Compensation Plan shall be deemed to be an Incumbent

Director if such director is elected to the Board by, or on the recommendation of or with the approval of, at least two-thirds of the directors who then qualified as Incumbent Directors either actually or by prior operation of the foregoing unless such election, recommendation or approval occurs as a result of an actual or threatened election contest or other actual or threatened solicitation of proxies or contests by or on behalf of a person other than a member of the Board; or

- (v) a merger, amalgamation, arrangement or consolidation of Biovail Corporation with any other corporation other than a merger, amalgamation, arrangement or consolidation that would result in the voting securities of Biovail Corporation outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 50% of the combined voting power of the voting securities of Biovail Corporation or such surviving entity outstanding immediately after such merger, amalgamation, arrangement or consolidation; provided, however, that a merger, amalgamation, arrangement or consolidation effected to implement a recapitalization of Biovail Corporation (or similar transaction) in which no person (other than those covered by the exceptions in (i) above) acquires more than 50% of the combined voting power of Biovail Corporation's then outstanding securities shall not constitute a Change in Control.

#### **Notice of Termination**

3.07 Any termination of employment by Biovail or by the Executive shall be communicated by notice of termination to the other party hereto given in accordance with Section 5.09 (a "Notice of Termination"). For purposes of this Agreement, Notice of Termination means a written notice which (a) identifies the specific termination provision in the Agreement relied upon, and (b) to the extent applicable, sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive's employment under the provision identified, and (c)(i) in the case of a termination by Biovail, specifies the Executive's Termination Date which shall not be less than fifteen (15) nor more than sixty (60) days after the giving of such notice; or (ii) in the case of a termination by the Executive without Good Reason, shall not be less than ninety (90) days after the giving of such notice.

#### **Payments After Termination of Employment**

3.08 Payments made by Biovail to the Executive pursuant to this Agreement after the Executive's Termination Date will be made by courier delivery service to the last address provided for notices to the Executive pursuant to Section 5.09 of this Agreement.

#### **Release**

3.09 The Release identified in Sections 3.01 and 3.06 will not require the Executive to release any right the Executive may have to indemnification as an officer, director or employee of

Biovail (or any affiliate thereof) pursuant to the articles of incorporation or bylaws (or other governing instruments) of Biovail (or any affiliate thereof) or any vested benefits to which the Executive may be entitled under any employee benefit plan.

**ARTICLE FOUR — EXECUTIVE’S OBLIGATIONS**

**Confidentiality**

4.01 The Executive agrees to be bound by the terms of the confidentiality agreement (the “Confidentiality Agreement”) dated the date hereof, which Confidentiality Agreement has been read, understood and executed by the Executive and is attached hereto as Schedule A and which is incorporated by reference into this Agreement. In the event of a conflict between the terms of this Agreement and the terms of the Confidentiality Agreement, the terms of this Agreement shall govern.

**Non-Competition**

4.02 The Executive acknowledges that Biovail currently conducts Business activities in North America, Ireland, Barbados and Puerto Rico (the “Territory”). The Executive further acknowledges that, in the future, the Business activities are expected to substantially expand territorially. Accordingly, the Executive hereby agrees and covenants that he shall not during the term of this Agreement and for a period of one (1) year following the Executive’s Termination Date for involuntary termination by Biovail for Cause, voluntary termination by the Executive, or termination following a Change in Control, directly or in any manner whatsoever, including without limitation, either individually, in partnership, jointly or in conjunction with any other individual, partnership, corporation, unincorporated organization, trust, joint venture, the Crown or any agency or instrumentality thereof of any juridical entity, in the Territory (excluding, as applicable, any portions of the Territory in which Biovail is no longer carrying on business at the relevant time) or in any other regions or countries where Biovail may be carrying on business at the relevant time:

carry on, be engaged in, take part in or be a party to any Competitive Activity, directly or indirectly; or

consult, advise, render services to lend money, guarantee the debts or obligations of or permit the use of his name or any part thereof for any Competitive Activity.

For the purposes of this Section 4.02, a Competitive Activity shall be defined as any business: (i) that competes with or plans to actively compete with the Business activities of Biovail through, but not limited to, the formulation, clinical testing, registration, manufacturing or marketing of specialty pharmaceuticals and/or drug delivery technologies in the therapeutic categories on which Biovail is focused, which include central nervous system disorders, pain management, cardiovascular disease, type II diabetes, and any other category in which Biovail is focused in the future and excludes areas in which Biovail is not actively engaged at the relevant time, (ii) with which Biovail has a product(s) licensing agreement, (iii) in which Biovail has a minority equity interest, and (iv) with which Biovail is at the time actively negotiating a commercial relationship.



During the continuance of his employment, the Executive shall not (other than solely as a holder of not more than three per cent (3%) of the issued and outstanding voting shares of any public corporation or as a shareholder of Biovail, without the written approval of the board of directors of Biovail, directly or indirectly, either individually or in partnership or in conjunction with any Person or Persons, firm, association, syndicate, company or corporation as principal, agent, director, manager, servant, shareholder or in any other manner whatsoever) carry on or be engaged in or be concerned with or interested in any business or vocation whatsoever which would be reasonably judged to be a Competitive Activity or would impede the Executive in performing his duties as outlined herein.

The Executive may at any time, or from time to time, request Biovail to advise the Executive in writing whether or not Biovail considers a specified business to be a Competitive Activity. Any such request shall be made by written notice to Biovail that includes: (i) the name of the specific business unit for which the Executive proposes to provide services; (ii) the name or names of any parent companies of such business unit; (iii) a description of the specific services which the Executive proposes to perform for such business unit; (iv) a statement as to why the Executive believes that the performance of such services will not adversely affect Biovail’s legitimate interests.

**Non-Solicitation**

4.03 The Executive hereby covenants and agrees that the Executive shall not, during the term of this Agreement and for a period of one (1) year thereafter, solicit or contact, either directly or indirectly, any of the Customers, Prospective Customers or any suppliers of the pharmaceutical compounds used by Biovail on the Executive’s own behalf, or on behalf of any entity, by which the Executive is hired or retained. “Customers” means customers of Biovail with which the Executive had personal contact or had supervision over the efforts of those who had direct personal contact with such customers during the last two (2) years of the Employment Term. “Prospective Customer” means any organizations or entities which had been actively contacted and solicited for their business by representatives of Biovail, and with whom the Executive had contact, both during the last two (2) years of the Employment Term.

**Non-Hiring**

4.04 The Executive hereby covenants and agrees that the Executive shall not, during the term of this Agreement and for a period of one (1) year thereafter, either directly or indirectly, solicit or endeavour to solicit from Biovail any of its employees, and shall not for a period one (1) year from the end of the term of this Agreement hire any of the foregoing on the Executive’s own behalf or on behalf of any entity for which the Executive is hired or retained. Notwithstanding the foregoing, the Executive shall not be considered in breach of this section should the Executive solicit for hiring such Executive’s administrative assistant.

**Injunctive Relief**

4.05 The Executive acknowledges and agrees that the agreements and covenants in this Article Four are essential to protect the business and goodwill of Biovail and that a breach by the

Executive of the covenants in Sections 4.01, 4.02, 4.03 and 4.04 hereof could result in irreparable harm to Biovail for which Biovail could not be adequately compensated in damages and that, accordingly, Biovail may have no adequate remedy at law if the Executive breaches such provisions. Consequently, if the Executive breaches any of such provisions, Biovail shall have, in addition to and not in lieu of, any other rights and remedies available to it under any law or in equity, the right to obtain injunctive relief to restrain any breach or threatened breach thereof and to have such provisions specifically enforced by any court of competent jurisdiction.

**Severability of Covenants in Full or in Part**

4.06 The parties acknowledge that the provisions of Article Four hereof (the “Restrictive Covenants”) are reasonable and valid in geographic and temporal scope and in all other respects. If any court of competent jurisdiction determines that any of the Restrictive Covenants or any part thereof, is or are invalid or unenforceable, the Executive and Biovail agree that the remainder of the Restrictive Covenants shall not be affected by the deemed invalid portions.

**Assignment of IP**

4.07 The Executive shall disclose to Biovail any and all Intellectual Property (as defined in the Confidentiality Agreement) which the Executive may make solely, jointly, or in common with other employees during the term of the Executive’s employment within Biovail and which relates to the business. Any Intellectual Property coming within the scope of the business made and/or developed by the Executive while in the employ of Biovail, whether or not conceived or made during regular working hours, and whether or not the Executive is specifically instructed to make or develop same, shall be for the benefit of Biovail and shall be regarded as work made in the course of employment for the purposes of the *Copyright Act* (Canada). The Executive shall assign, set over and transfer to Biovail the Executive’s entire right, title and interest in and to any and all of the Intellectual Property and to all letters patent and applications for letters patent which may be, or may have been filed and/or issued by or to the Executive or on the Executive’s behalf and the Executive agrees to execute and deliver to Biovail any and all instruments necessary or desirable to accomplish the foregoing and, in addition, to do all lawful acts which may be necessary or desirable to assist Biovail to obtain and enforce protection of the Intellectual Property. To the extent of any rights Executive may have with respect to the Intellectual Property which are not assignable, including but not limited to moral rights, the Executive hereby waives same. The Executive will execute and deliver to Biovail or its successors and assigns, such other and further assignments, instruments and documents as Biovail from time to time reasonably may request for the purpose of establishing, evidencing, and enforcing or defending its complete, exclusive, perpetual, and world-wide ownership of all rights, titles, and copyrights, in and to the Intellectual Property, and Executive constitutes and appoints Biovail as agent and attorney-in-fact, with full power of substitution, to execute and deliver such assignments, instruments, documents as Executive may fail to or refuse to execute and deliver, this power and agency being coupled with an interest and being irrevocable.

**Standards of Business Conduct**

4.08 The Executive acknowledges and agrees that the Executive has read and understood and agrees to be bound by Biovail’s Standards of Business Conduct, which is attached hereto as Schedule B.

**No Conflicting Obligations**

- 4.09 The Executive warrants to Biovail that:
- (a) the performance of the Executive’s duties as an employee of Biovail will not breach any agreement or other obligation to keep confidential the Confidential Information of any third party; and
  - (b) the Executive is not bound by any agreement with or obligation to any third party that conflicts with the Executive’s obligations as an employee of Biovail.

**ARTICLE FIVE - INTERPRETATION AND ENFORCEMENT**

**Section 409A**

5.01 This Agreement shall be interpreted to avoid any penalty sanctions under Internal Revenue Code section 409A. If any payment or benefit cannot be provided or made at the time specified herein without incurring sanctions under section 409A, then such benefit or payment shall be provided in full at the earliest time thereafter when such sanctions will not be imposed.

Notwithstanding any provision of this Agreement to the contrary, if the Executive is a key employee of a publicly traded corporation under section 409A at the time of the Executive’s separation from service and if payment of any amount under this Agreement is required to be delayed for a period of six (6) months after separation from service pursuant to section 409A, payment of such amount shall be delayed as required by section 409A, and the accumulated postponed amount shall be paid in a lump sum payment within ten (10) days after the end of the six-month period. If the Executive dies during the postponement period prior to the payment of postponed amount, the amounts withheld on account of section 409A shall be paid to the personal representative of the Executive’s estate within 60 days after the date of the Executive’s death. A “key employee” shall mean an employee who, at any time during the twelve (12) month period ending on the identification date, is a “specified employee” under section 409A of the Internal Revenue Code, as determined by the Board. The determination of key employees, including the number and identity of persons considered key employees and the identification date, shall be made by the Board in accordance with the provisions of sections 416(i) and 409A and the regulations issued thereunder.

For purposes of section 409A, the right to any series of installment payments under this Agreement shall be treated as a right to a series of separate payments. All reimbursements and in kind benefits provided under this Agreement shall be made or provided in accordance with the requirements of section 409A, including, where applicable, the requirement that (i) any reimbursement shall be for expenses incurred during the Executive’s lifetime (or during a shorter period of time specified in this Agreement), (ii) the amount of expenses eligible for

reimbursement, or in kind benefits, provided during a calendar year may not affect the expenses eligible for reimbursement, or in kind benefits to be provided, in any other calendar year, (iii) the reimbursement of an eligible expense will be made on or before the last day of the calendar year following the year in which the expense is incurred, and (iv) the right to reimbursement or in kind benefits is not subject to liquidation or exchange for another benefit.

**Independent Legal Advice**

5.02 The Executive agrees to the terms and conditions of this Agreement having had the opportunity to receive independent legal advice, for which the Executive has been reimbursed by Biovail.

**Severability**

5.03 The parties further acknowledge that if any provision contained in this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof shall continue in full force and effect.

**Sections and Headings**

5.04 The division of this Agreement into Articles and Sections and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Agreement.

**Number and Gender**

5.05 In this Agreement words importing the singular number only shall include the plural and vice versa and words importing the masculine gender shall include the feminine and neuter genders and vice versa.

**Entire Agreement**

5.06 This Agreement and all the Schedules hereto constitute the entire Agreement between the parties with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the parties with respect thereto. There are no representations, warranties, forms, conditions, undertakings or collateral Agreements, express, implied or statutory between the parties other than as expressly set forth in this Agreement.

**Amendments and Waivers**

5.07 No amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by both parties. No waiver of any breach of any term or provision of this Agreement shall be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided in written waiver, shall be limited to the specific breach waived.

**Governing Law**

5.08 This Agreement shall be deemed to have been made in and shall be construed in accordance with the laws of the Province of Ontario and all legal proceedings contemplated in this Agreement shall be brought in, and be governed by, the laws of the Province of Ontario, without regard to principles of conflicts of law.

**Notices**

5.09 Any demand, notice or other communication (hereinafter in this Section 5.09 referred to as a “Communication”) to be made or given in connection with this Agreement shall be made or given in writing and may be made or given by personal delivery addressed respectively to the recipients:

|                         |                                                                                   |
|-------------------------|-----------------------------------------------------------------------------------|
| To the Executive:       | Dr. Christian Fibiger,<br>xxx<br><br>and<br><br>Dr. Christian Fibiger,<br>xxx     |
| To Biovail:             | 7150 Mississauga Road<br>Mississauga, ON L5N 8M5<br>Attn: Chief Executive Officer |
| To Biovail Corporation: | 7150 Mississauga Road<br>Mississauga, ON L5N 8M5<br>Attn: Chief Executive Officer |

or such other address or individual as may be designated by notice by either party to the other. Any communication made or given by personal delivery shall be conclusively deemed to have been given on the day of the actual delivery thereof.

**Benefit of Agreement**

5.10 This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, legal personal representatives, successors and assigns.

**Assignment**

5.11 The Executive may not assign the Executive’s rights or obligations under this Agreement without the prior written consent of Biovail which consent may be unreasonably withheld. Biovail may unilaterally assign this agreement to an affiliate without consent but on notice to the Executive.

**Execution of Agreement**

5.12 The Executive acknowledges that the Executive has executed this Agreement freely; that the Executive has reviewed this Agreement thoroughly; that the Executive agrees with its contents; and that the terms herein are reasonable for the fair protection of both the Executive and Biovail.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates identified below at

BIOVAIL LABORATORIES INTERNATIONAL SRL

EXECUTIVE

By: /s/ MICHEL CHOUINARD  
Michel Chouinard  
Chief Operating Officer

/s/ CHRISTIAN FIBIGER  
Dr. Christian Fibiger

BIOVAIL CORPORATION

By: (Signed)

Date: \_\_\_\_\_

**SCHEDULE A**

**BIOVAIL CORPORATION  
(and its Subsidiaries, Divisions, and Affiliates)**

**CONFIDENTIALITY AGREEMENT**

As an employee of Biovail Corporation (the “Corporation”), I acknowledge that I may acquire or have disclosed to me by the Corporation or by any affiliate, associate, or technology partner of the Corporation, either directly or indirectly, in writing, conversation, or through observation, various information about the business of the Corporation which is not in the public domain and which the Corporation does not wish to be divulged to other persons, companies, or third parties. I further understand that the Corporation’s Confidential Information (as defined below) is essential to its competitive advantage and to its ability to be financially viable. I further understand that the unauthorized disclosure of such Confidential information may cause the Corporation irreparable injury that may not be rectified in the future.

Therefore, as a condition and in consideration of my employment with the Corporation, I understand and agree that while employed with the Corporation and thereafter (as more particularly described below). I am required to hold confidential and not to disclose to anyone without the written authority from the Corporation any knowledge, information, or facts concerning the Corporation’s:

- research and development activities
- technological plans, advances, applications and inventions
- technical specifications, designs and plans
- materials and sources of supply
- discoveries, inventions, trade secrets, patents
- financial affairs, contracts, licensing agreements, customer lists, pricing practices, marketing strategies
- any other information regarding the Corporation, its products and their development which is not in the public domain

All of the foregoing shall hereinafter collectively be referred to as the “Confidential Information”.

I shall keep confidential any and all Confidential Information which has been disclosed to me in writing or through oral communications and shall not divulge in any manner whatsoever any such information to any person, firm, corporation, partnership or similar entities without the Corporation’s written authority.

Should I breach or threaten to breach this Agreement, I shall be liable to the Corporation in equity and/or in law for damages that may be suffered by the Corporation as a result of the breach or threatened breach. I understand that a breach of this Agreement may result in irreparable harm to the Corporation such as to warrant the entitlement by the

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Corporation to an interlocutory and/or permanent injunction or other equitable relief against me, and an award of damages including punitive, exemplary and aggravated damages, together with legal costs and expense and I specifically agree that I will not argue the adequacy of damages or the Corporation's ability to seek equitable relief in any such proceeding.

All Confidential Information supplied by the Corporation to me during the course of my employment and any rights related thereto, including but not limited to rights of know how, patent, trademark and copyright, with respect to existing products or those that are developed during or after my employment, are and remain the exclusive and absolute property of the Corporation.

I shall not, except as and to the extent required to enable me to carry out my duties with the Corporation, make any copies or reproduce the Confidential Information nor shall I remove or cause to have removed from the premises of the Corporation during my employment any Confidential Information unless required to do so in order to fulfill my duties with the Corporation. Such copies or reproductions shall be strictly subject to the terms and conditions of this Agreement. I shall take such steps as are necessary to restrict access to and protect the confidentiality of such copies or reproductions of the Confidential Information. Any such copies or reproductions made shall become the exclusive and absolute property of the Corporation.

Upon request of the Corporation, I agree to immediately surrender to the Corporation all documentation and information - notes, drawings, recordings, manuals, letters, correspondence, computer data and programs, records, books or any other materials relating to the Confidential Information which is in my possession without my retaining any copies or duplicates thereof.

I agree that this Agreement shall be construed in accordance with the laws of the Province of Ontario and I agree that the applicable courts of the Province of Ontario shall have exclusive jurisdiction with respect to any dispute or breach herein and I hereby attorn to the exclusive jurisdiction of the courts of the Province of Ontario.

This Agreement shall enure to the benefit of and shall be binding upon my successors, heirs and attorneys.

The disclosure or divulging of any Confidential Information contrary to this Agreement, or the violation of this Agreement in any way shall result in my immediate termination of employment, in addition to which I may be subject to criminal prosecution and civil liability.

I acknowledge and agree that I have executed this Agreement freely and with the benefit of independent legal advice and the terms herein are fair and reasonable.

I acknowledge and agree to the foregoing.

Employee Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Witness Signature: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_

## SCHEDULE B



### **BIOVAIL CORPORATION (and its Subsidiaries, Divisions, and Affiliates)**

#### **STANDARDS OF BUSINESS CONDUCT**

Biovail Corporation ("Biovail"), together with its subsidiaries, divisions and affiliates, places great importance on conducting its business activities in an ethical and appropriate manner. Each employee, officer and director is a reflection of Biovail, and as such, the activities and actions of every individual within Biovail must be undertaken in accordance with a high standard of ethics and integrity. As such, Biovail expects each employee, officer and director to comply with, and adhere to, these Standards of Business Conduct (the "Standards").

#### **1. CONFLICTS OF INTEREST**

Employees, officers and directors of Biovail must avoid situations where their private interests could conflict with, or even appear to conflict with, the interests of Biovail and its stockholders.

Conflicts of interest arise when an individual's position or responsibilities with Biovail present an opportunity for personal gain apart from the normal rewards of employment. They also arise when the private interests of an employee, officer or director are inconsistent with those of Biovail or create conflicting loyalties. Such conflicting loyalties can cause an employee, officer or director to give preference to private interests in situations where corporate responsibilities should come first. Employees, officers and directors must perform the responsibilities of their positions on the basis of what is in the best interests of Biovail and free from the influence of personal considerations and relationships.

In the event that any potential conflict of interest arises, the individual involved must immediately notify his or her immediate supervisor. If such individual is an officer or director of Biovail, the Executive Chairman ("Chairman"), Chief Executive Officer ("CEO") and the General Counsel, or in the absence of a General Counsel the Vice President, Associate General Counsel ("SLO") of Biovail must also be immediately notified and no further action may be taken unless authorized in writing by the Chairman and/or the CEO.

While it is not possible to detail every situation where conflicts of interest may arise, the following policies cover the areas that have the greatest potential for conflict:

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**A. Trading in Biovail Securities and Use of Inside Information**

There are numerous laws in Canada and the United States (federal, provincial and state laws), to regulate transactions in corporate securities (stocks and bonds) and the securities industry. Violation of these laws may lead to civil and criminal actions against the individual and Biovail.

- i. Any employee, officer, director or other insider or anyone (family member, etc.) who knows of any material information (as defined below) about Biovail that has not been disclosed to the public (commonly known as “insider information”) may not engage in any transaction in Biovail’s securities until such information is disclosed to the public (whether or not there is a formal trading “black out” in place). This rule applies equally to transactions in securities of other companies. In addition, employees, officers and directors must not provide insider information to others (“tippees”) who may trade in either the securities of Biovail or the securities of other companies.  
  
“Material information” is any information relating to the business and affairs of Biovail that would reasonably be expected to result in a change in the market price or value of Biovail’s securities. Generally speaking, material information is a matter to which an average prudent investor should be reasonably informed before a decision is made to buy or sell the security involved. Examples of such information would include annual or quarterly financial results; significant changes in management; significant shifts in operating or financial circumstances, such as major write-offs and changes in earnings projections; borrowing of a significant amount of funds; acquisitions of, or mergers with, other companies; significant new contracts or loss of business; and major new products, services or patents. This list provides examples only; many other matters may be considered material information.  
  
Employees, officers, directors and other insiders who have questions that relate to the sale or purchase of a security under circumstances where these laws and regulations might apply should consult with the SLO, who may refer them to outside legal counsel.
- ii. In addition to the prohibition against the use of “insider” information which applies to all employees, officers and directors, the various securities laws that apply in the jurisdiction and countries in which Biovail does business place definite restrictions on the manners in which employees, officers and directors of Biovail, and their family members, their associates, etc., may

engage in transactions involving the securities of Biovail. Employees, officers and directors shall comply with all laws, rules and regulations that prohibit or restrict insider trading.

Whenever there is any doubt as to whether any transactions involving Biovail’s securities would violate securities laws, employees, officers and directors should consult the SLO of Biovail. Within the framework of the foregoing policies and laws, the final decision of each employee, officer or director, with respect to securities transactions, must be his or her own.

- iii. Employees, officers, directors and other insiders shall maintain the confidentiality of information entrusted to them by Biovail or its customers (except where disclosure is authorized or legally mandated) and shall not, without proper authority, give or release to anyone not employed by Biovail, data or information of a confidential nature concerning Biovail. Disclosure of confidential information can be harmful to Biovail and could be the basis for legal action against Biovail and the individual disclosing the information. Confidential information includes all non-public information that might be of use to competitors, or harmful to Biovail or its customers, if disclosed.
- iv. Employees, officers, directors and other insiders shall not acquire any property, security or any business interest that they know Biovail has an interest in acquiring. Moreover, based on such advance information, employees, officers and directors shall not acquire any property, security or business interest for speculation or investment.
- v. Employees, officers, directors and other insiders must follow Biovail policies regarding “Blackout Periods” when Biovail’s stock may not be traded. Such policies will be communicated by the SLO from time to time and must be adhered to by all employees, officers and directors.

**B. Personal Financial Interest**

Employees, officers and directors should avoid any outside financial interests that might influence decisions or actions they have been empowered to make on behalf of Biovail. An employee, officer or director performing duties in conformity with this policy shall not have a financial interest in, indebtedness to, or a personal contract or understanding with any concern with which he or she does business on behalf of Biovail.

- i. Employees, officers or directors whose corporate duties bring them into business dealings with an organization in which they, or a member of their family, have a financial interest or to which they,

or a member of their family, have any indebtedness, or a business employing a relative or close friend, must immediately notify their immediate supervisor. The employee, officer or director, in turn, cannot complete a transaction on behalf of Biovail with this organization unless properly authorized in writing from their supervisor after full disclosure of the relationship.

- ii. An employee, officer or director may not perform work or services, outside the course of their normal employment by Biovail, for an organization doing or seeking to do business with Biovail without appropriate prior written approval of their supervisor or the Board of Directors. An employee, officer or director may not be a director, officer, partner or consultant of an organization doing or seeking to do business with Biovail, nor may any of them permit their names to be used in any way indicating a business connection with such an organization, without appropriate prior written approval of their supervisor or the Board.
- iii. An employee, officer or director shall not accept for himself or herself, or for the benefit of any relative or friend, any payments, loans, services, favors involving more than ordinary social amenity, or gifts of more than nominal value from any organization doing or seeking to do business with Biovail.
- iv. The requirement of freedom from conflict of interest applies with equal force to the spouse, children and other close relatives of each employee, officer and director. This policy applies to all employees, officers and directors of Biovail with respect to all of the affairs of Biovail.
- v. Employees, officers and directors shall not (a) take for themselves personally opportunities that are discovered through the use of corporate property, information or position; (b) use corporate property information, or position for personal gain; (c) compete with Biovail. Employees, officers and directors owe a duty to Biovail to advance its legitimate interests when the opportunity to do so arises.
- vi. Biovail may not make loans to any employee, officer or director.

### **C. Outside Activities**

Employees, officers and directors should avoid outside employment or activities which would impair the effective performances of their responsibilities to Biovail, either because of excessive demands on their time, or because the outside commitments can be contrary to their obligations to Biovail

**D. Protection and Proper Use of Biovail’s Assets**

All employees, officers and directors should protect Biovail’s assets and ensure their efficient use. Theft, carelessness and waste have a direct impact on Biovail’s profitability. All of Biovail’s assets should be used only for legitimate business purposes.

**E. Fair Dealing**

Each employee, officer and director shall endeavor to deal fairly with Biovail’s customers, suppliers, competitors and employers. None should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other unfair-dealing practice,

**2. COMPETITIVE PRACTICES**

The management of Biovail firmly believes that fair competition is fundamental to continuation of the free-enterprise system. Biovail complies with, and supports, laws of all countries that prohibit restraints of trade, unfair practices, or abuse of economic power.

Biovail will not enter into arrangements that unlawfully restrict its ability to compete with other businesses, or the ability of any other business organization to compete freely with Biovail. Biovail policy also prohibits employees, officers and directors from entering into, or even discussing, any unlawful arrangement or understanding which may affect its pricing policies, terms upon which its products and services are sold, or which might be construed as dividing customers or sales territories with a competitor.

These principles of fair competition are basic to all Biovail operations. They are integral parts of the following sections that cover Biovail’s dealings with suppliers, customers and public officials.

**3. DEALING WITH SUPPLIERS**

Biovail is a valuable customer for many suppliers of goods, services and facilities. People who want to do business, or to continue to do business, with Biovail must understand that all purchases by Biovail will be made in accordance with its purchasing policy and exclusively on the basis of price, quality, service and suitability to Biovail’s needs.

**A. Reciprocity**

Biovail considers reciprocity a harmful practice and a hindrance to assuring purchase of the best available materials or services at the lowest possible prices. It will not be practiced or allowed.

Suppliers of goods and services to Biovail will not be asked to buy goods and services from Biovail in order to become or continue as a supplier.

Biovail will not attempt to influence its suppliers to purchase from customers of Biovail. When Biovail makes purchases it will not favor firms who are customers of Biovail or any of its affiliates.

**B. “Kickbacks” and Rebates**

Purchases or sales of goods and services by Biovail must not lead to employees, officers or directors, or their families, receiving any type of personal kickbacks or rebates. Employees, officers, directors, and their families, must not accept any form of “under-the-table” payment.

**C. Receipt of Gifts and Entertainment**

Even when gifts and entertainment are exchanged out of the purest motives of personal friendship, they can be misunderstood. They can appear to be attempts to bribe Biovail’s employees, officers or directors into directing business of Biovail to a particular supplier. To avoid both the reality and the appearance of improper relations with suppliers or potential suppliers, the following standards will apply to the receipt of gifts and entertainment by employees, officers and directors of Biovail:

**Gifts**

- i) Employees, officers and directors are prohibited from soliciting gifts, gratuities, or any other personal benefit or favor of any kind from suppliers or potential suppliers. Gifts include not only merchandise and products but also personal services, and tickets to theatrical and sports events. Employees, officers and directors should exercise good judgment when accepting unsolicited gifts. Employees, officers and directors are prohibited from accepting gifts of money.
- ii) Employees, officers and directors may accept unsolicited non-money gifts provided:
  - (1) They are items of nominal intrinsic value; or
  - (2) They are advertising and promotional materials, clearly marked with Biovail or brand names of the giver.
- iii) Any gift of more than nominal intrinsic value must be reported to the SLO to determine whether it can be accepted. Some gifts may be perishable so as to make their return impractical. Supervisors can permit acceptance of such gifts, but should require employees, officers and directors to tactfully inform givers that such gifts are discouraged.
- iv) In the transaction of some international business, it is lawful and customary for business leaders in some countries to give unsolicited gifts to employees, officers or directors of Biovail. These gifts can be of more



than nominal value. Moreover, under the circumstances, returning the gifts or payment for them may constitute an affront to the giver. In such cases, the gift must be reported to the SLO who may permit the retaining of the gifts.

- v) In all other instances where gifts cannot be returned or may adversely affect Biovail's continuing business relationships, the SLO must be notified. They can require employees, officers and directors to transfer ownership of such gifts to Biovail.

#### **Entertainment**

- i) Employees, officers and directors shall not encourage or solicit entertainment from any individual or company with whom Biovail does business. Entertainment includes, but is not limited to, activities such as dinner parties, theater parties, and sporting events.
- ii) From time to time employees, officers and directors may accept unsolicited entertainment, but only under the following conditions:
  - (1) The entertainment occurs infrequently;
  - (2) It arises out of the ordinary course of business;
  - (3) It involves reasonable, not lavish expenditures (the amounts involved should be ones employees, officers and directors are accustomed to normally spending for their own business or personal entertainment); and
  - (4) The entertainment takes place in settings that also are reasonable, appropriate, and fitting to employees, officers and directors, their hosts, and their business at hand.

#### **4. DEALINGS WITH CUSTOMERS AND POTENTIAL CUSTOMERS**

Employees, officers and directors must keep all dealings with customers and potential customers fair and above board. Biovail gets business and keeps it because of the quality of its goods and services. Biovail does not give unethical or illegal rebates, kickbacks, under-the-table payments, or other similar improper favors to customers or their representatives.

The boundary line between ethical and unethical competition, or legal and illegal conduct, is not always well defined, particularly in international activities where differing local laws, custom; and practices come into play. Therefore, the following standards will serve as guides:

- a) All employees, officers and directors should make themselves aware of and fully comply with all laws, rules and regulations, whether federal, state, local or foreign, including laws governing relations with customers as well as competitors.
- b) All employees, officers and directors engaged in negotiations and contracts with foreign governments, the United States or any political subdivision thereof must also know and abide by the specific rules and regulations covering relations with such governments and their agencies.
- c) Employees, officers and directors may not give gifts to customers except items of nominal value, which fit the legal, normal, and customary pattern of Biovail's sales efforts for a particular market. Exceptions to this policy can occur in international trades where it can be legal, customary, and appropriate business practice to exchange gifts with customers. Only the CEO can authorize the giving, receiving, or exchanging of such gifts. Any gifts received by employees, officers or directors in such an exchange must be reported to the CEO for determination as to the disposition of the gifts.
- d) Entertainment for any customer must fit regular business practices. The place and type of entertainment and the money spent must be reasonable and appropriate.

## 5. DEALING WITH PUBLIC OFFICIALS

Domestic and foreign laws and regulations require Biovail to be in contact with public officials on a wide variety of matters. Employees, officers and directors who regularly make these contacts have special responsibilities for upholding Biovail's good name. The following standards relate to these special responsibilities:

- a) All employees, officers and directors who contact public officials must be familiar with lobbying laws and public disclosure requirements, particularly those that apply to registrations and filings.
- b) No employee shall make any form of payment, direct or indirect, to any public official as an inducement to procuring or keeping business or having a law or regulation enacted, defeated, or violated. This is bribery, pure and simple. It will not be tolerated.  
  
It should be acknowledged that inherent in the current health-care regulatory environment, the definition of "form of payment" may include seemingly trivial gifts and/or favors (e.g. buying lunches, coffee, etc.).
- c) When not prohibited by law, employees, officers and directors are allowed to give to public officials gifts where the presentation and acceptance of gifts is an established custom and a normal business practice. All such

gifts shall be of reasonable value and the presentation approved in advance by the CEO. Moreover, such gifts must be presented in a manner that clearly identifies Biovail and the occasion that warrants the presentation.

- d) Employees, officers and directors are also allowed to give public officials gifts in the form of product models and pictures provided the models and pictures are part of Biovail's general marketing and public relations programs (except as noted in clause (b) above).
- e) On special ceremonial occasions, officers of Biovail may publicly give gifts of more than nominal value to public institutions and public bodies. Such gifts can commemorate special events or milestones in Biovail's history.

These may be transmitted through public officials but the gifts are given to the public institutions and public groups they represent, not to the officials personally.

- f) From time to time employees, officers and directors may entertain public officials, but only under the following conditions:
  - i. It is legal and permitted by the entity represented by the official;
  - ii. The entertainment is not solicited by the public official;
  - iii. The entertainment occurs infrequently;
  - iv. It arises out of the ordinary course of business;
  - v. It does not involve lavish expenditures, considering the circumstances;
  - vi. The settings and types of entertainment are reasonable, appropriate and fitting to our employees, officers or directors, their guests, and the business at hand.

## **6. POLITICAL ACTIVITIES AND CONTRIBUTIONS**

### **A. Canada and the United States**

Employees, officers and directors who participate in partisan political activities must make every effort to ensure that they do not leave the impression that they speak or act for Biovail.

Biovail encourages its employees, officers and directors to participate in political activities in their own time and at their sole expense. No corporate action, direct or indirect, will be allowed that infringes on the right of any employee individually to

decide whether, to whom, and in what amount, they will make personal political contributions. The same is true of volunteer political donations of personal service time, so long as it does not interfere with the working status of employees, officers or directors.

**B. Outside Canada and the United States**

No employees, officers and directors are permitted to use Biovail’s funds, facilities, or other assets, to support either directly or indirectly any political candidates or political parties, without advance authorization in writing from their immediate supervisor and the General Counsel. The policy of Biovail is that employees, officers and directors and employees should not participate in political activities in countries of which they are not nationals. However, such persons, of course, are free to participate in political activities in countries of which they are nationals in their own time and at their own expense.

**7. DISCLOSURE**

Biovail has formed a Disclosure Committee to promote consistent practices aimed at informative, timely and broadly disseminated disclosure of Material Information to the market. external stakeholder groups and employees in accordance with all applicable legal, regulatory and stock-exchange requirements.

It is essential that the Disclosure Committee be fully apprised of all material corporate developments to be able to determine whether there is information that should be publicly disclosed, and what the appropriate timing is for release of that information. In some cases, the Disclosure Committee may determine that the information should remain confidential. If that is the case, the Disclosure Committee will determine how that information will be controlled so that it is not inadvertently released. Therefore any employee who becomes aware of information that he/she believes might be material to Biovail and/or any of its affiliates and subsidiaries he/she should advise their manager or supervisor or a member of the Disclosure Committee. Current membership of the Disclosure Committee is posted on the Biovail.com website.

This applies throughout the year, but is particularly critical when annual or quarterly financial statements and Management Discussion and Analysis (MD&A) or regulatory filings are being prepared (e.g. regulatory filings, such as the U.S. Securities and Exchange Commission, Form 20-F).

**8. PUBLIC COMMUNICATIONS**

Given the importance placed on confidentiality and the appropriate disclosures of information regarding Biovail, it is important for employees, officers and directors to ensure that care be taken with any communication regarding Biovail or its activities outside of Biovail.

**A. Designated Spokespersons**

Biovail has designated official spokespersons who are authorized to speak on behalf of Biovail, and answer questions from the news media and the investment community, about Biovail and its activities. Employees, officers and directors who have not been designated as spokespersons for Biovail are not permitted to speak on behalf of the Company to the news media or to the investment community.

**B. Media or Analyst Inquiries**

Any employee who is approached by any person asking for comment on the activities of Biovail must direct any and all such inquiries to a member of the Disclosure Committee or to a member of the Company’s Stakeholder Relations team (Corporate Communications, Investor Relations) so that an appropriate spokesperson can respond to the inquiry on behalf of Biovail.

**C. Conferences**

The Disclosure Committee should be advised of any request to present at any conference or public meeting. Certain materials prepared for any such presentation may be required to be reviewed by the Company’s Stakeholder Relations group.

**D. Electronic Communications**

Care must be taken in all instances in the use of e-mail, and other devices (e.g., Blackberry’s) in communications relating to Biovail’s business. While users tend to resort to shorthand communication using these kinds of tools, those communications do form a record of those communications that may be subject to later review and disclosure. A more fulsome policy regarding electronic communications is in place (found in the Human Resources Management System Policy Binder) and should be adhered to by all employees, officers and directors.

**E. The Internet**

Biovail has instituted policies regarding the use of, and access to the Internet by employees, officers and directors. These policies include a prohibition against anyone participating in any chat rooms dedicated to Biovail or its operations or the industry at large. If any employee, officer or director becomes aware that any such chat room exists, they are asked to report the address of such site to the SLO so that it may be monitored and appropriate action may be taken.

**9. EQUAL OPPORTUNITY**

Biovail supports the principle that every individual must be accorded an equal opportunity to participate in the free-enterprise system and to develop their ability to achieve their full potential within that system.

There shall be no discrimination against any employee or applicant because of race, religion, color, sex, age, sexual orientation, national or ethnic origin, or disability (as required by law) or any other consideration prohibited by local law. All employees, officers and directors will be treated with equality during their employment without regard to their race, religion, color, sex, age, national or ethnic origin, or physical handicap, in all matters, including employment, upgrading, promotion, transfer, layoff, termination, rates of pay, selection for training and recruitment. Biovail will maintain a work environment free of discriminatory practice of any kind.

No employee shall have any authority to engage in any action or course of conduct or to condone any action or course of conduct by any other person which shall in any manner, directly or indirectly, discriminate or result in discrimination in the course of one’s employment, termination of employment, or any related matter where such discrimination is, directly or indirectly, based upon race, religion, color, sex, age, sexual orientation, national or ethnic origin, disability, or any other consideration prohibited by law.

**10. HEALTH, SAFETY, AND ENVIRONMENTAL PROTECTION**

It is Biovail’s policy to pay due regard to the health and safety of its employees, officers, directors and others, and to the state of the environment. There are federal, provincial, state and local workplace safety and environmental laws which through various governmental agencies regulate both physical safety of employees, officers and directors and their exposure to conditions in the workplace. Should you be faced with an environmental health issue or have a concern about workplace safety, you should contact your Health and Safety Committee representative or notify Biovail management immediately.

Many countries and their regional and local governments now have complex legislation to protect the health and safety of employees, or the general public, and to prevent pollution and protect the environment. In case of violation, these laws often provide penalties for both the company involved and its executive personnel. Biovail’s SLO should always be consulted when necessary to understand or comply with such laws.

**11. WORK ENVIRONMENT**

Employees, officers and directors must treat each other with professional courtesy and respect at all times. Employees, officers and directors shall not subject any other employee to unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct which might be construed as sexual in nature, or harass others on the basis of race, disability, gender, sexual orientation or any other consideration prohibited by law. Such conduct may constitute sexual harassment or harassment under federal, provincial and state law and may be the basis for legal action against the offending employee and/or Biovail.

Employees are encouraged to report all conduct that they believe in good faith to be violations of local anti-harassment policies. To the extent permissible under local law the

identity of the employees, officers or directors involved will be kept strictly confidential, and will not be revealed by Biovail’s management without the employee’s permission. The alleged harassment will be thoroughly investigated by Biovail and appropriate action will be taken. Biovail has an appropriate policy to protect employees against discrimination or retaliation as a result of such a complaint.

**12. INTEGRITY OF RECORDS AND FINANCIAL REPORTS**

It is of critical importance that Biovail’s filings with the appropriate regulatory authorities (e.g. U.S. Securities and Exchange Commission) be accurate and timely. Depending on their position with Biovail, an employee, officer or director may be called upon to provide necessary information to ensure that Biovail’s public reports are complete, fair and understandable. Biovail expects employees, officers and directors to take this responsibility very seriously and to provide prompt accurate answers to inquiries related to Biovail’s public disclosure requirements.

The integrity of Biovail’s record keeping systems will be respected at all times. Employees, officers and directors are forbidden to use, authorize, or condone the use of “off-the-books” bookkeeping, secret accounts, unrecorded bank accounts, “slush” funds, falsified books, or any other devices that could be utilized to distort records or reports of Biovail’s true operating results and financial conditions or could otherwise result in the improper recordation of funds or transactions.

**13. USE OLD AGENTS AND NON-EMPLOYEES, OFFICERS AND DIRECTORS**

Agents or other non-employees cannot be used to circumvent the law. Employees, officers and directors will not retain agents or other representatives to engage in practices that run contrary to the Standards of Business Conduct or applicable laws.

**14. INTERNATIONAL OPERATIONS**

Employees, officers and directors operating outside of Canada and the United States have a special responsibility to know and obey the laws and regulations of countries where they act for Biovail. Customs vary throughout the world, but all employees, officers and directors must uphold the integrity of Biovail in other nations diligently.

**15. STANDARDS OF BUSINESS CONDUCT**

**A. Initial Distribution**

- i. Employees, officers and directors designated to receive these Standards will receive their copies immediately after publication.
- ii. Future employees, officers and directors designated to receive these Standards will receive their copies at the time they are hired.

**B. Initial Verification**

Upon receiving their copy of the Standards, employees, officers and directors current and future will:

- i. Become thoroughly familiar with the Standards.
- ii. Resolve any doubts or questions about the Standards with their supervisors.
- iii. Inform their supervisors of any existing holdings or activities that might be, or appear to be, inconsistent with, or in violation of, the Standards.
- iv. Prepare written disclosures of such information, if requested, by supervisors.
- v. Take steps to correct existing situations and bring holdings and activities into full compliance with the Standards. Such steps will be approved in writing by supervisors and will be based on the written disclosure submitted by employees, officers or directors.
- vi. Sign the verification and return it to their supervisors who will make it part of employee's permanent corporate records.

**C. Maintaining Compliance**

- i. Employees, officers and directors have the responsibility to maintain their understanding of the Standards of Business Conduct and for following them.
- ii. Supervisors have the responsibility to maintain an awareness on the part of their employees, officers and directors of the importance of their adhering to the Standards of Business Conduct and for reporting deviations to Management.
- iii. As requested by the Board of Directors or senior management, employees, officers and directors will be asked to re-verify their understanding of the Standards of Business Conduct and their compliance with them every year as a part of Biovail's annual reporting.
- iv. Employees, officers and directors must inform their supervisors of any changes in their holdings or activities that might be, or appear to be in non-compliance with the Standards of Business Conduct.



- v. Employees, officers and directors must prepare written disclosure of such information, if requested, by supervisors.
- vi. Employees, officers and directors must take steps to correct any such changes, if necessary, to bring holdings and activities into full compliance. Such steps will be approved in writing by supervisors and Management and will be based on the written disclosures submitted by employees, officers and directors.

#### **D. Audits of Compliance**

Regular audits of Biovail will include procedures to test compliance with the Standards of Business Conduct.

#### **16. VIOLATIONS OF STANDARDS**

Employees, officers and directors must immediately report any violations of the Standards or any violation of any applicable law, rule or regulation. Failure to do so can have serious consequences for the employees, officers or directors and for Biovail.

Employees, officers and directors, should report violations to their supervisors and/or to the Human Resources department and to the SLO or to any secure reporting hotline the company may have contracted with. When in doubt, employees should talk to their supervisors or other appropriate personnel to determine the best course of action in a particular situation.

Supervisors and the Human Resources group have the responsibility to promptly and thoroughly investigate all reports, and to report violations to the SLO.

After a violation is investigated, appropriate action will be taken promptly. Management has the right to determine the appropriate disciplinary action for a violation up to and including termination of employment. All proposed disciplinary action is subject to review by senior Management, Human Resources and the SLO.

Employees, officers and directors should be aware that, in addition to any disciplinary action taken by Biovail, violations of certain Standards may require restitution and may lead to civil or criminal action against individual employees, officers and directors and any corporation involved.

Supervisors have the responsibility of taking remedial steps to correct any operating procedures that may contribute to violations of Standards.

Retaliation in any form against an individual who reports a violation of these Standards of Business Conduct or of any law, rule or regulation in good faith, or who assists in the investigation of a reported violation, is itself a serious violation of this policy. Acts of retaliation will be disciplined appropriately and should be reported immediately to your supervisor or Human Resources.

**17. CONTINUANCE OF EXISTING PERSONNEL POLICIES, RULES AND PERFORMANCE STANDARDS**

Biovail has codified numerous personnel policies, rules and standards of employee performance, which continue in force. These Standards of Business Conduct are intended to supplement and amplify those established personnel policies, rules and standards.

It continues to be the responsibility of all employees to comply with all such policies, rules and performance standards. Additionally, all members of management are to continue making certain that employees reporting to them are made aware of established policies, rules and performance standards and comply with them.

**18. AMENDMENT, MODIFICATION AND WAIVER**

Biovail will periodically review these Standards of Business Conduct. These Standards may be amended, modified or waived by the Board of Directors and waivers may also be granted by the Nominating & Governance Committee, subject to the disclosure and other provisions of the Securities Exchange Act of 1934, and the rules there under and the applicable rules of the Toronto Stock Exchange/New York Stock Exchange. Employees, officers and directors will be fully informed of any revisions to the Standards of Business Conduct.

Any waiver of these Standards for any employee other than a director or an executive officer, may only be made by the Executive Chairman or the CEO. Any waiver of these Standards for director or an executive officer may be made only by the Board of Directors or the Compensation, Nominating and Corporate Governance Committee and will be promptly disclosed to Biovail's stockholders.

**VERIFICATION AND RECEIPT OF UNDERSTANDING**

I have received a copy of Standards of Business Conduct for BIOVAIL CORPORATION and its subsidiaries, divisions and affiliates. I understand how the Standards apply to me. I acknowledge that my receiving the Standards obligates me to follow them and I agree to abide by their conditions.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

*Employee's Copy*

**VERIFICATION AND RECEIPT OF UNDERSTANDING**

I have received a copy of Standards of Business Conduct for BIOVAIL CORPORATION and its subsidiaries, divisions and affiliates. I understand how the Standards apply to me. I acknowledge that my receiving the Standards obligates me to follow them and I agree to abide by their conditions.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

***HR File Copy***

## Letter of Guarantee



January 29, 2009

Dr. Christian Fibiger  
xxx

xxx

Dear Christian:

**Re: Executive Employment Agreement between Biovail Laboratories International SRL and Dr. Christian Fibiger**

We are writing in respect of your Executive Employment Agreement with Biovail Laboratories International SRL dated November 24, 2008 (as amended, revised or extended from time to time, the "**Executive Employment Agreement**").

In the event that Biovail Laboratories International SRL fails to make a payment to you due under the Executive Employment Agreement, Biovail Corporation ("**Guarantor**") hereby irrevocably and unconditionally guarantees payment, forthwith on demand, of all present and future indebtedness, liabilities and obligations owing at any time and from time to time hereafter by Biovail Laboratories International SRL to you pursuant to the Executive Employment Agreement (collectively, the "**Obligations**"). This guarantee shall be a continuing guarantee and shall guarantee the Obligations, notwithstanding that Biovail Laboratories International SRL will from time to time satisfy the Obligations in whole or in part and thereafter incur further Obligations.

This guarantee is an absolute, unconditional, and continuing guarantee of payment and performance which shall remain in full force and effect without respect to future changes in conditions, including any change of law. The obligations of Guarantor hereunder are independent of the obligations of Biovail Laboratories International SRL, and that a separate action may be brought against Guarantor whether such action is brought against Biovail Laboratories International SRL or whether Biovail Laboratories International SRL is joined in such action. Guarantor agrees that its liability hereunder shall be immediate and shall not be contingent upon the exercise or enforcement by Dr. Fibiger of whatever remedies he may have

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against Biovail Laboratories International SRI., or the enforcement of any lien or realization upon any security Dr. Fibiger may at any time possess.

If any withholding for or on account of any present or future tax imposed by or within the jurisdiction which governs the Executive Employment Agreement is required by law on any payments made hereunder, Biovail Corporation shall make the withholding and pay the amount withheld to the appropriate governmental authority.

Yours very truly,

**BIOVAIL CORPORATION**

Per: /s/ MARK DURHAM  
Name: Mark Durham  
Title:

**BIOVAIL CORPORATION EXECUTIVE  
EMPLOYMENT AGREEMENT**

THIS AGREEMENT is made by and between Biovail Pharmaceuticals, Inc. (hereinafter “BPI”) and CHRISTINE MAYER (hereinafter the “Executive”).

**ARTICLE ONE - GENERAL DUTIES AND TERM**

**Scope of Employment I Duties**

1.01 BPI will employ the Executive as **Senior Vice President, Business Development Services**. The Executive will serve as an officer of BPI. During the Employment Term, the Executive will devote substantially all of the Executive’s business efforts and time to BPI. The Executive agrees, during the Employment Term, not to actively engage in any other employment, occupation or consulting activity for any direct or indirect compensation without the prior approval of the Chief Executive Officer (the “CEO”) of BPI’s parent company, Biovail Corporation (the “Corporation”); provided, however, that the Executive may (a) serve on the boards of directors of other companies (subject to reasonable approval of the CEO) and boards of trade associations or charitable organizations; (b) engage in charitable activities and community affairs; or (c) manage the Executive’s personal investments and affairs, as long as such activities do not violate Section 4.02 and do not materially interfere with the Executive’s duties and responsibilities for BPI.

1.02 BPI reserves the right to establish the employment relationship with the Executive directly with BPI or with any of its affiliates or subsidiaries, or to change such employment relationship over time, as it deems necessary or appropriate to comply with legal requirements or for ease of administration of employee benefits programs or other matters.

1.03 While Executive has reported to the CEO of the Corporation, effective June 18, 2007 Executive shall report to the Executive Vice President, Chief Operating Officer of the Corporation.

**Term of Agreement**

1.04 BPI hereby agrees to employ the Executive and the Executive hereby accepts employment, in accordance with the terms and conditions of this Agreement, commencing on January 1, 2007 (the “Employment Commencement Date”). The period of the Executive’s employment under this Agreement will be referred to as the “Employment Term.” Subject to BPI’s obligation to provide severance benefits and the parties’ obligation to provide a Notice of Termination (as defined below), the Executive

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and BPI acknowledge that this employment relationship may be terminated at any time and for any or no cause or reason at the option of either the Executive or BPI.

**ARTICLE TWO - COMPENSATION**

**Base Salary**

2.01 As of the Employment Commencement Date, the Executive’s annualized base salary will be \$350,000(USD), payable in accordance with BPI’s normal payroll practices for employees generally, and will be subject to annual review in accordance with BPI’s normal review process for other similarly situated senior executives.

**Incentive Compensation**

2.02 The Executive will be eligible to participate in the Corporation’s annual incentive compensation plan in accordance with the terms of such plan; provided, however, that the Executive’s annual incentive compensation, if any, will be paid between January 1 and March 15 of the calendar year following the calendar year for which the annual incentive compensation is earned. For 2007, the Executive’s target level of annual incentive compensation will be fifty percent (50%) of the Executive’s annual base salary.

**Equity Compensation**

2.03 The Executive will be eligible to participate in the Corporation’s equity compensation plan, as may be amended from time to time (the “Equity Compensation Plan”), in accordance with the terms of the Equity Compensation Plan, except as may be otherwise indicated in this Agreement.

**Employee Benefits**

2.05 During the Employment Term, the Executive will be eligible to participate in employee benefit plans and programs that are offered to the Corporation’s other similarly-situated senior executives in accordance with the terms of such plans as they may change from time to time. Nothing in this Agreement shall preclude the Corporation or any affiliate of the Corporation from terminating or amending any employee benefit plan or program from time to time after the Employment Commencement Date.

**Expenses**

2.06 The Executive shall be reimbursed for reasonable out of pocket business expenses, including travel and entertainment expenses, actually and properly incurred by the Executive in the course of performing the Executive’s services hereunder, upon



furnishing to BPI reasonable supporting statements and vouchers; provided, however, that in any financial year in which the Corporation has provided to the Executive an approved budget, such expenses must not exceed the amount so budgeted without the prior written approval from the Corporation.

**Vacation**

2.07 The Executive will be eligible for four (4) weeks of vacation annually, to be taken in accordance with the terms of the Corporation’s Vacation Policy, without regard to any lesser amount of vacation time set forth therein. Notwithstanding the foregoing, the Executive’s eligibility for vacation in the year of hire will be pro-rated in the manner specified in the Corporation’s Vacation Policy.

**ARTICLE THREE - TERMINATION AND RESIGNATION**

**Involuntary Termination - Either By BPI Without Cause or By The Executive For Good Reason**

3.01 If the Executive incurs an involuntary termination from employment with BPI on account of a termination by BPI without Cause or by the Executive for Good Reason, then, in addition to any benefits or compensation accrued, earned and due to the Executive but not yet paid as of the date that is designated by BPI or the Executive, as applicable, as the last day of the Executive’s employment or term of office with BPI (the “Termination Date”), the Executive will be eligible for the severance payments and benefits as described in this Section 3.01; provided that (i) the Executive continues to comply with the Restrictive Covenants (as defined below); and (ii) the Executive executes, and does not revoke, a written waiver and release of all claims, demands and causes of action against the Corporation and related parties in a form prescribed by the Corporation, as limited by Section 3.09 (“Release”):

(a) The Executive will be paid a lump sum severance payment within 60 days of the Executive’s Termination Date, equal to one (1) times the Executive’s base salary (calculated using the Executive’s highest annual base salary in the three years prior to the Executive’s Termination Date) plus one (1) times the Executive’s target level of annual incentive compensation for the year prior to the year in which the Executive’s Termination Date occurs;

(b) The Executive will be paid a pro-rated portion of the Executive’s annual target level of incentive compensation under the Short Term Incentive Plan for the year in which the Executive’s Termination Date occurs, between January 1 and March 15 after the calendar year to which the bonus relates, based on the number of months (rounded to the next highest number for a partial month) of the calendar year elapsed prior to the Executive’s Termination Date and calculated in accordance with the terms of the Corporation’s Short Term Incentive Plan; and

(c) Until the earlier of (i) the end of the one (1) year period following the Executive’s Termination Date, or (ii) the date, or dates, the Executive is eligible to receive benefits under the same type of plan of a subsequent employer (the “Benefit Period”), BPI will pay to the Executive a monthly payment on the first payroll date of each month equal to the COBRA cost of continued medial and dental coverage for the Executive and the Executive’s covered dependents under the medical and dental plans of the Corporation pursuant to section 4980B of the Internal Revenue Code, less the amount that the Executive would be required to contribute for medical and dental coverage if the Executive were an active employee. These payments will commence on BPI’s first payroll date after the Executive’s Termination Date and will continue until the end of the Benefit Period (but not longer than the Benefit Period).

**Involuntary Termination By BPI For Cause Or Voluntary Resignation Without Good Reason**

3.02 If the Executive is involuntarily terminated by BPI for Cause or the Executive voluntarily resigns from employment without Good Reason, then the Executive will forfeit the Executive’s right to receive any salary, Short Term Incentive Plan compensation, Equity Compensation Plan compensation or other compensation that has not been fully accrued at the time the Executive’s employment terminates; provided, however, that the Executive will be entitled to receive any benefits or compensation accrued, earned and due to the Executive but not yet paid as of the Executive’s Termination Date.

**Death or Disability**

The Executive’s employment will terminate automatically upon the Executive’s death. BPI may terminate the Executive’s employment if illness, disease, or physical or mental incapacity render the Executive generally incapable of performing the Executive’s duties or unfit to advance or represent BPI on a daily basis for a period of twelve (12) consecutive months and within such twelve (12) months, the Executive fails to produce to BPI a medical opinion indicating a reasonable time for the return of the Executive to the full-time assumption of the Executive’s past duties and responsibilities. Nothing herein is intended to circumvent or abridge the Corporation’s short-term disability policy or long-term disability plan. In the event of termination pursuant to the terms of this Section 3.03, the Executive or the Executive’s estate, as applicable, will be entitled to receive any salary, benefits or other amounts accrued, earned and due to the Executive but not yet paid as of the Executive’s Termination Date.

**Cause**

3.04 For purposes of this Agreement, Cause includes:

- (a) conviction of the Executive, or entering of a guilty plea or a plea of no contest by the Executive, with respect to, a felony, any crime involving fraud, larceny or embezzlement or any other crime involving moral turpitude which subjects, or if generally known, would damage the business interests or reputation of the Corporation or any of its affiliates;
- (b) any act of fraud, misappropriation, material dishonesty, embezzlement or similar conduct involving the Corporation or any affiliates;
- (c) a material breach by the Executive of the Executive’s duties hereunder (other than as a result of incapacity due to physical or mental impairment) which is demonstrably willful and deliberate on the part of the Executive or which is committed in bad faith or without reasonable belief that such breach is in the best interests of the Corporation;
- (d) a material breach by the Executive of the Executive’s duties hereunder (other than as a result of incapacity due to physical or mental impairment), except as identified in Section 3.04(c) above, which breach is not remedied by the Executive within 30 days after receipt of written notice from the Corporation specifying such breach; or
- (e) the Executive’s failure to comply in any material way with any of the provisions of this Agreement.

**Good Reason**

3.05 For purposes of this Agreement, a voluntary resignation by the Executive will be deemed to be a termination for Good Reason if:

- (a) BPI makes: (i) any assignment to the Executive of any duties which are materially inconsistent with the Executive’s position; (ii) any material reduction in the Executive’s authority, responsibilities or status; or (iii) a material reduction to the Executive’s base salary;
- (b) The Executive notifies BPI in writing of the Executive’s belief that BPI has taken an action identified in Section 3.05(a) within thirty (30) days of the event at issue;
- (c) BPI has not remedied the situation within thirty (30) days after receipt of written notice from the Executive; and
- (d) The Executive provides a Notice of Termination within thirty (30) days after BPI’s opportunity to remedy the situation has expired.

**Change in Control**

3.06 (a) BPI shall provide the payments and benefits described in Section 3.06(b) below only if: (i) the Executive continues to comply with the Restrictive Covenants (as such term is defined below); and (b) the Executive executes, and does not revoke, a Release (as defined above).

3.06 (b) Upon a Change in Control (as defined below), and an involuntary termination of the Executive’s employment either by BPI without Cause or by the Executive for Good Reason, which termination occurs within a period of twelve (12) months following the Change in Control, BPI shall provide to the Executive, in addition to any benefits or compensation accrued, earned and due to the Executive but not yet paid as of the Executive’s Termination Date, but in lieu of any payments or benefits to which the Executive may be entitled under Section 3.01 above, (a) a lump sum severance payment of two (2) times the Executive’s base salary (calculated using the Executive’s highest annual base salary in the three years prior to the Executive’s Termination Date) plus two (2) times the Executive’s target level of incentive compensation for the year prior to the year in which the Executive’s Termination Date occurs, within thirty (30) days of the Executive’s Termination Date and, (b) any unvested equity compensation awards held by the Executive shall automatically accelerate and become one hundred percent (100%) vested and, as applicable, exercisable, as of the Executive’s Termination Date.

3.06 (c) For the purpose of this Section 3.06, “Change in Control” means the happening of any of the following events:

- (i) the completion of a transaction pursuant to which (A) the Corporation goes out of existence or (B) any person, or any Associate (as such terms defined in National Instrument 45-106 *Prospectus and Registration Exemptions*, as amended from time to time, or such other successor rules, instruments or policies from time to time of Canadian provincial securities regulatory authorities which may govern trades of securities to employees, officers, directors or consultants (“NI45-106”)) or Related Entity (as such term is defined in NI45-106) of such person (other than the Corporation, any trustee or other fiduciary holding securities under any employee benefit plan of the Corporation or a Related Entity, or any company owned, directly or indirectly, by the shareholders of the Corporation in substantially the same proportions as their ownership of common shares of the Corporation) hereafter acquires the direct or indirect “beneficial ownership” (as defined by the *Canada Business Corporations Act*) of securities of the Corporation representing 50% or more of the aggregate voting power of all of the Corporation’s then issued and outstanding securities;

- (ii) the lease, exchange, license, sale or other similar disposition of all or substantially all of the Corporation's assets in one transaction or a series of related transactions to a person, or any Associate or Related Entity of such person (other than an Associate or Related Entity of the Corporation, any trustee or other fiduciary holding securities under any employee benefit plan of the Corporation or a Related Entity, or any company owned, directly or indirectly, by the shareholders of the Corporation in substantially the same proportions as their ownership of common shares of the Corporation);
- (iii) the dissolution or liquidation of the Corporation except in connection with the distribution of assets of the Corporation to one or more persons which were Related Entities prior to such event;
- (iv) during any period of 24 consecutive months beginning on or after the date of the Equity Compensation Plan, the persons who were members of the Board immediately before the beginning of such period (the "Incumbent Directors") cease (for any reason other than death) to constitute at least a majority of the Board or the board of directors of any successor to the Corporation, provided that any director who was not a director as of the date of the Equity Compensation Plan shall be deemed to be an Incumbent Director if such director is elected to the Board by, or on the recommendation of or with the approval of, at least two-thirds of the directors who then qualified as Incumbent Directors either actually or by prior operation of the foregoing unless such election, recommendation or approval occurs as a result of an actual or threatened election contest or other actual or threatened solicitation of proxies or contests by or on behalf of a person other than a member of the Board; or
- (v) a merger, amalgamation, arrangement or consolidation of the Corporation with any other corporation other than a merger, amalgamation, arrangement or consolidation that would result in the voting securities of the Corporation outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 50% of the combined voting power of the voting securities of the Corporation or such surviving entity outstanding immediately after such merger, amalgamation, arrangement or consolidation; provided, however, that a merger, amalgamation, arrangement or consolidation effected to implement a recapitalization of the Corporation (or similar

transaction) in which no person (other than those covered by the exceptions in (i) above) acquires more than 50% of the combined voting power of the Corporation’s then outstanding securities shall not constitute a Change in Control.

**Notice of Termination**

3.07 Any termination of employment by BPI or by the Executive shall be communicated by notice of termination to the other party hereto given in accordance with Section 5.09 (a “Notice of Termination”). For purposes of this Agreement, Notice of Termination means a written notice which (a) identifies the specific termination provision in the Agreement relied upon, and (b) to the extent applicable, sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive’s employment under the provision identified, and (c) (i) in the case of a termination by BPI specifies the Executive’s Termination Date which shall not be less than fifteen (15) nor more than sixty (60) days after the giving of such notice; or (ii) in the case of a termination by the Executive without Good Reason shall not be less than ninety (90) days after the giving of such notice.

**Payments After Termination of Employment**

3.08 Payments made by BPI to the Executive pursuant to this Agreement after the Executive’s Termination Date will be made by courier delivery service to the last address provided for notices to the Executive pursuant to Section 5.09 of this Agreement.

**Release**

3.09 The Release identified in Sections 3.01 and 3.06 will not require the Executive to release any right the Executive may have to indemnification as an officer, director or employee of BPI (or any affiliate thereof) pursuant to the articles of incorporation or bylaws (or other governing instruments) of the Corporation (or any affiliate thereof) or any vested benefits to which the Executive may be entitled under any employee benefit plan.

**ARTICLE FOUR - EXECUTIVE’S OBLIGATIONS**

**Confidentiality**

4.01 The Executive agrees to be bound by the terms of the confidentiality agreement (the “Confidentiality Agreement”) dated the date hereof, which Confidentiality

Agreement has been read, understood and executed by the Executive and is attached hereto as Schedule A and which is incorporated by reference into this Agreement. In the event of a conflict between the terms of this Agreement and the terms of the Confidentiality Agreement, the terms of this Agreement shall govern.

**Non-Competition**

4.02 The Executive acknowledges that BPI currently conducts Business activities in the United States (the “Territory”). Accordingly, the Executive hereby agrees and covenants that the Executive shall not, during the term of this Agreement, and for a period of twelve (12) months following the Executive’s Termination Date for involuntary termination by BPI for Cause, voluntary termination by the Executive, or a termination following a Change in Control to which the provisions of Section 3.06 apply, directly or in any manner whatsoever, including without limitation, either individually, in partnership, jointly or in conjunction with any other individual, partnership, corporation, unincorporated organization, trust, joint venture, the Crown or any agency or instrumentality thereof of any juridical entity (a “Person”), in the Territory:

- (a) carry on, be engaged in, take part in or be a party to any undertaking, directly or indirectly; or
  - (b) consult, advise, render services to lend money, guarantee the debts or obligations of or permit the use of the Executive’s name or any part thereof by any Person with respect to a business carried on by that Person,
- which actively competes directly with the Corporation’s business objects or, could be judged to be causing or potentially be causing through competitive acts, material harm to the Corporation.

For the purposes of this Section 4.02, as of the date of this Agreement, a Person shall include, but not be limited to, Abbott Laboratories, Andrx Group, Apotex Inc., Elan Corporation, Ethypharm S.A., Flamel Technologies, S.A., Forest Laboratories Inc., Johnson & Johnson, King Pharmaceuticals, Inc., Pfizer Inc., GlaxoSmithKline, Reliant Pharmaceuticals, Inc., Teva Pharmaceutical Industries Ltd., Wyeth Pharmaceuticals, and any of their affiliates and subsidiaries which are in the same or a competitive business and, in addition, shall include any pharmaceutical entity with which the Corporation has a product(s) licensing agreement, any entity in which the Corporation has a minority equity interest and any entity with which the Corporation is at the time actively negotiating a commercial relationship.

During the continuance of the Executive’s employment, the Executive shall not (other than solely as a holder of not more than three per cent (3%) of the issued and outstanding voting shares of any public corporation or as a shareholder of the Corporation, without the written approval of the board of directors of the Corporation, directly or indirectly, either individually or in partnership or in conjunction with any Person or Persons, firm, association, syndicate, company or corporation as principal,

agent, director, manager, servant, shareholder or in any other manner whatsoever,) carry on or be engaged in or be concerned with or interested in any business or vocation whatsoever which would be reasonably judged to be competitive to the Business or would impede the Executive in performing the Executive’s duties as outlined herein.

**Non-Solicitation**

4.03 The Executive hereby covenants and agrees that the Executive shall not, during the term of this Agreement and for a period of twelve (12) months thereafter, solicit or contact, either directly or indirectly, any of the Customers, Prospective Customers or any suppliers of the pharmaceutical compounds used by the Corporation on the Executive’s own behalf, or on behalf of any entity, by which the Executive is hired or retained. “Customers” means customers of the Corporation with which the Executive had personal contact or had supervision over the efforts of those who had direct personal contact with such customers during the last two (2) years of the Employment Term. “Prospective Customer” means any organizations or entities which had been actively contacted and solicited for their business by representatives of the Corporation, and with whom the Executive had contact, both during the last two (2) years of the Employment Term.

**Non-Hiring**

4.04 The Executive hereby covenants and agrees that the Executive shall not, during the term of this Agreement and for a period of twelve (12) months thereafter, either directly or indirectly, solicit or endeavour to solicit from the Corporation any of its employees, and shall not for a period of 12 months from the end of the term of this Agreement hire any of the foregoing on the Executive’s own behalf or on behalf of any entity for which the Executive is hired or retained. Notwithstanding the foregoing, the Executive shall not be considered in breach of this section should the Executive solicit for hiring such Executive’s administrative assistant.

**Injunctive Relief**

4.05 The Executive acknowledges and agrees that the agreements and covenants in this Article Four are essential to protect the business and goodwill of the Corporation and that a breach by the Executive of the covenants in Sections 4.01, 4.02, 4.03 and 4.04 hereof could result in irreparable harm to the Corporation for which the Corporation could not be adequately compensated in damages and that, accordingly, the Corporation may have no adequate remedy at law if the Executive breaches such provisions. Consequently, if the Executive breaches any of such provisions, the Corporation shall have, in addition to and not in lieu of, any other rights and remedies available to it under any law or in equity, the right to obtain injunctive relief to restrain any breach or threatened breach thereof and to have such provisions specifically enforced by any court of competent jurisdiction.



**Severability of Covenants in Full or in Part**

4.06 The parties acknowledge that the provisions of Article Four hereof (the “Restrictive Covenants”) are reasonable and valid in geographic and temporal scope and in all other respects. If any court of competent jurisdiction determines that any of the Restrictive Covenants or any part thereof, is or are invalid or unenforceable, the Executive and BPI agree that the remainder of the Restrictive Covenants shall not be affected by the deemed invalid portions.

**Assignment of IP**

4.07 The Executive shall disclose to BPI any and all Intellectual Property (as defined in the Confidentiality Agreement) which the Executive may make solely, jointly, or in common with other employees during the term of the Executive’s employment within BPI and which relates to the business. Any Intellectual Property coming within the scope of the business made and/or developed by the Executive while in the employ of BPI, whether or not conceived or made during regular working hours, and whether or not the Executive is specifically instructed to make or develop same, shall be for the benefit of the Corporation and shall be regarded as work made in the course of employment for the purposes of the *Copyright Act* (Canada). The Executive shall assign, set over and transfer to the Corporation the Executive’s entire right, title and interest in and to any and all of the Intellectual Property and to all letters patent and applications for letters patent which may be, or may have been filed and/or issued by or to the Executive or on the Executive’s behalf and the Executive agrees to execute and deliver to the Corporation any and all instruments necessary or desirable to accomplish the foregoing and, in addition, to do all lawful acts which may be necessary or desirable to assist the Corporation to obtain and enforce protection of the Intellectual Property. To the extent of any rights Executive may have with respect to the Intellectual Property which are not assignable, including but not limited to moral rights, the Executive hereby waives same. The Executive will execute and deliver to the Corporation or its successors and assigns, such other and further assignments, instruments and documents as the Corporation from time to time reasonably may request for the purpose of establishing, evidencing, and enforcing or defending its complete, exclusive, perpetual, and world-wide ownership of all rights, titles, and copyrights, in and to the Intellectual Property, and Executive constitutes and appoints the Corporation as agent and attorney-in-fact, with full power of substitution, to execute and deliver such assignments, instruments, documents as Executive may fail to refuse to execute and deliver, this power and agency being coupled with an interest and being irrevocable.

**Standards of Business Conduct**

4.08 The Executive acknowledges and agrees that the Executive has read and understood and agrees to be bound by the Corporation’s Standards of Business Conduct, which is attached hereto as Schedule B.

**No Conflicting Obligations**

4.09 The Executive warrants to BPI that:

- (a) the performance of the Executive’s duties as an employee of BPI will not breach any agreement or other obligation to keep confidential the Confidential Information of any third party; and
- (b) the Executive is not bound by any agreement with or obligation to any third party that conflicts with the Executive’s obligations as an employee of BPI.

**ARTICLE FIVE - INTERPRETATION AND ENFORCEMENT**

**Section 409A**

5.01 This Agreement shall be interpreted to avoid any penalty sanctions under Internal Revenue Code section 409A. If any payment or benefit cannot be provided or made at the time specified herein without incurring sanctions under section 409A, then such benefit or payment shall be provided in full at the earliest time thereafter when such sanctions will not be imposed.

Notwithstanding any provision of this Agreement to the contrary, if the Executive is a key employee of a publicly traded corporation under section 409A at the time of the Executive’s separation from service and if payment of any amount under this Agreement is required to be delayed for a period of six (6) months after separation from service pursuant to section 409A, payment of such amount shall be delayed as required by section 409A, and the accumulated postponed amount shall be paid in a lump sum payment within ten (10) days after the end of the six-month period. If the Executive dies during the postponement period prior to the payment of postponed amount, the amounts withheld on account of section 409A shall be paid to the personal representative of the Executive’s estate within 60 days after the date of the Executive’s death. A “key employee” shall mean an employee who, at any time during the twelve (12) month period ending on the identification date, is a “specified employee” under section 409A of the Internal Revenue Code, as determined by the Board. The determination of key employees, including the number and identity of persons considered key employees and the identification date, shall be made by the Board in accordance with the provisions of sections 416(i) and 409A and the regulations issued thereunder.

For purposes of section 409A, the right to a series of installment payments under this Agreement shall be treated as a right to a series of separate payments. All reimbursements and in kind benefits provided under this Agreement shall be made or provided in accordance with the requirements of section 409A, including, where applicable, the requirement that (i) any reimbursement shall be for expenses incurred during the Executive’s lifetime (or during a shorter period of time specified in this Agreement), (ii) the amount of expenses eligible for reimbursement, or in kind benefits, provided during a calendar year may not affect the expenses eligible for reimbursement, or in kind benefits to be provided, in any other calendar year, (iii) the reimbursement of an eligible expense will be made on or before the last day of the calendar year following the year in which the expense is incurred, and (iv) the right to reimbursement or in kind benefits is not subject to liquidation or exchange for another benefit.

**Independent Legal Advice**

5.02 The Executive agrees to the terms and conditions of this Agreement having had the opportunity to receive independent legal advice, for which the Executive has been reimbursed by BPI.

**Severability**

5.03 The parties further acknowledge that if any provision contained in this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof shall continue in full force and effect.

**Sections and Headings**

5.04 The division of this Agreement into Articles and Sections and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Agreement.

**Number and Gender**

5.05 In this Agreement words importing the singular number only shall include the plural and vice versa and words importing the masculine gender shall include the feminine and neuter genders and vice versa.

**Entire Agreement**

5.06 This Agreement and all the Schedules hereto constitute the entire Agreement between the parties with respect to the subject matter hereof and cancels and

supersedes any prior understandings and agreements between the parties with respect thereto. There are no representations, warranties, forms, conditions, undertakings or collateral Agreements, express, implied or statutory between the parties other than as expressly set forth in this Agreement.

**Amendments and Waivers**

5.07 No amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by both parties. No waiver of any breach of any term or provision of this Agreement shall be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided in written waiver, shall be limited to the specific breach waived.

**Governing Law**

5.08 This Agreement shall be deemed to have been made in and shall be construed in accordance with the laws of the State of New Jersey and all legal proceedings contemplated in this Agreement shall be brought in, and be governed by, the laws of the State of New Jersey, without regard to principles of conflicts of law.

**Notices**

5.09 Any demand, notice or other communication (hereinafter in this Section 5.09 referred to as a “Communication”) to be made or given in connection with this Agreement shall be made or given in writing and may be made or given by personal delivery addressed respectively to the recipients:

To the Executive:

Christine C. Mayer  
xxx

To BPI:

700 Route 202/206 North  
Bridgewater, NJ 08807 Attn:  
President

or such other address or individual as may be designated by notice by either party to the other. Any communication made or given by personal delivery shall be conclusively deemed to have been given on the day of the actual delivery thereof.

**Benefit of Agreement**

5.10 This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, legal personal representatives, successors and assigns.

**Assignment**

5.11 The Executive may not assign the Executive’s rights or obligations under this Agreement without the prior written consent of BPI which consent may be unreasonably withheld. BPI may unilaterally assign this agreement to an affiliate without consent but on notice to the Executive.

**Execution of Agreement**

5.12 The Executive acknowledges that the Executive has executed this Agreement freely; that the Executive has reviewed this Agreement thoroughly; that the Executive agrees with its contents; and that the terms herein are reasonable for the fair protection of both the Executive and BPI.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the dates identified below at Bridgewater, New Jersey.

BIOVAIL PHARMACEUTICALS, INC.

By: /s/ DOUGLAS JP SQUIRES  
Dr. Douglas JP Squires  
Title: President

/s/ CHRISTINE C. MAYER  
CHRISTINE C. MAYER

Date: 12 – 18 - 07

Date: 12 / 12 / 07

**“SCHEDULE A”**

**BIOVAIL CORPORATION  
(and its Subsidiaries, Divisions, and Affiliates)**

**CONFIDENTIALITY AGREEMENT**

As an employee of Biovail Corporation (the “Corporation”), I acknowledge that I may acquire or have disclosed to me by the Corporation or by any affiliate, associate, or technology partner of the Corporation, either directly or indirectly, in writing, conversation, or through observation, various information about the business of the Corporation which is not in the public domain and which the Corporation does not wish to be divulged to other persons, companies, or third parties. I further understand that the Corporation’s Confidential Information (as defined below) is essential to its competitive advantage and to its ability to be financially viable. I further understand that the unauthorized disclosure of such Confidential Information may cause the Corporation irreparable injury that may not be rectified in the future.

Therefore, as a condition and in consideration of my employment with the Corporation, I understand and agree that while employed with the Corporation and for a period of time thereafter (as more particularly described below), I am required to hold confidential and not to disclose to anyone without the written authority from the Corporation any knowledge, information, or facts concerning the Corporation’s:

- research and development activities
- technological plans, advances, applications and inventions
- technical specifications, designs and plans
- materials and sources of supply
- discoveries, inventions, trade secrets, patents
- financial affairs, contracts, licensing agreements, customer lists, pricing practices, marketing strategies
- any other information regarding the Corporation, its products and their development which is not in the public domain

All of the foregoing shall hereinafter collectively be referred to as the “Confidential Information”.

For a period commencing on the date I commenced my employment with the Corporation and ending ten (10) years from the date of the termination of my employment with the Corporation, I shall keep confidential any and all Confidential Information which has been disclosed to me in writing or through oral communications and shall not divulge in any manner whatsoever any such information to any person, firm, corporation, partnership or similar entities without the Corporation’s written authority.

Should I breach or threaten to breach this Agreement, I shall be liable to the Corporation in equity and/or in law for damages that may be suffered by the Corporation as a result of the breach or threatened breach. I understand that a breach of this Agreement may result in irreparable harm to the Corporation such as to warrant the entitlement by the Corporation to an interlocutory and/or permanent injunction or other equitable relief against me, and an award of damages including punitive, exemplary and aggravated damages, together with legal costs and expense and I specifically agree that I will not argue the adequacy of damages or the Corporation’s ability to seek equitable relief in any such proceeding.

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All Confidential Information supplied by the Corporation to me during the course of my employment and any rights related thereto, including but not limited to rights of know how, patent, trademark and copyright, with respect to existing products or those that are developed during or after my employment, are and remain the exclusive and absolute property of the Corporation.

I shall not, except as and to the extent required to enable me to carry out my duties with the Corporation, make any copies or reproduce the Confidential Information nor shall I remove or cause to have removed from the premises of the Corporation during my employment any Confidential Information unless required to do so in order to fulfill my duties with the Corporation. Such copies or reproductions shall be strictly subject to the terms and conditions of this Agreement. I shall take such steps as are necessary to restrict access to and protect the confidentiality of such copies or reproductions of the Confidential Information. Any such copies or reproductions made shall become the exclusive and absolute property of the Corporation.

Upon request of the Corporation, I agree to immediately surrender to the Corporation all documentation and information - notes, drawings, recordings, manuals, letters, correspondence, computer data and programs, records, books or any other materials relating to the Confidential Information which is in my possession without my retaining any copies or duplicates thereof.

I agree that this Agreement shall be construed in accordance with the laws of the Province of Ontario and I agree that the applicable courts of the Province of Ontario shall have exclusive jurisdiction with respect to any dispute or breach herein and I hereby attorn to the exclusive jurisdiction of the courts of the Province of Ontario.

This Agreement shall enure to the benefit of and shall be binding upon my successors, heirs and attorneys.

The disclosure or divulging of any Confidential Information contrary to this Agreement, or the violation of this Agreement in any way shall result in my immediate termination of employment, in addition to which I may be subject to criminal prosecution and civil liability.

I acknowledge and agree that I have executed this Agreement freely and with the benefit of independent legal advice and the terms herein are fair and reasonable.

I acknowledge and agree to the foregoing.

Employee Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Witness Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## SCHEDULE B



**BIOVAIL CORPORATION**  
**(and its Subsidiaries, Divisions, and Affiliates)**  
**STANDARDS OF BUSINESS CONDUCT**

Biovail Corporation (“Biovail”), together with its subsidiaries, divisions and affiliates, places great importance on conducting its business activities in an ethical and appropriate manner. Each employee, officer and director is a reflection of Biovail, and as such, the activities and actions of every individual within Biovail must be undertaken in accordance with a high standard of ethics and integrity. As such, Biovail expects each employee, officer and director to comply with, and adhere to, these Standards of Business Conduct (the “Standards”).

### **1. CONFLICTS OF INTEREST**

Employees, officers and directors of Biovail must avoid situations where their private interests could conflict with, or even appear to conflict with, the interests of Biovail and its stockholders.

Conflicts of interest arise when an individual’s position or responsibilities with Biovail present an opportunity for personal gain apart from the normal rewards of employment. They also arise when the private interests of an employee, officer or director are inconsistent with those of Biovail or create conflicting loyalties. Such conflicting loyalties can cause an employee, officer or director to give preference to private interests in situations where corporate responsibilities should come first. Employees, officers and directors must perform the responsibilities of their positions on the basis of what is in the best interests of Biovail and free from the influence of personal considerations and relationships.

In the event that any potential conflict of interest arises, the individual involved must immediately notify his or her immediate supervisor. If such individual is an officer or director of Biovail, the Executive Chairman (“Chairman”), Chief Executive Officer (“CEO”) and the General Counsel, or in the absence of a General Counsel the Vice President, Associate General Counsel (“SLO”) of Biovail must also be immediately notified and no further action may be taken unless authorized in writing by the Chairman and/or the CEO.

While it is not possible to detail every situation where conflicts of interest may arise, the following policies cover the areas that have the greatest potential for conflict:

#### **A. Trading in Biovail Securities and Use of Inside Information**

There are numerous laws in Canada and the United States (federal, provincial and state laws), to regulate transactions in corporate securities (stocks and bonds) and the securities industry. Violation of these laws may lead to civil and criminal actions against the individual and Biovail.

- i. Any employee, officer, director or other insider or anyone (family member, etc.) who knows of any material information (as defined below) about Biovail that has not been disclosed to the public (commonly known as “insider information”) may not engage in



any transaction in Biovail's securities until such information is disclosed to the public (whether or not there is a formal trading "black out" in place). This rule applies equally to transactions in securities of other companies. In addition, employees, officers and directors must not provide insider information to others ("tippees") who may trade in either the securities of Biovail or the securities of other companies.

"Material information" is any information relating to the business and affairs of Biovail that would reasonably be expected to result in a change in the market price or value of Biovail's securities. Generally speaking, material information is a matter to which an average prudent investor should be reasonably informed before a decision is made to buy or sell the security involved. Examples of such information would include annual or quarterly financial results; significant changes in management; significant shifts in operating or financial circumstances, such as major write-offs and changes in earnings projections; borrowing of a significant amount of funds; acquisitions of, or mergers with, other companies; significant new contracts or loss of business; and major new products, services or patents. This list provides examples only; many other matters may be considered material information.

Employees, officers, directors and other insiders who have questions that relate to the sale or purchase of a security under circumstances where these laws and regulations might apply should consult with the SLO, who may refer them to outside legal counsel.

- ii. In addition to the prohibition against the use of "insider" information which applies to all employees, officers and directors, the various securities laws that apply in the jurisdiction and countries in which Biovail does business place definite restrictions on the manners in which employees, officers and directors of Biovail, and their family members, their associates, etc., may engage in transactions involving the securities of Biovail. Employees, officers and directors shall comply with all laws, rules and regulations that prohibit or restrict insider trading.

Whenever there is any doubt as to whether any transactions involving Biovail's securities would violate securities laws, employees, officers and directors should consult the SLO of Biovail. Within the framework of the foregoing policies and laws, the final decision of each employee, officer or director, with respect to securities transactions, must be his or her own.

- iii. Employees, officers, directors and other insiders shall maintain the confidentiality of information entrusted to them by Biovail or its customers (except where disclosure is authorized or legally mandated) and shall not, without proper authority, give or release to anyone not employed by Biovail, data or information of a confidential nature concerning Biovail. Disclosure of confidential information can be harmful to Biovail and could be the basis for legal action against Biovail and the individual disclosing the information. Confidential information includes all non-public information that might be of use to competitors, or harmful to Biovail or its customers, if disclosed.
- iv. Employees, officers, directors and other insiders shall not acquire any property, security or any business interest that they know Biovail has an interest in acquiring. Moreover, based on such advance information, employees, officers and directors shall not acquire any property, security or business interest for speculation or investment.
- v. Employees, officers, directors and other insiders must follow Biovail policies regarding “Blackout Periods” when Biovail’s stock may not be traded. Such policies will be communicated by the SLO from time to time and must be adhered to by all employees, officers and directors.

**B. Personal Financial Interest**

Employees, officers and directors should avoid any outside financial interests that might influence decisions or actions they have been empowered to make on behalf of Biovail. An employee, officer or director performing duties in conformity with this policy shall not have a financial interest in, indebtedness to, or a personal contract or understanding with any concern with which he or she does business on behalf of Biovail.

- i. Employees, officers or directors whose corporate duties bring them into business dealings with an organization in which they, or a member of their family, have a financial interest or to which they, or a member of their family, have any indebtedness, or a business employing a relative or close friend, must immediately notify their immediate supervisor. The employee, officer or director, in turn, cannot complete a transaction on behalf of Biovail with this organization unless properly authorized in writing from their supervisor after full disclosure of the relationship.
- ii. An employee, officer or director may not perform work or services, outside the course of their normal employment by Biovail, for an organization doing or seeking to do business with Biovail without appropriate prior written approval of their supervisor or the Board of Directors. An employee, officer or

director may not be a director, officer, partner or consultant of an organization doing or seeking to do business with Biovail, nor may any of them permit their names to be used in any way indicating a business connection with such an organization, without appropriate prior written approval of their supervisor or the Board.

- iii. An employee, officer or director shall not accept for himself or herself, or for the benefit of any relative or friend, any payments, loans, services, favors involving more than ordinary social amenity, or gifts of more than nominal value from any organization doing or seeking to do business with Biovail.
- iv. The requirement of freedom from conflict of interest applies with equal force to the spouse, children and other close relatives of each employee, officer and director. This policy applies to all employees, officers and directors of Biovail with respect to all of the affairs of Biovail.
- v. Employees, officers and directors shall not (a) take for themselves personally opportunities that are discovered through the use of corporate property, information or position; (b) use corporate property information, or position for personal gain; (c) compete with Biovail. Employees, officers and directors owe a duty to Biovail to advance its legitimate interests when the opportunity to do so arises.
- vi. Biovail may not make loans to any employee, officer or director.

#### **C. Outside Activities**

Employees, officers and directors should avoid outside employment or activities which would impair the effective performances of their responsibilities to Biovail, either because of excessive demands on their time, or because the outside commitments can be contrary to their obligations to Biovail

#### **D. Protection and Proper Use of Biovail's Assets**

All employees, officers and directors should protect Biovail's assets and ensure their efficient use. Theft, carelessness and waste have a direct impact on Biovail's profitability. All of Biovail's assets should be used only for legitimate business purposes.

#### **E. Fair Dealing**

Each employee, officer and director shall endeavor to deal fairly with Biovail's customers, suppliers, competitors and employers. None should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other unfair-dealing practice,

**2. COMPETITIVE PRACTICES**

The management of Biovail firmly believes that fair competition is fundamental to continuation of the free-enterprise system. Biovail complies with, and supports, laws of all countries that prohibit restraints of trade, unfair practices, or abuse of economic power.

Biovail will not enter into arrangements that unlawfully restrict its ability to compete with other businesses, or the ability of any other business organization to compete freely with Biovail. Biovail policy also prohibits employees, officers and directors from entering into, or even discussing, any unlawful arrangement or understanding which may affect its pricing policies, terms upon which its products and services are sold, or which might be construed as dividing customers or sales territories with a competitor.

These principles of fair competition are basic to all Biovail operations. They are integral parts of the following sections that cover Biovail’s dealings with suppliers, customers and public officials.

**3. DEALING WITH SUPPLIERS**

Biovail is a valuable customer for many suppliers of goods, services and facilities. People who want to do business, or to continue to do business, with Biovail must understand that all purchases by Biovail will be made in accordance with its purchasing policy and exclusively on the basis of price, quality, service and suitability to Biovail’s needs.

**A. Reciprocity**

Biovail considers reciprocity a harmful practice and a hindrance to assuring purchase of the best available materials or services at the lowest possible prices. It will not be practiced or allowed.

Suppliers of goods and services to Biovail will not be asked to buy goods and services from Biovail in order to become or continue as a supplier.

Biovail will not attempt to influence its suppliers to purchase from customers of Biovail. When Biovail makes purchases it will not favor firms who are customers of Biovail or any of its affiliates.

**B. “Kickbacks” and Rebates**

Purchases or sales of goods and services by Biovail must not lead to employees, officers or directors, or their families, receiving any type of personal kickbacks or rebates. Employees, officers, directors, and their families, must not accept any form of “under-the-table” payment.

**C. Receipt of Gifts and Entertainment**

Even when gifts and entertainment are exchanged out of the purest motives of personal friendship, they can be misunderstood. They can appear to be attempts to bribe Biovail’s employees, officers or directors into directing business of Biovail to a particular supplier. To avoid both the reality and the appearance of improper relations with suppliers or potential suppliers, the following standards will apply to the receipt of gifts and entertainment by employees, officers and directors of Biovail:

## **Gifts**

- i) Employees, officers and directors are prohibited from soliciting gifts, gratuities, or any other personal benefit or favor of any kind from suppliers or potential suppliers. Gifts include not only merchandise and products but also personal services, and tickets to theatrical and sports events. Employees, officers and directors should exercise good judgment when accepting unsolicited gifts. Employees, officers and directors are prohibited from accepting gifts of money.
- ii) Employees, officers and directors may accept unsolicited non-money gifts provided:
  - (1) They are items of nominal intrinsic value; or
  - (2) They are advertising and promotional materials, clearly marked with Biovail or brand names of the giver.
- iii) Any gift of more than nominal intrinsic value must be reported to the SLO to determine whether it can be accepted. Some gifts may be perishable so as to make their return impractical. Supervisors can permit acceptance of such gifts, but should require employees, officers and directors to tactfully inform givers that such gifts are discouraged.
- iv) In the transaction of some international business, it is lawful and customary for business leaders in some countries to give unsolicited gifts to employees, officers or directors of Biovail. These gifts can be of more than nominal value. Moreover, under the circumstances, returning the gifts or payment for them may constitute an affront to the giver. In such cases, the gift must be reported to the SLO who may permit the retaining of the gifts.
- v) In all other instances where gifts cannot be returned or may adversely affect Biovail's continuing business relationships, the SLO must be notified. They can require employees, officers and directors to transfer ownership of such gifts to Biovail.

## **Entertainment**

- i) Employees, officers and directors shall not encourage or solicit entertainment from any individual or company with whom Biovail does business. Entertainment includes, but is not limited to, activities such as dinner parties, theater parties, and sporting events.
- ii) From time to time employees, officers and directors may accept unsolicited entertainment, but only under the following conditions:
  - (1) The entertainment occurs infrequently;

- (2) It arises out of the ordinary course of business;
- (3) It involves reasonable, not lavish expenditures (the amounts involved should be ones employees, officers and directors are accustomed to normally spending for their own business or personal entertainment); and
- (4) The entertainment takes place in settings that also are reasonable, appropriate, and fitting to employees, officers and directors, their hosts, and their business at hand.

#### **4. DEALINGS WITH CUSTOMERS AND POTENTIAL CUSTOMERS**

Employees, officers and directors must keep all dealings with customers and potential customers fair and above board. Biovail gets business and keeps it because of the quality of its goods and services. Biovail does not give unethical or illegal rebates, kickbacks, under-the-table payments, or other similar improper favors to customers or their representatives.

The boundary line between ethical and unethical competition, or legal and illegal conduct, is not always well defined, particularly in international activities where differing local laws, custom; and practices come into play. Therefore, the following standards will serve as guides:

- a) All employees, officers and directors should make themselves aware of and fully comply with all laws, rules and regulations, whether federal, state, local or foreign, including laws governing relations with customers as well as competitors.
- b) All employees, officers and directors engaged in negotiations and contracts with foreign governments, the United States or any political subdivision thereof must also know and abide by the specific rules and regulations covering relations with such governments and their agencies.
- c) Employees, officers and directors may not give gifts to customers except items of nominal value, which fit the legal, normal, and customary pattern of Biovail's sales efforts for a particular market. Exceptions to this policy can occur in international trades where it can be legal, customary, and appropriate business practice to exchange gifts with customers. Only the CEO can authorize the giving, receiving, or exchanging of such gifts. Any gifts received by employees, officers or directors in such an exchange must be reported to the CEO for determination as to the disposition of the gifts.
- d) Entertainment for any customer must fit regular business practices. The place and type of entertainment and the money spent must be reasonable and appropriate.

5. DEALING WITH PUBLIC OFFICIALS

Domestic and foreign laws and regulations require Biovail to be in contact with public officials on a wide variety of matters. Employees, officers and directors who regularly make these contacts have special responsibilities for upholding Biovail’s good name. The following standards relate to these special responsibilities:

- a) All employees, officers and directors who contact public officials must be familiar with lobbying laws and public disclosure requirements, particularly those that apply to registrations and filings.
- b) No employee shall make any form of payment, direct or indirect, to any public official as an inducement to procuring or keeping business or having a law or regulation enacted, defeated, or violated. This is bribery, pure and simple. It will not be tolerated.

It should be acknowledged that inherent in the current health-care regulatory environment, the definition of “form of payment” may include seemingly trivial gifts and/or favors (e.g. buying lunches, coffee, etc.).

- c) When not prohibited by law, employees, officers and directors are allowed to give to public officials gifts where the presentation and acceptance of gifts is an established custom and a normal business practice. All such gifts shall be of reasonable value and the presentation approved in advance by the CEO. Moreover, such gifts must be presented in a manner that clearly identifies Biovail and the occasion that warrants the presentation.
- d) Employees, officers and directors are also allowed to give public officials gifts in the form of product models and pictures provided the models and pictures are part of Biovail’s general marketing and public relations programs (except as noted in clause (b) above).
- e) On special ceremonial occasions, officers of Biovail may publicly give gifts of more than nominal value to public institutions and public bodies. Such gifts can commemorate special events or milestones in Biovail’s history.

These may be transmitted through public officials but the gifts are given to the public institutions and public groups they represent, not to the officials personally.

- f) From time to time employees, officers and directors may entertain public officials, but only under the following conditions:
  - i. It is legal and permitted by the entity represented by the official;
  - ii. The entertainment is not solicited by the public official;
  - iii. The entertainment occurs infrequently;

- iv. It arises out of the ordinary course of business;
- v. It does not involve lavish expenditures, considering the circumstances;
- vi. The settings and types of entertainment are reasonable, appropriate and fitting to our employees, officers or directors, their guests, and the business at hand.

## **6. POLITICAL ACTIVITIES AND CONTRIBUTIONS**

### **A. Canada and the United States**

Employees, officers and directors who participate in partisan political activities must make every effort to ensure that they do not leave the impression that they speak or act for Biovail.

Biovail encourages its employees, officers and directors to participate in political activities in their own time and at their sole expense. No corporate action, direct or indirect, will be allowed that infringes on the right of any employee individually to decide whether, to whom, and in what amount, they will make personal political contributions. The same is true of volunteer political donations of personal service time, so long as it does not interfere with the working status of employees, officers or directors.

### **B. Outside Canada and the United States**

No employees, officers and directors are permitted to use Biovail's funds, facilities, or other assets, to support either directly or indirectly any political candidates or political parties, without advance authorization in writing from their immediate supervisor and the General Counsel. The policy of Biovail is that employees, officers and directors and employees should not participate in political activities in countries of which they are not nationals. However, such persons, of course, are free to participate in political activities in countries of which they are nationals in their own time and at their own expense.

## **7. DISCLOSURE**

Biovail has formed a Disclosure Committee to promote consistent practices aimed at informative, timely and broadly disseminated disclosure of Material Information to the market, external stakeholder groups and employees in accordance with all applicable legal, regulatory and stock-exchange requirements.

It is essential that the Disclosure Committee be fully apprised of all material corporate developments to be able to determine whether there is information that should be publicly disclosed, and what the appropriate timing is for release of that information. In some cases, the Disclosure Committee may determine that the information should remain confidential. If that is the case, the Disclosure Committee will determine how that information will be controlled so that it is not inadvertently released. Therefore any employee who becomes aware of information that he/she believes might be material to Biovail and/or any of its affiliates and subsidiaries he/she should advise their manager or supervisor or a member of the Disclosure Committee. Current membership of the Disclosure Committee is posted on the Biovail.com website.



This applies throughout the year, but is particularly critical when annual or quarterly financial statements and Management Discussion and Analysis (MD&A) or regulatory filings are being prepared (e.g. regulatory filings, such as the U.S. Securities and Exchange Commission, Form 20-F).

**8. PUBLIC COMMUNICATIONS**

Given the importance placed on confidentiality and the appropriate disclosures of information regarding Biovail, it is important for employees, officers and directors to ensure that care be taken with any communication regarding Biovail or its activities outside of Biovail.

**A. Designated Spokespersons**

Biovail has designated official spokespersons who are authorized to speak on behalf of Biovail, and answer questions from the news media and the investment community, about Biovail and its activities. Employees, officers and directors who have not been designated as spokespersons for Biovail are not permitted to speak on behalf of the Company to the news media or to the investment community.

**B. Media or Analyst Inquiries**

Any employee who is approached by any person asking for comment on the activities of Biovail must direct any and all such inquiries to a member of the Disclosure Committee or to a member of the Company's Stakeholder Relations team (Corporate Communications, Investor Relations) so that an appropriate spokesperson can respond to the inquiry on behalf of Biovail.

**C. Conferences**

The Disclosure Committee should be advised of any request to present at any conference or public meeting. Certain materials prepared for any such presentation may be required to be reviewed by the Company's Stakeholder Relations group.

**D. Electronic Communications**

Care must be taken in all instances in the use of e-mail, and other devices (e.g., Blackberry's) in communications relating to Biovail's business. While users tend to resort to shorthand communication using these kinds of tools, those communications do form a record of those communications that may be subject to later review and disclosure. A more fulsome policy regarding electronic communications is in place (found in the Human Resources Management System Policy Binder) and should be adhered to by all employees, officers and directors.

**E. The Internet**

Biovail has instituted policies regarding the use of, and access to the Internet by employees, officers and directors. These policies include a prohibition against anyone participating in any chat rooms dedicated to Biovail or its operations or the industry at large. If any employee, officer or director becomes aware that any such chat room exists, they are asked to report the address of such site to the SLO so that it may be monitored and appropriate action may be taken.

**9. EQUAL OPPORTUNITY**

Biovail supports the principle that every individual must be accorded an equal opportunity to participate in the free-enterprise system and to develop their ability to achieve their full potential within that system.

There shall be no discrimination against any employee or applicant because of race, religion, color, sex, age, sexual orientation, national or ethnic origin, or disability (as required by law) or any other consideration prohibited by local law. All employees, officers and directors will be treated with equality during their employment without regard to their race, religion, color, sex, age, national or ethnic origin, or physical handicap, in all matters, including employment, upgrading, promotion, transfer, layoff, termination, rates of pay, selection for training and recruitment. Biovail will maintain a work environment free of discriminatory practice of any kind.

No employee shall have any authority to engage in any action or course of conduct or to condone any action or course of conduct by any other person which shall in any manner, directly or indirectly, discriminate or result in discrimination in the course of one's employment, termination of employment, or any related matter where such discrimination is, directly or indirectly, based upon race, religion, color, sex, age, sexual orientation, national or ethnic origin, disability, or any other consideration prohibited by law.

**10. HEALTH, SAFETY, AND ENVIRONMENTAL PROTECTION**

It is Biovail's policy to pay due regard to the health and safety of its employees, officers, directors and others, and to the state of the environment. There are federal, provincial, state and local workplace safety and environmental laws which through various governmental agencies regulate both physical safety of employees, officers and directors and their exposure to conditions in the workplace. Should you be faced with an environmental health issue or have a concern about workplace safety, you should contact your Health and Safety Committee representative or notify Biovail management immediately.

Many countries and their regional and local governments now have complex legislation to protect the health and safety of employees, or the general public, and to prevent pollution and protect the environment. In case of violation, these laws often provide penalties for both the company involved and its executive personnel. Biovail's SLO should always be consulted when necessary to understand or comply with such laws.

**11. WORK ENVIRONMENT**

Employees, officers and directors must treat each other with professional courtesy and respect at all times. Employees, officers and directors shall not subject any other employee to unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct which might be construed as sexual in nature, or harass others on the basis of race, disability, gender, sexual orientation or any other consideration prohibited by law. Such conduct may constitute sexual harassment or harassment under federal, provincial and state law and may be the basis for legal action against the offending employee and/or Biovail.

Employees are encouraged to report all conduct that they believe in good faith to be violations of local anti-harassment policies. To the extent permissible under local law the

identity of the employees, officers or directors involved will be kept strictly confidential, and will not be revealed by Biovail’s management without the employee’s permission. The alleged harassment will be thoroughly investigated by Biovail and appropriate action will be taken. Biovail has an appropriate policy to protect employees against discrimination or retaliation as a result of such a complaint.

**12. INTEGRITY OF RECORDS AND FINANCIAL REPORTS**

It is of critical importance that Biovail’s filings with the appropriate regulatory authorities (e.g. U.S. Securities and Exchange Commission) be accurate and timely. Depending on their position with Biovail, an employee, officer or director may be called upon to provide necessary information to ensure that Biovail’s public reports are complete, fair and understandable. Biovail expects employees, officers and directors to take this responsibility very seriously and to provide prompt accurate answers to inquiries related to Biovail’s public disclosure requirements.

The integrity of Biovail’s record keeping systems will be respected at all times. Employees, officers and directors are forbidden to use, authorize, or condone the use of “off-the-books” bookkeeping, secret accounts, unrecorded bank accounts, “slush” funds, falsified books, or any other devices that could be utilized to distort records or reports of Biovail’s true operating results and financial conditions or could otherwise result in the improper recordation of funds or transactions.

**13. USE OLD AGENTS AND NON-EMPLOYEES, OFFICERS AND DIRECTORS**

Agents or other non-employees cannot be used to circumvent the law. Employees, officers and directors will not retain agents or other representatives to engage in practices that run contrary to the Standards of Business Conduct or applicable laws.

**14. INTERNATIONAL OPERATIONS**

Employees, officers and directors operating outside of Canada and the United States have a special responsibility to know and obey the laws and regulations of countries where they act for Biovail. Customs vary throughout the world, but all employees, officers and directors must uphold the integrity of Biovail in other nations diligently.

**15. STANDARDS OF BUSINESS CONDUCT**

**A. Initial Distribution**

- i. Employees, officers and directors designated to receive these Standards will receive their copies immediately after publication.
- ii. Future employees, officers and directors designated to receive these Standards will receive their copies at the time they are hired.

**B. Initial Verification**

Upon receiving their copy of the Standards, employees, officers and directors current and future will:

- i. Become thoroughly familiar with the Standards.

- ii. Resolve any doubts or questions about the Standards with their supervisors.
- iii. Inform their supervisors of any existing holdings or activities that might be, or appear to be, inconsistent with, or in violation of, the Standards.
- iv. Prepare written disclosures of such information, if requested, by supervisors.
- v. Take steps to correct existing situations and bring holdings and activities into full compliance with the Standards. Such steps will be approved in writing by supervisors and will be based on the written disclosure submitted by employees, officers or directors.
- vi. Sign the verification and return it to their supervisors who will make it part of employee's permanent corporate records.

**C. Maintaining Compliance**

- i. Employees, officers and directors have the responsibility to maintain their understanding of the Standards of Business Conduct and for following them.
- ii. Supervisors have the responsibility to maintain an awareness on the part of their employees, officers and directors of the importance of their adhering to the Standards of Business Conduct and for reporting deviations to Management.
- iii. As requested by the Board of Directors or senior management, employees, officers and directors will be asked to re-verify their understanding of the Standards of Business Conduct and their compliance with them every year as a part of Biovail's annual reporting.
- iv. Employees, officers and directors must inform their supervisors of any changes in their holdings or activities that might be, or appear to be in non-compliance with the Standards of Business Conduct.
- v. Employees, officers and directors must prepare written disclosure of such information, if requested, by supervisors.
- vi. Employees, officers and directors must take steps to correct any such changes, if necessary, to bring holdings and activities into full compliance. Such steps will be approved in writing by supervisors and Management and will be based on the written disclosures submitted by employees, officers and directors.

**D. Audits of Compliance**

Regular audits of Biovail will include procedures to test compliance with the Standards of Business Conduct.

**16. VIOLATIONS OF STANDARDS**

Employees, officers and directors must immediately report any violations of the Standards or any violation of any applicable law, rule or regulation. Failure to do so can have serious consequences for the employees, officers or directors and for Biovail.

Employees, officers and directors, should report violations to their supervisors and/or to the Human Resources department and to the SLO or to any secure reporting hotline the company may have contracted with. When in doubt, employees should talk to their supervisors or other appropriate personnel to determine the best course of action in a particular situation.

Supervisors and the Human Resources group have the responsibility to promptly and thoroughly investigate all reports, and to report violations to the SLO.

After a violation is investigated, appropriate action will be taken promptly. Management has the right to determine the appropriate disciplinary action for a violation up to and including termination of employment. All proposed disciplinary action is subject to review by senior Management, Human Resources and the SLO.

Employees, officers and directors should be aware that, in addition to any disciplinary action taken by Biovail, violations of certain Standards may require restitution and may lead to civil or criminal action against individual employees, officers and directors and any corporation involved.

Supervisors have the responsibility of taking remedial steps to correct any operating procedures that may contribute to violations of Standards.

Retaliation in any form against an individual who reports a violation of these Standards of Business Conduct or of any law, rule or regulation in good faith, or who assists in the investigation of a reported violation, is itself a serious violation of this policy. Acts of retaliation will be disciplined appropriately and should be reported immediately to your supervisor or Human Resources.

**17. CONTINUANCE OF EXISTING PERSONNEL POLICIES, RULES AND PERFORMANCE STANDARDS**

Biovail has codified numerous personnel policies, rules and standards of employee performance, which continue in force. These Standards of Business Conduct are intended to supplement and amplify those established personnel policies, rules and standards.

It continues to be the responsibility of all employees to comply with all such policies, rules and performance standards. Additionally, all members of management are to continue making certain that employees reporting to them are made aware of established policies, rules and performance standards and comply with them.

**18. AMENDMENT, MODIFICATION AND WAIVER**

Biovail will periodically review these Standards of Business Conduct. These Standards may be amended, modified or waived by the Board of Directors and waivers may also be granted by the Nominating & Governance Committee, subject to the disclosure and other provisions of the Securities Exchange Act of 1934, and the rules there under and the

applicable rules of the Toronto Stock Exchange/New York Stock Exchange. Employees, officers and directors will be fully informed of any revisions to the Standards of Business Conduct.

Any waiver of these Standards for any employee other than a director or an executive officer, may only be made by the Executive Chairman or the CEO. Any waiver of these Standards for director or an executive officer may be made only by the Board of Directors or the Compensation, Nominating and Corporate Governance Committee and will be promptly disclosed to Biovail's stockholders.

**VERIFICATION AND RECEIPT OF UNDERSTANDING**

I have received a copy of Standards of Business Conduct for BIOVAIL CORPORATION and its subsidiaries, divisions and affiliates. I understand how the Standards apply to me. I acknowledge that my receiving the Standards obligates me to follow them and I agree to abide by their conditions.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

*Employee's Copy*

**VERIFICATION AND RECEIPT OF UNDERSTANDING**

I have received a copy of Standards of Business Conduct for BIOVAIL CORPORATION and its subsidiaries, divisions and affiliates. I understand how the Standards apply to me. I acknowledge that my receiving the Standards obligates me to follow them and I agree to abide by their conditions.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

*HR File Copy*



**BIOVAIL LABORATORIES INTERNATIONAL SRL  
EXECUTIVE EMPLOYMENT AGREEMENT**

THIS AGREEMENT is made by and between Biovail Laboratories International SRL (hereinafter the “Corporation”) and Michel Chouinard (hereinafter the “Executive”).

**ARTICLE ONE — GENERAL DUTIES AND TERM**

**Scope of Employment / Duties**

1.01 The Corporation will employ the Executive as the Chief Operating Officer (“COO”) of the Corporation. The Executive will serve as an officer of the Corporation. During the Employment Term (as defined below in Section 1.04), the Executive will devote substantially all of the Executive’s business efforts and time to the Corporation. The Executive agrees, during the Employment Term, not to actively engage in any other employment, occupation or consulting activity for any direct or indirect compensation without the prior approval of the President of the Corporation (the “President”); provided, however, that the Executive may (a) serve on the boards of directors of other companies (subject to reasonable approval of the President) and boards of trade associations or charitable organizations; (b) engage in charitable activities and community affairs; and (c) manage the Executive’s personal investments and affairs, as long as such activities do not violate Section 4.02 and do not materially interfere with the Executive’s duties and responsibilities for the Corporation.

1.02 The Corporation reserves the right to change the employment relationship over time, as it deems necessary or appropriate to comply with legal requirements or for ease of administration of employee benefits programs or other matters. The parties agree that, at the discretion of the Corporation, the Executive’s employment may be transferred to the Corporation’s affiliates or subsidiaries, as they may exist from time to time.

1.03 Notwithstanding 1.02, the Corporation acknowledges and agrees that the Executive’s principal residence is and shall remain in Barbados.

**Term of Agreement**

1.04 The Corporation hereby agrees to employ the Executive and the Executive hereby accepts employment, in accordance with the terms and conditions of this Agreement, commencing on February 24, 2010 (the “Employment Commencement Date”). The period of the Executive’s employment under this Agreement will be referred to as the “Employment Term.” Subject to the Corporation’s obligation to provide severance benefits and the parties’ obligation to provide a Notice of Termination (as defined below), the Executive and the Corporation acknowledge that this employment relationship may be terminated at any time and for any or no cause or reason at the option of either the Executive or the Corporation.

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ARTICLE TWO — COMPENSATION

Base Salary

2.01 As of the Employment Commencement Date, the Executive’s annualized base salary will be \$343,120 (USD), payable in accordance with the Corporation’s normal payroll practices for employees generally, and will be subject to annual review in accordance with the Corporation’s normal review process for other similarly situated senior executives.

Incentive Compensation

2.02 The Executive will be eligible to participate in Biovail Corporation’s (“Biovail’s”) short term annual incentive compensation plan as such plan may be amended from time to time (the “Short Term Incentive Plan”) in accordance with the terms of the Short Term Incentive Plan.

Equity Compensation

2.03 Eligibility and Terms.

The Executive will be eligible to participate in Biovail’s equity compensation plan, as such plan may be amended from time to time (the “Equity Compensation Plan”), in accordance with the terms of the Equity Compensation Plan, except as may be otherwise indicated in this Agreement.

Employee Benefits

2.04 During the Employment Term, the Executive will be eligible to participate in employee benefit plans and programs that are offered to the Corporation’s other similarly-situated senior executives in accordance with the terms of such plans as they may change from time to time. Nothing in this Agreement shall preclude the Corporation or any affiliate of the Corporation from terminating or amending any employee benefit plan or program from time to time before or after the Employment Commencement Date.

Expenses

2.05 The Executive shall be reimbursed for reasonable out of pocket business expenses, including travel and entertainment expenses, actually and properly incurred by the Executive in the course of performing the Executive’s services hereunder, upon furnishing to the Corporation reasonable supporting statements and vouchers; provided, however, that in any financial year in which the Corporation has provided to the Executive an approved budget, such expenses must not exceed the amount so budgeted without the prior written approval from the President.

**Housing Allowance**

2.06 While on assignment in Barbados, the Executive will receive a housing allowance in the amount of \$6,000 USD per month.

**Travel Allowance**

2.07 While on assignment in Barbados, the Executive will be provided with reimbursement for the cost of two return airline tickets for travel home twice per year.

**Company Vehicle**

2.08 A company car will be provided to the Executive and related expenses will be paid or reimbursed by the Corporation.

**Vacation**

2.09 The Executive will be eligible for four (4) weeks of vacation annually, to be taken in accordance with the terms of the Corporation’s Vacation Policy, without regard to any lesser amount of vacation time set forth therein. Notwithstanding the foregoing, the Executive’s eligibility for vacation in the year the Employment Term commences will be pro-rated in the manner specified in the Corporation’s Vacation Policy. Eligibility for increases to vacation entitlement will be in accordance with local regulations.

**ARTICLE THREE — TERMINATION AND RESIGNATION**

**Termination Date**

3.01 For the purposes of this Agreement, “Termination Date” shall mean the date designated as the last day of the Executive’s employment or term of office with the Corporation as specified in a notice of termination given by the party that issues a notice of termination to the other party.

**Termination of Employment By The Corporation Without Cause or By The Executive For Good Reason**

3.02 If the Executive’s employment with the Corporation is terminated involuntarily either by a termination by the Corporation without Cause or a termination by the Executive for Good Reason, then, in addition to any benefits or compensation accrued, earned and due to the Executive but not yet paid as of the Termination Date, the Executive will be eligible for the severance payments and benefits as described in this Section 3.02; provided that (i) the Executive continues to comply with the Restrictive Covenants (as defined below in Article Four); and (ii) the Executive executes, and does not revoke, a written waiver and release of all claims, demands and causes of action against the Corporation and related parties in a form prescribed by the Corporation, as limited by Section 3.10 (“Release”):

- (a) Within 60 days following the Executive’s Termination Date, the Executive will be paid a lump sum severance payment equal to (i) an amount that is one (1) times the Executive’s base salary (calculated using the Executive’s highest annual base salary in the three years prior to the Executive’s Termination Date) plus (ii) an amount that is one (1) times the Executive’s target level of annual incentive compensation for the year prior to the year in which the Executive’s Termination Date occurs;
- (b) The Executive will be entitled to a pro-rated portion of the Executive’s target level of annual incentive compensation under the Short Term Incentive Plan for the year in which the Executive’s Termination Date occurs. The pro-rated portion will be based on the number of months (rounded to the next highest number for a partial month) of the calendar year that elapsed prior to the Executive’s Termination Date and will be calculated and paid in accordance with the terms of the Corporation’s Short Term Incentive Plan; and
- (c) Until the earlier of (i) the date that ends a period of one (1) year following the Executive’s Termination Date, and (ii) the date, or dates, on which the Executive is eligible to receive benefits under the same type of plan of a subsequent employer (the “Benefit Period”), the Corporation will pay to the Executive a monthly payment on the first payroll date of each month equal to the cost of continued medical and dental coverage for the Executive and the Executive’s covered dependents under the medical and dental plans of the Corporation, less the amount that the Executive would be required to contribute for medical and dental coverage if the Executive were an active employee. These payments will commence on the Corporation’s first payroll date after the Executive’s Termination Date and will continue until the end of the Benefit Period (and not beyond the end of the Benefit Period).

**Termination of Employment By The Corporation For Cause Or The Executive’s Voluntary Resignation Without Good Reason**

3.03 If the employment of the Executive is terminated by the Corporation for Cause or if the Executive voluntarily resigns from employment without Good Reason, then the Executive will forfeit the Executive’s right to receive any salary, Short Term Incentive Plan compensation, Equity Compensation Plan compensation or other compensation that has not been fully accrued at the time the Executive’s employment terminates; provided, however, that the Executive will be entitled to receive any benefits or compensation accrued, earned and due to the Executive but not yet paid as of the Executive’s Termination Date.

**Death or Disability**

3.04 The Executive’s employment will terminate automatically upon the Executive’s death. The Corporation may terminate the Executive’s employment if illness, disease, or physical or mental incapacity render the Executive generally incapable of performing the Executive’s duties or unfit to advance or represent the Corporation on a daily basis for a period of twelve (12) consecutive months and within such twelve (12) months, the Executive fails to produce to the Corporation a medical opinion indicating a reasonable

time for the return of the Executive to the full-time assumption of the Executive’s past duties and responsibilities. Nothing herein is intended to circumvent or abridge the Corporation’s short-term disability policy or long-term disability plan. In the event of termination pursuant to the terms of this Section 3.03, the Executive or the Executive’s estate, as applicable, will be entitled to receive any salary, benefits or other amounts accrued, earned and due to the Executive but not yet paid as of the Executive’s Termination Date.

**Cause**

3.05 For purposes of this Agreement, Cause includes:

- (a) conviction of the Executive, or the entering of a guilty plea or a plea of no contest by the Executive, with respect to a felony, any crime involving fraud, larceny or embezzlement or any other crime involving moral turpitude which may subject the business to damage in any way, or if generally known, would damage the business interests or reputation of the Corporation or any of its affiliates;
- (b) any act of fraud, misappropriation, material dishonesty, embezzlement or similar conduct involving the Corporation or any affiliates;
- (c) a material breach by the Executive of the Executive’s duties hereunder (other than as a result of incapacity due to physical or mental impairment) which is demonstrably willful and deliberate on the part of the Executive or which is committed in bad faith or without reasonable belief that such breach is in the best interests of the Corporation;
- (d) a material breach by the Executive of the Executive’s duties hereunder (other than as a result of incapacity due to physical or mental impairment), except as identified in Section 3.05(c) above, which breach is not remedied by the Executive within 30 days after receipt of written notice from the Corporation specifying such breach; or
- (e) the Executive’s failure to comply in any material way with any of the provisions of this Agreement.

**Good Reason**

3.06 For purposes of this Agreement, a voluntary resignation by the Executive will be deemed to be a termination for Good Reason if:

- (a) The Corporation makes: (i) any assignment to the Executive of any duties which are materially inconsistent with the Executive’s position; (ii) any material reduction in the Executive’s authority, responsibilities or status; or (iii) a material reduction to the Executive’s base salary;

- (b) The Executive notifies the Corporation in writing of the Executive’s belief that the Corporation has taken an action identified in Section 3.06(a) within thirty (30) days of the event at issue;
- (c) The Corporation has not remedied the situation within thirty (30) days after receipt of written notice from the Executive;
- (d) The Executive provides a Notice of Termination within thirty (30) days after the Corporation’s opportunity to remedy the situation has expired; and
- (e) After a period of 5 years from the commencement of the assignment in Barbados (February 28, 2011), the Corporation is unable to provide the Executive with a position deemed comparable by the Corporation in another location other than Barbados.

**Change in Control**

- 3.07 (a) The Corporation shall provide the payments and benefits described in Section 3.07(b) below only if:
- (i) the Executive continues to comply with the Restrictive Covenants (as such term is defined below in Article Four); and
  - (b) the Executive executes, and does not revoke, a Release (as defined above in Section 3.02).
- (b) Upon a Change in Control (as defined below in Section 3.07(c)), and an involuntary termination of the Executive’s employment either by the Corporation without Cause or by the Executive for Good Reason, which termination occurs within a period of twelve (12) months following the Change in Control, the Corporation shall provide to the Executive, in addition to any benefits or compensation accrued, earned and due to the Executive but not yet paid as of the Executive’s Termination Date, but in lieu of any payments or benefits to which the Executive is or might be entitled under Section 3.02 above:
- (i) a lump sum severance payment of (a) an amount that is equal to two (2) times the Executive’s base salary (calculated using the Executive’s highest annual base salary in the three years prior to the Executive’s Termination Date) plus (b) an amount that is equal to two (2) times the Executive’s target level of annual incentive compensation under the Short Term Incentive Plan for the year prior to the year in which the Executive’s Termination Date occurs, payable within thirty (30) days of the Executive’s Termination Date; and
  - (ii) any unvested equity compensation awards held by the Executive shall automatically accelerate and become one hundred percent (100%) vested and, as applicable, exercisable, as of the Executive’s Termination Date.
- (c) For the purpose of this Section 3.07, “Change in Control” means the happening of any of the following events:

- (i) the completion of a transaction pursuant to which (A) the Corporation goes out of existence or (B) any person, or any Associate (as such terms defined in National Instrument 45-106 - *Prospectus and Registration Exemptions*, as amended from time to time, or such other successor rules, instruments or policies from time to time of Canadian provincial securities regulatory authorities which may govern trades of securities to employees, officers, directors or consultants ("NI45-106")) or Related Entity (as such term is defined in NI45-106) of such person (other than the Corporation, any trustee or other fiduciary holding securities under any employee benefit plan of the Corporation or a Related Entity, or any company owned, directly or indirectly, by the shareholders of the Corporation in substantially the same proportions as their ownership of common shares of the Corporation) hereafter acquires the direct or indirect "beneficial ownership" (as defined by the *Canada Business Corporations Act*) of securities of the Corporation representing 50% or more of the aggregate voting power of all of the Corporation's then issued and outstanding securities;
- (ii) the lease, exchange, license, sale or other similar disposition of all or substantially all of the Corporation's assets in one transaction or a series of related transactions to a person, or any Associate or Related Entity of such person (other than an Associate or Related Entity of the Corporation, any trustee or other fiduciary holding securities under any employee benefit plan of the Corporation or a Related Entity, or any company owned, directly or indirectly, by the shareholders of the Corporation in substantially the same proportions as their ownership of common shares of the Corporation);
- (iii) the dissolution or liquidation of the Corporation except in connection with the distribution of assets of the Corporation to one or more persons which were Related Entities prior to such event;
- (iv) during any period of 24 consecutive months beginning on or after the date of the Equity Compensation Plan, the persons who were members of the Board immediately before the beginning of such period (the "Incumbent Directors") cease (for any reason other than death) to constitute at least a majority of the Board or the board of directors of any successor to the Corporation, provided that any director who was not a director as of the date of the Equity Compensation Plan shall be deemed to be an Incumbent Director if such director is elected to the Board by, or on the recommendation of or with the approval of, at least two-thirds of the directors who then qualified as Incumbent Directors either actually or by prior operation of the foregoing unless such election,

recommendation or approval occurs as a result of an actual or threatened election contest or other actual or threatened solicitation of proxies or contests by or on behalf of a person other than a member of the Board; or

- (v) a merger, amalgamation, arrangement or consolidation of the Corporation with any other corporation other than a merger, amalgamation, arrangement or consolidation that would result in the voting securities of the Corporation outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 50% of the combined voting power of the voting securities of the Corporation or such surviving entity outstanding immediately after such merger, amalgamation, arrangement or consolidation; provided, however, that a merger, amalgamation, arrangement or consolidation effected to implement a recapitalization of the Corporation (or similar transaction) in which no person (other than those covered by the exceptions in (i) above) acquires more than 50% of the combined voting power of the Corporation's then outstanding securities shall not constitute a Change in Control.

### **Notice of Termination**

3.08 Any termination of employment by the Corporation or by the Executive shall be communicated by notice of termination to the other party hereto given in accordance with Section 5.09 (a "Notice of Termination"). For purposes of this Agreement, Notice of Termination means a written notice that (a) identifies the specific termination provision in the Agreement relied upon, and (b), to the extent applicable, sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive's employment under the provision identified, and (c)(i), in the case of a termination by the Corporation, specifies the Executive's Termination Date which shall not be less than fifteen (15) nor more than sixty (60) days after the giving of such notice; or (ii) in the case of a termination by the Executive without Good Reason, shall not be less than ninety (90) days after the giving of such notice.

### **Payments After Termination of Employment**

3.09 Payments made by the Corporation to the Executive pursuant to this Agreement after the Executive's Termination Date will be made by courier delivery service to the last address provided for notices to the Executive pursuant to Section 5.09 of this Agreement.

### **Release**

3.10 The Release identified in Sections 3.02 and 3.07 will not require the Executive to release any right the Executive may have to indemnification as an officer, director or



employee of the Corporation (or any affiliate thereof) pursuant to the articles of incorporation or bylaws (or other governing instruments) of the Corporation (or any affiliate thereof) or any vested benefits to which the Executive may be entitled under any employee benefit plan.

**ARTICLE FOUR — EXECUTIVE’S OBLIGATIONS**

**Confidentiality**

4.01 The Executive agrees to be bound by the terms of the confidentiality agreement (the “Confidentiality Agreement”) dated the date hereof, which Confidentiality Agreement has been read, understood and executed by the Executive, is attached hereto as Schedule A, and is incorporated by reference into this Agreement. In the event of a conflict between the terms of this Agreement and the terms of the Confidentiality Agreement, the terms of this Agreement shall govern.

**Non-Competition**

4.02 The Executive acknowledges that the Corporation currently conducts business activities in North America and Barbados (the “Territory”). The Executive further acknowledges that, in the future, the business activities are expected to substantially expand territorially. Accordingly, the Executive hereby agrees and covenants that he shall not during the Employment Term and for a period of one (1) year following the Executive’s Termination Date for involuntary termination by the Corporation for Cause, voluntary termination by the Executive, or termination following a Change in Control, directly or in any manner whatsoever, including without limitation, either individually, in partnership, jointly or in conjunction with any other individual, partnership, corporation, unincorporated organization, trust, joint venture, the Crown or any agency or instrumentality thereof of any juridical entity, in the Territory (excluding, as applicable, any portions of the Territory in which the Corporation is no longer carrying on business at the relevant time) or in any other regions or countries where the Corporation may be carrying on business at the relevant time:

- (a) carry on, be engaged in, take part in or be a party to any Competitive Activity, directly or indirectly; or
- (b) consult, advise, render services to, lend money to, guarantee the debts or obligations of or permit the use of his name or any part thereof for any Competitive Activity.

For the purposes of this Section 4.02, a Competitive Activity shall be defined as that part, division or unit of any business: (i) that competes with or plans to actively compete with the business activities of the Corporation through, but not limited to, the formulation, clinical testing, registration, manufacturing or marketing of specialty pharmaceuticals and/or drug delivery technologies in the therapeutic categories on which the Corporation is focused, which include central nervous system disorders, pain

management, cardiovascular disease, type II diabetes, and any other category in which the Corporation is focused in the future and excludes areas in which the Corporation is not actively engaged at the relevant time, (ii) with which the Corporation has a product(s) licensing agreement, (iii) in which the Corporation has a minority equity interest, or (iv) with which the Corporation is at the time actively negotiating a commercial relationship. For greater certainty, any specific and separate part, division or unit of any business that is not as described above in this paragraph shall not constitute a Competitive Activity for the purposes of this non-competition covenant.

During the continuance of his employment, the Executive shall not (other than solely as a holder of not more than three per cent (3%) of the issued and outstanding voting shares of any public corporation or as a shareholder of the Corporation) without the written approval of the board of directors of the Corporation, directly or indirectly, either individually or in partnership or in conjunction with any person, firm, association, syndicate, company or corporation as principal, agent, director, manager, servant, shareholder or in any other manner whatsoever) carry on or be engaged in or be concerned with or interested in any business or vocation whatsoever which would be reasonably judged to be a Competitive Activity or would impede the Executive in performing his duties as outlined herein.

The Executive may at any time, or from time to time, request the Corporation to advise the Executive in writing whether or not the Corporation considers a specified business to be a Competitive Activity. Any such request shall be made by written notice to the Corporation that includes: (i) the name of the specific business unit for which the Executive proposes to provide services; (ii) the name or names of any parent companies of such business unit; (iii) a description of the specific services which the Executive proposes to perform for such business unit; (iv) a statement as to why the Executive believes that the performance of such services will not adversely affect the Corporation's legitimate interests.

**Non-Solicitation**

4.03 The Executive hereby covenants and agrees that the Executive shall not, during the Employment Term and for a period of twelve (12) months thereafter, solicit or contact, either directly or indirectly, any of the Customers, Prospective Customers or any suppliers of the pharmaceutical compounds used by the Corporation on the Executive's own behalf, or on behalf of any entity, by which the Executive is hired or retained where such solicitation or contact has the purpose, intent or effect of inducing or attempting to induce any of the Customers, Prospective Customers or suppliers of the pharmaceutical compounds used by the Corporation to cease to deal or to decline to deal with the Corporation, to alter the products or quantities of products acquired from or supplied to the Corporation, or to alter the terms on which any of them deal with the Corporation. "Customers" means customers of the Corporation with which the Executive had personal contact or had supervision over the efforts of those who had direct personal contact with such customers during the last two (2) years of the

Employment Term. “Prospective Customer” means any organizations or entities with which the Executive had contact, and which had been actively contacted and solicited for their business by representatives of the Corporation, both during the last two (2) years of the Employment Term.

**Non-Hiring**

4.04 The Executive hereby covenants and agrees that the Executive shall not, during the Employment Term and for a period of twelve (12) months thereafter, either directly or indirectly, solicit or endeavour to solicit any of the Corporation’s employees with the purpose, intent or effect of having such employees cease their employment with the Corporation, and shall not for a period twelve (12) months from the end of the term of this Agreement hire or assist in the hiring of any of the Corporation’s employees on the Executive’s own behalf or on behalf of any entity by which the Executive is hired or retained or with which he is associated in any other manner. Notwithstanding the foregoing, the Executive shall not be considered in breach of this section should the Executive solicit for hiring such Executive’s administrative assistant.

**Injunctive Relief**

4.05 The Executive acknowledges and agrees that the agreements and covenants in this Article Four are essential to protect the business and goodwill of the Corporation and that a breach by the Executive of the covenants in Sections 4.01, 4.02, 4.03 and 4.04 hereof could result in irreparable harm to the Corporation for which the Corporation could not be adequately compensated in damages and that, accordingly, the Corporation may have no adequate remedy at law if the Executive breaches such provisions. Consequently, if the Executive breaches any of such provisions, the Corporation shall have, in addition to and not in lieu of, any other rights and remedies available to it under any law or in equity, the right to obtain injunctive relief to restrain any breach or threatened breach thereof and to have such provisions specifically enforced by any court of competent jurisdiction.

**Severability of Covenants in Full or in Part**

4.06 The parties acknowledge that the provisions of Article Four hereof (the “Restrictive Covenants”) are reasonable in geographic and temporal scope and in all other respects. If any court of competent jurisdiction determines that any of the Restrictive Covenants or any part thereof, is or are invalid or unenforceable, the Executive and the Corporation agree that the remainder of the Restrictive Covenants shall not be affected by the deemed invalid portions.

**Assignment of IP**

4.07 The Executive shall disclose to the Corporation any and all Intellectual Property (as defined in the Confidentiality Agreement) which the Executive may make solely, jointly, or in common with other employees during the term of the Executive’s employment within the Corporation and which relates to the business. Any Intellectual Property coming within the scope of the business made and/or developed by the

Executive while in the employ of the Corporation, whether or not conceived or made during regular working hours, and whether or not the Executive is specifically instructed to make or develop same, shall be for the benefit of the Corporation and shall be regarded as work made in the course of employment for the purposes of the *Copyright Act* (Canada). The Executive assigns, sets over and transfers to the Corporation the Executive's entire right, title and interest in and to any and all of the Intellectual Property and to all letters patent and applications for letters patent which may be, or may have been filed and/or issued by or to the Executive or on the Executive's behalf and the Executive agrees to execute and deliver to the Corporation any and all instruments necessary or desirable to accomplish the foregoing and, in addition, to do all lawful acts which may be necessary or desirable to assist the Corporation to obtain and enforce protection of the Intellectual Property, without the requirement for additional compensation. To the extent of any rights the Executive may have with respect to the Intellectual Property which are not assignable, including but not limited to moral rights, the Executive hereby waives same. The Executive will execute and deliver to the Corporation or its successors and assigns, including after the Employment Term, such other and further assignments, instruments and documents as the Corporation from time to time reasonably may request for the purpose of establishing, evidencing, and enforcing or defending its complete, exclusive, perpetual, and world-wide ownership of all rights, titles, and copyrights, in and to the Intellectual Property, without the requirement for additional compensation. The Executive constitutes and appoints the Corporation as agent and attorney-in-fact, with full power of substitution, to execute and deliver such assignments, instruments, documents as the Executive may fail to or refuse to execute and deliver, this power and agency being coupled with an interest and being irrevocable.

**Standards of Business Conduct**

4.08 The Executive acknowledges and agrees that the Executive has read and understood and agrees to be bound by Biovail's Standards of Business Conduct, which is attached hereto as Schedule B.

**No Conflicting Obligations**

- 4.09 The Executive warrants to the Corporation that:
- (a) the performance of the Executive's duties as an employee of the Corporation will not breach any agreement or other obligation to keep confidential the Confidential Information of any third party; and
  - (b) the Executive is not bound by any agreement with or obligation to any third party that conflicts or interferes with the Executive's obligations as an employee of the Corporation.

**ARTICLE FIVE - INTERPRETATION AND ENFORCEMENT**

**Independent Legal Advice**

5.01 The Executive has had the opportunity to receive independent legal advice regarding this Agreement (for which the Executive has been reimbursed by the Corporation), and the Executive agrees to the terms and conditions of this Agreement.

**Severability**

5.02 The parties further acknowledge that if any provision contained in this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof shall continue in full force and effect.

**Sections and Headings**

5.03 The division of this Agreement into Articles and Sections and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Agreement.

**Number and Gender**

5.04 In this Agreement words importing the singular number only shall include the plural and vice versa and words importing the masculine gender shall include the feminine and neuter genders and vice versa.

**Entire Agreement**

5.05 This Agreement and all the Schedules hereto constitute the entire Agreement between the parties with respect to the subject matters hereof and cancel and supersede any prior understandings and agreements between the parties with respect thereto (including, but not limited to, the Executive’s employment agreement dated June 16, 2008 and any agreement involving an entity for whom the Executive provides or has provided consulting services). There are no representations, warranties, forms, conditions, undertakings or collateral agreements, express or implied, between the parties other than as expressly set forth in this Agreement.

**Amendments and Waivers**

5.06 No amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by both parties. No waiver of any breach of any term or provision of this Agreement shall be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided in written waiver, shall be limited to the specific breach waived.

**Governing Law**

5.07 This Agreement shall be deemed to have been made in and shall be construed in accordance with the laws of Barbados and all legal proceedings contemplated in this Agreement shall be brought in, and be governed by, the laws of Barbados, without regard to principles of conflicts of law.

**Notices**

5.08 Any demand, notice or other communication (hereinafter in this Section 5.09 referred to as a “Communication”) to be made or given in connection with this Agreement shall be made or given in writing and may be made or given by personal delivery addressed respectively to the recipients:

To the Executive:

Michel Chouinard

To the Corporation:

Biovail Laboratories International, SRL  
Welches Christ Church  
Barbados, WI 17154  
Attn: President

or such other address or individual as may be designated by notice by either party to the other. Any communication made or given by personal delivery shall be conclusively deemed to have been given on the day of the actual delivery thereof.

**Benefit of Agreement**

5.09 This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, legal personal representatives, successors and assigns.

**Assignment**

5.10 The Executive may not assign the Executive’s rights or obligations under this Agreement without the prior written consent of the Corporation which consent may be unreasonably withheld. The Corporation may unilaterally assign this agreement to an affiliate without consent but on notice to the Executive.

**Execution of Agreement**

5.11 The Executive acknowledges that the Executive has executed this Agreement freely; that the Executive has reviewed this Agreement thoroughly; that the Executive agrees with its contents; and that the terms herein are reasonable for the fair protection of both the Executive and the Corporation.

**[SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the dates identified below at St. Michael, Barbados.

BIOVAIL LABORATORIES  
INTERNATIONAL SRL

EXECUTIVE

By: /s/ WILLIAM WELLS  
Name: WILLIAM WELLS  
Title: President

/s/ MICHEL CHOUINARD  
MICHEL CHOUINARD

Date: February 24, 2010

Date: February 24, 2010



**SCHEDULE A**  
**CONFIDENTIALITY AGREEMENT**  
**“SCHEDULE A”**

**BIOVAIL CORPORATION**  
**(and its Subsidiaries, Divisions, and Affiliates)**

**CONFIDENTIALITY AGREEMENT**

As an employee of Biovail Corporation (the “Corporation”), I acknowledge that I may acquire or have disclosed to me by the Corporation or by any affiliate, associate, or technology partner of the Corporation, either directly or indirectly, in writing, conversation, or through observation, various information about the business of the Corporation which is not in the public domain and which the Corporation does not wish to be divulged to other persons, companies, or third parties. I further understand that the Corporation’s Confidential Information (as defined below) is essential to its competitive advantage and to its ability to be financially viable. I further understand that the unauthorized disclosure of such Confidential Information may cause the Corporation irreparable injury that may not be rectified in the future.

Therefore, as a condition and in consideration of my employment with the Corporation, I understand and agree that while employed with the Corporation and for a period of time thereafter (as more particularly described below), I am required to hold confidential and not to disclose to anyone without the written authority from the Corporation any knowledge, information, or facts concerning the Corporation’s:

- research and development activities
- technological plans, advances, applications and inventions
- technical specifications, designs and plans
- materials and sources of supply
- discoveries, inventions, trade secrets, patents
- financial affairs, contracts, licensing agreements, customer lists, pricing practices, marketing strategies
  
- any other information regarding the Corporation, its products and their development which is not in the public domain

All of the foregoing shall hereinafter collectively be referred to as the “Confidential Information”.

For a period commencing on the date I commenced my employment with the Corporation and ending ten (10) years from the date of the termination of my employment with the Corporation, I shall keep confidential any and all Confidential Information which has been disclosed to me in writing or through oral communications and shall not divulge in any manner whatsoever any such information to any person, firm, corporation, partnership or similar entities without the Corporation’s written authority.

Should I breach or threaten to breach this Agreement, I shall be liable to the Corporation in equity and/or in law for damages that may be suffered by the Corporation as a result of the breach or threatened breach. I understand that a breach of this Agreement may result in irreparable harm to the Corporation such as to warrant the entitlement by the Corporation to an interlocutory and/or permanent injunction or other equitable relief against me, and an award of damages including punitive, exemplary and aggravated damages, together with legal costs and expense and I specifically agree that I will not argue the adequacy of damages or the Corporation’s ability to seek equitable relief in any such proceeding.

All Confidential Information supplied by the Corporation to me during the course of my employment and any rights related thereto, including but not limited to rights of know how, patent, trademark and copyright, with respect to existing products or those that are developed during or after my employment, are and remain the exclusive and absolute property of the Corporation.

I shall not, except as and to the extent required to enable me to carry out my duties with the Corporation, make any copies or reproduce the Confidential Information nor shall I remove or cause to have removed from the premises of the Corporation during my employment any Confidential Information unless required to do so in order to fulfill my duties with the Corporation. Such copies or reproductions shall be strictly subject to the terms and conditions of this Agreement. I shall take such steps as are necessary to restrict access to and protect the confidentiality of such copies or reproductions of the Confidential Information. Any such copies or reproductions made shall become the exclusive and absolute property of the Corporation.

Upon request of the Corporation, I agree to immediately surrender to the Corporation all documentation and information - notes, drawings, recordings, manuals, letters, correspondence,

computer data and programs, records, books or any other materials relating to the Confidential Information which is in my possession without my retaining any copies or duplicates thereof.

I agree that this Agreement shall be construed in accordance with the laws of the Province of Ontario and I agree that the applicable courts of the Province of Ontario shall have exclusive jurisdiction with respect to any dispute or breach herein and I hereby attorn to the exclusive jurisdiction of the courts of the Province of Ontario.

This Agreement shall enure to the benefit of and shall be binding upon my successors, heirs and attorneys.

The disclosure or divulging of any Confidential Information contrary to this Agreement, or the violation of this Agreement in any way shall result in my immediate termination of employment, in addition to which I may be subject to criminal prosecution and civil liability.

I acknowledge and agree that I have executed this Agreement freely and with the benefit of independent legal advice and the terms herein are fair and reasonable.

I acknowledge and agree to the foregoing.

Employee Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Witness Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**SCHEDULE B**

**STANDARDS OF BUSINESS CONDUCT**

**[See Standards of Business Conduct posted on <http://www.biovail.com>]**

**BIOVAIL CORPORATION  
EXECUTIVE EMPLOYMENT AGREEMENT**

THIS AGREEMENT is made by and between Biovail Corporation (hereinafter the “Corporation”) and **Michel Chouinard** (hereinafter the “Executive”).

**ARTICLE ONE — GENERAL DUTIES AND TERM**

**Scope of Employment / Duties**

1.01 The Corporation will cause Biovail Laboratories International SRL (“SRL”) to employ the Executive as the **Chief Operating Officer (“COO”) of SRL**. The Executive will also serve as an officer of the Corporation. During the Employment Term (as defined below), the Executive will devote substantially all of the Executive’s business efforts and time to his duties as COO of SRL and an officer of the Corporation. The Executive agrees, during the Employment Term, not to actively engage in any other employment, occupation or consulting activity for any direct or indirect compensation without the prior approval of the Chief Executive Officer of the Corporation (the “CEO”); provided, however, that the Executive may (a) serve on the boards of directors of other companies (subject to reasonable approval of the CEO) and boards of trade associations or charitable organizations; (b) engage in charitable activities and community affairs; and (c) manage the Executive’s personal investments and affairs, as long as such activities do not violate Section 4.02 and do not materially interfere with the Executive’s duties and responsibilities for SRL and the Corporation.

1.02 The Corporation reserves the right to establish the employment relationship with the Executive directly with the Corporation or with any of its affiliates or subsidiaries, or to change such employment relationship over time, as it deems necessary or appropriate to comply with legal requirements or for ease of administration of employee benefits programs or other matters. References in this Agreement to the Corporation shall include the Corporation and the affiliates or subsidiaries of the Corporation by which the Executive is employed from time to time under this Agreement.

**Term of Agreement**

1.03 The Corporation hereby agrees to cause SRL to employ the Executive and the Executive hereby accepts employment, in accordance with the terms and conditions of this Agreement, commencing on June 16, 2008 (the “Employment Commencement Date”). The period of the Executive’s employment under this Agreement will be referred to as the “Employment Term.” Subject to the obligation to provide severance benefits and the parties’ obligation to provide a Notice of Termination (as defined below), the Executive and the Corporation acknowledge that this employment relationship may be terminated at any time and for any or no cause or reason at the option of either the Executive or the Corporation.

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## ARTICLE TWO — COMPENSATION

### Base Salary

2.01 As of the Employment Commencement Date, the Executive's annualized base salary will be \$123,585.00 (USD), payable in accordance with the Corporation's normal payroll practices for employees generally, and will be subject to annual review in accordance with the Corporation's normal review process for other similarly situated senior executives.

### Incentive Compensation

2.02 The Executive will be eligible to participate in the Corporation's short term annual incentive compensation plan as such plan may be amended from time to time (the "Short Term Incentive Plan") in accordance with the terms of the Short Term Incentive Plan.

### Equity Compensation

2.03 Eligibility and Terms.

The Executive will be eligible to participate in the Corporation's equity compensation plan, as such plan may be amended from time to time (the "Equity Compensation Plan"), in accordance with the terms of the Equity Compensation Plan, except as may be otherwise indicated in this Agreement.

### Employee Benefits

2.04 During the Employment Term, the Executive will be eligible to participate in employee benefit plans and programs that are offered to the Corporation's other similarly-situated senior executives in accordance with the terms of such plans as they may change from time to time. Nothing in this Agreement shall preclude the Corporation or any affiliate of the Corporation from terminating or amending any employee benefit plan or program from time to time after the Employment Commencement Date.

### Housing Allowance

2.05 While on assignment in Barbados, the Executive will receive a housing allowance in the amount of \$5,000 USD per month.

### Travel Allowance

2.06 While on assignment in Barbados, the Executive will be provided with reimbursement of the cost of two return airline tickets for travel home twice per year.

### Expenses

2.07 The Executive shall be reimbursed for reasonable out of pocket business expenses, including travel and entertainment expenses, actually and properly incurred by the Executive in the course of performing the Executive's services hereunder, upon furnishing to the Corporation reasonable supporting statements and vouchers; provided, however, that in any financial year in which the

Corporation has provided to the Executive an approved budget, such expenses must not exceed the amount so budgeted without the prior written approval from the CEO.

Company Vehicle

2.08 A company car will be provided to the Executive and related expenses will be paid or reimbursed by the Corporation.

Vacation

2.09 The Executive will be eligible for four (4) weeks of vacation annually, to be taken in accordance with the terms of the Corporation’s Vacation Policy, without regard to any lesser amount of vacation time set forth therein. Notwithstanding the foregoing, the Executive’s eligibility for vacation in the year of hire will be pro-rated in the manner specified in the Corporation’s Vacation Policy. Eligibility for increases to vacation entitlement will be in accordance with local regulations.

ARTICLE THREE — TERMINATION AND RESIGNATION

Involuntary Termination - Either By The Corporation Without Cause or By The Executive For Good Reason

3.01 If the Executive incurs an involuntary termination from employment with the Corporation on account of a termination by the Corporation without Cause or by the Executive for Good Reason, then, in addition to any benefits or compensation accrued, earned and due to the Executive but not yet paid as of the date that is designated by the Corporation or the Executive, as applicable, as the last day of the Executive’s employment or term of office with the Corporation (the “Termination Date”), the Executive will be eligible for the severance payments and benefits as described in this Section 3.01; provided that (i) the Executive continues to comply with the Restrictive Covenants (as defined below); and (ii) the Executive executes, and does not revoke, a written waiver and release of all claims, demands and causes of action against the Corporation and related parties in a form prescribed by the Corporation, as limited by Section 3.09 (“Release”):

- (a) The Executive will be paid a lump sum severance payment within 60 days of the Executive’s Termination Date, equal to one (1) times the Executive’s base salary (calculated using the Executive’s highest annual base salary in the three years prior to the Executive’s Termination Date) plus one (1) times the Executive’s target level of annual incentive compensation for the year prior to the year in which the Executive’s Termination Date occurs;
- (b) The Executive will be entitled to a pro-rated portion of the Executive’s target level of annual incentive compensation under the Short Term Incentive Plan for the year in which the Executive’s Termination Date occurs, based on the number of months (rounded to the next highest number for a partial month) of the calendar year elapsed prior to the Executive’s Termination Date and calculated and paid in accordance with the terms of the Corporation’s Short Term Incentive Plan; and



(c) Until the earlier of (i) the end of the one (1) year period following the Executive’s Termination Date, or (ii) the date, or dates, the Executive is eligible to receive benefits under the same type of plan of a subsequent employer (the “Benefit Period”), the Corporation will pay to the Executive a monthly payment on the first payroll date of each month equal to the cost of continued medical and dental coverage for the Executive and the Executive’s covered dependents under the medical and dental plans of the Corporation, less the amount that the Executive would be required to contribute for medical and dental coverage if the Executive were an active employee. These payments will commence on the Corporation’s first payroll date after the Executive’s Termination Date and will continue until the end of the Benefit Period (but not longer than the Benefit Period).

**Involuntary Termination By The Corporation For Cause Or Voluntary Resignation Without Good Reason**

3.02 If the Executive is involuntarily terminated by the Corporation for Cause or the Executive voluntarily resigns from employment without Good Reason, then the Executive will forfeit the Executive’s right to receive any salary, Short Term Incentive Plan compensation, Equity Compensation Plan compensation or other compensation that has not been fully accrued at the time the Executive’s employment terminates; provided, however, that the Executive will be entitled to receive any benefits or compensation accrued, earned and due to the Executive but not yet paid as of the Executive’s Termination Date.

**Death or Disability**

3.03 The Executive’s employment will terminate automatically upon the Executive’s death. Subject to the requirements of applicable law, the Corporation may terminate the Executive’s employment if illness, disease, or physical or mental incapacity render the Executive generally incapable of performing the Executive’s duties or unfit to advance or represent the Corporation on a daily basis for a period of twelve (12) consecutive months and within such twelve (12) months, the Executive fails to produce to the Corporation a medical opinion indicating a reasonable time for the return of the Executive to the full-time assumption of the Executive’s past duties and responsibilities. Nothing herein is intended to circumvent or abridge the Corporation’s short-term disability policy or long-term disability plan. In the event of termination pursuant to the terms of this Section 3.03, the Executive or the Executive’s estate, as applicable, will be entitled to receive any salary, benefits or other amounts accrued, earned and due to the Executive but not yet paid as of the Executive’s Termination Date.

**Cause**

3.04 For purposes of this Agreement, Cause includes:

- (a) conviction of the Executive, or entering of a guilty plea or a plea of no contest by the Executive, with respect to, a felony, any crime involving fraud, larceny or embezzlement or any other crime involving moral turpitude which subjects, or if generally known, would damage the business interests or reputation of the Corporation or any of its affiliates;
- (b) any act of fraud, misappropriation, material dishonesty, embezzlement or similar conduct involving the Corporation or any affiliates;

- (c) a material breach by the Executive of the Executive’s duties hereunder (other than as a result of incapacity due to physical or mental impairment) which is demonstrably willful and deliberate on the part of the Executive or which is committed in bad faith or without reasonable belief that such breach is in the best interests of the Corporation and its affiliates;
- (d) a material breach by the Executive of the Executive’s duties hereunder (other than as a result of incapacity due to physical or mental impairment), except as identified in Section 3.04(c) above, which breach is not remedied by the Executive within 30 days after receipt of written notice from the Corporation specifying such breach; or
- (e) the Executive’s failure to comply in any material way with any of the provisions of this Agreement.

**Good Reason**

3.05 For purposes of this Agreement, a voluntary resignation by the Executive will be deemed to be a termination for Good Reason if:

- (a) The Corporation makes: (i) any assignment to the Executive of any duties which are materially inconsistent with the Executive’s position; (ii) any material reduction in the Executive’s authority, responsibilities or status; or (iii) a material reduction to the Executive’s base salary;
- (b) The Executive notifies the Corporation in writing of the Executive’s belief that the Corporation has taken an action identified in Section 3.05(a) within thirty (30) days of the event at issue;
- (c) The Corporation has not remedied the situation within thirty (30) days after receipt of written notice from the Executive; and
- (d) The Executive provides a Notice of Termination within thirty (30) days after the Corporation’s opportunity to remedy the situation has expired.
- (e) After a period of 5 years from the commencement of the assignment in Barbados, the Corporation is unable to provide the Executive with a position deemed comparable by the Corporation in another location other than the Barbados.

**Change in Control**

- 3.06 (a) The Corporation shall provide the payments and benefits described in Section 3.06(b) below only if: (i) the Executive continues to comply with the Restrictive Covenants (as such term is defined below); and (b) the Executive executes, and does not revoke, a Release (as defined above).
- (b) Upon a Change in Control (as defined below), and an involuntary termination of the Executive’s employment either by the Corporation without Cause or by the Executive for Good Reason, which termination occurs within a period of twelve (12) months following the Change in Control, the Corporation shall provide to the Executive, in addition to any benefits or compensation accrued, earned and due to the Executive but not yet paid as of the Executive’s Termination Date,

but in lieu of any payments or benefits to which the Executive may be entitled under Section 3.01 above, (a) a lump sum severance payment of two (2) times the Executive's base salary (calculated using the Executive's highest annual base salary in the three years prior to the Executive's Termination Date) plus two (2) times the Executive's target level of annual incentive compensation under the Short Term Incentive Plan for the year prior to the year in which the Executive's Termination Date occurs, payable within thirty (30) days of the Executive's Termination Date and, (b) any unvested equity compensation awards held by the Executive shall automatically accelerate and become one hundred percent (100%) vested and, as applicable, exercisable, as of the Executive's Termination Date.

(c) For the purpose of this Section 3.06, "Change in Control" means the happening of any of the following events:

- (i) the completion of a transaction pursuant to which (A) the Corporation goes out of existence or (B) any person, or any Associate (as such terms defined in National Instrument 45-106 - *Prospectus and Registration Exemptions*, as amended from time to time, or such other successor rules, instruments or policies from time to time of Canadian provincial securities regulatory authorities which may govern trades of securities to employees, officers, directors or consultants ("NI45-106")) or Related Entity (as such term is defined in NI45-106) of such person (other than the Corporation, any trustee or other fiduciary holding securities under any employee benefit plan of the Corporation or a Related Entity, or any company owned, directly or indirectly, by the shareholders of the Corporation in substantially the same proportions as their ownership of common shares of the Corporation) hereafter acquires the direct or indirect "beneficial ownership" (as defined by the *Canada Business Corporations Act*) of securities of the Corporation representing 50% or more of the aggregate voting power of all of the Corporation's then issued and outstanding securities;
- (ii) the lease, exchange, license, sale or other similar disposition of all or substantially all of the Corporation's assets in one transaction or a series of related transactions to a person, or any Associate or Related Entity of such person (other than an Associate or Related Entity of the Corporation, any trustee or other fiduciary holding securities under any employee benefit plan of the Corporation or a Related Entity, or any company owned, directly or indirectly, by the shareholders of the Corporation in substantially the same proportions as their ownership of common shares of the Corporation);
- (iii) the dissolution or liquidation of the Corporation except in connection with the distribution of assets of the Corporation to one or more persons which were Related Entities prior to such event;
- (iv) during any period of 24 consecutive months beginning on or after the date of the Equity Compensation Plan, the persons who were members of the Board of Directors of the Corporation (the "Board") immediately before the beginning of such period (the "Incumbent Directors") cease (for any reason

other than death) to constitute at least a majority of the Board or the board of directors of any successor to the Corporation, provided that any director who was not a director as of the date of the Equity Compensation Plan shall be deemed to be an Incumbent Director if such director is elected to the Board by, or on the recommendation of or with the approval of, at least two-thirds of the directors who then qualified as Incumbent Directors either actually or by prior operation of the foregoing unless such election, recommendation or approval occurs as a result of an actual or threatened election contest or other actual or threatened solicitation of proxies or contests by or on behalf of a person other than a member of the Board; or

- (v) a merger, amalgamation, arrangement or consolidation of the Corporation with any other corporation other than a merger, amalgamation, arrangement or consolidation that would result in the voting securities of the Corporation outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 50% of the combined voting power of the voting securities of the Corporation or such surviving entity outstanding immediately after such merger, amalgamation, arrangement or consolidation; provided, however, that a merger, amalgamation, arrangement or consolidation effected to implement a recapitalization of the Corporation (or similar transaction) in which no person (other than those covered by the exceptions in (i) above) acquires more than 50% of the combined voting power of the Corporation's then outstanding securities shall not constitute a Change in Control.

### **Notice of Termination**

3.07 Any termination of employment by the Corporation or by the Executive shall be communicated by notice of termination to the other party hereto given in accordance with Section 5.09 (a "Notice of Termination"). For purposes of this Agreement, Notice of Termination means a written notice which (a) identifies the specific termination provision in the Agreement relied upon, and (b) to the extent applicable, sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive's employment under the provision identified, and (c)(i) in the case of a termination by the Corporation, specifies the Executive's Termination Date which shall not be less than fifteen (15) nor more than sixty (60) days after the giving of such notice; or (ii) in the case of a termination by the Executive without Good Reason, shall not be less than ninety (90) days after the giving of such notice.

### **Payments After Termination of Employment**

3.08 Payments made by the Corporation to the Executive pursuant to this Agreement after the Executive's Termination Date will be made by courier delivery service to the last address provided for notices to the Executive pursuant to Section 5.09 of this Agreement.

**Release**

3.09 The Release identified in Sections 3.01 and 3.06 will not require the Executive to release any right the Executive may have to indemnification as an officer, director or employee of the Corporation (or any affiliate thereof) pursuant to the articles of incorporation or bylaws (or other governing instruments) of the Corporation (or any affiliate thereof) or any vested benefits to which the Executive may be entitled under any employee benefit plan.

**ARTICLE FOUR — EXECUTIVE’S OBLIGATIONS**

**Confidentiality**

4.01 The Executive agrees to be bound by the terms of the confidentiality agreement (the “Confidentiality Agreement”) dated the date hereof, which Confidentiality Agreement has been read, understood and executed by the Executive and is attached hereto as Schedule A and which is incorporated by reference into this Agreement. In the event of a conflict between the terms of this Agreement and the terms of the Confidentiality Agreement, the terms of this Agreement shall govern.

**Non-Competition**

4.02 The Executive acknowledges that the Corporation and its affiliates currently conducts Business activities in, among other jurisdictions, Canada and the United States (the “Territory”). Accordingly, the Executive hereby agrees and covenants that the Executive shall not, during the term of this Agreement, and for a period of twelve (12) months following the Executive’s Termination Date for involuntary termination by the Corporation for Cause, voluntary termination by the Executive, or a termination following a Change in Control to which the provisions of Section 3.06 apply, directly or in any manner whatsoever, including without limitation, either individually, in partnership, jointly or in conjunction with any other individual, partnership, corporation, unincorporated organization, trust, joint venture, the Crown or any agency or instrumentality thereof of any juridical entity (a “Person”), in the Territory:

- (a) carry on, be engaged in, take part in or be a party to any undertaking, directly or indirectly; or
- (b) consult, advise, render services to lend money, guarantee the debts or obligations of or permit the use of the Executive’s name or any part thereof by any Person with respect to a business carried on by that Person,

which actively competes directly with the business objects of the Corporation and its affiliates or could be judged to be causing or potentially be causing through competitive acts, material harm to the Corporation and its affiliates.

For the purposes of this Section 4.02, as of the date of this Agreement, a Person shall include, but not be limited to, Abbott Laboratories, Andrx Group, Apotex Inc., Bayer Inc., Elan Corporation, Ethypharm S.A., Flamel Technologies, S.A., Forest Laboratories Inc., Johnson & Johnson, King Pharmaceuticals, Inc., Lundbeck Canada Inc., Pfizer Inc., Novopharm Limited, GlaxoSmithKline, Reliant Pharmaceuticals, Inc., Teva Pharmaceutical Industries Ltd., Wyeth Pharmaceuticals and any of their affiliates and subsidiaries which are in the same or a competitive business and, in addition, shall include any pharmaceutical entity with which the Corporation (or any of its affiliates) has a product(s) licensing agreement, any entity in which the Corporation has a minority equity interest and any entity with which the Corporation (or any of its affiliates) is at the time actively negotiating a commercial relationship.

During the continuance of the Executive’s employment, the Executive shall not (other than solely as a holder of not more than three per cent (3%) of the issued and outstanding voting shares of any public corporation or as a shareholder of the Corporation, without the written approval of the Board of directors of the Corporation, directly or indirectly, either individually or in partnership or in conjunction with any Person or Persons, firm, association, syndicate, company or corporation as principal, agent, director, manager, servant, shareholder or in any other manner whatsoever,) carry on or be engaged in or be concerned with or interested in any business or vocation whatsoever which would be reasonably judged to be competitive to the Business or would impede the Executive in performing the Executive’s duties as outlined herein.

**Non-Solicitation**

4.03 The Executive hereby covenants and agrees that the Executive shall not, during the term of this Agreement and for a period of twelve (12), months thereafter, solicit or contact, either directly or indirectly, any of the Customers, Prospective Customers or any suppliers of the pharmaceutical compounds used by the Corporation and its affiliates on the Executive’s own behalf, or on behalf of any entity, by which the Executive is hired or retained. “Customers” means customers of the Corporation and its affiliates with which the Executive had personal contact or had supervision over the efforts of those who had direct personal contact with such customers during the last two (2) years of the Employment Term. “Prospective Customer” means any organizations or entities which had been actively contacted and solicited for their business by representatives of the Corporation and its affiliates, and with whom the Executive had contact, both during the last two (2) years of the Employment Term.

**Non-Hiring**

4.04 The Executive hereby covenants and agrees that the Executive shall not, during the term of this Agreement and for a period of twelve (12) months thereafter, either directly or indirectly, solicit or endeavour to solicit from the Corporation or any of its affiliates any of its employees, and shall not for a period twelve (12) months from the end of the term of this Agreement hire any of the foregoing on the Executive’s own behalf or on behalf of any entity for which the Executive is hired

or retained. Notwithstanding the foregoing, the Executive shall not be considered in breach of this section should the Executive solicit for hiring such Executive’s administrative assistant.

**Injunctive Relief**

4.05 The Executive acknowledges and agrees that the agreements and covenants in this Article Four are essential to protect the business and goodwill of the Corporation and that a breach by the Executive of the covenants in Sections 4.01, 4.02, 4.03 and 4.04 hereof could result in irreparable harm to the Corporation and its affiliates for which the Corporation and its affiliates could not be adequately compensated in damages and that, accordingly, the Corporation and its affiliates may have no adequate remedy at law if the Executive breaches such provisions. Consequently, if the Executive breaches any of such provisions, the Corporation and its affiliates shall have, in addition to and not in lieu of, any other rights and remedies available to it under any law or in equity, the right to obtain injunctive relief to restrain any breach or threatened breach thereof and to have such provisions specifically enforced by any court of competent jurisdiction.

**Severability of Covenants in Full or in Part**

4.06 The parties acknowledge that the provisions of Article Four hereof (the “Restrictive Covenants”) are reasonable and valid in geographic and temporal scope and in all other respects. If any court of competent jurisdiction determines that any of the Restrictive Covenants or any part thereof, is or are invalid or unenforceable, the Executive and the Corporation agree that the remainder of the Restrictive Covenants shall not be affected by the deemed invalid portions.

**Assignment of IP**

4.07 The Executive shall disclose to the Corporation any and all Intellectual Property (as defined in the Confidentiality Agreement) which the Executive may make solely, jointly, or in common with other employees during the term of the Executive’s employment within the Corporation and its affiliates and which relates to the business. Any Intellectual Property coming within the scope of the business made and/or developed by the Executive while in the employ of the Corporation and its affiliates, whether or not conceived or made during regular working hours, and whether or not the Executive is specifically instructed to make or develop same, shall be for the benefit of the Corporation and its affiliates and shall be regarded as work made in the course of employment for the purposes of the *Copyright Act* (Canada). The Executive shall assign, set over and transfer to the Corporation and its affiliates the Executive’s entire right, title and interest in and to any and all of the Intellectual Property and to all letters patent and applications for letters patent which may be, or may have been filed and/or issued by or to the Executive or on the Executive’s behalf and the Executive agrees to execute and deliver to the Corporation and its affiliates any and all instruments necessary or desirable to accomplish the foregoing and, in addition, to do all lawful acts which may be necessary or desirable to assist the Corporation and its affiliates to obtain and enforce protection of the Intellectual Property. To the extent of any rights Executive may have with respect to the Intellectual Property which are not assignable, including but not limited to moral rights, the Executive hereby waives same. The Executive will execute and deliver to the Corporation and its affiliates or their respective successors and assigns, such other and further assignments, instruments and documents as the Corporation and its affiliates from time to time reasonably may request for the purpose of establishing, evidencing, and enforcing or defending its complete, exclusive,

perpetual, and world-wide ownership of all rights, titles, and copyrights, in and to the Intellectual Property, and Executive constitutes and appoints the Corporation and its affiliates as agent and attorney-in-fact, with full power of substitution, to execute and deliver such assignments, instruments, documents as Executive may fail to or refuse to execute and deliver, this power and agency being coupled with an interest and being irrevocable.

**Standards of Business Conduct**

4.08 The Executive acknowledges and agrees that the Executive has read and understood and agrees to be bound by the Corporation’s Standards of Business Conduct, which is attached hereto as Schedule B.

**No Conflicting Obligations**

- 4.09 The Executive warrants to the Corporation that:
- (a) the performance of the Executive’s duties as an employee of the Corporation and its affiliates will not breach any agreement or other obligation to keep confidential the Confidential Information of any third party; and
  - (b) the Executive is not bound by any agreement with or obligation to any third party that conflicts with the Executive’s obligations as an employee of the Corporation and its affiliates.

**ARTICLE FIVE — INTERPRETATION AND ENFORCEMENT**

**Section 409A**

5.01 This Agreement shall be interpreted to avoid any penalty sanctions under Internal Revenue Code section 409A. If any payment or benefit cannot be provided or made at the time specified herein without incurring sanctions under section 409A, then such benefit or payment shall be provided in full at the earliest time thereafter when such sanctions will not be imposed. For purposes of section 409A of the Code, all payments to be made upon a termination of employment under this Agreement may only be made upon the Executive’s “separation from service” (within the meaning of such term under section 409A of the Code), each payment made under this Agreement shall be treated as a separate payment, and the right to a series of installment payments under this Agreement shall be treated as a right to a series of separate payments. In no event shall the Executive, directly or indirectly, designate the calendar year of payment, except as permitted under section 409A of the Code.

Notwithstanding anything herein to the contrary, if, at the time of the Executive’s termination of employment with the Corporation, the Corporation or its affiliates has securities which are publicly traded on an established securities market and the Executive is a “specified employee” (as such term is defined in section 409A of the Code) and it is necessary to postpone the commencement of any payments or benefits otherwise payable under this Agreement as a result of such termination of employment to prevent any accelerated or additional tax under section 409A of the Code, then the Corporation shall postpone the commencement of the payment of any such payments or benefits hereunder (without any reduction in such payments or benefits ultimately paid or provided to the



Executive) that are not otherwise paid within the ‘short-term deferral exception’ under Treas. Reg. section 1.409A-1(b)(4) and/or the ‘separation pay exception’ under Treas. Reg. section 1.409A-1(b)(9)(iii), until the first payroll date that occurs after the date that is six months following the Executive’s “separation of service” with the Corporation. If any payments are postponed due to such requirements, such postponed amounts shall be paid in a lump sum to the Executive on the first payroll date that occurs after the date that is six months following Executive’s “separation of service” with the Corporation. If the Executive dies during the postponement period prior to the payment of postponed amount, the amounts withheld on account of section 409A of the Code shall be paid to the personal representative of the Executive’s estate within 60 days after the date of the Executive’s death. The determination of key employees, including the number and identity of persons considered key employees and the identification date, shall be made by the Board of Directors of Biovail Corporation in accordance with the provisions of sections 416(i) and 409A and the regulations issued thereunder.

All reimbursements and in kind benefits provided under this Agreement shall be made or provided in accordance with the requirements of section 409A, including, where applicable, the requirement that (i) any reimbursement shall be for expenses incurred during the Executive’s lifetime (or during a shorter period of time specified in this Agreement), (ii) the amount of expenses eligible for reimbursement, or in kind benefits, provided during a calendar year may not affect the expenses eligible for reimbursement, or in kind benefits to be provided, in any other calendar year, (iii) the reimbursement of an eligible expense will be made on or before the last day of the calendar year following the year in which the expense is incurred, and (iv) the right to reimbursement or in kind benefits is not subject to liquidation or exchange for another benefit.

**Independent Legal Advice**

5.02 The Executive agrees to the terms and conditions of this Agreement having had the opportunity to receive independent legal advice, for which the Executive has been reimbursed by the Corporation.

**Severability**

5.03 The parties further acknowledge that if any provision contained in this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof shall continue in full force and effect.

**Sections and Headings**

5.04 The division of this Agreement into Articles and Sections and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Agreement.

**Number and Gender**

5.05 In this Agreement words importing the singular number only shall include the plural and vice versa and words importing the masculine gender shall include the feminine and neuter genders and vice versa.

**Entire Agreement**

5.06 This Agreement and all the Schedules hereto constitute the entire Agreement between the parties with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the parties with respect thereto. There are no representations, warranties, forms, conditions, undertakings or collateral Agreements, express, implied or statutory between the parties other than as expressly set forth in this Agreement.

**Amendments and Waivers**

5.07 No amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by both parties. No waiver of any breach of any term or provision of this Agreement shall be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided in written waiver, shall be limited to the specific breach waived.

**Governing Law**

5.08 This Agreement shall be deemed to have been made in and shall be construed in accordance with the laws of Barbados and all legal proceedings contemplated in this Agreement shall be brought in, and be governed by, the laws of the Barbados, without regard to principles of conflicts of law.

**Notices**

5.09 Any demand, notice or other communication (hereinafter in this Section 5.09 referred to as a “Communication”) to be made or given in connection with this Agreement shall be made or given in writing and may be made or given by personal delivery addressed respectively to the recipients:

To the Executive:

Michel Chouinard  
xxx

To the Corporation:

7150 Mississauga Road  
Mississauga, ON L5N 8M5  
Attn: Chief Executive Officer

or such other address or individual as may be designated by notice by either party to the other. Any communication made or given by personal delivery shall be conclusively deemed to have been given on the day of the actual delivery thereof.

**Benefit of Agreement**

5.10 This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, legal personal representatives, successors and assigns.

**Assignment**

5.11 The Executive may not assign the Executive’s rights or obligations under this Agreement without the prior written consent of the Corporation which consent may be unreasonably withheld. The Corporation may unilaterally assign this agreement to an affiliate without consent but on notice to the Executive.

**Execution of Agreement**

5.12 The Executive acknowledges that the Executive has executed this Agreement freely; that the Executive has reviewed this Agreement thoroughly; that the Executive agrees with its contents; and that the terms herein are reasonable for the fair protection of both the Executive and the Corporation.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the dates identified below at St. Michael, Barbados.

BIOVAIL CORPORATION

EXECUTIVE

By: /s/ W. WELLS

/s/ MICHEL CHOUINARD

Name: William Wells  
Title: Chief Executive Officer

Michel Chouinard

Date: 10-22-08

Date: August 13, 2008

**SCHEDULE A**  
**BIOVAIL CORPORATION**  
**(and its Subsidiaries, Divisions, and Affiliates)**  
**CONFIDENTIALITY AGREEMENT**

As an employee of Biovail Corporation (the “Corporation”), I acknowledge that I may acquire or have disclosed to me by the Corporation or by any affiliate, associate, or technology partner of the Corporation, either directly or indirectly, in writing, conversation, or through observation, various information about the business of the Corporation which is not in the public domain and which the Corporation does not wish to be divulged to other persons, companies, or third parties. I further understand that the Corporation’s Confidential Information (as defined below) is essential to its competitive advantage and to its ability to be financially viable. I further understand that the unauthorized disclosure of such Confidential information may cause the Corporation irreparable injury that may not be rectified in the future.

Therefore, as a condition and in consideration of my employment with the Corporation, I understand and agree that while employed with the Corporation and thereafter (as more particularly described below). I am required to hold confidential and not to disclose to anyone without the written authority from the Corporation any knowledge, information, or facts concerning the Corporation’s:

- research and development activities
- technological plans, advances, applications and inventions
- technical specifications, designs and plans
- materials and sources of supply
- discoveries, inventions, trade secrets, patents
- financial affairs, contracts, licensing agreements, customer lists, pricing practices, marketing strategies
- any other information regarding the Corporation, its products and their development which is not in the public domain

All of the foregoing shall hereinafter collectively be referred to as the “Confidential Information”.

I shall keep confidential any and all Confidential Information which has been disclosed to me in writing or through oral communications and shall not divulge in any manner whatsoever any such information to any person, firm, corporation, partnership or similar entities without the Corporation’s written authority.

Should I breach or threaten to breach this Agreement, I shall be liable to the Corporation in equity and/or in law for damages that may be suffered by the Corporation as a result of the breach or threatened breach. I understand that a breach of this Agreement may result in irreparable harm to the Corporation such as to warrant the entitlement by the Corporation to an interlocutory and/or permanent injunction or other equitable relief against me, and an

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award of damages including punitive, exemplary and aggravated damages, together with legal costs and expense and I specifically agree that I will not argue the adequacy of damages or the Corporation's ability to seek equitable relief in any such proceeding.

All Confidential Information supplied by the Corporation to me during the course of my employment and any rights related thereto, including but not limited to rights of know how, patent, trademark and copyright, with respect to existing products or those that are developed during or after my employment, are and remain the exclusive and absolute property of the Corporation.

I shall not, except as and to the extent required to enable me to carry out my duties with the Corporation, make any copies or reproduce the Confidential Information nor shall I remove or cause to have removed from the premises of the Corporation during my employment any Confidential Information unless required to do so in order to fulfill my duties with the Corporation. Such copies or reproductions shall be strictly subject to the terms and conditions of this Agreement. I shall take such steps as are necessary to restrict access to and protect the confidentiality of such copies or reproductions of the Confidential Information. Any such copies or reproductions made shall become the exclusive and absolute property of the Corporation.

Upon request of the Corporation, I agree to immediately surrender to the Corporation all documentation and information - notes, drawings, recordings, manuals, letters, correspondence, computer data and programs, records, books or any other materials relating to the Confidential Information which is in my possession without my retaining any copies or duplicates thereof.

I agree that this Agreement shall be construed in accordance with the laws of the Province of Ontario and I agree that the applicable courts of the Province of Ontario shall have exclusive jurisdiction with respect to any dispute or breach herein and I hereby attorn to the exclusive jurisdiction of the courts of the Province of Ontario.

This Agreement shall enure to the benefit of and shall be binding upon my successors, heirs and attorneys.

The disclosure or divulging of any Confidential Information contrary to this Agreement, or the violation of this Agreement in any way shall result in my immediate termination of employment, in addition to which I may be subject to criminal prosecution and civil liability.

I acknowledge and agree that I have executed this Agreement freely and with the benefit of independent legal advice and the terms herein are fair and reasonable.

I acknowledge and agree to the foregoing.

Employee Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Witness Signature: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_

## SCHEDULE B



### **BIOVAIL CORPORATION (and its Subsidiaries, Divisions, and Affiliates)**

#### **STANDARDS OF BUSINESS CONDUCT**

Biovail Corporation ("Biovail"), together with its subsidiaries, divisions and affiliates, places great importance on conducting its business activities in an ethical and appropriate manner. Each employee, officer and director is a reflection of Biovail, and as such, the activities and actions of every individual within Biovail must be undertaken in accordance with a high standard of ethics and integrity. As such, Biovail expects each employee, officer and director to comply with, and adhere to, these Standards of Business Conduct (the "Standards").

#### **1. CONFLICTS OF INTEREST**

Employees, officers and directors of Biovail must avoid situations where their private interests could conflict with, or even appear to conflict with, the interests of Biovail and its stockholders.

Conflicts of interest arise when an individual's position or responsibilities with Biovail present an opportunity for personal gain apart from the normal rewards of employment. They also arise when the private interests of an employee, officer or director are inconsistent with those of Biovail or create conflicting loyalties. Such conflicting loyalties can cause an employee, officer or director to give preference to private interests in situations where corporate responsibilities should come first. Employees, officers and directors must perform the responsibilities of their positions on the basis of what is in the best interests of Biovail and free from the influence of personal considerations and relationships.

In the event that any potential conflict of interest arises, the individual involved must immediately notify his or her immediate supervisor. If such individual is an officer or director of Biovail, the Executive Chairman ("Chairman"), Chief Executive Officer ("CEO") and the General Counsel, or in the absence of a General Counsel the Vice President, Associate General Counsel ("SLO") of Biovail must also be immediately notified and no further action may be taken unless authorized in writing by the Chairman and/or the CEO.

While it is not possible to detail every situation where conflicts of interest may arise, the following policies cover the areas that have the greatest potential for conflict:

#### **A. Trading in Biovail Securities and Use of Inside Information**

There are numerous laws in Canada and the United States (federal, provincial and state laws), to regulate transactions in corporate securities (stocks and bonds) and the securities

industry. Violation of these laws may lead to civil and criminal actions against the individual and Biovail.

- i. Any employee, officer, director or other insider or anyone (family member, etc.) who knows of any material information (as defined below) about Biovail that has not been disclosed to the public (commonly known as “insider information”) may not engage in any transaction in Biovail’s securities until such information is disclosed to the public (whether or not there is a formal trading “black out” in place). This rule applies equally to transactions in securities of other companies. In addition, employees, officers and directors must not provide insider information to others (“tippees”) who may trade in either the securities of Biovail or the securities of other companies.

“Material information” is any information relating to the business and affairs of Biovail that would reasonably be expected to result in a change in the market price or value of Biovail’s securities. Generally speaking, material information is a matter to which an average prudent investor should be reasonably informed before a decision is made to buy or sell the security involved. Examples of such information would include annual or quarterly financial results; significant changes in management; significant shifts in operating or financial circumstances, such as major write-offs and changes in earnings projections; borrowing of a significant amount of funds; acquisitions of, or mergers with, other companies; significant new contracts or loss of business; and major new products, services or patents. This list provides examples only; many other matters may be considered material information.

Employees, officers, directors and other insiders who have questions that relate to the sale or purchase of a security under circumstances where these laws and regulations might apply should consult with the SLO, who may refer them to outside legal counsel.

- ii. In addition to the prohibition against the use of “insider” information which applies to all employees, officers and directors, the various securities laws that apply in the jurisdiction and countries in which Biovail does business place definite restrictions on the manners in which employees, officers and directors of Biovail, and their family members, their associates, etc., may engage in transactions involving the securities of Biovail. Employees, officers and directors shall comply with all laws, rules and regulations that prohibit or restrict insider trading.

Whenever there is any doubt as to whether any transactions involving Biovail’s securities would violate securities laws, employees, officers and directors should consult the SLO of Biovail. Within the



framework of the foregoing policies and laws, the final decision of each employee, officer or director, with respect to securities transactions, must be his or her own.

- iii. Employees, officers, directors and other insiders shall maintain the confidentiality of information entrusted to them by Biovail or its customers (except where disclosure is authorized or legally mandated) and shall not, without proper authority, give or release to anyone not employed by Biovail, data or information of a confidential nature concerning Biovail. Disclosure of confidential information can be harmful to Biovail and could be the basis for legal action against Biovail and the individual disclosing the information. Confidential information includes all non-public information that might be of use to competitors, or harmful to Biovail or its customers, if disclosed.
- iv. Employees, officers, directors and other insiders shall not acquire any property, security or any business interest that they know Biovail has an interest in acquiring. Moreover, based on such advance information, employees, officers and directors shall not acquire any property, security or business interest for speculation or investment.
- v. Employees, officers, directors and other insiders must follow Biovail policies regarding “Blackout Periods” when Biovail’s stock may not be traded. Such policies will be communicated by the SLO from time to time and must be adhered to by all employees, officers and directors.

## **B. Personal Financial Interest**

Employees, officers and directors should avoid any outside financial interests that might influence decisions or actions they have been empowered to make on behalf of Biovail. An employee, officer or director performing duties in conformity with this policy shall not have a financial interest in, indebtedness to, or a personal contract or understanding with any concern with which he or she does business on behalf of Biovail.

- i. Employees, officers or directors whose corporate duties bring them into business dealings with an organization in which they, or a member of their family, have a financial interest or to which they, or a member of their family, have any indebtedness, or a business employing a relative or close friend, must immediately notify their immediate supervisor. The employee, officer or director, in turn, cannot complete a transaction on behalf of Biovail with this organization unless properly authorized in writing from their supervisor after full disclosure of the relationship.
- ii. An employee, officer or director may not perform work or services, outside the course of their normal employment by Biovail, for an

organization doing or seeking to do business with Biovail without appropriate prior written approval of their supervisor or the Board of Directors. An employee, officer or director may not be a director, officer, partner or consultant of an organization doing or seeking to do business with Biovail, nor may any of them permit their names to be used in any way indicating a business connection with such an organization, without appropriate prior written approval of their supervisor or the Board.

- iii. An employee, officer or director shall not accept for himself or herself, or for the benefit of any relative or friend, any payments, loans, services, favors involving more than ordinary social amenity, or gifts of more than nominal value from any organization doing or seeking to do business with Biovail.
- iv. The requirement of freedom from conflict of interest applies with equal force to the spouse, children and other close relatives of each employee, officer and director. This policy applies to all employees, officers and directors of Biovail with respect to all of the affairs of Biovail.
- v. Employees, officers and directors shall not (a) take for themselves personally opportunities that are discovered through the use of corporate property, information or position; (b) use corporate property information, or position for personal gain; (c) compete with Biovail. Employees, officers and directors owe a duty to Biovail to advance its legitimate interests when the opportunity to do so arises.
- vi. Biovail may not make loans to any employee, officer or director.

#### **C. Outside Activities**

Employees, officers and directors should avoid outside employment or activities which would impair the effective performances of their responsibilities to Biovail, either because of excessive demands on their time, or because the outside commitments can be contrary to their obligations to Biovail

#### **D. Protection and Proper Use of Biovail's Assets**

All employees, officers and directors should protect Biovail's assets and ensure their efficient use. Theft, carelessness and waste have a direct impact on Biovail's profitability. All of Biovail's assets should be used only for legitimate business purposes.

#### **E. Fair Dealing**

Each employee, officer and director shall endeavor to deal fairly with Biovail's customers, suppliers, competitors and employers. None should take unfair advantage of anyone through

manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other unfair-dealing practice,

**2. COMPETITIVE PRACTICES**

The management of Biovail firmly believes that fair competition is fundamental to continuation of the free-enterprise system. Biovail complies with, and supports, laws of all countries that prohibit restraints of trade, unfair practices, or abuse of economic power.

Biovail will not enter into arrangements that unlawfully restrict its ability to compete with other businesses, or the ability of any other business organization to compete freely with Biovail. Biovail policy also prohibits employees, officers and directors from entering into, or even discussing, any unlawful arrangement or understanding which may affect its pricing policies, terms upon which its products and services are sold, or which might be construed as dividing customers or sales territories with a competitor.

These principles of fair competition are basic to all Biovail operations. They are integral parts of the following sections that cover Biovail’s dealings with suppliers, customers and public officials.

**3. DEALING WITH SUPPLIERS**

Biovail is a valuable customer for many suppliers of goods, services and facilities. People who want to do business, or to continue to do business, with Biovail must understand that all purchases by Biovail will be made in accordance with its purchasing policy and exclusively on the basis of price, quality, service and suitability to Biovail’s needs.

**A. Reciprocity**

Biovail considers reciprocity a harmful practice and a hindrance to assuring purchase of the best available materials or services at the lowest possible prices. It will not be practiced or allowed.

Suppliers of goods and services to Biovail will not be asked to buy goods and services from Biovail in order to become or continue as a supplier.

Biovail will not attempt to influence its suppliers to purchase from customers of Biovail. When Biovail makes purchases it will not favor firms who are customers of Biovail or any of its affiliates.

**B. “Kickbacks” and Rebates**

Purchases or sales of goods and services by Biovail must not lead to employees, officers or directors, or their families, receiving any type of personal kickbacks or rebates. Employees, officers, directors, and their families, must not accept any form of “under-the-table” payment.

**C. Receipt of Gifts and Entertainment**

Even when gifts and entertainment are exchanged out of the purest motives of personal friendship, they can be misunderstood. They can appear to be attempts to bribe Biovail’s employees, officers or directors into directing business of Biovail to a particular supplier. To avoid both the reality and the appearance of improper relations with suppliers or potential suppliers, the following standards will apply to the receipt of gifts and entertainment by employees, officers and directors of Biovail:

**Gifts**

- i) Employees, officers and directors are prohibited from soliciting gifts, gratuities, or any other personal benefit or favor of any kind from suppliers or potential suppliers. Gifts include not only merchandise and products but also personal services, and tickets to theatrical and sports events. Employees, officers and directors should exercise good judgment when accepting unsolicited gifts. Employees, officers and directors are prohibited from accepting gifts of money.
- ii) Employees, officers and directors may accept unsolicited non-money gifts provided:
  - (1) They are items of nominal intrinsic value; or
  - (2) They are advertising and promotional materials, clearly marked with Biovail or brand names of the giver.
- iii) Any gift of more than nominal intrinsic value must be reported to the SLO to determine whether it can be accepted. Some gifts may be perishable so as to make their return impractical. Supervisors can permit acceptance of such gifts, but should require employees, officers and directors to tactfully inform givers that such gifts are discouraged.
- iv) In the transaction of some international business, it is lawful and customary for business leaders in some countries to give unsolicited gifts to employees, officers or directors of Biovail. These gifts can be of more than nominal value. Moreover, under the circumstances, returning the gifts or payment for them may constitute an affront to the giver. In such cases, the gift must be reported to the SLO who may permit the retaining of the gifts.
- v) In all other instances where gifts cannot be returned or may adversely affect Biovail’s continuing business relationships, the SLO must be notified. They can require employees, officers and directors to transfer ownership of such gifts to Biovail.

**Entertainment**

- i) Employees, officers and directors shall not encourage or solicit entertainment from any individual or company with whom Biovail does business. Entertainment includes, but is not limited to, activities such as dinner parties, theater parties, and sporting events.
- ii) From time to time employees, officers and directors may accept unsolicited entertainment, but only under the following conditions:
  - (1) The entertainment occurs infrequently;
  - (2) It arises out of the ordinary course of business;
  - (3) It involves reasonable, not lavish expenditures (the amounts involved should be ones employees, officers and directors are accustomed to normally spending for their own business or personal entertainment); and
  - (4) The entertainment takes place in settings that also are reasonable, appropriate, and fitting to employees, officers and directors, their hosts, and their business at hand.

**4. DEALINGS WITH CUSTOMERS AND POTENTIAL CUSTOMERS**

Employees, officers and directors must keep all dealings with customers and potential customers fair and above board. Biovail gets business and keeps it because of the quality of its goods and services. Biovail does not give unethical or illegal rebates, kickbacks, under-the-table payments, or other similar improper favors to customers or their representatives.

The boundary line between ethical and unethical competition, or legal and illegal conduct, is not always well defined, particularly in international activities where differing local laws, custom; and practices come into play. Therefore, the following standards will serve as guides:

- a) All employees, officers and directors should make themselves aware of and fully comply with all laws, rules and regulations, whether federal, state, local or foreign, including laws governing relations with customers as well as competitors.
- b) All employees, officers and directors engaged in negotiations and contracts with foreign governments, the United States or any political subdivision thereof must also know and abide by the specific rules and regulations covering relations with such governments and their agencies.
- c) Employees, officers and directors may not give gifts to customers except items of nominal value, which fit the legal, normal, and customary pattern of Biovail’s sales efforts for a particular market. Exceptions to this policy can

occur in international trades where it can be legal, customary, and appropriate business practice to exchange gifts with customers. Only the CEO can authorize the giving, receiving, or exchanging of such gifts. Any gifts received by employees, officers or directors in such an exchange must be reported to the CEO for determination as to the disposition of the gifts.

- d) Entertainment for any customer must fit regular business practices. The place and type of entertainment and the money spent must be reasonable and appropriate.

## 5. DEALING WITH PUBLIC OFFICIALS

Domestic and foreign laws and regulations require Biovail to be in contact with public officials on a wide variety of matters. Employees, officers and directors who regularly make these contacts have special responsibilities for upholding Biovail's good name. The following standards relate to these special responsibilities:

- a) All employees, officers and directors who contact public officials must be familiar with lobbying laws and public disclosure requirements, particularly those that apply to registrations and filings.
- b) No employee shall make any form of payment, direct or indirect, to any public official as an inducement to procuring or keeping business or having a law or regulation enacted, defeated, or violated. This is bribery, pure and simple. It will not be tolerated.

It should be acknowledged that inherent in the current health-care regulatory environment, the definition of "form of payment" may include seemingly trivial gifts and/or favors (e.g. buying lunches, coffee, etc.).

- c) When not prohibited by law, employees, officers and directors are allowed to give to public officials gifts where the presentation and acceptance of gifts is an established custom and a normal business practice. All such gifts shall be of reasonable value and the presentation approved in advance by the CEO. Moreover, such gifts must be presented in a manner that clearly identifies Biovail and the occasion that warrants the presentation.
- d) Employees, officers and directors are also allowed to give public officials gifts in the form of product models and pictures provided the models and pictures are part of Biovail's general marketing and public relations programs (except as noted in clause (b) above).
- e) On special ceremonial occasions, officers of Biovail may publicly give gifts of more than nominal value to public institutions and public bodies. Such gifts can commemorate special events or milestones in Biovail's history.

These may be transmitted through public officials but the gifts are given to the public institutions and public groups they represent, not to the officials personally.

- f) From time to time employees, officers and directors may entertain public officials, but only under the following conditions:
  - i. It is legal and permitted by the entity represented by the official;
  - ii. The entertainment is not solicited by the public official;
  - iii. The entertainment occurs infrequently;
  - iv. It arises out of the ordinary course of business;
  - v. It does not involve lavish expenditures, considering the circumstances;
  - vi. The settings and types of entertainment are reasonable, appropriate and fitting to our employees, officers or directors, their guests, and the business at hand.

## **6. POLITICAL ACTIVITIES AND CONTRIBUTIONS**

### **A. Canada and the United States**

Employees, officers and directors who participate in partisan political activities must make every effort to ensure that they do not leave the impression that they speak or act for Biovail.

Biovail encourages its employees, officers and directors to participate in political activities in their own time and at their sole expense. No corporate action, direct or indirect, will be allowed that infringes on the right of any employee individually to decide whether, to whom, and in what amount, they will make personal political contributions. The same is true of volunteer political donations of personal service time, so long as it does not interfere with the working status of employees, officers or directors.

### **B. Outside Canada and the United States**

No employees, officers and directors are permitted to use Biovail's funds, facilities, or other assets, to support either directly or indirectly any political candidates or political parties, without advance authorization in writing from their immediate supervisor and the General Counsel. The policy of Biovail is that employees, officers and directors and employees should not participate in political activities in countries of which they are not nationals. However, such persons, of course, are free to participate in political activities in countries of which they are nationals in their own time and at their own expense.

**7. DISCLOSURE**

Biovail has formed a Disclosure Committee to promote consistent practices aimed at informative, timely and broadly disseminated disclosure of Material Information to the market, external stakeholder groups and employees in accordance with all applicable legal, regulatory and stock-exchange requirements.

It is essential that the Disclosure Committee be fully apprised of all material corporate developments to be able to determine whether there is information that should be publicly disclosed, and what the appropriate timing is for release of that information. In some cases, the Disclosure Committee may determine that the information should remain confidential. If that is the case, the Disclosure Committee will determine how that information will be controlled so that it is not inadvertently released. Therefore any employee who becomes aware of information that he/she believes might be material to Biovail and/or any of its affiliates and subsidiaries he/she should advise their manager or supervisor or a member of the Disclosure Committee. Current membership of the Disclosure Committee is posted on the Biovail.com website.

This applies throughout the year, but is particularly critical when annual or quarterly financial statements and Management Discussion and Analysis (MD&A) or regulatory filings are being prepared (e.g. regulatory filings, such as the U.S. Securities and Exchange Commission, Form 20-F).

**8. PUBLIC COMMUNICATIONS**

Given the importance placed on confidentiality and the appropriate disclosures of information regarding Biovail, it is important for employees, officers and directors to ensure that care be taken with any communication regarding Biovail or its activities outside of Biovail.

**A. Designated Spokespersons**

Biovail has designated official spokespersons who are authorized to speak on behalf of Biovail, and answer questions from the news media and the investment community, about Biovail and its activities. Employees, officers and directors who have not been designated as spokespersons for Biovail are not permitted to speak on behalf of the Company to the news media or to the investment community.

**B. Media or Analyst Inquiries**

Any employee who is approached by any person asking for comment on the activities of Biovail must direct any and all such inquiries to a member of the Disclosure Committee or to a member of the Company’s Stakeholder Relations team (Corporate Communications, Investor Relations) so that an appropriate spokesperson can respond to the inquiry on behalf of Biovail.



**C. Conferences**

The Disclosure Committee should be advised of any request to present at any conference or public meeting. Certain materials prepared for any such presentation may be required to be reviewed by the Company’s Stakeholder Relations group.

**D. Electronic Communications**

Care must be taken in all instances in the use of e-mail, and other devices (e.g., Blackberry’s) in communications relating to Biovail’s business. While users tend to resort to shorthand communication using these kinds of tools, those communications do form a record of those communications that may be subject to later review and disclosure. A more fulsome policy regarding electronic communications is in place (found in the Human Resources Management System Policy Binder) and should be adhered to by all employees, officers and directors.

**E. The Internet**

Biovail has instituted policies regarding the use of, and access to the Internet by employees, officers and directors. These policies include a prohibition against anyone participating in any chat rooms dedicated to Biovail or its operations or the industry at large. If any employee, officer or director becomes aware that any such chat room exists, they are asked to report the address of such site to the SLO so that it may be monitored and appropriate action may be taken.

**9. EQUAL OPPORTUNITY**

Biovail supports the principle that every individual must be accorded an equal opportunity to participate in the free-enterprise system and to develop their ability to achieve their full potential within that system.

There shall be no discrimination against any employee or applicant because of race, religion, color, sex, age, sexual orientation, national or ethnic origin, or disability (as required by law) or any other consideration prohibited by local law. All employees, officers and directors will be treated with equality during their employment without regard to their race, religion, color, sex, age, national or ethnic origin, or physical handicap, in all matters, including employment, upgrading, promotion, transfer, layoff, termination, rates of pay, selection for training and recruitment. Biovail will maintain a work environment free of discriminatory practice of any kind.

No employee shall have any authority to engage in any action or course of conduct or to condone any action or course of conduct by any other person which shall in any manner, directly or indirectly, discriminate or result in discrimination in the course of one’s employment, termination of employment, or any related matter where such discrimination is, directly or indirectly, based upon race, religion, color, sex, age, sexual orientation, national or ethnic origin, disability, or any other consideration prohibited by law.

**10. HEALTH, SAFETY, AND ENVIRONMENTAL PROTECTION**

It is Biovail’s policy to pay due regard to the health and safety of its employees, officers, directors and others, and to the state of the environment. There are federal, provincial, state and local workplace safety and environmental laws which through various governmental agencies regulate both physical safety of employees, officers and directors and their exposure to conditions in the workplace. Should you be faced with an environmental health issue or have a concern about workplace safety, you should contact your Health and Safety Committee representative or notify Biovail management immediately.

Many countries and their regional and local governments now have complex legislation to protect the health and safety of employees, or the general public, and to prevent pollution and protect the environment. In case of violation, these laws often provide penalties for both the company involved and its executive personnel. Biovail’s SLO should always be consulted when necessary to understand or comply with such laws.

**11. WORK ENVIRONMENT**

Employees, officers and directors must treat each other with professional courtesy and respect at all times. Employees, officers and directors shall not subject any other employee to unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct which might be construed as sexual in nature, or harass others on the basis of race, disability, gender, sexual orientation or any other consideration prohibited by law. Such conduct may constitute sexual harassment or harassment under federal, provincial and state law and may be the basis for legal action against the offending employee and/or Biovail.

Employees are encouraged to report all conduct that they believe in good faith to be violations of local anti-harassment policies. To the extent permissible under local law the identity of the employees, officers or directors involved will be kept strictly confidential, and will not be revealed by Biovail’s management without the employee’s permission. The alleged harassment will be thoroughly investigated by Biovail and appropriate action will be taken. Biovail has an appropriate policy to protect employees against discrimination or retaliation as a result of such a complaint.

**12. INTEGRITY OF RECORDS AND FINANCIAL REPORTS**

It is of critical importance that Biovail’s filings with the appropriate regulatory authorities (e.g. U.S. Securities and Exchange Commission) be accurate and timely. Depending on their position with Biovail, an employee, officer or director may be called upon to provide necessary information to ensure that Biovail’s public reports are complete, fair and understandable. Biovail expects employees, officers and directors to take this responsibility very seriously and to provide prompt accurate answers to inquiries related to Biovail’s public disclosure requirements.

The integrity of Biovail’s record keeping systems will be respected at all times. Employees, officers and directors are forbidden to use, authorize, or condone the use of “off-the-books” bookkeeping, secret accounts, unrecorded bank accounts, “slush” funds, falsified books, or

any other devices that could be utilized to distort records or reports of Biovail’s true operating results and financial conditions or could otherwise result in the improper recordation of funds or transactions.

**13. USE OLD AGENTS AND NON-EMPLOYEES, OFFICERS AND DIRECTORS**

Agents or other non-employees cannot be used to circumvent the law. Employees, officers and directors will not retain agents or other representatives to engage in practices that run contrary to the Standards of Business Conduct or applicable laws.

**14. INTERNATIONAL OPERATIONS**

Employees, officers and directors operating outside of Canada and the United States have a special responsibility to know and obey the laws and regulations of countries where they act for Biovail. Customs vary throughout the world, but all employees, officers and directors must uphold the integrity of Biovail in other nations diligently.

**15. STANDARDS OF BUSINESS CONDUCT**

**A. Initial Distribution**

- i. Employees, officers and directors designated to receive these Standards will receive their copies immediately after publication.
- ii. Future employees, officers and directors designated to receive these Standards will receive their copies at the time they are hired.

**B. Initial Verification**

Upon receiving their copy of the Standards, employees, officers and directors current and future will:

- i. Become thoroughly familiar with the Standards.
- ii. Resolve any doubts or questions about the Standards with their supervisors.
- iii. Inform their supervisors of any existing holdings or activities that might be, or appear to be, inconsistent with, or in violation of, the Standards.
- iv. Prepare written disclosures of such information, if requested, by supervisors.
- v. Take steps to correct existing situations and bring holdings and activities into full compliance with the Standards. Such steps will be approved in writing by supervisors and will be based on the written disclosure submitted by employees, officers or directors.

- vi. Sign the verification and return it to their supervisors who will make it part of employee's permanent corporate records.

**C. Maintaining Compliance**

- i. Employees, officers and directors have the responsibility to maintain their understanding of the Standards of Business Conduct and for following them.
- ii. Supervisors have the responsibility to maintain an awareness on the part of their employees, officers and directors of the importance of their adhering to the Standards of Business Conduct and for reporting deviations to Management.
- iii. As requested by the Board of Directors or senior management, employees, officers and directors will be asked to re-verify their understanding of the Standards of Business Conduct and their compliance with them every year as a part of Biovail's annual reporting.
- iv. Employees, officers and directors must inform their supervisors of any changes in their holdings or activities that might be, or appear to be in non-compliance with the Standards of Business Conduct.
- v. Employees, officers and directors must prepare written disclosure of such information, if requested, by supervisors.
- vi. Employees, officers and directors must take steps to correct any such changes, if necessary, to bring holdings and activities into full compliance. Such steps will be approved in writing by supervisors and Management and will be based on the written disclosures submitted by employees, officers and directors.

**D. Audits of Compliance**

Regular audits of Biovail will include procedures to test compliance with the Standards of Business Conduct.

**16. VIOLATIONS OF STANDARDS**

Employees, officers and directors must immediately report any violations of the Standards or any violation of any applicable law, rule or regulation. Failure to do so can have serious consequences for the employees, officers or directors and for Biovail.

Employees, officers and directors, should report violations to their supervisors and/or to the Human Resources department and to the SLO or to any secure reporting hotline the company may have contracted with. When in doubt, employees should talk to their supervisors or other appropriate personnel to determine the best course of action in a particular situation.

Supervisors and the Human Resources group have the responsibility to promptly and thoroughly investigate all reports, and to report violations to the SLO.

After a violation is investigated, appropriate action will be taken promptly. Management has the right to determine the appropriate disciplinary action for a violation up to and including termination of employment. All proposed disciplinary action is subject to review by senior Management, Human Resources and the SLO.

Employees, officers and directors should be aware that, in addition to any disciplinary action taken by Biovail, violations of certain Standards may require restitution and may lead to civil or criminal action against individual employees, officers and directors and any corporation involved.

Supervisors have the responsibility of taking remedial steps to correct any operating procedures that may contribute to violations of Standards.

Retaliation in any form against an individual who reports a violation of these Standards of Business Conduct or of any law, rule or regulation in good faith, or who assists in the investigation of a reported violation, is itself a serious violation of this policy. Acts of retaliation will be disciplined appropriately and should be reported immediately to your supervisor or Human Resources.

**17. CONTINUANCE OF EXISTING PERSONNEL POLICIES, RULES AND PERFORMANCE STANDARDS**

Biovail has codified numerous personnel policies, rules and standards of employee performance, which continue in force. These Standards of Business Conduct are intended to supplement and amplify those established personnel policies, rules and standards.

It continues to be the responsibility of all employees to comply with all such policies, rules and performance standards. Additionally, all members of management are to continue making certain that employees reporting to them are made aware of established policies, rules and performance standards and comply with them.

**18. AMENDMENT, MODIFICATION AND WAIVER**

Biovail will periodically review these Standards of Business Conduct. These Standards may be amended, modified or waived by the Board of Directors and waivers may also be granted by the Nominating & Governance Committee, subject to the disclosure and other provisions of the Securities Exchange Act of 1934, and the rules there under and the applicable rules of the Toronto Stock Exchange/New York Stock Exchange. Employees, officers and directors will be fully informed of any revisions to the Standards of Business Conduct.

Any waiver of these Standards for any employee other than a director or an executive officer, may only be made by the Executive Chairman or the CEO. Any waiver of these Standards for director or an executive officer may be made only by the Board of Directors or the



**VERIFICATION AND RECEIPT OF UNDERSTANDING**

I have received a copy of Standards of Business Conduct for BIOVAIL CORPORATION and its subsidiaries, divisions and affiliates. I understand how the Standards apply to me. I acknowledge that my receiving the Standards obligates me to follow them and I agree to abide by their conditions.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

*Employee's Copy*

**VERIFICATION AND RECEIPT OF UNDERSTANDING**

I have received a copy of Standards of Business Conduct for BIOVAIL CORPORATION and its subsidiaries, divisions and affiliates. I understand how the Standards apply to me. I acknowledge that my receiving the Standards obligates me to follow them and I agree to abide by their conditions.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

***HR File Copy***



CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT (the “**Agreement**”) is dated as of the 27<sup>th</sup> day of February, 2006.

BY AND BETWEEN:

**Biovail Laboratories International SRL**  
having a business location at  
Barbados

(hereinafter referred to as “Biovail”)

and

**Bord de Lac Ltd**

(hereinafter referred to as the “**Consultant**”)

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**WHEREAS** Biovail wishes to retain the Consultant to provide consulting services to Biovail relating to responsible for the direction, management and control of all aspects of BLS business, the whole as more fully described on Schedule A annexed hereto (hereinafter referred to as the “**Services**”);

**AND WHEREAS** Consultant agrees to be retained for that purpose in accordance with the terms and conditions hereinafter described,

**NOW THEREFORE** in consideration of the terms and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Biovail and Consultant agree as follows:

**1. SERVICES AND REMUNERATION**

- 1.01 The Consultant hereby agrees to provide and perform the Services for, and for the benefit of, Biovail, including such various assignments as may otherwise be requested from time to time by the President of BLS (the “**Supervisor**”) .
  - 1.02 The Consultant’s representative for the provision of the Services hereunder shall be Michel Chouinard. No change to the Consultant’s representative can be made without written agreement by the Supervisor of Biovail.
  - 1.03 In performing the Services, Consultant shall report to, and be subject to the direct supervision of the Supervisor and shall take instructions and directions only from the Supervisor, or such other person as indicated by the Supervisor.
  - 1.04 In consideration of the provision by Consultant of the Services to Biovail, Biovail agrees to pay Consultant a consulting fee (the “**Consulting Fee**”) in the sum of THIRTEEN THOUSAND SEVEN HUNDRED AND FIFTY U.S. DOLLARS (US\$13,750) per month of work of the performed by Consultant in executing the Services, as partial consideration for Consultant’s Services. These fees will be increased annually to reflect, at a minimum, cost of living increases in Barbados.
  - 1.05 The Consultant is also eligible to an annual performance based Bonus up to FIFTY (50%) percent of the sum of the Consulting Fee paid in each calendar year for the duration of the Term of this Agreement, payable within 90 days of the end of each calendar year.
  - 1.06 Consultant shall also be entitled to reimbursement for its reasonable expenses which are: (a) incurred directly in performing the Services; and (b) approved in advance by Biovail in accordance with its applicable expense reimbursement policies in effect from time to time (the “**Consultant Expenses**”).
  - 1.07 The Consulting Fee (and Consultant Expenses, if any) shall be payable by Biovail to Consultant for each month of Services performed under this Agreement, in arrears, within thirty (30) days of receipt by Biovail of a consulting report (the “**Report**”) to be provided by Consultant to Biovail once quarterly (on the last
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Business Day of each calendar month of the Term of this Agreement). For the purposes hereof the term “**Business Day**” means any day other than a Saturday, Sunday or federal, or local statutory holiday, on which banks are normally open for business in Barbados. The Report must contain the following details: (a) an invoice including the number of hours that the Consultant has worked in the previous calendar quarter pursuant to Consultant’s obligations hereunder; (b) details and amounts of the Consulting Expenses, if any (including invoices evidencing any such Consulting Expenses so incurred); and (c) a brief list or explanation of all accomplishments of the Consultant for such calendar in the provision of the Services hereunder.

## **2. TERM**

- 2.01 Biovail and Consultant agree that the term of this Agreement shall be for the period from the date hereof until the termination of the Executive Employment Agreement between Michel Chouinard and Biovail Laboratories International SR.L, not to exceed a 5-year period ending on February 27<sup>th</sup>, 2011. (the “**Term**”). The Agreement may be renewed or extended by mutual Agreement.
- 2.02 Consultant acknowledges and agrees that the Term of this Agreement is temporary and that this Agreement is not intended to create a contract of indefinite duration.

## **3. TERMINATION**

- 3.01 In the event that Biovail, in its sole discretion, determines at any time during the currency of this Agreement that Consultant is in breach of the terms and conditions hereof or is otherwise not performing the functions requested of Consultant competently, then Biovail may terminate this Agreement by providing Consultant with nine (9) months’ prior written notice. The Consultant will be eligible at Biovail’s sole discretion for the Bonus for that period.
- 3.02 In the event of any termination of this Agreement, Biovail shall have no further financial or other obligations to Consultant, other than the payment of the Consultant Fee (and the reimbursement of Consultant Expenses, if any) incurred to the date of termination of the Notice period.

## **4. CONFIDENTIALITY COVENANT**

- 4.01 Consultant acknowledges that Consultant may acquire or have disclosed to Consultant by Biovail or by any affiliate, associate, or technology or financial partner of Biovail, either directly or indirectly, in writing, conversation, or through observation, various information about the business of Biovail which is not in the public domain and which Biovail does not wish to be divulged to other persons, companies, or third parties.
- 4.02 As a condition of and in consideration of Consultant’s provision of Services to Biovail, Consultant understands and agrees that during the Term and for a period of

time thereafter (as more particularly described below), Consultant is required to hold strictly confidential any knowledge, information, or facts concerning Biovail's:

- (a) research and development activities;
- (b) technological plans, advances, applications and inventions;
- (c) technical specifications, designs and plans;
- (d) materials and sources of supply;
- (e) discoveries, inventions, trade secrets, patents;
- (f) financial affairs, contracts, licensing agreements, customer lists, pricing practices, marketing and sales strategies and programs;
- (g) potential merger and acquisition transactions; and
- (h) any other information regarding Biovail, its business, finances, products and their development which is not in the public domain.

All of the foregoing shall hereinafter collectively be referred to as “**Confidential Information**”. For a period commencing on the date hereof and ending ten (10) years from the date of the termination of this Agreement, Consultant shall keep strictly confidential any and all Confidential Information which has been disclosed to Consultant and shall not divulge in any manner whatsoever any such information to any person, firm, corporation, partnership or other entity.

- 4.03 Should Consultant breach or threaten to breach this Agreement, Consultant shall be liable to Biovail in equity and/or in law for damages that may be suffered by Biovail as a result of the breach or threatened breach. Consultant understands that a breach of this Agreement may result in irreparable harm to Biovail such as to warrant the entitlement to a preliminary, interlocutory and/or permanent injunction and/or other equitable relief and Consultant specifically agrees that Consultant will not argue the adequacy of damages in any such proceeding.
- 4.04 All Confidential Information disclosed by Biovail to Consultant during the course of this Agreement (or prior to the execution hereof or following the termination of this Agreement) and any rights related thereto, including but not limited to intellectual property rights, rights of know how, patent, trademark copyright and any other rights related in any way to any such Confidential Information, are and shall remain the exclusive and absolute property of Biovail.
- 4.05 Consultant shall not, except as and to the extent required to enable Consultant to carry out Consultant's duties with Biovail, make any copies or reproduce the Confidential Information nor shall Consultant remove or cause to have removed

from the premises of Biovail any Confidential Information unless required to do so in order to fulfill Consultant's duties with Biovail. Such copies or reproductions shall be subject to the terms and conditions of this Agreement. Consultant shall take all steps so as to restrict access to and protect the strict confidentiality of such copies or reproductions of the Confidential Information. Any such copies or reproductions made shall become, upon their being made, the exclusive and absolute property of Biovail.

- 4.06 Upon request of Biovail, Consultant agrees to immediately surrender to Biovail all documentation and information, notes, drawings, recordings, manuals, letters, correspondence, computer data and programs, records, books or any other materials relating to the Confidential Information which is in Consultant's possession.
- 4.07 The disclosure or divulging of any Confidential Information contrary to this Agreement, or the violation of this Agreement in any way shall result in immediate termination of this Agreement.

## **5. NON-SOLICITATION**

- 5.01 During the Term of this Agreement and for a period of two years thereafter, Consultant will not directly or indirectly hire any employee of Biovail or its affiliated companies with respect to the businesses conducted by Biovail or its affiliated companies, or attempt to induce any such employee to leave his or her employment with Biovail or its affiliated companies.
- 5.02 The Consultant shall disclose to Biovail any and all intellectual property which Consultant may make solely, jointly, or in common with any other person consultants during the Term of Consultant's engagement with Biovail. Any intellectual property made and/or developed by the Consultant while engaged by Biovail, whether or not conceived or made during regular working hours, and whether or not the Consultant is specifically instructed to make or develop same, shall be for the benefit of Biovail and shall be the sole exclusive and absolute property of Biovail. The Consultant shall assign, set over and transfer to Biovail Consultant's entire right, title and interest in and to any and all of such intellectual property and all rights therein, and to all letters patent and applications for letters patent which may be, or may have been filed and/or issued by or to Consultant or on Consultant's behalf, and the Consultant agrees to execute and deliver to Biovail any and all instruments necessary or desirable to accomplish the foregoing and, in addition to the foregoing, to do all lawful acts which may be necessary or desirable to assist Biovail to obtain and enforce protection of such intellectual property. To the extent of any rights Consultant may have with respect to such intellectual property which are not assignable, including but not limited to moral rights, the Consultant hereby waives same. The Consultant will execute and deliver to Biovail or its successors and assigns, such other and further assignments, instruments and documents as Biovail from time to time reasonably may request for the purpose of establishing, evidencing, and

enforcing or defending its complete, exclusive, perpetual, and worldwide ownership of all rights, titles, and copyrights, in and to intellectual property, and Consultant constitutes and appoints Biovail as agent and attorney-in-fact, with full power of substitution, to execute and deliver such assignments, instruments, documents as Consultant may fail to refuse to execute and deliver, this power and agency being coupled with an interest and being irrevocable.

**6. GENERAL**

- 6.01 The Consultant hereby acknowledges that Biovail is a publicly traded company and the trading in securities of Biovail is subject to applicable securities legislation. The Consultant hereby further acknowledges that as a result of the disclosure that may be made to it of any Confidential Information of Biovail, it may possess material, non-public information of Biovail. Accordingly, the Consultant hereby acknowledges and agrees that any trading by it in the securities of Biovail may entail the violation by the Consultant of applicable securities and other legislation and regulations, and the Consultant hereby irrevocably agrees to fully indemnify and hold harmless Biovail and all of its affiliated entities and their respective directors, officers, representatives and employees from any damages that may be caused to any of such persons as a result of any such violations.
- 6.02 Michel Chouinard hereby irrevocably agrees to guarantee the obligations and duties of the Consultant hereunder, jointly and severally (solidarily), as if he was defined hereunder as the “Consultant”.
- 6.03 This Agreement constitutes the entire agreement between the parties and supersedes any other agreements, negotiations or discussions between the parties whether written or oral. This Agreement may not be altered or amended except in writing and signed by both parties. If any provision hereof is held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be severed from this Agreement and shall not serve to invalidate the remaining provisions hereof.
- 6.04 This Agreement shall be governed by the laws of **Barbados** and the parties attorn and submit to the exclusive jurisdiction of the courts in such jurisdiction, to resolve any dispute in any manner related to the matters contemplated by this Agreement.
- 6.05 Nothing herein contained will be deemed to constitute Consultant or any of its employees an agent, partner or joint venturer of Biovail or its affiliated companies. It is understood that Consultant shall render his consulting services to Biovail as an independent contractor and Consultant shall not have any right, title or authority to enter any contract, agreement or commitment on behalf of Biovail or its affiliated companies or to bind Biovail or its affiliated companies in any manner whatsoever.

- 6.06 This Agreement is not assignable by Consultant without the prior written consent of Biovail (which consent may be unreasonably withheld in the sole and absolute discretion of Biovail, which discretion may be exercised arbitrarily, with or without reasons) and any such assignment without Biovail’s consent shall be null and void.
- 6.07 If any notice is required or permitted to be given, such may be effectively given if delivered personally or sent by facsimile and addressed:
- 6.07.1 in the case of Biovail to:
- Biovail Laboratories International SRL  
At the Address first hereinabove set forth  
Fax: 246-228-7891  
Attention: President

- 6.07.2 In the case of Consultant to:
- Bord de Lac Ltd  
At the address first hereinabove set forth  
Fax: n/a  
Attention: Michel Chouinard

Any such notice shall be deemed to have been given and received when actually received unless the day of receipt is not a business day in which case it shall be deemed to have been given and received on the next following business day.

**[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]**

IN WITNESS WHEREOF the parties to this Agreement hereby execute this Agreement as of the date first written above.

**Biovail Laboratories SRL**

Per: /s/ Eugene Melnyk  
Name: Eugene Melnyk  
Title: President

**Bord de Lac Ltd**

Per: /s/ Michel Chouinard  
Name: Michel Chouinard  
Title: Director

**As Guaranteed by:**

/s/ Michel Chouinard

**Witnessed By:**

/s/ Paula Cozier  
Paula Cozier



**SCHEDULE A**  
**SERVICES**

**Area of Focus:** BLS management and operations

**REPORTS TO:** President, Biovail Laboratories International SRL

**LOCATION:** Barbados

**Consulting Mandate SUMMARY:**

Supervise and lead Biovail Laboratories International SRL (BLS) operations including responsible for the direction, management and control of all aspects of BLS business.

**KEY RESPONSIBILITIES:**

- 1) Development and execution of BLS’ strategic plan.
- 2) Management of BLS’ relationships with third parties.
- 3) Responsibility for all activities related to BLS’ products and technologies, including, but not limited to:
  - Direction and control over all Business Development activities
  - Supply chain management
  - Customer and supplier relationship
  - Direction and control over all R & D activities related to BLS’ business
  - Direction and control over all regulatory activities relating to BLS’ business

**RELATIONSHIPS WITH:**

BLS’ Customers and Suppliers  
Licensors and Licensees of BLS’ Technology  
Senior Executives of Affiliates  
BLS and External IP and Business Development Executives

**Effort and Working Conditions:**

Required to meet frequent deadlines. Variation from regular hours of work. Regular periods of prolonged mental concentration. Frequent interruptions and frequent changing of priorities. Some travelling may be required.

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**2007 Equity Compensation Plan**

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May 16, 2007  
(as amended May 28, 2009)

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**BIOVAIL CORPORATION**  
**2007 EQUITY COMPENSATION PLAN**

**ARTICLE 1**  
**PURPOSE**

**1.1**            **Purpose**

The purpose of this Plan is to assist the Company in attracting, retaining and motivating key employees, officers and directors by granting to them, and to others providing services to the Company, its subsidiaries and affiliates, equity-based compensation of the Company.

**1.2**            **2006 Stock Option Plan**

This Plan includes the 2006 Stock Option Plan of the Company, as amended and restated herein, and any outstanding options granted under the 2006 Stock Option Plan prior to the Effective Date shall be governed by the provisions of this Plan as if such options had been granted hereunder.

**ARTICLE 2**  
**INTERPRETATION**

**2.1**            **Definitions**

When used herein, unless the context otherwise requires, the following terms have the following meanings, respectively:

“**Acquiror**” has the meaning set forth in Subsection 6.1(e) of this Plan;

“**Associate**” has the meaning given to it in NI 45-106;

“**Blackout Period**” means a period when the Participant is prohibited from trading in the Company’s securities pursuant to securities regulatory requirements or the Company’s written policies then applicable;

“**Board**” means the board of directors of the Company;

“**Business Day**” means any day, other than a Saturday, Sunday or statutory or civic holiday, on which banks in Toronto, Ontario are open for business;

“**Canadian Option**” means an Option for which the Exercise Price is stated and payable in Canadian dollars;

“**Canadian Unit**” means a Unit for which the cash payment payable under Section 5.3(c) (if elected by the Company) is stated and payable in Canadian dollars;

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“**CBCA**” means the *Canada Business Corporations Act* and the regulations promulgated thereunder, both as amended from time to time;

“**Change in Control**” has the meaning set forth in Section 6.1 of this Plan;

“**Code**” means the U.S. Internal Revenue Code of 1986, as amended;

“**Committee**” has the meaning set forth in Section 3.2 of this Plan;

“**Common Shares**” means the common shares in the capital of the Company;

“**Company**” means Biovail Corporation, a corporation existing under the laws of Canada, and its successors;

“**Compensation Committee**” means the compensation, nominating and corporate governance committee of the Board;

“**Consultant Participant**” means an individual, other than an Employee Participant or an Executive Participant, who is a “consultant” (as defined in NI 45-106) and includes a Consultant Participant’s Permitted Assigns;

“**Date of Grant**” means, for any Option or Unit, the date specified by the Board at the time it grants the Option or the Unit, as the case may be (which cannot be earlier than the date of grant) or, if no such date is specified, the date upon which the Option or the Unit (as the case may be) was granted;

“**Detrimental Activity**” means: (a) the disclosure to anyone outside the Company or its Related Entities, or the use in any manner other than in the furtherance of the Company’s or a Related Entity’s business, without written authorization from the Company, of any confidential information or proprietary information relating to the business of the Company or its Related Entities that is acquired by a Participant prior to the Participant’s Termination Date; (b) activity by the Participant while employed or performing services that results, or if known could result, in the Participant’s termination of service that is classified by the Company as a termination for cause; (c) any attempt, directly or indirectly, to solicit, induce or hire (or the identification for solicitation, inducement or hiring of) any non-clerical employee of the Company or its Related Entities to be employed by, or to perform services for, the Participant or any Person with which the Participant is associated (including, but not limited to, due to the Participant’s employment by, consultancy for, equity interest in, or creditor relationship with such Person) or any Person from which the Participant receives direct or indirect compensation or fees as a result of such solicitation, inducement or hire (or the identification for solicitation, inducement or hire) without, in all cases, written authorization from the Company; (d) any attempt, directly or indirectly, to solicit in a competitive manner any current or prospective customer of the Company or its Related Entities without written authorization from the Company; (e) the Participant’s Disparagement, or inducement of others to engage in Disparagement, of the Company or its Related Entities or their past and present officers, directors, employees or products; (f) without written authorization from the Company, the direct or indirect engaging in any business or organization

competitive with the Company or its Related Entities or the rendering of services to any such organization or business if such organization or business is otherwise prejudicial to, or in conflict with, the interests of the Company or its Related Entities; provided, however, that competitive activities shall be only those competitive with any business unit or Related Entity of the Company with regard to which the Participant performed services at any time within the year prior to the Participant's Termination Date; or (g) material breach of any agreement between the Participant and the Company or a Related Entity (including, without limitation, any employment agreement or non-competition or non-solicitation agreement). For purposes of sub-sections (a), (c), (d) and (f) above, the Chairman of the Board or the Chief Executive Officer of the Company shall have authority to provide the Participant with written authorization to engage in the activities contemplated thereby and no other person shall have authority to provide the Participant with such authorization;

**"Director"** means a member of the board of directors of the Company or of a Related Entity;

**"Disabled"** or **"Disability"** means the permanent and total incapacity of an Optionholder or a Unitholder as determined in accordance with procedures established by the Board for purposes of this Plan;

**"Disparagement"** means making comments or statements to (x) the press, (y) the Company's or a Related Entity's employees or consultants, or (z) any individual or entity with whom the Company or its Related Entities has a business relationship, in each case that could reasonably be expected to adversely affect in any manner: (a) the conduct of the business of the Company or its Related Entities (including, without limitation, any products or business plans or prospects); or (b) the business prospects or reputation of the Company or its Related Entities, any of their products, or their past or present officers, directors or employees;

**"Effective Date"** has the meaning set forth in Section 8.10 of this Plan;

**"Employee Participant"** means a full-time or part-time employee or contract employee (other than an Executive Participant or Consultant Participant) of the Company or of a Related Entity and includes an Employee Participant's Permitted Assigns;

**"Executive Participant"** means an officer of the Company or of a Related Entity and includes any officer of the Company or of a Related Entity who is also a Director, and Executive Participant also refers to an Executive Participant's Permitted Assigns;

**"Exercise Notice"** means a notice in writing, in the form set out in Schedule B or such successor form as the Board may adopt from time to time, signed by an Optionholder and stating the Optionholder's intention to exercise a particular Option;

**"Exercise Period"** means the period of time during which an Option granted under this Plan may be exercised (provided however that the Exercise Period may not exceed 10 years from the relevant Date of Grant);

**“Exercise Price”** means the price at which a Common Share may be purchased pursuant to the exercise of an Option;

**“Individual Optionholder”** means an Optionholder who is an individual or the individual of which the Optionholder is a Permitted Assign, as the case may be;

**“Individual Unitholder”** means a Unitholder who is an individual or the individual of which the Unitholder is a Permitted Assign, as the case may be;

**“Insider”** has the meaning set forth in the TSX Company Manual;

**“Market Price”** of a Common Share means:

- (a) in the case of determining the exercise price of an Option, the VWAP on the TSX, or the NYSE or other stock exchange where the majority of the trading volume and value of the Common Shares occurs, for the five trading days immediately preceding the Date of Grant, except that with respect to Participants subject to U.S. taxation, to the extent required by Section 409A of the Code, “Market Price” of a Common Share means the greater of (i) the Market Price as calculated above or (ii) the VWAP on the TSX, or the NYSE or other stock exchange where the majority of the trading volume and value of the Common Shares occurs, for the single trading day immediately preceding the Date of Grant. The Market Price so determined may be in Canadian dollars or U.S. dollars. As a result, the Market Price of a Common Share covered by a Canadian Option shall be either (a) such Market Price as determined above, if in Canadian dollars, or (b) such Market Price as determined above converted into Canadian dollars at the closing rate of exchange of the Bank of Canada on the Date of Grant, if in U.S. dollars. Similarly, the Market Price of a U.S. Option shall be either (a) such Market Price as determined above, if in U.S. dollars, or (b) such Market Price as determined above converted into U.S. dollars at the closing rate of exchange of the Bank of Canada on the Date of Grant, if in Canadian dollars. If on the Date of Grant there is not a closing rate of exchange of the Bank of Canada, then the Market Price of a Common Share covered by a Canadian Option and the Market Price of a Common Share covered by a U.S. Option shall be determined as provided above on the first day immediately preceding the Date of Grant for which there was such a closing rate of exchange. The Market Price of a Common Share shall be rounded up to the nearest whole cent; or
- (b) in the case of determining the cash payment payable to a Unitholder, the average market price of the Common Shares on the Vesting Date on the TSX, the NYSE or other stock exchange where the majority of the trading volume and value of the Common Shares occurs. If the Vesting Date is not a trading day for the applicable stock exchange, the Market Price shall be the average market price of the Common Shares for the trading day immediately preceding the Vesting Date. The Market Price so determined may be in Canadian dollars or U.S. dollars. As a result, the Market Price of a Common Share covered by a Canadian Unit shall be either (a) such Market Price as determined above, if in Canadian dollars, or (b) such Market Price as determined above converted into Canadian dollars at the closing rate of exchange of the Bank of Canada on the Vesting Date, if in U.S. dollars. Similarly, the Market Price of a U.S. Unit shall be either (a) such Market Price as determined above, if in U.S. dollars, or (b)

such Market Price as determined above converted into U.S. dollars at the closing rate of exchange of the Bank of Canada on the Vesting Date, if in Canadian dollars. If on the Vesting Date there is not a closing rate of exchange of the Bank of Canada, then the Market Price of a Common Share covered by a Canadian Unit and the Market Price of a Common Share covered by a U.S. Unit shall be determined as provided above on the first day immediately preceding the Vesting Date for which there was such a closing rate of exchange. The Market Price of a Common Share shall be rounded up to the nearest whole cent.

“**NI 45-106**” means National Instrument 45-106 — Prospectus and Registration Exemptions, as amended from time to time, or such other successor rules, instruments or policies from time to time of Canadian provincial securities regulatory authorities which may govern trades of securities to employees, officers, directors or consultants;

“**NYSE**” means the New York Stock Exchange;

“**Offer**” has the meaning set forth in Section 6.1 of this Plan;

“**Option**” means a right to purchase Common Shares under this Plan; except that, to the extent required by Section 409A of the Code, Participants who are subject to U.S. taxation and who are employed by a Related Entity may receive an Option under this Plan provided that the Common Shares subject to the Option constitute “service recipient stock” for purposes of Section 409A of the Code in order to avoid application of Section 409A of the Code to the Option;

“**Option Agreement**” means a signed, written agreement between an Optionholder and the Company, in the form attached as Schedule A, subject to any amendments or additions thereto as may, in the discretion of the Board, be necessary or advisable, evidencing the terms and conditions on which an Option has been granted under this Plan;

“**Optionholder**” means an Employee Participant, Executive Participant or Consultant Participant who has been granted one or more Options;

“**Participant**” means an Employee Participant, Executive Participant or Consultant Participant;

“**Performance Criteria**” has the meaning set forth in Schedule D;

“**Performance Goal**” means the objective performance goals established by the Compensation Committee and, if desirable for purposes of Section 162(m) of the Code, based on one or more Performance Criteria;

**“Performance Period”** means three consecutive fiscal years of the Company, or such shorter period as determined by the Compensation Committee in its discretion;

**“Permitted Assigns”** has the meaning given to it in NI 45-106;

**“Person”** includes an individual, sole proprietorship, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, and a natural person in his or her capacity as trustee, executor, administrator or other legal representative;

**“Plan”** means this 2007 Equity Compensation Plan, as the same may be amended, modified, revised, supplemented, restated or replaced from time to time;

**“Related Entity”** means a “related entity” (as defined in NI 45-106) of the Company;

**“Retirement”** means retirement from active employment with the Company or a Related Entity at or after age 65 or, with the consent for purposes of this Plan of such officer of the Company as may be designated by the Board, at or after such earlier age and upon the completion of such years of service as the Board may specify, provided that with respect to Participants subject to U.S. taxation, the exercise of such discretion by the Board shall not subject an Option to Section 409A of the Code;

**“Section 162(m) of the Code”** means the exception for performance-based compensation under Section 162(m) of the Code and any U.S. Treasury regulations thereunder;

**“Termination Date”** means:

- (i) in the case of an Employee Participant or Executive Participant whose employment or term of office with the Company or a Related Entity terminates in the circumstances set out in Subsections 4.7(b), 4.7(c), 5.8(a) or 5.8(b) the date that is designated by the Company or a Related Entity, as the case may be, as the last day of the Optionholder’s or the Unitholder’s (as the case may be) employment or term of office with the Company or the Related Entity, as the case may be; provided that “Termination Date” specifically does not mean the date on which any period in respect of which any pay in lieu of notice, that the Company or the Related Entity (as the case may be) may be required by law or may voluntarily elect to provide to the Optionholder or the Unitholder (as the case may be), expires; and
- (ii) in the case of a Consultant Participant whose consulting agreement or arrangement with the Company or a Related Entity, as the case may be, terminates in the circumstances set out in Subsection 4.7(d), 4.7(e), 5.8(a) or 5.8(b) the date that is designated by the Company or the Related Entity, as the case may be, as the date on which the Optionholder’s or the Unitholder’s (as the case may be) consulting agreement or arrangement is terminated; provided that “Termination Date” specifically does not mean the date on which any period of notice of termination that the Company or



the Related Entity (as the case may be) may be required to provide to the Optionholder or the Unitholder (as the case may be) under the terms of the consulting agreement for which the Company has elected to provide compensation in lieu of notice;

“**TSX**” means the Toronto Stock Exchange;

“**TSX Company Manual**” means the Company Manual of the TSX, as amended from time to time, including such Staff Notices of the TSX from time to time which may supplement the same;

“**Unit**” means a restricted share unit granted to a Unitholder pursuant to Section 5.1 and in accordance with the terms and provisions of the Plan;

“**Unit Account**” has the meaning given to it under Section 5.4;

“**Unit Agreement**” means a signed, written agreement between a Unitholder and the Company, in the form attached as Schedule C, subject to any amendments or additions thereto as may, in the discretion of the Board, be necessary or advisable, evidencing the terms and conditions on which a Unit has been granted under this Plan;

“**Unitholder**” means an Employee Participant, Executive Participant or Consultant Participant who has been granted one or more Units;

“**U.S. Option**” means an Option for which the Exercise Price is stated and payable in U.S. dollars;

“**U.S. Unit**” means a Unit for which the cash payment payable under Section 5.3(c) (if elected by the Company) is stated and payable in U.S. dollars;

“**Vesting Date**” means the date on which Units granted to a Unitholder under the Plan vest pursuant to the provisions of the Plan; and

“**VWAP**” means the volume weighted average trading price of the Common Shares, calculated by dividing the total value by the total volume of Common Shares traded for the relevant period.

2.2                    **Interpretation**

- (a)            Whenever the Board or, where applicable, the Committee is to exercise discretion in the administration of the terms and conditions of this Plan, the term “discretion” means the sole and absolute discretion of the Board or the Committee, as the case may be.
- (b)            As used herein, the terms “Article”, “Section”, “Subsection” and “clause” mean and refer to the specified Article, Section, Subsection and clause of this Plan, respectively.
- (c)            Words importing the singular include the plural and vice versa and words importing any gender include any other gender.

(d) Unless otherwise specified, all references to money amounts are to U.S. currency.

(e) Wherever in this Plan reference is made to generally accepted accounting principles (“GAAP”), such reference shall be deemed to be to accounting principles generally accepted for financial reporting in the United States of America, as recognized in the opinions, statements or other pronouncements of the American Institute of Certified Public Accountants and/or the Financial Accounting Standards Board, applied on a basis consistent with preceding periods.

### **ARTICLE 3** **ADMINISTRATION**

#### **3.1           Administration**

Subject to Sections 3.2 and 5.2(a), this Plan will be administered by the Board and the Board has sole and complete authority, in its discretion, to:

- (a) determine the individuals (from among the Participants) to whom Options or Units may be granted;
- (b) grant Options or Units in such amounts and, subject to the provisions of this Plan, on such terms and conditions as it determines including:
  - (i) the time or times at which Options or Units may be granted;
  - (ii) the Exercise Price, in the case of Options, subject to Section 4.2;
  - (iii) the time or times when each Option becomes exercisable and, subject to Section 4.3, the duration of the Exercise Period;
  - (iv) the time or times when each Unit will vest and whether a grant or vest of Unit is subject to the attainment of Performance Goals;
  - (v) the form of payment to a Unitholder in satisfaction of a vested Unit as contemplated in Section 5.3(a);
  - (vi) whether restrictions or limitations are to be imposed on the Common Shares and the nature of such restrictions or limitations, if any; and
  - (vii) any acceleration of exercisability or vesting (as the case may be) or waiver of termination regarding any Option or Unit, based on such factors as the Board may determine;
- (c) interpret this Plan and adopt, amend and rescind administrative guidelines and other rules and regulations relating to this Plan; and
- (d) make all other determinations and take all other actions necessary or advisable for the implementation and administration of this Plan.

The Board’s determinations and actions within its authority under this Plan are conclusive and binding on the Company and all other persons. The day-to-day administration of this Plan may be delegated to such officers and employees of the Company or of a Related Entity as the Board determines.

**3.2                    Delegation to Committee**

To the extent permitted by applicable law, the Board may, from time to time, delegate to a committee (the “Committee”) of the Board all or any of the powers conferred on the Board under this Plan. In such event, the Committee will exercise the powers delegated to it by the Board in the manner and on the terms authorized by the Board. Any decision made or action taken by the Committee arising out of or in connection with the administration or interpretation of this Plan in this context is final and conclusive. Notwithstanding anything to the contrary contained herein, each Option or Unit intended to comply with Section 162(m) of the Code shall be granted by the Compensation Committee comprised solely of two or more “outside directors” (within the meaning of Section 162(m) of the Code) and such committee shall have all of the powers of the Board hereunder with respect to grants of Options or Units intended to comply with Section 162(m) of the Code; *provided, however*, that failure of an Option or Unit to be approved in a manner that satisfies the requirements of Section 162(m) of the Code shall not cause the Option or the Unit to be void.

**3.3                    Eligibility**

All Employee Participants, Executive Participants and Consultant Participants are eligible to participate in this Plan, subject to Subsections 4.6(b) and 4.7(f), 5.7(d) and 5.8(c). Eligibility to participate does not confer upon any Participant any right to be granted Options or Units pursuant to this Plan. Subject to Sections 3.2 and 5.2(a), the extent to which any Participant is entitled to be granted Options or Units pursuant to this Plan will be determined in the discretion of the Board, provided however that the following restrictions shall also apply to this Plan:

- (a)      the number of Common Shares reserved for Insiders issuable from treasury, at any time, under this Plan and under any other security based compensation arrangements, will not exceed 10% of issued and outstanding Common Shares of the Company;
- (b)      the number of Common Shares issued from treasury to Insiders, within any one year period, under this Plan and under any other security based compensation arrangements, will not exceed 10% of issued and outstanding Common Shares of the Company;
- (c)      the total number of Options and Units in aggregate granted pursuant to this Plan to any one Participant during any calendar year must not exceed 20% of the total number of Options and Units in aggregate granted pursuant to this Plan during such calendar year;
- (d)      the number of Common Shares to be issued from treasury under this Plan to any one Participant during each calendar year during the term of the Plan shall not

exceed the lesser of (i) 5% of the issued and outstanding Common Shares or (ii) 7,987,450 Common Shares of the Company;

- (e) the number of Common Shares reserved for issuance and issued from treasury pursuant to this Plan to any one Participant at any time must not exceed 25% of the total number of Common Shares that may be issued from treasury under this Plan; and
- (f) the maximum number of Common Shares issuable from treasury in respect of Units that are subject to Performance Goals, during any calendar year, to any one Participant, shall be 90,000 Common Shares (subject to any decrease pursuant to Sections 7.2 and 7.3); provided, however, that if the Performance Period is less than three consecutive fiscal years, the maximum number of Common Shares above shall be determined by multiplying 90,000 by a fraction, the numerator of which is the number of days in the Performance Period and the denominator of which is 1095.

For purposes of this Section, the term “security based compensation arrangements” has the meaning set forth in the TSX Company Manual.

### **3.4 Total Common Shares Subject to Options and Units**

(a) The aggregate number of Common Shares that may be issued from treasury pursuant to the exercise of Options and vesting of Units must not exceed 12,000,000 Common Shares. No Option or Unit may be granted if such grant would have the effect of causing the total number of Common Shares subject to Options and Units that may be issued from treasury to exceed the above-noted total number of Common Shares reserved for issuance pursuant to the exercise of Options and vesting of Units.

(b) Notwithstanding Section 3.4(a), the aggregate number of Common Shares that may be issued from treasury pursuant to the vesting of Units must not exceed 40% of Common Shares reserved for issuance under the Plan as set out in Section 3.4(a). No Unit may be granted if such grant would have the effect of causing the total number of Common Shares subject to Units that may be issued from treasury to exceed such limit.

(c) To the extent Options or Units terminate for any reason prior to exercise or vesting in full (as the case may be) or are surrendered for cancellation or otherwise, and to the extent Units are settled in Common Shares provided by the Company through market purchases or in a cash amount paid to the Unitholder (as contemplated in Section 5.3), the Common Shares subject to such Options or Units that may be issued from treasury shall, to the extent such Common Shares have been deducted, be added back to the number of Common Shares reserved for issuance under this Plan as set out in Sections 3.4(a) and 3.4(b) and such Common Shares will again become available for issuance from treasury under this Plan.

### **3.5 Option Agreements and Unit Agreements**

All grants of Options and Units under Section 4.1 and Section 5.1 of this Plan, respectively, will be evidenced by Option Agreements or Unit Agreements (as the case may be).

Such Option Agreements and Unit Agreements will be subject to the applicable provisions of this Plan and will contain such provisions as are required by this Plan and any other provisions that the Board may direct. Any one officer of the Company is authorized and empowered to execute and deliver, for and on behalf of the Company, an Option Agreement to each Optionholder and a Unit Agreement to each Unitholder.

**3.6                    Transferability**

(a)            Subject to Sections 3.6(b), 3.6(c), 4.6 and 5.7 and, in the case of Options, the rules and policies of any stock exchange on which the Common Shares are listed, Options or Units granted under this Plan may only be exercised or may only vest (as the case may be) during the lifetime of the Individual Optionholder or the Individual Unitholder (as the case may be) by such Individual Optionholder or Individual Unitholder personally. Except to the extent permitted herein and, in the case of Options, by such rules and applicable law, no assignment or transfer of Options or Units, whether voluntary, involuntary, by operation of law or otherwise, vests any interest or right in such Options or Units whatsoever in any assignee or transferee and immediately upon any assignment or transfer, or any attempt to make the same, such Options or Units will terminate and be of no further force or effect. If any Individual Optionholder (the “Original Optionholder”) has transferred Options to a corporation pursuant to this Section 3.6 when such transfer is permitted herein and by applicable rules or law, such Options will terminate and be of no further force or effect if at any time the Original Optionholder should cease to own all of the issued shares of such corporation.

(b)            Notwithstanding Section 3.6(a) and subject to Section 3.6(c), the Board will consider in good faith any request by an Optionholder for consent to assign or transfer any Options of the Optionholder and, in making a determination as to whether to consent to such assignment or transfer, the Board will consider whether such assignment or transfer is consistent with the purposes of this Plan, including without limitation to assist the Company in attracting, retaining and motivating key employees, officers and directors, and may attach such terms and conditions to such consent as the Board determines in good faith.

(c)            Notwithstanding Sections 3.6(a) and 3.6(b), no assignment or transfer as would otherwise be permitted pursuant to such sections may occur where such assignment or transfer is to be made for consideration.

**ARTICLE 4**  
**GRANT OF OPTIONS**

**4.1                    Grant of Options**

The Board may, from time to time, subject to the provisions of this Plan and such other terms and conditions as the Board may determine, grant Options to any Participant. In determining whether to make such a grant the Board or its Committee, will consider the Participant’s achievement of performance objectives under the Company’s long term incentive program, the achievement by the Company of its strategic goals and objectives and the contribution that Participant has made, or in the case of a new Participant, the contribution that Participant is expected to make in furtherance of the Company’s overall goals.

#### **4.2                    Exercise Price**

(a)        The purchase price of Common Shares purchasable under any Option will be as determined by the Board but in any event will be no less than the Market Price of the Common Shares.

(b)        Except pursuant to Sections 7.2 or 7.3, no Option may be amended to reduce the Exercise Price of the Option below the Exercise Price as of the Date of Grant, nor will any options be cancelled and replaced with new options with a lower Exercise Price, without shareholder approval.

#### **4.3                    Term of Options**

(a)        Subject to any accelerated termination as set forth in this Plan, each Option expires on the fifth anniversary of the Date of Grant.

(b)        If the term of an Option held by an Optionholder expires during a Blackout Period, then the term of such Option or unexercised portion thereof shall be extended and shall expire on the tenth Business Day following the end of the Blackout Period.

#### **4.4                    Exercise Period**

(a)        Options will vest and be exercisable in the manner determined by the Board and specified in the applicable Option Agreement.

Once an Option becomes exercisable, it remains exercisable until expiration or termination of the Option, unless otherwise specified by the Board in connection with the grant of such Option or pursuant to Section 6.1. Each Option or instalment may be exercised at any time or from time to time, in whole or in part, for up to the total number of Common Shares with respect to which it is then exercisable. The Board has the right to accelerate the date upon which any instalment of any Option becomes exercisable.

(b)        Provided that an Optionholder has been employed by the Company or a Related Entity for at least ten (10) consecutive years, provided that the sum of the Optionholder's age and the Optionholder's years of service with the Company or a Related Entity equals or exceeds "70", upon the Retirement, death, Disability or termination (other than in the case of termination for cause, in which case, for greater certainty, the provisions of this Section 4.4(b) shall not apply), all of the unvested Options held by such Optionholder shall immediately vest and become exercisable pursuant to the terms of this Plan. Notwithstanding Sections 4.6 and 4.7, all such vested Options shall expire on the earlier of (a) the expiration of the term of such options, and (b) one year following the date of Retirement, death or Disability or the Termination Date, as applicable. For the purposes of this section, an Optionholder's employment with the Company or a Related Entity ends on the Termination Date.

(c)        Unless otherwise determined by the Board at grant, the Option Agreement shall provide that (i) in the event the Participant engages in a Detrimental Activity prior to any exercise of the Option, all Options held by the Participant shall thereupon terminate and expire, (ii) as a condition of the exercise of a Option, the Participant shall be deemed to have certified at

the time of exercise that the Participant is in compliance with the terms and conditions of the Plan and that the Participant has not engaged in, and does not intend to engage in, any Detrimental Activity, and (iii) in the event the Participant engages in a Detrimental Activity during the one-year period commencing on the date the Option is exercised, the Company shall be entitled to recover from the Participant at any time within one year after such exercise, and the Participant shall pay over to the Company, an amount equal to any gain realized as a result of the exercise of the Option (whether at the time of exercise or thereafter). The Company's rights in subsection (iii) shall also apply if it is determined that the Participant's deemed certification pursuant to subsection (ii) was untrue. This Section 4.4(c) shall cease to apply upon a Change in Control.

**4.5                    Payment of Exercise Price**

The Exercise Notice must be accompanied by payment in full of the purchase price for the Common Shares to be purchased. The Exercise Price must be fully paid in cash, or by certified cheque, bank draft or money order payable to the Company or by such other means as might be specified from time to time by the Board. No Common Shares will be issued or transferred until full payment therefor has been received by the Company. As soon as practicable after receipt of any Exercise Notice and full payment, the Company will deliver to the Optionholder a certificate or certificates representing the acquired Common Shares.

**4.6                    Retirement, Death or Disability of Optionholder**

If an Individual Optionholder dies or becomes Disabled while an employee, director or officer of the Company or a Related Entity or if the employment or term of office of the Individual Optionholder with the Company or a Related Entity terminates due to Retirement:

- (a) the executor or administrator of the Individual Optionholder's estate or the Individual Optionholder, as the case may be, may exercise any Options of the Optionholder to the extent that the Options were exercisable at the date of such death, Disability or Retirement and the right to exercise such Options terminates on the earlier of: (i) the date that is 180 days from the date of the Individual Optionholder's death, Disability or Retirement; and (ii) the date on which the Exercise Period of the particular Option expires. Any Options held by the Optionholder that were not exercisable at the date of death, Disability or Retirement immediately expire and are cancelled on such date; and
- (b) such Optionholder's eligibility to receive further grants of Options under the Plan ceases as of the date of the Individual Optionholder's death, Disability or Retirement, as the case may be.

**4.7                    Termination of Employment or Services**

(a) Where, in the case of an Employee Participant or Executive Participant, an Individual Optionholder's employment or term of office with the Company or a Related Entity ceases by reason of the Individual Optionholder's death, Disability or Retirement, then the provisions of Section 4.6 will apply.

(b) Where, in the case of an Employee Participant or Executive Participant, an Individual Optionholder's employment or term of office terminates by reason of: (i) termination by the Company or a Related Entity without cause; or (ii) voluntarily resignation by the Optionholder, then any Options held by the Optionholder that are exercisable at the Termination Date continue to be exercisable by the Optionholder until the earlier of: (A) the date that is 60 days after the Termination Date; and (B) the date on which the Exercise Period of the particular Option expires. Any Options held by the Optionholder that are not exercisable at the Termination Date immediately expire and are cancelled on the Termination Date.

(c) Where, in the case of an Employee Participant or Executive Participant, an Individual Optionholder's employment or term of office is terminated by the Company or a Related Entity for cause, then any Options held by the Optionholder, whether or not exercisable at the Termination Date, immediately expire and are cancelled on such date at a time determined by the Board, in its sole discretion.

(d) Where, in the case of a Consultant Participant, an Optionholder's consulting agreement or arrangement terminates by reason of: (i) termination by the Company or a Related Entity for any reason whatsoever other than for breach of the consulting agreement or arrangement (whether or not such termination is effected in compliance with any termination provisions contained in the Optionholder's consulting agreement or arrangement); or (ii) voluntarily termination by the Individual Optionholder; or (iii) the death or Disability of the Individual Optionholder, then any Options held by the Optionholder that are exercisable at the Termination Date, or at the date of the death or Disability of the Individual Optionholder, as the case may be, continue to be exercisable by the Optionholder until the earlier of: (A) the date that is 60 days from the Termination Date, or from the date of the death or Disability of the Individual Optionholder, as the case may be; and (B) the date on which the Exercise Period of the particular Option expires. Any Options held by the Optionholder that are not exercisable at the Termination Date, or at the date of the death or Disability of the Individual Optionholder, as the case may be, immediately expire and are cancelled on such date.

(e) Where, in the case of a Consultant Participant, an Optionholder's consulting agreement or arrangement is terminated by the Company or a Related Entity for breach of the consulting agreement or arrangement (whether or not such termination is effected in compliance with any termination provisions contained in Optionholder's consulting agreement or arrangement), then any Options held by the Optionholder, whether or not such Options are exercisable at the Termination Date, immediately expire and are cancelled on the Termination Date at a time determined by the Board, in its discretion.

(f) An Optionholder's eligibility to receive further grants of Options under the Plan ceases as of the date that the Company or a Related Entity, as the case may be, provides the Optionholder with written notification that the Individual Optionholder's employment, term of office, consulting agreement or arrangement, as the case may be, is terminated, notwithstanding that such date may be prior to the Termination Date.

(g) Notwithstanding Subsections 4.7(b) and 4.7(d), unless the Board, in its discretion, otherwise determines, at any time and from time to time, Options are not affected by a change of employment or consulting arrangement within or among the Company or one or more Related



Entities for so long as the Participant continues to be any of an Employee Participant, a Consultant Participant or an Executive Participant.

**4.8                      Discretion to Permit Exercise**

Notwithstanding the provisions of Sections 4.6 and 4.7, the Board may, in its discretion, at any time prior to or following the events contemplated in such sections, permit the exercise of any or all Options held by the Optionholder in the manner and on the terms authorized by the Board, provided that the Board will not, in any case, authorize the exercise of an Option pursuant to this section beyond the expiration of the Exercise Period of the particular Option.

**ARTICLE 5**  
**GRANT OF UNITS**

**5.1                      Grant and Vest of Units**

(a)            Subject to Sections 3.2 and 5.2(a), the Board may, from time to time, subject to the provisions of this Plan and such other terms and conditions as the Board may determine, grant Units to any Participant. Units may be granted as Canadian Units or as U.S. Units. A Unitholder shall be notified in writing by the Company in respect of each grant and such grant shall be evidenced by a Unit Agreement between the Company and the Unitholder.

(b)            Subject to Sections 5.1(c), 5.1(d), 5.2(a), 6.1(c) and 7.4 and the applicable termination and any other acceleration provisions set forth in this Plan and unless provided otherwise in the applicable Unit Agreement, each Unit granted to a Unitholder shall vest on the third anniversary date of the Date of Grant.

(c)            If a Unit held by a Unitholder vests during a Blackout Period, then the Vesting Date of such Unit shall be extended to the first Business Day following the end of the Blackout Period.

(d)            Provided that a Unitholder has been employed by the Company or a Related Entity for at least ten (10) consecutive years, provided that the sum of the Unitholder's age and the Unitholder's years of service with the Company or a Related Entity equals or exceeds "70", upon the Retirement, death, Disability or termination (other than in the case of termination for cause, in which case, for greater certainty, the provisions of this Subsection 5.1(d) shall not apply), all of the unvested Units held by such Unitholder shall immediately vest. For the purposes of this section, a Unitholder's employment with the Company or a Related Entity ends on the Termination Date.

**5.2                      Performance Goals**

(a)            The Board may condition the granting or vesting of Units upon the attainment of specified performance goals including, without limitation, the Performance Goals, or such other factors as the Board may determine in its sole discretion. If the Unit is intended to comply with

Section 162(m) of the Code, the grant of Units and the Performance Goals shall be set by the Compensation Committee in its sole discretion.

(b) In connection with the granting of any Unit intended to comply with Section 162(m) of the Code, the Compensation Committee shall establish the Performance Goals in writing prior to the beginning of the applicable Performance Period. Such Performance Goals may incorporate provisions for disregarding (or adjusting for) changes in accounting methods, corporate transactions (including, without limitation, dispositions and acquisitions) and other similar type events or circumstances while the outcome of the Performance Goals is substantially uncertain. To the extent any Unit is intended to comply with the provisions of Section 162(m) of the Code, if any provision would create impermissible discretion under Section 162(m) of the Code or otherwise violate Section 162(m) of the Code, such provision shall be of no force or effect.

(c) As applicable, if a Unit is designed to vest upon the achievement of Performance Goals during a Performance Period, at the expiration of the Performance Period, the Compensation Committee shall determine and certify in writing the extent to which the Performance Goals have been achieved.

(d) Upon a determination by the Board or the Compensation Committee that a Unitholder has failed to attain specified performance goals, any unvested Units whose vesting is contingent upon the attainment of such goals including, without limitation, the Performance Goals, shall be forfeited immediately upon such determination and thereafter be of no further force and effect.

(e) To the extent any Unit is intended to comply with Section 162(m) of the Code and in the event that any objective Performance Goals are used, if any measurements require deviation from GAAP, such deviation shall be at the discretion of the Compensation Committee at the time the Performance Goals are set or at such later time to the extent permitted under Section 162(m) of the Code.

### **5.3 Unit Rights**

(a) The Board shall have the sole discretion to make the determination concerning the form of payment to a Unitholder as contemplated in paragraphs (b) and (c) below.

(b) Each vested Unit pursuant to the provisions of the Plan shall represent the right to receive one Common Share to be delivered on the Vesting Date or as soon as practicable thereafter (provided that the Vesting Date does not occur during the Blackout Period), to be issued from treasury or provided by the Company through market purchases. Such market purchases, if any, shall be effected in such manner as is determined by the Board in its sole discretion and the costs in connection therewith shall be borne by the Company.

(c) Unless otherwise specified in the Unit Agreement, the Company may, in lieu of all or a portion of the Common Shares which would otherwise be issued or provided to a Unitholder, elect to pay a cash amount to a Unitholder equivalent to the Market Price of one Common Share for each vested Unit, to be paid on the Vesting Date or as soon as practicable thereafter, provided that the Vesting Date does not occur during the Blackout Period.

(d) Unless otherwise determined by the Board at the Date of Grant, the Unit Agreement shall provide that (i) in the event the Participant engages in a Detrimental Activity prior to any vesting of a Unit, all Units held by the Participant shall thereupon terminate and be cancelled, (ii) as a condition of the vesting and payment of a Unit, the Participant shall be deemed to have certified at the time of vesting that the Participant is in compliance with the terms and conditions of the Plan and that the Participant has not engaged in, and does not intend to engage in, any Detrimental Activity, and (iii) in the event the Participant engages in a Detrimental Activity during the one-year period commencing on the date the Unit vests, the Company shall be entitled to recover from the Participant at any time within one year after such vesting, and the Participant shall pay over to the Company, an amount equal to the Market Price of the Common Shares and/or the cash amount paid to the Unitholder, together with any other gain realized as a result of the vesting of the Unit, issuance of the Common Shares and/or payment of the cash amount (whether at the time of vesting or thereafter). The Company's rights in subsection (iii) shall also apply if it is determined that the Participant's deemed certification pursuant to subsection (ii) was untrue. This Subsection 5.3(d) shall cease to apply upon a Change in Control.

**5.4                    Unit Account**

A separate account, to be known as a "Unit Account", shall be maintained on the books of the Company for each Unitholder, recording the number of Units standing to the credit of a Unitholder from time to time.

**5.5                    Dividends**

Except as otherwise determined by the Board on the Date of Grant, a Unitholder's Unit Account shall, until the Vesting Date or termination and cancellation or forfeiture of the Units pursuant to the terms of the Plan, be allocated additional Units on the payment date of dividends on the Company's Common Shares, the number of which shall be the quotient determined by dividing: (a) the total amount of the dividends (excluding stock dividends but including dividends which may be paid in cash or Common Shares at the option of the shareholder) declared and that would have been paid to the Unitholder if the Units in his or her Unit Account on the relevant record date for dividends on the Common Shares had been Common Shares by (b) the closing price of the Common Shares on the TSX, NYSE or other exchange where the majority of the trading volume and value of the Common Shares occurs on the payment date of such dividends. Fractional Units shall not be granted pursuant to this Section 5.5. Any such additional Units shall have the same Vesting Dates and vest in accordance with the same terms as the Units in respect of which such additional Units are credited.

**5.6                    Voting Rights**

Subject to Section 8.5, a Unitholder shall not have the right or be entitled to exercise any voting rights or be entitled to any other rights as a shareholder of the Company in respect of any Units.

- (a) In the case of an Employee Participant or Executive Participant, provided that the Individual Unitholder has been continuously employed by the Company or a Related Entity for a 12-month period following the Date of Grant of Units, if the employment or term of the office of the Individual Unitholder with the Company or a Related Entity terminates prior to the vesting of such Units due to Retirement, then such Units shall vest on the Vesting Date (subject to the attainment of performance goals and any other factors, if any, as determined by the Compensation Committee in its sole discretion), provided that the number of Units which shall vest on the Vesting Date shall be prorated by multiplying the number of unvested Units by the number of days from but excluding the Date of Grant to and including the Vesting Date during which the Individual Unitholder has been providing active service to the Company or a Related Entity, divided by the total number of days from but excluding the Date of Grant to and including the Vesting Date. Any remaining unvested Units shall be cancelled on the date of Retirement. If the Individual Unitholder has not been so continuously employed by the Company or a Related Entity for such 12-month period, then all unvested Units shall be cancelled on the date of Retirement.
- (b) In the case of an Employee Participant, Executive Participant or Consultant Participant, if an Individual Unitholder dies while an employee, director or officer of, or while a consultant to, the Company or a Related Entity, as applicable, and prior to the vesting of Units, then such Units shall vest on the date of death (subject to the attainment of performance goals and any other factors, if any, as determined by the Compensation Committee in its sole discretion), provided that the number of Units which shall vest on such date shall be prorated by multiplying the number of unvested Units by the number of days from but excluding the Date of Grant to and including the date of death during which the Individual Unitholder had provided active service to the Company or a Related Entity, divided by the total number of days from but excluding the Date of Grant to and including the Vesting Date. The payment in respect of the vested Units, whether in form of Common Shares, cash or both, shall be made by the Company to the Unitholder’s designated beneficiary specified in the Unit Agreement as soon as practicable after the date of death. Any remaining unvested Units shall be cancelled on the date of death.
- (c) In the case of an Employee Participant, Executive Participant or Consultant Participant, if an Individual Unitholder becomes Disabled while an employee, director or officer of, or while a consultant to, the Company or a Related Entity, as applicable, and prior to the vesting of Units, then such Units shall vest on the date of Disability (subject to the attainment of performance goals and any other factors, if any, as determined by the Compensation Committee in its sole discretion), provided that the number of Units which shall vest on such date shall be prorated by multiplying the number of unvested Units by the number of days from but excluding the Date of Grant to and including the date of Disability during which the Individual Unitholder had provided active service to the Company or a Related Entity, divided by the total number of days from but excluding the Date of Grant to and including the Vesting Date. Any remaining unvested Units shall be cancelled on the date of Disability.
- (d) A Unitholder’s eligibility to receive further grants of Units under the Plan ceases as of the date of the Individual Unitholder’s death, Disability or Retirement, as the case may be, except that a Unitholder whose eligibility ceases as a result of Disability shall be eligible to

participate in the Plan upon his or her resumption of active employment with, or as an active consultant to, the Company or a Related Entity, as applicable.

**5.8                    Termination of Employment or Services and Voluntary Resignations or Terminations**

(a)        Where (i) in the case of an Employee Participant or Executive Participant, an Individual Unitholder’s employment or term of office is terminated by the Company or a Related Entity without cause, or (ii) in the case of a Consultant Participant, a Unitholder’s consulting agreement or arrangement is terminated by the Company or a Related Entity for any reason whatsoever other than for breach of the consulting agreement or arrangement (whether or not such termination is effected in compliance with any termination provisions contained in the Unitholder’s consulting agreement or arrangement), and in the case of clauses (i) or (ii), such termination is prior to the vesting of Units, then such Units shall vest on the Termination Date (subject to the attainment of performance goals and any other factors, if any, as determined by the Compensation Committee in its sole discretion), provided that the number of Units which shall vest on such date shall be prorated by multiplying the number of unvested Units by the number of days from but excluding the Date of Grant to and including the Termination Date during which the Individual Unitholder had provided active service to the Company or a Related Entity, divided by the total number of days from but excluding the Date of Grant to and including the Vesting Date. Any remaining unvested Units shall be cancelled and forfeited on the Termination Date.

(b)        Where (i) in the case of an Employee Participant or Executive Participant, an Individual Unitholder’s employment or term of office is terminated (A) by reason of the Individual Unitholder’s voluntary resignation or (B) by the Company or a Related Entity for cause, or (ii) in the case of a Consultant Participant, a Unitholder’s consulting agreement or arrangement is terminated (A) by reason of the Individual Unitholder’s voluntary termination or (B) by the Company or a Related Entity for breach of the consulting agreement or arrangement (whether or not such termination is effected in compliance with any termination provisions contained in the Unitholder’s consulting agreement or arrangement), then any Units that are unvested on the date of such termination or resignation shall be forfeited and cancelled on the Termination Date.

(c)        An Individual Unitholder’s eligibility to receive further grants of Units under the Plan ceases as of the date that the Company or a Related Entity, as the case may be, provides the Individual Unitholder with written notification that the Individual Unitholder’s employment, term of office, consulting agreement or arrangement, as the case may be, is terminated, notwithstanding that such date may be prior to the Termination Date.

(d)        Notwithstanding Sections 5.8(a) and (b), unless the Board, in its discretion, otherwise determines, at any time and from time to time, Units are not affected by a change of employment or consulting arrangement within or among the Company or one or more Related Entities for so long as the Participant continues to be any of an Employee Participant, a Consultant Participant or an Executive Participant.

**5.9                    Leave of Absence**

- (a)        In the case of an Employee Participant or Executive Participant, where an Individual Unitholder’s employment or term of office is suspended by reason of a leave of absence required under applicable law (including employment law), any unvested Units on the date of such suspension shall vest on the Vesting Date (subject to the attainment of performance goals and any other factors, if any, as determined by the Compensation Committee in its sole discretion) as if such leave of absence had not occurred.
- (b)        In the case of an Employee Participant or Executive Participant, provided that the Individual Unitholder has been continuously employed by the Company or a Related Entity for a 12-month period following the Date of Grant of Units, where an Individual Unitholder’s employment or term of office is suspended by reason of a personal leave of absence approved by the Company, any unvested Units on the date of such suspension shall vest on the Vesting Date (subject to the attainment of performance goals and any other factors, if any, as determined by the Compensation Committee in its sole discretion) as if such leave of absence had not occurred. If the Individual Unitholder had not been so continuously employed by the Company or a Related Entity for such 12-month period, then all unvested Units as at the day prior to the commencement of the leave of absence shall be cancelled on that date. Such Individual Unitholder shall be eligible to participate in the Plan upon his or her resumption of active employment with the Company or a Related Entity.

**5.10                  Discretion to Permit Vesting**

Notwithstanding the provisions of Sections 5.7 to 5.9, the Board may, in its discretion, at any time prior to or following the events contemplated in such sections, provide for the vesting of any or all Units held by the Unitholder in the manner and on the terms authorized by the Board.

**ARTICLE 6  
CHANGE IN CONTROL**

**6.1                    Change in Control**

Subject to the terms of any employment or consulting agreement with any Participant entered into by the Company or a Related Entity:

- (a)        Notwithstanding anything else in this Plan or any Option Agreement or Unit Agreement, the Board may, without the consent of any Optionholder or Unitholder, take such steps as are necessary or desirable to cause the conversion or exchange of any outstanding Options or Units into or for cash or options, units, rights or other securities of substantially equivalent value (or greater value), as determined by the Board in its discretion, in any entity participating in or resulting from a “Change in Control” (as defined below).
- (b)        Upon the Company entering into an agreement relating to, or otherwise becoming aware of, a transaction which, if completed, would result in a Change in Control, the Company shall give written notice of the proposed transaction to the Optionholders and the Unitholders,

together with a description of the effect of such Change in Control on outstanding Options and Units, not less than ten (10) Business Days prior to the closing of the transaction resulting in the Change of Control.

(c) The Board may, in its sole discretion, accelerate the vesting of any or all outstanding Options or Units to provide that, notwithstanding Sections 4.4, 5.1, 5.2 or any Option Agreement or Unit Agreement, such outstanding Options or Units shall be fully vested and, in the case of Options, exercisable conditional upon (or prior to) the completion of the transaction resulting in the Change in Control provided that the Board shall not, in any case, authorize the exercise of Options pursuant to this section beyond the Expiry Date of the Options. If the Board elects to accelerate the vesting of the Options, then if any of the Options are not exercised on or prior to completion of the transaction resulting in the Change in Control, such unexercised Options shall terminate and expire upon the completion of the transaction resulting in the Change in Control. If, for any reason, the transaction which would result in the Change in Control is not completed, the acceleration of the vesting of the Options and Units shall be retracted and vesting shall instead revert to the manner provided in Sections 4.4, 5.1 and 5.2.

(d) To the extent that the transaction resulting in a Change in Control is a capital reorganization, arrangement, amalgamation or reclassification of the share capital of the Company and the Board does not accelerate the vesting of Options or Units pursuant to Subsection 6.1(c) or take action pursuant to 6.1(a), the Company shall make reasonable efforts to ensure that, upon completion of the proposed transaction resulting in the Change in Control, the number and kind of shares subject to outstanding Options and Units and/or the Exercise Price per share of Options shall be appropriately adjusted in such manner as the Board considers equitable to prevent substantial dilution or enlargement of the rights granted to Optionholders and Unitholders. The Board may make changes to the terms of the Options, the Units or this Plan to the extent necessary or desirable to comply with any rules, regulations or policies of any stock exchange on which the Common Shares are listed, provided that the value of previously granted Options and Units, as determined by the Board in its discretion, and the rights of Optionholders and Unitholders are not materially adversely affected by any such changes.

(e) If any individual, corporation or other entity (an “Acquiror”) makes an offer to purchase all of the Common Shares (an “Offer”) and the Offer is accepted by all of the holders of Common Shares (or by a sufficient number of holders such that the Acquiror may statutorily acquire the balance of the outstanding Common Shares), each Optionholder shall be required to either (i) exercise all vested Options held and sell the Common Shares which they acquire pursuant to such exercise of Options then owned by them to the Acquiror on the same terms and conditions as set out in the Offer; or (ii) have such vested Options cancelled. In the event that the Board does not elect to accelerate Options or Units pursuant to Subsection 6.1(c) any unvested Options or Units then held by any Optionholder or Unitholder (as the case may be) shall terminate and expire on the date that the Acquiror completes its acquisition of Common Shares.

(f) For purposes of this Section 6.1, a “Change in Control” means the happening of any of the following events:

- (i) the completion of a transaction pursuant to which (A) the Company goes out of existence or (B) any Person, or any Associate or Related Entity of such Person (other than the Company, any trustee or other fiduciary holding securities under any employee benefit plan of the Company or a Related Entity, or any company owned, directly or indirectly, by the shareholders of the Company in substantially the same proportions as their ownership of Common Shares of the Company) hereafter acquires the direct or indirect “beneficial ownership” (as defined by the CBCA) of securities of the Company representing 50% or more of the aggregate voting power of all of the Company’s then issued and outstanding securities following which the Chairman of the Board of the Company prior to the transaction taking place is not the Chairman of the board of directors of the resulting company;
- (ii) the lease, exchange, license, sale or other similar disposition of all or substantially all of the Company’s assets in one transaction or a series of related transactions to an entity following which the Chairman of the Board of the Company prior to the transaction taking place is not the Chairman of the board of directors of such entity, or if such entity is not a corporation, the Chairman of the Board of the Company prior to the transaction taking place does not hold a position with such entity entitling him to perform functions similar to those performed by the chairman of a board of directors of a corporation;
- (iii) the dissolution or liquidation of the Company except in connection with the distribution of assets of the Company to one or more Persons which were Related Entities prior to such event;
- (iv) during any period of 30 consecutive months beginning on or after the date of this Plan, the persons who were members of the Board immediately before the beginning of such period (the “Incumbent Directors”) cease (for any reason other than death) to constitute at least a majority of the Board or the board of directors of any successor to the Company, provided that any director who was not a director as of the date of this Plan shall be deemed to be an Incumbent Director if such director is elected to the Board by, or on the recommendation of or with the approval of, at least two-thirds of the directors who then qualified as Incumbent Directors either actually or by prior operation of the foregoing unless such election, recommendation or approval occurs as a result of an actual or threatened election contest or other actual or threatened solicitation of proxies or contests by or on behalf of a Person other than a member of the Board; or
- (v) a merger, amalgamation, arrangement or consolidation of the Company with any other corporation following which the Chairman of the Board of the Company prior to the transaction taking place is no longer chairman of the Board of the Company, other than a merger, amalgamation, arrangement or consolidation that would result in the voting securities of



the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 50% of the combined voting power of the voting securities of the Company or such surviving entity outstanding immediately after such merger, amalgamation, arrangement or consolidation; provided, however, that a merger, amalgamation, arrangement or consolidation effected to implement a recapitalization of the Company (or similar transaction) in which no Person (other than those covered by the exceptions in (i) above) acquires more than 50% of the combined voting power of the Company's then outstanding securities shall not constitute a Change in Control.

(g) If the Board elects to accelerate the vesting of any or all outstanding Options and Units immediately prior to the completion of a transaction resulting in a Change in Control, it may also determine that all such outstanding Options or Units will be purchased by the Company or a Related Entity at the "Change in Control Price" (as defined below), and, in the case of Options, less the applicable Exercise Price for such Options, as of the date such Change in Control is determined to have occurred or as of such other date prior to the Change in Control as the Board may determine. However, outstanding Options may only be purchased by the Company or a Related Entity, as described above, if the Change in Control Price is higher than the Exercise Price for such outstanding Options.

For purposes of this Subsection 6.1(g), "Change in Control Price" means the highest price per Common Share paid in any transaction reported on a stock exchange or paid or offered in any bona fide transaction related to a potential or actual Change in Control at any time during the five trading days (or if the Common Shares are not listed on any stock exchange, during the three month period) preceding the Change in Control, as determined by the Board.

**ARTICLE 7**  
**SHARE CAPITAL ADJUSTMENTS**

**7.1            General**

The existence of any Options or Units does not affect in any way the right or power of the Company or its shareholders to make, authorize or determine any adjustment, recapitalization, reorganization or any other change in the Company's capital structure or its business, or any amalgamation, combination, merger or consolidation involving the Company, to create or issue any bonds, debentures, Common Shares or other securities of the Company or to determine the rights and conditions attaching thereto, to effect the dissolution or liquidation of the Company or any sale or transfer of all or any part of its assets or business, or to effect any other corporate act or proceeding, whether of a similar character or otherwise, whether or not any such action referred to in this section would have an adverse effect on this Plan or any Option or Unit granted hereunder.

**7.2                    Reorganization of Company’s Capital**

Should the Company effect a subdivision or consolidation of Common Shares or any similar capital reorganization or a payment of a stock dividend (other than a stock dividend that is in lieu of a cash dividend), or should any other change be made in the capitalization of the Company that, in the opinion of the Board, would warrant the replacement or amendment of any existing Options or Units in order to adjust: (a) the number of Common Shares that may be acquired on the exercise of any outstanding Options or vesting of any outstanding Units; and/or (b) the Exercise Price of any outstanding Options in order to preserve proportionately the rights and obligations of the Optionholders, the Board will authorize such steps to be taken as may be equitable and appropriate to that end.

**7.3                    Other Events Affecting the Company**

In the event of an amalgamation, combination, merger or other reorganization involving the Company by exchange of Common Shares, by sale or lease of assets or otherwise, that, in the opinion of the Board, warrants the replacement or amendment of any existing Options or Units in order to adjust: (a) the number of Common Shares that may be acquired on the exercise of any outstanding Options or the vesting of any outstanding Units; or (b) the Exercise Price of any outstanding Options in order to preserve proportionately the rights and obligations of the Optionholders, the Board will authorize such steps to be taken as may be equitable and appropriate to that end.

**7.4                    Immediate Exercise of Options or Vesting of Units**

Where the Board determines that the steps provided in Sections 7.2 and 7.3 would not preserve proportionately the rights and obligations of the Optionholders or the Unitholders in the circumstances or otherwise determines that it is appropriate, the Board may permit the immediate exercise of any outstanding Options or vesting of any outstanding Units that are not otherwise exercisable or vested (as the case may be).

**7.5                    Issue by Company of Additional Shares**

Except as expressly provided in this Article 7, neither the issue by the Company of shares of any class or securities convertible into or exchangeable for shares of any class, nor the conversion or exchange of such shares or securities, affects, and no adjustment by reason thereof is to be made with respect to: (a) the number of Common Shares that may be acquired on the exercise of any outstanding Options or the vesting of outstanding Units; or (b) the Exercise Price of any outstanding Options.

**7.6                    Fractions**

No fractional Common Shares will be issued on the exercise of an Option or the vesting of a Unit. Accordingly, if, as a result of any adjustment under Sections 7.2 to 7.4 inclusive, an Optionholder or Unitholder would become entitled to a fractional Common Share, the Optionholder or Unitholder has the right to acquire only the adjusted number of full Common Shares and no payment or other adjustment will be made with respect to the fractional Common Shares so disregarded.

**7.7                      Conditions of Exercise or Vesting**

This Plan and each Option and Unit are subject to the requirement that if at any time the Board determines that the listing, registration or qualification of the Common Shares subject to such Option or Unit upon any stock exchange or under any provincial, state or federal law, or the consent or approval of any governmental body, stock exchange or of the holders of the Common Shares generally, is necessary or desirable, as a condition of, or in connection with, the granting of such Option or Unit or the issue or purchase of Common Shares thereunder, no such Option or Unit may be granted, exercised or vested in whole or in part unless such listing, registration, qualification, consent or approval has been effected or obtained free of any conditions not acceptable to the Board. The Optionholders and the Unitholders shall, to the extent applicable, cooperate with the Company in relation to such listing, registration, qualification, consent or other approval and shall have no claim or cause of action against the Company or any of its officers or directors as a result of any failure by the Company to obtain or to take any steps to obtain any such registration, qualification or approval.

**ARTICLE 8**  
**MISCELLANEOUS PROVISIONS**

**8.1                      Legal Requirement**

The Company is not obligated to grant any Options or Units, issue any Common Shares or other securities, make any payments or take any other action if, in the opinion of the Board, in its sole discretion, such action would constitute a violation by an Optionholder, a Unitholder or the Company of any provision of any applicable statutory or regulatory enactment of any government or government agency.

**8.2                      Conditions of Exercise or Vest**

Each Optionholder and Unitholder will, when requested by the Company, sign and deliver all such documents relating to the granting or exercise of Options or vesting of Units which the Company deems necessary or desirable. Subject to the provisions of this Plan and any Option Agreement, Options shall be exercised by means of a fully completed Exercise Notice delivered to the Company.

**8.3                      Optionholder’s and Unitholder’s Entitlement**

Except as otherwise provided in this Plan, Options and Units previously granted under this Plan, whether or not then exercisable or capable of vesting, are not affected by any change in the relationship between, or ownership of, the Company and a Related Entity. For greater certainty, all Options and Units remain valid and exercisable or capable of vesting in accordance with the terms and conditions of this Plan and are not affected by reason only that, at any time, a Related Entity ceases to be a Related Entity.

#### **8.4                    Withholding Taxes**

(a)        The exercise of each Option granted under this Plan is subject to the condition that if at any time the Company determines, in its discretion, that the satisfaction of withholding tax or withholding liabilities is required under applicable law in respect of such exercise, such exercise is not effective unless such withholding has been effected to the satisfaction of the Company. In such circumstances, the Company may require that an Optionholder pay to the Company, in addition to and in the same manner as the Exercise Price for the Common Shares, such amount as the Company is obliged to remit to the relevant taxing authority in respect of the exercise of the Option.

(b)        Any and all payments to be made to the Unitholder, or to the Unitholder's designated beneficiary in accordance with Section 5.7, whether in the form of Common Shares, cash or both, shall be made subject to the deduction of any and all applicable taxes or withholdings.

#### **8.5                    Rights of Participant/Optionholder/Unitholder**

No Participant has any claim or right to be granted an Option or Unit (including, without limitation, an Option granted in substitution for any Option that has expired pursuant to the terms of this Plan), and the granting of any Option or Unit is not to be construed as giving an Optionholder or Unitholder (as the case may be) a right to remain in the employ of the Company or a Related Entity. No Optionholder or Unitholder has any rights as a shareholder of the Company in respect of Common Shares issuable on the exercise of rights or on the vesting of Units to acquire Common Shares under any Option or Unit until the allotment and issuance to the Optionholder or Unitholder (as the case may be) of certificates representing such Common Shares.

#### **8.6                    Termination; Amendment**

(a)        This Plan will terminate and, for greater certainty, all unexercised Options and unvested Units shall terminate and expire on the earliest of:

- (i)    the date upon which no further Common Shares remain available for issuance pursuant to Options and Units which may be granted under this Plan and no Options and Units remain outstanding; and
- (ii)   upon the occurrence of a Change in Control provided that the Board accelerates the vesting of Options and Units pursuant to Section 6.1,

unless this Plan is renewed for such further period and upon such terms and conditions as the Board may determine.

(b)        Subject to Section 8.6(c), the Board may, without notice, at any time or from time to time for any purpose whatsoever, and whether in whole or in part, amend, suspend, discontinue or terminate this Plan or any provisions hereof or amend an Option or Unit granted to a Participant or a related Option Agreement or Unit Agreement, as applicable, in such respects as it, in its sole discretion, determines appropriate. No such amendment, suspension,

discontinuance or termination may, without the consent of any Optionholder, Unitholder or the representatives of his or her estate, as applicable, alter or impair any rights or obligation arising from any Option or Unit previously granted to an Optionholder or Unitholder, as applicable, under this Plan unless the Board determines that the action would not materially and adversely affect the rights of such Participant. In addition, no such action shall be undertaken that would cause a previously granted Option or Unit intended to qualify for favourable treatment under Section 162(m) of the Code to cease to so qualify.

(c) Notwithstanding anything contained herein to the contrary, no such action as is contemplated by Section 8.6(b) is effective until shareholder approval is obtained where such shareholder approval is required under Section 162(m) of the Code or the rules of the TSX and/or NYSE or the rules of any other exchange or system on which the Company's securities are listed or traded at the request of the Company. In addition, in order to become effective, shareholder approval shall be required for:

- (i) any amendment to increase the number of Common Shares reserved for issuance from treasury under the Plan;
- (ii) any amendment that would reduce the Exercise Price of an outstanding Option (including a cancellation and reissue of an Option constituting a reduction of the Exercise Price);
- (iii) any amendment to extend the term of an outstanding Option beyond the originally scheduled expiry date for that Option;
- (iv) any amendment to the eligible participants under the Plan that would permit the introduction or reintroduction of non-employee directors to participate under the Plan on a discretionary basis;
- (v) any amendment that would alter the transferability or assignability of Options or Units under the Plan; and
- (vi) any amendment to the Plan to provide for other types of compensation through equity issuance,

unless the change results from the application of Article 7 of the Plan.

(d) The shareholders' approval of an action as contemplated by Section 8.6(c), if required pursuant to the terms thereof, shall be given by approval of the holders of a majority of the Common Shares present and voting in person or by proxy at a duly called meeting of the shareholders. If required by the rules of the TSX and/or NYSE or the rules of any other exchange or system on which the Company's securities are listed or traded at the request of the Company, the votes of Common Shares held directly or indirectly by Insiders benefiting from the action shall be excluded. Options and Units may be granted under the Plan prior to the approval of the action, provided that no Common Shares may be issued pursuant to the revised terms until the shareholders' approval of the action has been obtained.

**8.7                    Indemnification**

Every Director will at all times be indemnified and saved harmless by the Company from and against all costs, charges and expenses whatsoever including any income tax liability arising from any such indemnification, that such Director may sustain or incur by reason of any action, suit or proceeding, taken or threatened against the Director, otherwise than by the Company, for or in respect of any act done or omitted by the Director in respect of this Plan, such costs, charges and expenses to include any amount paid to settle such action, suit or proceeding or in satisfaction of any judgement rendered therein.

**8.8                    Quebec Stock Savings Plan**

If the Common Shares qualify in any period for purposes of a stock savings plan under the *Taxation Act* (Quebec) (the “Act”), the Company shall so notify all Quebec resident Employee Participants and Executive Participants who are officers of the Company or of a Related Entity, whereupon any such Participant who wishes to deposit pursuant to the Act some or all of the Common Shares to be issued to them under this Plan in such period shall so indicate in the Exercise Notice.

**8.9                    Participation in the Plan**

The participation of any Participant in this Plan is entirely voluntary and not obligatory and shall not be interpreted as conferring upon such Participant any rights or privileges other than those rights and privileges expressly provided in this Plan. In particular, participation in this Plan does not constitute a condition of employment or service nor a commitment on the part of the Company to ensure the continued employment or service of such Participant. This Plan does not provide any guarantee against any loss which may result from fluctuations in the market value of the Common Shares. The Company does not assume responsibility for the personal income or other tax consequences for the Participants and they are advised to consult with their own tax advisors.

**8.10                  Effective Date**

The Plan shall be effective May 16, 2007 (the “Effective Date”), subject, solely to the extent required by any applicable law (including, without limitation, approval required under Section 162(m) of the Code or Section 422 of the Code) or registration, stock exchange, quotation system, listing or similar rule or regulation, to approval by the shareholders of the Company in the manner set forth in such law, regulation or rule.

**8.11                  Governing Law**

This Plan is created under and is to be governed, construed and administered in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

**8.12                  Unfunded Status of Plan**

This Plan is an “unfunded” plan for incentive and deferred compensation. With respect to any payments as to which a Participant has a fixed and vested interest but that are not

yet made to a Participant by the Company, nothing contained herein shall give any such Participant any rights that are greater than those of a general unsecured creditor of the Company.

**8.13                    Other Benefits**

No Option or Unit granted or amount paid with respect to any Option or Unit under this Plan shall be deemed compensation for purposes of computing benefits under any retirement plan of the Company or its Related Entities nor affect any benefits under any other benefit plan now or subsequently in effect under which the availability or amount of benefits is related to the level of compensation, except as may be specifically provided for in any such retirement or benefit plan.

**8.14                    Section 409A of the Code**

Options granted under this Plan are intended to be exempt under, and not subject to, Section 409A of the Code and shall be limited, construed and interpreted in accordance with such intent. Notwithstanding anything herein to the contrary, any provision in the Plan that is inconsistent with Section 409A of the Code shall be deemed to be amended to comply with Section 409A of the Code and to the extent such provision cannot be amended to comply therewith, such provision shall be null and void. References to “Participants subject to U.S. taxation” throughout this Plan shall include only those Participants employed in the U.S. or Participants who have advised the company in writing that they are subject to U.S. income tax.

**8.15                    Amendments to Stock Options under the 1993 and 2004 Stock Option Plans**

- (a) Reference is made to the 1993 Stock Option Plan, as amended, and the 2004 Stock Option Plan of the Company (collectively, the “Prior Plans”), as such Prior Plans may be further amended, modified, supplemented, revised, restated or replaced from time to time. The terms of the outstanding options (“Prior Plan Options”) granted prior to the effective date of the 2006 Stock Option Plan to Optionholders under the Prior Plans (“Prior Plan Optionholders”) were amended to provide for the benefit of the following provisions of the 2006 Stock Option Plan (and accordingly this Plan), which provisions apply for the benefit of Optionholders under the 2006 Stock Option Plan and hereunder and which, absent such amendments, would not have applied for the benefit of Prior Plan Optionholders, and which provisions would not adversely affect the rights under Prior Plan Options of such Prior Plan Optionholders:
- (i) to provide for the benefit of the obligation on the part of the Board to consider any request for consent by a Prior Plan Optionholder to assign or transfer any Prior Plan Options of such Optionholder as provided for in Section 3.6(b) (subject to the limitations set out in Section 3.6(c));
  - (ii) except with respect to Participants subject to U.S. taxation, to the extent required by Section 409A of the Code, to provide for the benefit of the ten Business Day extension of the expiration of any such Prior Plan Option should such expiration occur during a Blackout Period as provided for in Section 4.3(b);

- (iii) to provide that where the maximum period for exercise of vested Prior Plan Options following termination of an option holder is 30 days, that such period will be extended to 60 days; and
- (iv) in the case of Prior Plan Options granted under the 1993 Stock Option Plan, to provide that unless the Board, in its discretion, otherwise determines, at any time and from time to time, such options are not affected by a change of employment or consulting arrangement within or among the Company or one or more Related Entities for so long as the Prior Plan Optionholder continues to be any of an eligible Employee Participant, a Consultant Participant or an Executive Participant under the Plan;

and the terms of each of the option agreements governing such Prior Plan Options were amended to provide that, notwithstanding any other provision contained in such option agreement or in the applicable Prior Plan, the relevant Prior Plan Optionholder will have the benefit of Sections 3.6(b), 4.3(b) and 4.7(g) of the 2006 Stock Option Plan (and accordingly this Plan) as contemplated above, such provisions to apply to the terms of such Prior Plan Options *mutatis mutandis*.

(b) It is the intention of the Company that the terms of the options granted under all of its stock option plans shall be consistent, to the extent permitted under applicable law and the terms of such plans. Accordingly, the Board will consider, in good faith, any request by a Prior Plan Optionholder to amend the terms of any Prior Plan Options of such Optionholder which would provide such Optionholder with the benefit of any provisions of this Plan which provisions apply for the benefit of Optionholders hereunder and which provisions do not apply for the benefit of such Prior Plan Optionholder under the applicable Prior Plan, provided, however, that any such amendment shall not extend any Prior Plan Options or modify any Prior Plan Options in a manner that subjects any Prior Plan Option to Section 409A of the Code.

(c) Any interpretation of this Section 8.15 will be decided by the Board or, if applicable in accordance with Section 3.2, the Committee, in either case, acting in good faith. The decision reached in respect of any such interpretation shall be final and conclusive.



**SCHEDULE A**  
**OPTION AGREEMENT**

Biovail Corporation (the “Company”) hereby grants to the Optionholder named below (the “Optionholder”), an option (the “Option”) to purchase, in accordance with and subject to the terms, conditions and restrictions of this Agreement, together with the provisions of the 2007 Equity Compensation Plan (the “Plan”) of the Company dated May 16, 2007, as such plan may be amended, modified, supplemented, revised, restated or replaced from time to time, the number of common shares in the capital of the Company (“Common Shares”) at the price per share set forth below:

Name of Optionholder:

Type of Participant: [Employee Participant, Executive Participant, or Consultant Participant]

Date of Grant:

Total Number of Common Shares Subject to Option:

Exercise Price:

Vesting:

1. The terms and conditions of the Plan are hereby incorporated by reference as terms and conditions of this Option Agreement and all capitalized terms used herein, unless expressly defined in a different manner, have the meanings ascribed thereto in the Plan.
  2. Subject to Sections 6.1 and 7.4 of the Plan, each Option is exercisable in the instalments and subject to the conditions set forth above.
  3. The provisions in the Plan regarding Detrimental Activity shall apply to this Option. In the event that the Optionholder engages in Detrimental Activity prior to the exercise of the Option, the Option shall terminate and expire as of the date the Optionholder engaged in such Detrimental Activity. As a condition of the exercise of the Option, the Optionholder shall be deemed to have certified at the time of exercise in the Exercise Notice that the Optionholder is in compliance with the terms and conditions of the Plan and that the Optionholder has not engaged in, and does not intend to engage in, any Detrimental Activity. In the event the Optionholder engages in Detrimental Activity, the Company shall be entitled to enforce its rights under the Plan and all other rights available to it at law or equity.
  4. In no event is the Option granted hereunder exercisable after the expiration of the relevant Exercise Period.
  5. No fractional Common Shares will be issued on the exercise of the Option granted hereunder. If, as a result of any adjustment to the number of Common Shares issuable on the exercise of the Option granted hereunder pursuant to the Plan, the Optionholder would be entitled to receive a fractional Common Share, the Optionholder has the right to
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acquire only the adjusted number of full Common Shares and no payment or other adjustment will be made with respect to the fractional Common Shares so disregarded.

6. Nothing in the Plan or in this Option Agreement will affect the Company's right, or that of a Related Entity, to terminate the employment of, term of office of, or consulting agreement or arrangement with an Optionholder at any time for any reason whatsoever. Upon such termination, an Optionholder's rights to exercise Options will be subject to restrictions and time limits for the exercise of Options. Complete details of such restrictions are set out in the Plan, and in particular in Sections 4.6 and 4.7 thereof.
7. Each notice relating to the Option, including the exercise thereof, must be in writing. All notices to the Company must be delivered personally or by prepaid registered mail and must be addressed to the Manager, Benefits Administration. All notices to the Optionholder will be addressed to the principal address of the Optionholder on file with the Company. Either the Company or the Optionholder may designate a different address by written notice to the other. Such notices are deemed to be received, if delivered personally, on the date of delivery, and if sent by prepaid, registered mail, on the fifth business day following the date of mailing. Any notice given by either the Optionholder or the Company is not binding on the recipient thereof until received.
8. When the issuance of Common Shares on the exercise of the Option may, in the opinion of the Company, conflict or be inconsistent with any applicable law or regulation of any governmental agency having jurisdiction, the Company reserves the right to refuse to issue such Common Shares for so long as such conflict or inconsistency remains outstanding.
9. Subject to Section 4.6 of the Plan, the Option granted pursuant to this Option Agreement may only be exercised during the lifetime of the Optionholder by the Optionholder personally and, subject to Section 3.6 of the Plan, no assignment or transfer of the Option, whether voluntary, involuntary, by operation of law or otherwise, vests any interest or right in such Option whatsoever in any assignee or transferee, and immediately upon any assignment or transfer or any attempt to make such assignment or transfer, the Option granted hereunder terminates and is of no further force or effect. Complete details of this restriction are set out in the Plan.
10. The Optionholder hereby agrees that:
  - (a) any rule, regulation or determination, including the interpretation by the Board of the Plan, the Option granted hereunder and the exercise thereof, is final and conclusive for all purposes and binding on all persons including the Company and the Optionholder; and
  - (b) the grant of the Option does not affect in any way the right of the Company or any Related Entity to terminate the employment or service of the Optionholder.

11. This Option Agreement has been made in and is to be construed under and in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

**BIOVAIL CORPORATION**

by \_\_\_\_\_  
Authorized Signatory

I have read the foregoing Option Agreement and hereby accept the Option to purchase Common Shares in accordance with and subject to the terms and conditions of such Agreement and the Plan. I understand that I may review the complete text of the Plan by contacting the Manager, Benefits Administration of the Company. I agree to be bound by the terms and conditions of the Plan governing the Option.

\_\_\_\_\_  
Date Accepted

\_\_\_\_\_  
Optionholder’s Signature

\_\_\_\_\_  
Optionholder’s Name

(PLEASE PRINT)

**SCHEDULE B**  
**EXERCISE NOTICE FORM - OPTIONS**

1. The terms and conditions of the Plan are hereby incorporated by reference as terms and conditions of this Exercise Notice and all capitalized terms used herein, unless expressly defined in a different manner, have the meanings ascribed thereto in the Biovail Corporation 2007 Equity Compensation Plan (the “Plan”).
2. I, \_\_\_\_\_, hereby certify that:
- (PRINT NAME)
- (a) I am in compliance with the terms and conditions of the Plan and I have not engaged in, and do not intend to engage in, any Detrimental Activity; and
- (b) I, hereby exercise the option to purchase \_\_\_\_\_ Common Shares at a purchase price of **[Cdn]\$** \_\_\_\_\_ per Common Share. This Exercise Notice is delivered in respect of the option to purchase \_\_\_\_\_ Common Shares that was granted to me on \_\_\_\_\_ pursuant to the Option Agreement entered into between the Company and me. In connection with the foregoing, I enclose cash, a certified cheque, bank draft or money order payable to the Company in the amount of **[Cdn]\$** \_\_\_\_\_ as full payment for the Common Shares to be received upon exercise of the Option.

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Date Accepted

Optionholder's Signature

**SCHEDULE C**  
**RESTRICTED SHARE UNIT AGREEMENT**

Biovail Corporation (the “Company”) hereby grants to the Unitholder named below (the “Unitholder”), the number of restricted share units (the “Units”) of the Company set forth below, in accordance with and subject to the terms, conditions and restrictions of this Unit Agreement, together with the provisions of the 2007 Equity Compensation Plan (the “Plan”) of the Company dated May 16, 2007, as such plan may be amended, modified, supplemented, revised, restated or replaced from time to time.

Name of Unitholder:

Type of Participant: [Employee Participant, Executive Participant, or Consultant Participant]

Date of Grant:

Number of Units Granted:

Total Number of Common Shares Subject to Units

Vesting:

Name of Designated Beneficiary in the Event of Death of Unitholder:

1. The terms and conditions of the Plan are hereby incorporated by reference as terms and conditions of this Unit Agreement and all capitalized terms used herein, unless expressly defined in a different manner, have the meanings ascribed thereto in the Plan.
  2. The provisions in the Plan regarding Detrimental Activity shall apply to this Unit. In the event that the Unitholder engages in Detrimental Activity prior to the vesting of the Unit, the Unit shall terminate as of the date the Unitholder engaged in such Detrimental Activity. As a condition of the vesting of the Unit, the Unitholder shall be deemed to have certified at the time of vesting that the Unitholder is in compliance with the terms and conditions of the Plan and that the Unitholder has not engaged in, and does not intend to engage in, any Detrimental Activity. In the event the Unitholder engages in Detrimental Activity, the Company shall be entitled to enforce its rights under the Plan and all other rights available to it at law or equity.
  3. No fractional Common Shares will be issued or provided on the vesting of the Unit granted hereunder. If, as a result of any adjustment to the number of Common Shares issuable or to be provided on the vesting of the Unit granted hereunder pursuant to the Plan, the Unitholder would be entitled to receive a fractional Common Share, the Unitholder has the right to acquire only the adjusted number of full Common Shares and no payment or other adjustment will be made with respect to the fractional Common Shares so disregarded.
  4. Nothing in the Plan or in this Unit Agreement will affect the Company’s right, or that of a Related Entity, to terminate the employment of, term of office of, or consulting
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agreement or arrangement with a Unitholder at any time for any reason whatsoever. Upon such termination, a Unitholder's rights to vesting of Units will be subject to restrictions for the vesting of Units. Complete details of such restrictions are set out in the Plan, and in particular in Sections 5.7 and 5.8 hereof.

5. Each notice relating to the Unit must be in writing. All notices to the Company must be delivered personally or by prepaid registered mail and must be addressed to the Manager, Benefits Administration. All notices to the Unitholder will be addressed to the principal address of the Unitholder on file with the Company. Either the Company or the Unitholder may designate a different address by written notice to the other. Such notices are deemed to be received, if delivered personally, on the date of delivery, and if sent by prepaid, registered mail, on the fifth business day following the date of mailing. Any notice given by either the Unitholder or the Company is not binding on the recipient thereof until received.
6. When the issuance or the providing of Common Shares or the payment of cash amount on the vesting of the Unit (if any) may, in the opinion of the Company, conflict or be inconsistent with any applicable law or regulation of any governmental agency having jurisdiction, the Company reserves the right to refuse to issue or provide such Common Shares or pay such cash amount for so long as such conflict or inconsistency remains outstanding.
7. The Unit granted pursuant to this Unit Agreement may only vest during the lifetime of the Unit by the Unitholder personally and no assignment or transfer of the Unit, whether voluntary, involuntary, by operation of law or otherwise, vests any interest or right in such Unit whatsoever in any assignee or transferee, and immediately upon any assignment or transfer or any attempt to make such assignment or transfer, the Unit granted hereunder terminates and is of no further force or effect. Complete details of this restriction are set out in the Plan.
8. The Unitholder hereby agrees that:
  - (a) any rule, regulation or determination, including the interpretation by the Board of the Plan, the Unit granted hereunder and the vesting thereof, is final and conclusive for all purposes and binding on all persons including the Company and the Unitholder; and
  - (b) the grant of the Unit does not affect in any way the right of the Company or any Related Entity to terminate the employment or service of the Unitholder.

9. This Unit Agreement has been made in and is to be construed under and in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

**BIOVAIL CORPORATION**

by \_\_\_\_\_  
Authorized Signatory

I have read the foregoing Unit Agreement and hereby accept the Unit in accordance with and subject to the terms and conditions of such Unit Agreement and the Plan. I understand that I may review the complete text of the Plan by contacting the Manager, Benefits Administration of the Company. I agree to be bound by the terms and conditions of the Plan governing the Units.

\_\_\_\_\_  
Date Accepted

\_\_\_\_\_  
Unitholder's Signature

\_\_\_\_\_  
Unitholder's Name

(PLEASE PRINT)

**SCHEDULE D**  
**PERFORMANCE CRITERIA**

1. Performance Goals established for purposes of a grant of Units intended to comply with Section 162(m) of the Code shall be based on one or more of the following performance criteria ("Performance Criteria"):
- (a) the attainment of certain target levels of, or a specified increase in, revenues, income before taxes and extraordinary items, net income, operating income, earnings before income tax, earnings before interest, taxes, depreciation and amortization or a combination of any or all of the foregoing;
  - (b) the attainment of certain target levels of, or a specified increase in, after-tax or pre-tax profits including, without limitation, that attributable to continuing and/or other operations;
  - (c) the attainment of certain target levels of, or a specified increase in, operational cash flow;
  - (d) the achievement of a certain level of, reduction of, or other specified objectives with regard to limiting the level of increase in, all or a portion of, the Company's bank debt or other long-term or short-term public or private debt or other similar financial obligations of the Company, which may be calculated net of such cash balances and/or other offsets and adjustments as may be established by the Committee;
  - (e) earnings per share or the attainment of a specified increase in earnings per share or earnings per share from continuing operations;
  - (f) the attainment of certain target levels of, or a specified increase in return on capital employed or return on invested capital;
  - (g) the attainment of certain target levels of, or a percentage increase in, after-tax or pre-tax return on stockholders' equity;
  - (h) the attainment of certain target levels of, or a specified increase in, economic value added targets based on a cash flow return on investment formula;
  - (i) the attainment of certain target levels, or a specified increase in, the fair market value of the Common Shares;
  - (j) the growth in the value of an investment in the Common Shares assuming the reinvestment of dividends;
  - (k) the filing of one or more new drug application(s) ("NDA") or one or more new drug submission(s) ("NDS") or the approval of one or more NDA(s) or one or
-



more NDS(s) by the U.S. Food and Drug Administration or the Canadian Therapeutic Products Directorate, as applicable;

- (l) the achievement of a launch of one or more new drug(s);
  - (m) the achievement of research and development milestones;
  - (n) the successful completion of clinical trial phases; or
  - (o) the attainment of a certain level of, reduction of, or other specified objectives with regard to limiting the level in or increase in, all or a portion of controllable expenses or costs or other expenses or costs.
2. For purposes of item (1) above, “extraordinary items” shall mean all items of gain, loss or expense for the fiscal year determined to be extraordinary or unusual in nature or infrequent in occurrence or related to a corporate transaction (including, without limitation, a disposition or acquisition) or related to a change in accounting principle, all as determined in accordance with standards established by Opinion No. 30 of the Accounting Principles Board.
3. In addition, such Performance Criteria may be based upon the attainment of specified levels of Company (or subsidiary, division or other operational unit of the Company) performance under one or more of the measures described above relative to the performance of other corporations. To the extent permitted under Section 162(m) of the Code, but only to the extent permitted under Section 162(m) of the Code (including, without limitation, compliance with any requirements for shareholder approval), the Committee may: (i) designate additional business criteria on which the Performance Criteria may be based or (ii) adjust, modify or amend the aforementioned business criteria.

**AMENDMENT NO. 1**  
**TO THE**  
**BIOVAIL CORPORATION 2007 EQUITY COMPENSATION PLAN**

This Amendment No. 1 (the "Amendment") to that certain 2007 Equity Compensation Plan (the "Plan") of Biovail Corporation (the "Company") is made as of December 18, 2008. Capitalized terms used herein and not otherwise defined shall have the meaning ascribed thereto in the Plan.

**WHEREAS**, the Board of Directors of the Company (the "Board") desires to amend the Plan to comply with the applicable requirements of section 409A of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (the "Code"); and

**WHEREAS**, Section 8.6 of the Plan provides that the Board is authorized to amend the terms of the Plan.

**NOW, THEREFORE**, the Plan is amended in the following respects:

1. Article 1 of the Plan is amended by adding the following Section 1.3:

1.3 Special Rules for Participants subject to U.S. taxation.

There are special rules for Participants subject to U.S. taxation that are necessary to comply with the final regulations under section 409A of the Code issued by the Treasury Department on April 10, 2007 and effective January 1, 2009. These special rules are set forth in the Plan where noted and in the attached Addendum to the Biovail Corporation 2007 Equity Compensation Plan ("Addendum") on Exhibit A.

2. Section 6.1(f) is hereby amended so that the introduction shall read as follows:

(f) For purposes of this Section 6.1, a "Change in Control" means the happening of any of the following events, except as the Compensation Committee may modify the definition of Change in Control for a particular grant of Options or Units as the Committee deems appropriate to comply with section 409A of the Code or otherwise:

3. Section 8.14 is hereby amended and replaced with the following Section 8.14:

8.14 Section 409A of the Code.

Options granted under this Plan are intended to be exempt under, and not subject to, section 409A of the Code and shall be limited, construed and interpreted in accordance with such intent. Options or Units granted under the Plan shall be structured in a manner consistent with the requirements of section 409A of the Code and payment or distributions with respect thereto shall only be made in a manner and upon an event permitted under section 409A of the Code and, to the extent required under section 409A of the Code, payments or distributions to a Participant subject to U.S. taxation who is a "specified employee" (within the meaning of such term under Section 409A of the Code) upon his or her separation from service shall be postponed and subject to a 6 month delay and shall be paid within 15 days after the end of the 6 month period following separation from service, or if such Participant dies during the postponement period prior to the payment of postponed amount, the amounts withheld on account of section 409A of the Code shall be paid to the personal representative of such Participant's estate within 60 days after the date of such Participant's death. All payments to Participant's subject to U.S. taxation, made upon a termination of employment or service, shall only be made upon a "separation from service" under section 409A of the Code. In no event shall a Participant subject to U.S. taxation, directly or indirectly designate the calendar year in which payment or distribution is made. References to "Participants subject to U.S. taxation" throughout this Plan shall include only those Participants employed in the U.S. or Participants who have advised the company in writing that they are subject to U.S. income tax.

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IN WITNESS WHEREOF, the Company has caused the execution of this Amendment on this 18th day of December, 2008.

BIOVAIL CORPORATION

By:    /s/ MARK DURHAM  
\_\_\_\_\_  
Name: Mark Durham  
Title: Senior Vice President of Human Resources  
and Shared Services

**EXHIBIT A**

**ADDENDUM**

**ADDENDUM TO THE BIOVAIL CORPORATION  
2007 EQUITY COMPENSATION PLAN**

This Addendum to the Biovail Corporation 2007 Equity Compensation Plan ("Addendum") applies to all Participants subject to U.S. taxation. The Section references set forth below match the Section references in the Plan. This Addendum shall have no other effect on any other terms and provisions set forth in the Plan except as set forth below. Capitalized terms not otherwise defined herein shall have the same meaning ascribed to such terms under the Plan.

**5.1 Grant and Vest of Units**

(d) Provided that a Unitholder has been employed by the Company or a Related Entity for at least ten (10) consecutive years, provided that the sum of the Unitholder's age and the Unitholder's years of service with the Company or a Related Entity equals or exceeds "70", all of the unvested Units held by such Unitholder shall immediately vest on the date on which such Unitholder has been employed by the Company or a Related Entity for at least ten (10) consecutive years, provided that the sum of the Unitholder's age and the Unitholder's years of service with the Company or a Related Entity equals or exceeds "70". Payment with respect of such vested Units, whether in the form of Common Shares, cash or both, shall be made by the Company to the Unitholder (or the Unitholder's designated beneficiary if applicable) within 60 days following the earliest to occur of the following events: the third anniversary of the Date of Grant (or such date as provided in the Unit Agreement in accordance with Section 5.1(b)), death, Disability (within the meaning of such term under section 409A) or the Termination Date (other than in the case of termination for cause). For the purposes of this Section, a Unitholder's employment with the Company or a Related Entity ends on the Termination Date.

**5.3 Unit Rights**

(c) Unless otherwise specified in the Unit Agreement, the Company may, in lieu of all or a portion of the Common Shares which would otherwise be issued or provided to a Unitholder, elect to pay a cash amount to a Unitholder equivalent to the Market Price of one Common Share for each vested Unit, to be paid within 60 days following the Vesting Date, provided that the Vesting Date does not occur during the Blackout Period.

**5.5 Dividends**

Except as otherwise determined by the Board on the Date of Grant, a Unitholder's Unit Account shall, until the earlier of the Vesting Date or termination and cancellation or forfeiture of the Units pursuant to the terms of the Plan, be allocated additional Units on the payment date of dividends on the Company's Common Shares, the number of which shall be the quotient determined by dividing: (a) the total amount of the dividends (excluding stock dividends but including dividends which may be paid in cash or Common Shares at the option of the shareholder) declared and that would have been paid to the Unitholder if the Units in his or her Unit Account on the relevant record date for dividends on the Common Shares had been Common Shares by (b) the closing price of the Common Shares on the TSX, NYSE or other exchange where the majority of the trading volume and value of the Common Shares occurs on the payment date of such dividends. Fractional Units shall not be granted pursuant to this Section 5.5. Any such additional Units shall have the same Vesting Dates and vest in accordance with the same terms as the Units in respect of which such additional Units are credited.

**5.7 Retirement, Death and Disability of Unitholder**

(a) In the case of an Employee Participant or Executive Participant, provided that the Individual Unitholder has been continuously employed by the Company or a Related Entity for a 12-month period following the Date of Grant of Units, if the employment or term of the office of the Individual Unitholder with the Company or a Related Entity terminates prior to the vesting of such Units on or after the Individual Unitholder's attainment of Retirement Age,, then such Individual Unitholder shall vest in the right to receive a number of Units following the Unitholder's Termination Date (subject to the attainment of performance goals and any other factors, if any, as determined by the Compensation Committee in its sole discretion), provided that the number of Units in which the Individual Unitholder shall be vest in the right to receive as of the Termination Date shall be prorated by multiplying the number of unvested Units by the number of days from but

excluding the Date of Grant to and including the Termination Date during which the Individual Unitholder has been providing active service to the Company or a Related Entity, divided by the total number of days from but excluding the Date of Grant to and including the third anniversary of the Date of Grant (or such date as provided in the Unit Agreement in accordance with Section 5.1(b)). Any remaining unvested Units shall be cancelled on the Termination Date. Payment with respect of the vested Units, whether in form of Common Shares, cash or both, shall be made by the Company to the Unitholder within 60 days following the third anniversary date of the Date of Grant (or such date as provided in the Unit Agreement in accordance with Section 5.1(b)). If the Individual Unitholder has not been so continuously employed by the Company or a Related Entity for such 12-month period, then all unvested Units shall be cancelled on the Termination Date.

(b) In the case of an Employee Participant, Executive Participant or Consultant Participant, if an Individual Unitholder dies while an employee, director or officer of, or while a consultant to, the Company or a Related Entity, as applicable, and prior to the vesting of Units, then such Units shall vest on the date of death (subject to the attainment of performance goals and any other factors, if any, as determined by the Compensation Committee in its sole discretion), provided that the number of Units which shall vest on such date shall be prorated by multiplying the number of unvested Units by the number of days from but excluding the Date of Grant to and including the date of death during which the Individual Unitholder had provided active service to the Company or a Related Entity, divided by the total number of days from but excluding the Date of Grant to and including the third anniversary of the Date of Grant (or such date as provided in the Unit Agreement in accordance with Section 5.1(b)). The payment with respect of the vested Units, whether in form of Common Shares, cash or both, shall be made by the Company to the Unitholder's designated beneficiary specified in the Unit Agreement with 60 days after the date of death. Any remaining unvested Units shall be cancelled on the date of death.

(c) In the case of an Employee Participant, Executive Participant or Consultant Participant, if an Individual Unitholder becomes Disabled while an employee, director or officer of, or while a consultant to, the Company or a Related Entity, as applicable, and prior to the vesting of Units, then such Units shall vest on the date of Disability (subject to the attainment of performance goals and any other factors, if any, as determined by the Compensation Committee in its sole discretion), provided that the number of Units which shall vest on such date shall be prorated by multiplying the number of unvested Units by the number of days from but excluding the Date of Grant to and including the date of Disability during which the Individual Unitholder had provided active service to the Company or a Related Entity, divided by the total number of days from but excluding the Date of Grant to and including the third anniversary of the Date of Grant (or such date as provided in the Unit Agreement in accordance with Section 5.1(b)). The payment with respect of the vested Units, whether in form of Common Shares, cash or both, shall be made by the Company to the Unitholder within 60 days following the Unitholder's Disability. Any remaining unvested Units shall be cancelled on the date of Disability. Notwithstanding the foregoing, no payment shall be made to a Participant on account of Disability unless a Participant becomes disabled within the meaning of such term under section 409A(a)(2)(C) of the Code.

**6.1 Change in Control**

Notwithstanding any provision to the contrary in the Plan, in the event a Change in Control occurs as set forth in Section 6.1 of the Plan and Units accelerate as described in Section 6.1 of the Plan, payment shall be made to the Unitholder within 60 days after the consummation of the Change in Control; provided, however, that Units shall be paid in accordance with Section 6.1 only if the transaction constituting a Change in Control is also a "change in control event" for purposes of section 409A of the Code ("409A Change in Control Event"). If the Change in Control does not constitute a 409A Change in Control Event then Units shall be paid on the earliest to occur of the following events: death, Disability, the Termination Date or the third anniversary date of the Date of Grant (or such date as provided in the Unit Agreement in accordance with Section 5.1(b)).

**7.2 Reorganization of Company's Capital**

Should the Company effect a subdivision or consolidation of Common Shares or any similar capital reorganization or a payment of a stock dividend (other than a stock dividend that is in lieu of a cash dividend), or should any other change be made in the capitalization of the Company that, in the opinion of the Board, would warrant the replacement or amendment of any existing Options or Units in order to adjust: (a) the

number of Common Shares that may be acquired on the exercise of any outstanding Options or vesting of any outstanding Units; and/or (b) the Exercise Price of any outstanding Options in order to preserve proportionately the rights and obligations of the Optionholders, the Board will authorize such steps to be taken as may be equitable and appropriate to that end. Any adjustments to outstanding Options or Units shall be consistent with the applicable requirements of section 409A.

**7.3 Other Events Affecting the Company**

In the event of an amalgamation, combination, merger or other reorganization involving the Company by exchange of Common Shares, by sale or lease of assets or otherwise, that, in the opinion of the Board, warrants the replacement or amendment of any existing Options or Units in order to adjust: (a) the number of Common Shares that may be acquired on the exercise of any outstanding Options or the vesting of any outstanding Units; or (b) the Exercise Price of any outstanding Options in order to preserve proportionately the rights and obligations of the Optionholders, the Board will authorize such steps to be taken as may be equitable and appropriate to that end. Any adjustments to outstanding Options or Units shall be consistent with the applicable requirements of section 409A.

**7.4 Immediate Exercise of Options or Vesting of Units**

Where the Board determines that the steps provided in Sections 7.2 and 7.3 would not preserve proportionately the rights and obligations of the Optionholders or the Unitholders in the circumstances or otherwise determines that it is appropriate, the Board may permit the immediate exercise of any outstanding Options or vesting of any outstanding Units that are not otherwise exercisable or vested (as the case may be). Notwithstanding the foregoing, payment with respect to any outstanding vested Units in accordance with Section shall be made on the earliest to occur of the following events: death, Disability, the Termination Date or the third anniversary date of the Date of Grant (or such date as provided in the Unit Agreement in accordance with Section 5.1(b)).

**8.7 Indemnification**

Every Director will at all times be indemnified and saved harmless by the Company from and against all costs, charges and expenses whatsoever including any income tax liability arising from any such indemnification, that such Director may sustain or incur by reason of any action, suit or proceeding, taken or threatened against the Director, otherwise than by the Company, for or in respect of any act done or omitted by the Director in respect of this Plan, such costs, charges and expenses to include any amount paid to settle such action, suit or proceeding or in satisfaction of any judgment rendered therein. All reimbursements provided pursuant to this Section 8.7, shall be made or provided in accordance with the requirements of section 409A of the Code, including, where applicable, the requirement that (A) any reimbursement shall be for expenses incurred during the Director's lifetime, (B) the amount of expenses eligible for reimbursement, during a calendar year may not affect the expenses eligible for reimbursement in any other calendar year, (C) the reimbursement of an eligible expense will be made on or before the last day of the calendar year following the year in which the expense is incurred and (D) the right to reimbursement is not subject to liquidation or exchange for another benefit.

**The following defined terms shall apply to the provisions set forth above:**

**"Termination Date"** means:

- (i) in the case of an Employee Participant or Executive Participant whose employment or term of office with the Company or a Related Entity terminates in the circumstances set out in Subsections 4.7(b), 4.7(c), 5.8(a) or 5.8(b) the date that is designated by the Company or a Related Entity, as the case may be, as the last day of the Optionholder's or the Unitholder's (as the case may be) employment or term of office with the Company or the Related Entity, as the case may be; provided that "Termination Date" specifically does not mean the date on which any period in respect of which any pay in lieu of notice, that the Company or the Related Entity (as the case may be) may be required by law or may voluntarily elect to provide to the Optionholder or the Unitholder (as the case may be), expires; and

- (ii) in the case of a Consultant Participant whose consulting agreement or arrangement with the Company or a Related Entity, as the case may be, terminates in the circumstances set out in Subsection 4,7(b), 4.7(c), 5.8(a) or 5.8(b) the date that is designated by the Company or the Related Entity, as the case may be, as the date on which the Optionholder's or the Unitholder's (as the case may be) consulting agreement or arrangement is terminated; provided that "Termination Date" specifically does not mean the date on which any period of notice of termination that the Company or the Related Entity (as the case may be) may be required to provide to the Optionholder or the Unitholder (as the case may be) under the terms of the consulting agreement for which the Company has elected to provide compensation in lieu of notice;
- (iii) in the case of Participants subject to U.S. taxation, if any payment is to be made upon a "Termination Date", the "Termination Date" shall mean a "separation from service" (within the meaning of such term under section 409A of the Code).

**"Retirement Age"** means attainment of age 65.



QuickLinks

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[BIOVAIL CORPORATION 2007 EQUITY COMPENSATION PLAN](#)

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**Amended and Restated  
2004 Stock Option Plan**

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June 25, 2004

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**BIOVAIL CORPORATION**  
**AMENDED AND RESTATED**  
**2004 STOCK OPTION PLAN**

**ARTICLE 1**  
**PURPOSE**

**1.1 Purpose**

The purpose of this Plan is to assist the Company in attracting, retaining and motivating key employees, officers and directors by granting to them, and to others providing services to the Company, its subsidiaries and affiliates, options to purchase common shares in the capital of the Company.

**ARTICLE 2**  
**INTERPRETATION**

**2.1 Definitions**

When used herein, unless the context otherwise requires, the following terms have the following meanings, respectively:

- “Acquiror” has the meaning set forth in Subsection 4.9(e) of this Plan;
  - “Affiliated Entity” means an “affiliated entity” (as defined in MI 45-105) of the Company;
  - “Associate” has the meaning given to it in MI 45-105;
  - “Board” means the board of directors of the Company;
  - “Change in Control” has the meaning set forth in Section 4.9 of this Plan;
  - “Canadian Option” means an Option for which the Exercise Price is stated and payable in Canadian dollars;
  - “Code” means the U.S. Internal Revenue Code of 1986, as amended;
  - “Committee” has the meaning set forth in Section 3.2 of this Plan;
  - “Common Shares” means the common shares in the capital of the Company;
  - “Company” means Biovail Corporation, a corporation incorporated under the laws of Ontario, and its successors;
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“Consultant Participant” means an individual, other than an Employee Participant or an Executive Participant, who is a “consultant” (as defined in MI 45-105) and includes a Consultant Participant’s Permitted Assigns;

“Date of Grant” means, for any Option, the date specified by the Board at the time it grants the Option (which cannot be earlier than the date of grant) or, if no such date is specified, the date upon which the Option was granted;

“Detrimental Activity” means: (a) the disclosure to anyone outside the Company or its Affiliated Entities, or the use in any manner other than in the furtherance of the Company’s or an Affiliated Entity’s business, without written authorization from the Company, of any confidential information or proprietary information relating to the business of the Company or its Affiliated Entities that is acquired by a Participant prior to the Participant’s Termination Date; (b) activity by the Participant while employed or performing services that results, or if known could result, in the Participant’s termination of service that is classified by the Company as a termination for cause; (c) any attempt, directly or indirectly, to solicit, induce or hire (or the identification for solicitation, inducement or hiring of) any non-clerical employee of the Company or its Affiliated Entities to be employed by, or to perform services for, the Participant or any Person with which the Participant is associated (including, but not limited to, due to the Participant’s employment by, consultancy for, equity interest in, or creditor relationship with such Person) or any Person from which the Participant receives direct or indirect compensation or fees as a result of such solicitation, inducement or hire (or the identification for solicitation, inducement or hire) without, in all cases, written authorization from the Company; (d) any attempt, directly or indirectly, to solicit in a competitive manner any current or prospective customer of the Company or its Affiliated Entities without written authorization from the Company; (e) the Participant’s Disparagement, or inducement of others to engage in Disparagement, of the Company or its Affiliated Entities or their past and present officers, directors, employees or products; (f) without written authorization from the Company, the direct or indirect engaging in any business or organization competitive with the Company or its Affiliated Entities or the rendering of services to any such organization or business if such organization or business is otherwise prejudicial to, or in conflict with, the interests of the Company or its Affiliated Entities; provided, however, that competitive activities shall be only those competitive with any business unit or Affiliated Entity of the Company with regard to which the Participant performed services at any time within the year prior to the Participant’s Termination Date; or (g) material breach of any agreement between the Participant and the Company or an Affiliated Entity (including, without limitation, any employment agreement or non-competition or non-solicitation agreement). For purposes of sub-sections (a), (c), (d) and (f) above, the Chairman of the Board or the Chief Executive Officer of the Company shall have authority to provide the Participant with written authorization to engage in the activities contemplated thereby and no other person shall have authority to provide the Participant with such authorization;

“Director” means a member of the board of directors of the Company or of an Affiliated Entity;

“Disabled” or “Disability” means the permanent and total incapacity of an Optionee as determined in accordance with procedures established by the Board for purposes of this Plan;

“Disparagement” means making comments or statements to (x) the press, (y) the Company’s or an Affiliated Entity’s employees or consultants, or (z) any individual or entity with whom the Company or its Affiliated Entities has a business relationship, in each case that could reasonably be expected to adversely affect in any manner: (a) the conduct of the business of the Company or its Affiliated Entities (including, without limitation, any products or business plans or prospects); or (b) the business prospects or reputation of the Company or its Affiliated Entities, any of their products, or their past or present officers, directors or employees;

“Employee Participant” means a full-time, part-time employee or contract employee (other than an Executive Participant or Consultant Participant) of the Company or of an Affiliated Entity and includes an Employee Participant’s Permitted Assigns;

“Executive Participant” means a Director or an officer of the Company or of an Affiliated Entity and includes an Executive Participant’s Permitted Assigns;

“Exercise Notice” means a notice in writing, in the form set out in Schedule B or such successor form as the Board may adopt from time to time, signed by an Optionee and stating the Optionee’s intention to exercise a particular Option;

“Exercise Price” means the price at which a Common Share may be purchased pursuant to the exercise of an Option;

“Exercise Period” means the period of time during which an Option granted under this Plan may be exercised (provided however that the Exercise Period may not exceed 10 years from the relevant Date of Grant);

“Fair Market Value” of a Common Share means the weighted average trading price of the Common Shares traded in Canadian dollars on the TSX during the relevant day or, if the volume of Common Shares traded on the New York Stock Exchange (“NYSE”) on that day exceeds the volume of Common Shares traded in Canadian dollars on the TSX on such relevant day, the weighted average trading price of the Common Shares on the NYSE. The Fair Market Value so determined may be in Canadian dollars or U.S. dollars. As a result, the Fair Market Value of a Common Share covered by a Canadian Option shall be either (a) such Fair Market Value as determined above, if in Canadian dollars, or (b) such Fair Market Value as determined above converted into Canadian dollars at the noon rate of exchange of the Bank of Canada on the relevant day, if in U.S. dollars. Similarly, the Fair Market Value of a U.S. Option shall be either (a) such Fair Market Value as determined above, if in U.S. dollars, or (b) such Fair Market Value as determined above converted into U.S. dollars at the noon rate of exchange of the Bank of Canada on the relevant day, if in Canadian dollars. If on the relevant day there is not a board lot trade in the Common Shares on each of the TSX and NYSE or there is not a noon rate of exchange of the Bank of Canada, then the Fair Market Value of a Common Share covered by a Canadian Option and the Fair Market Value of a Common Share covered by a U.S. Option shall be determined as provided above on the first day

immediately preceding the relevant day for which there were such board lot trades in the Common Shares and a noon rate of exchange. The Fair Market Value of a Common Share shall be rounded up to the nearest whole cent;

“Individual Optionee” means an Optionee who is an individual or the individual of which the Optionee is a permitted assign, as the case may be;

“Insider” has the meaning set forth in the Policy;

“MI 45-105” means Multilateral Instrument 45-105 of certain of the Canadian Securities Administrators, as amended from time to time;

“OBCA” means the *Business Corporations Act* (Ontario) and the regulations promulgated thereunder, both as amended from time to time;

“Offer” has the meaning set forth in Section 4.9 of this Plan;

“Option” means a non-assignable, non-transferable right to purchase Common Shares under this Plan;

“Optionee” means an Employee Participant, Executive Participant or Consultant Participant who has been granted one or more Options;

“Option Agreement” means a signed, written agreement between an Optionee and the Company, in the form attached as Schedule A, subject to any amendments or additions thereto as may, in the discretion of the Board, be necessary or advisable, evidencing the terms and conditions on which an Option has been granted under this Plan;

“Participant” means an Employee Participant, Executive Participant or Consultant Participant;

“Permitted Assigns” has the meaning given to it in MI 45-105;

“Person” includes an individual, sole proprietorship, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, and a natural person in his or her capacity as trustee, executor, administrator or other legal representative;

“Plan” means this stock option plan;

“Policy” means the Revised Policy of the TSX on Listed Company Share Incentive Arrangements, as set forth in sections 626 to and through 637.3 of the Company Manual of the TSX;

“Retirement” means retirement from active employment with the Company or an Affiliated Entity at or after age 65 or, with the consent for purposes of this Plan of such officer of the Company as may be designated by the Board, at or after such earlier age and upon the completion of such years of service as the Board may specify;

“Section 162(m) of the Code” shall mean the exception for performance-based compensation under section 162(m) of the Code and any U.S. Treasury regulations thereunder;

“Termination Date” means:

- (i) in the case of an Employee Participant or Executive Participant whose employment or term of office with the Company or an Affiliated Entity terminates in the circumstances set out in Subsection 4.7(b) or 4.7(c), the date that is designated by the Company or an Affiliated Entity, as the case may be, as the last day of the Optionee’s employment or term of office with the Company or the Affiliated Entity, as the case may be, provided that in the case of termination of employment by voluntary resignation by the Optionee, such date shall not be earlier than the date notice of resignation was given, and “Termination Date” specifically does not mean the date on which any period of reasonable notice that the Company or the Affiliated Entity (as the case may be) may be required at law to provide to the Optionee expires; and
- (ii) in the case of a Consultant Participant whose consulting agreement or arrangement with the Company or an Affiliated Entity, as the case may be, terminates in the circumstances set out in Subsection 4.7(d) or 4.7(e), the date that is designated by the Company or the Affiliated Entity, as the case may be, as the date on which the Optionee’s consulting agreement or arrangement is terminated, provided that in the case of termination of employment by voluntary termination by the Optionee, such date shall not be earlier than the date notice of voluntary termination was given, and “Termination Date” specifically does not mean the date on which any period of notice of termination that the Company or the Affiliated Entity (as the case may be) may be required to provide to the Optionee under the terms of the consulting agreement or arrangement expires;

“TSX” means the Toronto Stock Exchange; and

“U.S. Option” means an Option for which the Exercise Price is stated and payable in U.S. dollars.

## **2.2 Interpretation**

- (a) Whenever the Board or, where applicable, the Committee is to exercise discretion in the administration of the terms and conditions of this Plan, the term “discretion” means the sole and absolute discretion of the Board or the Committee, as the case may be.
- (b) As used herein, the terms “Article”, “Section”, “Subsection” and “clause” mean and refer to the specified Article, Section, Subsection and clause of this Plan, respectively.

- (c) Words importing the singular include the plural and vice versa and words importing any gender include any other gender.
- (d) Unless otherwise specified, all references to money amounts are to U.S. currency.

### **ARTICLE 3 ADMINISTRATION**

#### **3.1 Administration**

Subject to 3.2, this Plan will be administered by the Board and the Board has sole and complete authority, in its discretion, to:

- (a) determine the individuals (from among the Participants) to whom Options may be granted;
- (b) grant Options in such amounts and, subject to the provisions of this Plan, on such terms and conditions as it determines including:
  - (i) the time or times at which Options may be granted;
  - (ii) the Exercise Price;
  - (iii) the time or times when each Option becomes exercisable and, subject to Section 4.3, the duration of the Exercise Period;
  - (iv) whether restrictions or limitations are to be imposed on the Common Shares and the nature of such restrictions or limitations, if any;
  - (v) any acceleration of exercisability or waiver of termination regarding any Option, based on such factors as the Board may determine;
- (c) interpret this Plan and adopt, amend and rescind administrative guidelines and other rules and regulations relating to this Plan; and
- (d) make all other determinations and take all other actions necessary or advisable for the implementation and administration of this Plan.

The Board's determinations and actions within its authority under this Plan are conclusive and binding on the Company and all other persons. The day-to-day administration of this Plan may be delegated to such officers and employees of the Company or of an Affiliated Entity as the Board determines.

#### **3.2 Delegation to Committee**

To the extent permitted by applicable law, the Board may, from time to time, delegate to a committee (the "Committee") of the Board all or any of the powers conferred on the Board under this Plan. In such event, the Committee will exercise the powers delegated to it by the Board in the manner and on the terms authorized by the Board. Any decision made or action taken by the Committee arising out of or in connection with the administration or interpretation of this Plan in



this context is final and conclusive. Notwithstanding anything to the contrary contained herein, each Option intended to comply with Section 162(m) of the Code shall be approved by a compensation committee of the Board comprised solely of two or more “outside directors” (within the meaning of Section 162(m) of the Code); *provided, however*, that failure of an Option to be approved in a manner that satisfies the requirements of Section 162(m) shall not cause the Option to be void.

**3.3 Eligibility**

All Employee Participants, Executive Participants and Consultant Participants are eligible to participate in this Plan, subject to Subsections 4.6(b) and 4.7(f). Eligibility to participate does not confer upon any Participant any right to be granted Options pursuant to this Plan. The extent to which any Participant is entitled to be granted Options pursuant to this Plan will be determined in the discretion of the Board, provided however that the following restrictions shall also apply to this Plan:

- (a) the number of Common Shares reserved for issuance to any one person pursuant to Options must not exceed 5% of the outstanding issue of the Company;
- (b) the number of Common Shares reserved for issuance pursuant to Options granted to Insiders under this Plan, together with Common Shares issuable to Insiders under the Company’s other share compensation arrangements, must not exceed 10% of the outstanding issue of the Company;
- (c) the number of Common Shares issued to Insiders within any one year period pursuant to this Plan, together with Common Shares issuable to Insiders during that one year period under the Company’s other share compensation arrangements, must not exceed 10% of the outstanding issue of the Company;
- (d) the number of Common Shares issued pursuant to this Plan to any one Insider and such Insider’s Associates within a one year period, together with Common Shares issuable to such persons within that one year period under the Company’s other share compensation arrangements, must not exceed 5% of the outstanding issue of the Company;
- (e) the number of Common Shares to be issued under this Plan to any one Optionee during each calendar year during the term of the Plan shall not exceed 5% of the outstanding issue of the Company; and
- (f) the aggregate number of Common Shares to be issued to non-employee Directors, as a group, under this Plan, together with any Common Shares to be issued under to non-employee Directors any predecessor stock option plan of the Company, to non-employee Directors, as a group, shall not exceed 350,000.

For purposes of this Section, the term “outstanding issue” and “share compensation arrangements” have the meanings set forth in the Policy. In addition, for purposes of Subsections (c) and (d) above, “outstanding issue” will be determined on the basis of the number of shares that are outstanding immediately prior to the share issuance in question, excluding shares issued pursuant to share compensation arrangements over the preceding one year period.

**3.4 Total Common Shares Subject to Options**

- (a) The aggregate number of Common Shares that may be issued pursuant to the exercise of Options must not exceed 5,000,000 Common Shares. No Option may be granted if such grant would have the effect of causing the total number of Common Shares subject to Options to exceed the above-noted total number of Common Shares reserved for issuance pursuant to the exercise of Options. Subject to applicable law and any shareholder or other approval which may be required, the Board may in its discretion amend this Plan to increase such number of Common Shares without notice to any Optionees.
- (b) To the extent Options terminate for any reason prior to exercise in full or are surrendered for cancellation or otherwise, the Common Shares subject to such Options shall be added back to the number of Common Shares reserved for issuance under this Plan and such Common Shares will again become available for grant under this Plan.

**3.5 Option Agreements**

All grants of Options under Section 4.1 of this Plan will be evidenced by Option Agreements. Such Option Agreements will be subject to the applicable provisions of this Plan and will contain such provisions as are required by this Plan and any other provisions that the Board may direct. Any one officer of the Company is authorized and empowered to execute and deliver, for and on behalf of the Company, an Option Agreement to each Optionee.

**3.6 Non-transferability**

Subject to Section 4.6 and the rules and policies of any stock exchange on which the Common Shares are listed, Options granted under this Plan may only be exercised during the lifetime of the Individual Optionee by such Individual Optionee personally. Except to the extent permitted by such rules and applicable law, no assignment or transfer of Options, whether voluntary, involuntary, by operation of law or otherwise, vests any interest or right in such Options whatsoever in any assignee or transferee and immediately upon any assignment or transfer, or any attempt to make the same, such Options will terminate and be of no further force or effect. If any Individual Optionee (the “Original Optionee”) has transferred Options to a corporation pursuant to this Section 3.6 when such transfer is permitted by applicable rules or law, such Options will terminate and be of no further force or effect if at any time the Original Optionee should cease to own all of the issued shares of such corporation.

**ARTICLE 4  
GRANT OF OPTIONS**

**4.1 Grant of Options**

The Board may, from time to time, subject to the provisions of this Plan and such other terms and conditions as the Board may determine, grant Options to any Participant.

**4.2      Exercise Price**

The purchase price of Common Shares purchasable under any Option will be as determined by the Board but in any event will be no less than the Fair Market Value of the Common Shares on the day prior to the Date of Grant.

**4.3      Term of Options**

Subject to any accelerated termination as set forth in this Plan, each Option, unless otherwise specified by the Board, expires on the fifth anniversary of the Date of Grant, provided that in no event will the Exercise Period of an Option exceed 10 years from its Date of Grant.

**4.4      Exercise Period**

- (a)      Options will vest and be exercisable in the manner determined by the Board and specified in the applicable Option Agreement.  
  
Once an Option becomes exercisable, it remains exercisable until expiration or termination of the Option, unless otherwise specified by the Board in connection with the grant of such Option or pursuant to Section 4.9. Each Option or instalment may be exercised at any time or from time to time, in whole or in part, for up to the total number of Common Shares with respect to which it is then exercisable. The Board has the right to accelerate the date upon which any instalment of any Option becomes exercisable.  
  
Subject to the provisions of this Plan and any Option Agreement, Options shall be exercised by means of a fully completed Exercise Notice delivered to the Company.
- (b)      Provided that an Optionee has been employed by the Company or an Affiliated Entity for at least ten (10) consecutive years, on the date that the sum of the Optionee’s age and the Optionee’s years of service with the Company or an Affiliated Entity equals “70”, all of the unvested Options held by such Optionee shall immediately vest and become exercisable pursuant to the terms of this Plan. Notwithstanding Sections 4.6 and 4.7, all such vested Options shall expire on the earlier of (a) the expiration of the term of such options, and (b) one year following the Termination Date. For the purposes of this section, an Optionee’s employment with the Company or an Affiliated Entity ends on the Termination Date.
- (c)      Unless otherwise determined by the Board at grant, the Option Agreement shall provide that (i) in the event the Participant engages in a Detrimental Activity prior to any exercise of the Option, all Options held by the Participant shall thereupon terminate and expire, (ii) as a condition of the exercise of a Option, the Participant shall be deemed to have certified at the time of exercise that the Participant is in compliance with the terms and conditions of the Plan and that the Participant has not engaged in, and does not intend to engage in, any Detrimental Activity, and (iii) in the event the Participant engages in a Detrimental Activity during the one-year period commencing on the date the Option is exercised or becomes vested, the Company shall be entitled to recover from the Participant at any time within

one year after such exercise or vesting, and the Participant shall pay over to the Company, an amount equal to any gain realized as a result of the exercise of the Option (whether at the time of exercise or thereafter). The Company's rights in subsection (iii) shall also apply if it is determined that the Participant's deemed certification pursuant to subsection (ii) was untrue. This Section 4.4(c) shall cease to apply upon a Change in Control.

#### **4.5 Payment of Exercise Price**

The Exercise Notice must be accompanied by payment in full of the purchase price for the Common Shares to be purchased. The Exercise Price must be fully paid in cash, or by certified cheque, bank draft or money order payable to the Company or by such other means as might be specified from time to time by the Board. No Common Shares will be issued or transferred until full payment therefor has been received by the Company. As soon as practicable after receipt of any Exercise Notice and full payment, the Company will deliver to the Optionee a certificate or certificates representing the acquired Common Shares.

#### **4.6 Retirement, Death or Disability of Optionee**

If an Individual Optionee dies or becomes Disabled while an employee, director or officer of the Company or an Affiliated Entity or if the employment or term of office of the Individual Optionee with the Company or an Affiliated Entity terminates due to Retirement:

- (a) the executor or administrator of the Individual Optionee's estate or the Individual Optionee, as the case may be, may exercise any Options of the Optionee to the extent that the Options were exercisable at the date of such death, Disability or Retirement and the right to exercise such Options terminates on the earlier of: (i) the date that is 180 days from the date of the Individual Optionee's death, Disability or Retirement; and (ii) the date on which the Exercise Period of the particular Option expires. Any Options held by the Optionee that were not exercisable at the date of death, Disability or Retirement immediately expire and are cancelled on such date; and
- (b) such Optionee's eligibility to receive further grants of Options under the Plan ceases as of the date of the Individual Optionee's death, Disability or Retirement, as the case may be.

#### **4.7 Termination of Employment or Services**

- (a) Where, in the case of an Employee Participant or Executive Participant, an Individual Optionee's employment or term of office with the Company or an Affiliated Entity ceases by reason of the Individual Optionee's death, Disability or Retirement, then the provisions of Section 4.6 will apply.
- (b) Where, in the case of an Employee Participant or Executive Participant, an Individual Optionee's employment or term of office terminates by reason of: (i) termination by the Company or an Affiliated Entity without cause (whether such termination occurs with or without any or adequate reasonable notice, or with or without any or adequate compensation in lieu of such reasonable notice); or (ii)

voluntarily resignation by the Optionee, then any Options held by the Optionee that are exercisable at the Termination Date continue to be exercisable by the Optionee until the earlier of: (A) the date that is 30 days after the Termination Date; and (B) the date on which the Exercise Period of the particular Option expires. Any Options held by the Optionee that are not exercisable at the Termination Date immediately expire and are cancelled on the Termination Date.

- (c) Where, in the case of an Employee Participant or Executive Participant, an Individual Optionee's employment or term of office is terminated by the Company or an Affiliated Entity for cause, then any Options held by the Optionee, whether or not exercisable at the Termination Date, immediately expire and are cancelled on such date at a time determined by the Board, in its sole discretion.
- (d) Where, in the case of a Consultant Participant, an Optionee's consulting agreement or arrangement terminates by reason of: (i) termination by the Company or an Affiliated Entity for any reason whatsoever other than for breach of the consulting agreement or arrangement (whether or not such termination is effected in compliance with any termination provisions contained in the Optionee's consulting agreement or arrangement); or (ii) voluntarily termination by the Individual Optionee; or (iii) the death or Disability of the Individual Optionee, then any Options held by the Optionee that are exercisable at the Termination Date, or at the date of the death or Disability of the Individual Optionee, as the case may be, continue to be exercisable by the Optionee until the earlier of: (A) the date that is 30 days from the Termination Date, or from the date of the death or Disability of the Individual Optionee, as the case may be; and (B) the date on which the Exercise Period of the particular Option expires. Any Options held by the Optionee that are not exercisable at the Termination Date, or at the date of the death or Disability of the Individual Optionee, as the case may be, immediately expire and are cancelled on such date.
- (e) Where, in the case of a Consultant Participant, an Optionee's consulting agreement or arrangement is terminated by the Company or an Affiliated Entity for breach of the consulting agreement or arrangement (whether or not such termination is effected in compliance with any termination provisions contained in Optionee's consulting agreement or arrangement), then any Options held by the Optionee, whether or not such Options are exercisable at the Termination Date, immediately expire and are cancelled on the Termination Date at a time determined by the Board, in its discretion.
- (f) An Optionee's eligibility to receive further grants of Options under the Plan ceases as of the date that the Company or an Affiliated Entity, as the case may be, provides the Optionee with written notification that the Individual Optionee's employment, term of office, consulting agreement or arrangement, as the case may be, is terminated, notwithstanding that such date may be prior to the Termination Date.
- (g) Notwithstanding Subsections 4.7(b) and (d), unless the Board, in its discretion, otherwise determines, at any time and from time to time, Options are not affected

by a change of employment or consulting arrangement within or among the Company or an Affiliated Entity for so long as the Participant continues to be any of an Employee Participant, a Consultant Participant or an Executive Participant.

#### **4.8 Discretion to Permit Exercise**

Notwithstanding the provisions of Sections 4.6 and 4.7, the Board may, in its discretion, at any time prior to or following the events contemplated in such sections, permit the exercise of any or all Options held by the Optionee in the manner and on the terms authorized by the Board, provided that the Board will not, in any case, authorize the exercise of an Option pursuant to this section beyond the expiration of the Exercise Period of the particular Option.

#### **4.9 Change in Control**

- (a) Notwithstanding anything else in this Plan or any Option Agreement, the Board may, without the consent of any Optionee, take such steps as are necessary or desirable to cause the conversion or exchange of any outstanding Options into or for cash or options, rights or other securities of substantially equivalent value (or greater value), as determined by the Board in its discretion, in any entity participating in or resulting from a "Change in Control" (as defined below).
- (b) Upon the Company entering into an agreement relating to, or otherwise becoming aware of, a transaction which, if completed, would result in a Change in Control, the Company shall give written notice of the proposed transaction to the Optionees, together with a description of the effect of such Change in Control on outstanding Options, not less than ten (10) Business Days prior to the closing of the transaction resulting in the Change of Control.
- (c) The Board may, in its sole discretion, accelerate the vesting of any or all outstanding Options to provide that, notwithstanding Section 4.4 or any Option Agreement, such outstanding Options shall be fully vested and conditionally exercisable upon (or prior to) the completion of the transaction resulting in the Change in Control provided that the Board shall not, in any case, authorize the exercise of Options pursuant to this section beyond the Expiry Date of the Options. If the Board elects to accelerate the vesting of the Options, then if any of such Options are not exercised on or prior to completion of the transaction resulting in the Change in Control, such unexercised Options shall terminate and expire upon the completion of the transaction resulting in the Change in Control. If, for any reason, the transaction which would result in the Change in Control is not completed, the acceleration of the vesting of the Options shall be retracted and vesting shall instead revert to the manner provided in Section 4.4.
- (d) To the extent that the transaction resulting in a Change in Control is a capital reorganization, arrangement, amalgamation or reclassification of the share capital of the Company and the Board does not accelerate the vesting of Options pursuant to Subsection 4.9(c) or take action pursuant to Section 4.9(a), the Company shall make adequate provisions to ensure that, upon completion of the proposed transaction resulting in the Change in Control, the number and kind of shares subject to outstanding Options and/or the Exercise Price per share of Options shall

be appropriately adjusted in such manner as the Board considers equitable to prevent substantial dilution or enlargement of the rights granted to Optionees. The Board may make changes to the terms of the Options or this Plan to the extent necessary or desirable to comply with any rules, regulations or policies of any stock exchange on which the Common Shares are listed, provided that the value of previously granted Options, as determined by the Board in its discretion, and the rights of Optionees are not materially adversely affected by any such changes.

- (e) If any individual, corporation or other entity (an “Acquiror”) makes an offer to purchase all of the Common Shares (an “Offer”) and the Offer is accepted by all of the holders of Common Shares (or by a sufficient number of holders such that the Acquiror may statutorily acquire the balance of the outstanding Common Shares), each Optionee shall be required to exercise all Options held and sell the Common Shares which they acquire pursuant to such exercise of Options then owned by them to the Acquiror on the same terms and conditions as set out in the Offer.
- (f) For purposes of this Section 4.9, a “Change in Control” means the happening of any of the following events:
  - (i) the completion of a transaction pursuant to which (A) the Company goes out of existence or (B) any Person, or any Associate or Affiliated Entity of such Person (other than the Company, any trustee or other fiduciary holding securities under any employee benefit plan of the Company or an Affiliated Entity, or any company owned, directly or indirectly, by the shareholders of the Company in substantially the same proportions as their ownership of Common Shares of the Company) hereafter acquires the direct or indirect “beneficial ownership” (as defined by the OBCA) of securities of the Company representing 50% or more of the aggregate voting power of all of the Company’s then issued and outstanding securities following which Eugene Melnyk is not the Chairman of the board of directors of the Company;
  - (ii) the lease, exchange, license, sale or other similar disposition of all or substantially all of the Company’s assets in one transaction or a series of related transactions to an entity following which Eugene Melnyk is not the Chairman of the board of directors of such entity, or if such entity is not a corporation, Eugene Melnyk does not hold a position with such entity entitling him to perform functions similar to those performed by the chairman of a board of directors of a corporation;
  - (iii) the dissolution or liquidation of the Company except in connection with the distribution of assets of the Company to one or more Persons which were Affiliated Entities prior to such event;
  - (iv) during any period of 30 consecutive months beginning on or after the date of this Plan, the persons who were members of the Board immediately before the beginning of such period (the “Incumbent Directors”) cease (for any reason other than death) to constitute at least a majority of the Board

or the board of directors of any successor to the Company, provided that any director who was not a director as of the date of this Plan shall be deemed to be an Incumbent Director if such director is elected to the Board by, or on the recommendation of or with the approval of, at least two-thirds of the directors who then qualified as Incumbent Directors either actually or by prior operation of the foregoing unless such election, recommendation or approval occurs as a result of an actual or threatened election contest or other actual or threatened solicitation of proxies or contests by or on behalf of a Person other than a member of the Board; or

- (v) a merger, amalgamation, arrangement or consolidation of the Company with any other corporation following which Eugene Melnyk is no longer chairman of the Company, other than a merger, amalgamation, arrangement or consolidation that would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 50% of the combined voting power of the voting securities of the Company or such surviving entity outstanding immediately after such merger, amalgamation, arrangement or consolidation; provided, however, that a merger, amalgamation, arrangement or consolidation effected to implement a recapitalization of the Company (or similar transaction) in which no Person (other than those covered by the exceptions in (i) above) acquires more than 50% of the combined voting power of the Company's then outstanding securities shall not constitute a Change in Control.
- (g) If the Board elects to accelerate the vesting of any or all outstanding Options immediately prior to the completion of a transaction resulting in a Change in Control, it may also determine that all such outstanding Options will be purchased by the Company or an Affiliated Entity at the "Change in Control Price" (as defined below), less the applicable Exercise Price for such Options, as of the date such Change in Control is determined to have occurred or as of such other date prior to the Change in Control as the Board may determine. Outstanding Options may only be purchased by the Company or an Affiliated Entity, as described above, however, if the Change in Control Price is higher than the Exercise Price for such outstanding Options.

For purposes of this Subsection 4.9(g), "Change in Control Price" means the highest price per Common Share paid in any transaction reported on a stock exchange or paid or offered in any bona fide transaction related to a potential or actual Change in Control at any time during the five trading days (or if the Common Shares are not listed on any stock exchange, during the three month period) preceding the Change in Control, as determined by the Board.

#### **4.10 Conditions of Exercise**

Each Optionee will, when requested by the Company, sign and deliver all such documents relating to the granting or exercise of Options which the Company deems necessary or desirable.



**ARTICLE 5**  
**SHARE CAPITAL ADJUSTMENTS**

**5.1 General**

The existence of any Options does not affect in any way the right or power of the Company or its shareholders to make, authorize or determine any adjustment, recapitalization, reorganization or any other change in the Company's capital structure or its business, or any amalgamation, combination, merger or consolidation involving the Company, to create or issue any bonds, debentures, Common Shares or other securities of the Company or to determine the rights and conditions attaching thereto, to effect the dissolution or liquidation of the Company or any sale or transfer of all or any part of its assets or business, or to effect any other corporate act or proceeding, whether of a similar character or otherwise, whether or not any such action referred to in this section would have an adverse effect on this Plan or any Option granted hereunder.

**5.2 Reorganization of Company's Capital**

Should the Company effect a subdivision or consolidation of Common Shares or any similar capital reorganization or a payment of a stock dividend (other than a stock dividend that is in lieu of a cash dividend), or should any other change be made in the capitalization of the Company that, in the opinion of the Board, would warrant the replacement or amendment of any existing Options in order to adjust: (a) the number of Common Shares that may be acquired on the exercise of any outstanding Options; and/or (b) the Exercise Price of any outstanding Options in order to preserve proportionately the rights and obligations of the Optionees, the Board will authorize such steps to be taken as may be equitable and appropriate to that end.

**5.3 Other Events Affecting the Company**

In the event of an amalgamation, combination, merger or other reorganization involving the Company by exchange of Common Shares, by sale or lease of assets or otherwise, that, in the opinion of the Board, warrants the replacement or amendment of any existing Options in order to adjust: (a) the number of Common Shares that may be acquired on the exercise of any outstanding Options; or (b) the Exercise Price of any outstanding Options in order to preserve proportionately the rights and obligations of the Optionees, the Board will authorize such steps to be taken as may be equitable and appropriate to that end.

**5.4 Immediate Exercise of Options**

Where the Board determines that the steps provided in Sections 5.2 and 5.3 would not preserve proportionately the rights and obligations of the Optionees in the circumstances or otherwise determines that it is appropriate, the Board may permit the immediate exercise of any outstanding Options that are not otherwise exercisable.

**5.5 Issue by Company of Additional Shares**

Except as expressly provided in this Article 5, neither the issue by the Company of shares of any class or securities convertible into or exchangeable for shares of any class, nor the conversion or exchange of such shares or securities, affects, and no adjustment by reason thereof is to be made

with respect to: (a) the number of Common Shares that may be acquired on the exercise of any outstanding Options; or (b) the Exercise Price of any outstanding Options.

**5.6 Fractions**

No fractional Common Shares will be issued on the exercise of an Option. Accordingly, if, as a result of any adjustment under Sections 5.2 to 5.4 inclusive, an Optionee would become entitled to a fractional Common Share, the Optionee has the right to acquire only the adjusted number of full Common Shares and no payment or other adjustment will be made with respect to the fractional Common Shares so disregarded.

**5.7 Conditions of Exercise**

This Plan and each Option are subject to the requirement that if at any time the Board determines that the listing, registration or qualification of the Common Shares subject to such Option upon any stock exchange or under any provincial, state or federal law, or the consent or approval of any governmental body, stock exchange or of the holders of the Common Shares generally, is necessary or desirable, as a condition of, or in connection with, the granting of such Option or the issue or purchase of Common Shares thereunder, no such Option may be granted or exercised in whole or in part unless such listing, registration, qualification, consent or approval has been effected or obtained free of any conditions not acceptable to the Board. The Optionees shall, to the extent applicable, cooperate with the Company in relation to such listing, registration, qualification, consent or other approval and shall have no claim or cause of action against the Company or any of its officers or directors as a result of any failure by the Company to obtain or to take any steps to obtain any such registration, qualification or approval.

**ARTICLE 6  
MISCELLANEOUS PROVISIONS**

**6.1 Legal Requirement**

The Company is not obligated to grant any Options, issue any Common Shares or other securities, make any payments or take any other action if, in the opinion of the Board, in its sole discretion, such action would constitute a violation by an Optionee or the Company of any provision of any applicable statutory or regulatory enactment of any government or government agency.

**6.2 Optionee’s Entitlement**

Except as otherwise provided in this Plan, Options previously granted under this Plan, whether or not then exercisable, are not affected by any change in the relationship between, or ownership of, the Company and an Affiliated Entity. For greater certainty, all Options remain valid and exercisable in accordance with the terms and conditions of this Plan and are not affected by reason only that, at any time, an Affiliated Entity ceases to be an Affiliated Entity.

**6.3 Withholding Taxes**

The exercise of each Option granted under this Plan is subject to the condition that if at any time the Company determines, in its discretion, that the satisfaction of withholding tax or other

withholding liabilities is required under applicable law in respect of such exercise, such exercise is not effective unless such withholding has been effected to the satisfaction of the Company. In such circumstances, the Company may require that an Optionee pay to the Company, in addition to and in the same manner as the Exercise Price for the Common Shares, such amount as the Company is obliged to remit to the relevant taxing authority in respect of the exercise of the Option.

**6.4 Rights of Participant/Optionee**

No Participant has any claim or right to be granted an Option (including, without limitation, an Option granted in substitution for any Option that has expired pursuant to the terms of this Plan), and the granting of any Option is not to be construed as giving an Optionee a right to remain in the employ of the Company or an Affiliated Entity. No Optionee has any rights as a shareholder of the Company in respect of Common Shares issuable on the exercise of rights to acquire Common Shares under any Option until the allotment and issuance to the Optionee of certificates representing such Common Shares.

**6.5 Termination; Amendment**

- (a) This Plan will terminate and, for greater certainty, all unexercised Options shall terminate and expire on the earliest of:
  - (i) the date upon which no further Common Shares remain available for issuance pursuant to Options which may be granted under this Plan and no Options remain outstanding; and
  - (ii) upon the occurrence of a Change in Control provided that the Board accelerates the vesting of Options pursuant to Section 4.9,unless this Plan is renewed for such further period and upon such terms and conditions as the Board may determine.
- (b) The Board may, without notice, at any time or from time to time, amend, suspend or terminate this Plan or any provisions hereof in such respects as it, in its sole discretion, determines appropriate. No such amendment, suspension or termination of this Plan, without the consent of any Optionee or the representatives of his or her estate, as applicable, alters or impairs any rights or obligations arising from any Option previously granted to an Optionee under this Plan. In addition, no such modification shall be undertaken that would cause a previously granted Option intended to qualify for favourable treatment under Section 162(m) to cease to so qualify.

**6.6 Indemnification**

Every Director will at all times be indemnified and saved harmless by the Company from and against all costs, charges and expenses whatsoever including any income tax liability arising from any such indemnification, that such Director may sustain or incur by reason of any action, suit or proceeding, taken or threatened against the Director, otherwise than by the Company, for or in respect of any act done or omitted by the Director in respect of this Plan, such costs,

charges and expenses to include any amount paid to settle such action, suit or proceeding or in satisfaction of any judgement rendered therein.

**6.7 Quebec Stock Savings Plan**

If the Common Shares qualify in any period for purposes of a stock savings plan under the *Taxation Act* (Quebec) (the “Act”), the Company shall so notify all Quebec resident Employee Participants and Executive Participants who are officers of the Company or of an Affiliated Entity, whereupon any such Participant who wishes to deposit pursuant to the Act some or all of the Common Shares to be issued to them under this Plan in such period shall so indicate in the Exercise Notice.

**6.8 Participation in the Plan**

The participation of any Participant in this Plan is entirely voluntary and not obligatory and shall not be interpreted as conferring upon such Participant any rights or privileges other than those rights and privileges expressly provided in this Plan. In particular, participation in this Plan does not constitute a condition of employment or service nor a commitment on the part of the Company to ensure the continued employment or service of such Participant. This Plan does not provide any guarantee against any loss which may result from fluctuations in the market value of the Common Shares. The Company does not assume responsibility for the personal income or other tax consequences for the Participants and they are advised to consult with their own tax advisors.

**6.9 Effective Date**

The Plan shall be effective June 25, 2004, subject, solely to the extent required by any applicable law (including, without limitation, approval required under Section 162(m) of the Code or Section 422 of the Code) or registration, stock exchange, quotation system, listing or similar rule or regulation, to approval by the shareholders of the Company in the manner set forth in such law, regulation or rule.

**6.10 Governing Law**

This Plan is created under and is to be governed, construed and administered in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

## SCHEDULE A

### 2004 STOCK OPTION PLAN OPTION AGREEMENT

Biovail Corporation (the “Company”) hereby grants to the Optionee named below (the “Optionee”), an option (the “Option”) to purchase, in accordance with and subject to the terms, conditions and restrictions of this Agreement, together with the provisions of the 2004 Stock Option Plan (the “Plan”) of the Company dated •, 2004, the number of common shares in the capital of the Company (“Common Shares”) at the price per share set forth below:

Name of Optionee:

Type of Participant: [Employee Participant, Executive Participant, or Consultant Participant]

Date of Grant:

Total Number of Common Shares Subject to Option:

Exercise Price:

Vesting:

1. The terms and conditions of the Plan are hereby incorporated by reference as terms and conditions of this Option Agreement and all capitalized terms used herein, unless expressly defined in a different manner, have the meanings ascribed thereto in the Plan.
  2. Subject to Sections 4.9 and 5.4 of the Plan, each Option is exercisable in the instalments and subject to the conditions set forth above.
  3. The provisions in the Plan regarding Detrimental Activity shall apply to this Option. In the event that the Optionee engages in Detrimental Activity prior to the exercise of the Option, the Option shall terminate and expire as of the date the Optionee engaged in such Detrimental Activity. As a condition of the exercise of the Option, the Optionee shall be deemed to have certified at the time of exercise in the Exercise Notice that the Optionee is in compliance with the terms and conditions of the Plan and that the Optionee has not engaged in, and does not intend to engage in, any Detrimental Activity. In the event the Optionee engages in Detrimental Activity, the Company shall be entitled to enforce its rights under the Plan and all other rights available to it at law or equity.
  4. In no event is the Option granted hereunder exercisable after the expiration of the relevant Exercise Period.
  5. No fractional Common Shares will be issued on the exercise of the Option granted hereunder. If, as a result of any adjustment to the number of Common Shares issuable on the exercise of the Option granted hereunder pursuant to the Plan, the Optionee would be entitled to receive a fractional Common Share, the Optionee has the right to acquire only the adjusted number of full Common Shares and no payment or other adjustment will be made with respect to the fractional Common Shares so disregarded.
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6. Nothing in the Plan or in this Option Agreement will affect the Company's right, or that of an Affiliated Entity, to terminate the employment of, term of office of, or consulting agreement or arrangement with an Optionee at any time for any reason whatsoever. Upon such termination, an Optionee's rights to exercise Options will be subject to restrictions and time limits for the exercise of Options. Complete details of such restrictions are set out in the Plan, and in particular in Sections 4.6 and 4.7 thereof.
7. Each notice relating to the Option, including the exercise thereof, must be in writing. All notices to the Company must be delivered personally or by prepaid registered mail and must be addressed to the Chief Legal Officer. All notices to the Optionee will be addressed to the principal address of the Optionee on file with the Company. Either the Company or the Optionee may designate a different address by written notice to the other. Such notices are deemed to be received, if delivered personally, on the date of delivery, and if sent by prepaid, registered mail, on the fifth business day following the date of mailing. Any notice given by either the Optionee or the Company is not binding on the recipient thereof until received.
8. When the issuance of Common Shares on the exercise of the Option may, in the opinion of the Company, conflict or be inconsistent with any applicable law or regulation of any governmental agency having jurisdiction, the Company reserves the right to refuse to issue such Common Shares for so long as such conflict or inconsistency remains outstanding.
9. Subject to Section 4.6 of the Plan, the Option granted pursuant to this Option Agreement may only be exercised during the lifetime of the Optionee by the Optionee personally and, subject to Section 3.6 of the Plan, no assignment or transfer of the Option, whether voluntary, involuntary, by operation of law or otherwise, vests any interest or right in such Option whatsoever in any assignee or transferee, and immediately upon any assignment or transfer or any attempt to make such assignment or transfer, the Option granted hereunder terminates and is of no further force or effect. Complete details of this restriction are set out in the Plan.
10. The Optionee hereby agrees that:
  - (a) any rule, regulation or determination, including the interpretation by the Board of the Plan, the Option granted hereunder and the exercise thereof, is final and conclusive for all purposes and binding on all persons including the Company and the Optionee; and
  - (b) the grant of the Option does not affect in any way the right of the Company or any Affiliated Entity to terminate the employment or service of the Optionee.

11. This Option Agreement has been made in and is to be construed under and in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

**BIOVAIL CORPORATION**

By: \_\_\_\_\_  
Authorized Signatory

I have read the foregoing Option Agreement and hereby accept the Option to purchase Common Shares in accordance with and subject to the terms and conditions of such Agreement and the Plan. I understand that I may review the complete text of the Plan by contacting the Chief Legal Officer of the Company. I agree to be bound by the terms and conditions of the Plan governing the Option.

|               |                      |
|---------------|----------------------|
| _____         | _____                |
| Date Accepted | Optionee's Signature |
|               | _____                |
|               | Optionee's Name      |
|               | (PLEASE PRINT)       |



SCHEDULE B

2004 STOCK OPTION PLAN EXERCISE NOTICE FORM - OPTIONS

1. The terms and conditions of the Plan are hereby incorporated by reference as terms and conditions of this Exercise Notice and all capitalized terms used herein, unless expressly defined in a different manner, have the meanings ascribed thereto in the Biovail Corporation 2004 Stock Option Plan (the “Plan”).
2. I, \_\_\_\_\_, hereby certify that:  
(PRINT NAME)

(a) I am in compliance with the terms and conditions of the Plan and I have not engaged in, and do not intend to engage in, any Detrimental Activity; and

(b) I, hereby exercise the option to purchase \_\_\_\_\_ Common Shares at a purchase price of [Cdn]\$\_\_\_\_\_ per Common Share. This Exercise Notice is delivered in respect of the option to purchase \_\_\_\_\_ Common Shares that was granted to me on \_\_\_\_\_ pursuant to the Option Agreement entered into between the Company and me. In connection with the foregoing, I enclose cash, a certified cheque, bank draft or money order payable to the Company in the amount of [Cdn]\$\_\_\_\_\_ as full payment for the Common Shares to be received upon exercise of the Option.

Date Accepted

Optionee’s Signature



**Amendment to the Amended and Restated 2004 Stock Option Plan of Biovail Corporation dated March 14, 2007**

THIS AMENDMENT, effective March 14, 2007, is made to the Amended and Restated 2004 Stock Option Plan of Biovail Corporation, as amended (the “2004 Stock Option Plan”).

WHEREAS, on March 14, 2007, the Board of Directors of Biovail Corporation approved certain amendments to the transferability provisions of the 2004 Stock Option Plan, which amendments did not require shareholder approval;

NOW THEREFORE the 2004 Stock Option Plan is hereby amended as follows:

1. The existing paragraph in Section 3.6 shall be renumbered as Section 3.6(a).
2. The phrase “Sections 3.6(b) and 4.6” shall replace the reference to “Section 4.6” in the first line of Section 3.6(a).
3. A new Section 3.6(b) shall be inserted immediately following Section 3.6(a) and shall state as follows:

“(b) Notwithstanding Section 3.6(a), no assignment or transfer as would otherwise be permitted pursuant to such section may occur where such assignment or transfer is to be made for consideration.”.

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**Amendment to the Amended and Restated 2004 Stock Option Plan of Biovail Corporation dated May 16, 2007**

THIS AMENDMENT, effective May 16, 2007, is made to the Amended and Restated 2004 Stock Option Plan of Biovail Corporation, as amended (the “2004 Stock Option Plan”).

WHEREAS, on March 14, 2007, the Board of Directors of Biovail Corporation approved certain revisions to the amendment provisions of the 2004 Stock Option Plan, subject to approval of the shareholders of Biovail Corporation (the “Shareholders”);

AND WHEREAS, at the annual and special meeting of Shareholders, held on May 16, 2007, the Shareholders approved such revisions to the amendment provisions of the 2004 Stock Option Plan;

NOW THEREFORE the 2004 Stock Option Plan is hereby amended as follows:

1. Section 6.5(b) is hereby deleted in its entirety and replaced with the following:

“(b) Subject to Section 6.5(c), the Board may, without notice, at any time or from time to time for any purpose whatsoever, and whether in whole or in part, amend, suspend, discontinue or terminate this Plan or any provisions hereof or amend an Option granted to a Participant or a related Option Agreement, as applicable, in such respects as it, in its sole discretion, determines appropriate. No such amendment, suspension, discontinuance or termination may, without the consent of any Optionee or the representatives of his or her estate, as applicable, alter or impair any rights or obligation arising from any Option previously granted to an Optionee under this Plan unless the Board determines that the action would not materially and adversely affect the rights of such Participant. In addition, no such action shall be undertaken that would cause a previously granted Option intended to qualify for favourable treatment under Section 162(m) of the Code to cease to so qualify.”.

4. New sections 6.5(c) and 6.5(d) shall be inserted immediately following the Section 6.5(b) and shall state as follows:

“(c) Notwithstanding anything contained herein to the contrary, no such action as is contemplated by Section 6.5(b) is effective until shareholder approval is obtained where such shareholder approval is required under Section 162(m) of the Code or the rules of the TSX and/or NYSE or the rules of any other exchange or system on which the Company’s securities are listed or traded at the request of the Company. In addition, in order to become effective, shareholder approval shall be required for:

- (i) any amendment to increase the number of Common Shares reserved for issuance from treasury under the Plan;
- (ii) any amendment that would reduce the Exercise Price of an outstanding Option (including a cancellation and reissue of an Option constituting a reduction of the Exercise Price);
- (iii) any amendment to extend the term of an outstanding Option beyond the originally scheduled expiry date for that Option;
- (iv) any amendment to the eligible participants under the Plan that would permit the introduction or reintroduction of non-employee directors to participate under the Plan on a discretionary basis;
- (v) any amendment that would alter the transferability or assignability of Options under the Plan; and
- (vi) any amendment to the Plan to provide for other types of compensation through equity issuance,

unless the change results from the application of Article 5 of the Plan.

(d) The shareholders’ approval of an action as contemplated by Section 6.5(c), if required pursuant to the terms thereof, shall be given by approval of the holders of a majority of the Common Shares present and voting in person or by proxy at a duly called meeting of the shareholders. If required by the rules of the TSX and/or NYSE or the rules of any other exchange or system on which the Company’s securities are listed or traded at the request of the Company, the votes of Common Shares held directly or indirectly by Insiders benefiting from the action shall be excluded.”.

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**BIOVAIL CORPORATION**

**1993 STOCK OPTION PLAN, AS AMENDED & RESTATED**

1. **PURPOSE:** The purpose of this Stock Option Plan (the "Plan") is to attract, retain the services of directors, employees, consultants and advisors of Biovail Corporation, its subsidiaries and affiliates (the "Corporation") who are primarily responsible for the management and profitable growth of its business and to advance the interests of the Corporation by enabling them to acquire common shares (the "Shares") of the Corporation as an additional incentive for superior performance by such persons.
  2. **ELIGIBILITY:** Options may be granted under the Plan to directors, senior officers, or to a personal holding corporation controlled by such persons, officers or employees and consultants of the Corporation, whether or not they are full or part time employees of the Corporation; provided, however, that options may be conditionally granted to persons who are prospective directors or employees of, or consultants or advisors to, the Corporation, but no such grant shall become, by its terms, effective earlier than the date as of which the board of directors approves the grant or the date as of which the Optionee becomes an officer, employee or director of, or consultant or advisor to (as the case may be), the Corporation.
  3. **ADMINISTRATION:** The Plan shall be administered by the Board of Directors who shall have full authority to interpret the Plan and to make such rules and regulations and establish such procedures as they deem appropriate for the administration of the Plan. A decision of the majority of persons comprising the Board in respect of any matter hereunder shall be binding and conclusive for all purposes and upon all persons.
  4. **SHARES SUBJECT TO THE PLAN:** The total number of shares which are reserved and set aside for issue under this Plan, and under all other management options outstanding and employee stock purchase plans, if any, shall not in the aggregate exceed 1,500,000 common shares. All shares issued pursuant to the exercise of options granted or deemed to be granted under the Plan will be so issued as fully paid common shares.
  5. **PARTICIPATION:** Options shall be granted under the Plan only to directors or senior officers or their personal holding corporation or to officers, employees, consultants and field personnel of the Corporation (the "Optionee") as shall be designated from time to time by the Board of Directors and shall be subject to the approval of such regulatory authorities as may have jurisdiction. Approval of the Plan also constitutes shareholders
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approval of options that may be granted under the Plan to directors or senior officers of the Corporation or to their personal holding corporation.

6.        **OPTION AGREEMENTS:** Each option shall be evidenced by a written agreement (an “Option Agreement”), containing such terms and conditions, not inconsistent with the Plan, as the Board of Directors may, in its discretion, determine. Each Option Agreement shall be executed on behalf of the Corporation and the Optionee. Option Agreements may differ among Optionees.
7.        **TERMS AND CONDITIONS OF OPTIONS:** The terms and conditions of each option granted under the Plan shall include the following, as well as such other provisions, not inconsistent with the Plan, as may be deemed advisable by the Board of Directors:
- (a)        **Number of Shares:** The number of Shares subject to the option.
  - (b)        **Option Price:** The option price of any shares in respect of which an option may be granted under the Plan shall be fixed by the Board of Directors but shall not be less than the fair market value of the shares at the time the option is granted, less an amount up to the maximum discount allowed by regulatory authorities or stock exchanges having jurisdiction as may be determined by the Board of Directors. For the purpose of this paragraph, “fair market value” shall be deemed to be the closing market price at which the shares are traded on the Toronto Stock Exchange on the day prior to the date the option is granted, or if not so traded, the average between the closing bid and ask prices thereof as reported for that day.
  - (c)        **Payment:** The full purchase price payable under the option shall be paid in cash, certified funds upon the exercise hereof. A holder of an option shall have none of the rights of a shareholder until the shares are issued.
  - (d)        **Term of Option:** Options may be granted under this Plan over a period not exceeding ten (10) years. Each option shall be subject to earlier termination as provided in subparagraph (f) of this paragraph 7.
  - (e)        **Accelerated Vesting:** Provided that an Optionee has been employed by the Corporation or a subsidiary for at least ten (10) consecutive years, on the date that the sum of Optionee’s age and the Optionee’s years of service with the Corporation or a subsidiary equals “70”, all of the unvested stock options held by such Optionee shall immediately vest and become exercisable pursuant to the others terms of the Plan. Subject to paragraph 8, any stock options held by such Optionee shall not terminate on cessation of employment but shall expire on the earlier of the term of such options and one year following the cessation of the Optionee’s employment with the Corporation or its subsidiary.
  - (f)        **Exercise of Option:** Subject to the provisions of subparagraph (f) of this paragraph 7, no option may be exercised unless the Optionee is then a director,
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senior officer, officer, employee, consultant and advisor of the Corporation. This Plan shall not confer upon the Optionee any right with respect to continuation of employment by the Corporation. Absence on leave approved by an officer of the Corporation authorized to give such approval shall not be considered an interruption of employment for any purpose of the Plan. Subject to the provisions of the Plan, an option may be exercised from time to time by delivery to the Corporation at Toronto of written notice of exercise specifying the number of shares with respect to which the option is being exercised and accompanied by payment in full of the purchase price of the shares then being purchased.

- (g) Termination of Options: Any option granted pursuant hereto, to the extent not validly exercised, will terminate on the date of expiration specified in the option agreement, being not more than ten (10) years after the date upon which the option was granted.
- (h) Nontransferability of Stock Option: No option shall be transferable, except to a personal holding corporation of the Optionee, by the Optionee other than by will or the laws of descent and distribution and such option shall be exercisable during the lifetime of the Optionee.
- (i) Applicable Laws or Regulations: The Corporation's obligation to sell and deliver shares under each option is subject to such compliance by the Corporation and any Optionee as the Corporation deems necessary or advisable with all laws, rules and regulations of Canada and any provinces and/or territories thereof applying to the authorization, issuance, listing or sale of securities and is also subject to the acceptance for listing of the shares which may be issued upon the exercise thereof by each stock exchange upon which shares of the Corporation are then listed for trading.

8. **TERMINATION OF EMPLOYMENT, DISABILITY AND DEATH:** The Board of Directors may determine the period or periods of time during which an Optionee may exercise an option following (i) the termination by the Corporation, with or without cause, of the Optionee's employment or other relationship with the Corporation, (ii) the termination by the Optionee of any such relationship with the Corporation, or (iii) the death or permanent and total disability of the Optionee. Such period or periods shall be set forth in the Option Agreement evidencing such option.

9. **ADJUSTMENTS IN SHARES SUBJECT TO THE PLAN:** The aggregate number and kind of shares available under the Plan and the exercise price thereof shall be appropriately adjusted in the event of a reorganization, recapitalization, stock split, stock dividend, combination of shares, merger, consolidation, rights offering or any other change in the corporate structure or shares of the Corporation. In any of such events, the Board of Directors may determine the adjustments to be made in the number and kind of shares covered by options theretofore granted or to be granted and in the option price.

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10.        **AMENDMENT AND TERMINATION OF PLAN:** Subject to the approval of the Toronto Stock Exchange or other regulatory authorities having jurisdiction, the Board of Directors may from time to time amend or revise the terms of the Plan or may terminate the Plan at any time provided however that no such action shall, without the consent of the Optionee, in any manner adversely affect his rights under any option theretofore granted under the Plan.
11.        **CORPORATE TRANSACTIONS:** In the event the Shares are exchanged for securities, cash or other property of any other corporation or entity as the result of a reorganization, merger or consolidation in which the Corporation is not the surviving corporation, the dissolution or liquidation of the Corporation, or the sale of all or substantially all the assets of the Corporation, the Board of Directors or the board of directors of any successor corporation or entity may, in its discretion, as to outstanding options (a) accelerate the exercise date or dates of such options pursuant to section 7(e), (b) upon written notice to the holders thereof, provided the options have been accelerated pursuant to paragraph (a) above, terminate all such options prior to consummation of the transaction unless exercised within a prescribed period, (c) provide for payment of an amount equal to the excess of the fair market value, as determined by the Board of Directors or such board, over the Option Price of such shares as of the date of the transaction, in exchange for the surrender of the right to exercise such options, or (d) provide for the assumption of such options, or the substitution therefor of new options, by the successor corporation or entity.
12.        **EFFECTIVE DATE AND DURATION OF PLAN:** Subject to the approval of the shareholders of the Corporation, the Plan becomes effective on the date of its adoption by the Board of Directors and options may be granted immediately thereafter. The Plan shall remain in full force and effect until (i) the tenth anniversary of the date on which the Plan was adopted by the Board of Directors, (ii) the tenth anniversary of the date on which the Plan is approved by the shareholders of the Corporation, or (iii) the date as of which the Board of Directors, in its sole discretion, determines to terminate the Plan, whichever its the earlier.
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**Amendment to the 1993 Stock Option Plan, as Amended & Restated, of Biovail Corporation dated March 14, 2007**

THIS AMENDMENT, effective March 14, 2007, is made to the 1993 Stock Option Plan, as Amended & Restated, of Biovail Corporation, as amended (the “1993 Stock Option Plan”).

WHEREAS, on March 14, 2007, the Board of Directors of Biovail Corporation approved certain amendments to the transferability provisions of the 1993 Stock Option Plan, which amendments did not require shareholder approval;

NOW THEREFORE the 1993 Stock Option Plan is hereby amended as follows:

1. Section 7(h) is hereby amended by inserting, at the end of that section, immediately following the word “Optionee”, the following:

“; provided that no such transfer may occur where such transfer is to be made for consideration.”.

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**Amendment to the 1993 Stock Option Plan, as Amended & Restated, of Biovail Corporation dated May 16, 2007**

THIS AMENDMENT, effective May 16, 2007, is made to the 1993 Stock Option Plan, as Amended & Restated, of Biovail Corporation, as amended (the "1993 Stock Option Plan").

WHEREAS, on March 14, 2007, the Board of Directors of Biovail Corporation approved certain revisions to the amendment provisions of the 1993 Stock Option Plan, subject to approval of the shareholders of Biovail Corporation (the "Shareholders");

AND WHEREAS, at the annual and special meeting of Shareholders, held on May 16, 2007, the Shareholders approved such revisions to the amendment provisions of the 1993 Stock Option Plan;

NOW THEREFORE the 1993 Stock Option Plan is hereby amended as follows:

1. Section 10 is hereby deleted in its entirety and replaced with the following:

"(a) Subject to Section 10(b), the Board of Directors may, without notice, at any time or from time to time for any purpose whatsoever, and whether in whole or in part, amend, suspend, discontinue or terminate this Plan or any provisions hereof or amend an option granted to a Optionee or a related Option Agreement, as applicable, in such respects as it, in its sole discretion, determines appropriate. No such amendment, suspension, discontinuance or termination may, without the consent of any Optionee or the representatives of his or her estate, as applicable, alter or impair any rights or obligation arising from any option previously granted to an Optionee under this Plan unless the Board of Directors determines that the action would not materially and adversely affect the rights of such Optionee. In addition, no such action shall be undertaken that would cause a previously granted option intended to qualify for favourable treatment for performance-based compensation under Section 162(m) of the U.S. Internal Revenue Code of 1986 (as amended) and any U.S. Treasury regulations thereunder ("Section 162(m) of the Code") to cease to so qualify.

(b) Notwithstanding anything contained herein to the contrary, no such action as is contemplated by Section 10(a) is effective until shareholder approval is obtained where such shareholder approval is required under Section 162(m) of the Code or the rules of the Toronto Stock Exchange ("TSX") and/or New York Stock Exchange ("NYSE") or the rules of any other exchange or system on which the Corporation's securities are listed or traded at the request of the Corporation. In addition, in order to become effective, shareholder approval shall be required for:

- (i) any amendment to increase the number of Shares reserved for issuance from treasury under the Plan;
- (ii) any amendment that would reduce the option price of an outstanding option (including a cancellation and reissue of an option constituting a reduction of the option price);
- (iii) any amendment to extend the term of an outstanding option beyond the originally scheduled expiry date for that option;
- (iv) any amendment to the eligible participants under the Plan that would permit the introduction or reintroduction of non-employee directors to participate under the Plan on a discretionary basis;
- (v) any amendment that would alter the transferability or assignability of options under the Plan; and
- (vi) any amendment to the Plan to provide for other types of compensation through equity issuance,

unless the change results from the application of Section 9 of the Plan.

(c) The shareholders' approval of an action as contemplated by Section 10(b), if required pursuant to the terms thereof, shall be given by approval of the holders of a majority of the Shares present and voting in person or by proxy at a duly called meeting of the shareholders. If required by the rules of the TSX and/or NYSE or the rules of any other exchange or system on which the Corporation's securities are listed or traded at the request of the Corporation, the votes of Shares held directly or indirectly by Insiders (as defined under the TSX Company Manual, as amended from time to time) benefiting from the action shall be excluded."

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**BIOVAIL CORPORATION**  
**DEFERRED SHARE UNIT PLAN**  
**FOR CANADIAN DIRECTORS**

**Approved: May 3, 2005**  
**Amended: March 14, 2007**

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**BIOVAIL CORPORATION**  
**DIRECTORS' DEFERRED SHARE UNIT PLAN**

**ARTICLE 1**  
**PREAMBLE AND DEFINITIONS**

**1.1            Title.**

The Plan herein described shall be called the “Directors’ Deferred Share Unit Plan”, and is referred to herein as the “Plan”.

**1.2            Purpose of the Plan.**

The purpose of the Plan is to promote a greater alignment of interests between the directors of the Corporation who participate in the Plan and the shareholders of the Corporation.

**1.3            Definitions.**

“**Annual Board Retainer**” means the annual cash retainer payable by the Corporation to a Director in a financial year for service on the Board and any committee of the Board, but excludes other retainers and fees (including, without limitation, any Chair Retainer and Meeting Fees).

“**Annual Chair Retainer**” means the annual retainer paid by the Corporation to a Director in a financial year for acting as the chair of the Board or of one or more committees of the Board, but excludes other retainers and fees (including, without limitation, the Annual Board Retainer and Meeting Fees).

“**Annual DSU Allocation**” means such amount as may from time to time be determined by resolution of the Directors of the Corporation.

“**Annual Payment Date**” has the meaning ascribed thereto in Section 4.1.

“**Board**” means the board of directors of the Corporation.

“**Corporation**” means Biovail Corporation and any successor corporation whether by amalgamation, merger or otherwise.

“**Deferred Share Unit**” means a bookkeeping entry, the value of which on any particular date shall be equal to the Market Price.

“**Deferred Share Unit Account**” has the meaning ascribed thereto in Section 4.7.

“**Director**” means a director of the Corporation other than a director who is a full-time employee of the Corporation.

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“**Election Notice**” has the meaning ascribed thereto in Section 4.2.

“**Market Price**” means the market price of a Share and shall be the VWAP on the TSX, or the NYSE or other stock exchange where the majority of the trading volume and value of the Shares occurs, for the five trading days immediately preceding such date, except that with respect to Members subject to U.S. taxation, to the extent required by Section 409A of the Code, “Market Price” of a Share means the greater of (i) the Market Price as calculated above or (ii) the VWAP on the TSX, or the NYSE or other stock exchange where the majority of the trading volume and value of the Shares occurs, for the single trading day immediately preceding such date. The Market Price so determined may be in Canadian dollars or U.S. dollars. As a result, the Market Price of a Share in respect of a Deferred Share Unit that will be paid in Canadian dollars shall be either (a) such Market Price as determined above, if in Canadian dollars, or (b) such Market Price as determined above converted into Canadian dollars at the closing rate of exchange of the Bank of Canada on the Date of Grant, if in U.S. dollars. Similarly, the Market Price of a Share in respect of a Deferred Share Unit that will be paid in U.S. dollars shall be either (a) such Market Price as determined above, if in U.S. dollars, or (b) such Market Price as determined above converted into U.S. dollars at the closing rate of exchange of the Bank of Canada on the Date of Grant, if in Canadian dollars. If on the such date there is not a closing rate of exchange of the Bank of Canada, then the Market Price of a Share shall be determined as provided above on the first day immediately preceding such date for which there was such a closing rate of exchange. The Market Price of a Share shall be rounded up to the nearest whole cent.

“**Meeting Fees**” means the fees paid by the Corporation to a Director in a financial year for attendance at meetings of the Board and its committees.

“**Member**” means a Director who becomes a participant in the Plan in accordance with Article 4.

“**Member’s Termination Date**” has the meaning ascribed thereto in Section 5.1.

“**NYSE**” means the New York Stock Exchange.

“**Payment Date**” has the meaning ascribed thereto in Section 4.1.

“**Shares**” means the common shares of the Corporation and such other shares as may be substituted therefor as a result of amendments to the articles of the Corporation, a reorganization of the Corporation or otherwise.

“**Trading Day**” means any date on which the TSX is open for the trading of the Shares.

“**TSX**” means the Toronto Stock Exchange.

“**VWAP**” means the volume weighted average trading price of the Shares, calculated by dividing the total value by the total volume of Shares traded for the relevant period.

- 1.4            **Schedules.**
- Schedule A – Election Notice  
Schedule B – Redemption Notice

**ARTICLE 2**  
**INTERPRETATION**

2.1            **Governing Law.**

The Plan shall be governed and interpreted in accordance with the laws of the Province of Ontario and the federal laws in Canada applicable therein.

2.2            **Severability.**

If any provision of the Plan or part hereof is determined to be void or unenforceable in whole or in part, such determination shall not affect the validity or enforcement of any other provision or part thereof.

2.3            **References.**

Headings wherever used herein are for reference purposes only and do not limit or extend the meaning of the provisions herein. In the Plan, references to the singular shall include the plural and vice versa, as the context shall require.

**ARTICLE 3**  
**ELIGIBILITY**

3.1            **Establishment.**

Subject to obtaining Board approval, the Plan shall be effective as at May 4 , 2005.

3.2            **Automatic Participation for Directors.**

Each Director in office at the effective date of establishment of the Plan shall, without further formality, become a Member in the Plan. Each person who becomes a Director at any time subsequent to the effective date of establishment of the Plan shall thereupon, without further or other formality, become a Member of the Plan.

3.3            **No Additional Rights.**

Nothing herein contained shall be deemed to give any person the right to be retained as a Director of the Corporation or as an employee of the Corporation.

**ARTICLE 4**  
**DEFERRED SHARE UNIT GRANTS AND ACCOUNTS**

**4.1            Annual Grants.**

Each year, as soon as practicable following the election or appointment of any Director, (each of which is referred to as a “Payment Date”, annually, the “Annual Payment Date”), such Director shall be credited, without further or other formality, with the respective number of Deferred Share Units as may be determined by dividing the Annual DSU Allocation by the Market Price at the Annual Payment Date in question, subject, if such person is not elected by the shareholders at the annual general meeting, to proration according to the number of days such person was a Director of the Corporation during such twelve month period or as the Board may otherwise determine.

**4.2            Election to Participate.**

Each Director shall have, subject to the conditions stated herein, the right to elect at any time and from time to time in accordance with this Section 4.2, to be credited with Deferred Share Units in lieu of all or any part of the Annual Board Retainer and all or any part of any Annual Chair Retainer otherwise payable to such Director in cash (commencing with amounts payable after the effective date of the Plan). No such election shall be effective unless and until the Director in question shall have filed a notice of election in the form of Schedule A hereto (the “Election Notice”) with the Corporation’s Chief Financial Officer, which notice, subject as hereinafter provided, may be filed at any time.

**4.3            Effect of Notice.**

A duly filed Election Notice shall be binding upon the Director who filed it, and upon the Corporation, unless and until such Director has filed a subsequent Election Notice to terminate or change his or her election and such subsequent Election Notice has become effective in accordance with the Plan.

**4.4            Termination or Change to Election.**

(a) Each Member is entitled to terminate or change his or her election specified in any Election Notice filed with the Corporation by filing with the Chief Financial Officer of the Corporation a subsequent Election Notice, provided that no Member shall be entitled to file more than one Election Notice in any calendar year unless specifically authorized by resolution of the Directors.

(b) To be effective with respect to all or any part of any annual payment on account of the Annual Board Retainer or the Annual Chair Retainer, a Notice of Election must be filed at least 21 days prior to the annual payment date in question.

(c) For greater certainty, subject to the foregoing limitation, a Member who has filed a subsequent Election Notice to terminate an earlier election by the Member may thereafter again elect in accordance with Section 4.2.

**4.5                    Timing and Recording of Credits.**

(a) Each Member who has filed an Election Notice in accordance with Section 4.2 shall be credited with Deferred Share Units as hereinafter provided in respect of the Annual Board Retainer or Annual Chair Retainer, as applicable, annually in arrears immediately following the annual general meeting of shareholders, while such Election Notice remains in effect.

(b) Deferred Share Units credited to a Member in accordance with any provision of this agreement shall be recorded by the Corporation in the Member's Deferred Share Unit Account (as defined below) as soon as reasonably practicable thereafter.

**4.6                    Calculation of Number of Deferred Share Units.**

The number of Deferred Share Units credited at any particular time with respect to any amount in respect of which a Member shall have elected pursuant to Section 4.2 will be calculated by dividing such amount by the Market Price on the relevant annual payment date for such amount.

**4.7                    Deferred Share Unit Account.**

An account, to be known as a "Deferred Share Unit Account", shall be maintained by the Corporation for each Member, in which shall be recorded all Deferred Share Units credited to a Member from time to time.

**4.8                    Dividends.**

Whenever cash dividends are paid on the Shares, additional Deferred Share Units will be credited to the Member's Deferred Share Unit Account. The number of such additional Deferred Share Units will be calculated by dividing (i) the dividends that would have been paid to such Member if the Deferred Share Units in the Member's Deferred Share Unit Account on the relevant dividend record date had been Shares, by (ii) the closing price of the Shares on the TSX, the NYSE or other stock exchange where the majority of the trading volume and value of the Shares occurs on the date of payment of such dividend. If on such date of payment there is not a closing price of the Shares on any such exchange, then the opening price of the Shares on the TSX, the NYSE or other stock exchange where the majority of the trading volume and value of the Shares occurs on the first available date thereafter will be used for purposes of (ii) above.

**4.9                    Adjustments.**

In the event of any stock dividend, stock split, combination or exchange of Shares, merger, consolidation, spin-off or other distribution (other than normal cash dividends) of the Corporation's assets to shareholders, or any other changes affecting the Shares, such proportionate adjustments shall be made with respect to the number of Deferred Share Units outstanding under the Plan to reflect such change or changes.



**4.10                    No Price Adjustment.**

For greater certainty, no additional Deferred Share Units will be granted to such Member to compensate for a downward fluctuation in the price of the Shares, nor will any other form of benefit be conferred upon, or in respect of, a Member for such purpose.

**ARTICLE 5**  
**REDEMPTION ON RETIREMENT OR DEATH**

**5.1                    Redemption.**

Subject to Section 5.2, the value (determined in accordance with Section 5.2) of the Deferred Share Units credited to a Member’s Deferred Share Unit Account shall be redeemable by the Member (or, where the Member has died, his or her estate) at the Member’s option (or after the Member’s death, at the option of his legal representative) following the event, including death, causing the Member to no longer be a Director or an employee of the Corporation or a person related to the Corporation for the purposes of the *Income Tax Act* (Canada) (the “Member’s Termination Date”). The value of the Deferred Share Units shall be redeemed by filing a written notice of redemption in the form of Schedule B hereto with the Chief Financial Officer of the Corporation, specifying: (i) either one or two redemption dates; and (ii) the percentage of Deferred Share Units held by the Member to be redeemed on each such redemption date (which when added together shall equal 100%). Each redemption date specified in the notice of redemption shall occur during the period commencing at least five (5) business days following the date on which such notice is filed with the Chief Financial Officer of the Corporation and ending not later than December 15 of the first calendar year commencing after the Member’s Termination Date. If no notice of redemption has been filed by December 15 of the first calendar year after the Member’s Termination Date, December 15 of the first calendar year after the Member’s Termination Date will be deemed to be the redemption date for all of the Member’s Deferred Share Units.

**5.2                    Payment of Redeemed Amount.**

Subject to applicable income tax and other withholdings as required by law, the value of the Deferred Share Units redeemed by or in respect of a Member shall be paid to the Member (or if the Member has died, to his or her estate, as the case may be) in the form of one or two lump sum cash payments, as applicable in accordance with the Member’s notice of redemption, less the amounts required to be withheld by applicable law, as soon as practicable after the applicable redemption date, provided that in any event such payment date shall be no later than December 31 of the first calendar year commencing after the Member’s Termination Date. The amount of the cash payment (or payments, as the case may be) to be paid to the Member on the redemption date (or redemption dates, as the case may be), before such withholdings, shall be determined by multiplying the number of Deferred Share Units to be redeemed on a redemption date by the Market Price on such redemption date.

**ARTICLE 6**  
**SHAREHOLDER RIGHTS**

**6.1           No Shareholder Rights.**

Deferred Share Units are not Shares and will not entitle a Member to any shareholder rights, including, without limitation, voting rights, dividend entitlement or rights on liquidation.

**ARTICLE 7**  
**ADMINISTRATION**

**7.1           Unfunded Obligation.**

Unless otherwise determined by the Board, the Plan shall remain an unfunded obligation of the Corporation.

**7.2           Committee to Administer Plan.**

The Plan shall be administered by the Board with the advice of the Compensation Committee of the Board or such other committee of the Board as the Board may, from time to time, determine to be appropriate.

**7.3           Amendment and Termination.**

The Plan may be amended or terminated at any time by the Board, except as to rights already accrued hereunder by the Members. Notwithstanding the foregoing, any amendment or termination of the Plan shall be such that the Plan continuously meets the requirements of paragraph 6801(d) of the Regulations under the *Income Tax Act* (Canada) or any successor provision thereto.

**7.4           Costs of Administration.**

The Corporation will be responsible for all costs relating to the administration of the Plan.

**ARTICLE 8**  
**ASSIGNMENT**

**8.1           Assignment.**

A Deferred Share Unit is personal to the Member and is non-assignable. No Deferred Share Unit granted hereunder shall be pledged, hypothecated, charged, transferred, assigned or otherwise encumbered or disposed of by the Member, whether voluntarily or by operation of law, otherwise than by testate succession or the laws of descent and distribution, and any attempt to do so will cause such Deferred Share Unit to be null and void. During the lifetime of the Member, a Deferred Share Unit shall be redeemable only by the Member and, upon the

death of a Member, the person to whom the rights shall have passed by testate succession or by the laws of descent and distribution may redeem any Deferred Share Units in accordance with the provisions of Article 5.

**Schedule A to Deferred Share Unit Plan  
for Directors of Biovail Corporation (the “Plan”)**

**ELECTION NOTICE**

Please complete one of Section 1 (Election Notice), Section 2 (Election to Change Participation) or Section 3 (Election to Terminate an Earlier Election), and return a signed and dated copy of this Schedule A to the Chief Financial Officer of Biovail Corporation (the “Corporation”).

**1. ELECTION NOTICE**

I hereby elect to participate in the Plan on the following basis, commencing with the next annual payment date following the date hereof, unless and until the election is terminated or changed in accordance with a subsequently filed Election Notice, namely, to receive in Deferred Stock Units       % **(please insert applicable percentage)** of the amount otherwise payable to me in cash in respect of my Annual Board Retainer and       % **(please insert applicable percentage)** of the amount otherwise payable to me in cash in respect of my Annual Chair Retainer.

**2. ELECTION TO CHANGE PARTICIPATION**

I hereby elect, notwithstanding any previous election in the form of this Election Notice, to change my election with respect to my participation in the Plan, commencing with the next annual payment following the date hereof, unless and until the election is terminated or changed in accordance with a subsequently filed Election Notice, namely, so as to receive in Deferred Stock Units       % **(please insert applicable percentage)** of the amount otherwise payable to me in cash in respect of my Annual Board Retainer and       % **(please insert applicable percentage)** of the amount otherwise payable to me in cash in respect of my Annual Chair Retainer.

**3. ELECTION TO TERMINATE AN ELECTION**

I hereby elect, by marking the box below this paragraph with an “X”, to terminate my election under Section 4.2 of the Plan and to receive my Annual Board Retainer and my Annual Chair Retainer in cash commencing with the next annual payment following the date hereof.

YES, I WISH TO TERMINATE MY MOST RECENT ELECTION UNDER SECTION 4.2 OF THE PLAN.

I confirm that:

1. I have received and reviewed a copy of the terms of the Plan and agreed to be bound by such terms.
-

2. I understand that I will not be able to cause the Corporation to redeem Deferred Share Units granted under the Plan (“DSUs”) until I am no longer a Director or an employee of the Corporation.
3. I recognize that when DSUs credited pursuant to an election made under Section 1 or 2 of this Election Notice are redeemed in accordance with the terms of the Plan after I am no longer a Director or employee of the Corporation, income tax and other withholdings as required will arise at that time that will be my obligations (and not the Corporation’s, except as required by law). Upon redemption of the DSUs, the Corporation will make all appropriate withholdings as required by law at that time.
4. The value of DSUs are based on the value of the common shares of the Corporation and therefore are not guaranteed.
5. No funds will be set aside to guarantee the payment of DSUs. Future payment of DSUs will remain an unfunded liability recorded on the books of the Corporation.
6. I acknowledge and agree that, as described in greater detail in the Plan, I am not permitted to assign, pledge, charge or otherwise encumber the DSUs granted to me under the Plan.
7. An election filed pursuant to Section 2 or 3 of this Schedule A is required to be filed with the Chief Financial Officer of the Corporation not later than thirty (30) days prior to the end of a calendar year in order to be effective with respect to any amounts payable on and after the last day of such calendar year on account of my Annual Board Retainer or my Annual Chair Retainer.

The foregoing is only a brief outline of certain key provisions of the Plan. For more complete information, reference should be made to the Plan in its entirety.

\_\_\_\_\_

Date

\_\_\_\_\_

(Signature of Director)

\_\_\_\_\_

(Name of Director)

Schedule B to Deferred Share Unit Plan  
for Directors of Biovail Corporation (the “Plan”)

REDEMPTION NOTICE

I hereby advise Biovail Corporation (the “Corporation”) that I wish to redeem all the Deferred Share Units credited to my account under the Plan on the following redemption date or dates, which in each case shall be at least five (5) business days following the date on which this notice is filed with the Corporation but no later than December 15 of the first calendar year commencing after the year in which the member ceased to be a director or an employee of the Corporation:

|    | Amount of Deferred Share Units<br>(expressed as a percentage<br>totalling 100%) | Redemption Date |
|----|---------------------------------------------------------------------------------|-----------------|
| 1. |                                                                                 |                 |
| 2. |                                                                                 |                 |

\_\_\_\_\_

Date

\_\_\_\_\_

(Signature of Member)

\_\_\_\_\_

(Name of Member)

If this Redemption Notice is signed by a beneficiary or legal representative, documents providing the authority of such signature must accompany this Redemption Notice.

\_\_\_\_\_

**BIOVAIL CORPORATION**

**DEFERRED SHARE UNIT PLAN FOR  
US DIRECTORS**

**APPROVED: MAY 3, 2005**  
**AMENDED AND RESTATED EFFECTIVE JANUARY 1, 2009**

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DIRECTORS' DEFERRED SHARE UNIT PLAN

ARTICLE 1

PREAMBLE AND DEFINITIONS

**1.1 Title.**

The Plan herein described shall be called the "Directors' Deferred Share Unit Plan", and is referred to herein as the "Plan". This Plan is amended and restated effective January 1, 2009 to implement changes required pursuant to and consistent with section 409A of the Internal Revenue Code of 1986, as amended and the regulations promulgated thereunder (the "Code"). Until December 31, 2008 the Plan has been operated in accordance with transition relief established by the Treasury Department and Internal Revenue Service pursuant to section 409A of the Code.

**1.2 Purpose of the Plan.**

The purpose of the Plan is to promote a greater alignment of interests between the directors of the Corporation who participate in the Plan and the shareholders of the Corporation.

**1.3 Definitions.**

"**Annual Board Retainer**" means the annual cash retainer payable by the Corporation to a Director in a financial year for service on the Board and any committee of the Board, but excludes other retainers and fees (including, without limitation, any Chair Retainer and Meeting Fees).).

"**Annual Chair Retainer**" means the annual retainer paid by the Corporation to a Director in a financial year for acting as the chair of the Board or of one or more committees of the Board, but excludes other retainers and fees (including, without limitation, the Annual Board Retainer and Meeting Fees).

"**Annual DSU Allocation**" means such amount as may from time to time be determined by resolution of the Directors of the Corporation.

"**Annual Payment Date**" has the meaning ascribed thereto in Section 4.1.

"**Board**" means the board of directors of the Corporation.

"**Corporation**" means Biovail Corporation and any successor corporation whether by amalgamation, merger or otherwise.

"**Deferred Share Unit**" means a bookkeeping entry, the value of which on any particular date shall be equal to the Market Price.

"**Deferred Share Unit Account**" has the meaning ascribed thereto in Section 4.7.

"**Director**" means a director of the Corporation other than a director who is a full-time employee of the Corporation.

"**Election Notice**" has the meaning ascribed thereto in Section 4.2.

"**Market Price**" means the market price of a Share and shall be the VWAP on the TSX, or the NYSE or other stock exchange where the majority of the trading volume and value of the Shares occurs, for the five trading days immediately preceding such date, except that with respect to Members subject to U.S. taxation, to the extent required by section 409A of the Code, "Market Price" of a Share means the greater of (i) the Market Price as calculated above or (ii) the VWAP on the TSX, or the NYSE or other stock exchange where the majority of the trading volume and value of the Shares occurs, for the single trading day immediately preceding such date. The Market Price so determined may be in Canadian dollars or U.S. dollars. As a result, the Market Price of a Share in respect of a Deferred Share Unit that will be paid in Canadian dollars shall be either (a) such Market Price as determined above, if in Canadian dollars, or (b) such Market Price

as determined above converted into Canadian dollars at the closing rate of exchange of the Bank of Canada on the Date of Grant, if in U.S. dollars. Similarly, the Market Price of a of a Share in respect of a Deferred Share Unit that will be paid in U.S. dollars shall be either (a) such Market Price as determined above, if in U.S. dollars, or (b) such Market Price as determined above converted into U.S. dollars at the closing rate of exchange of the Bank of Canada on the Date of Grant, if in Canadian dollars. If on the such date there is not a closing rate of exchange of the Bank of Canada, then the Market Price of a Share shall be determined as provided above on the first day immediately preceding such date for which there was such a closing rate of exchange. The Market Price of a Share shall be rounded up to the nearest whole cent.

"**Meeting Fees**" means the fees paid by the Corporation to a Director in a financial year for attendance at meetings of the Board and its committees.

"**Member**" means a Director who becomes a participant in the Plan in accordance with Article 4.

"**Member's Termination Date**" has the meaning ascribed thereto in Section 5.1.

"**NYSE**" means the New York Stock Exchange.

"**Payment Date**" has the meaning ascribed thereto in Section 4.1.

"**Shares**" means the common shares of the Corporation and such other shares as may be substituted therefor as a result of amendments to the articles of the Corporation, a reorganization of the Corporation or otherwise.

"**Trading Day**" means any date on which the TSX is open for the trading of the Shares.

"**TSX**" means the Toronto Stock Exchange.

"**VWAP**" means the volume weighted average trading price of the Shares, calculated by dividing the total value by the total volume of Shares traded for the relevant period.

**1.4 Schedules.**

Schedule A — Election Notice

**ARTICLE 2**

**INTERPRETATION**

**2.1 Governing Law.**

The Plan shall be governed and interpreted in accordance with the laws of the Province of Ontario and the federal laws in Canada applicable therein.

**2.2 Severability.**

If any provision of the Plan or part hereof is determined to be void or unenforceable in whole or in part, such determination shall not affect the validity or enforcement of any other provision or part thereof.

**2.3 References.**

Headings wherever used herein are for reference purposes only and do not limit or extend the meaning of the provisions herein. In the Plan, references to the singular shall include the plural and vice versa, as the context shall require.

**ARTICLE 3**

**ELIGIBILITY**

**3.1 Establishment.**

The Plan was originally effective May 4, 2005. The Plan as amended and restated herein is effective January 1, 2009.

**3.2 Automatic Participation for Directors.**

Each Director in office at the effective date of establishment of the Plan shall, without further formality, become a Member in the Plan. Each person who becomes a Director at any time subsequent to the effective date of establishment of the Plan shall thereupon, without further or other formality, become a Member of the Plan.

**3.3 No Additional Rights.**

Nothing herein contained shall be deemed to give any person the right to be retained as a Director of the Corporation or as an employee of the Corporation.

**ARTICLE 4**

**DEFERRED SHARE UNIT GRANTS AND ACCOUNTS**

**4.1 Annual Grants.**

Each year, within three (3) business days following the election or appointment of any Director, (each of which is referred to as a "Payment Date", annually, the "Annual Payment Date"), such Director shall be credited, without further or other formality, with the respective number of Deferred Share Units as may be determined by dividing the Annual DSU Allocation by the Market Price at the Annual Payment Date in question, subject, if such person is not elected by the shareholders at the annual general meeting, to proration according to the number of days such person was a Director of the Corporation during the preceding twelve month period or as the Board may otherwise determine.

**4.2 Election to Participate.**

Each Director shall have, subject to the conditions stated herein, the right to elect in accordance with this Section 4.2, to be credited with Deferred Share Units in lieu of all or any part of the Annual Board Retainer and all or any part of any Annual Chair Retainer otherwise payable to such Director in cash (commencing with amounts payable after the effective date of the Plan). No such election shall be effective unless and until the Director in question shall have filed a notice of election in the form of Schedule A hereto (the "Election Notice") with the Corporation's Chief Financial Officer. An Election Notice must be filed on or before the last business day of the calendar year ending immediately before the calendar year to which the Annual Board Retainer and/or Annual Chair Retainer relate, except in the case of a newly elected or appointed Director, whose Election Notice is effective for the year in which such Director first becomes a Director if the Election Notice is filed on or before the earlier of (i) thirty days after the date the Director first became a Director, and (ii) the last business day of the calendar year in which the Director first became a Director.

**4.3 Effect of Notice.**

A duly filed Election Notice shall be binding upon the Director who filed it, and upon the Corporation, unless and until such Director has filed a subsequent Election Notice to terminate or change his or her election and such subsequent Election Notice has become effective in accordance with the rules set forth in Section 4.4 of the Plan.

**4.4 Termination or Change to Election.**

- (a) Each Member is entitled to terminate or change his or her election specified in any Election Notice filed with the Corporation by filing with the Chief Financial Officer of the Corporation a subsequent Election Notice, provided that no Member shall be entitled to file more than one Election Notice in any calendar year unless specifically authorized by resolution of the Directors. A subsequent Election Notice will become effective at the beginning of the calendar year following the calendar year in which the subsequent Election Notice is filed.
- (b) For greater certainty a Member who has filed a subsequent Election Notice to terminate an earlier election by the Member may thereafter again elect in accordance with Section 4.2.

**4.5 Timing and Recording of Credits.**

- (a) Each Member who has filed an Election Notice in accordance with Section 4.2 shall be credited with Deferred Share Units as hereinafter provided in respect of the Annual Board Retainer or Annual Chair Retainer, as applicable, annually in arrears immediately following the annual general meeting of shareholders, while such Election Notice remains in effect.
- (b) Deferred Share Units credited to a Member in accordance with any provision of the Plan shall be recorded by the Corporation in the Member's Deferred Share Unit Account (as defined below) as soon as reasonably practicable thereafter.

**4.6 Calculation of Number of Deferred Share Units.**

The number of Deferred Share Units credited at any particular time with respect to any amount in respect of which a Member shall have elected pursuant to Section 4.2 will be calculated by dividing such amount by the Market Price on the relevant Annual Payment Date for such amount.

**4.7 Deferred Share Unit Account.**

A bookkeeping account, to be known as a "Deferred Share Unit Account", shall be maintained by the Corporation for each Member, in which shall be recorded all Deferred Share Units credited to a Member from time to time.

**4.8 Dividends.**

Whenever cash dividends are paid on the Shares, additional Deferred Share Units will be credited to the Member's Deferred Share Unit Account and redeemed in accordance with the terms of Article 5. The number of such additional Deferred Share Units will be calculated by dividing (i) the dividends that would have been paid to such Member if the Deferred Share Units in the Member's Deferred Share Unit Account on the relevant dividend record date had been Shares, by (ii) the closing price of the Shares on the TSX, the NYSE or other stock exchange where the majority of the trading volume and value of the Shares occurs on the date of payment of such dividend. If on such date of payment there is not a closing price of the Shares on any such exchange, then the opening price of the Shares on the TSX, the NYSE or other stock exchange where the majority of the trading volume and value of the Shares occurs on the first available date thereafter will be used for purposes of (ii) above.

**4.9 Adjustments.**

In the event of any stock dividend, stock split, combination or exchange of Shares, merger, consolidation, spin-off or other distribution (other than normal cash dividends) of the Corporation's assets to shareholders, or any other changes affecting the Shares, such proportionate adjustments shall be made with respect to the number of Deferred Share Units outstanding under the Plan to reflect such change or changes. Any adjustments shall be made consistent with the applicable requirements of section 409A of the Code.

**4.10 No Price Adjustment.**

For greater certainty, no additional Deferred Share Units will be granted to such Member to compensate for a downward fluctuation in the price of the Shares, nor will any other form of benefit be conferred upon, or in respect of, a Member for such purpose.

**ARTICLE 5**

**REDEMPTION ON RETIREMENT OR DEATH**

**5.1 Redemption.**

Subject to Section 5.2, the value (determined in accordance with Section 5.2) of the Deferred Share Units credited to a Member's Deferred Share Unit Account shall be redeemed immediately following the earliest to occur of the following events: (i) the Member's "separation from service" (within the meaning of such term

under section 409A of the Code) with the Corporation; (ii) the Member's disability (within the meaning of such term under section 409A of the Code); or (iii) the Member's death. (collectively such events shall be referred to as the "Member's Termination Date").

**5.2 Payment of Redeemed Amount.**

Subject to applicable income tax, other withholdings as required by law and the 6 month delay set forth in Section 7.5 below, the value of the Deferred Share Units redeemed by or in respect of a Member shall be paid to the Member (or if the Member has died, to his or her estate, as the case may be) in the form of one lump sum cash payment, less the amounts required to be withheld by applicable law, within 30 days following the Member's Termination Date. The amount of the cash payment to be paid to the Member (or if the Member has died, to his or her estate, as the case may be) on redemption, before such withholdings, shall be determined by multiplying the number of Deferred Share Units held by the Member on the Member's Termination Date by the Market Price on such Member's Termination Date.

**ARTICLE 6**

**SHAREHOLDER RIGHTS**

**6.1 No Shareholder Rights.**

Deferred Share Units are not Shares and will not entitle a Member to any shareholder rights, including, without limitation, voting rights, dividend entitlement or rights on liquidation.

**ARTICLE 7**

**ADMINISTRATION**

**7.1 Unfunded Obligation.**

Unless otherwise determined by the Board, the Plan shall remain an unfunded obligation of the Corporation.

**7.2 Committee to Administer Plan.**

The Plan shall be administered by the Board with the advice of the Compensation Committee of the Board or such other committee of the Board as the Board may, from time to time, determine to be appropriate.

**7.3 Amendment and Termination.**

The Plan may be amended or terminated at any time by the Board, except as to rights already accrued hereunder by the Members. Notwithstanding the foregoing, any amendment or termination of the Plan shall be such that the Plan continuously meets the requirements of paragraph 6801(d) of the Regulations under the *Income Tax Act* (Canada) or any successor provision thereto.

**7.4 Costs of Administration.**

The Corporation will be responsible for all costs relating to the administration of the Plan.

**7.5 Section 409A of the Code**

This Plan is intended to comply with the applicable requirements of section 409A of the Code and shall be administered in accordance with section 409A of the Code. All payments to be made upon a termination of employment or service, shall only be made upon a "separation from service" under section 409A of the Code. In no event shall a Member, directly or indirectly designate the calendar year in which payments will be made. All payments under the Plan shall be structured in a manner consistent with the requirements of section 409A of the Code and payments with respect thereto shall only be made in a manner and upon an event permitted under section 409A of the Code and, to the extent required under section 409A of the Code, payments to a Member who is a "specified employee" (within the meaning of such term under section 409A of the Code) upon his or

her separation from service shall be postponed and subject to a 6 month delay and shall be paid within 15 days after the end of the 6 month period following separation from service, or if such Member dies during the postponement period prior to the payment of postponed amount, the amounts withheld on account of section 409A of the Code shall be paid to the personal representative of such Member's estate within 60 days after the date of such Member's death. To the extent that any provision of the Plan would cause a conflict with the requirements of section 409A of the Code, or would cause the administration of the Plan to fail to satisfy the requirements of section 409A of the Code, such provision shall be deemed null and void to the extent permitted by applicable law.

**ARTICLE 8**

**ASSIGNMENT**

**8.1 Assignment.**

A Deferred Share Unit is personal to the Member and is non-assignable. No Deferred Share Unit granted hereunder shall be pledged, hypothecated, charged, transferred, assigned or otherwise encumbered or disposed of by the Member, whether voluntarily or by operation of law, otherwise than by testate succession or the laws of descent and distribution, and any attempt to do so will cause such Deferred Share Unit to be null and void. During the lifetime of the Member, a Deferred Share Unit shall be redeemable only by the Member and, upon the death of a Member, the person to whom the rights shall have passed by testate succession or by the laws of descent and distribution may redeem any Deferred Share Units in accordance with the provisions of Article 5.

**Schedule A to Deferred Share Unit Plan  
for Directors of Biovail Corporation (the "Plan")**

**ELECTION NOTICE**

Please complete one of the following: Section 1 (Election Notice), Section 2 (Election to Change Participation) or Section 3 (Election to Terminate an Earlier Election), and return a signed and dated copy of this Schedule A to the Chief Financial Officer of Biovail Corporation (the "Corporation").

**1. ELECTION NOTICE**

I hereby elect to participate in the Plan on the following basis, commencing with the first annual payment of the first calendar year beginning after the date hereof,<sup>(1)</sup> unless and until the election is terminated or changed in accordance with a subsequently filed Election Notice, namely, to receive in Deferred Stock Units \_\_\_\_\_% **(please insert applicable percentage)** of the amount otherwise payable to me in cash in respect of my Annual Board Retainer and \_\_\_\_\_% **(please insert applicable percentage)** of the amount otherwise payable to me in cash in respect of my Annual Chair Retainer.

**2. ELECTION TO CHANGE PARTICIPATION**

I hereby elect, notwithstanding any previous election in the form of this Election Notice, to change my election with respect to my participation in the Plan, commencing with the first annual payment of the first calendar year beginning after the date hereof, unless and until the election is terminated or changed in accordance with a subsequently filed Election Notice, namely, so as to receive in Deferred Stock Units \_\_\_\_\_% **(please insert applicable percentage)** of the amount otherwise payable to me in cash in respect of my Annual Board Retainer and \_\_\_\_\_% **(please insert applicable percentage)** of the amount otherwise payable to me in cash in respect of my Annual Chair Retainer.

**3. ELECTION TO TERMINATE AN ELECTION**

I hereby elect, by marking the box below this paragraph with an "X", to terminate my election under Section 4.2 of the Plan and to receive my Annual Board Retainer and my Annual Chair Retainer in cash commencing with the first annual payment of the first calendar year beginning after the date hereof.

☐ YES, I WISH TO TERMINATE MY MOST RECENT ELECTION UNDER SECTION 4.2 OF THE PLAN.

I confirm that:

1. I have received and reviewed a copy of the terms of the Plan and agreed to be bound by such terms.
2. I understand that I will not be able to cause the Corporation to redeem Deferred Share Units granted under the Plan ("DSUs") until I am no longer a Director or an employee of the Corporation.
3. I recognize that when DSUs credited pursuant to an election made under Section 1 or 2 of this Election Notice are redeemed in accordance with the terms of the Plan after I am no longer a Director or employee of the Corporation, income tax and other withholdings as required will arise at that time that will be my obligations (and not the Corporation's, except as required by law). Upon redemption of the DSUs, the Corporation will make all appropriate withholdings as required by law at that time.
4. The value of DSUs are based on the value of the common shares of the Corporation and therefore are not guaranteed.
5. No funds will be set aside to guarantee the payment of DSUs. Future payment of DSUs will remain an unfunded liability recorded on the books of the Corporation.
6. I acknowledge and agree that, as described in greater detail in the Plan, I am not permitted to assign, pledge, charge or otherwise encumber the DSUs granted to me under the Plan.

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(1) If this is the year in which I have first become Director, my participation commences with the next annual payment in the current year if this Election Notice is filed on or before the earlier of (i) thirty days after the date I first became Director, and (ii) the last business day of this calendar year.

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7. An election filed pursuant to Section 1, 2 or 3 of this Schedule A is required to be filed with the Chief Financial Officer of the Corporation not later than the last business day of the calendar year ending before the particular calendar year in respect of which I am electing to receive any portion of my Annual Board Retainer and/or my Annual Chair Retainer in DSUs rather than cash (or in respect of which I am electing to change or terminate such election, as the case may be).

The foregoing is only a brief outline of certain key provisions of the Plan. For more complete information, reference should be made to the Plan in its entirety.

|       |                         |
|-------|-------------------------|
| <hr/> | <hr/>                   |
| Date  | (Signature of Director) |
|       | <hr/>                   |
|       | (Name of Director)      |
| <hr/> |                         |



**BIOVAIL LABORATORIES INTERNATIONAL SRL**

**DEFERRED SHARE UNIT PLAN**

**Effective: May 3, 2005**  
**Amended: March 14, 2007**

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BIOVAIL LABORATORIES INTERNATIONAL SRL

DIRECTORS’ DEFERRED SHARE UNIT PLAN

ARTICLE 1  
PREAMBLE AND DEFINITIONS

1.1 Title.

The Plan herein described shall be called the “Deferred Share Unit Plan”, and is referred to herein as the “Plan”.

1.2 Purpose of the Plan.

The purpose of the Plan is to align the compensation incentives available to the employees, officers and directors of the Corporation and the interests of the Corporation’s parent company.

1.3 Definitions.

“**Board**” means the board of directors of the Corporation.

“**Corporation**” means Biovail Laboratories International SRL and any successor corporation whether by amalgamation, merger or otherwise.

“**Deferred Share Unit**” means a bookkeeping entry, the value of which on any particular date shall be equal to the Market Price.

“**Deferred Share Unit Account**” has the meaning ascribed thereto in Section 4.7.

**DSU Allocation**” means such amount as may from time to time be determined by resolution of the Board;

“**Election Notice**” has the meaning ascribed thereto in Section 4.2.

“**Market Price**” means the market price of a Share and shall be the VWAP on the TSX, or the NYSE or other stock exchange where the majority of the trading volume and value of the Shares occurs, for the five trading days immediately preceding such date, except that with respect to Members subject to U.S. taxation, to the extent required by Section 409A of the Code, “Market Price” of a Share means the greater of (i) the Market Price as calculated above or (ii) the VWAP on the TSX, or the NYSE or other stock exchange where the majority of the trading volume and value of the Shares occurs, for the single trading day immediately preceding such date. The Market Price so determined may be in Canadian dollars or U.S. dollars. As a result, the Market Price of a Share in respect of a Deferred Share Unit that will be paid in Canadian dollars shall be either (a) such Market

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Price as determined above, if in Canadian dollars, or (b) such Market Price as determined above converted into Canadian dollars at the closing rate of exchange of the Bank of Canada on the Date of Grant, if in U.S. dollars. Similarly, the Market Price of a of a Share in respect of a Deferred Share Unit that will be paid in U.S. dollars shall be either (a) such Market Price as determined above, if in U.S. dollars, or (b) such Market Price as determined above converted into U.S. dollars at the closing rate of exchange of the Bank of Canada on the Date of Grant, if in Canadian dollars. If on the such date there is not a closing rate of exchange of the Bank of Canada, then the Market Price of a Share shall be determined as provided above on the first day immediately preceding such date for which there was such a closing rate of exchange. The Market Price of a Share shall be rounded up to the nearest whole cent.

“**Member**” means an employee, officer or director of the Corporation who becomes a participant in the Plan in accordance with Article 4.

“**Member’s Termination Date**” has the meaning ascribed thereto in Section 5.1.

“**NYSE**” means the New York Stock Exchange.

“**Payment Date**” has the meaning ascribed thereto in Section 4.1.

“**Shares**” means the common shares of Biovail Corporation and such other shares as may be substituted therefor as a result of amendments to the articles of Biovail Corporation, a reorganization of Biovail Corporation or otherwise.

“**Trading Day**” means any date on which the TSX is open for the trading of the Shares.

“**TSX**” means the Toronto Stock Exchange.

“**VWAP**” means the volume weighted average trading price of the Shares, calculated by dividing the total value by the total volume of Shares traded for the relevant period.

1.4                    **Schedules.**

- Schedule A — Election Notice
- Schedule B — Redemption Notice

**ARTICLE 2**  
**INTERPRETATION**

2.1                    **Governing Law.**

The Plan shall be governed and interpreted in accordance with the laws of Barbados.

**2.2                    Severability.**

If any provision of the Plan or part hereof is determined to be void or unenforceable in whole or in part, such determination shall not affect the validity or enforcement of any other provision or part thereof.

**2.3                    References.**

Headings wherever used herein are for reference purposes only and do not limit or extend the meaning of the provisions herein. In the Plan, references to the singular shall include the plural and vice versa, as the context shall require.

**ARTICLE 3**  
**ELIGIBILITY**

**3.1                    Establishment.**

Subject to obtaining Board approval, the Plan shall be effective as at May 4, 2005.

**3.2                    Participation.**

Each employee, officer or director of the Corporation shall become a Member in the Plan if so designated by resolution of the Board.

**3.3                    No Additional Rights.**

Nothing herein contained shall be deemed to give any person the right to be retained as an employee, director or officer of the Corporation.

**ARTICLE 4**  
**DEFERRED SHARE UNIT GRANTS AND ACCOUNTS**

**4.1                    Grants.**

From time to time, as the Board may consider appropriate, a Member may be credited, without further or other formality, with the respective number of Deferred Share Units as may be determined by dividing the DSU Allocation by the Market Price at the date of payment determined by the Board (a “Payment Date”).

**4.2                    Election to Participate.**

Each Member shall have, subject to the conditions stated herein, the right to elect at any time and from time to time in accordance with this Section 4.2, to be credited with Deferred Share Units in lieu of all or any part of any cash compensation payable to such Member. No such election shall be effective unless and until the Member in question shall have filed a notice of election in the form of Schedule A hereto (the “Election Notice”) with the Corporation’s Secretary, which notice, subject as hereinafter provided, may be filed at any time.

**4.3                    Effect of Notice.**

A duly filed Election Notice shall be binding upon the Member who filed it, and upon the Corporation, unless and until such Member has filed a subsequent Election Notice to terminate or change his or her election and such subsequent Election Notice has become effective in accordance with the Plan.

**4.4                    Termination or Change to Election.**

- (a) Each Member is entitled to terminate or change his or her election specified in any Election Notice filed with the Corporation by filing with the Secretary of the Corporation a subsequent Election Notice, provided that no Member shall be entitled to file more than one Election Notice in any calendar year unless specifically authorized by resolution of the Directors.
- (b) For greater certainty, subject to the foregoing limitation, a Member who has filed a subsequent Election Notice to terminate an earlier election by the Member may thereafter again elect in accordance with Section 4.2.

**4.5                    Timing and Recording of Credits.**

- (a) Each Member who has filed an Election Notice in accordance with Section 4.2 shall be credited with Deferred Share Units as hereinafter provided in respect of the cash payment in respect of which such election is made, immediately upon the later to occur of: (i) the filing of such Election Notice or (ii) the date on which the cash payment would otherwise be payable (such later date being the “Effective Date”), while such Election Notice remains in effect.
- (b) The number of Deferred Share Units to be received by the Member will be calculated by dividing (i) the cash payment to which the Member would otherwise be entitled, by (ii) the Market Price at the Effective Date.
- (c) Deferred Share Units credited to a Member in accordance with any provision of this agreement shall be recorded by the Corporation in the Member’s Deferred Share Unit Account (as defined below) as soon as reasonably practicable thereafter.

**4.6                    [Intentionally Left Blank]**

**4.7                    Deferred Share Unit Account.**

An account, to be known as a “Deferred Share Unit Account”, shall be maintained by the Corporation for each Member, in which shall be recorded all Deferred Share Units credited to a Member from time to time.

**4.8                    Dividends.**

Whenever cash dividends are paid on the Shares, additional Deferred Share Units will be credited to the Member’s Deferred Share Unit Account. The number of such additional Deferred Share Units will be calculated by dividing (i) the dividends that would have been paid

to such Member if the Deferred Share Units in the Member’s Deferred Share Unit Account on the relevant dividend record date had been Shares, by (ii) the closing price of the Shares on the TSX, the NYSE or other stock exchange where the majority of the trading volume and value of the Shares occurs on the date of payment of such dividend. If on such date of payment there is not a closing price of the Shares on any such exchange, then the opening price of the Shares on the TSX, the NYSE or other stock exchange where the majority of the trading volume and value of the Shares occurs on the first available date thereafter will be used for purposes of (ii) above.

**4.9                    Adjustments.**

In the event of any stock dividend, stock split, combination or exchange of Shares, merger, consolidation, spin-off or other distribution (other than normal cash dividends) of the Corporation’s assets to shareholders, or any other changes affecting the Shares, such proportionate adjustments shall be made with respect to the number of Deferred Share Units outstanding under the Plan to reflect such change or changes.

**4.10                  No Price Adjustment.**

For greater certainty, no additional Deferred Share Units will be granted to such Member to compensate for a downward fluctuation in the price of the Shares, nor will any other form of benefit be conferred upon, or in respect of, a Member for such purpose.

**ARTICLE 5**  
**REDEMPTION ON RETIREMENT OR DEATH**

**5.1                    Redemption.**

Subject to Section 5.2, the value (determined in accordance with Section 5.2) of the Deferred Share Units credited to a Member’s Deferred Share Unit Account shall be redeemable by the Member (or, where the Member has died, his or her estate) at the Member’s option (or after the Member’s death, at the option of his legal representative) following the event, including death, causing the Member to no longer be an employee, officer or director of the Corporation (the “Member’s Termination Date”). The value of the Deferred Share Units shall be redeemed by filing a written notice of redemption in the form of Schedule B hereto with the Secretary of the Corporation, specifying: (i) either one or two redemption dates; and (ii) the percentage of Deferred Share Units held by the Member to be redeemed on each such redemption date (which when added together shall equal 100%). Each redemption date specified in the notice of redemption shall occur during the period commencing at least five (5) business days following the date on which such notice is filed with the Secretary of the Corporation and ending not later than December 15 of the first calendar year commencing after the Member’s Termination Date. If no notice of redemption has been filed by December 15 of the first calendar year after the Member’s Termination Date, December 15 of the first calendar year after the Member’s Termination Date will be deemed to be the redemption date for all of the Member’s Deferred Share Units.



5.2 **Payment of Redeemed Amount.**

Subject to applicable income tax and other withholdings as required by law, the value of the Deferred Share Units redeemed by or in respect of a Member shall be paid to the Member (or if the Member has died, to his or her estate, as the case may be) in the form of one or two lump sum cash payments, as applicable in accordance with the Member’s notice of redemption, less the amounts required to be withheld by applicable law, as soon as practicable after the applicable redemption date, provided that in any event such payment date shall be no later than December 31 of the first calendar year commencing after the Member’s Termination Date. The amount of the cash payment (or payments, as the case may be) to be paid to the Member on the redemption date (or redemption dates, as the case may be), before such withholdings, shall be determined by multiplying the number of Deferred Share Units to be redeemed on a redemption date by the Market Price on such redemption date.

**ARTICLE 6**  
**SHAREHOLDER RIGHTS**

6.1 **No Shareholder Rights.**

Deferred Share Units are not Shares and will not entitle a Member to any shareholder rights, including, without limitation, voting rights, dividend entitlement or rights on liquidation.

**ARTICLE 7**  
**ADMINISTRATION**

7.1 **Unfunded Obligation.**

Unless otherwise determined by the Board, the Plan shall remain an unfunded obligation of the Corporation.

7.2 **[Intentionally left blank]**

7.3 **Amendment and Termination.**

The Plan may be amended or terminated at any time by the Board, except as to rights already accrued hereunder by the Members.

7.4 **Costs of Administration.**

The Corporation will be responsible for all costs relating to the administration of the Plan.

**Schedule A to Deferred Share Unit Plan  
(the “Plan”)**

**ELECTION NOTICE**

Please complete one of Section 1 (Election Notice), Section 2 (Election to Change Participation) or Section 3 (Election to Terminate an Earlier Election), and return a signed and dated copy of this Schedule A to the Secretary of Biovail Laboratories International SRL (the “Corporation”).

**1. ELECTION NOTICE**

I hereby elect to participate in the Plan on the following basis, commencing immediately, unless and until the election is terminated or changed in accordance with a subsequently filed Election Notice, namely, to receive in Deferred Stock Units, \$ \_\_\_\_\_ of the amount otherwise payable to me in cash by the Corporation.

**2. ELECTION TO CHANGE PARTICIPATION**

I hereby elect, notwithstanding any previous election in the form of this Election Notice, to change my election with respect to my participation in the Plan, commencing immediately, unless and until the election is terminated or changed in accordance with a subsequently filed Election Notice, namely, to receive in Deferred Stock Units, \$ \_\_\_\_\_ of the amount otherwise payable to me in cash by the Corporation.

**3. ELECTION TO TERMINATE AN ELECTION**

I hereby elect, by marking the box below this paragraph with an “X”, to terminate my election under Section 4.2 of the Plan to receive the cash referred to in that election as cash.

☐ YES, I WISH TO TERMINATE MY MOST RECENT ELECTION UNDER SECTION 4.2 OF THE PLAN.

I confirm that:

1. I have received and reviewed a copy of the terms of the Plan and agreed to be bound by such terms.
  2. I understand that I will not be able to cause the Corporation to redeem Deferred Share Units granted under the Plan (“DSUs”) until I am no longer a director, officer or employee of the Corporation.
  3. I recognize that when DSUs credited pursuant to an election made under Section 1 or 2 of this Election Notice are redeemed in accordance with the terms of the Plan after I am no longer a director, officer or employee of the Corporation, income tax and other withholdings as required will arise at that time that will be my obligations (and not the Corporation’s, except as required by law). Upon redemption of the DSUs, the Corporation will make all appropriate withholdings as required by law at that time.
-

4.               The value of DSUs are based on the value of the common shares of the Biovail Corporation and therefore are not guaranteed.
5.               No funds will be set aside to guarantee the payment of DSUs. Future payment of DSUs will remain an unfunded liability recorded on the books of the Corporation.
- The foregoing is only a brief outline of certain key provisions of the Plan. For more complete information, reference should be made to the Plan in its entirety.

\_\_\_\_\_

Date

\_\_\_\_\_

(Signature of Member)

\_\_\_\_\_

(Name of Member)

Schedule B to Deferred Share Unit Plan  
(the “Plan”)

REDEMPTION NOTICE

I hereby advise Biovail Laboratories International SRL (the “Corporation”) that I wish to redeem all the Deferred Share Units credited to my account under the Plan on the following redemption date or dates, which in each case shall be at least five (5) business days following the date on which this notice is filed with the Corporation but no later than December 15 of the first calendar year commencing after the year in which I ceased to be a director, officer or an employee of the Corporation:

|    | Amount of Deferred Share Units<br>(expressed as a percentage<br>totalling 100%) | Redemption Date |
|----|---------------------------------------------------------------------------------|-----------------|
| 1. |                                                                                 |                 |
| 2. |                                                                                 |                 |

\_\_\_\_\_

Date

\_\_\_\_\_

(Signature of Member)

\_\_\_\_\_

(Name of Member)

If this Redemption Notice is signed by a beneficiary or legal representative, documents providing the authority of such signature must accompany this Redemption Notice.

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**Plan Document**  
**BIOVAIL AMERICAS CORP.**  
**Executive Deferred Compensation Plan**  
**As Amended and Restated Effective January 1, 2009**

BIOVAIL AMERICAS CORP., a Delaware corporation (the "Company"), has established and maintains the Biovail Americas Corp. Executive Deferred Compensation Plan (the "Plan"), originally effective January 1, 2003, to enable Participants covered under the Plan to enhance their retirement security by permitting them to enter into agreements with the Company to defer compensation and receive benefits at retirement, death, separation from service, and as otherwise provided under the Plan.

This Plan is amended and restated effective January 1, 2009 to implement changes required pursuant to and consistent with Section 409A of the Internal Revenue Code of 1986, as amended and the regulations promulgated thereunder (the "Code"), incorporate all prior amendments and make certain desired design changes. For the period January 1, 2005 through December 31, 2008 the Plan has been operated in accordance with transition relief established by the Treasury Department and Internal Revenue Service pursuant to Section 409A of the Code.

**ARTICLE 1 — Definitions**

- 1.1 **Annual Deferral:** shall mean the amount of Compensation, which the Participant elects to defer under the Deferral Commitment pursuant to Article 3 of the Plan.
  - 1.2 **Beneficiary:** shall mean the person or persons or entity designated as such in accordance with Article 10 of the Plan.
  - 1.3 **Board:** shall mean the Board of Directors of Biovail Americas Corp.
  - 1.4 **Code:** shall mean the Internal Revenue Code of 1986, as amended and the regulations promulgated thereunder.
  - 1.5 **Company:** shall mean Biovail Americas Corp., its subsidiaries and divisions, and any successor(s) in interest.
  - 1.6 **Compensation:** shall mean a Participant's salary and bonuses, before reductions for deferral.
  - 1.7 **Deferral Account:** shall mean the account or accounts established in the books of the Company in accordance with Section 4.1 to track all amounts deferred by a Participant under the Plan and any earnings (or losses) attributable thereto. Grandfathered Amounts and any earnings (or losses) attributable thereto and non-Grandfathered Amounts and any earnings (or losses) attributable thereto will be accounted for separately.
  - 1.8 **Deferral Commitment:** shall mean an election made by a Participant to defer Compensation pursuant to Articles 2 and 3 of the Plan for which a Deferral Election Form has been submitted by the Participant.
  - 1.9 **Deferral Contribution Period:** shall mean the period of one (1) Plan Year, or such other period as the Deferred Compensation Committee may permit in its discretion, over which the Participant has elected to defer Compensation pursuant to Article 3 of the Plan.
  - 1.10 **Deferral Election Form:** shall mean a written or electronic agreement between the Company and the Participant, entered into pursuant to Section 2.1 of the Plan, by which the Participant elects to participate in the Plan and make a Deferral Commitment.
  - 1.11 **Deferred Compensation Committee:** shall mean the committee appointed by the Board to administer the Plan pursuant to Article 9 of the Plan.
  - 1.12 **Early Retirement:** shall mean a Participant's Separation from Service with the Company for any reason whatsoever, whether voluntary or involuntary, other than as a result of the Participant's death, on or after the Participant's attainment of age fifty (55) and completion of a minimum of fifteen (15) years of continuous service, or such other date as the Deferred Compensation Committee may determine in its discretion.
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- 1.13 **Eligible Employee:** shall mean (i) an officer or members of the senior management of Biovail Americas Corp. whose annual base salary is one hundred twenty-five thousand (\$125,000) or more, and (ii) any officer or senior member of management of a Participating Company who is specifically designated in writing by such Participating Company as eligible to participate in the Plan.
- 1.14 **Employer:** shall mean the Company or any of its subsidiaries or divisions.
- 1.15 **ERISA:** shall mean the Employee Retirement Income Security Act of 1974, as amended.
- 1.16 **Financial Hardship:** shall mean a Participant's unexpected need for cash arising from an unforeseeable emergency (for non-Grandfathered Amounts within the meaning of Section 409A of the Code), as determined by the Deferred Compensation Committee. Cash needs arising from foreseeable events such as, for example, the purchase of a residence or education expenses for children shall not, alone, be considered a Financial Hardship.
- 1.17 **Funds:** shall mean certain investment alternatives designated by the Deferred Compensation Committee from time to time for determining earnings (and losses) attributable to the Deferral Accounts of Participants.
- 1.18 **Grandfathered Amounts:** shall mean the portion of a Participant's Deferral Account attributable to amounts earned and vested for purposes of Section 409A of the Code as of December 31, 2004 and the earnings thereon (whenever credited).
- 1.19 **Participant:** shall mean an Eligible Employee who is participating in the Plan as provided in Article 2, or a former Eligible Employee for whom a Deferral Account is being maintained under the Plan.
- 1.20 **Participating Company:** shall mean each affiliate (within the meaning of Sections 414(b), (c) and (m) of the Code) of the Company that adopts this Plan by means of a written instrument with the consent of the Company. References herein to the 'Company' will be deemed to include each Participating Company, unless the context indicates otherwise.
- 1.21 **Plan:** shall mean this Executive Deferred Compensation Plan as set forth in this document and as the same may be amended, supplemented and restated from time to time and any successor plan.
- 1.22 **Plan Year:** shall mean the twelve (12)-month period from January 1 through December 31.
- 1.23 **Retirement:** shall mean a Participant's Separation from Service with the Company for any reason whatsoever, whether voluntary or involuntary, other than as a result of the Participant's death, after the Participant attains age sixty-five (65).
- 1.24 **Separation from Service:** shall mean for non-Grandfathered Amounts a Participant's separation from service with the Company within the meaning of Section 409A of the Code for any reason whatsoever, whether voluntary or involuntary. For Grandfathered Amounts it shall mean a termination of employment.
- 1.25 **Valuation Date:** shall mean the last day of each Plan Year calendar quarter, or such other dates as the Deferred Compensation Committee may determine in its discretion, which must be at least annually, for the valuation of a Participant's Deferral Account.
- 1.26 **Vesting Date:** shall mean the date that marks the end of the five (5) year period which begins on the effective date of the first Participation Agreement filed by the Participant under the Plan. For example: if a Participant's first Participation Agreement was effective January 1, 2003; the Vesting Date for this Participant would be January 1, 2008.

**ARTICLE 2 — Participation**

- 2.1 **Deferral Election Form.** Annually, all Eligible Employees will be offered the opportunity to defer Compensation to be earned in the following Plan Year. Any Eligible Employee may elect to participate in the Plan and to make a Deferral Commitment effective as of the first day of a Plan Year by submitting a Deferral Election Form specifying the amount of the Deferral Commitment and the time and form of payment under the Plan in accordance with Article 6. The Deferral Election Form must be submitted to

the Deferred Compensation Committee no later than December 31 of the Plan Year preceding the Plan Year for which Compensation is to be earned. Except as otherwise provided in the Plan, the Participant's Deferral Commitment shall be irrevocable.

An employee who first becomes an Eligible Employee after the beginning of a Plan Year is eligible to participate in the Plan as of the sixtieth (60th) day following the date he became an Eligible Employee and may elect to participate in the Plan and to make a Deferral Commitment for that Plan Year with respect to Compensation to be earned on and after such date by submitting a Deferral Election Form specifying the time and form of payment under the Plan to the Deferred Compensation Committee within thirty (30) days following the date the employee became an Eligible Employee.

Participation in the Plan shall be made conditional upon an Eligible Employee's acknowledgement, in writing or by making a deferral election under the Plan, that all decisions and determinations of the Deferred Compensation Committee shall be final and binding on the Participant, his or her Beneficiaries and any other person having or claiming an interest under the Plan.

- 2.2 **Continuation of Participation.** A Participant who has elected to participate in the Plan by making a Deferral Commitment shall continue as a Participant in the Plan for purposes of such Deferral Commitment even though in any Plan Year after such Deferral Commitment such Participant elects not to make a new Deferral Commitment or ceases to be an Eligible Employee. A Participant shall not be eligible to make a new Deferral Commitment unless the Participant is an Eligible Employee with respect to the Plan Year for which the election is made.

**ARTICLE 3 — Form of Deferral Commitments**

- 3.1 **Deferral Commitment.** Subject to Sections 3.2 and 3.3, a Participant may elect in the Deferral Election Form to defer an amount equal to a specified dollar amount or a percentage of Compensation so long as the amount of Compensation net of the amount deferred does not fall below any applicable thresholds determined by the Deferred Compensation Committee in its sole discretion. Once made, a Participant's Deferral Commitment is irrevocable. The Deferred Compensation Committee, in its sole discretion, will determine rules regarding the deferral of Compensation, as necessary or appropriate.

A Participant may change his Deferral Commitment annually for any Plan Year by filing a new Deferral Election Form prior to the beginning of such Plan Year.

- 3.2 **Minimum Deferral Commitment.** A Participant may not elect to defer less than three thousand dollars (\$3,000) of Compensation in any one Plan Year.
- 3.3 **Maximum Deferral Commitment.** The maximum amount a Participant may defer in any one Plan Year is fifty percent (50%) of salary and one hundred percent (100%) of bonus. The Deferred Compensation Committee, in its sole discretion, may establish alternative maximum Deferral Commitment limits for the purpose of controlling the Company's financial obligations under the Plan or for any other reason deemed necessary.
- 3.4 **Withholding.** The Deferred Compensation Committee, in its sole discretion, will make arrangements for satisfying any federal, state or local income tax withholding requirements and Social Security or other employee tax requirements applicable to the deferral of Compensation under the Plan.

**ARTICLE 4 — Deferral Accounts**

- 4.1 **Deferral Accounts.** A Deferral Account shall be established for each Participant. The Deferral Account shall be credited with the applicable portion of a Participant's Annual Deferral as of the approximate date such amounts would otherwise have been paid to the Participant. The portion of a Participant's Deferral Account attributable to Grandfathered Amounts and any earnings (or losses) attributable thereto will be accounted for separately from the portion of a Participant's Deferral Account attributable to non-Grandfathered Amounts and any earnings (or losses) attributable thereto.

- 4.2 **Statements of Account.** The Deferred Compensation Committee shall provide periodically (but no less frequently than annually) to each Participant a statement setting forth the balance of the Deferral Account maintained for such Participant.
- 4.3 **Vesting of Deferral Accounts.** A Participant shall be one hundred percent (100%) vested at all times in the amount of Annual Deferrals and any earnings attributable thereto credited to the Participant's Deferral Account. A Participant shall be zero percent (0%) vested in any Company contributions and any earnings attributable thereto credited to the Participant's Deferral Account until the Participant's Vesting Date. If the Participant is still providing service to the Company and is a Participant in the Plan on the Vesting Date, the Participant shall immediately become one hundred percent (100%) vested in all Company contributions and any earnings attributable thereto credited to his Deferral Account. In the event the Participant dies prior to reaching the Vesting Date, the Participant shall become one hundred percent (100%) vested in any unvested amounts credited to his Deferral Account as of the day prior to his date of death.
- 4.4 **Earnings (or Losses) on Deferral Accounts.** A Participant's Deferral Account shall be credited with all deemed earnings (or losses) generated by the Funds elected by the Participant from time to time. Participants may allocate their Deferral Account among the Funds available under the Plan only in whole percentages. The deemed rate of return, positive or negative, credited under each Fund is based upon the actual investment performance of the corresponding investment portfolios that the Deferred Compensation Committee may designate from time to time, and shall equal the total return of each such investment fund net of asset based charges, including, without limitation, money management fees and Fund expenses. The Deferred Compensation Committee may, on a prospective basis, add or delete any of the Funds.
- 4.5 **Funds.** Notwithstanding that the rates of return credited to Participants' Deferral Accounts are based upon the actual performance of the corresponding Funds as the Deferred Compensation Committee may designate, the Company shall not be obligated to actually invest any Compensation deferrals made by Participants under this Plan in such Funds or in any other investment funds.
- 4.6 **Changes in Funds.** A Participant may change the Funds to which his or her Deferral Account is deemed to be allocated with whatever frequency is determined by the Deferred Compensation Committee. Each such change may include a reallocation of the Participant's existing Deferral Account in whole percentages and/or a change in investment allocation of amounts to be credited to the Participant's Deferral Account in the future, as the Participant may elect.
- 4.7 **Valuation of Deferral Accounts.** The value of a Participant's Deferral Account as of any Valuation Date shall equal the amounts theretofore credited to such Account, including any earnings (positive or negative) deemed to be earned on each such Account in accordance with Section 4.4, through the day preceding such date, less the amounts theretofore deducted from such Account.

**ARTICLE 5 — Company Contributions**

- 5.1 The Company may from time to time, in its discretion, credit the Deferral Account of each Participant who is an Eligible Employee with a matching contribution. The amount and timing of the matching contribution, if any, shall be determined by the Deferred Compensation Committee, in its sole discretion.
- 5.2 Company contributions credited to a Participant's Deferral Account, if any, shall be distributed to a Participant only to the extent such amounts are vested. A Participant shall become vested in Company contributions made on his behalf, and all earnings attributable thereto, in accordance with the Vesting Date. The balance, if any, of such Company contributions shall be forfeited upon the Participant's Separation from Service to the extent not then vested.



6.1 **Payment with respect to Grandfathered Amounts.** Payment with respect to Grandfathered Amounts shall be made as follows:

- (a) Upon Separation from Service. Upon a Participant's Separation from Service other than on account of the Participant's Retirement or Early Retirement, the Company shall pay to the Participant the Participant's vested Deferral Account balance in a lump sum payment. The Participant's Deferral Account balance shall be determined as of the Valuation Date following the Participant's Separation from Service and payment shall be made within ninety (90) days of the Valuation Date.
- (b) Upon Retirement or Early Retirement. Upon a Participant's Separation from Service on account of Retirement or Early Retirement, the Company shall pay to the Participant the vested balance of the Participant's Deferral Account, in accordance with the Participant's direction as found on the Deferral Election Form submitted by the Participant at the time the Deferral Commitment was made. If no election was submitted, payment will be made in fifteen (15) installment payments. The Participant's Deferral Account balance shall be determined as of the Valuation Date following the Participant's Separation from Service and payment shall be made within ninety (90) days of the Valuation Date.

A Participant may elect the following alternative forms of payment:

- (i) Lump Sum. A lump sum payment equal to the balance of the applicable Deferral Account as of the Valuation Date following the Participant's Retirement or Early Retirement. Lump sum payment shall commence no earlier than the first day of the calendar year quarter following the Participant's Retirement or Early Retirement.
- (ii) Installment Payments. Annual installment payments in substantially equal amounts over a period of five (5), ten (10), or fifteen (15) years. Installment payments shall be made by the thirtieth (30th) day of the calendar year quarter of each year following the Participant's Retirement or Early Retirement.

A Participant may change his election with respect to Grandfathered Amounts to an allowable alternative form of payment by submitting a new Deferral Election Form to the Deferred Compensation Committee at least one (1) year prior to the Participant's Retirement or Early Retirement. Subject to the foregoing, the Deferral Election Form most recently accepted by the Deferred Compensation Committee shall govern the payout of the Participant's Deferral Account.

- (c) In-Service Distributions. If a Participant elected an in-service distribution with respect to Grandfathered Amounts, payment will be made in a lump sum by January 31 of the calendar year elected by the Participant. A Participant may not change his in-service distribution election with respect to Grandfathered Amounts.
- (d) Accelerated Distribution Prior to Retirement Date. A Participant may request a distribution of all of the Participant's Deferral Account with respect to Grandfathered Amounts only at any time in accordance with the following rules:
  - (i) The balance distributed to the Participant will be reduced by a penalty amount equal to ten percent (10%) of the balance of the Participant's Deferral Account. The Participant's Deferral Account balance shall be determined as of the Valuation Date next following the Participant's distribution request. Payment shall be made within ninety (90) days following the Valuation Date.
  - (ii) No Compensation Deferrals will be made on behalf of the Participant until the January following a twelve (12) month period from the date of the requested distribution.
- (e) Accelerated Distribution Following Retirement Date. A Participant may request a distribution of the Participant's Deferral Account with respect to Grandfathered Amounts only at any time

following Retirement. The balance distributed to the Participant will be reduced by a penalty amount equal to ten percent (10%) of the balance of the Participant's Deferral Account. The Participant's Deferral Account balance shall be determined as of the Valuation Date next following the Participant's distribution request. Payment shall be made within ninety (90) days following the Valuation Date.

## 6.2 **Payment with respect to Non-Grandfathered Amounts.**

- (a) Upon a Participant's Separation from Service, the Company shall pay to the Participant the vested balance of the Participant's Deferral Account, in accordance with the Participant's direction as found on the Deferral Election Form submitted by the Participant at the time the Deferral Commitment was made. If no election is submitted, payment will be made as a lump sum payment. A Participant may elect the following forms of payment:
  - (i) **Lump Sum.** A lump sum payment equal to the balance of the applicable Deferral Account as soon as practicable following the first day of the thirteenth (13th) month following the Participant's Separation from Service. The Participant's Deferral Account balance shall be determined as of the Valuation Date immediately preceding the date payment is to commence.
  - (ii) **Installment Payments.** Annual installment payments in substantially equal amounts over a period of five (5), ten (10), or fifteen (15) years. Installment payments shall commence as soon as practicable following the first day of the thirteenth (13th) month following the Participant's Separation from Service. The Participant's Deferral Account balance shall be determined as of the Valuation Date immediately preceding the date payment is to commence.
- (b) **In-Service Distributions.** At the time a Participant makes a Deferral Commitment, a Participant can elect to receive an in-service distribution of all or a portion of the Compensation deferred for a Deferral Contribution Period. If a Participant elects an in-service distribution, payment will be made in a lump sum by January 31 of the calendar year elected by the Participant; provided that such calendar year is at least five (5) years after the end of the Deferral Contribution Period for which the Deferral Commitment was made.
- (c) **Subsequent Elections with respect to Non-Grandfathered Amounts.** A Participant may change his election with respect to non-Grandfathered Amounts under Sections 6.2(a) and (b) to an allowable alternative form of payment or to postpone commencement of payment to a later Plan Year by submitting a new Deferral Election Form to the Deferred Compensation Committee; provided that any such election change shall be made in accordance with the requirements of Section 409A of the Code and that no subsequent election may result in an impermissible acceleration of payment as described in Section 409A of the Code. A Participant may make a subsequent election to postpone payment of the applicable Deferral Account to a later Plan Year or to change the form of payment; provided that:
  - (i) the subsequent election must be made at least twelve (12) months prior to the date on which the first scheduled payment was to occur;
  - (ii) the subsequent election may not take effect until at least twelve (12) months after the date on which the election is made; and
  - (iii) the first payment with respect to which such election is made must be deferred for a period of not less than five (5) years from the date such payment would otherwise have been made.

The Deferred Compensation Committee may prescribe limitations with respect to subsequent elections under this Section 6.2(c) as it deems necessary or appropriate, subject to the requirements of Section 409A of the Code.

- 6.3 **Pre-Retirement Survivor Benefit.** If a Participant dies prior to Separation from Service, the Company shall pay to the Participant's Beneficiary the balance of the Participant's Deferral Account, determined as of the Valuation Date following the death of the Participant. Payment shall be made to the Participant's Beneficiary in a lump sum within ninety (90) days following the applicable Valuation Date.

In addition, at the same time the Participant's Deferral Account is distributed following the Participant's death, as described above, the Company shall pay to the Pre-2008 Participant's (as defined below) Beneficiary an amount equal to one times the Pre-2008 Participant's salary at the rate in effect as of the beginning of the Plan Year in which the Pre-2008 Participant's death occurs. This benefit applies to all eligible Pre-2008 Participants, conditioned only upon the Pre-2008 Participant signing the "Consent to Insure" form made available to the Pre-2008 Participant upon enrollment. For purposes of this section a "Pre-2008 Participant" is a Participant other than a Participant hired or rehired by the Company on or after January 1, 2008.

- 6.4 **Post-Retirement Survivor Benefit.** If a Participant dies after installment payments have commenced, but prior to distribution of the Participant's vested Deferral Account in full, the Company shall pay to the Participant's Beneficiary the remaining schedule of installment payments.
- 6.5 **Small Benefit Exception.** Notwithstanding any provision of the Plan to the contrary, in the event the sum of all benefits payable to the Participant (or the Participant's Beneficiary) under the Plan is less than or equal to ten thousand dollars (\$10,000), the Company shall pay such benefits in a single lump sum payment on the date such benefits first become payable pursuant to this Article 6.

**ARTICLE 7 — Conditions Related to Benefits**

- 7.1 **Nonassignability.** The benefits provided under the Plan may not be alienated, assigned, transferred, pledged or hypothecated by or to any person or entity, at any time or in any manner whatsoever. These benefits shall be exempt from the claims of creditors or other claimants of any Participant and from all orders, decrees, levies, garnishment or executions against any Participant to the fullest extent allowed by law.
- 7.2 **Financial Hardship Distribution.** Upon finding that the Participant or the Beneficiary has suffered a Financial Hardship, the Deferred Compensation Committee may, in its sole discretion and upon written petition by the Participant or Beneficiary, accelerate distributions of benefits under the Plan in the amount reasonably necessary to alleviate such Financial Hardship. If a distribution is to be made to a Participant on account of Financial Hardship, the Participant may not make subsequent Deferral Commitments under the Plan until the second Plan Year following the Plan Year in which a distribution based on Financial Hardship was made. Any Deferral Commitment in effect at the time such distribution is made under this Section 8.2 shall be canceled. The Deferred Compensation Committee shall administer financial hardship distribution requests consistently for non-Grandfathered Amounts with Section 409A of the Code.
- 7.3 **No Right to Company Assets.** The benefits paid under the Plan shall be paid from the general funds of the Company, and the Participant and any Beneficiary shall be no more than unsecured general creditors of the Company with no special or prior right to any assets of the Company for payment of any obligations hereunder.
- 7.4 **Protective Provisions.** The Participant shall cooperate with the Company by furnishing any and all information requested by the Deferred Compensation Committee in order to facilitate the payment of benefits hereunder, taking such physical examinations as the Deferred Compensation Committee may deem necessary, and taking such other actions as may be requested by the Deferred Compensation Committee. If the Participant refuses to cooperate or makes any material misstatement or nondisclosure of information, then no benefits will be payable hereunder to such Participant or his Beneficiary.
- 7.5 **Withholding.** The Participant or the Beneficiary shall make appropriate arrangements with the Company for satisfaction of any federal, state or local income tax withholding requirements and Social Security or other employee tax requirements applicable to the payment of benefits under the Plan. If no such arrangements are made, the Company may provide, at its discretion, for such withholding and tax payments as may be required.
- 7.6 **Key Employees.** Notwithstanding any provision of the Plan to the contrary, any amount payable under the Plan attributable to non-Grandfathered Amounts to a Participant who is determined to be a "key employee," as defined below, shall be postponed to a date that is not less than six (6) months following

the Participant's Separation from Service. For purposes of the Plan, "key employee" means (a) officers of the Company having annual compensation greater than one hundred fifty thousand dollars (\$150,000) (adjusted for inflation pursuant to section 416(i) of the Code and limited to fifty (50) employees), (b) five percent owners, and (c) one percent owners having annual compensation from the Company greater than one hundred fifty thousand dollars (\$150,000), all as determined by the Committee in a manner consistent with Section 409A of the Code.

- 7.7 **Permissible Distribution Event.** Notwithstanding any provision of the Plan to the contrary, distributions from the Plan shall only be made upon an event and in a manner permitted by Section 409A of the Code. If a payment is not made by the designated payment date under the Plan, the payment shall be made by December 31 of the calendar year in which the designated date occurs. In no event shall a Participant, directly or indirectly, designate the calendar year of payment, except as permitted under Section 409A of the Code.

**ARTICLE 8 — Administration of the Plan**

The Deferred Compensation Committee shall administer the Plan and interpret, construe and apply its provisions in accordance with its terms. The Deferred Compensation Committee shall determine in its sole discretion those who are eligible to participate in the Plan and shall have the right to set guidelines for participation under the Plan including, but not limited to, the type, manner and level of Deferral Commitments. The Deferred Compensation Committee shall further establish, adopt or revise such other rules and regulations as it may deem necessary or advisable for the administration of the Plan. All decisions of the Deferred Compensation Committee shall be final and binding. The individuals serving on the Deferred Compensation Committee shall, except as prohibited by law, be indemnified and held harmless by the Company from any and all liabilities, costs, and expenses (including legal fees), to the extent not covered by liability insurance, arising out of any action taken by any member of the Deferred Compensation Committee with respect to the Plan, unless such liability arises from the individual's own gross negligence or willful misconduct.

**ARTICLE 9 — Beneficiary Designation**

- 9.1 **Beneficiary Designation.** The Participant shall have the right, at any time, to designate any person or persons as a Beneficiary (both primary and contingent) to whom payment under the Plan shall be made in the event of the Participant's death. The Beneficiary designation shall be effective when it is submitted in writing and delivered to the Deferred Compensation Committee during the Participant's lifetime on a form prescribed by the Deferred Compensation Committee. If, however, the Participant is married, his spouse shall be required to join any such designation, or change or revocation thereof, to name a Beneficiary other than the spouse.
- 9.2 **New Beneficiary Designation.** The Participant shall have the right to change or revoke any such designation from time to time by filing a new designation or notice of revocation with the Company, and no notice to any Beneficiary nor consent by any Beneficiary shall be required to effect any such change or revocation. If, however, the Participant is married, his spouse shall be required to join in any such designation, or change or revocation thereof, to name a Beneficiary other than the spouse.
- 9.3 **Failure to Designate Beneficiary.** If a Participant fails to designate a Beneficiary before his death, or if no designated Beneficiary survives the Participant, the Deferred Compensation Committee shall direct the Company to pay the balance of the Participant's Deferral Account in a lump sum to the executor or administrator for his estate within ninety (90) days of the date of death; provided, however, if no executor or administrator shall have been appointed, and actual notice of the death was given to the Deferred Compensation Committee within sixty (60) days after the Participant's death, and if his Deferral Account balance does not exceed ten thousand dollars (\$10,000), the Deferred Compensation Committee may direct the Company to pay the Deferral Account balance to such person or persons as the Deferred Compensation Committee determines may be entitled to it, and the Deferred Compensation Committee may require such proof of right and identity of such person or persons as the Deferred Compensation Committee may deem appropriate and necessary.

## ARTICLE 10 — Amendment and Termination of the Plan

- 10.1 **Amendment of the Plan.** The Plan may be amended at any time, in whole or in part, by the Board or the Deferred Compensation Committee; provided, however, that such amendment shall not decrease the vested balance of the Participant's Deferral Account at the time of such amendment.
- 10.2 **Termination of the Plan.** The Board or the Deferred Compensation Committee may at any time terminate the Plan as to all or any group of Participants. In the event the Plan is terminated, distributions will be made in accordance with Article 6.
- 10.3 **Constructive Receipt Termination.** In the event the Deferred Compensation Committee determines that amounts deferred under the Plan have been constructively received by Participants and must be recognized as income for federal income tax purposes, distributions shall be made to Participants as necessary to cover the income tax liability. The determination of the Deferred Compensation Committee under this Section 11.3 shall be binding and conclusive.

## ARTICLE 11 — Miscellaneous

- 11.1 **Successors of the Company.** The rights and obligations of the Company under the Plan shall inure to the benefit of, and shall be binding upon, the successors and assigns of the Company.
- 11.2 **ERISA Plan.** The Plan is intended to be an unfunded plan maintained primarily to provide deferred compensation benefits for "a select group of management or highly compensated employees" within the meaning of Sections 201, 301, and 401 of ERISA and therefore to be exempt from Parts 2, 3, and 4 of Title I of ERISA.
- 11.3 **Employment Not Guaranteed.** Nothing contained in the Plan nor any action taken hereunder shall be construed as a contract of employment or as giving any Participant any right to continued employment with the Company.
- 11.4 **Gender, Singular and Plural.** All pronouns and variations thereof shall be deemed to refer to the masculine or feminine, as the identity of the person or persons may require. As the context may require, the singular may be read as the plural and the plural as the singular.
- 11.5 **Captions.** The captions of the articles and paragraphs of the Plan are for convenience only and shall not control or affect the meaning or construction of any of its provisions.
- 11.6 **Validity.** In the event any provision of the Plan is held invalid, void or unenforceable, the same shall not affect, in any respect whatsoever, the validity of any other provisions of the Plan.
- 11.7 **Waiver of Breach.** The waiver by the Company of any breach of any provision of the Plan by the Participant shall not operate or be construed as a waiver of any subsequent breach by the Participant.
- 11.8 **Applicable Law.** The Plan shall be governed and construed in accordance with the laws of the State of New Jersey except where the laws of the State of New Jersey are preempted by ERISA.
- 11.9 **Notice.** Any notice or filing required or permitted to be given to the Company under the Plan shall be sufficient if in writing or hand-delivered, or sent by registered or certified mail, return receipt requested, to the principal office of the Company, directed to the attention of the Deferred Compensation Committee. Such notice shall be deemed given as of the date of delivery, or if delivery is made by mail, as of the date shown on the postmark on the receipt for registration or certification.
- 11.10 **Section 409A.** The Plan is intended to comply with the applicable requirements of Section 409A of the Code, and shall be administered in accordance with Section 409A of the Code to the extent Section 409A of the Code apply to the Plan. To the extent that any provision of the Plan would cause a conflict with the requirements of Section 409A of the Code, or would cause the administration of the Plan to fail to satisfy the requirements of Section 409A of the Code, such provision shall be deemed null and void to the extent permitted by applicable law.

## ARTICLE 12 — Claims Procedure

- 12.1 **Claim.** A Participant or, following the Participant's death, a Beneficiary (collectively referred to in this Section as "Claimant") may submit a claim for benefits under the Plan. Any claim for benefits under this Plan shall be made in writing to the Committee.
- 12.2 **Claim Decision.** If such claim for benefits is wholly or partially denied, the Committee shall, within ninety (90) days after receipt of the claim, notify the Claimant of the denial of the claim unless special circumstances require an extension of time for processing the claim, which extension shall not exceed one hundred eighty (180) days from receipt of the claim. If such extension is required, written notice of the extension shall be furnished to the Claimant prior to the termination of the initial ninety (90)-day period and shall indicate the special circumstances requiring an extension of time and the date by which the Committee expects to render a final decision. A notice of denial shall be in writing, shall be written in a manner calculated to be understood by the Claimant, and shall contain the specific reason or reasons for denial of the claim, a specific reference to the pertinent Plan provisions upon which the denial is based, a description of the additional material or information (if any) necessary to perfect the claim, together with an explanation of why such material or information is necessary, and an explanation of the claims review procedure set forth below, including a statement of the Claimant's right to bring a civil action under Section 502(a) ERISA following an adverse benefit determination on review.
- 12.3 **Request for Review.** Within sixty (60) days after the receipt by a Claimant of a written notice of denial of a claim, the Claimant may file a written request with the Committee that it conduct a full and fair review of the denial of the claim for benefits. The Claimant, or duly authorized representative, shall receive, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information relevant to the Claimant's claim for benefits. The Claimant, or duly authorized representative may also submit written comments, documents, records and other information relating to the claim for benefits, and the review will take into account such items whether or not they were considered in the initial benefit determination. If the Claimant does not request a review of the initial determination within such sixty (60)-day period, the Claimant shall be barred and stopped from challenging the determination.
- 12.4 **Review of Decision.** After considering all of the materials presented by the Claimant, the Committee shall deliver to the Claimant, or authorized representative, a written decision on the claim within sixty (60) days after the receipt of the request for review, except that if there are special circumstances that require an extension of time, the sixty (60)-day period may be extended to one hundred twenty (120) days. If such extension is required, written notice shall be furnished to the Claimant, or authorized representative, prior to the termination of the initial sixty (60)-day period and shall indicate the special circumstances requiring an extension of time and the date by which the final decision will be rendered. The decision shall be written in a manner calculated to be understood by the Claimant, include the specific reason or reasons for the decision, include a statement that the Claimant is entitled to receive upon request and free of charge, access to and copies of all documents and other information relevant to the claim, contain a specific reference to the pertinent Plan provisions upon which the decision is based, and include a statement describing the Claimant's right to bring an action under Section 502(a) of ERISA.

## ARTICLE 13 — The Trust

- 13.1 **Establishment of Trust.** The Employer shall establish the Trust with the Trustee pursuant to such terms and conditions as are set forth in the Trust agreement to be entered into between the Employer and the Trustee or the Employer shall cause to be maintained one or more separate subaccounts in an existing Trust maintained with the Trustee with respect to one or more other plans of the Employer, which subaccount or subaccounts represent Participants' interests in the Plan. Any such Trust shall be intended to be treated as a "grantor trust" under the Code and the establishment of the Trust or the utilization of any existing Trust for Plan benefits, as applicable, shall not be intended to cause any Participant to realize current income on amounts contributed thereto, and the Trust shall be so interpreted.

IN WITNESS WHEREOF, the Company has caused this Plan to be executed and effective as of the 18<sup>th</sup> day of December, 2008.

BIOVAIL AMERICAS CORP.

By: /s/ MARK DURHAM

Title: Senior Vice President of Human Resources and Shared Services

QuickLinks

Exhibit 10.60

Plan Document BIOVAIL AMERICAS CORP. Executive Deferred Compensation Plan As Amended and Restated Effective January 1, 2009



**BIOVAIL CORPORATION**

**SHORT TERM INCENTIVE PLAN (STIP)**

**Section 1. Purpose**

Biovail Corporation ("Biovail") previously established the Biovail Corporation Short Term Incentive Plan (the "Plan") effective January 1, 2007. The purpose of the Plan is to attract and retain the services of employees and officers of Biovail and its subsidiaries and affiliates, and to recognize and reward the achievement of specific company, division/function and individual performance objectives over the performance period. This Plan is amended and restated effective January 1, 2009 to implement changes required pursuant to and consistent with section 409A of the Internal Revenue Code of 1986, as amended and the regulations promulgated thereunder (the "Code"). Until December 31, 2008 the Plan has been operated in accordance with transition relief established by the Treasury Department and Internal Revenue Service pursuant to section 409A of the Code.

**Section 2. Definitions**

For purposes of the Plan, the following terms shall have the meanings as set forth below:

- (a) "Award" means the actual incentive award earned by a Participant under the Plan for any Performance Period.
  - (b) "Board of Directors" means the board of directors of the Company, as constituted from time to time.
  - (c) "Cause" means a Participant's engaging in a Detrimental Activity as defined in the Biovail Corporation 2007 Equity Compensation Plan.
  - (d) "Company" means Biovail Corporation, a corporation existing under the laws of Canada, and its successors.
  - (e) "Committee" means the Compensation, Nominating & Corporate Governance Committee of the Board of Directors or its designee, or other such committee of the Board of Directors as may be designated by the Board of Directors from time to time to administer the Plan.
  - (f) "Disability" means the permanent and total incapacity of a Participant as determined in accordance with procedures established by the Committee for purposes of this Plan.
  - (g) "Division/Function" means a division, subsidiary, strategic business unit, central function, regional group or other unit classification of the Employer, as specified by the Committee.
  - (h) "Effective Date" means January 1, 2009. The Plan was originally effective January 1, 2007. The Plan as amended and restated hereunder is effective January 1, 2009.
  - (i) "Eligible Earnings" means an individual's actual regular base salary earnings during the Plan Year, and shall not include overtime, shift premiums, disability, top up payments, employee referrals, worker's compensation, allowances, incentive payments and any termination payments including severance, termination pay or contractually obligated salary continuance arrangements.
  - (j) "Employee" means an individual employed by the Employer other than an individual (i) employed in a casual or temporary capacity (i.e., those hired for a specific job of limited duration), (ii) classified by the Employer as a "contractor" or "consultant," no matter how characterized by the any governmental agency or a court. Any change of characterization of an individual by any court or government agency shall have no effect upon the classification of an individual as an Employee for purposes of this Plan, unless the Committee determines otherwise.
  - (k) "Employer" means the Company and its subsidiaries and affiliates.
  - (l) "Participant" means, for any Performance Period, any Employee other than Employees covered by another incentive plan sponsored by the Employer.
  - (m) "Performance Goals," for any Performance Period, means the performance goals of the Company, a Division/Function, and/or a Participant, as specified by the Committee, based on such performance
-

measures of objectives, whether quantitative or qualitative, developed by the Committee for the Performance Period. The Performance Goals, may be weighted in such manner as the Committee may allocate, as determined prior to, or as soon as practicable after the beginning of each Performance Period, or such other date as may be determined by the Committee. To the extent applicable, the Committee, in determining whether and to what extent a Performance Goal has been achieved, shall use the information set forth in the Company's audited financial statements. The Performance Goals established by the Committee may (but need not be) different each Performance Period and different Performance Goals may be applicable to different Participants or different classes of Participants.

- (n) "Performance Multiplier" means the value applied to the overall award based on the individual performance rating awarded for the performance cycle.
- (o) "Performance Period" means the Plan Year or any other period designated by the Committee with respect to which an Award may be earned.
- (p) "Plan" means the Biovail Corporation Short Term Incentive Plan as set forth herein and as may be amended from time to time.
- (q) "Plan Year" means the calendar year.
- (r) "Target" means, for any Participant with respect to any Performance Period, the percentage of the Participant's Eligible Earnings based on their level within the organization as set by the Committee for that Participant for the Performance Period.
- (s) "Target Cash" means, for any Participant with respect to any Performance Period, the dollar amount based on the Participant's Target multiplied by the Participant's Eligible Earnings, that the Participant would earn as an award if the target performance were achieved for each of the Performance Goals set by the Committee for that Participant for the Performance Period.

**Section 3. Eligibility and Participation**

- (a) **Eligibility** — Subject to the limitations contained in this Section 3, all Employees of the Employer are eligible to participate in the Plan. The Committee shall designate which Employees shall participate in the Plan prior to, or as soon as practicable after the beginning of each Performance Period for each Performance Period. Employees shall be eligible to receive an Award for a Performance Period based on their Eligible Earnings for the Plan Year that the Employee is employed by the Employer.
- (b) **Participation in Other Incentive Plans** — Employees shall participate in only one incentive plan or sales incentive plan for any specific period of time. An Employee may participate in this Plan and another plan sequentially during any Performance Period because of promotion or reassignment; provided that participation in each such incentive plan is a prorated to reflect the period during which he or she participated in each plan.
- (c) **Conditions to Awards** — All Awards shall be made conditional upon the Participant's acknowledgment, in writing or by acceptance of the Award, that all decisions and determinations of the Committee shall be final and binding on the Participant, his or her beneficiaries, or any other person having or claiming an interest in such Award. Awards need not be uniform as among Participants.
- (d) **Termination of Participation** — During any Plan Year, an Employee will cease to be a Participant on the earliest to occur of (i) the Participant's death; (ii) the Participant's termination of employment (whether voluntary or involuntary); or (iii) termination of the Plan.

**Section 4. Performance Goals**

- (a) **Target**
  - (i) Prior to, or as soon as practicable after the beginning of each Performance Period, or such other date as may be determined by the Committee, the Committee shall determine the Employees who shall be Participants during that Performance Period and determine each Participant's Target. The Company shall notify each Participant of the Participant's Target and the applicable Performance

Goals that must be satisfied for an Award to be payable under the Plan for that Performance Period.

- (ii) A Participant's Target shall be stated as a percentage of his or her Eligible Earnings.
  
- (b) **Performance Goals** — The Performance Goals shall be weighted in such manner as the Committee may allocate, and will be based on the Participant's level within the organization, unless the Committee determines otherwise at the time Performance Goals are established.
  - (i) **Company Performance Goals** — a percentage of the Participant's Target Award shall be based on the achievement of Corporate objectives as determined by the Committee in accordance with the annual objective setting cycle of the Corporation.
  - (ii) **Division/Function Goals** — a percentage of the Participant's Target Award shall be based on the attainment of the goals of the division or function established in accordance with the annual objective setting cycle of the Corporation. Divisional supporting functions (Finance, Information Technology, Human Resources, Facilities, Technology Transfer, Quality Assurance, Quality Control and any other departments considered supporting functions by the Committee) will be awarded the divisional percentage determined.
  - (iii) **Individual Goals** — a percentage of the Participant's Target Award shall be based on the attainment of the goals of the individual established in accordance with the annual objective setting cycle of the Corporation.
  
- (c) **Earning an Award**
  - (i) Generally, a Participant earns an Award for a Performance Period based on the level of achievement of the Performance Goals established by the Committee for that Performance Period.
  - (ii) A Performance Multiplier is applied to the overall Award based on the Participant's overall performance rating awarded for the Performance Period.

| <u>Individual Performance Rating</u> | <u>Multiplier Range</u> |
|--------------------------------------|-------------------------|
| Outstanding (OR)                     | 1.2 to 1.5              |
| Exceeds Expectations (EE)            | 1.0 to 1.2              |
| Achieves Expectations (AE)           | .75 to 1.0              |
| Needs Improvement (NI)               | 0 to .50                |
| Unacceptable (UA)                    | 0                       |

- (iii) The Award, if any, to be received by a Participant whose performance is rated below standard, will be in the sole discretion of the Committee.

**Section 5. Payment of Awards**

- (a) **Form of Payment** — All Awards shall be paid in a single lump sum cash payment on or after January 1 but not later than March 15th of the Plan Year following the Plan Year for which such Award is earned.
  
- (b) **Termination of Employment** — Except as provided in (c) below, if the Participant terminates employment for any reason at any time during a Performance Period, the Participant shall not be entitled to an Award under the Plan. In addition, if a Participant engages in conduct that constitutes Cause, the Participant shall not be entitled to an Award under the Plan.
  
- (c) **Retirement, Death and Disability** — If a Participant retires (as determined by the Committee in its sole and absolute discretion), incurs a Disability or dies during the Plan Year, the Award, if any is earned based on actual achievement of the applicable Performance Goals, shall be pro-rated based upon the duration of the Participant's participation in the Plan during such Plan Year and shall be paid to the Participant or the Participant's designated beneficiary on or after January 1 but not later than March 15th of the Plan Year following the Plan Year for which such Award is earned.

- (d) **Designation of Beneficiary** — Except as otherwise required by applicable law, any payments under the Plan payable to a Participant following the Participant's death shall be paid to the beneficiary designated on the Participant's Employer-provided life insurance policy or, if no such policy is provided or the Participant has conflicting beneficiary designations, to the Participant's estate. Payment in accordance with this Section 5 shall fully and completely discharge the Employer from all further obligations under this Plan with respect to the deceased Participant, and any entitlements of the Participant under the Plan shall terminate upon such full payment.

**Section 6. Plan Administration**

- (a) **Committee** — The Plan shall be supervised by the Committee. The Committee shall supervise the Plan consistent with the purpose and the terms of the Plan. Subject to the terms of the Plan, the Committee shall have full authority to (i) designate Participants; (ii) establish, amend, suspend, or waive such rules and regulations and appoint such agents as it deems appropriate for the proper administration of the Plan; (iii) to determine each Participant's Target Award; (iv) to approve Awards; (v) to decide facts in any case arising under the Plan; and (vi) make all other determinations including factual determinations, and take all other actions that the Committee deems necessary or desirable for the proper administration of the Plan, including the delegation of such authority or power, where appropriate; provided that only the Committee shall have the authority to amend or terminate the Plan. All powers of the Committee shall be executed in its sole discretion, in the best interest of the Company not as a fiduciary, and in keeping with the objectives of the Plan and need not be uniform as to similarly situated individuals. The Committee's supervision of the Plan, including all such rules and regulations, interpretations, selections, determinations, approvals, decisions, delegations, amendments, terminations and all other actions, shall be final and binding on the Employer and all Employees of the Employer, including the Participants and their beneficiaries.
- (b) **Employment Contracts** — In addition to the foregoing, the Committee shall have the power to vary or waive any provision of the Plan in respect of a Participant in order to satisfy the terms of such Participant's employment contract with the Employer and to eliminate any conflict between such contract and the provisions of the Plan; provided that, to the extent applicable, the Committee shall vary or waive such provision in a manner that complies with section 409A of the Code.

**Section 7. Termination, Modifications, and Amendments**

The Company reserves the right to terminate the Plan or from time to time make modifications or amendments of the Plan as it may, in its sole discretion, deem advisable.

**Section 8. Miscellaneous**

- (a) **Withholding** — The Employer shall be authorized to withhold from any payment due under the Plan the amount of withholding taxes due in respect to the Plan and to take such other action as may be necessary in the opinion of the Employer or to satisfy all obligations for the payment of such taxes.
- (b) **No Right to Employment** — No person shall have any claim or right to be granted an Award, and the Plan shall not be construed as giving a Participant the right to be retained in the employ of, or in any other relationship with, the Employer. Further, the Employer, expressly reserves the right at any time to dismiss a Participant free from any liability or any claim under the Plan, except as provided herein.
- (c) **Offset** — Subject to the applicable requirements of section 409A of the Code, if a Participant becomes entitled to a payment under the Plan, and at the time of payment the Participant has any outstanding debt, obligation, or other liability representing an amount owing to the Employer (as determined by the Employer), including amounts owing on Employer credit cards, then in the sole and absolute discretion of the Employer, the payment otherwise distributable may be offset by such amount.
- (d) **Governing Law** — To the extent that federal laws do not otherwise control, the Plan is created under and is to be governed, construed and administered in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

- (e) **Severability** — The Plan is intended to comply in all respects with applicable laws and regulations. If any one or more of the provisions of the Plan shall be held invalid, illegal, or unenforceable in any respect under applicable law and regulation, the validity, legality and unenforceability of the remaining provision shall be deemed null and void; however, to the extent permissible by law, any provision which could be deemed null and void shall first be construed, interpreted or revised retroactively to permit the Plan to be construed in compliance with all applicable laws so as to foster the intent of the Plan.
- (f) **No Assignment** — A Participant's rights and interests under the Plan may not be assigned or transferred, and any attempted assignment or transfer of such rights and interests shall be null and void.
- (g) **Headings** — Headings are inserted in this Plan for convenience of reference only and are to be ignored in the construction of the provisions of the Plan.
- (h) **Notice** — Any notice or filing required or permitted to be given to the Committee under the Plan shall be sufficient if sent via first class mail, in writing and hand delivered, sent via electronic mail, or transmitted by facsimile, to the human resources department or to such other entity as the Committee may designate from time to time. Such notice shall be deemed given as to the date of delivery, or, if delivery is made by mail, as of the date shown on the postmark on the receipt for registration or certification.
- (i) **Section 409A** — This Plan is intended to be exempt from section 409A of the Code by making payments within the short-term deferral exception set forth in the regulations under section 409A of the Code. However, to the extent that any such payment under this Plan is deferred compensation subject to the requirements of section 409A of the Code, payment shall only be made under the Plan upon an event and in a manner permitted by section 409A of the Code, including the requirement that payments made to "specified employees" (as defined below) be postponed until the first payroll date after the expiration of the six month period following the date of the specified employee's "separation from service" (within the meaning of such term under section 409A of the Code). If the Participant dies during the postponement period prior to the payment of postponed amount, the amount postponed on account of section 409A of the Code will be paid to the personal representative of the Participant's estate within 60 days after the date of the Participant's death. If a payment is not made by the designated payment date under the Plan, the payment shall be made by December 31 of the calendar year in which the designated date occurs. To the extent that any provision of the Plan would cause a conflict with the requirements of section 409A of the Code, or would cause the administration of the Plan to fail to satisfy the requirements of section 409A of the Code, such provision shall be deemed null and void to the extent permitted by applicable law. In no event shall a Participant, directly or indirectly, designate the calendar year of payment. A "specified employee" means an employee who, at any time during the 12 month period ending on the identification date, is a "specified employee" under section 409A of the Code, as determined by the Committee. The determination of specified employees, including the number and identity of persons considered specified employees and the identification date, will be made by the Committee in accordance with a procedure established by the Company, which complies with the provisions of sections 416(i) and 409A and the regulations issued thereunder.

**BIOVAIL CORPORATION**  
**CODE OF PROFESSIONAL CONDUCT**  
**FOR THE SENIOR FINANCE EXECUTIVES**

The Board of Directors of Biovail Corporation (“Biovail”) has adopted this Code of Professional Conduct (the “**Professional Code**”) for Biovail’s Chief Executive Officer, Chief Financial Officer and the principal accounting officer or controller, or persons performing similar functions (collectively, the “**Senior Finance Executives**”) to deter wrongdoing and promote honest and ethical conduct in the practice of financial management, full, fair, accurate, timely and understandable disclosure and compliance with all applicable laws and regulations. The Senior Finance Executives are expected to abide by this Professional Code as well as all other applicable Biovail business policies, standards and guidelines.

As a Senior Finance Executive you will:

1. Act with honesty and integrity.
  2. Avoid actual, apparent or perceived conflicts of interest between your personal and professional relationships and never use or attempt to use your position to obtain any improper personal benefit for yourself, your family, or any other person. In the event that an actual, apparent or perceived conflict of interest does arise, it should be reported immediately by the Senior Finance Executives to the Chair of the Audit Committee of the Board of Directors.
  3. Observe both the form and spirit of technical and ethical accounting standards.
  4. Ensure that Biovail’s disclosure is full, fair, accurate, complete, objective, relevant, timely and understandable, including in Biovail’s disclosures and filings with, and other submissions to, the U.S. Securities and Exchange Commission, the Canadian securities regulatory authorities and any exchange on which Biovail’s securities are listed.
  5. Comply with all applicable laws, rules and regulations of federal, state, provincial and local governments, and other appropriate private and public regulatory agencies.
  6. Act in good faith, responsibly, with due care, competence and diligence, without misrepresenting facts or allowing your independent judgment to be subordinated.
  7. Respect the confidentiality of information concerning Biovail, its business, operations and customers acquired in the course of your work except when
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authorized or otherwise legally obligated to disclose. Confidential information acquired in the course of your work will not be used for personal advantage. You will also comply with your obligations in this regard under Biovail's Insider Trading Policy and Biovail's Blackout Policy.

8. Not unduly or fraudulently influence, coerce, manipulate, or mislead any authorized audit or interfere with any auditor engaged in the performance of an internal or independent audit of Biovail's financial statements or accounting books and records.
9. Advance Biovail's legitimate interests when the opportunity to do so arises. In that regard you will not (a) take for yourself personal opportunities that are discovered through the use of corporate property, information or position; (b) use corporate property, information or position for personal gain; or (c) compete with Biovail.
10. Protect Biovail's assets and ensure their efficient use and acknowledge that Biovail assets should only be used for legitimate business purposes.

If you are aware of any suspected or known violations of this Professional Code, you have a duty to promptly report such concerns to the Chair of the Audit Committee.

You understand that you will be held accountable for your adherence to this Professional Code. Your failure to observe the terms of this Professional Code may result in disciplinary action, up to and including termination of employment. Violations of this Professional Code may also constitute violations of law and may result in civil and criminal penalties for you and/or Biovail.

The Board of Directors of Biovail shall be responsible for the administration of this Professional Code and shall have the sole authority to amend the Professional Code or grant waivers of its provisions. Waivers will be disclosed as required by the Securities Exchange Act of 1934, as amended, and the rules thereunder and the applicable rules of the New York Stock Exchange.

It is Biovail's intention that this Professional Code be its written code of ethics under Section 406 of the Sarbanes-Oxley Act of 2002 complying with the standards set forth in Item 10 of Form 10-K promulgated under the Securities and Exchange Act of 1934, as amended.

Acknowledgement

I acknowledge that I have received and read this Professional Code for Senior Finance Executives, revised as of December 17, 2009, and I understand my obligations as a Senior Finance Executive to comply with this Professional Code and all other Biovail policies, standards and guidelines.

|           |      |
|-----------|------|
| Name:     | Date |
| Position: |      |





Subsidiary Information

As of February 26, 2010

| Company                                           | Jurisdiction of Incorporation | Doing Business As                                 |
|---------------------------------------------------|-------------------------------|---------------------------------------------------|
| Biovail Technologies West Ltd.                    | Ontario                       | Biovail Technologies West Ltd.                    |
| Prestwick Pharmaceuticals Canada Inc.             | Canada                        | Prestwick Pharmaceuticals Canada Inc.             |
| Biovail Americas Corp.                            | Delaware                      | Biovail Americas Corp.                            |
| Biovail Distribution Corporation                  | Delaware                      | Biovail Distribution Corporation                  |
| Biovail Technologies Ltd.                         | Delaware                      | Biovail Technologies Ltd.                         |
| BTA Pharmaceuticals, Inc.                         | Delaware                      | BTA Pharmaceuticals, Inc.                         |
| Biovail NTI Inc.                                  | Delaware                      | Biovail NTI Inc.                                  |
| Prestwick Pharmaceuticals, Inc.                   | Delaware                      | Prestwick Pharmaceuticals, Inc.                   |
| Fuisz Technologies Properties Inc.                | Delaware                      | Fuisz Technologies Properties Inc.                |
| Biovail Holdings International SRL                | Barbados                      | Biovail Holdings International SRL                |
| Biovail Insurance Incorporated                    | Barbados                      | Biovail Insurance Incorporated                    |
| Biovail Laboratories International SRL            | Barbados                      | Biovail Laboratories International SRL            |
| Biovail Laboratories International (Barbados) SRL | Barbados                      | Biovail Laboratories International (Barbados) SRL |
| Hythe Property Incorporated                       | Barbados                      | Hythe Property Incorporated                       |
| Biovail International Holdings Limited            | Ireland                       | Biovail International Holdings Limited            |
| Biovail Technologies (Ireland) Limited            | Ireland                       | Biovail Technologies (Ireland) Limited            |
| Biovail International S.a.r.l.                    | Luxembourg                    | Biovail International S.a.r.l.                    |
| Biovail SA                                        | Switzerland (Zug)             | Biovail SA                                        |
| Biovail U.K. Ltd.                                 | United Kingdom                | Biovail U.K. Ltd.                                 |
| Pharma Pass SA                                    | France                        | Pharma Pass SA                                    |



Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement (Form S-8 No. 333-92229) pertaining to the 1993 Stock Option Plan and the 1996 Employee Stock Purchase Plan and in the Registration Statement (Form S-8 No. 333-138697) pertaining to the 2006 Stock Option Plan of Biovail Corporation, of our reports dated February 26, 2010, with respect to the consolidated financial statements and schedule of Biovail Corporation, and the effectiveness of internal control over financial reporting of Biovail Corporation, included in this Annual Report (Form 10-K) for the year ended December 31, 2009.

/s/ ERNST & YOUNG LLP

Toronto, Canada  
February 26, 2010

Chartered Accountants  
Licensed Public Accountant

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**CERTIFICATION OF CHIEF EXECUTIVE OFFICER  
PURSUANT TO RULE 13a-14(a)  
AS ADOPTED PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, William M. Wells, certify that:

1. I have reviewed this annual report on Form 10-K of Biovail Corporation (the “Company”);
  2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
  3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Company as of, and for, the periods presented in this report;
  4. The Company’s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Company and have:
    - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
    - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
    - (c) Evaluated the effectiveness of the Company’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
    - (d) Disclosed in this report any change in the Company’s internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the Company’s internal control over financial reporting; and
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5. The Company’s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Company’s auditors and the audit committee of the Company’s board of directors:
- (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Company’s ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the Company’s internal control over financial reporting.

Date: February 26, 2010

\_\_\_\_\_  
/s/ William M. Wells  
William M. Wells  
Chief Executive Officer

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**CERTIFICATION OF CHIEF FINANCIAL OFFICER  
PURSUANT TO RULE 13a-14(a)  
AS ADOPTED PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Margaret Mulligan, certify that:

1. I have reviewed this annual report on Form 10-K of Biovail Corporation (the “Company”);
  2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
  3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Company as of, and for, the periods presented in this report;
  4. The Company’s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Company and have:
    - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
    - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
    - (c) Evaluated the effectiveness of the Company’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
    - (d) Disclosed in this report any change in the Company’s internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the Company’s internal control over financial reporting; and
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5. The Company’s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Company’s auditors and the audit committee of the Company’s board of directors:
- (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Company’s ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the Company’s internal control over financial reporting.

Date: February 26, 2010

\_\_\_\_\_  
/s/ Margaret Mulligan  
Margaret Mulligan  
Senior Vice-President and Chief Financial Officer

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**CERTIFICATION OF THE CHIEF EXECUTIVE OFFICER  
PURSUANT TO 18 U.S.C. § 1350  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, William M. Wells, Chief Executive Officer of Biovail Corporation (the “Company”), certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

1. The Annual Report of the Company on Form 10-K for the fiscal year ended December 31, 2009 (the “Annual Report”) fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Annual Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: February 26, 2010

By:

\_\_\_\_\_  
/s/ William M. Wells

William M. Wells  
*Chief Executive Officer*

This certification accompanies the Annual Report pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by such Act, be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Such certification will not be deemed to be incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Exchange Act, except to the extent that the Company specifically incorporates it by reference.

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the U.S. Securities and Exchange Commission or its staff upon request.

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**CERTIFICATION OF THE CHIEF FINANCIAL OFFICER  
PURSUANT TO 18 U.S.C. § 1350  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Margaret Mulligan, Senior Vice-President and Chief Financial Officer of Biovail Corporation (the “Company”), certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

- 1. The Annual Report of the Company on Form 10-K for the fiscal year ended December 31, 2009 (the “Annual Report”) fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934; and
- 2. The information contained in the Annual Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: February 26, 2010

By: \_\_\_\_\_  
/s/ Margaret Mulligan

Margaret Mulligan  
*Senior Vice-President and Chief Financial Officer*

This certification accompanies the Annual Report pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by such Act, be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Such certification will not be deemed to be incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Exchange Act, except to the extent that the Company specifically incorporates it by reference.

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the U.S. Securities and Exchange Commission or its staff upon request.

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