



# Current Agreements

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## **Acquisition agreement for YM BioSciences**

Gilead Sciences  
YM BioSciences

Dec 12 2012

## Acquisition agreement for YM BioSciences

<b>Companies:</b>	<a href="#">Gilead Sciences</a> <a href="#">YM BioSciences</a>
<b>Announcement date:</b>	Dec 12 2012
<b>Deal value, US\$m:</b>	510 : sum of acquisition of shares in cash

- [Details](#)
- [Financials](#)
- [Termsheet](#)
- [Press Release](#)
- [Filing Data](#)
- [Contract](#)

### Details

<b>Announcement date:</b>	Dec 12 2012
<b>Industry sectors:</b>	Bigpharma Bigbiotech Pharmaceutical Biotech
<b>Therapy areas:</b>	Hematology Hematology » Anemia

### Financials

<b>Deal value, US\$m:</b>	510 : sum of acquisition of shares in cash
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### Termsheet

Gilead Sciences and YM BioSciences have signed a definitive agreement under which Gilead will acquire YM for U.S.\$2.95 per share in cash.

Under the terms of the agreement, upon closing of the proposed transaction, shareholders of YM will receive U.S.\$2.95 per common share in cash, and holders of warrants and stock options will receive a cash payment equal to the difference between U.S.\$2.95 and the exercise price of such warrant or stock option.

Gilead plans to fund the acquisition with cash on hand.

YM's lead drug candidate, CYT387, is an orally-administered, once-daily, selective inhibitor of the Janus kinasefamily, specifically JAK1 and JAK2.

The JAK enzymes have been implicated in a number of disorders including myeloproliferative diseases, inflammatory disorders and certain cancers.

### Press Release

Gilead Sciences, Inc. (GILD) Bags Blood Disorder Drug With \$510 Million YM BioSciences (YM.TO) Buy

12/12/2012 7:24:18 AM

FOSTER CITY, Calif. & MISSISSAUGA, Ontario--(BUSINESS WIRE)-- Gilead Sciences, Inc. (GILD) and YM BioSciences Inc. (NYSE MKT: YMI, TSX: YM) announced today that the companies have signed a definitive agreement under which Gilead will acquire YM for U.S.\$2.95 per share in cash. The transaction has received the unanimous approval of YM's Board of Directors, and values YM at approximately U.S.\$510 million, with YM reporting C\$125.5 million in cash and cash equivalents as of September 30, 2012. Gilead plans to fund the acquisition with cash on hand. The transaction is expected to close in the first quarter of 2013. YM's lead drug candidate, CYT387, is an orally-administered,

once-daily, selective inhibitor of the Janus kinase (JAK) family, specifically JAK1 and JAK2. The JAK enzymes have been implicated in a number of disorders including myeloproliferative diseases, inflammatory disorders and certain cancers. YM has reported positive results from a Phase 1/2 clinical trial of CYT387 in 166 patients with myelofibrosis, a life-threatening myeloproliferative disease. Pending completion of the acquisition, Gilead intends to initiate a pivotal Phase 3 clinical trial of CYT387 in myelofibrosis in the second half of 2013.

"This acquisition represents an opportunity to add a complementary clinical program in the area of hematologic cancers to our growing oncology portfolio," said Norbert W. Bischofberger, PhD, Gilead's Executive Vice President, Research and Development and Chief Scientific Officer.

"Based on promising Phase 2 data, we believe CYT387 could provide important clinical benefit for patients with myelofibrosis, including potential improvements with regard to anemia and decreased dependence on blood transfusions. We look forward to advancing CYT387 into a Phase 3 study as quickly as possible and to exploring its potential in other myeloproliferative diseases with significant unmet medical need."

Myelofibrosis is a progressive, chronic bone marrow disorder in which the marrow is replaced by fibrous scar tissue, making it difficult for the bone marrow to sufficiently produce blood cells, leading to anemia (low red blood cell count) and thrombocytopenia (low blood platelet count), severe constitutional symptoms and spleen enlargement. JAK inhibitors modulate cytokine-stimulated intracellular signalling and decrease the circulating levels of proinflammatory cytokines associated with the pathogenesis of myelofibrosis.

"This agreement represents a positive outcome both for myelofibrosis patients and for our shareholders. Gilead has the research and development capabilities and the resources needed to more fully realize the potential of CYT387 as a therapeutic advance for myelofibrosis patients and potentially for other indications," said Dr. Nick Glover, President and CEO of YM.

"Since our acquisition of CYT387 nearly three years ago, YM has made great progress in advancing CYT387 through the clinical, regulatory, manufacturing and business development processes. While Gilead's acquisition will end a long, varied and interesting journey for YM, we are pleased to have this transaction crystallize the present value of this important therapeutic candidate," said Mr. David Allan, Chairman of YM.

In recent years, Gilead has sought to expand its R&D expertise in the area of oncology through the appointment of leading cancer researchers and clinicians, the establishment of external scientific partnerships and through strategic acquisitions. Gilead's lead compound in oncology, idelalisib (formerly referred to as GS-1101), is an investigational, first-in-class specific inhibitor of the phosphoinositide-3 kinase (PI3K) delta isoform. Five Phase 3 studies of idelalisib in chronic lymphocytic leukemia (CLL) and indolent non-Hodgkin's lymphoma (iNHL) are progressing.

Gilead is also conducting Phase 2 clinical trials of simtuzumab (formerly referred to as GS-6624), an investigational monoclonal antibody (mAb) candidate targeting the human lysyl oxidase-like 2 (LOXL2) protein, in myelofibrosis, colorectal cancer, pancreatic cancer and certain fibrotic diseases.

CYT387, idelalisib and simtuzumab are investigational products and their safety and efficacy have not yet been established.

#### Terms of the Transaction

Under the terms of the agreement, upon closing of the proposed transaction, shareholders of YM will receive U.S.\$2.95 per common share in cash, and holders of warrants and stock options will receive a cash payment equal to the difference between U.S.\$2.95 and the exercise price of such warrant or stock option. The proposed transaction will be completed through a plan of arrangement under the provisions of the Companies Act (Nova Scotia).

The transaction will require the approval of YM shareholders at a special meeting of YM shareholders, to be held as soon as reasonably practicable and in any event on or before February 11, 2013. In addition to YM's shareholder approval, closing of the transaction is subject to the satisfaction of certain other customary conditions, including court approval of the transaction, and applicable government and regulatory approvals, including expiration or termination of the waiting period under the United States Hart Scott Rodino Antitrust Improvements Act, and the review period under the Competition Act (Canada). The approval of Gilead shareholders is not required in connection with the proposed transaction.

The arrangement agreement contains customary non-solicitation provisions, but permits YM, in certain circumstances, to terminate the arrangement and accept an unsolicited superior proposal, subject to fulfilling certain conditions.

BofA Merrill Lynch and Bloom Burton & Co. serve as financial advisors, and Gowling Lafleur Henderson LLP, Heenan Blaikie LLP and Dorsey & Whitney LLP serve as legal advisors to YM in connection with the transaction. Gilead is advised by Wilson Sonsini Goodrich & Rosati, Professional Corporation and Blake Cassels and Graydon LLP.

#### About YM

YM BioSciences Inc. is a drug development company primarily focused on advancing CYT387, an orally administered inhibitor of both the JAK1 and JAK2 kinases, which have been implicated in a number of hematological and immune cell disorders including myeloproliferative neoplasms and inflammatory diseases as well as certain cancers. Positive interim results have been reported from a Phase 1/2 trial of CYT387 in 166 patients with myelofibrosis. In addition, YM has several preclinical programs underway with candidates from its library of novel compounds identified through internal research conducted at YM BioSciences Australia.

#### About Gilead Sciences

Gilead Sciences is a biopharmaceutical company that discovers, develops and commercializes innovative therapeutics in areas of unmet medical need. The company's mission is to advance the care of patients suffering from life-threatening diseases worldwide. Headquartered in Foster City, California, Gilead has operations in North America, Europe and Asia Pacific.

## **Filing Data**

*Not available.*

## **Contract**

EX-99.3 4 v330205\_ex99-3.htm EXHIBIT 99.3

ARRANGEMENT AGREEMENT

AMONG

GILEAD SCIENCES, INC.

- AND -

3268218 NOVA SCOTIA LIMITED

- AND -

YM BIOSCIENCES INC.

DECEMBER 12, 2012

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ARRANGEMENT AGREEMENT

THIS ARRANGEMENT AGREEMENT (this "Agreement") dated as of December 12, 2012,

AMONG:

GILEAD SCIENCES, INC., a corporation existing under the laws of Delaware (the "Parent")

- and -

3268218 NOVA SCOTIA LIMITED, a company incorporated under the laws of the Province of Nova Scotia (the "Purchaser")

- and -

YM BIOSCIENCES INC., a company continued under the laws of the Province of Nova Scotia (the "Company")

WHEREAS the Parent desires to acquire all of the Common Shares (as hereinafter defined) through its wholly-owned subsidiary, the Purchaser;

AND WHEREAS the board of directors of the Company (the "Board of Directors") has unanimously determined that the consideration to be received by the Shareholders (as hereinafter defined) pursuant to the Arrangement (as hereinafter defined) is fair and that the Arrangement is in the best interests of the Company and that the Board of Directors has resolved to unanimously support the Arrangement and to recommend that the Shareholders vote in favour of the Arrangement, all subject to the terms and the conditions contained herein;

NOW THEREFORE THIS AGREEMENT WITNESSES that, in consideration of the covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto covenant and agree as follows:

## ARTICLE I

### INTERPRETATION

#### 1.1 Definitions

In this Agreement (including the Schedules and the Recitals hereto), the following terms shall have the following meanings, and grammatical variations shall have the respective corresponding meanings:

"1933 Act" means the United States Securities Act of 1933, as amended, including the rules and regulations promulgated thereunder;

"1934 Act" means the United States Securities Exchange Act of 1934, as amended, including the rules and regulations promulgated thereunder;

"Acquisition Proposal" means any offer, proposal or inquiry, whether written or oral, from any person or group of persons acting jointly or in concert relating to, in each case whether in a single transaction or a series of related transactions:

(i) any takeover bid, tender offer or exchange offer that, if consummated, would result in a person or group of persons beneficially owning 20% or more of any class of voting or equity securities of the Company and/or one or more Subsidiaries of the Company whose assets, revenues or earnings constitute, individually or in the aggregate, 20% or more of the consolidated assets, revenues or earnings of the Company;

(ii) any amalgamation, plan of arrangement, share exchange, business combination, merger, consolidation, recapitalization, reorganization or other similar transaction involving the Company and/or one or more Subsidiaries of the Company whose assets, revenues or earnings constitute, individually or in the aggregate, 20% or more of the consolidated assets, revenues or earnings of the Company, or any liquidation, dissolution or winding-up of the Company and/or one or more Subsidiaries of the Company whose assets, revenues or earnings constitute, individually or in the aggregate, 20% or more of the consolidated assets, revenues or earnings of the Company;

(iii) any direct or indirect acquisition or sale of assets (or any lease, long-term supply arrangement, license, technology partnering agreement or other arrangement having the same economic effect as a sale of assets) of the Company and/or one or more Subsidiaries of the Company which represents, individually or in the aggregate, 20% or more of the consolidated assets or contributed 20% or more of the consolidated revenues or earnings of the Company;

(iv) any direct or indirect grant of any right or appointment (including any license under any Company Intellectual Property) to commercialize (whether to promote, distribute, sell or otherwise commercially exploit) the Key Product in any of the jurisdictions listed on Part A of Section 1.1 of the Company Disclosure Letter;

(v) any direct or indirect sale, issuance or acquisition of Common Shares or any other voting or equity interests (or securities convertible into or exercisable for such Common Shares or other voting or equity interests) of the Company representing 20% or more of the issued and outstanding voting or equity interests (or rights or interests therein or thereto) of the Company or any Subsidiary of the Company; or

(vi) any proposal or offer to do, proposed amendment of, or public announcement of an intention to do, any of the foregoing,

excluding the Transactions and the Plan of Arrangement and any transaction to which the Parent, the Purchaser or a Subsidiary of the Parent is a party and any transaction involving only the Company and/or one or more of its Subsidiaries;

"affiliate" has the meaning ascribed thereto in the NSCA;

"Agreement" means this agreement and the Schedules hereto, as the same may be amended, supplemented or otherwise modified from time to time in accordance with the terms hereof;

"Antitrust Restraint" has the meaning ascribed thereto in Section 5.4(3);

"Applicable Securities Laws" means the Securities Act, the 1933 Act, the 1934 Act, and all other applicable Canadian and U.S. securities Laws, rules and regulations and published policies thereunder and the rules of the Exchanges applicable to companies listed thereon;

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"Arrangement" means an arrangement under Section 130 of the NSCA on the terms and subject to the conditions set out in the Plan of Arrangement, subject to any amendments or variations thereto made in accordance with Section 9.13 or the Plan of Arrangement or made at the direction of the Court in the Final Order with the consent of the Company and the Purchaser, each acting reasonably;

"Arrangement Filings" means the filing of a certified copy of the Final Order with the Registrar under the NSCA together with all other corporate filings as may be necessary to give effect to the Arrangement;

"Arrangement Resolution" means the special resolution of the Shareholders approving the Plan of Arrangement to be considered at the Company Meeting, to be substantially in the form and content of Schedule A;

"Assets" has the meaning ascribed thereto in Section 14(c) of Schedule C;

"Audited Balance Sheet" means the audited consolidated balance sheet of the Company and its Subsidiaries as of June 30, 2012;

"Australian Dollar Equivalent" means the amount in Australian dollars of the applicable Canadian dollar amount on the basis of the noon Canadian to Australian dollar exchange rate on the date that is three business days immediately preceding the Effective Date as reported by the Reserve Bank of Australia;

"Bankruptcy and Equity Exception" has the meaning ascribed thereto in Section 4(a) of Schedule C;

"Base Price" has the meaning ascribed thereto in the SARs Plan;

"Benefit Plans" has the meaning ascribed thereto in Section 9(a) of Schedule C;

"Board of Directors" has the meaning ascribed thereto in the Recitals;

"Bump Transactions" has the meaning ascribed thereto in Section 5.2(3);

"business day" means any day (other than a Saturday, a Sunday or a statutory or civic holiday) on which commercial banks located in Halifax, Nova Scotia, Toronto, Ontario and San Francisco, California are open for the conduct of business;

"Canadian Equivalent of the Consideration per Common Share" means the amount in Canadian dollars of the Consideration per Common Share on the basis of the noon United States to Canadian dollar exchange rate on the date that is three business days immediately preceding the Effective Date as reported by the Bank of Canada;

"Change in Recommendation" by the Board of Directors means:

(i) any withholding, amendment, withdrawal, modification or qualification in any manner adverse to the Parent and/or the consummation of the Arrangement of the Company Recommendation, including any failure to include the Company Recommendation in the Company Circular;

(ii) any approval, acceptance, recommendation or endorsement by the Board of Directors of, or public proposal by the Board of Directors to approve, accept, recommend or endorse, or publicly taking no position or a neutral position with respect to, any Acquisition Proposal (it being understood that publicly taking a neutral position or no position with respect to an Acquisition Proposal until the earlier to occur of (a) ten business days following the receipt, and the public announcement of such Acquisition Proposal and (b) two business days prior to the Company Meeting shall not constitute a Change in Recommendation);

(iii) the Company enters into a written agreement in respect of an Acquisition Proposal (other than a confidentiality and standstill agreement permitted by Section 7.2(4)(i)); or

(iv) the Company shall have publicly announced the intention to, or the Board of Directors shall have resolved to, do any of the foregoing;

“Code” means the United States Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder;

“Commissioner” means the Commissioner of Competition appointed under subsection 7(1) of the Competition Act or any person duly authorized to exercise the powers and perform the duties of the Commissioner of Competition;

“Common Shares” means common shares in the capital of the Company, including common shares issued on the conversion, exchange or exercise of Convertible Securities, together in each case with the associated SRP Rights;

“Company Circular” means the notice of the Company Meeting and accompanying management information circular, including all schedules, appendices and exhibits thereto, to be sent to, among others, the Shareholders in connection with the Company Meeting, as amended, supplemented or otherwise modified from time to time;

“Company Disclosure Letter” means the disclosure letter dated the date hereof regarding this Agreement that has been provided by the Company to the Parent and the Purchaser;

“Company Intellectual Property” means all Intellectual Property used in, or necessary to conduct, the Company’s or its Subsidiaries’ business as currently conducted and as planned to be conducted;

“Company Leases” means all leases, subleases, licenses, occupancy or other agreements pursuant to which the Company or any of its Subsidiaries holds a leasehold, subleasehold or other estate in real property;

“Company Material Adverse Change” means (i) the occurrence of a Key Product Event, or (ii) any event, change, effect, development, state of facts, condition, circumstance or occurrence that, individually or in the aggregate with other events, effects, developments, state of facts, conditions, circumstances or occurrences would or would reasonably be expected to (a) prevent, materially delay or materially impair the ability of the Company to consummate the Transactions, or (b) have a material adverse effect on the business, results of operations, assets, liabilities or financial condition of the Company and its Subsidiaries, taken as a whole; except to the extent that such material adverse effect referred to in this clause (b) results from any of the following:

(i) any changes in applicable Law or interpretations thereof by any Governmental Entity or Regulatory Authority, except to the extent that such changes have a materially disproportionate adverse effect on the Company and its Subsidiaries, taken as a whole, relative to the adverse effect that such changes have on other development-stage companies in the pharmaceutical or biotechnology industry;

(ii) any changes in general Canadian, United States or global economic conditions or in national or global financial or capital markets, except to the extent such changes have a materially disproportionate adverse effect on the Company and its Subsidiaries, taken as a whole, relative to the adverse effect that such changes have on other development-stage companies in the pharmaceutical or biotechnology industry;

(iii) any changes in conditions generally affecting the pharmaceutical or biotechnology industries, except to the extent such changes in conditions have a materially disproportionate adverse effect on the Company and its Subsidiaries, taken as a whole, relative to the adverse effect that such changes have on other development-stage companies in the pharmaceutical or biotechnology industry;

(iv) the public announcement or pendency of the Arrangement or any of the Transactions, including any loss or threatened loss of, or adverse change or threatened adverse change in, the relationship of the Company or any of its Subsidiaries with any of their customers, employees, shareholders, financing sources, vendors, distributors, partners, licensees or suppliers arising as a direct consequence of same (provided that the exceptions in this clause (iv) shall not apply to any representation or warranty contained in Section 5 of Schedule C (or any portion thereof) to the extent the purpose of such representation or warranty (or any portion thereof) is to address the consequences resulting from the execution and delivery of this Agreement or the performance by the Company of its obligations hereunder);

(v) changes or proposed changes in GAAP applicable to the Company or the enforcement or interpretation thereof, except to the extent that such changes or proposed changes have a materially disproportionate adverse effect on the Company and its Subsidiaries, taken as a whole, relative to the adverse effect that such changes have on other development-stage companies in the pharmaceutical or biotechnology industry;

(vi) any natural disaster, act of terrorism or outbreak of war, except to the extent that such event has a materially disproportionate adverse effect on the Company and its Subsidiaries, taken as a whole, relative to the adverse effect that such changes have on other development-stage companies in the pharmaceutical or biotechnology industry;

(vii) any change in the market price or trading volume of the securities of the Company (it being understood that the causes underlying such change may be taken into account in determining whether a Company Material Adverse Change has occurred);

(viii) any matter set forth in Part B of Section 1.1 of the Company Disclosure Letter or any part of the Company Disclosure Letter that contains disclosure that reasonably relates to any matter set forth in Part B of Section 1.1 of the Company Disclosure Letter, but only if such relationship is reasonably apparent on the face of the disclosure in such other part of the Company Disclosure Letter;

(ix) the failure of the Company in and of itself to meet any internal or public projections, forecasts or estimates of revenues or earnings (it being understood that the causes underlying such change or failure may be taken into account in determining whether a Company Material Adverse Change has occurred); or

(x) except for any requirement to operate in the ordinary course of business, any action taken (or refrained from being taken) specifically and expressly required by this Agreement or at the written request of the Parent or the Purchaser;

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“Company Meeting” means the special meeting of the Shareholders, including any adjournment or postponement thereof in accordance with the terms of this Agreement, to be called and held in accordance with the Interim Order to consider the Arrangement Resolution;

“Company Pharmaceutical Product” means any pharmaceutical or medicinal compound or product developed, or being researched or developed, by or on behalf of Company or its Subsidiaries (including CYT387);

"Company Recommendation" has the meaning ascribed thereto in Section 4(b) of Schedule C;

"Company Registered IP" shall mean (i) Patents, (ii) Trademarks that are the subject of a registration or a pending application for registration and material unregistered Trademarks, (iii) copyrights that are the subject of a registration or pending application for registration, and (iv) domain name registrations, in each case, owned by the Company or its Subsidiaries;

"Company Reports" has the meaning ascribed thereto in Section 6(a) of Schedule C;

"Company Securities" has the meaning ascribed thereto in Section 2(e) of Schedule C;

"Competition Act" means the Competition Act (Canada), and the rules and regulations promulgated thereunder, as amended;

"Competition Act Clearance" means that, with regard to the Transactions, either that (i) the Commissioner shall have issued an advance ruling certificate pursuant to section 102 of the Competition Act, and such advance ruling certificate shall not have been rescinded or amended, or (ii) (a) the statutory waiting period under section 123 of the Competition Act shall have expired or have been terminated by the Commissioner, or the Commissioner shall have waived the obligation to submit a notification pursuant to paragraph 113(c) of the Competition Act, and (b) the Commissioner shall have issued a No-Action Letter, and such letter shall not have been rescinded or amended;

"Competition Filings" means the notices and filings made to Governmental Entities in respect of obtaining the Regulatory Clearances;

"Confidentiality Agreement" means the confidentiality agreement dated March 17, 2011, as amended on April 13, 2012, between the Parent and the Company;

"Consideration" means U.S.\$2.95 in cash per Common Share, subject to adjustment pursuant to Section 2.15 and in accordance with Section 2.4 of the Plan of Arrangement;

"Contract" means any lease, sublease, license, sublicense, contract, subcontract, commitment, note, bond, mortgage, indenture, or other agreement, instrument, obligation or binding arrangement or understanding of any kind or character, whether oral or in writing;

"Convertible Securities" means, collectively, the Options, Warrants and any other securities of the Company that are convertible into or exchangeable or exercisable for Common Shares;

"Court" means the Supreme Court of Nova Scotia;

"Data Room" means collectively, the website hosted by Firmex and maintained by Heenan Blaikie LLP under the project name "Project Yukon" and the website maintained by the Company and accessible at <https://ymbiosciences.securevdr.com/?uh=bp>, the contents of which websites on the date of this Agreement are set forth in the index of documents, which is appended to the Company Disclosure Letter;

"Depository" means CIBC Mellon Trust Company, as depository;

"Designated Contract" has the meaning ascribed thereto in Part D of Section 1.1 of the Company Disclosure Letter.

"Dissent Rights" means the rights of dissent in respect of the Arrangement described in the Plan of Arrangement;

"EDGAR" means the Electronic Data Gathering, Analysis, and Retrieval system;

"Effective Date" has the meaning ascribed thereto in the Plan of Arrangement;

"Effective Time" has the meaning ascribed thereto in the Plan of Arrangement;

"Environmental Law" means any Law concerning (i) pollution or the protection, investigation or restoration of the environment, health and safety as it relates to Hazardous Substance exposure, or natural resources, (ii) the assessment of any substance to determine toxicity and management or regulation of any such substances, (iii) the handling, import, manufacture, processing, distribution, treatment, generation, storage, containment, transportation, use, presence, disposal, emissions, discharges, release or threatened release of, or exposure to, any Hazardous Substance, (iv) noise, odor, air, employee exposure, surface water, groundwater, land, wetlands, pollution, contamination or any injury or threat of injury to persons or property relating to any Hazardous Substance, or (v) endangered or threatened species of fish, wildlife and plants, or the mitigation of adverse environmental effects on environment;

"ERISA" means the United States Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder;

"Exchanges" means the TSX and NYSE;

"Expense Reimbursement" has the meaning ascribed thereto in Section 7.3(1);

"Export Controls" has the meaning ascribed thereto in Section 23(a) of Schedule C;

"Fairness Opinion" means the opinion of Merrill Lynch Canada Inc., the financial advisor to the Company, rendered to the Board of Directors, to the effect that, as of the date of this Agreement, and based upon and subject to the assumptions, qualifications and limitations set forth in its written opinion, the consideration of U.S.\$2.95 in cash per Common Share to be received by the Shareholders pursuant to the Arrangement is fair, from a financial point of view, to such holders;

"FDA" means the United States Food and Drug Administration;



“Final Order” means the final order of the Court, after a hearing upon the fairness of the terms and conditions of the Arrangement, approving the Arrangement as such order may be amended by the Court (with the consent of both the Company and the Purchaser, each acting reasonably) at any time prior to the Effective Date or, if appealed, then, unless such appeal is withdrawn or denied, as affirmed or as amended (provided that any such amendment is acceptable to both the Company and the Purchaser, each acting reasonably) on appeal;

“GAAP” means Canadian generally accepted accounting principles as set out in the Handbook of the Canadian Institute of Chartered Accountants, as amended from time to time, consistently applied, which, for greater certainty, includes International Financial Reporting Standards consistently applied, as applicable;

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“GMP Regulations” means the applicable laws and regulations, as may be amended from time to time, for current Good Manufacturing Practice, which have been promulgated by (i) the FDA under the United States Federal Food, Drug and Cosmetic Act, 21 C.F.R. §210 et seq., (ii) the European Medicines Agency or under the European Union guide to Good Manufacturing Practice for medical products and (iii) any other applicable Regulatory Authorities in each jurisdiction where the Company, or a third party acting on its behalf, is undertaking or has undertaken a clinical trial or any manufacturing activities as of or prior to the Effective Time;

“Governmental Entity” means any (i) supranational, multinational, federal, territorial, provincial, state, regional, municipal, local or other governmental or public ministry, department, authority, body, central bank, court, commission, tribunal, board, bureau or agency, domestic or foreign, (ii) subdivision, agent or authority of any of the above, (iii) quasi-governmental or private body, including any tribunal, commission, regulatory agency or self-regulatory organization, exercising any regulatory, expropriation or taxing authority under or for the account of any of the above, or (iv) stock exchange (including the Exchanges), and “Governmental Entities” means more than one Governmental Entity;

“Hazardous Substance” means any chemical, pollutant, contaminant, waste, material or substance that is: (i) defined, listed, classified or regulated pursuant to any Environmental Law; or (ii) any other substance which is regulated due to a potential adverse effect on human health or the environment;

“Healthcare Data Requirements” has the meaning ascribed thereto in Section 11(a) of Schedule C;

“HSR Act” means the United States Hart-Scott Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder;

“Import Restrictions” has the meaning ascribed thereto in Section 23(a) of Schedule C;

“Intellectual Property” means all registered and unregistered intellectual property and industrial property rights of any kind or nature throughout the world, including all Trademarks, Patents, Trade Secrets, inventions, copyrights and copyrightable subject matter, including all published and unpublished works of authorship and the registrations and applications, and renewals, extensions, restorations and reversions thereof; rights in computer programs (whether in source code, object code, or other form), algorithms, databases, compilations and data, technology supporting the foregoing, and all documentation, including user manuals and training materials, related to any of the foregoing; and all rights in the foregoing and in other similar intangible assets;

“Interim Order” means the interim order of the Court in a form acceptable to the Company and the Purchaser, acting reasonably, providing for, among other things, the calling and holding of the Company Meeting, as the same may be amended by the Court with the consent of the Company and the Purchaser, each acting reasonably;

"Investment Canada Act" means the Investment Canada Act (Canada), and the rules and regulations thereunder, as amended;

"IP Contracts" means (i) all Contracts to which the Company or any of its Subsidiaries is a party as of the date hereof, the primary subject of which is the licensing of Intellectual Property, under which the Company or one of its Subsidiaries has obtained or granted any express license or other right to use, or which by their terms expressly restrict the Company's or its Subsidiaries' right to use any Company Intellectual Property, other than (a) Contracts involving Intellectual Property that is generally available on a commercial basis from third parties, and (b) Contracts providing for the license of software that is generally available on a commercial basis, and (ii) all Contracts to which the Company or any of its Subsidiaries is a party as of the date hereof, the primary subject of which is the assignment or other conveyance of Intellectual Property, under which the Company or one of its Subsidiaries has obtained or granted any ownership right in any Company Intellectual Property, other than Contracts entered into in the ordinary course of business, such as Contracts with employees, material transfer agreements, and contract research organization agreements;

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"IRS" has the meaning ascribed thereto in Section 9(b) of Schedule C;

"Key Product" means the Company's JAK 1/2 small molecule inhibitor referred to as CYT387;

"Key Product Event" means any serious adverse event that (i) is determined by an independent safety review committee overseeing the safety of the relevant clinical study to be directly related to the Key Product and to have (a) resulted in death, (b) been life threatening, (c) required inpatient hospitalization or a significant prolongation of existing hospitalization, (d) resulted in persistent or significant disability or incapacity, (e) resulted in a congenital anomaly or birth defect, or (f) required significant intervention to prevent permanent impairment or damage; and (ii) (x) results in the FDA, Health Canada or the Therapeutic Goods Administration (Australia) placing a clinical hold on the development program of the Key Product or (y) is likely to result in a significant delay to the development timeline of the Key Product as of the date of this Agreement;

"Law" or "Laws" means any applicable laws, including international, multinational, federal, national, provincial, state, municipal and local laws (statutory, common or otherwise), constitutions, treaties, conventions, statutes, principles of law and equity, rulings, ordinances, judgments, determinations, awards, decrees, injunctions, writs, certificates and orders, notices, bylaws, rules, regulations, ordinances, or other requirements, policies, guidelines, standards or instruments, whether domestic or foreign, and the terms and conditions of any grant of approval, permission, authority or licence or other similar requirement enacted, adopted, promulgated, or applied by any Governmental Entity (including the Exchanges) having the force of law, and the term "applicable" with respect to such Laws and in a context that refers to one or more persons, means such Laws as are binding upon or applicable to such person or its assets;

"Liabilities" means any liability, indebtedness, obligation or commitment of any kind or nature (whether accrued, absolute, contingent, matured, unmaturing or otherwise and whether or not required to be recorded or reflected on a balance sheet under GAAP);

"Liens" means any mortgage, hypothec, pledge, assignment, charge, lien, prior claim, security interest, encroachment, option, right of first refusal or first offer, occupancy rights, covenants, restrictions adverse interest, adverse claim, other third person interest or encumbrance of any kind, whether contingent or absolute, and any agreement, option, right or privilege (whether by Law, contract or otherwise) capable of becoming any of the foregoing;

"Material Contract" has the meaning ascribed thereto in Section 13(a) of Schedule C;

"material fact" has the meaning ascribed thereto in the Securities Act and, where the context requires, the meaning ascribed thereto under the 1933 Act and the 1934 Act;

"MI 61-101" means Multilateral Instrument 61-101 – Protection of Minority Security Holders in Special Transactions of the securities regulatory authorities of Ontario and Quebec;

"Money Laundering Laws" has the meaning ascribed thereto in Section 12(b) of Schedule C;

"MTA" means the Materials Transfer Agreement by and between Parent and the Company, dated as of December 12, 2012;

"No-Action Letter" means a letter from the Commissioner stating that the Commissioner does not, at such time, intend to bring an application under Section 92 of the Competition Act with respect to the transactions contemplated by this Agreement;

"Notice of Filing" has the meaning ascribed thereto in Section 2.11;

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"NSCA" means the Companies Act (Nova Scotia), and the regulations promulgated thereunder, as amended;

"NYSE" means the NYSE MKT LLC;

"OFAC" has the meaning ascribed thereto in Section 23(a) of Schedule C;

"Option" means an option to purchase Common Shares granted by the Company under the Stock Option Plan or otherwise;

"Order" means, with respect to any person, any order, judgment, decision, decree, injunction, ruling, writ, assessment or other similar requirement issued, enacted, adopted, promulgated or applied by, or agreed to with, any Governmental Entity or arbitrator that is binding on or applicable to such person or its property;

"ordinary course of business", when used in relation to the taking of any action by the Company or any of its Subsidiaries, means that the action is consistent in nature, scope and magnitude with the past practices of the Company and its Subsidiaries over the last 12 months prior to the date hereof and is taken in the ordinary course of normal day-to-day operations of the Company and its Subsidiaries;

"Outside Date" means April 1, 2013 or such later date as the Purchaser and the Company may agree in writing;

"Parent" has the meaning ascribed thereto in the Recitals;

"Parent Material Adverse Change" has the meaning ascribed thereto in Section 1 of Schedule D;

"Parties" means, collectively, the Company, the Parent and the Purchaser, and "Party" means any of them;

"Patents" means all patents (including utility and design patents and utility models), and patent applications, including any divisionals, revisions, supplementary protection certificates, continuations, continuations-in-part, reissues, re-examinations, substitutions, extensions and renewals thereof;

"Permits" means any permit, license, certifications, registrations, variances, exemptions, Orders, authorization, consent, approval or franchise from any Governmental Entity;

"Permitted Liens" means a Lien:

(i) for Taxes, assessments or governmental charges or levies which relate to obligations not yet due and delinquent or that are being contested in good faith by appropriate proceedings in respect to which adequate reserves have been established in accordance with GAAP in the consolidated balance sheet of the Company as at September 30, 2012;

(ii) that is a carriers', warehousemen's, mechanics', materialmen's, repairmen's or other similar lien arising in the ordinary course of business; or

(iii) that is a zoning, entitlement or other land use or environmental regulation by any Governmental Entity that does not, individually or in the aggregate, materially detract from the value of, or materially impair the use of such property in the ordinary course of business;

"person" includes an individual, general partnership, limited partnership, corporation, company, limited liability company, body corporate, joint venture, unincorporated organization, other form of business organization, trust, trustee, executor, administrator or other legal representative, government (including any Governmental Entity) or any other entity, whether or not having legal status;

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"Plan of Arrangement" means the plan of arrangement, substantially in the form of Schedule B, and any amendments or variations thereto made in accordance with Section 9.13 or the Plan of Arrangement or made at the direction of the Court in the Final Order with the written consent of the Company and the Purchaser, each acting reasonably;

"Pre-Acquisition Reorganization" has the meaning ascribed thereto in Section 5.2(1);

"Privacy Laws" has the meaning ascribed thereto in Section 11(a) of Schedule C;

"Proceedings" has the meaning ascribed thereto in Section 8 of Schedule C;

"Product Applications" has the meaning ascribed thereto in Section 10(g) of Schedule C;

"Purchaser" has the meaning ascribed thereto in the Recitals hereto;

"Receiving Party" has the meaning set out in Section 5.4(2);

"Registrar" means the Registrar of Joint Stock Companies appointed under the NSCA;

"Regulatory Authorities" has the meaning ascribed thereto in Section 10(b) of Schedule C;

"Regulatory Clearances" means (i) the Competition Act Clearance and (ii) the expiration or termination of all waiting periods (and any extensions thereof) applicable to the Transactions under the HSR Act;

"Representative" means, in respect of a person, its Subsidiaries and each of its and their respective directors, officers, employees, agents and other representatives (including any financial, legal or other advisors);

"Requisite Shareholder Approval" has the meaning ascribed thereto in Section 2.2(iii);

"Right to Match Period" has the meaning ascribed thereto in Section 7.2(5);

"SARs" means the share appreciation rights granted by YM BioSciences Australia Pty Ltd (formerly Cytopia Research Pty Ltd) under the SARs Plan or otherwise, including, for greater certainty, SARs granted with performance vesting conditions;

"SARs Plan" means the employee bonus plan letters of YM BioSciences Australia Pty Ltd (formerly Cytopia Research Pty Ltd);

"SEC" means the United States Securities and Exchange Commission;

"Securities Act" means the Securities Act (Ontario), and the rules and regulations promulgated thereunder, as amended;

"Securities Authorities" means the Ontario Securities Commission, the SEC and the applicable securities commissions and other securities regulatory authorities in each of the other provinces of Canada and the states of the United States;

"SEDAR" means the System for Electronic Document Analysis and Retrieval described in National Instrument 13-101 – System for Electronic Document Analysis and Retrieval and available for public view at [www.sedar.com](http://www.sedar.com);

“Separation Time” has the meaning ascribed thereto in the Shareholder Rights Plan;

“Shareholder Rights Plan” means the shareholder rights plan agreement dated October 22, 2007, entered into between the Company and CIBC Mellon Trust Company and ratified by the Company’s shareholders on November 18, 2010;

“Shareholders” means the registered or beneficial holders of the Common Shares;

“Special Committee” means the special committee of the Board of Directors;

“SRP Right” means a right issued pursuant to the Shareholder Rights Plan;

“Stock Option Plan” means the Amended and Restated Stock Option Plan of the Company dated September 19, 2012, as may be amended, restated and/or supplemented;

“Subsidiary” means a “subsidiary” as defined in the NSCA;

“Subsidiary Securities” has the meaning ascribed thereto in Section 3(c) of Schedule C;

“Superior Proposal” means a bona fide Acquisition Proposal to purchase or otherwise acquire directly or indirectly, including by means of a merger, takeover bid, amalgamation, plan of arrangement, business combination or similar transaction, (i) not less than all of the Common Shares (other than Common Shares beneficially owned by the party making such Acquisition Proposal), or (ii) not less than all or substantially all of the assets of the Company and its Subsidiaries taken as a whole, that, in either case:

(i) did not result from a breach of any agreement between any one or more of the persons making such Acquisition Proposal and its affiliates and the Company or a breach of Section 7.2;

(ii) is made in writing after the date hereof, including any variation or other amendment of any Acquisition Proposal made prior to the date hereof;

(iii) is not subject to any due diligence condition;

(iv) the Board of Directors has determined in good faith (after consultation with its financial advisors and outside legal counsel) (A) is reasonably capable of being completed in accordance with its terms without undue delay taking into account, to the extent considered appropriate by the Board of Directors, all legal, financial, regulatory and other aspects of such Acquisition Proposal and the person or persons making such Acquisition Proposal, and (B) would, if consummated in accordance with its terms (but expressly taking into account any risk of non-completion), result in a transaction more favourable from a financial point of view to the Shareholders than the Arrangement (taking into consideration any adjustment to the terms and conditions of the Arrangement proposed by the Parent and the Purchaser pursuant to Section 7.2); and

(v) in respect of which any required financing to complete such Acquisition Proposal is available or committed and subject to conditions that the Board of Directors determines in its good faith judgment, after consultation with its financial advisors and its outside counsel are more likely than not to be satisfied;

“Superior Proposal Notice” has the meaning ascribed thereto in Section 7.2(5);

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“Supplying Party” has the meaning ascribed thereto in Section 5.4(2);

“Tax Act” means the Income Tax Act (Canada) and the rules and regulations promulgated thereunder, as amended;

“Taxes” means, with respect to any person, all supranational, federal, state, local, provincial, branch or other taxes, including income taxes, gross receipts taxes, windfall profits taxes, value added taxes, severance taxes, ad valorem taxes, property taxes, capital taxes, net worth taxes, production taxes, sales taxes, use taxes, licence taxes, excise taxes, franchise taxes, environmental taxes, transfer taxes, withholding or similar taxes, payroll taxes, employment taxes, contributions, pension plan premiums, social security premiums, workers’ compensation premiums, employment insurance or compensation premiums, stamp taxes, occupation taxes, premium taxes, alternative or add-on minimum taxes, goods and services tax, harmonized sales taxes, customs duties or other taxes of any kind whatsoever imposed, required to be withheld or accounted for, or charged by any Governmental Entity, together with installments of any such taxes and any interest, penalties, or additions with respect thereto and any interest in respect of such additions or penalties;

“Tax Returns” means all reports, forms, elections, declarations, designations, schedules, agreements, statements, estimates, declarations of estimated tax, information statements, returns and all other similar documents filed or required by Law to be filed with or provided to a Governmental Entity with respect to Taxes or Tax information reporting, including any claims for refunds of Taxes, and any amendments or supplements of the foregoing;

“Termination Payment” has the meaning ascribed thereto in Section 7.3(2);

“Termination Payment Event” has the meaning ascribed thereto in Section 7.3(2);

“Third Party Actions” means those terminations, assignments and novations with respect to the Designated Contracts described in Part D of Section 1.1 of the Company Disclosure Letter;

“Trade Secrets” means all trade secrets, know-how, and any other proprietary confidential information, including processes, formulae, models and methodologies;

“Trademarks” means all trademarks, service marks, corporate names, trade names, Internet domain names, logos, slogans, trade dress, and other indicia of source or origin, any applications and registrations for the foregoing and the renewals thereof, and all goodwill associated therewith and symbolized thereby;

“Transaction Personal Information” has the meaning ascribed thereto in Section 5.6;

"Transactions" has the meaning ascribed thereto in Section 4(a) of Schedule C;

"TSX" means the Toronto Stock Exchange;

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

"Voting Support Agreements" means the voting support agreements, entered into contemporaneously herewith, between the Purchaser and each member of the Board of Directors and each officer of the Company; and

"Warrants" means the outstanding share purchase warrants issued by the Company, as listed in Section 2(c) of the Company Disclosure Letter.

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#### 1.2 Interpretation Not Affected by Headings

The division of this Agreement into Articles, Sections, subsections, paragraphs, clauses and Schedules and the insertion of headings are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement. Unless the contrary intention appears, references in this Agreement to an Article, Section, subsection, paragraph, clause or Schedule by number or letter or both refer to the Article, Section, subsection, paragraph, clause or Schedule, respectively, bearing that designation in this Agreement.

#### 1.3 Number and Gender

In this Agreement, unless the contrary intention appears, words importing the singular include the plural and vice versa, and words importing gender include all genders.

#### 1.4 Date for Any Action

If the date on which any action is required to be taken hereunder by a Party is not a business day, such action shall be required to be taken on the next succeeding day which is a business day. In this Agreement, references from or through any date mean, unless otherwise specified, from and including that date and/or through and including that date, respectively.

#### 1.5 Currency

Unless otherwise stated, all references in this Agreement to sums of money are expressed in, and all payments provided for herein shall be made in, U.S. currency and "U.S.\$" or "\$" refers to United States dollars. All references to "Cdn.\$" refers to Canadian dollars.



## 1.6 Accounting Matters

Unless otherwise stated, all accounting terms used in this Agreement in respect of the Company shall have the meanings attributable thereto under GAAP and all determinations of an accounting nature in respect of the Company required to be made shall be made in a manner consistent with GAAP.

## 1.7 Knowledge

In this Agreement, unless otherwise stated, references to "the knowledge of the Company" means the actual knowledge, after reasonable internal inquiry in their capacity as officers of the Company and not in their personal capacity of, Nick Glover, Chief Executive Officer and President; Mark Kowalski, Chief Medical Officer and Vice-President (Regulatory Affairs); Gregg Smith, Ph.D., M.B.A., Vice President (Drug Development); Leonard Vernon, Vice-President (Finance and Administration); and Ernest Wong, Vice-President (Business Development).

## 1.8 Schedules

The following Schedules are annexed to this Agreement and are incorporated by reference into this Agreement and form a part hereof:

Schedule A - Arrangement Resolution

Schedule B - Plan of Arrangement

Schedule C - Representations and Warranties of the Company

Schedule D - Representations and Warranties of the Parent and the Purchaser

Schedule E - Procedures for Requesting Consent of the Parent under Section 5.1(1)

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## 1.9 Other Definitional and Interpretive Provisions

(i) References in this Agreement to the words "include", "includes" or "including" shall be deemed to be followed by the words "without limitation" whether or not they are in fact followed by those words or words of like import.

(ii) The words "hereof", "herein" and "hereunder" and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(iii) Any terms defined in this Agreement and used in the Company Disclosure Letter, any exhibit or Schedule but not otherwise defined therein, shall have the meaning as defined in this Agreement.

(iv) References to any agreement, contract or plan are to that agreement, contract or plan as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof. Any reference in this Agreement to any person includes its heirs, administrators, executors, legal personal representatives, predecessors, successors and permitted assigns of that person.

(v) References to a particular statute or Law shall be to such statute or Law and the rules, regulations and published policies made thereunder, as now in effect and as they may be promulgated thereunder or amended from time to time.

## ARTICLE II

### THE ARRANGEMENT

#### 2.1 Arrangement

The Company, the Parent and the Purchaser agree that the Arrangement shall be implemented in accordance with and subject to the terms and conditions contained in this Agreement and the Plan of Arrangement.

#### 2.2 Interim Order

The Company agrees that as soon as reasonably practicable after the date hereof, and in any event no later than January 2, 2013, the Company shall apply, in a manner acceptable to the Purchaser, acting reasonably, pursuant to Section 130 of the NSCA and, in cooperation with the Purchaser, prepare, file and diligently pursue an application for the Interim Order, the terms of which are acceptable to the Purchaser, acting reasonably, which shall provide, among other things:

(i) for the class of persons to whom notice is to be provided in respect of the Arrangement and the Company Meeting and for the manner in which notice is to be provided;

(ii) for confirmation of the record date in respect of the Company Meeting referred to in Section 2.3(2);

(iii) that the requisite approval for the Arrangement Resolution shall be (A) three-quarters of the votes cast on the Arrangement Resolution by the Shareholders present in person or represented by proxy at the Company Meeting (the "Requisite Shareholder Approval"); and (B) such other approval, if any, as is required by MI 61-101;

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(iv) that, in all other respects, the terms, restrictions and conditions of the Company's memorandum of association and articles of association, including quorum requirements and all other matters, shall apply in respect of the Company Meeting;

(v) for the grant of the Dissent Rights;

(vi) for the notice requirements with respect to the presentation of the application to the Court for the Final Order;

(vii) that the Company Meeting may be adjourned or postponed in accordance with the terms of this Agreement from time to time by the Company without the need for additional approval of the Court; and

(viii) that the record date for Shareholders entitled to vote at the Company Meeting shall not change in respect of any adjournment(s) or postponement(s) of the Company Meeting, unless required by applicable Law.

### 2.3 The Company Meeting

(1) Subject to the terms of this Agreement and the Interim Order and provided that this Agreement has not been terminated, the Company agrees to convene and conduct the Company Meeting in accordance with the Interim Order, the Company's memorandum of association and articles of association and applicable Laws as soon as reasonably practicable and in any event on or before February 11, 2013 and not to propose to adjourn or postpone the Company Meeting:

(i) except as required for quorum purposes or by applicable Law or by a Governmental Entity;

(ii) except as required under Section 7.2(8); or

(iii) except for an adjournment consented to by the Purchaser for the purpose of attempting to obtain the Requisite Shareholder Approval.

(2) The Company shall fix a record date for the purposes of determining the Shareholders entitled to receive notice of and to vote at the Company Meeting, which record date shall be January 14, 2013 or such other date as agreed by the Company and the Purchaser.

(3) The Company shall use its commercially reasonable efforts to solicit proxies in favour of the approval of the Arrangement Resolution, including, if so requested by the Purchaser, acting reasonably, using dealer and proxy solicitation services and cooperating with any persons engaged by the Purchaser to solicit proxies in favour of the approval of the Arrangement Resolution.

(4) The Company shall give notice to the Purchaser of the Company Meeting and allow the Purchaser's representatives and legal counsel to attend the Company Meeting.

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(5) The Company shall advise the Purchaser as the Purchaser may reasonably request, and at least on a daily basis on each of the last ten business days prior to the date of the Company Meeting, as to the aggregate tally of the proxies received by the Company in respect of the Arrangement Resolution and any further information respecting such proxies as the Purchaser may reasonably request.

(6) The Company shall promptly advise the Purchaser of any written notice of dissent or purported exercise by any Shareholder of Dissent Rights received by the Company in relation to the Arrangement Resolution and any withdrawal of Dissent Rights received by the

Company and, subject to applicable Laws, any written communications sent by or on behalf of the Company to any Shareholder exercising or purporting to exercise Dissent Rights in relation to the Arrangement Resolution. The Company shall not make any payment or settlement offer, or agree to any such settlement, prior to the Effective Time with respect to any such notice of dissent or purported exercise of Dissent Rights unless the Purchaser shall have given its prior written consent to such payment, settlement offer or settlement as applicable.

## 2.4 The Company Circular

(1) Subject to compliance by the Purchaser and/or the Parent with this Section 2.4, promptly after the execution of this Agreement, the Company shall prepare and complete the Company Circular together with any other documents required by the NSCA, Applicable Securities Laws and other applicable Laws in connection with the Company Meeting and the Arrangement, and the Company shall, as promptly as reasonably practicable after obtaining the Interim Order, cause the Company Circular and other documentation required in connection with the Company Meeting to be filed and to be sent to each Shareholder, each holder of Options, Warrants and SARs, the directors of the Company, the auditors of the Company and any other persons as required by the Interim Order and applicable Laws, in each case so as to permit the Company Meeting to be held within the time required by Section 2.3(1).

(2) The Company shall ensure that the Company Circular complies in all material respects with all applicable Laws, and, without limiting the generality of the foregoing, that the Company Circular shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements contained therein not misleading in light of the circumstances in which they are made (other than with respect to any information furnished by the Parent, the Purchaser or their affiliates) and shall provide the Shareholders with information in sufficient detail to permit them to form a reasoned judgment concerning the matters to be placed before them at the Company Meeting. The Company Circular shall include the Company Recommendation.

(3) The Purchaser and its legal counsel shall be given a reasonable opportunity to review and comment on drafts of the Company Circular and other documents related thereto, and reasonable consideration shall be given to any comments made by the Purchaser and its counsel, provided that all information relating solely to the Purchaser, the Parent or their affiliates included in the Company Circular shall be in form and content satisfactory to the Purchaser, acting reasonably.

(4) The Purchaser and the Parent shall furnish to the Company all such information concerning the Purchaser, the Parent and their respective affiliates and any financing sources, as applicable, as may be reasonably required by the Company in the preparation of the Company Circular and other documents related thereto, and the Purchaser and the Parent shall ensure that no such information shall contain any untrue statement of a material fact or omit to state a material fact required to be stated in the Company Circular in order to make any information so furnished not misleading in light of the circumstances in which it is disclosed.

(5) The Purchaser and the Parent shall jointly and severally indemnify and save harmless the Company's Representatives from and against any and all liabilities, claims, demands, losses, costs, damages and expenses to which the Company's Representatives may be subject or may suffer, in any way caused by, or arising, directly or indirectly, from or in consequence of:

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(i) any misrepresentation or alleged misrepresentation in any information related to the Purchaser, the Parent or their affiliates included in the Company Circular that is provided by the Purchaser, the Parent or their affiliates in writing for the purpose of inclusion in the Company Circular; and

(ii) any order made, or any inquiry, investigation or proceeding by any Governmental Entity (including any Securities Authority), to the extent based on any misrepresentation or any alleged misrepresentation in any information related to the Purchaser, the Parent or their affiliates and provided by the Purchaser, the Parent or their affiliates in writing for the purpose of inclusion in the Company Circular.

(6) The Company, the Purchaser and the Parent shall promptly notify each other if at any time before the Effective Date it becomes aware that the Company Circular contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements contained therein not misleading in light of the circumstances in which they are made, or that otherwise requires an amendment or supplement to the Company Circular, as required or appropriate, and the Company shall, subject to compliance by the Purchaser and/or the Parent with this Section 2.4, and, if required by the Court or applicable Laws, promptly mail or otherwise publicly disseminate any amendment or supplement to the Company Circular to the Shareholders and file the same with the Securities Authorities and as otherwise required.

## 2.5 Final Order

If the Interim Order is obtained, the Arrangement Resolution is passed at the Company Meeting as provided for in the Interim Order and as required by applicable Law and the condition in Section 6.1(iii) has been satisfied or waived by each of the Parties then, subject to the terms of this Agreement, the Company shall as soon as reasonably practicable (but in any event within two business days) thereafter take all steps necessary or desirable to submit the Arrangement to the Court and diligently pursue an application for the Final Order pursuant to Section 130 of the NSCA. The Company agrees that it will oppose any proposal from any other person that the Final Order contains any provision inconsistent with this Agreement and, if at any time after the issuance of the Final Order and prior to the Effective Date, the Company is required by the terms of the Final Order or by Law to return to Court with respect to the Final Order, it shall do so after notice to, and in consultation and cooperation with, the Parent.

## 2.6 Court Proceedings

Subject to the terms and conditions of this Agreement, the Purchaser and the Parent shall cooperate with, assist and consent to the Company seeking the Interim Order and the Final Order, including by providing to the Company on a timely basis any information required to be supplied by the Purchaser and the Parent concerning the Purchaser and the Parent or their respective affiliates in connection therewith. The Company shall provide legal counsel to the Purchaser with reasonable opportunity to review and comment upon drafts of all material to be filed with the Court in connection with the Arrangement and reasonable consideration shall be given to any comments made by the Purchaser and its legal counsel. The Company shall also provide legal counsel to the Purchaser on a timely basis with copies of any notice of appearance and evidence served on the Company or its legal counsel in respect of the application for the Final Order or any appeal therefrom. The Company will ensure that all materials filed with the Court in connection with the Arrangement are consistent in all material respects with the terms of this Agreement and the Plan of Arrangement. In addition, the Company will not object to legal counsel to the Parent making such submissions on the hearing of the motion for the Interim Order and the application for the Final Order as such counsel considers appropriate, provided that the Company is advised of the nature of any submissions prior to the hearing and such submissions are consistent with this Agreement and the Plan of Arrangement.

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## 2.7 Stock Options

In accordance with the Plan of Arrangement, at the time specified in the Plan of Arrangement, each Option outstanding immediately prior to the Effective Time (whether vested or unvested) shall be transferred from the holder thereof to the Company in consideration for a cash payment by or on behalf of the Company equal to the amount, if any, by which the Canadian Equivalent of the Consideration per Common Share, in respect of each Option, exceeds the exercise price per Common Share of such Option, subject to (for greater certainty) applicable Tax withholdings and other source deductions in accordance with Section 2.13. Each Option issued and outstanding immediately prior to the Effective Time shall thereafter be immediately cancelled, the holder thereof shall thereafter have only the right to receive the consideration to which such holder is entitled pursuant to this Section 2.7 and in the manner specified in the Plan of Arrangement, and all option agreements related thereto shall be terminated. The Company shall take, and shall cause its Subsidiaries to take, all steps necessary or desirable to give effect to the foregoing, including amending the Stock Option Plan. The Company also shall use, and shall cause its Subsidiaries to use, commercially reasonable efforts

to obtain necessary consents (in form and substance reasonably satisfactory to the Purchaser) from holders of Options to the transfer and cancellation of the Options as described above.

## 2.8 Warrants

In accordance with the Plan of Arrangement, at the time specified in the Plan of Arrangement, each Warrant outstanding immediately prior to the Effective Time (whether vested or unvested) shall be transferred from the holder thereof to the Company in consideration for a cash payment by or on behalf of the Company equal to the amount, if any, by which the Consideration per Common Share, in respect of each Warrant, exceeds the exercise price per Common Share of such Warrant, subject to (for greater certainty) applicable Tax withholdings and other source deductions in accordance with Section 2.13. Each Warrant issued and outstanding immediately prior to the Effective Time shall thereafter be immediately cancelled, the holder thereof shall thereafter have only the right to receive the consideration to which such holder is entitled pursuant to this Section 2.8 and in the manner specified in the Plan of Arrangement, and all agreements related thereto shall be terminated. The Company shall take, and shall cause its Subsidiaries to take, all steps necessary or desirable to give effect to the foregoing, including obtaining any necessary consents from holders of Warrants.

## 2.9 Share Appreciation Rights

Each SAR outstanding immediately prior to the Effective Time (whether vested or unvested) shall be transferred at the Effective Time by the holder thereof to YM BioSciences Australia Pty Ltd (formerly Cytopia Research Pty Ltd) in consideration for a cash payment by or on behalf of YM BioSciences Australia Pty Ltd (formerly Cytopia Research Pty Ltd) equal to the Australian Dollar Equivalent of the amount, if any, by which the Canadian Dollar Equivalent of the Consideration per Common Share in respect of each SAR, exceeds the Base Price per Common Share of such SAR, subject to (for greater certainty) applicable Tax withholdings and other source deductions in accordance with Section 2.13. Each SAR issued and outstanding immediately prior to the Effective Time shall thereafter be immediately cancelled, the holder thereof shall thereafter have only the right to receive the consideration to which such holder is entitled pursuant to this Section 2.9, and all agreements related thereto shall be terminated. The Company shall take, and shall cause its Subsidiaries to take, all steps necessary or desirable to give effect to the foregoing, including obtaining any necessary consents from holders of SARs.

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## 2.10 Performance of the Purchaser

The Parent hereby unconditionally and irrevocably guarantees, and covenants and agrees to be jointly and severally liable with the Purchaser, as principal obligor, for the due and punctual performance of each and every obligation of the Purchaser under or relating to this Agreement and the Transactions, including ensuring it has (i) sufficient funds under Section 2.12 to pay the aggregate Consideration for all of the Common Shares to be acquired pursuant to the Arrangement, and (ii) any other amounts required to be paid by the Purchaser in connection with the Transactions and all related fees and expenses and any amount of any judgment or award made against the Purchaser for the benefit of the Company. The guarantee and obligations of the Parent pursuant to this Section 2.10 shall terminate at the Effective Time. The Parent shall cause the Purchaser to comply with all of the Purchaser's obligations under or relating to the Arrangement and the transactions contemplated by this Agreement.

## 2.11 Effective Date

On the second business day after the issuance of the Final Order and satisfaction or, where not prohibited, the waiver by the applicable Party or Parties in whose favour the condition is, and subject to applicable Law, of the conditions (excluding conditions that, by their terms, cannot be satisfied until the Effective Date, but subject to the satisfaction or, where not prohibited, the waiver by the applicable Party or Parties in whose favour the condition is, of those conditions as of the Effective Date) set forth in Article VI, unless another time or date is agreed to in writing by

the Parties, Company shall make the Arrangement Filings, provided that the Company shall not be required to make the Arrangement Filings unless the Company has received written confirmation, in form satisfactory to it, from the Depository that it has received the funds referred to in Section 2.12. Subject to the terms hereof, the Company shall specify in a written notice (the "Notice of Filing") to the Purchaser the date the Arrangement Filings are to be made, which date shall not be less than two business days following the date that such confirmation of the Depository has been provided. From and after the Effective Time, the Plan of Arrangement shall have all of the effects provided by applicable Law.

#### 2.12 Payment of Consideration

Following the Company providing the Notice of Filing under Section 2.11 and not less than one business day prior to the Arrangement Filings by the Company, the Purchaser shall provide the Depository with sufficient funds in escrow (the terms and conditions of such escrow to be satisfactory to the Parties) to pay the aggregate Consideration for all of the Common Shares to be acquired pursuant to the Arrangement.

#### 2.13 Tax Withholdings and Other Source Deductions

Each of the Company, Parent, Purchaser, and the Depository shall be entitled to deduct and withhold from any amounts payable to any person pursuant to this Agreement and under the Plan of Arrangement such amounts as are required or permitted to be deducted or withheld with respect to such payment under the Tax Act or any provision of any other applicable Law or under the administrative practice of the relevant Governmental Entity administering such Law. To the extent that amounts are so withheld or deducted and remitted to the applicable Governmental Entity, such withheld or deducted amounts shall be treated for all purposes of this Agreement and the Plan of Arrangement as having been paid to such person as the remainder of the payment in respect of which such deduction and withholding were made.

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#### 2.14 Elections Regarding Options

The Parent, the Purchaser and the Company each acknowledge and agree that the Company and all persons not dealing at arm's length with the Company will forego any deduction under the Tax Act with respect to the cash payment to be made by the Company to holders of Options as described in Section 2.7 and pursuant to the Plan of Arrangement. To effect the foregoing, the Company shall timely comply with the requirements described in subsection 110(1.1) of the Tax Act, including making and filing appropriate elections and delivering written notice of such elections to such holders of Options in accordance with the requirements set out in the Tax Act.

#### 2.15 Dividends, etc.

If, on or after the date hereof, the Company declares, sets aside or pays any dividend or other distribution payable in cash, securities, property or otherwise with respect to the Common Shares, or sets a record date therefor that is prior to the Effective Date, then the Consideration shall be adjusted to reflect each such dividend or other distribution by way of a reduction in the Consideration by an amount equal to the amount of such dividend or distribution per Common Share.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES OF THE COMPANY

### 3.1 Representations and Warranties of the Company

Except as disclosed in the Company Disclosure Letter, the Company hereby represents and warrants to and in favour of the Parent and the Purchaser as set forth in Schedule C and acknowledges that the Parent and the Purchaser are relying upon such representations and warranties in connection with the entering into of this Agreement.

### 3.2 Company Disclosure Letter

Contemporaneously with the execution and delivery of this Agreement, the Company is delivering to the Purchaser the Company Disclosure Letter required to be delivered pursuant to this Agreement, which sets out the disclosures, exceptions and exclusions contemplated or permitted by this Agreement, including certain exceptions and exclusions to the representations and warranties and covenants of the Company contained in this Agreement. The disclosure of any item in the Company Disclosure Letter shall constitute disclosure or, as applicable, exclusion of that item for the Company Disclosure Letter where the relevance of that item as an exception to (or a disclosure for the purposes of) the applicable representations and warranties and covenants is reasonably apparent on the face of such disclosure regardless of whether the applicable representations, warranties or covenants are qualified by the language "Except as disclosed in the Company Disclosure Letter" or an equivalent qualification.

### 3.3 Survival of Representations and Warranties of the Company

The representations and warranties of the Company contained in this Agreement shall not survive the completion of the Arrangement and shall expire and be terminated on the earlier of the Effective Time and the date on which this Agreement is terminated in accordance with its terms.

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## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES OF THE PARENT

### AND THE PURCHASER

#### 4.1 Representations and Warranties of the Parent and the Purchaser

Each of the Parent and the Purchaser hereby jointly and severally represents and warrants to and in favour of the Company as set forth in Schedule D and acknowledges that the Company is relying upon such representations and warranties in connection with the entering into of this Agreement.

#### 4.2 Survival of Representations and Warranties of the Parent and the Purchaser

The representations and warranties of the Parent and the Purchaser contained in this Agreement shall not survive the completion of the Arrangement and shall expire and be terminated on the earlier of the Effective Date and the date on which this Agreement is terminated in accordance with its terms.



ARTICLE V

COVENANTS OF COMPANY, THE PARENT AND THE PURCHASER

5.1 Interim Covenants of the Company

(1) From the date hereof until the earlier of the Effective Time and the time that this Agreement is terminated in accordance with its terms, except (i) as required by applicable Law or a Governmental Entity (including a Securities Authority and Regulatory Authority), (ii) with the prior written consent of Parent (it being agreed that the Parent shall respond within five business days to any request for consent under this Section 5.1(1) that is made in accordance with the procedures set forth in Schedule E), (iii) as expressly required by this Agreement, or (iv) as set forth in Section 5.1(1) of the Company Disclosure Letter, (x) the Company shall cause the business of the Company and its Subsidiaries to be conducted in the ordinary course of business and shall use commercially reasonable efforts to (a) preserve intact its and its Subsidiaries' present business organization, pay and perform all material obligations when due and maintain its current relationships with Governmental Entities and other persons having business dealings with the Company or any of its Subsidiaries, (b) prepare and file any requisite regulatory filings with any Regulatory Authority on a timely basis and in accordance with the ordinary course of business, (c) obtain and maintain quantities of the Key Product and related raw materials and components as necessary for use in the Company's ongoing and anticipated phase II and phase III clinical trials of the Key Product and (y) without limiting the generality of clause (x) above and notwithstanding anything to the contrary contained in clause (x) above, the Company shall not and shall not permit any of its Subsidiaries to:

(i) amend its memorandum of association and articles of association or comparable governing documents;

(ii) merge or consolidate the Company or any of its Subsidiaries with any other person, except for such transactions between the Company and its Subsidiaries, or dissolve or completely or partially liquidate;

(iii) form any Subsidiary or acquire assets from any other person with a value or purchase price in the aggregate in excess of \$100,000 in any transaction or series of related transactions;

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(iv) issue, sell, pledge, dispose of, grant, transfer or encumber (A) any Company Securities (B) any Subsidiary Securities or (C) any share appreciation rights, phantom shares, profit participation interests or other similar agreements, commitments or arrangements payable in cash that relate to the shares of, or other equity or voting interest in, the Company or any of its Subsidiaries, other than (x) issuance or sales of Common Shares upon exercise of the Options or Warrants outstanding on the date hereof or (y) as permitted under Section 5.1(1)(xviii);

(v) other than in the ordinary course of business, create or incur any Lien on (A) any assets (other than Company Intellectual Property) of the Company or any of its Subsidiaries having a value in excess of \$100,000, (B) any Intellectual Property of the Company or any of its Subsidiaries or (C) any Intellectual Property licensed to the Company or any of its Subsidiaries;

(vi) (A) make any loans, advances, guarantees or capital contributions to or investments in any person (other than the Company or any of its wholly-owned Subsidiaries) in excess of \$100,000 in the aggregate, or (B) deposit, invest or otherwise manage its cash, cash equivalents or marketable securities other than in the ordinary course of business (including as to manner, amount and jurisdictions);

(vii) (A) declare, accrue, set aside, make or pay any dividend (other than in the ordinary course of business) or other distribution payable in cash, shares, property or otherwise, with respect to any Company Securities or Subsidiary Securities (except for dividends paid by the Company's

wholly-owned Subsidiaries to the Company or another wholly-owned Subsidiary of the Company), (B) repurchase, redeem or otherwise reacquire any shares or other securities, or subdivide, reclassify, recapitalize, split, combine or exchange or enter into any similar transaction with respect to any Company Securities or Subsidiary Securities or issue any other securities in respect of, in lieu of or in substitution for Company Securities or Subsidiary Securities, except for any split, combination or reclassification of shares of a wholly-owned Subsidiary of the Company, or any issuance of any securities of a wholly-owned Subsidiary of the Company to the Company or another wholly-owned Subsidiary of the Company, or (C) enter into any agreement with respect to the voting of its shares;

(viii) incur any indebtedness for borrowed money or assume, guarantee, endorse or otherwise become liable or responsible for (whether directly, contingently or otherwise) any other person's indebtedness for borrowed money, or issue or sell any debt securities or warrants or other rights to acquire any debt security of the Company or any of its Subsidiaries;

(ix) make any capital expenditures in excess of \$100,000 in the aggregate;

(x) make any changes with respect to accounting policies or procedures other than as required by changes in GAAP;

(xi) settle any pending or threatened Proceedings or other material claims or disputes, other than the settlement of Proceedings or other material claims or disputes (A) reflected or reserved against in full in the Audited Balance Sheet or (B) the settlement of which does not include any obligation (other than the payment of money) to be performed by the Company or its Subsidiaries following the Effective Time that is in excess of \$100,000 in the aggregate;

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(xii) enter into any Contract that would have been a Material Contract (except for the purposes of this paragraph (xii) only, references to \$100,000 in Section 13(a)(vii)(B) of Schedule C shall be changed to \$250,000 and references to \$100,000 in Section 13(a)(vii)(C) of Schedule C shall be changed to \$500,000) had it been entered into prior to the date hereof;

(xiii) amend, modify, assign any rights under or terminate any Material Contract;

(xiv) other than pursuant to Material Contracts in effect prior to the date hereof and furnished to the Parent prior to the date of this Agreement, transfer, sell, lease, license, mortgage, pledge, surrender, encumber, divest, cancel, abandon or allow to lapse or expire or otherwise dispose of any material assets, licenses, operations, rights or businesses of the Company or any of its Subsidiaries;

(xv) assign or grant an exclusive license of any material right in any Company Intellectual Property necessary or useful for the manufacture, use, sale, offer for sale or importation of any Company Pharmaceutical Product or that otherwise enables a third party to compete with the Company with respect to the manufacture or sale of any product that competes with any Company Pharmaceutical Product;

(xvi) (A) waive or terminate any inbound license in any IP Contract under any Patent or other Company Intellectual Property material to any Company Pharmaceutical Product, (B) amend any inbound license in any IP Contract under any Patent or other Company Intellectual Property material to any Company Pharmaceutical Product or (C) enter into any Contract that would constitute an IP Contract if entered into prior to the date of this Agreement;

(xvii) commence (other than planning) or amend any phase I, phase II, phase III or phase IV human clinical trial (including initiation of a new institutional review board) involving any Company Pharmaceutical Product;

(xviii) except as required by applicable Law or otherwise required pursuant to existing Contracts or Benefit Plans in effect as of the date hereof and made available to the Parent prior to the date hereof, (A) increase the compensation or benefits of any current or former employee, director, or consultant of the Company or any of its Subsidiaries, (B) promote any employee, (C) pay any bonus to any person (including any employee), (D) amend, enter into or establish any new employment, change in control, severance, termination, indemnification or other agreement with any current or former employee, director, or consultant of the Company or any of its Subsidiaries, (E) make any severance or termination payments to any current or former employee, director, or consultant of the Company or any of its Subsidiaries, (F) make any new equity awards to any person or accelerate the vesting of any award under any Benefit Plan, (G) establish, adopt, terminate or amend any Benefit Plan, or (H) hire any person as an employee or consultant;

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(xix) except as required by applicable Law, make, change or rescind any material Tax election, file any amended material Tax Return, settle or compromise any material Tax liability, agree to an extension or waiver of the statute of limitations with respect to material Taxes, make a request for a Tax ruling or enter into any closing agreement with respect to a material Tax, surrender any right to claim a material Tax refund, or change any material method of Tax accounting;

(xx) enter into or consummate any tax planning or restructuring transaction which involves any transfer, assignment or other disposition of any Company Intellectual Property;

(xxi) make any "investment", as that term is defined for purposes of proposed section 212.3 of the Tax Act, in any corporation that is, or will be prior to the Effective Time, a "foreign affiliate" of the Company for purposes of the Tax Act;

(xxii) (A) waive or amend (except in the course of diligently prosecuting the Company Intellectual Property) the Company's rights in or to any Company Intellectual Property owned by the Company or one of its Subsidiaries that is registered or the subject of an application for registration, (B) fail to diligently prosecute or maintain any material Company Intellectual Property owned by the Company or one of its Subsidiaries that is registered or the subject of an application for registration, in each case in the name of Company or one of its Subsidiaries or (C) fail to make any required payments in accordance with the terms of any IP Contract pursuant to which the Company licenses any material Intellectual Property;

(xxiii) qualify any new site for manufacturing of the Key Product;

(xxiv) make any payment to any third party financial, accounting, legal or other advisor in respect of any fees, costs or expenses incurred by the Company or any of its Subsidiaries in connection with the Transactions; or

(xxv) authorize, commit or enter into any Contract to do any of the foregoing.

(2) The Company shall promptly notify the Parent and the Purchaser of the following:

(i) any serious adverse event reports or expedited reports relating to the Key Product; or

(ii) any data (preclinical, clinical or otherwise) that changes the safety profile, the efficacy profile or the risk-benefit profile of the Key Product.

(3) From the date hereof until the Effective Time, the Company shall:

(i) consult with the Parent in connection with any proposed meeting with the FDA or any other Regulatory Authority relating to any Company Pharmaceutical Product;

(ii) promptly inform the Parent of, and provide the Parent with a reasonable opportunity to review, any material filing proposed to be made by or on behalf of the Company or any of its Subsidiaries, and any material correspondence or other material communication proposed to be submitted or otherwise transmitted to the FDA or any other Regulatory Authority by or on behalf of the Company or any of its Subsidiaries, in each case relating to any Company Pharmaceutical Product;

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(iii) keep the Parent promptly informed of (A) any material communication (written or oral) with or from the FDA and any other Regulatory Authority and (B) any material communications (written or oral) received from any person relating to the Company Intellectual Property; and

(iv) promptly inform the Parent and provide the Parent or the Purchaser with a reasonable opportunity (but no more than three business days) to comment, in each case, prior to making any material change to any study protocol, adding any new trial, making any material change to a manufacturing plan or process, making any material change to a development timeline or initiating, or making any material change to, promotional or marketing materials or activities relating to any Company Pharmaceutical Product.

(4) Notwithstanding the above, the delivery of any notice pursuant to Section 5.1(2) or 5.1(3) shall not limit or otherwise affect the representations, warranties, covenants or agreements of the parties hereto, the remedies available hereunder to the party hereto receiving such notice or the conditions to such party's obligation to consummate the Transactions.

(5) Nothing contained in this Agreement shall give Parent or the Purchaser, directly or indirectly, the right to control the Company or any of its Subsidiaries or direct the business or operations of the Company or any of its Subsidiaries prior to the Effective Time. Prior to the Effective Time, the Company shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its operations and the operations of its Subsidiaries. Nothing in this Agreement, including any of the actions, rights or restrictions set forth herein, shall be interpreted in such a way as to place the Company, the Parent or the Purchaser in violation of any rule, regulation or policy of any Governmental Entity or Regulatory Authority, including any applicable Law.

## 5.2 Pre-Acquisition Reorganization

(1) The Company shall effect such reorganization of its Subsidiaries, business, operations, and assets or such other transactions as the Purchaser may reasonably request (each, a "Pre-Acquisition Reorganization") prior to or following the Effective Time, and the Plan of Arrangement, if required, shall be modified accordingly; provided, however, that the Company need not effect a Pre-Acquisition Reorganization which in the opinion of the Company (or its counsel), acting reasonably (i) would require the Company to obtain the prior approval of the Shareholders in respect of such Pre-Acquisition Reorganization, (ii) would require the filing of a registration statement under the 1933 Act, (iii) would expose the Company (in the event the Arrangement is not completed) to additional adverse Tax consequences that it would not otherwise be exposed to in the absence of completing the Pre-Acquisition Reorganization, or (iv) would impede or delay the consummation of the Arrangement. Without limiting the foregoing and other than as set forth in clause (iv) above, the Company shall use commercially reasonable efforts to obtain all necessary consents, approvals or waivers from any persons to effect each Pre-Acquisition Reorganization, and the Company

shall cooperate with the Purchaser in structuring, planning and implementing any such Pre-Acquisition Reorganization. The Purchaser shall provide written notice to the Company of any proposed Pre-Acquisition Reorganization at least ten business days prior to the Effective Date. In addition:

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(i) the Purchaser shall indemnify and save harmless the Company and its Representatives from and against any and all liabilities, losses, damages, claims, costs, expenses, interest awards, judgments and penalties (including actual out-of-pocket costs and expenses for filing fees and external counsel) suffered or incurred by any of them in connection with or as a result of any Pre-Acquisition Reorganization or as a result of the reversal (where such reversal is reasonably necessary) of all or any of the Pre-Acquisition Reorganization steps in the event the Arrangement does not proceed;

(ii) unless the Parties otherwise agree, any Pre-Acquisition Reorganization to be effected prior to the Effective Time shall not become effective until a date that is no earlier than three business days prior to the Effective Date and in any event not prior to obtaining the Final Order; and

(iii) such cooperation does not require the directors, officers or employees of the Company and its Subsidiaries to take any action in any capacity other than as a director, officer or employee, as applicable.

(2) The Purchaser acknowledges and agrees that the planning for and implementation of any Pre-Acquisition Reorganization requested by the Purchaser shall not be considered a breach of any covenant under this Agreement and shall not be considered in determining whether a representation or warranty of the Company hereunder has been breached. The Purchaser and the Company shall work cooperatively and use commercially reasonable efforts to prepare prior to the Effective Time all documentation necessary and do such other acts and things as are necessary to give effect to such Pre-Acquisition Reorganization.

(3) Without limiting the generality of the foregoing, the Company acknowledges that the Purchaser may enter into transactions (the "Bump Transactions") designed to step up the tax basis in certain capital property of the Company for purposes of the Tax Act and agrees to use commercially reasonable efforts to provide information reasonably required by Purchaser in this regard on a timely basis and to assist in the obtaining of any such information in order to facilitate a successful completion of the Bump Transactions or any such other reorganizations or transactions as is reasonably requested by the Purchaser.

(4) Subject to Section 5.2(5), during the period from the date of this Agreement to the Effective Time, the Company shall not, and shall not permit any of its Subsidiaries to, take any action or enter into any transaction, or agree to take any such action or to enter into any such transaction, that it knows or ought reasonably to know is likely to have the effect of materially reducing the amount that would otherwise be determined pursuant to paragraph 88(1)(d) (and subsection 87(11), if applicable) of the Tax Act in respect of any of the non-depreciable capital properties owned by the Company as of the date of this Agreement or acquired by the Company subsequent to the date of this Agreement in accordance with the terms of this Agreement in connection with a winding-up or amalgamation of the Company at or after the Effective Time.

(5) Any action taken or transaction entered into by the Company or any Subsidiary that is within the ordinary course of business of the Company, such Subsidiary or either of their respective predecessors, as the case may be, or that is explicitly contemplated by this Agreement, shall not constitute a breach of the covenant in Section 5.2(4).

(6) Any divestiture, transaction or reorganization required by or effected pursuant to Section 5.3 shall not constitute a Pre-Acquisition Reorganization.

### 5.3 Covenants Regarding the Performance of Obligations

Subject to the terms and conditions of this Agreement, the Company shall and shall cause its Subsidiaries, and the Parent shall and shall cause its Subsidiaries, to perform all obligations required or desirable to be performed by the Company or any of its Subsidiaries or the Parent or any of its Subsidiaries under this Agreement, and co-operate with the other in connection therewith, in order to consummate and make effective, as soon as reasonably practicable, the Arrangement. Without limiting the generality of the foregoing, the Company shall and, where appropriate, shall cause its Subsidiaries to:

(i) use commercially reasonable efforts to obtain the Requisite Shareholder Approval, including submitting the Arrangement Resolution for approval by the Shareholders at the Company Meeting in accordance with Section 2.3(1);

(ii) promptly advise the Purchaser orally and, if then requested, in writing of any event, change or development that has resulted in, or that to the knowledge of the Company, would reasonably be expected to constitute, a Company Material Adverse Change, or resulted in any material adverse change in any fact set forth in the Company Disclosure Letter;

(iii) promptly notify Parent of (a) any written notice or other communication received by it from any third party, subsequent to the date of this Agreement and prior to the Effective Time, alleging any material breach of or default under (x) any Material Contract to which the Company or any of its Subsidiaries is a party or (y) any other Contract to which the Company or any of its Subsidiaries is a party, the breach of or default under which would reasonably be expected to result in liability that is material to the Company and its Subsidiaries, taken as a whole, or (b) any written notice or other communication received by the Company or any of its Subsidiaries from any third party, subsequent to the date of this Agreement and prior to the Effective Time, alleging that the consent or waiver of such third party is or may be required in connection with the Transactions;

(iv) use commercially reasonable efforts to assist in effecting the resignations of the Company directors and cause them to be replaced following the Effective Date by persons nominated by the Purchaser;

(v) (A) undertake an investigation to identify each Designated Contract, and provide to the Parent a true and complete copy of each Designated Contract and all documentation that is reasonably necessary or appropriate to allow the Parent to verify the results of the Company's investigation and (B) complete all Third Party Actions as promptly as practicable after the date hereof but in any event prior to the Effective Time, and provide to the Parent all documentation that is reasonably necessary or appropriate to allow the Parent to verify the completion of each such Third Party Action;

(vi) at the request of the Purchaser, use commercially reasonable efforts to obtain all other third person consents, waivers, Permits, exemptions, orders, approvals, agreements, amendments and modifications to the Material Contracts that are necessary to permit consummation of the Transactions;

(vii) subject to the Confidentiality Agreement, provide lists of beneficial and registered holders of the Common Shares and any geographical reports prepared by its transfer agent in the possession of the Company and a list of holders of the Options, SARs and Warrants, as well as a

security position listing from each depository, including CDS Clearing and Depository Services Inc. and the Depository, and deliver any such lists to the Purchaser promptly following the date hereof and promptly deliver to the Purchaser upon demand thereafter supplemental lists setting out changes thereto;

(viii) in order to ensure that the Separation Time does not occur in connection with this Agreement or the Arrangement, give effect to the waiver, if required, of the application of the Shareholder Rights Plan to the Transactions and ensure that the Shareholder Rights Plan does not interfere with or impede the success of any of the Transactions; and

(ix) (A) not waive the application of the Shareholder Rights Plan to any Acquisition Proposal unless it is a Superior Proposal and the Right to Match Period has expired, and (B) not amend the Shareholder Rights Plan (except as may be necessary to comply with its obligations hereunder) nor authorize, approve or adopt any other shareholder rights plan or enter into any agreement providing therefor. Notwithstanding the foregoing, the Company shall be entitled to defer the Separation Time in connection with an Acquisition Proposal.

#### 5.4 Mutual Covenants

(1) Subject to the terms and conditions of this Agreement, with respect to the Transactions, the Parent, the Purchaser and the Company shall use their commercially reasonable efforts to obtain the Regulatory Clearances as soon as practicable, without limiting the foregoing, each of the Parties shall:

(i) cooperate and provide assistance to the other party in respect of the Competition Filings, including the provision of information regarding itself and any respective Subsidiaries and commercial activities relevant to the preparation of any filing or submission to a Governmental Entity;

(ii) as applicable to a Party under a Law, as soon as practicable (but in any event, except as otherwise stated herein, within seven business days of the date hereof):

(a) with respect to the Competition Act Clearance, the Purchaser shall submit a letter to the Commissioner requesting an advance ruling certificate or, in the alternative, a No-Action Letter, and, if the Competition Act Clearance has not been obtained within 21 days from when the Purchaser submitted the letter to the Commissioner, the Purchaser or Company may, at any time thereafter, notify the other Party that it intends to file a notification pursuant to subsection 114(1) of the Competition Act in which case the Purchaser and Company shall each submit its respective notification to the Commissioner within seven business days thereof;

(b) with respect to notification and filings under the HSR Act, the Purchaser and Company shall each submit a notification and the Purchaser shall request the earlier termination of the applicable waiting period under the HSR Act; and

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(c) the Parties shall submit to the appropriate Governmental Entities all filings necessary or advisable to obtain or satisfy all other Regulatory Clearances;

(iii) respond as quickly as reasonably practicable to any requests for non-privileged information or requests for meetings by a Governmental Entity in respect of the Competition Filings (including in respect of any supplementary filings, submissions or requests for information);

(iv) promptly advise the other Party of any material written or verbal communications that it receives from a Governmental Entity in respect of the Competition Filings (including in respect of any supplementary filings, submissions or requests for information) and permit the other Party to participate in any meetings with any Governmental Entity (subject to any opposition by a Governmental Entity to a particular Party's participation in such meeting) and participate or review any material written or verbal communication before it is made to any Governmental Entity; and

(v) promptly pay any mandatory filing fees payable to a Governmental Entity in connection with the Competition Filings, the costs of which shall be borne by the Purchaser.

(2) Notwithstanding anything to the contrary in this Section 5.4, no Party shall be required to provide to any other Party any confidential competitively-sensitive information, provided that any Party seeking to exclude any such confidential competitively-sensitive information ("Supplying Party") from any other Party ("Receiving Party") shall provide a redacted version of the information to the Receiving Party along with a non-redacted version containing the confidential competitively sensitive information to the Receiving Party's external legal counsel on an "external counsel only" basis and the Receiving Party shall not request or otherwise receive the information from its external legal counsel without having received written permission from the Supplying Party. In particular, the Receiving Party will cause its external counsel to use such confidential competitively-sensitive information disclosed or made available to the Receiving Party's external counsel solely for the purposes of Section 5.4 hereof and not for external counsel's own or other purposes. The Receiving Party will promptly advise the Supplying Party in writing of any misappropriation or misuse by the Receiving Party's external counsel of such confidential competitively-sensitive information disclosed or made available to external counsel which may come to its attention. The Receiving Party shall be liable for all breaches of the terms of this subsection by its external counsel.

(3) Notwithstanding anything to the contrary in this Agreement, it is expressly understood and agreed that, in connection with obtaining the Regulatory Clearances:

(i) neither the Parent nor the Purchaser shall have any obligation to litigate or contest any administrative or judicial action or Proceeding or any decree, judgment, injunction or other Order, whether temporary, preliminary or permanent; and

(ii) the Parent and the Purchaser shall not be under any obligation to enter into consent decrees or submit to orders providing for (A) the sale, divestiture, license or other disposition or holding separate (through the establishment of a trust or otherwise) of any assets or categories of assets of the Parent or any of its affiliates or the Company or any of its Subsidiaries, (B) the imposition of any limitation or regulation on the ability of the Parent or any of its affiliates to freely conduct their business or own such assets, or (C) the holding separate of the Common Shares or any limitation or regulation on the ability of the Parent or any of its affiliates to exercise full rights of ownership of the Common Shares (any of the foregoing in connection with obtaining the Regulatory Clearances, an "Antitrust Restraint").

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## 5.5 Securityholder Communications

The Company and the Parent agree to co-operate in the preparation of presentations, if any, to securityholders of the Company regarding the Arrangement, provided that nothing shall restrict a Party from responding to investor relations inquiries. Neither the Parent nor the Purchaser will communicate with securityholders of the Company with respect to the Arrangement without the prior written consent of the Company. For greater certainty, the foregoing shall not prevent ordinary course communications with Representatives of the Company (including meeting or interviewing existing employees of the Company) otherwise in accordance with the provisions hereof. Subject to Section 2.4, except as required by applicable Laws, neither the Parent, the Purchaser nor the Company shall, and each shall cause its respective Representatives not to, make any public announcement or statement with respect to the Arrangement, this Agreement, or the financial condition, properties, assets or liabilities of the Company without the approval of the other Parties, such approval not to be unreasonably withheld, conditioned or delayed. In any event, each Party agrees to give prior notice to the other of any such public announcement relating to the Arrangement or this Agreement and agrees to consult with the other prior to issuing each such public announcement. Each of the Parent and the Company agrees that, promptly after the



entering into of this Agreement, it shall issue a press release announcing the entering into of this Agreement, which press release shall, in each case, be satisfactory in form and substance to the other Party, acting reasonably. The Company will file such press release, together with a material change report in prescribed form, with applicable Securities Authorities in each province of Canada in which it is a reporting issuer (or equivalent) under Applicable Securities Laws. Without limiting the generality of the foregoing, the Parent and the Purchaser acknowledge and agree that a copy of this Agreement will be filed on SEDAR and EDGAR by the Company and made available on the Company website promptly following the execution thereof.

## 5.6 Privacy

Each Party shall comply with applicable privacy Laws in the course of collecting, using and disclosing personal information about an identifiable individual ("Transaction Personal Information"). The Purchaser shall not disclose Transaction Personal Information to any person other than to its advisors who are evaluating and advising on the Transactions. If the Purchaser completes the Transactions, the Purchaser shall not, following the Effective Date, without the consent of the individuals to whom such Transaction Personal Information relates or as permitted or required by applicable Law, use or disclose Transaction Personal Information:

- (i) for purposes other than those for which such Transaction Personal Information was collected by the Company prior to the Effective Date; and
- (ii) which does not relate directly to the carrying on of the Company's business or to the carrying out of the purposes for which the Transactions were implemented.

The Company shall protect and safeguard Transaction Personal Information against unauthorized collection, use or disclosure. The Purchaser shall cause its advisors to observe the terms of this Section 5.6 and to protect and safeguard Transaction Personal Information in their possession.

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## ARTICLE VI

### CONDITIONS

#### 6.1 Mutual Conditions Precedent

The obligations of the Parties to complete the Arrangement are subject to the fulfillment, on or before the Effective Time, of each of the following conditions precedent, each of which may only be waived with the mutual consent of the Parties:

- (i) the Arrangement Resolution shall have been approved by the Shareholders at the Company Meeting in accordance with the Interim Order;
- (ii) the Interim Order and the Final Order shall each have been obtained on terms consistent with this Agreement, and shall not have been set aside or modified in a manner inconsistent with this Agreement;

(iii) the Regulatory Clearances shall have been obtained on terms not imposing any Antitrust Restraint and each such Regulatory Clearance is in force and has not been modified in a way that would impose any Antitrust Restraint or that would enjoin or prohibit the closing of the Arrangement;

(iv) no Governmental Entity shall have after the date of this Agreement enacted, issued, promulgated, made, enforced or entered, any Law (whether temporary, preliminary or permanent) that restrains, enjoins or otherwise prohibits consummation of, or dissolves, the Arrangement; and

(v) this Agreement shall not have been terminated in accordance with its terms.

## 6.2 Additional Conditions Precedent to the Obligations of the Parent and the Purchaser

The obligations of the Purchaser to complete the Arrangement are subject to the fulfillment, on or before the Effective Time, of each of the following additional conditions precedent, all of which are included for the sole benefit of the Purchaser and any or all of which may be waived by the Purchaser in whole or in part in its sole discretion without prejudice to any other right the Purchaser may have under this Agreement:

(i) all representations and warranties of the Company set forth in this Agreement shall be true and correct in all respects as of the date hereof and as of the Effective Time as though made at and as of the Effective Time (except for representations and warranties made as of a specified date, the accuracy of which shall be determined as of that specified date), without regard to any materiality or Company Material Adverse Change qualifications contained in them, except where the failure or failures of any such representations and warranties to be so true and correct in all respects would not have, individually or in the aggregate, a Company Material Adverse Change; provided that the representations and warranties of the Company in Sections 1, 2, 3, 4, 7(b)(A) and 21 of Schedule C shall be true in all respects (except in the case of Section 2 of Schedule C for any de minimis inaccuracies, which for the purposes of numerical components of Section 2 of Schedule C shall not increase, individually or in the aggregate, the number of Company Securities by more than 50,000) as of the date hereof and as of the Effective Time as though made at and as of the Effective Time, and the Parent and the Purchaser shall have received a certificate of the Company addressed to the Parent and the Purchaser and dated the Effective Date, signed on behalf of the Company by two senior executive officers of the Company (on the Company's behalf and without personal liability), confirming the same as of the Effective Date;

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(ii) all covenants of the Company under this Agreement to be performed on or before the Effective Time shall have been duly performed by the Company in all material respects, and the Parent and the Purchaser shall have received a certificate of the Company addressed to the Parent and the Purchaser and dated the Effective Date, signed on behalf of the Company by two senior executive officers of the Company (on the Company's behalf and without personal liability), confirming the same as of the Effective Date;

(iii) all Third Party Actions shall have been completed in a manner and on terms that are acceptable to the Purchaser, acting reasonably, and the Parent and the Purchaser shall have received a certificate of the Company addressed to the Parent and the Purchaser and dated as of the Effective Time, signed on behalf of the Company by two senior executive officers of the Company (on the Company's behalf and without personal liability), confirming the same as of the Effective Date;

(iv) since the date of this Agreement, there shall not have occurred, or have been disclosed to the public (if previously undisclosed to the public prior to the date hereof) any Company Material Adverse Change;

(v) no act, action, suit, demand or Proceeding shall have been commenced or threatened in writing by any Governmental Entity and no Law shall have been proposed, enacted, promulgated or applied, in either case:

(a) to cease trade, enjoin, prohibit, or impose material limitations, damages or material additional conditions on, the completion of the Arrangement; or

(b) to impose an Antitrust Restraint;

(vi) the aggregate number of Common Shares held, directly or indirectly, by those holders of such shares who have validly exercised Dissent Rights and not withdrawn such exercise in connection with the Arrangement (or instituted proceedings to exercise Dissent Rights) shall not exceed 5% of the aggregate number of Common Shares outstanding immediately prior to the Effective Time; and

(vii) Parent shall have received the consents and releases described in Item 2 of Section 5.1(1) of the Company Disclosure Letter from each person described in such item, except as set forth therein.

### 6.3 Additional Conditions Precedent to the Obligations of the Company

The obligations of the Company to complete the Arrangement are subject to the fulfillment, on or before the Effective Time, of each of the following additional conditions precedent, all of which are included for the sole benefit of the Company and any or all of which may be waived by the Company in whole or in part in its sole discretion without prejudice to any other right the Company may have under this Agreement:

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(i) all representations and warranties of the Parent and the Purchaser set forth in this Agreement shall be true and correct in all respects, without regard to any materiality qualifications contained in them as at the date hereof and as of the Effective Time, as though made at and as of the Effective Time (except for representations and warranties made as of a specified date, the accuracy of which shall be determined as of that specified date), except where any failure or failures of any such representations and warranties to be so true and correct in all respects would not, individually or in the aggregate, reasonably be expected to materially delay or materially impede the completion of the Arrangement, and the Company shall have received a certificate of the Purchaser addressed to the Company and dated the Effective Date, signed on behalf of the Purchaser by two officers of the Purchaser (on the Purchaser's behalf and without personal liability), confirming the same as of the Effective Date;

(ii) all covenants of the Parent and the Purchaser under this Agreement to be performed on or before the Effective Time shall have been duly performed by the Parent and the Purchaser in all material respects, and the Company shall have received a certificate of the Company addressed to the Company and dated the Effective Date, signed on behalf of the Purchaser by two officers of the Purchaser (on the Purchaser's behalf and without personal liability), confirming the same as of the Effective Date; and

(iii) the Purchaser shall have deposited or caused to be deposited with the Depositary in escrow (the terms and conditions of such escrow to be satisfactory to the Company, acting reasonably) in accordance with Section 2.12 the funds required to effect payment in full of the aggregate Consideration to be paid for the Common Shares and the Depositary shall have confirmed in writing to the Company receipt of those funds.

### 6.4 Satisfaction of Conditions

The conditions precedent set out in Sections 6.1, 6.2, and 6.3 shall be conclusively deemed to have been satisfied, waived or released at the Effective Time. For greater certainty, and notwithstanding the terms of any escrow arrangement entered into between the Purchaser and the Depositary, all funds held in escrow by the Depositary pursuant to Section 2.12 shall be released from escrow at the Effective Time without any further act or formality required on the part of any person.

## ARTICLE VII

### ADDITIONAL AGREEMENTS

#### 7.1 Notice and Cure Provisions

(1) Each Party shall give prompt notice to the other Parties of the occurrence, or failure to occur, at any time from the date hereof until the earlier to occur of the termination of this Agreement and the Effective Time of any event or state of facts which occurrence or failure would, or would be likely to:

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(i) cause any of the representations or warranties of any Party contained herein to be untrue or inaccurate in any material respect on the date hereof or at the Effective Time; or

(ii) result in the failure to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by any Party hereunder prior to the Effective Time.

(2) The Purchaser may not exercise its right to terminate this Agreement pursuant to Section 8.1(1)(iii)(b) [Breach of Representations or Covenants by Company] and the Company may not exercise its right to terminate this Agreement pursuant to Section 8.1(1)(iv)(b) [Breach of Representations or Covenants by Purchaser] unless the Party seeking to terminate this Agreement shall have delivered a written notice to the other Parties specifying in reasonable detail all breaches of covenants, representations and warranties or other matters which the Party delivering such notice is asserting as the basis for the termination right. If any such notice is delivered, provided that a Party is proceeding diligently to cure such matter and such matter is reasonably capable of being cured, no Party may exercise such termination right until the earlier of (i) the Outside Date and (ii) the date that is thirty days following receipt of such notice by the Party to whom the notice was delivered, if such matter has not been cured by such date. If such notice has been delivered prior to the date of the Company Meeting, the notifying Party may elect to request that such meeting shall, unless the Parties agree otherwise, be postponed or adjourned in accordance with the terms of this Agreement until the expiry of such period (without causing any breach of any other provision contained herein).

(3) No notification provided to the Parent or the Purchaser under this Section 7.1 or Section 5.3 shall affect or be deemed to modify any representation or warranty of the Company set forth herein or the conditions to the obligations of Parent and the Purchaser to consummate the Transactions or the remedies available to the parties hereunder.

#### 7.2 Non-Solicitation, Superior Proposal, Right to Match

(1) Subject to Section 7.2(4) and Section 7.2(5), on and after the date hereof until the termination of this Agreement, the Company shall not, directly or indirectly, through any Representative or otherwise, and shall cause each of its Subsidiaries not to, directly or indirectly or through

any Representative:

(i) make, solicit, knowingly assist, initiate, knowingly encourage, promote or otherwise knowingly facilitate (including by way of furnishing non-public information, permitting any visit to any facilities or properties of the Company or any Subsidiary or entering into any form of written or oral agreement, arrangement or understanding) any inquiries, proposals or offers regarding, constituting or that could reasonably be expected to lead to, an Acquisition Proposal;

(ii) participate in any discussions or negotiations with any person (other than the Parent or any of its Representatives) regarding any Acquisition Proposal, provided that, for greater certainty, the Company may advise any person making an unsolicited Acquisition Proposal that such Acquisition Proposal does not constitute a Superior Proposal when the Board of Directors has so determined;

(iii) make a Change in Recommendation;

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(iv) accept, approve, endorse or recommend, or propose publicly to accept, approve, endorse or recommend, or take no position or remain neutral with respect to, any Acquisition Proposal (it being understood that publicly taking no position or a neutral position with respect to an Acquisition Proposal until the earlier to occur of (a) ten business days following the earlier of the receipt and the public announcement of such Acquisition Proposal and (b) two business days prior to the Company Meeting shall not be considered to be in violation of this Section 7.2(1));

(v) release any person from, terminate, waive, amend or modify any provision of or otherwise forbear the enforcement of, any confidentiality or standstill agreement to which it or any of its Subsidiaries is a party, provided that, for avoidance of doubt, any release or deemed waiver from the standstill provisions of any such agreement in accordance with its terms without further agreement or action by the Company or any of its Subsidiaries shall not constitute a breach of this Section 7.2(1); or

(vi) accept, approve, endorse, recommend or enter into, or publicly propose to accept, approve, endorse or enter into, any letter of intent, agreement in principle, agreement, arrangement or understanding related to an Acquisition Proposal.

(2) The Company shall, and shall cause each of its Representatives to, immediately cease and cause to be terminated any existing solicitation, assistance, discussion, encouragement, negotiation or process with or involving any person (other than the Parent or any of its Representatives) conducted heretofore by the Company or any of its Representatives with respect to or which could reasonably be expected to lead to an actual or potential Acquisition Proposal, whether or not initiated by the Company or any of its Representatives and, in connection therewith, the Company will discontinue access to any other third party to any data rooms (virtual or otherwise) made available by and under the control of the Company (and not establish or allow access to any other data rooms, virtual or otherwise or otherwise furnish information). The Company shall immediately request, to the extent permitted under the applicable confidentiality and standstill agreement (and exercise all rights it has to require) the return or destruction of all information provided to any third parties who have entered into a confidentiality and standstill agreement with the Company relating to any potential Acquisition Proposal and shall use commercially reasonable efforts to ensure that such requests are honoured in accordance with the terms of such confidentiality and standstill agreements. The Company shall enforce the provisions of any confidentiality and standstill agreement to which it or any of its Subsidiaries is a party, including by seeking injunctions to prevent any such breaches and to enforce specifically the terms and provisions thereof.

(3) The Company shall promptly (and in any event within 24 hours after it has received any proposal, inquiry, offer or request) notify the Parent, at first orally and then in writing, of any proposal, inquiry, offer or request relating to or constituting an Acquisition Proposal or which could lead to an Acquisition Proposal or any request for non-public information relating to the Company or any of its Subsidiaries in connection with an actual or potential Acquisition Proposal, or for access to properties, books and records or a list of securityholders of the Company or any of its Subsidiaries in connection with an actual or potential Acquisition Proposal. Such notice shall include a description of the terms and

conditions of, and the identity of the person making, any proposal, inquiry, offer or request. The Company shall promptly provide (and in any event within 24 hours thereafter) copies of all correspondence, proposals, inquiries, offers or requests if in writing or electronic form, and if not in writing or electronic form, a description of the terms of such correspondence, sent to the Company by or on behalf of the person making any such Acquisition Proposal or by or on behalf of the Company to the person making such Acquisition Proposal. The Company shall keep the Parent and the Purchaser informed on a prompt basis of the status, including any change to the price offered or any other material terms, of any such proposal (including amendments and proposed amendments), inquiry, offer, request, or any amendment to the foregoing.

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(4) If at any time following the date of this Agreement and prior to obtaining the approval of the Arrangement Resolution by the Shareholders at the Company Meeting, the Company or any of its Representatives receives any bona fide written Acquisition Proposal (including, for greater certainty, a variation or other amendment to an Acquisition Proposal made prior to the date hereof) that provides for consideration per Common Share that is greater than the Consideration and was not solicited after the date hereof in contravention of, and other than any Acquisition Proposal that resulted from a breach of, this Section 7.2 by the Company, its Subsidiaries or its Representatives, then the Company and its Representatives may, if the Board of Directors determines in good faith, after consultation with its outside legal counsel and financial advisors, that such Acquisition Proposal is, or is reasonably likely to lead to, a Superior Proposal, and that the failure to take the relevant action would be inconsistent with its fiduciary duties:

(i) furnish information with respect to the Company and its Subsidiaries to the person making such Acquisition Proposal and its Representatives, provided that (a) the Company has provided 48 hours prior written notice to the Parent and the Purchaser of its decision to take such action, (b) the Company first enters into a confidentiality and standstill agreement with such person that is no less favourable in the aggregate to the Company than the Confidentiality Agreement which may (but which need not) contain a standstill provision on market standard terms and conditions, (c) the Company sends a copy of such confidentiality and standstill agreement to the Parent promptly following its execution and before any non-public information is provided to such person and the Parent is promptly provided (to the extent not previously provided) with any such information provided to such person, and (d) the Company does not provide such person and its Representatives with access to information with respect to the Company and its Subsidiaries in respect of one or more Acquisition Proposals made by that person or persons acting jointly or in concert with such person for a period in excess of thirty days in aggregate; and

(ii) engage in discussions and negotiations with respect to the Acquisition Proposal with the person making such Acquisition Proposal and its Representatives, provided that (a) the Company has provided 48 hours prior written notice to the Parent and the Purchaser of its decision to take such action, (b) the Company first enters into a confidentiality and standstill agreement with such person that is no less favourable in the aggregate to the Company than the Confidentiality Agreement which may (but which need not) contain a standstill provision on market standard terms and conditions, and (c) the Company sends a copy of such confidentiality and standstill agreement to the Parent promptly following its execution and before any non-public information is provided to such person and the Parent is promptly provided (to the extent not previously provided) with any such information provided to such person.

(5) The Company may terminate this Agreement pursuant to Section 8.1(1)(iv)(a) [Definitive Agreement for Superior Proposal] and approve, accept and enter into any agreement, understanding or arrangement in respect of a Superior Proposal (other than a confidentiality and standstill agreement as described in Section 7.2(4)) if and only if:

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(i) the Company has complied in all material respects with its obligations under this Section 7.2;

(ii) the Board of Directors has determined in good faith, after consultation with its outside legal counsel and financial advisors, that such Acquisition Proposal is a Superior Proposal and that the failure to take the relevant action would be inconsistent with its fiduciary duties;

(iii) the Company has delivered written notice to the Parent and the Purchaser of the determination of the Board of Directors that the Acquisition Proposal is a Superior Proposal and of the intention of the Board of Directors to accept, approve or recommend such Superior Proposal and/or of the Company to enter into an agreement with respect to such Superior Proposal, together with a copy of the Acquisition Proposal and all documentation (including all agreements, arrangements and understandings) comprising the Acquisition Proposal to the extent not previously provided and all documentation relating to the Company's valuation of any non-cash consideration included in the Acquisition Proposal (collectively, the "Superior Proposal Notice");

(iv) at least five business days have elapsed from the date the Superior Proposal Notice was received by the Parent and the Purchaser, which five business day period is referred to herein as the "Right to Match Period";

(v) if the Parent and the Purchaser have offered to amend the terms and conditions of this Agreement during the Right to Match Period pursuant to Section 7.2(6), the Board of Directors has determined in accordance with Section 7.2(6) that such Acquisition Proposal continues to be a Superior Proposal when assessed against the Arrangement as it is proposed to be amended as at the termination of the Right to Match Period; and

(vi) prior to or simultaneously with, and as a condition to the effectiveness of a termination of this Agreement pursuant to Section 8.1(1)(iv)(a) [Definitive Agreement for Superior Proposal], the Company pays the Termination Payment prescribed by Section 7.3(2).

(6) During the Right to Match Period, the Parent and the Purchaser will have the opportunity, but not the obligation, to offer to amend the terms of the Arrangement and this Agreement, and the Company shall cooperate with the Parent and the Purchaser with respect thereto, including meeting and negotiating in good faith with the Parent and the Purchaser to enable the Parent and the Purchaser to make such adjustments to the terms and conditions of this Agreement and the Arrangement as the Parent and the Purchaser deem appropriate and as would permit the Parent and the Purchaser to proceed with the Arrangement and any related transactions on such adjusted terms. The Board of Directors will review any such offer by the Parent and the Purchaser to amend the terms of the Arrangement and this Agreement in order to determine, in good faith in the exercise of its fiduciary duties, after consultation with its outside legal counsel and financial advisors, whether the Parent and the Purchaser's offer to amend the Arrangement and this Agreement, upon its acceptance, would result in the applicable Acquisition Proposal ceasing to be a Superior Proposal when assessed against the Arrangement as it is proposed to be amended as at the termination of the Right to Match Period. If the Board of Directors so determines that the applicable Acquisition Proposal would cease to be a Superior Proposal when assessed against the Arrangement as it is proposed to be amended as at the termination of the Right to Match Period, the Parent and the Purchaser will amend the terms of the Arrangement and the Company, the Parent and the Purchaser shall enter into an amendment to this Agreement reflecting the offer by the Parent and the Purchaser to amend the terms of the Arrangement and this Agreement.

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(7) The Board of Directors will promptly reaffirm its Company Recommendation by press release after (i) any Acquisition Proposal is publicly announced or made and the Board of Directors determines it is not a Superior Proposal, (ii) the Board of Directors determines that a proposed amendment to the terms of the Arrangement pursuant to Section 7.2(6) would result in an Acquisition Proposal not being a Superior Proposal when assessed against the Arrangement as it is proposed to be amended as at the termination of the Right to Match Period, and the Parent and the Purchaser have so amended the terms of the Arrangement in accordance with Section 7.2(6), or (iii) the Purchaser, acting reasonably, requests reaffirmation of such Company Recommendation by the Board of Directors. The Parent and the Purchaser will be given a reasonable opportunity to review and comment on the form and content of any such press release.

(8) Each additional amendment to any Acquisition Proposal that results in an increase in, or modification of, the consideration (or value of such consideration) to be received by the Shareholders or otherwise constitutes a material amendment to the Acquisition Proposal will constitute a new Acquisition Proposal for purposes of this Section 7.2, and the Parent and the Purchaser shall be afforded a new Right to Match Period in respect of each such new Acquisition Proposal from the date the Superior Proposal Notice was received by the Parent in respect of such new Acquisition Proposal; provided that the Right to Match Period with respect to such amendment shall be three business days. In the event the

Company provides the notice contemplated by Section 7.2(3) on a date which is less than eleven days prior to the Company Meeting, the Purchaser shall be entitled to require the Company to adjourn or postpone the Company Meeting in accordance with the terms of this Agreement to a date that is not more than ten days after the scheduled date of the Company Meeting, provided that in no event shall such adjourned or postponed meeting be held on a date less than five business days prior to the Outside Date. In the event the Company provides the notice contemplated by Section 7.2(5), the Purchaser shall be entitled to require the Company to adjourn or postpone the Company Meeting to a date that is not less than five business days after the Right to Match Period has expired, provided that in no event shall such adjourned or postponed meeting be held less than five business days prior to the Outside Date. In the event the Company receives any proposal, inquiry, offer or request which could relate to or constitute an Acquisition Proposal on a date which is less than eleven days prior to the Company Meeting, the Board of Directors shall be entitled to adjourn or postpone the Company Meeting in accordance with the terms of this Agreement to a date that is not more than ten days after the scheduled date of the Company Meeting, provided that in no event shall such adjourned or postponed meeting be held on a date less than five business days prior to the Outside Date.

(9) Nothing in this Agreement shall prevent the Board of Directors from issuing a directors' circular or otherwise responding as required by applicable Laws to an Acquisition Proposal or from calling and holding a meeting of Shareholders requisitioned by Shareholders pursuant to the NSCA or ordered to be held by a court pursuant to the NSCA.

### 7.3 Expense Reimbursement and Termination Payment

(1) Subject to Section 5.4(1)(v), each Party shall pay all fees, costs and expenses incurred by such Party in connection with this Agreement and the Arrangement; provided that the Company acknowledges that the Parent, in connection with the negotiation and completion of the Transactions, shall be deemed to have incurred costs and expenses in the aggregate amount of U.S.\$3,000,000 (the "Expense Reimbursement") in connection with such negotiations, this Agreement and the Transactions, and the Company shall pay to the Parent the Expense Reimbursement if this Agreement is terminated pursuant to Section 8.1(1)(ii)(c) [Failure to receive Requisite Shareholder Approval] promptly by wire transfer of immediately available funds.

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(2) If a Termination Payment Event occurs, the Company shall pay as directed by the Parent in writing (by wire transfer of immediately available funds) the Termination Payment in accordance with Section 7.3(3). For the purposes of this Agreement, "Termination Payment" means U.S.\$17,500,000, and "Termination Payment Event" means the termination of this Agreement pursuant to:

(i) Section 8.1(1)(iii)(a) [Change in Recommendation] prior to the Company Meeting or Section 8.1(1)(iv)(a) [Definitive Agreement for Superior Proposal]; or

(ii) Section 8.1(1)(ii)(a) [Outside Date] or Section 8.1(1)(ii)(c) [Failure to Receive Requisite Shareholder Approval] either by the Company or the Purchaser, or Section 8.1(1)(iii)(b) [Breach of Representations or Covenants] by the Purchaser, but only if, in the case of this paragraph (ii): (a) following the date hereof and prior to the termination of this Agreement, an Acquisition Proposal shall have been publicly announced or otherwise made known to the Company by any person other than the Purchaser or the Parent or any affiliate thereof and not unconditionally withdrawn or terminated prior to termination, and (b) a definitive agreement providing for an Acquisition Proposal is entered into within 12 months of termination of this Agreement, and such Acquisition Proposal is later consummated or effected (whether or not within such one-year period) and provided that for the purposes of this paragraph (ii), all references to "20% or more" in the definition of Acquisition Proposal shall be changed to "more than 50%".

(3) If a Termination Payment Event occurs due to a termination of this Agreement by the Company pursuant to Section 8.1(1)(iv)(a) [Definitive Agreement for Superior Proposal], the Termination Payment shall be paid prior to or simultaneously with the giving of the notice of termination of this Agreement by the Company. If a Termination Payment Event occurs due to a termination of this Agreement by the Purchaser pursuant to Section 8.1(1)(iii)(a) [Change in Recommendation], the Termination Payment shall be paid within five business days following receipt



by the Company of notice of termination of this Agreement by the Purchaser. If a Termination Payment Event occurs in the circumstances set out in Section 7.3(2)(ii), the Termination Payment shall be paid upon the consummation of the applicable Acquisition Proposal referred to therein. For the avoidance of doubt, in the event that the Company terminates this Agreement at a time when the Parent or the Purchaser would have had the right to terminate this Agreement and be entitled hereunder to receive the Termination Payment or the Expense Reimbursement, the Parent shall be entitled to receipt of the Termination Payment or the Expense Reimbursement that would have been (or would have subsequently become) payable had the Parent terminated this Agreement at such time.

(4) Upon written notice to the Company, the Parent may assign its right to receive the Termination Payment or the Expense Reimbursement to any of its Subsidiaries or affiliates.

(5) The Company shall not be obligated to make more than one Termination Payment or Expense Reimbursement, respectively, under this Section 7.3 if one or more of the events specified herein occur. Notwithstanding any other provision of this Agreement, if the Company has paid the Expense Reimbursement to or at the direction of the Parent in accordance herewith, and a Termination Payment subsequently becomes payable, the Termination Payment shall be reduced by the amount of the Expense Reimbursement.

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(6) Each of the Parties acknowledges that the agreements contained in this Section 7.3 are an integral part of the Transactions and that, without these agreements, the Parties would not enter into this Agreement. Accordingly, if the Company shall fail to pay in a timely manner the Termination Payment or Expense Reimbursement due pursuant to this Section 7.3, and, in order to obtain such payment, the Parent makes a claim that results in a judgment against the Company, the Company shall pay to the Parent its reasonable costs and expenses (including its reasonable attorneys' fees and expenses) incurred in connection with such suit, together with interest on the Termination Payment or Expense Reimbursement due pursuant to this Section 7.3 at the prime rate of the Royal Bank of Canada in effect on the date such payment was required to be made, plus three percentage points. Subject to Sections 8.2 and 9.4, payment of the Termination Payment or Expense Reimbursement pursuant to this Section 7.3 shall be in lieu of any damages or any other payment or remedy to which the Parent or the Purchaser may be entitled in connection with, or arising pursuant to, this Agreement or the Transactions.

#### 7.4 Information Rights

The Parent and the Purchaser acknowledge having completed their due diligence investigation of the Company, but, for informational purposes only the Company agrees, upon reasonable notice, to continue to provide the Purchaser and its Representatives with reasonable access without unreasonable disruption to the conduct of the Company's business during normal business hours to the books, records, information and files in the Company's possession and control, and access (upon reasonable advance notice during normal business hours and with, at the Company's option, a Company representative present) to its personnel on an as requested basis, as well as reasonable access to the properties of the Company and each of its Subsidiaries, for strategic planning purposes; provided, however, that no such access shall affect the representations, warranties, covenants, agreements or obligations of the Parties (or remedies with respect thereto) or the conditions to the obligations of the Parties under this Agreement. The Company shall cooperate with the Parent and the Purchaser to promptly provide, without unreasonable disruption to the conduct of the Company's business, any information that they reasonably request. The foregoing shall be subject to the Confidentiality Agreement and nothing in the foregoing shall require the Company to disclose information which it is prohibited from disclosing pursuant to applicable Law.

#### 7.5 Shareholder Claims

The Company shall promptly notify the Purchaser and the Parent of any claim brought by (or threatened to be brought by) any present, former or purported holder of any securities of the Company in connection with any of the Transactions. The Company shall consult with the Purchaser and the Parent prior to settling any such claim and shall not settle or compromise, or agree to settle or compromise, any such claim without the prior written consent of the Parent and the Purchaser, such consent not to be unreasonably withheld or delayed.

## 7.6 Benefit Plans

If requested by Parent at least five days prior to the Effective Time, the Company shall terminate, or shall cause its Subsidiaries to terminate, any and all Benefit Plans intended to qualify under Section 401(k) of the Code, effective not later than the day immediately preceding the Effective Time. In the event that Parent requests that such 401(k) plan(s) be terminated, the Company shall provide Parent with evidence that such 401(k) plan(s) have been terminated pursuant to resolution of the Board of Directors or the relevant Subsidiary (in form and substance reasonably satisfactory to Parent) not later than the day immediately preceding the Effective Time. Prior to the adoption of such resolution, the Company shall provide Parent with a draft thereof and a reasonable opportunity to review and comment on such resolution.

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## 7.7 Materials Transfer Agreement

The Company shall deliver the "Materials" (as defined in the MTA) to the Parent in accordance with the MTA, which the Parent may use solely in accordance with applicable Law and subject to the terms set forth in the MTA.

## ARTICLE VIII

### TERMINATION, AMENDMENT AND WAIVER

#### 8.1 Termination

(1) This Agreement may be terminated and the Arrangement may be abandoned at any time prior to the Effective Time (notwithstanding any approval of this Agreement or the Arrangement Resolution or the Arrangement by the Shareholders and/or the Court):

(i) by mutual written agreement of the Company, the Parent and the Purchaser;

(ii) by either the Company or the Purchaser, if:

(a) the Effective Time shall not have occurred on or before the Outside Date, except that the right to terminate this Agreement under this Section 8.1(1)(ii)(a) shall not be available to any such Party whose failure (or, in the case of the Purchaser, the failure of any of the Purchaser or the Parent) to fulfill any of its obligations has been the principal cause of, or resulted in, the failure of the Effective Time to occur by such date;

(b) after the date hereof, there shall be enacted, issued, promulgated, made, enforced or amended any Law (which applicable Law shall have become final and non-appealable) that restrains, enjoins or otherwise prohibits the consummation of, or dissolves, the Arrangement; or

(c) the Arrangement Resolution shall have failed to receive the Requisite Shareholder Approval at the Company Meeting (including any adjournment or postponement thereof) in accordance with the Interim Order;

(iii) by the Purchaser, if:

(a) prior to obtaining the approval of the Arrangement Resolution by the Shareholders, (A) the Board of Directors shall have effected a Change in Recommendation, (B) the Company shall have breached Section 7.2 in any material respect, or (C) the Purchaser requests in writing that the Board of Directors unconditionally reaffirm its Company Recommendation and the Board of Directors shall not have done so by the earlier to occur of (x) the tenth business day following receipt of such request and (y) two business days prior to the Company Meeting;

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(b) subject to Section 7.1(2), a breach of any representation or warranty or failure to perform any covenant or agreement on the part of the Company set forth in this Agreement shall have occurred that would cause the conditions set forth in Section 6.1 or Section 6.2 not to be satisfied at such time; provided that the Purchaser or the Parent is not then in breach of this Agreement so as to cause any of the conditions set forth in Section 6.1 or Section 6.3 not to be satisfied; or

(c) after the date hereof and prior to the Effective Time, a Company Material Adverse Change has occurred;

(iv) by the Company, if:

(a) prior to obtaining the approval of the Arrangement Resolution by the Shareholders, the Board of Directors authorizes the Company, subject to complying with the terms of Section 7.2 and Section 7.3(2), to approve, accept and enter into a definitive agreement (other than a confidentiality agreement) with respect to a Superior Proposal;

(b) subject to Section 7.1(2), a breach of any representation or warranty or failure to perform any covenant or agreement on the part of any of the Purchaser or the Parent set forth in this Agreement shall have occurred that would cause the conditions set forth in Section 6.1 or Section 6.3 not to be satisfied at such time; provided that the Company is not then in breach of this Agreement so as to cause any of the conditions set forth in Section 6.1 or Section 6.2 not to be satisfied; or

(c) the Purchaser does not provide or cause to be provided the Depository with sufficient funds to complete the Arrangement as required pursuant to Section 2.12.

(2) The Party desiring to terminate this Agreement pursuant to this Section 8.1 (other than pursuant to Section 8.1(1)(i)) shall give written notice of such termination to the other Parties.

## 8.2 Effect of Termination

If this Agreement is terminated pursuant to Section 8.1, this Agreement shall become void and of no effect without liability of any Party (or any shareholder, director, officer, employee, agent, consultant or representative of such Party) to any other Party hereto, except that (i) the provisions of this Section 8.2, Section 5.2(1)(i), Section 5.6, Section 7.3, Section 9.2, Section 9.3, Section 9.6, Section 9.9, Section 9.10 and Section 9.11 (including all related definitions set forth herein) shall survive any termination hereof pursuant to Section 8.1(1), and (ii) neither the termination of this Agreement nor anything contained in this Section 8.2 shall relieve or have the effect of relieving any Party in any way from liability for damages incurred or suffered by any other Party as a result of a knowing, intentional or wilful breach of this Agreement, including a

knowing, intentional, wilful or fraudulent making of a representation or knowing, intentional or wilful non-compliance with a covenant of this Agreement. Subject to the foregoing provisions of this Section 8.2 and Section 9.4, payment of the Termination Payment or Expense Reimbursement pursuant to Section 7.3 shall be in lieu of any damages or any other payment or remedy to which the Parent or the Purchaser may be entitled in connection with, or arising pursuant to, this Agreement or the Transactions.

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### 8.3 Waiver

(1) At any time prior to the termination of this Agreement pursuant to Section 8.1, any Party may (i) extend the time for the performance of any of the obligations or other acts of any other Party or (ii) waive compliance with any of the agreements of the other Party or with any conditions to its own obligations, in each case only to the extent such obligations, agreements and conditions are intended for its benefit.

(2) No waiver of any of the provisions of this Agreement by any Party shall be effective unless in writing and any waiver shall affect only the matter, and the occurrence thereof, specifically identified and shall not extend to any other matter or occurrence. No failure or delay by any Party in exercising any right, power or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege under this Agreement.

## ARTICLE IX

### GENERAL PROVISIONS

#### 9.1 Directors' and Officers' Insurance

(1) Prior to the Effective Date, the Company shall purchase pre-paid, non-cancellable directors' and officers' liability insurance for the Company's present and former directors and officers and those of its Subsidiaries, covering claims made prior to and within six years after the Effective Time, on a "trailing" or "run-off" basis and otherwise bearing such terms and conditions as the Company may, in its sole discretion, determine, provided that such insurance is available at a one-time cost that is not in excess of 250% of the annual cost to the Company of the Company's current directors' and officers' insurance policy and that the Company shall have consulted with the Parent as to the pricing and scope of such insurance. From and after the Effective Time, the Company or the Parent, as applicable, agrees not to take any action to terminate such directors' and officers' liability insurance or adversely affect the rights of the Company's present and former directors and officers thereunder.

(2) Following the Effective Time, and subject to compliance with applicable Laws, the Parent shall cause the Company and its Subsidiaries (or their successors) to comply with all of their obligations to the present and former employees, directors and officers of the Company and its Subsidiaries under the agreements and rights to indemnification or exculpation as are disclosed in the Company Disclosure Letter, including by paying to the individuals party to such agreements, in each case, such amounts as are required in accordance with such agreements. Subject to compliance with applicable Laws, such rights to indemnification or exculpation shall not be amended, repealed or otherwise modified in a manner that would adversely affect the rights of present and former officers and directors of the Company and its Subsidiaries for a period of six years from the Effective Time.

#### 9.2 Notices

Any notice, consent, waiver, direction or other communication required or permitted to be given under this Agreement by a party shall be in writing and may be given by delivering same or sending same by facsimile transmission or by delivery addressed to the party to which the notice is to be given at its address for service herein. Any notice, consent, waiver, direction or other communication aforesaid shall, if delivered, be deemed to have been given and received on the date on which it was delivered to the address provided herein (if a business day, if not, the next succeeding business day) and if sent by facsimile transmission be deemed to have been given and received at the time of receipt (if a business day, if not, the next succeeding business day) unless actually received after 4:30 p.m. (local time) at the point of delivery in which case it shall be deemed to have been given and received on the next business day.

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(i) if to the Company:

Special Committee of the Board of Directors

Attention: Catherine Mackey, Chair

Facsimile: 905-629-4959

Attention: Nick Glover, President and CEO

Facsimile: 905-629-4959

with a copy (which shall not itself constitute notice) to:

Gowling Lafleur Henderson LLP

1 First Canadian Place

100 King Street West

Suite 1600

Toronto Ontario M5X 1G5

Attention: Vanessa Grant

Facsimile: 416-862-7661

and

Heenan Blaikie LLP

Bay Adelaide Centre

P.O. Box 2900

333 Bay Street, Suite 2900

Toronto Ontario M5H 2T4

Attention: Sonia Yung

Facsimile: 416-360-8425

(ii) if to the Parent or the Purchaser:

Gilead Sciences, Inc.

333 Lakeside Drive

Foster City, California 94404

Attention: General Counsel

Facsimile: (650) 522-5771

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with a copy (which shall not itself constitute notice) to:

Wilson Sonsini Goodrich & Rosati

One Market Plaza

Spear Tower, Suite 3300

San Francisco, CA 94105-1126

Attention: Martin W. Korman and Denny Kwon

Facsimile: (415) 947-2099

and

Blake, Cassels & Graydon LLP

199 Bay Street

Suite 4000, Commerce Court West

Toronto, Ontario M5L 1A9

Attention: Michael Gans  
Facsimile: (416) 863-2653

### 9.3 Governing Law, Jurisdiction

This Agreement shall be governed in all respects, including validity, interpretation and effect, by the Laws of the Province of Ontario and the federal Laws of Canada applicable therein, without giving effect to any principles of conflict of Laws thereof that would result in the application of the Laws of any other jurisdiction. The Parties irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario with respect to any dispute, claim or other matter arising under this Agreement.

### 9.4 Injunctive Relief and Specific Performance

The Parties agree that irreparable damage would occur for which money damages would not be an adequate remedy at Law in the event that any provision of this Agreement were not performed in accordance with its specific terms or were otherwise breached, and that money damages or other legal remedies would not be an adequate remedy for any such damages. Accordingly, the Parties acknowledge and hereby agree that in the event of any breach or threatened breach by the Company, on the one hand, or the Parent or the Purchaser, on the other hand, of any of their respective covenants or obligations set forth in this Agreement, the Company, on the one hand, and the Parent and the Purchaser, on the other hand, shall be entitled to seek an injunction or injunctions and other equitable relief to prevent or restrain breaches or threatened breaches of this Agreement by the other, and to seek enforcement of the terms and provisions of this Agreement to prevent breaches or threatened breaches of, or to enforce compliance with, the covenants and obligations of the other under this Agreement. The Parties further agree that (i) by seeking the remedies provided for in this Section 9.4, a Party shall not in any respect waive its right to seek any other form of relief that may be available to a Party under this Agreement in the event that this Agreement has been terminated or in the event that the remedies provided for in this Section 9.4 are not available or otherwise are not granted, and (ii) nothing set forth in this Section 9.4 shall require any party to institute any proceeding for (or limit any Party's right to institute any proceeding for) specific performance under this Section 9.4 prior or as a condition to exercising any termination right under Article VIII (and pursuing damages after such termination), nor shall the commencement of any legal proceeding restrict or limit any Party's right to terminate this Agreement in accordance with the terms of Article VIII or pursue any other remedies under this Agreement that may be available then or thereafter.

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### 9.5 Time of Essence

Time shall be of the essence in this Agreement.

### 9.6 Entire Agreement, Binding Effect

This Agreement, the Company Disclosure Letter and the Confidentiality Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and thereof and cancel and supersede all such prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties. There are no conditions, covenants, agreements, representations, warranties or other provisions, whether oral or written, express or implied, collateral, statutory or otherwise, relating to the subject matter hereof other than those contained in this Agreement, the Company Disclosure Letter and the Confidentiality Agreement.

#### 9.7 Assignment

This Agreement shall not be assigned by operation of Law or otherwise other than as expressly permitted by this Agreement. This Agreement may be assigned by the Company with the prior written consent of the Parent and the Purchaser and may be assigned by the Parent and the Purchaser with the prior written consent of the Company. The Purchaser may assign, without the consent of the Company, all or any part of its rights under this Agreement to, and its obligations under this Agreement may be assumed by, a Subsidiary of the Parent, provided that if such assignment and/or assumption takes place, the Purchaser shall continue to be liable jointly and severally with such Subsidiary for all of its obligations hereunder.

#### 9.8 Severability

If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule or Law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the Transactions are 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 shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the Transactions are fulfilled to the fullest extent possible.

#### 9.9 Contra Proferentum

The Parties waive the application of any rule of Law which otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same.

#### 9.10 No Third Party Beneficiaries

This Agreement is not intended to confer on any person other than the Parties, any rights or remedies, except that the provisions of Section 2.4(5), Section 5.2(1)(i) and Section 9.1 are (i) intended for the benefit of the persons specified therein as and to the extent applicable in accordance with their terms, and will be enforceable by each of such persons and his or her heirs, executors, administrators and other legal representatives and the Company will hold the rights and benefits of Section 2.4(5), Section 5.2(1)(i) and Section 9.1 in trust for and on behalf of such persons and the Company hereby accepts such trust and agrees to hold the benefit of and enforce performance of such covenants on behalf of such persons as directed by such persons, and (ii) in addition to, and not in substitution for, any other rights that such persons may have by contract or otherwise.

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#### 9.11 No Liability

No director or officer of the Parent or the Purchaser shall have any personal liability whatsoever to the Company or any third party beneficiary under this Agreement and the Plan of Arrangement or any other document delivered in connection with the Transactions on behalf of the Parent and the Purchaser. No director or officer of the Company shall have any personal liability whatsoever to the Parent and the Purchaser under this Agreement and the Plan of Arrangement or any other document delivered in connection with the Transactions on behalf of the Company.



9.12 Counterparts, Execution

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be original and all of which taken together shall be deemed to constitute one and the same instrument, and it shall not be necessary in making proof of this Agreement to produce more than one counterpart. The Parties shall be entitled to rely upon delivery of an executed facsimile, PDF email transmission or similar executed electronic copy of this Agreement, and such facsimile, PDF email transmission or similar executed electronic copy shall be legally effective to create a valid and binding agreement among the Parties.

9.13 Amendments

This Agreement and the Plan of Arrangement may, at any time and from time to time before or after the holding of the Company Meeting but not later than the Effective Time, be amended by mutual written agreement of the Parties, and any such amendment may, subject to the Interim Order and Final Order and applicable Laws, without limitation:

- (i) change the time for performance of any of the obligations or acts of the Parties;
- (ii) modify any representation or warranty contained herein or in any document delivered pursuant hereto;
- (iii) modify any of the covenants herein contained and waive or modify performance of any of the obligations of the Parties; and/or
- (iv) modify any mutual conditions precedent herein contained.

[Remainder of page intentionally left blank.]

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IN WITNESS WHEREOF, the Parent, the Purchaser and the Company have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

GILEAD SCIENCES, INC.

By: "John F. Milligan"

Name: John F. Milligan, Ph.D.

Title: President and Chief Operating Officer

3268218 NOVA SCOTIA LIMITED

By: "Brett A. Pletcher"

YM BIOSCIENCES INC.

By: "Nick Glover"

Name: Nick Glover

Title: President & CEO

## SCHEDULE A

### ARRANGEMENT RESOLUTION

#### BE IT RESOLVED THAT:

1. The arrangement (the "Arrangement") under Section 130 of the Companies Act (Nova Scotia) (the "NSCA") of YM BioSciences Inc. (the "Company"), as more particularly described and set forth in the management information circular (the "Company Circular") dated December n, 2012 of the Company accompanying the notice of this meeting (as the Arrangement may be amended, modified or supplemented in accordance with the arrangement agreement (the "Arrangement Agreement")) made as of December 12, 2012 between the Company, the Parent and the Purchaser, is hereby authorized, approved and adopted.
2. The plan of arrangement of the Company (as it has been or may be amended, modified or supplemented in accordance with the Arrangement Agreement and its terms, the "Plan of Arrangement"), the full text of which is set out in Appendix "●" to the Company Circular, is hereby authorized, approved and adopted.
3. The (i) Arrangement Agreement and related transactions, (ii) actions of the directors of the Company in approving the Arrangement Agreement, and (iii) actions of the directors and officers of the Company in executing and delivering the Arrangement Agreement, and any amendments, modifications or supplements thereto, are hereby ratified and approved.
4. The Company be and is hereby authorized to apply for a final order from the Supreme Court of Nova Scotia to approve the Arrangement on the terms set forth in the Arrangement Agreement and the Plan of Arrangement (as they may be amended, modified or supplemented and as described in the Company Circular).
5. Notwithstanding that these resolutions have been passed (and the Arrangement adopted) by the shareholders of the Company or that the Arrangement has been approved by the Supreme Court of Nova Scotia, the directors of the Company are hereby authorized and empowered to, without notice to or approval of the shareholders of the Company, (i) amend, modify or supplement the Arrangement Agreement or the Plan

of Arrangement to the extent permitted by the Arrangement Agreement or the Plan of Arrangement, and (ii) subject to the terms of the Arrangement Agreement, not to proceed with the Arrangement and related transactions.

6. Any officer or director of the Company is hereby authorized and directed for and on behalf of the Company to execute and deliver for filing with the Registrar under the NSCA the Final Order and such other documents as are necessary or desirable to give effect to the Arrangement in accordance with the Arrangement Agreement, such determination to be conclusively evidenced by the execution and delivery of such articles of arrangement and any such other documents.

7. Any officer or director of the Company is hereby authorized and directed for and on behalf of the Company to execute or cause to be executed and to deliver or cause to be delivered all such other documents and instruments and to perform or cause to be performed all such other acts and things as such person determines may be necessary or desirable to give full effect to the foregoing resolution and the matters authorized thereby, such determination to be conclusively evidenced by the execution and delivery of such document or instrument or the doing of any such act or thing.

## SCHEDULE B

### PLAN OF ARRANGEMENT

#### UNDER SECTION 130

#### OF THE COMPANIES ACT (NOVA SCOTIA)

### ARTICLE 1

#### INTERPRETATION

##### 1.1 Definitions

Unless indicated otherwise, where used in this Plan of Arrangement, capitalized terms used but not defined shall have the meanings specified in the Arrangement Agreement and the following terms shall have the following meanings (and grammatical variations of such terms shall have corresponding meanings):

"Arrangement" means the arrangement under section 130 of the NSCA on the terms and subject to the conditions set forth in this Plan of Arrangement, subject to any amendments or variations made in accordance with the terms of the Arrangement Agreement or Section 5.1 of this Plan of Arrangement or made at the direction of the Court in the Final Order with the prior written consent of the Company and the Purchaser, each acting reasonably.

"Arrangement Agreement" means the arrangement agreement made as of December 12, 2012 among the Parent, the Purchaser and the Company (including the Schedules thereto) as it may be amended, modified or supplemented from time to time in accordance with its terms.

"Arrangement Resolution" means the special resolution of the Shareholders approving this Plan of Arrangement to be considered at the Company Meeting.

"Business Day" means any day (other than a Saturday, a Sunday or a statutory or civic holiday) on which commercial banks located in Halifax, Nova Scotia, Toronto, Ontario and San Francisco, California are open for the conduct of business.

"Canadian Equivalent of the Consideration per Common Share" means the amount in the Canadian dollar equivalent of the Consideration per Common Share on the basis of the noon United States to Canadian dollar exchange rate on the date that is three Business Days immediately preceding the Effective Date as reported by the Bank of Canada.

"Common Shares" means common shares in the capital of the Company, including common shares issued on conversion, exchange or exercise of Convertible Securities, together in each case with the associated SRP Rights.

"Company" means YM BioSciences Inc., a company continued under the laws of the Province of Nova Scotia.

"Company Meeting" means the special meeting of the Shareholders, including any adjournment or postponement of such special meeting in accordance with the terms of the Arrangement Agreement, to be called and held in accordance with the Interim Order to consider the Arrangement Resolution.

"Consideration" means U.S.\$2.95 in cash per Common Share, subject to adjustment in accordance with the terms of the Arrangement Agreement and Section 2.4 of this Plan of Arrangement.

"Convertible Securities" means, collectively, the Options, Warrants and any other securities of the Company that are convertible into or exchangeable or exercisable for Common Shares.

"Court" means the Supreme Court of Nova Scotia.

"Depository" means CIBC Mellon Trust Company, as depository.

"Dissent Rights" has the meaning specified in Section 3.1.

"Dissenting Shareholder" means a registered Shareholder who has validly exercised its Dissent Rights and has not withdrawn or been deemed to have withdrawn such exercise of Dissent Rights, but only in respect of the Common Shares in respect of which Dissent Rights are validly exercised by such registered Shareholder.

"Effective Date" means the date of filing of the Final Order with the Registrar giving effect to the Arrangement.

"Effective Time" means the time of filing of the Final Order with the Registrar on the Effective Date.

"Exchanges" means the TSX and NYSE.

"Final Order" means the order of the Court approving the Arrangement as such order may be amended by the Court (with the consent of both the Company and the Purchaser, each acting reasonably) at any time prior to the Effective Date or, if appealed, then, unless such appeal is withdrawn or denied, as affirmed or as amended (provided that any such amendment is acceptable to both the Company and the Purchaser, each acting reasonably) on appeal.

"Governmental Entity" means any (i) supranational, multinational, federal, territorial, provincial, state, regional, municipal, local or other governmental or public ministry, department, authority, body, central bank, court, commission, tribunal, board, bureau or agency, domestic or foreign, (ii) subdivision, agent or authority of any of the above, (iii) quasi-governmental or private body, including any tribunal, commission, regulatory agency or self-regulatory organization, exercising any regulatory, expropriation or taxing authority under or for the account of any of the above, or (iv) stock exchange (including the Exchanges), and "Governmental Entities" means more than one Governmental Entity.

"Interim Order" means the order of the Court in a form acceptable to the Company and the Purchaser, acting reasonably, providing for, among other things, summoning and holding of the Company Meeting, as the same may be amended by the Court with the consent of the Company and the Purchaser, each acting reasonably.

"Law" means any applicable laws, including international, multinational, federal, national, provincial, state, municipal and local laws (statutory, common or otherwise), constitutions, treaties, conventions, statutes, principles of law and equity, rulings, ordinances, judgments, determinations, awards, decrees, injunctions, writs, certificates and orders, notices, bylaws, rules, regulations, ordinances, or other requirements, policies, guidelines, standards or instruments, whether domestic or foreign, and the terms and conditions of any grant of approval, permission, authority or licence or other similar requirement enacted, adopted, promulgated, or applied by any Governmental Entity (including the Exchanges) having the force of law, and the term "applicable" with respect to such Laws and in a context that refers to one or more persons, means such Laws as are binding upon or applicable to such person or its assets.

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"Letter of Transmittal" means the letter of transmittal delivered by the Company to the Shareholders for use in connection with the Arrangement.

"Lien" means any mortgage, hypothec, pledge, assignment, charge, lien, prior claim, security interest, encroachment, option, right of first refusal or first offer, occupancy rights, covenants, restrictions adverse interest, adverse claim, other third person interest or encumbrance of any kind, whether contingent or absolute, and any agreement, option, right or privilege (whether by Law, contract or otherwise) capable of becoming any of the foregoing.

"NSCA" means the Companies Act (Nova Scotia), and the regulations promulgated thereunder, as amended.

"Notice of Dissent" means a notice of dissent duly and validly given by a registered Shareholder exercising Dissent Rights as contemplated in the Interim Order and as described in Article 3.

"Option" means an option to purchase Common Shares granted by the Company under the Stock Option Plan or otherwise.

"Parent" means Gilead Sciences, Inc., a corporation existing under the laws of Delaware.

"Parties" means, collectively, the Company, the Parent and the Purchaser, and "Party" means any one of them.

"Person" includes an individual, general partnership, limited partnership, corporation, company, limited liability company, body corporate, joint venture, unincorporated organization, other form of business organization, trust, trustee, executor, administrator or other legal representative, government (including any Governmental Entity) or any other entity, whether or not having legal status.

"Plan of Arrangement" means this plan of arrangement proposed under Section 130 of the NSCA, and any amendments or variations made thereto in accordance with the Arrangement Agreement or Section 5.1 of this Plan of Arrangement or made at the direction of the Court in the Final Order with the written consent of the Company and the Purchaser, each acting reasonably.

"Purchaser" means 3268218 Nova Scotia Limited, a company incorporated under the laws of the Province of Nova Scotia.

"Registrar" means the Registrar of Joint Stock Companies for the Province of Nova Scotia.

"Shareholder Rights Plan" means the shareholder rights plan agreement dated October 22, 2007 entered into between the Company and CIBC Mellon Trust Company and ratified by the Company's shareholders on November 18, 2010.

"Shareholders" means the registered and/or beneficial holders of Common Shares, as the context requires.

"SRP Right" means a right issued pursuant to the Shareholder Rights Plan.

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"Stock Option Plan" means the Amended and Restated Stock Option Plan of the Company dated September 19, 2012, as amended, restated and/or supplemented.

"Tax" means, with respect to any person, all supranational, federal, state, local, provincial, branch or other taxes, including income taxes, gross receipts taxes, windfall profits taxes, value added taxes, severance taxes, ad valorem taxes, property taxes, capital taxes, net worth taxes, production taxes, sales taxes, use taxes, licence taxes, excise taxes, franchise taxes, environmental taxes, transfer taxes, withholding or similar taxes, payroll taxes, employment taxes, pension plan premiums, social security premiums, workers' compensation premiums, employment insurance or compensation premiums, stamp taxes, occupation taxes, premium taxes, alternative or add-on minimum taxes, goods and services tax, harmonized sales taxes, customs duties or other taxes of any kind whatsoever imposed, required to be withheld or accounted for, or charged by any Governmental Entity, together with instalments of any such taxes and any interest, penalties, or additions with respect thereto and any interest in respect of such additions or penalties.

"Tax Act" means the Income Tax Act (Canada) and the rules and regulations promulgated thereunder, as amended.

"Warrants" means the outstanding share purchase warrants issued by the Company.

"Warrant Letter of Transmittal" means the letter of transmittal delivered by the Company to holders of Warrants for use in connection with the Arrangement.

## 1.2 Currency

Unless otherwise stated, all references in this Plan of Arrangement to sums of money are expressed in, and all payments provided for herein shall be made in, U.S. currency and "U.S.\$" or "\$" refers to United States dollars. All references to "Cdn.\$" refers to Canadian dollars.

## 1.3 Headings, etc.

The division of this Plan of Arrangement into Articles and Sections and the insertion of headings are for convenient reference only and do not affect the construction or interpretation of this Plan of Arrangement.

## 1.4 Number and Gender, etc.

Unless the context requires to the contrary, any reference to gender includes all genders. Words importing the singular number only include the plural and vice versa.

## 1.5 Certain Phrases, etc.

The words (i) "including", "includes" and "include" mean "including (or includes or include) without limitation," (ii) "the aggregate of", "the total of", "the sum of", or a phrase of similar meaning means "the aggregate (or total or sum), without duplication, of," and (iii) unless stated otherwise, "Article", "Section", and "Schedule" followed by a number or letter mean and refer to the specified Article or Section of or Schedule to this Plan of Arrangement.

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## 1.6 Statutes.

Any reference to a statute refers to such statute and all rules, resolutions and regulations made under it, as it is or as they may have been or may from time to time be amended or re-enacted, unless stated otherwise.

## 1.7 Computation of Time.

A period of time is to be computed as beginning on the day following the event that began the period and ending at 4:30 p.m. on the last day of the period, if the last day of the period is a Business Day, or at 4:30 p.m. on the next Business Day if the last day of the period is not a Business Day. If the date on which any action is required or permitted to be taken under this Plan of Arrangement by a Person is not a Business Day, such action shall be required or permitted to be taken on the next succeeding day which is a Business Day.

#### 1.8 Time References.

References to time herein or in any Letter of Transmittal or Warrant Letter of Transmittal are to local time, Halifax, Nova Scotia, Canada.

## ARTICLE 2

### THE ARRANGEMENT

#### 2.1 Arrangement Agreement

This Plan of Arrangement is made pursuant to and subject to the provisions of the Arrangement Agreement.

#### 2.2 Binding Effect

This Plan of Arrangement and the Arrangement will become effective, and be binding on the Parent, the Purchaser, the Company, all holders and beneficial owners of Common Shares, including Dissenting Shareholders, Options, Warrants, the register and transfer agent of the Company, the Depositary and all other Persons, at and after, the Effective Time without any further act or formality required on the part of any Person.

#### 2.3 Arrangement

At the Effective Time each of the following events shall occur and shall be deemed to occur sequentially as set out below without any further authorization, act or formality, in each case, unless stated otherwise, effective as at five minute intervals starting at the Effective Time:

(a) notwithstanding the terms of the Shareholder Rights Plan, the Shareholder Rights Plan shall be terminated and all SRP Rights issued pursuant to the Shareholder Rights Plan shall be cancelled without any payment in respect thereof;

(b) notwithstanding the Stock Option Plan or any agreements or other arrangements relating to the Options, each Option outstanding immediately prior to the Effective Time (whether vested or unvested) shall be transferred from the holder thereof to the Company in consideration for a cash payment by or on behalf of the Company equal to the amount, if any, by which the Canadian Equivalent of the Consideration per Common Share, in respect of each Option, exceeds the exercise price per Common Share of such Option, subject to (for greater certainty) applicable Tax withholdings and other source deductions, and such Option shall be cancelled immediately after its transfer to the Company and, for greater certainty, where such amount is a negative, none of the Company, the Purchaser or any other Person shall be obligated to pay any amount in respect of such Option;



(c) each Warrant outstanding immediately prior to the Effective Time (whether or not exercisable) shall be transferred from the holder thereof to the Company in consideration for a cash payment by or on behalf of the Company equal to the amount, if any, by which the Consideration per Common Share, in respect of each Warrant, exceeds the exercise price per Common Share of such Warrant, subject to (for greater certainty) applicable Tax withholdings and other source deductions, and such Warrant shall be cancelled immediately after its transfer to the Company and, for greater certainty, where such amount is a negative, none of the Company, the Purchaser or any other Person shall be obligated to pay any amount in respect of such Warrant;

(d) (i) each holder of one or more Options or Warrants shall cease to be a holder of such Options or Warrants, (ii) such holder's name shall be removed from each applicable register, (iii) the Stock Option Plan, Warrants and all agreements and other arrangements relating to the Options and Warrants shall be terminated and shall be of no further force and effect, and (iv) such holder shall thereafter have only the right to receive the consideration to which it is entitled pursuant to Section 2.3(b) and Section 2.3(c) at the time and in the manner specified in Section 4.1(d) and Section 4.1(e);

(e) each of the Common Shares held by Dissenting Shareholders in respect of which Dissent Rights have been validly exercised shall be deemed to have been transferred without any further act or formality to the Purchaser (free and clear of all Liens) in consideration for a debt claim against the Purchaser for the amount determined under Article 3, and:

(i) such Dissenting Shareholders shall cease to be the holders of such Common Shares and to have any rights as holders of such Common Shares, other than the right to be paid fair value for such Common Shares, as set out in Section 3.1;

(ii) such Dissenting Shareholders' names shall be removed as the holders of such Common Shares from the registers of Common Shares maintained by or on behalf of the Company; and

(iii) the Purchaser shall be deemed to be the transferee of such Common Shares, free and clear of all Liens, and shall be entered in the registers of Common Shares maintained by or on behalf of the Company;

(f) each Common Share outstanding immediately prior to the Effective Time, other than Common Shares held by a Dissenting Shareholder who has validly exercised such holder's Dissent Right, shall, without any further action by or on behalf of a holder of Common Shares, be deemed to be assigned and transferred by the holder thereof to the Purchaser (free and clear of all Liens) in exchange for the applicable Consideration for each Common Share held, and:

(i) the holders of such Common Shares shall cease to be the holders thereof and to have any rights as holders of such Common Shares other than the right to be paid the Consideration per Common Share in accordance with this Plan of Arrangement;

(ii) such holders' names shall be removed from the register of the Common Shares maintained by or on behalf of the Company; and

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(iii) the Purchaser shall be deemed to be the transferee of such Common Shares (free and clear of all Liens) and shall be entered in the register of the Common Shares maintained by or on behalf of the Company.

## 2.4 Adjustment to Consideration

If, on or after the date of the Arrangement Agreement, the Company declares, sets aside or pays any dividend or other distribution payable in cash, securities, property or otherwise with respect to the Common Shares, or sets a record date therefor that is prior to the Effective Date, then the Consideration shall be adjusted to reflect each such dividend or other distribution by way of a reduction in the Consideration by an amount equal to the amount of such dividend or distribution per Common Share.

## ARTICLE 3

### RIGHTS OF DISSENT

#### 3.1 Dissent Rights

Registered Shareholders may exercise dissent rights with respect to the Common Shares held by such holders ("Dissent Rights") in connection with the Arrangement in the manner set out in Section 2 of the Third Schedule to the NSCA, as modified by the Interim Order and this Section 3.1, provided the Notice of Dissent is received by the Company by no later than the time on the date of the Company Meeting at which the Company Meeting is scheduled to commence. Without limiting the generality of the foregoing, Shareholders who duly exercise such Dissent Rights and who are ultimately determined to be entitled to be paid fair value for their Common Shares shall be deemed to have transferred such Common Shares, as of the Effective Time, without any further act or formality to the Purchaser in consideration of a payment of cash by the Purchaser equal to such fair value.

#### 3.2 Recognition of Dissenting Shareholders

(a) In no circumstances shall the Parent, the Purchaser, the Company or any other Person be required to recognize a Person exercising Dissent Rights unless such Person is the registered holder of those Common Shares in respect of which such rights are sought to be exercised.

(b) For greater certainty, in no case shall the Parent, the Purchaser, the Company or any other Person be required to recognize Dissenting Shareholders as holders of Common Shares in respect of which Dissent Rights have been validly exercised after the completion of the transfer under Section 2.3(e), and the names of such Dissenting Shareholders shall be removed from the Company's register of holders of Common Shares in respect of which Dissent Rights have been validly exercised as of the Effective Time. In addition to any other restrictions under the NSCA, holders of Common Shares who vote or have instructed a proxyholder to vote such Common Shares in favour of the Arrangement Resolution (but only in respect of such Common Shares) shall not be entitled to exercise Dissent Rights.

#### 3.3 Rights of Dissenting Shareholders

If a Shareholder gives a Notice of Dissent but is not entitled, for any reason, to be paid the fair value of the Common Shares in respect of which the Notice of Dissent was given as contemplated in Section 2 of the Third Schedule to the NSCA and the Interim Order, such Shareholder shall be deemed to have participated in the Arrangement on the same basis as a non-dissenting Shareholder.

## ARTICLE 4

### CERTIFICATES AND PAYMENT

#### 4.1 Payment of Consideration

(a) At or prior to the Effective Time, the Purchaser shall deposit, or arrange to be deposited, for the benefit of holders of Common Shares cash with the Depositary in the aggregate amount equal to the payments in respect thereof required by Sections 2.3(e) and (f) of this Plan of Arrangement, with the amount per Common Share in respect of which Dissent Rights have been exercised being deemed to be the Consideration per Common Share for this purpose, net of applicable withholdings. The cash deposited with the Depositary by or on behalf of the Purchaser shall be held in an interest bearing account, and any interest earned on such funds shall be for the account of the Purchaser.

(b) At or prior to the Effective Time, the Company shall deposit, or arrange to be deposited, for the benefit of holders of Warrants, cash with the Depositary in the aggregate amount equal to the payments in respect thereof required by Section 2.3(c) of this Plan of Arrangement. The cash deposited with the Depositary by or on behalf of the Company shall be held in an interest bearing account, and any interest earned on such funds shall be held for the account of the Company.

(c) As soon as practicable after the Effective Date, the Company shall pay the amounts, net of applicable withholdings, to be paid to holders of Options, either (i) pursuant to the normal payroll practices and procedures of the Company, or (ii) in the event that payment pursuant to the normal payroll practices and procedures of the Company is not practicable for any such holder, by cheque (delivered to such holder of Options, as applicable, as reflected on the register maintained by or on behalf of the Company in respect of the Options).

(d) Upon surrender to the Depositary for cancellation of a certificate which immediately prior to the Effective Time represented outstanding Warrants that were transferred pursuant to Section 2.3(c), together with a duly completed and executed Warrant Letter of Transmittal and such additional documents and instruments as the Depositary may reasonably require, the holder of the Warrants represented by such surrendered certificate shall be entitled to receive in exchange therefor, and the Depositary shall deliver to such holder, the cash which such holder has the right to receive under the Arrangement for such Warrants less any amounts withheld pursuant to Section 4.3, and any certificate so surrendered shall forthwith be cancelled.

(e) Upon surrender to the Depositary for cancellation of a certificate which immediately prior to the Effective Time represented outstanding Common Shares that were transferred pursuant to Section 2.3(f), together with a duly completed and executed Letter of Transmittal and such additional documents and instruments as the Depositary may reasonably require, the Shareholder represented by such surrendered certificate shall be entitled to receive in exchange therefor, and the Depositary shall deliver to such holder, the cash which such holder has the right to receive under the Arrangement for such Common Shares less any amounts withheld pursuant to Section 4.3, and any certificate so surrendered shall forthwith be cancelled.

(f) Until surrendered as contemplated by this Section 4.1, each certificate that immediately prior to the Effective Time represented Common Shares or Warrants shall be deemed after the Effective Time to represent only the right to receive upon such surrender a cash payment in lieu of such certificate as contemplated in this Section 4.1, less any amounts withheld pursuant to Section 4.3. Any such certificate formerly representing Common Shares or Warrants not duly surrendered on or before the second anniversary of the Effective Date shall cease to represent a claim by or interest of any former holder of Common Shares or Warrants of any kind or nature against or in the Company, the Parent or the Purchaser. On such date, all cash to which such former holder was entitled shall be deemed to have been surrendered to the Purchaser or the Company, as applicable, and shall be paid over by the Depositary to the Purchaser or as directed by the Purchaser.

(g) Any payment made by way of cheque by the Depositary (or the Company, if applicable) pursuant to this Plan of Arrangement that has not been deposited or has been returned to the Depositary (or the Company) or that otherwise remains unclaimed, in each case, on or before the second anniversary of the Effective Time, and any right or claim to payment hereunder that remains outstanding on the second anniversary of the Effective Time shall cease to represent a right or claim of any kind or nature and the right of the holder to receive the applicable consideration for the Common Shares, the Options and the Warrants pursuant to this Plan of Arrangement shall terminate and be deemed to be surrendered and forfeited to the Purchaser or the Company, as applicable, for no consideration.

(h) No holder of Common Shares, Options or Warrants shall be entitled to receive any consideration with respect to such Common Shares, Options or Warrants other than any cash payment to which such holder is entitled to receive in accordance with Section 2.3 and this Section 4.1 and, for greater certainty, no such holder will be entitled to receive any interest, dividends, premium or other payment in connection therewith.

#### 4.2 Lost Certificates

In the event any certificate which immediately prior to the Effective Time represented one or more outstanding Common Shares or Warrants that were transferred pursuant to Section 2.3 shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such certificate to be lost, stolen or destroyed, the Depositary will issue in exchange for such lost, stolen or destroyed certificate, cash deliverable in accordance with such holder's Letter of Transmittal or Warrant Letter of Transmittal. When authorizing such payment in exchange for any lost, stolen or destroyed certificate, the Person to whom such cash is to be delivered shall as a condition precedent to the delivery of such cash, give a bond satisfactory to the Purchaser and the Depositary (acting reasonably) in such sum as the Purchaser may direct, or otherwise indemnify the Purchaser and the Company in a manner satisfactory to Purchaser and the Company, acting reasonably, against any claim that may be made against the Purchaser and the Company with respect to the certificate alleged to have been lost, stolen or destroyed.

#### 4.3 Withholding Rights

The Purchaser, the Company or the Depositary, as the case may be, shall be entitled to deduct and withhold from any amount payable to any Person under this Plan of Arrangement (including, without limitation, any amounts payable pursuant to Section 3.1), such amounts as the Purchaser, the Company or the Depositary, as applicable, determines, acting reasonably, are required or permitted to be deducted and withheld with respect to such payment under the Tax Act, the United States Internal Revenue Code of 1986 or any provision of any other Law. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes hereof as having been paid to the Person in respect of which such withholding was made, provided that such amounts are actually remitted to the appropriate taxing authority.

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#### 4.4 No Liens

Any exchange or transfer of securities pursuant to this Plan of Arrangement shall be free and clear of any Liens or other claims of third parties of any kind.

#### 4.5 Paramountcy

From and after the Effective Time: (a) this Plan of Arrangement shall take precedence and priority over any and all Common Shares, Options and Warrants issued or outstanding prior to the Effective Time, (b) the rights and obligations of the holders of Common Shares, Options and Warrants, the Company, the Parent, the Purchaser, the Depositary and any transfer agent or other depositary therefor in relation thereto, shall be solely as provided for in this Plan of Arrangement, and (c) all actions, causes of action, claims or proceedings (actual or contingent and

whether or not previously asserted) based on or in any way relating to any Common Shares, Options or Warrants shall be deemed to have been settled, compromised, released and determined without liability except as set forth in this Plan of Arrangement.

## ARTICLE 5

### AMENDMENT

#### 5.1 Amendments to Plan of Arrangement

(a) The Company and the Purchaser may amend, modify and/or supplement this Plan of Arrangement at any time and from time to time prior to the Effective Time, provided that each such amendment, modification and/or supplement must (i) be set out in writing, (ii) be approved by the Company and the Purchaser, each acting reasonably, (iii) be filed with the Court and, if made following the Company Meeting, approved by the Court, and (iv) communicated to the holders of Common Shares, Options and Warrants, if and as required by the Court.

(b) Any amendment, modification or supplement to this Plan of Arrangement may be proposed by the Company or the Purchaser at any time prior to the Company Meeting (provided that the Company or the Purchaser, as applicable, shall have consented thereto) with or without any other prior notice or communication, and if so proposed and accepted by the Persons voting at the Company Meeting (other than as may be required under the Interim Order), shall become part of this Plan of Arrangement for all purposes.

(c) Any amendment, modification or supplement to this Plan of Arrangement that is approved or directed by the Court following the Company Meeting shall be effective only if (i) it is consented to in writing by each of the Company and the Purchaser (in each case, acting reasonably), and (ii) if required by the Court, it is consented to by some or all of the Shareholders voting in the manner directed by the Court.

(d) Any amendment, modification or supplement to this Plan of Arrangement may be made following the Effective Date unilaterally by the Purchaser, provided that it concerns a matter which, in the reasonable opinion of the Purchaser, is of an administrative nature required to better give effect to the implementation of this Plan of Arrangement.

(e) This Plan of Arrangement may be withdrawn prior to the Effective Time in accordance with the terms of the Arrangement Agreement.

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## ARTICLE 6

### FURTHER ASSURANCES

#### 6.1 Further Assurances

Notwithstanding that the transactions and events set out in this Plan of Arrangement shall occur and shall be deemed to occur in the order set out in this Plan of Arrangement without any further act or formality, each of the Parties shall make, do and execute, or cause to be made, done and executed, all such further acts, deeds, agreements, transfers, assurances, instruments or documents as may reasonably be required by any of them in order to further document or evidence any of the transactions or events set out in this Plan of Arrangement.

## SCHEDULE C

### REPRESENTATIONS AND WARRANTIES OF THE COMPANY

1. Organization, Good Standing and Qualification. The Company and each of its Subsidiaries is a legal entity duly organized, validly existing and in good standing under the Laws of its jurisdiction of organization (to the extent the "good standing" concept is applicable in such jurisdiction) and has all requisite corporate power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted. The Company and each of its Subsidiaries is qualified to do business and is in good standing in each jurisdiction where the ownership, leasing or operation of its assets or properties or conduct of its business requires such qualification (to the extent the "good standing" concept is applicable in such jurisdiction), except where the failure to be so qualified or in good standing, individually or in the aggregate, has not had, and would not reasonably be expected to have, a Company Material Adverse Change. The Company has made available to the Parent and the Purchaser complete and correct copies of the Company's and its Subsidiaries' memorandum of association and articles of association or comparable governing documents, in each case as amended, and each as so delivered is in full force and effect.

2. Capital Structure.

(a) The authorized capital of the Company consists of (A) 500,000,000 Common Shares of which 157,546,793 are issued and outstanding on the date hereof, (B) 500,000,000 Class A non-voting common shares, none of which are issued or outstanding on the date hereof, (C) 500,000,000 Class A preferred shares, none of which are issued or outstanding on the date hereof, and (D) 500,000,000 Class B preferred shares, none of which are issued or outstanding on the date hereof. All of the issued and outstanding Common Shares have been duly authorized and are validly issued, fully paid and non-assessable.

(b) On the date hereof, there are 23,632,019 Common Shares reserved for issuance under the Stock Option Plan and there are 7,838,016 Options outstanding. Section 2(b) of the Company Disclosure Letter sets forth a complete and accurate list of Options issued and outstanding on the date hereof, including, with respect to each such Option, a unique identifier for the holder, the date of grant, the type of Option, the exercise price per Common Share, the number of Common Shares originally granted subject to such Option (as adjusted to reflect all splits, combinations, share dividends and other adjustments), the number of Common Shares that remain subject to the Option and the expiration date. Each Option has been granted with an exercise price no less than the fair market value of the underlying shares on the date of grant. All grants of Options were validly issued and properly approved by the Board of Directors or a duly authorized committee thereof no later than the date on which the grant of such Option was by its terms to be effective in accordance with all applicable Laws and all required approvals by the Shareholders were timely obtained. Upon any issuance of any Common Shares in accordance with the terms of the Stock Option Plan, such Common Shares will be duly authorized, validly issued, fully paid and non-assessable.

(c) On the date hereof, there are 7,366,418 Common Shares reserved for issuance under the Warrants. Section 2(c) of the Company Disclosure Letter sets forth a complete and accurate list of Warrants issued and outstanding on the date hereof, including a unique identifier for the holder, the date of grant, term, number of Common Shares and exercise price. Each Warrant has been granted with an exercise price no less than the fair market value of the underlying shares on the date of grant. Upon any issuance of any Common Shares in accordance with the terms of the Warrants, such Common Shares will be duly authorized, validly issued, fully paid and non-assessable.

(d) On the date hereof, there are 180,000 SARs outstanding. Section 2(d) of the Company Disclosure Letter contains a complete and accurate list of the SARs issued and outstanding as of the date hereof, including, with respect to each such SAR, a unique identifier for the holder, the date of grant, the Base Price per Common Share subject to such SAR, the number of Common Shares covered by such SAR at the time of grant (as adjusted to reflect all splits, combinations, share dividends and other adjustments), the number of Common Shares then remaining covered by such SAR, the vesting schedule (including a description of all applicable accelerated vesting provisions) and the expiration date. Each SAR has been granted with a Base Price no less than the fair market value of the underlying Common Shares on the date of grant. No Common Shares will be issued upon settlement of any SARs. All grants of SARs were validly issued and properly approved by the Board of Directors.

(e) Except as set forth above and except for the SRP Rights issued pursuant to the Shareholder Rights Plan, there are no outstanding (A) shares of, or other equity or voting interests in, the Company, (B) Convertible Securities or other securities of the Company or any of its Subsidiaries convertible into or exchangeable for shares of, or other equity or voting interest in, the Company, (C) options, share appreciation rights, warrants, restricted share units, rights or other commitments or agreements to acquire from the Company or any of its Subsidiaries, or that obligate the Company or any of its Subsidiaries to issue, any shares of, or other equity or voting interest in, or any securities convertible into or exchangeable for shares of, or other equity or voting interest in, the Company, (D) obligations of the Company to grant, extend or enter into any subscription, warrant, right, convertible or exchangeable security or other similar agreement or commitment (whether payable in equity, cash or otherwise) relating to any shares of, or other equity or voting interest (including any voting debt) in, the Company (the items in clauses (A), (B), (C) and (D), together with the shares of the Company, the options, the warrants and the SARs being referred to collectively as "Company Securities") or (E) other obligations by the Company or any of its Subsidiaries to make any payments based on the price or value of any Company Securities. There are no Contracts which obligate the Company or any of its Subsidiaries to repurchase, redeem or otherwise acquire any outstanding Company Securities.

(f) None of the Company or any of its Subsidiaries (A) is a party to any agreement with respect to the voting of, restricting the transfer of, or granting preemptive rights, anti-dilutive rights, rights of first refusal or similar rights with respect to, any securities of the Company (other than this Agreement and the Voting Support Agreements) or (B) has any contractual obligation to file a prospectus or registration statement under Applicable Securities Laws, in respect of any securities of the Company or any of its Subsidiaries. Neither the Company nor any of its Subsidiaries has outstanding any bonds, debentures, notes or other obligations the holders of which have the right to vote (or convertible into or exercisable for securities having the right to vote) with the Shareholders on any matter.

(g) The aggregate value of the assets of the Company and its Subsidiaries, calculated in the manner prescribed by the Investment Canada Act, is less than Cdn.\$330 million and neither the Company nor its Subsidiaries carry on a cultural business (as such term is defined in the Investment Canada Act).

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(h) Other than the SARs listed in Section 2(d) of the Company Disclosure Letter, there are no outstanding or authorized share appreciation rights, phantom shares, profit participation interests or other similar agreements, commitments or arrangements payable in cash that relate to the shares of, or other equity or voting interest in, the Company.

### 3. Subsidiaries.

(a) Section 3(a) of the Company Disclosure Letter contains a complete and accurate list of the name and jurisdiction of organization of each Subsidiary of the Company. Other than as listed in Section 3(a) of the Company Disclosure Letter and except for the Company's Subsidiaries, the Company does not own, directly or indirectly, any shares of, or other equity or voting interest in, any person.

(b) All of the outstanding shares of, or other equity or voting interest in, each Subsidiary of the Company (A) have been duly authorized, validly issued and are fully paid and non-assessable and (B) are owned, directly or indirectly, by the Company, free and clear of any Lien or other restriction (including any restriction on the right to vote, sell or otherwise dispose of such shares or other equity or voting interest) that would

prevent the operation by Parent of such Subsidiary's business as presently conducted.

(c) There are no outstanding (A) Convertible Securities or other securities of the Company or any of its Subsidiaries convertible into or exchangeable for shares of, or other equity or voting interest in, any Subsidiary of the Company, (B) options, share appreciation rights, warrants, restricted share units, rights or other commitments or agreements to acquire from the Company or any of its Subsidiaries, or that obligate the Company or any of its Subsidiaries to issue, any shares of, or other equity or voting interest in, or any securities convertible into or exchangeable for shares of, or other equity or voting interest in, any Subsidiary of the Company, (C) obligations of the Company to grant, extend or enter into any subscription, warrant, right, convertible or exchangeable security or other similar agreement or commitment (whether payable in equity, cash or otherwise) relating to any shares of, or other equity or voting interest (including any voting debt) in, any Subsidiary of the Company (the items in clauses (A), (B) and (C), together with the shares of the Subsidiaries of the Company, being referred to collectively as "Subsidiary Securities") or (D) other obligations by the Company or any of its Subsidiaries to make any payments based on the price or value of any Subsidiary Securities. There are no Contracts of any kind which obligate the Company or any of its Subsidiaries to repurchase, redeem or otherwise acquire any outstanding Subsidiary Securities.

(d) There are no outstanding or authorized share appreciation rights, phantom shares, profit participation interests or other similar agreements, commitments or arrangements payable in cash that relate to the shares of, or other equity or voting interest in, any of the Company's Subsidiaries.

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#### 4. Corporate Authority; Approval and Fairness.

(a) The Company has all requisite corporate power, authority and capacity to execute and deliver this Agreement, to perform its obligations under this Agreement and to consummate the Arrangement and the other transactions contemplated under this Agreement (collectively, the "Transactions"), subject only to the approval by the Board of Directors of the Company Circular and the Requisite Shareholder Approval for the Arrangement in the manner required by the Interim Order and applicable Laws and approval by the Court. The execution and delivery by the Company of this Agreement, the performance by the Company of its obligations under this Agreement and the consummation by the Company of the Transactions have been duly authorized by the Board of Directors and no other corporate proceedings on the part of the Company are necessary to authorize the execution and delivery by the Company of this Agreement, the performance by the Company of its obligations under this Agreement or the consummation by the Company of the Transactions, subject only to the approval by the Board of Directors of the Company Circular and receipt of the Requisite Shareholder Approval at the Company Meeting. This Agreement has been duly executed and delivered by the Company and, assuming this Agreement constitutes the valid and binding agreement of Parent and Purchaser, constitutes a valid and binding agreement of the Company enforceable against the Company in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar Laws of general applicability relating to or affecting creditors' rights and to general equity principles (the "Bankruptcy and Equity Exception").

(b) At a meeting duly called and held prior to the execution and delivery of this Agreement, the Board of Directors adopted resolutions by the unanimous vote of all directors of the Company (A) authorizing and approving this Agreement, the Arrangement and the Transactions in accordance with the requirements of NSCA, (B) determining that the terms of this Agreement, the Arrangement, the Transactions and the Consideration to be received by the Shareholders are fair to the holders of such Common Shares and that the Arrangement is in the best interests of the Company and (C) resolved to unanimously recommend that the Shareholders vote in favour of the Arrangement ("Company Recommendation"), and, as of the date hereof, none of the aforesaid actions by the Board of Directors have been amended, rescinded or modified.

(c) The Company and the Board of Directors have taken all necessary steps as contemplated by the Shareholder Rights Plan to waive the application of the Shareholder Rights Plan to the Transactions.



(d) The Board of Directors has received the oral Fairness Opinion, and the Fairness Opinion has not been withdrawn or modified as of the date hereof.

5. Governmental Filings; No Violations.

(a) Other than (A) the Interim Order and any approvals required by the Interim Order, (B) the Final Order, (C) the Arrangement Filings under NSCA, (D) the Regulatory Clearances (and making the Competition Filings); (E) compliance with all Applicable Securities Laws, including the rules and policies of the Exchanges and (F) except as, individually or in the aggregate, (x) would not reasonably be expected to be material to the Company and its Subsidiaries, taken as a whole, and (y) would not reasonably be expected to prevent, materially delay or materially impair the consummation of the Transactions, no notices, reports or other filings are required to be made by the Company or any of its Subsidiaries with, nor are any consents, registrations, approvals, Permits or authorizations required to be obtained by the Company or any of its Subsidiaries from, any Governmental Entity, in connection with the execution and delivery by the Company of this Agreement, the performance by the Company of its obligations under this Agreement or the consummation by the Company of the Transactions.

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(b) The execution and delivery of this Agreement by the Company do not, and the performance by the Company of its obligations under this Agreement and the consummation by the Company of the Transactions will not, constitute or result in (A) a breach or violation of, or a default (or an event which with notice or lapse of time or both would become a default) under, the memorandum of association and articles of association of the Company or any of its Subsidiaries (or the comparable governing documents), (B) a breach or violation of, a termination or cancelation (or right of termination or cancelation) or a default (or an event which with notice or lapse of time or both would become a default) under, the creation or acceleration of any Liabilities under, or any change in the rights, benefits or obligations of any party under, any Contract or Permit to which the Company or any of its Subsidiaries is a party or by which the Company, any of its Subsidiaries or any of their respective properties or assets may be bound, (C) assuming compliance with the matters referred to in Section 5(a) of Schedule C and receipt of the Requisite Shareholder Approval at the Company Meeting, a violation of any Law or Order to which the Company, any of its Subsidiaries or any of their respective properties or assets may be subject, (D) the loss or impairment of, payment of any additional amounts with respect to or the consent of any other person being required in respect of, the Company's or any of its Subsidiaries' right to own or use any Company Intellectual Property or (E) the creation of a Lien on any of the assets or properties of the Company or any of its Subsidiaries, except, in the case of clause (B), (D) or (E) above, for any such breach, violation, termination, default, creation, acceleration, change, loss, impairment or payment that, individually or in the aggregate, (x) would not reasonably be expected to be material to the Company and its Subsidiaries, taken as a whole, and (y) would not reasonably be expected to prevent, materially delay or materially impair the consummation of the Transactions.

6. Company Reports; Financial Statements.

(a) Since July 1, 2009, the Company has filed or furnished, as applicable, on a timely basis all forms, statements, certifications, reports and documents required to be filed or furnished by it under Applicable Securities Laws (the forms, statements, certifications, reports and documents filed or furnished since July 1, 2009 and those filed or furnished subsequent to the date hereof, including any amendments thereto, the "Company Reports"). Each of the Company Reports required to be filed or furnished under Applicable Securities Laws, at the time of its filing or being furnished complied or, if not yet filed or furnished, will comply, in all material respects with Applicable Securities Laws. As of their respective dates (or, if amended, as of the date of such amendment), the Company Reports did not, and any Company Reports filed with or furnished subsequent to the date hereof will not, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances in which they were made, not misleading. All of the Company Reports required to be filed or furnished under Applicable Securities Laws are, or if not yet filed or furnished will be, publicly available on SEDAR or EDGAR to the extent required by Applicable Securities Laws. The Company has not filed any confidential material change report that at the date hereof remains confidential or, other than confidential treatment requests filed with the SEC for which a confidentiality order has been granted by the SEC, any other confidentiality filings under any Applicable Securities Laws.

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(b) The Company is in compliance in all material respects with the applicable listing and corporate governance rules and regulations of the Exchanges and Applicable Securities Laws.

(c) The Company is a "reporting issuer" under the Applicable Securities Laws of the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, Ontario and Nova Scotia, and is not in default of any Applicable Securities Laws of any such Canadian jurisdiction. None of the Company's Subsidiaries is subject to any continuous or periodic, or other disclosure requirements under any Applicable Securities Laws in any jurisdiction. The Company has not taken any action to cease to be a reporting issuer in any province of Canada nor has the Company received notification from any Securities Authorities seeking to revoke the reporting issuer status of the Company. The Company is a "foreign private issuer" (as such term is defined in Rule 3b-4 under the 1934 Act).

(d) No delisting, suspension of trading in or cease trading order with respect to the Common Shares is pending or, to the knowledge of the Company, threatened.

(e) The Company's system of internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the 1934 Act) is effective in providing reasonable assurance that (A) the Company maintains records that in reasonable detail accurately and fairly reflect its transactions and dispositions of assets, (B) transactions are executed in accordance with management's general or specific authorization, (C) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with GAAP, and (II) to maintain accountability for assets, (D) access to assets is permitted only in accordance with management's general or specific authorization, and (E) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Company's "disclosure controls and procedures" (as defined in Rules 13a-15(e) and 15d-15(e) under the 1934 Act) are reasonably designed to ensure that all information (both financial and non-financial) required to be disclosed by the Company in the reports that it files or furnishes under the 1934 Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC, and that all such information is accumulated and communicated to the Company's management as appropriate to allow timely decisions regarding required disclosure. The Company has disclosed, based on the most recent evaluation of its chief executive officer and its chief financial officer prior to the date hereof, to the Company's auditors and the audit committee of the Board of Directors (A) any "significant deficiencies" or "material weaknesses" in the design or operation of its internal control over financial reporting that would reasonably be expected to adversely affect the Company's ability to record, process, summarize and report financial information and has identified for the Company's auditors and audit committee of the Board of Directors any material weaknesses in internal control over financial reporting 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. The Company has made available to the Parent (x) a summary of any such disclosure made by management to the Company's auditors and audit committee since July 1, 2009 and (y) any material communication since July 1, 2009 made by management or the Company's auditors to the audit committee required or contemplated by listing standards of NYSE, the audit committee's charter or professional standards of the Public Company Accounting Oversight Board. For purposes of this Section 6(e), the terms "significant deficiency" and "material weakness" shall have the meanings assigned to them by the Public Company Accounting Oversight Board Interim Standard AU 325 parts 2 and 3, as in effect on the date hereof. Since July 1, 2009, none of the Company, any director, officer, auditor, accountant or representative of the Company or any of its Subsidiaries has received or otherwise obtained knowledge of any material complaint, allegation, assertion or claim, whether written or oral, regarding accounting, internal accounting controls or auditing matters, including any material complaint, allegation, assertion, or claim that the Company or any of its Subsidiaries has engaged in questionable accounting or auditing practices, or any expression of concern from its employees regarding questionable accounting or auditing matters. The Company has made available to the Parent a summary of all material complaints or concerns relating to other matters made since July 1, 2009 through the Company's whistleblower hot line or equivalent system for receipt of employee concerns regarding possible violations of Law. No attorney representing the Company or any of its Subsidiaries, whether or not employed by the Company or any of its Subsidiaries, has reported evidence of a violation of Applicable Securities Laws, breach of fiduciary duty or similar violation by the Company or any of its officers, directors, employees or agents to the Company's chief legal officer, audit committee of the Board of Directors (or other committee designated for the purpose) or the Board of Directors pursuant to the rules adopted pursuant to Section 307 of the Sarbanes-Oxley Act or any Company policy contemplating such reporting, including in instances not required by those rules.

(f) To the knowledge of the Company, there is no material weakness (as such term is defined in National Instrument 52-109 – Certification of Disclosure in Issuers' Annual and Interim Filings) relating to the design, implementation or maintenance of its internal control over financial reporting, or fraud, whether or not material, that involves management or other employees who have a significant role in the internal control over financial reporting of the Company.

(g) The auditors of the Company are independent chartered accountants as required by applicable Laws and there is not now, and to the knowledge of the Company, there has never been, any reportable event (as defined in National Instrument 51-102 – Continuous Disclosure Obligations) with the present or any former auditors of the Company.

(h) Neither the Company nor any of its Subsidiaries is a party to, nor has any commitment to become a party to, any joint venture, partnership agreement or any similar Contract (including any Contract or arrangement relating to any transaction or relationship between or among the Company, on the one hand, and any unconsolidated affiliate, including any structured finance, special purpose or limited purpose entity or person, on the other hand), or any "off-balance sheet arrangements" (as defined in Item 303(a) of Regulation S-K promulgated by the SEC), where the result, purpose or effect of such Contract is to avoid disclosure of any material transaction involving, or material liabilities of, the Company in its published financial statements or other Company Reports.

(i) Each of the balance sheets included in or incorporated by reference into the Company Reports (including the related notes and schedules) fairly presents in all material respects or, in the case of Company Reports filed after the date hereof, will fairly present in all material respects, the financial position of the Company and its Subsidiaries as of its date, and each of the statements of income, changes in Shareholders' equity and cash flows included in or incorporated by reference into the Company Reports (including any related notes and schedules) fairly presents or, in the case of Company Reports filed after the date hereof, will fairly present in all material respects, the results of operations, retained earnings (loss) and changes in financial position, as the case may be, of the Company and its Subsidiaries for the periods set forth therein (subject, in the case of unaudited statements, to notes and normal year-end audit adjustments that will not be material in amount or effect), in each case, in accordance GAAP consistently applied during the periods involved, except as may be noted therein.

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(j) Neither the Company nor any of its Subsidiaries has incurred any liabilities of the type required to be set forth on a balance sheet prepared in accordance with GAAP other than (A) liabilities reflected or otherwise reserved against in the Audited Balance Sheet, (B) liabilities incurred pursuant to this Agreement, (C) liabilities incurred in the ordinary course of business since the date of the Audited Balance Sheet in amounts and of the type consistent with the ordinary course of business, and (D) liabilities that are not and would not reasonably be expected to be material to the Company and its Subsidiaries, taken as a whole.

(k) Each Option and SAR was properly accounted for in accordance with GAAP in the financial statements (including the related notes) of the Company.

## 7. Absence of Certain Changes.

(a) Since the date of the Audited Balance Sheet, other than in connection with the Transactions, the Company and its Subsidiaries have conducted their respective business only in, and have not engaged in any material transaction other than in accordance with, the ordinary course of business.

(b) Since the date of the Audited Balance Sheet, there has not occurred: (A) a Company Material Adverse Change; (B) any material damage, destruction or other casualty loss with respect to any material asset or property owned, leased or otherwise used by the Company or any of its Subsidiaries, whether or not covered by insurance; or (C) any action that, if taken after the date of this Agreement without the prior written consent of Parent, would constitute a breach of Section 5.1 of this Agreement.

8. Legal Proceedings. There is no action, claim, suit, litigation, arbitration, investigation or proceeding (including any civil, criminal, administrative, investigative or appellate proceeding, public or private) by or before any Governmental Entity, arbitrator, mediator or other tribunal (collectively, "Proceedings") pending or, to the knowledge of the Company, threatened, against the Company, any of its Subsidiaries or any of their respective properties or assets (other than disputes of a type as may arise from time to time in the Company's ordinary course of business and which would not, individually or in the aggregate, be material to the Company or any of its Subsidiaries, taken as a whole). There is no material Order to which the Company, any of its Subsidiaries or any of their respective properties or assets is subject.

#### 9. Employee Benefits.

(a) All benefit and compensation plans, Contracts, policies or arrangements covering current or former employees, current or former consultants or current or former directors of the Company and its Subsidiaries under which the Company or any of its Subsidiaries has (or may have) an obligation (contingent or otherwise), whether funded or unfunded, insured or self-insured, written or unwritten, including any such plan, Contract, policy or arrangement relating to retirement savings, pensions, superannuation, profit sharing, deferred compensation, bonuses, incentive compensation (whether cash-based or otherwise), share purchase, share appreciation rights, stock option or other equity compensation, life or accident insurance, workers compensation, hospitalization, health, medical or dental treatment or expenses, disability, employment insurance benefits, employee loans, vacation pay, personal/carer's leave, severance or termination pay or benefits, retention, change in control, employment or other benefits (the "Benefit Plans"), are listed on Section 9(a) of the Company Disclosure Letter by jurisdiction.

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(b) The Company has furnished to the Purchaser true, correct, up-to-date and complete copies of all the Benefit Plans (or, where oral, written summaries of the material terms thereof) as amended as of the date hereof together with all related documentation including current and past documents in effect at any time (or, with respect to past documents relating to any Benefit Plan that is not intended to be qualified under Section 401(a) of the Code, past documents in effect at any time during the last three years) and all amendments thereto, including annuity contracts, trust agreements or other funding vehicles, investment management agreements, funding agreements, actuarial reports, funding and financial information returns and statements, the most recent report on Form 5500 filed with the U.S. Internal Revenue Service ("IRS") with respect to each Benefit Plan in effect on the date hereof (where required by applicable Law), current asset valuations, collective agreements, participation agreements, current summary plan descriptions (where required by applicable Law), all professional opinions (whether or not internally prepared) with respect to each Benefit Plan, all material internal memoranda concerning the Benefit Plans, copies of material correspondence, including correspondence with Governmental Entities, trustees and collective bargaining agents, with respect to each Benefit Plan and plan summaries, employee booklets and personnel manuals. The booklets, brochures, summaries, descriptions and manuals prepared for, and circulated to, the current and former participants and their beneficiaries concerning each Benefit Plan, together with all written communications of a general nature provided to such current and former participants and their beneficiaries, accurately summarize the benefits provided under each such Benefit Plan referred to therein.

(c) All Benefit Plans are, and have been, established, registered, qualified, administered, funded and invested in all material respects in accordance with the terms of such Benefit Plans including the terms of the material documents that support such Benefit Plans, any applicable collective agreement and all applicable Laws and none of the Company, any of its Subsidiaries or agents or any fiduciary, has been in breach of any contractual or fiduciary obligation with respect to the administration of the Benefit Plans or the trusts or other funding media relating thereto. None of the Benefit Plans is intended to be qualified under Section 401(a) et seq. of the Code, nor have any advance tax rulings been sought or received in respect of any Benefit Plans (whether relating to Section 401(a) et seq. of the Code or any other Law).

(d) None of the Benefit Plans is a "registered pension plan" as that term is defined in subsection 248(1) of the Tax Act or is required to be registered under the Pension Benefits Act (Ontario) or similar legislation of any other jurisdiction.

(e) All contributions or premiums required to be made by the Company or a Subsidiary under the terms of each Benefit Plan, any collective bargaining agreement or by applicable Law have been made in a timely fashion in accordance with applicable Law and the terms of the Benefit

Plans and any applicable collective bargaining agreement, no Taxes, penalties or fees are owing or exigible in respect of any of the Benefit Plans and neither the Company nor any Subsidiary has and as of the Effective Time will not have, any actual or potential unfunded liabilities (other than liabilities accruing after the Effective Time) with respect to any of the Benefit Plans. All liabilities of the Company and the Subsidiaries (whether accrued, absolute, contingent or otherwise) related to all Benefit Plans have been fully and accurately reflected in the Audited Balance Sheet.

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(f) None of the Benefit Plans provides benefits beyond retirement or other termination of service (including any continuation coverage benefits pursuant to any applicable Law) to current or former employees or current or former directors or to the beneficiaries or dependants of such employees or directors except to COBRA qualified beneficiaries at their own and not at the Company's expense.

(g) Neither the Company nor any of its Subsidiaries has any plan or obligation to create any new Benefit Plan. No improvements to any Benefit Plan have been promised, and no amendments or improvements to any Benefit Plan will be made or promised by the Company prior to the Effective Time.

(h) To the knowledge of the Company, all data used to administer each Benefit Plan is true and correct.

(i) To the knowledge of the Company, no Benefit Plan, nor any related trust or other funding medium thereunder, is subject to any pending, threatened or anticipated Proceeding initiated by any Governmental Entity or by any other person (other than routine claims for benefits), and there exists no state of facts which after notice or lapse of time or both could reasonably be expected to give rise to any such Proceeding.

(j) None of the execution of this Agreement, the approval of the Plan of Arrangement by the Shareholders of the Company, or the consummation of the Transactions (either alone or in conjunction with any other additional or subsequent event, contingent or otherwise) will or may result in any payment (whether of severance pay or otherwise), acceleration of payment or vesting of benefits, forgiveness of indebtedness, vesting, distribution, restriction on funds, increase the amount payable or result in any other obligation pursuant to, any of the Benefit Plans or otherwise.

(k) Neither the Company nor any other person that, together with the Company, is treated as a single employer under Section 414(b), (c), (m) or (o) of the Code or any other applicable Law, has sponsored, maintained, contributed to or been obligated to sponsor, maintain or contribute to, or has any actual or contingent liability or obligation under, (A) a "single-employer plan", within the meaning of Section 4001(a)(15) of ERISA, (B) a "multiemployer plan", within the meaning of Section 4001(a)(3) of ERISA, or (C) any benefit plan that is subject to Title IV of ERISA or Section 412 of the Code or is otherwise a defined benefit pension plan or is a plan described in Section 3(40) of ERISA or Section 413 of the Code.

(l) No employee has received or could reasonably be expected to receive any payment or benefit from the Company or any of its Subsidiaries that (A) could reasonably be expected to be non-deductible pursuant to Section 162(m) of the Code or any other applicable Law or (B) could reasonably be expected to result in the payment or receipt of an "excess parachute payment" within the meaning of Section 280G(b)(1) of the Code. Neither the Company nor any of its Subsidiaries is obligated to provide a gross-up payment or other financial assistance to any "disqualified individual" (as such term is defined in Treasury Regulation Section 1.280G-1) for any excise tax liability pursuant to Section 4999 of the Code.

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(m) Each Benefit Plan that is a non-qualified deferred compensation arrangement within the meaning of Section 409A of the Code (A) was, prior to January 1, 2009, operated and administered in a good faith to comply in all respects with the applicable requirements of Section 409A of the Code and the applicable IRS guidance thereunder and (B) for all periods on or after January 1, 2009, has been documented, operated and administered in full compliance with Section 409A of the Code and the applicable Treasury Regulations thereunder. The Company does not have any obligation to indemnify, hold harmless or provide any tax gross-up payment to any individual with respect to any penalty tax, interest payments or other liability such individual may incur under Section 409A of the Code.

(n) Each Benefit Plan intended to be qualified under Section 401(a) of the Code has either obtained from the IRS a favorable opinion or determination letter as to its qualified status under the Code, including all currently effective amendments to the Code, and the corresponding related exemption of its trust from U.S. federal income taxation under Section 501(a) of the Code, or has applied to the IRS for such favorable determination letter within the remedial amendment period under Section 401(b) of the Code, and the Company is not aware of any circumstances likely to result in the loss of such qualifications of any such Benefit Plan. Neither the Company nor any of its Subsidiaries has engaged in a transaction that could subject the Company or any of its Subsidiaries to a tax or penalty imposed by either Section 4975 of the Code or Section 502(i) of ERISA. Each Benefit Plan is being, and has been, administered substantially in accordance with its terms and complies in all material respects with and is being, and has been, administered substantially in material compliance with the requirements prescribed by any and all applicable Laws.

#### 10. Legal and Regulatory Compliance.

(a) The Company and each of its Subsidiaries, and, to the knowledge of the Company, their respective properties and assets, are and since January 1, 2008 have been in compliance in all material respects with all applicable Laws and Orders. Neither the Company nor any of its Subsidiaries (A) has received any written notice from any Governmental Entity alleging any violation or potential violation by the Company or any of its Subsidiaries of any applicable Law or Order nor (B) has provided any written notice to any Governmental Entity regarding any violation or potential violation by the Company or any of its Subsidiaries of any applicable Law or Order, and no such notice referred to in clauses (A) or (B) remains outstanding or unresolved as of the date of this Agreement. To the knowledge of the Company, no investigation by any Governmental Entity with respect to the Company or any of its Subsidiaries is pending or threatened.

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(b) Each of the Company and its Subsidiaries has (and at the time of the performance of all preclinical research, clinical development and manufacturing that it has conducted or sponsored, it did have) all Permits necessary to conduct its business as presently conducted, including all such Permits required by the FDA or any other applicable Governmental Entity responsible for the oversight and approval of the research, development or commercialization of pharmaceutical or medicinal products (collectively with the FDA, "Regulatory Authorities") necessary to conduct its business as presently conducted or as conducted at the time of such activities, as applicable, except those Permits that are not related to the Key Product the absence of which, individually or in the aggregate, (x) are not, and would not reasonably be, material to the Company and its Subsidiaries, taken as a whole, and (y) would not reasonably be expected to prevent, materially delay or materially impair the consummation of the Transactions. All such Permits are valid and in full effect, and no suspension, revocation or termination of any such Permit is pending or, to the knowledge of the Company, threatened, except for such noncompliance, suspensions or cancellations with respect to such Permits that are not related to the Key Product that, individually or in the aggregate, (x) are not, and would not reasonably be expected to be, material to the Company and its Subsidiaries, taken as a whole, and (y) would not reasonably be expected to prevent, materially delay or materially impair the consummation of the Transactions. Neither the Company nor any of its Subsidiaries has received any written notice from any Governmental Entity regarding (a) any violation or potential violation by the Company or any of its Subsidiaries of any Permits or the failure to have any required Permits, or (b) any suspension, revocation or termination of any Permits held by the Company or any of its Subsidiaries, and no such notice in either case remains outstanding or unresolved as of the date of this Agreement. There are no, and have not been any, inspection observations, notices pursuant to 21 U.S.C. Section 374 or any non-U.S. equivalents thereof, warning letters, untitled letters or similar documents that assert a lack of compliance by the Company or any of its Subsidiaries with any applicable Laws.

(c) All pre-clinical studies and clinical trials related to a Company Pharmaceutical Product, and other studies and tests related to a Company Pharmaceutical Product conducted by or on behalf of the Company or any of its Subsidiaries have, to the knowledge of the Company, been, and if still pending are being, conducted in compliance in all material respects with all applicable Laws (including those pertaining to Good Laboratory Practice and Good Clinical Practice contained in 21 C.F.R. Part 58 and Part 312, all applicable requirements relating to protection of human

subjects contained in 21 C.F.R. Parts 50, 54, and 56 and all applicable registration and publication requirements (including, if applicable, registration on <http://clinicaltrials.gov>) and any non-U.S. equivalents thereof. No clinical trial conducted by or on behalf of the Company or any of its Subsidiaries has been terminated or suspended prior to completion, and no Regulatory Authority, clinical investigator that has participated or is participating in, or institutional review board or ethics committee that has or has had jurisdiction over, a clinical trial conducted by or on behalf of the Company or any of its Subsidiaries has commenced or, to the knowledge of the Company, threatened to initiate, any action to place a clinical hold order on, or otherwise terminate, materially delay or suspend, any ongoing clinical trial conducted by or on behalf of the Company or any of its Subsidiaries.

(d) None of the Company, any of its Subsidiaries nor, to the knowledge of the Company, any of their respective officers or current or former employees nor any other person involved in the development of the Company Pharmaceutical Products, has been convicted of any crime or engaged in any conduct that in any such case has resulted in debarment under 21 U.S.C. Section 335a or exclusion from participation in any Federal health care program pursuant to 42 U.S.C. Section 1320a-7 or any applicable non-U.S. equivalent thereof, and there are currently no investigations regarding any debarments or exclusions pending.

(e) The Company has made available to the Parent complete and correct copies of each application or other material filing including all material related supplements, amendments, correspondence and annual reports made with any Regulatory Authority made on behalf of the Company or any of its Subsidiaries relating to the Key Product. The Company has made available to the Parent complete and correct copies of each material application or other material filing including all material related supplements, amendments, correspondence and annual reports made with any Regulatory Authority made on behalf of the Company or any of its Subsidiaries relating to CYT 997.

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(f) To the knowledge of the Company, there is no information that would reasonably be expected to prevent the acceptance or the subsequent approval of any filing or application for approval of the Key Product by a Regulatory Authority in the European Union, Australia, Canada or the United States.

(g) As applicable, all material applications, reports, documents, claims, Permits and notices required to be filed, maintained or furnished to any Regulatory Authority by the Company or any of its Subsidiaries, with respect to the Key Product, have been so filed, maintained or furnished ("Product Applications"). All Product Applications: (A) have been made available to the Parent; and (B) were complete and accurate in all material respects on the date filed (or were corrected in or supplemented by a subsequent filing) or issued. To the knowledge of the Company, neither the Company nor any of its Subsidiaries, nor, to the knowledge of the Company, any officer, employee or agent or distributor of the Company or its Subsidiaries, has made an untrue statement of a material fact or a fraudulent statement to any Regulatory Authority, failed to disclose a material fact required to be disclosed to any Regulatory Authority, or committed an act, made a statement, or failed to make a statement that, at the time such disclosure or non-disclosure was made, would reasonably be expected to provide a basis for any Regulatory Authority to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities", set forth in 56 Fed. Reg. 46191 (September 10, 1991) or any similar policy or applicable non-US equivalent thereof.

(h) To the knowledge of the Company, all manufacturing operations conducted for the benefit of the Company or any of its Subsidiaries with respect to any Company Pharmaceutical Product being used, or intended for use, in humans (including pursuant to any clinical trial) have been and are being conducted in accordance with GMP Regulations.

(i) To the knowledge of the Company, no facts exist that would give rise to the Key Product being recalled or the suspension, revocation or termination of any clinical trials.

(j) Section 10(j) of the Company Disclosure Letter sets forth a true and complete list of each country in which a clinical trial related to the Key Product is being or has been conducted by or on behalf of the Company or any of its Subsidiaries.

11. Healthcare Data Privacy and Security.

(a) To the knowledge of the Company, the Company and its Subsidiaries (A) have operated their businesses in compliance with all Laws relating to personal information, including medical records and medical information privacy, that regulate or limit the collection, maintenance, use, disclosure, processing or transmission of medical records, patient information or other personal information made available to or collected by the Company or its Subsidiaries in connection with the operation of its business (the "Healthcare Data Requirements") and (B) have implemented all confidentiality, security and other protective measures required by the Healthcare Data Requirements, in each case, in all material respects. Without limiting the foregoing, the Company and its Subsidiaries are and have at all times been in compliance with the privacy and security requirements of the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act (Pub. L. No. 111-5), the Personal Information Protection and Electronic Documents Act (Canada) and other applicable privacy Laws of any jurisdiction (collectively, "Privacy Laws").

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(b) To the knowledge of the Company, neither the Company nor any of its Subsidiaries has experienced any breach, misappropriation, or unauthorized collection, use or disclosure of any personal information and all protected health information (with protected health information having the meaning set forth in 45 C.F.R. § 160.103) for which written notification was given or required to be given under applicable Privacy Laws.

(c) The Company has not been notified in writing of and is not, to the knowledge of the Company, the subject of, any complaint, regulatory investigation or Proceeding related to data security or privacy.

12. Unlawful Payments.

(a) Neither the Company nor any of its Subsidiaries, nor, to the knowledge of the Company, any of their respective managers, directors, officers, agents, employees or other persons acting on behalf of or in the name of the Company or any of its Subsidiaries have, in any material way: (A) with the corrupt intent to obtain or retain business, offered or used any corporate funds for any unlawful contribution to any political campaign or activity; (B) if and to the extent applicable, violated or is violating any provision of the Corruption of Foreign Public Officials Act (Canada), the U.S. Foreign Corrupt Practices Act of 1977 or any other equivalent Laws concerning bribing a foreign public official and the accuracy of books and records; or (C) with the corrupt intent to obtain or retain business, offered or given any bribe, rebate, payoff, influence payment, kickback or other payment or gift of money or anything of value to any healthcare professional in violation of applicable Law.

(b) The operations of the Company and each of its Subsidiaries are and have been conducted at all times in material compliance with applicable financial recordkeeping and reporting requirements and money laundering Laws and the rules and regulations thereunder and any related or similar Laws, rules, regulations or guidelines, issued, administered or enforced by any Governmental Entity relating to money laundering (collectively, the "Money Laundering Laws") and no action, suit or proceeding by or before any court or Governmental Entity involving the Company or any of its Subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

13. Material Contracts.

(a) For purposes of this Agreement, a "Material Contract" means any Contract (or group of related Contracts) to which the Company or any of its Subsidiaries is a party or by which any of their respective properties or assets are bound:

(i) that is filed or required to be filed by the Company as a "material contract" under Applicable Securities Laws in Canada;



(ii) that (A) purports to limit or otherwise restrict in any material respect the ability of the Company or any of its Subsidiaries to compete in any business or geographic or therapeutic area (or that, following the Arrangement, would by its terms apply such limits or other restrictions to the Parent or its Subsidiaries), (B) grants any exclusive rights, (C) contains a "most favored nation" or similar provision, (D) includes any "take or pay" or "requirements" obligation, (E) otherwise purports to prohibit or limit the right of the Company or any of its Subsidiaries to develop, license, sell or distribute any products or services or (F) that purports to limit or otherwise restrict the ability of the Company or its Subsidiaries to solicit for hire or to hire any person;

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(iii) (A) containing any standstill, or similar agreement pursuant to which the Company or any of its Subsidiaries has agreed not to acquire assets or securities of another person, (B) containing a put, call, right of first refusal or similar right pursuant to which the Company or any of its Subsidiaries could be required to purchase or sell, or otherwise acquire or transfer, as applicable, any equity interests of any person or assets that have a fair market value or purchase price of more than \$100,000 or (C) relating to the acquisition or disposition of any business or any material assets other than in the ordinary course of business (whether by merger, sale of shares or assets or otherwise);

(iv) that would prevent, materially delay or materially impede the Company's ability to consummate the Transactions;

(v) that is between the Company or any of its Subsidiaries and any of their respective directors, officers, affiliates or any person beneficially owning five percent (5%) or more of the outstanding Common Shares;

(vi) that involves the payment or receipt by the Company or its Subsidiaries of royalties or other amounts in consideration for rights to practice any Intellectual Property of more than \$100,000 in the aggregate;

(vii) (A) for the furnishing of services or the sale of products which involves, or would reasonably be expected in the future to involve, consideration in excess of \$100,000 in any 12 month period, (B) for the receipt of services by a third party or for the purchase of raw materials, commodities, supplies, products, or other personal property, which involves payment by the Company or any of its Subsidiaries of consideration in excess of \$100,000 in any 12 month period or which would reasonably be expected to involve payment by the Company or any of its Subsidiaries of consideration in excess of \$100,000 in any future 12 month period during the term of such agreement except for payments to trade creditors in the ordinary course of business or (C) that provides for future payment obligations by the Company or any of its Subsidiaries of \$100,000 or more related to clinical trials of Company Pharmaceutical Products;

(viii) under which any of the Company or any of its Subsidiaries is a lessee of, or holds or uses, any equipment, machinery, vehicle or other tangible personal property owned by a third person which requires future annual payments in excess of \$100,000;

(ix) pursuant to which the Company or any of its Subsidiaries has entered into a partnership, joint venture, collaboration or other similar arrangement with any person (other than intercompany agreements);

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(x) for capital expenditures or the acquisition or construction of fixed assets which requires aggregate future payments in excess of \$100,000;

(xi) pursuant to which the Company or any of its Subsidiaries agrees not to make use of any material right in any Intellectual Property owned by the Company or any of its Subsidiaries;

(xii) pursuant to which the Company or any of its Subsidiaries has outstanding indebtedness, or provides a guarantee in a principal amount in excess of \$100,000 other than indebtedness to trade creditors incurred in the ordinary course of business;

(xiii) containing a settlement with respect to a Proceeding (whether commenced or threatened in writing) of any nature;

(xiv) which requires future payments by the Company or any of its Subsidiaries in excess of \$100,000 per annum containing "change of control" or similar provisions (whether or not such payments or benefits are contingent upon the occurrence of any other event);

(xv) under which the Company or its Subsidiaries have received, or are entitled to receive, payment from any person for use in the research or development of any Company Pharmaceutical Product;

(xvi) under which the Company is obligated to make future payments of over \$100,000 for the research, development, or commercialization of any Company Pharmaceutical Product;

(xvii) pursuant to which the Company, any of its Subsidiaries or any other party thereto has material continuing obligations, rights or interests relating to the research, development, distribution, supply, manufacture, marketing or co-promotion of, or collaboration with respect to any Company Pharmaceutical Product;

(xviii) any Company Lease;

(xix) any employment, contractor or consulting Contract with any Company employee with annual compensation in excess of Cdn\$200,000;

(xx) any Contract that provides for any change of control, severance or termination pay or other compensation or benefits related to termination of employment or services to the Company or any of its Subsidiaries;

(xxi) any collective bargaining agreement or other similar Contract with a union, works council, trade union or other labor relations entity;

(xxii) any Contract with any current or former officer or director of the Company or any of its Subsidiaries; or

(xxiii) any Contract of which the Company has knowledge to which any employee, consultant or independent contractor of the Company or a Subsidiary is bound that in any manner purports to (A) restrict such employee's, consultant's or independent contractor's freedom to engage in any line of business or activity or to compete with any other Person, or (B) assign to any other Person such employee's, consultant's or independent contractor's rights to any Intellectual Property that relate to the business of the Company and its Subsidiaries.

(b) Section 13(b) of the Company Disclosure Letter contains a complete and accurate list of all Material Contracts to which the Company or any of its Subsidiaries is a party or by which any of their respective properties or assets are bound, and identifies each subsection of Section 13(a) that describes such Material Contract. The Company has delivered or made available to the Parent true, correct and complete copies of the Material Contracts, including all amendments, supplements and modifications thereto. Each of the Material Contracts is valid and binding on the Company or its applicable Subsidiary and, to the knowledge of the Company, each other party thereto and is in full force and effect. None of the Company, any of its Subsidiaries or, to the knowledge of the Company, any other party, is in breach of, or default under, in any material respect, any Material Contract, and no event has occurred that with notice or lapse of time or both would constitute such a breach or default thereunder in any material respect by the Company or any of its Subsidiaries, or, to the knowledge of the Company, any other party thereto. Neither the Company nor any of its Subsidiaries has received any written notice or other communication regarding any actual or possible violation or breach of or default under, or intention to cancel or modify, any Material Contract.

(c) Section 13(c) of the Company Disclosure Letter contains a complete and accurate list of all Designated Contracts.

#### 14. Properties and Assets.

(a) Neither the Company nor any of its Subsidiaries owns, or has ever owned, any real property.

(b) None of the Company Leases has been assigned by the Company or a Subsidiary in favour of any person. The current uses of each property subject to a Company Lease comply with applicable Law. Except as disclosed in Section 14(b) of the Company Disclosure Letter, no consent is required nor is any notice required to be given under any Company Lease by any party thereto or any other person in connection with the completion of the Transactions in order to maintain all rights of the Company or a Subsidiary, as the case may be, under such Company Lease. The completion of the Transactions will not afford any party to any of the Company Leases or any other person the right to terminate any Company Lease nor will the completion of such transactions result in any additional or more onerous obligation on the Company or a Subsidiary, as the case may be, under any Company Lease.

(c) The machinery, equipment, furniture, fixtures and other tangible personal property and assets owned, leased or used by the Company or any of its Subsidiaries (the "Assets") are in good operating condition and repair, ordinary wear and tear excepted, in the aggregate, sufficient and adequate to carry on their respective businesses in all material respects as presently conducted or over the last twelve months prior to the date hereof, and the Company and its Subsidiaries are in possession of and have good title to, or valid leasehold interests in or valid rights under contract to use, such Assets that are material to the Company and its Subsidiaries, taken as a whole, free and clear of all Liens, except for Permitted Liens and defects in title that, individually or in the aggregate, are not and would not reasonably be expected to be material to the Company and its Subsidiaries, taken as a whole.

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#### 15. Environmental Matters.

(a) (A) The Company and its Subsidiaries are in compliance with and have complied at all times with all applicable Environmental Laws, which compliance includes obtaining, maintaining and complying with the terms of any consents, registrations, approvals, Permits or authorizations required to be obtained from any Governmental Entity under any Environmental Laws; (B) no property (including soils, groundwater, surface water, buildings or other structures) currently owned, leased or operated by the Company or any of its Subsidiaries is contaminated with any Hazardous Substance in amounts or concentrations exceeding applicable governmental criteria or requiring reporting or remediation by, or as could reasonably be expected to result in Liability to, the Company or any of its Subsidiaries; (C) no property formerly owned, leased or operated by the Company or any of its Subsidiaries has been contaminated with any Hazardous Substance from the operations or activities of the

Company or any of its Subsidiaries during or prior to such period of ownership, lease or operation requiring reporting or remediation by, or as could reasonably be expected to result in Liability to, the Company or any of its Subsidiaries; (D) neither the Company nor any of its Subsidiaries has incurred any Liability, nor, to the knowledge of the Company, been alleged to be Liable, for any Hazardous Substance disposal or contamination on any third-party property, including any sites to which the Company or any of its Subsidiaries have or may have sent Hazardous Substances, now or in the past; (E) neither the Company nor any of its Subsidiaries has released any Hazardous Substance other than in compliance with Environmental Laws; (F) neither the Company nor any of its Subsidiaries is subject to any Order or any indemnity or other agreement with any third party relating to liability under any Environmental Law or relating to Hazardous Substances; (G) to the knowledge of the Company there are no other circumstances or conditions involving the Company or any of its Subsidiaries that would reasonably be expected to result in any Proceeding, Liability or investigation pursuant to any Environmental Law; and (H) neither the Company nor any of its Subsidiaries has received any written or, to the knowledge of the Company, oral, notice, demand, letter, claim or request for information alleging that the Company or any of its Subsidiaries is or was in violation of, or has or had Liability under, any Environmental Law.

(b) The Company has delivered to the Parent copies of all environmental reports, studies, assessments, sampling data and other environmental reviews in its possession as of the date of this Agreement relating to the Company or any of its Subsidiaries or their respective current and former properties or operations.

16. Taxes.

(a) The Company and each of its Subsidiaries:

(i) has prepared in good faith and has duly and timely filed (taking into account any extension of time within which to file) all income Tax Returns and other material Tax Returns required to be filed by, with respect to, or on behalf of any of them with any Governmental Entity, and all such Tax Returns are true, correct and complete in all material respects;

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(ii) has timely paid all material Taxes, whether or not shown on any Tax Return, that are required to be paid by any of them at or prior to the date hereof except with respect to matters contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP;

(iii) has timely deducted, withheld and remitted (or accounted for) to the proper Governmental Entities all material Taxes required to have been deducted, withheld and remitted (or accounted for) by any of them in connection with amounts paid or owing to any person, including to any employee, creditor, person that is or is deemed to be a non-resident of Canada (for purposes of the Tax Act) or a non-resident with respect to any paying Subsidiary's jurisdiction of residence or other third party, in compliance with all applicable Laws related to Taxes, except with respect to matters contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP; and

(iv) has not waived any statute of limitations with respect to any material Taxes, agreed to any extension of time with respect to the assessment, reassessment or collection of a material Tax.

(b) There are not pending or, to the knowledge of the Company, threatened, against the Company or any of its Subsidiaries any audits, examinations, investigations or other proceedings in respect of Taxes or Tax matters.

(c) The Company and its Subsidiaries have charged, collected and remitted on a timely basis all material Taxes as required under applicable Law on any sale, supply or delivery whatsoever, made by any of them.

(d) To the knowledge of the Company, no material deficiencies have been asserted by any Governmental Entity with respect to Taxes of the Company or any of its Subsidiaries.

(e) The terms and conditions made or imposed in respect of every transaction (or series of transactions) between the Company or any Subsidiary and any person that is not dealing at arm's length with the Company or such Subsidiary, as the case may be, do not materially differ from those that would have been made between persons dealing at arm's length, and each of the Company and each Subsidiary has complied in all material respects with the transfer pricing requirements of any applicable Law.

(f) Adequate provision has been made on the consolidated financial statements of the Company for all Taxes assessed and all Taxes owing by the Company or any Subsidiary that are not yet due and payable and relate to periods ending prior to the date hereof.

(g) The Company has not, within the six months that precede the date of this Agreement, made any "investment", as that term is defined for purposes of proposed section 212.3 of the Tax Act, in any corporation that is, or will be prior to the Effective Time, a "foreign affiliate" of the Company for purposes of the Tax Act.

17. Labor and Employee Matters.

(a) Neither the Company nor any of its Subsidiaries is a party to or otherwise bound by any collective bargaining agreement or other Contract with a labor union or similar labor organization. No employees of the Company or any of its Subsidiaries are represented by any labor union or similar labor organization with respect to their employment with the Company or any of its Subsidiaries. Neither the Company nor any of its Subsidiaries is the subject of any Proceeding that is pending, or, to the knowledge of the Company, threatened asserting that the Company or any of its Subsidiaries has committed an unfair or unlawful labor practice or seeking to compel it to bargain with any labor union or similar labor organization. There is no labor strike, dispute, slowdown, stoppage or lockout involving the Company or any of its Subsidiaries pending, or to the knowledge of the Company, threatened against the Company or any of its Subsidiaries.

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(b) Section 17(b) of the Company Disclosure Letter contains a complete and accurate list of all of the employees of the Company and its Subsidiaries and other persons who are receiving remuneration for work or services provided to the Company or any of its Subsidiaries who are not employees as of the date of this Agreement, and the position, status, length of service, location of employment, compensation (wage or salary, bonus, deferred compensation, commission or individual severance arrangements) and benefits of each employee and the terms on which each other person who is providing work or services to the Company or any of its Subsidiaries is engaged. Except as set out on Section 17(b) of the Company Disclosure Letter, no employee of the Company or any of its Subsidiaries is on a long-term disability leave of absence, receiving benefits pursuant to applicable workers compensation legislation, or otherwise an inactive employee.

(c) Except as listed on Section 17(c) of the Company Disclosure Letter, neither the Company nor any of its Subsidiaries is a party to or bound by any written contract in respect of any employee (A) with annual compensation in excess of Cdn.\$200,000 or (B) which provides such employee with termination or severance entitlements in excess of those required by applicable Law.

(d) As of the date of this Agreement, to the knowledge of the Company, there is no current employee of the Company or any of its Subsidiaries above the level of Vice President, with an annual salary in excess of Cdn\$200,000, and/or who is a member of the clinical development team,

who intends to terminate his or her employment.

(e) To the knowledge of the Company, no employee of the Company or any of its Subsidiaries is in violation in any material respect of any term of any employment agreement, nondisclosure agreement, common law nondisclosure obligation, fiduciary duty, noncompetition agreement, assignment of invention covenant, restrictive covenant or other obligation to (A) the Company or any of its Subsidiaries or (B) a former employer of any such employee relating (i) to the right of any such employee to be employed by the Company or any of its Subsidiaries or (ii) to the knowledge or use of trade secrets, confidential or proprietary information.

(f) All current and former officers and employees of the Company or any of its Subsidiaries who are or have been involved in the creation or development of Company Intellectual Property material to the manufacture, use, sale, offer for sale or importation of any Company Pharmaceutical Products have executed and delivered to the Company an agreement providing for the protection of proprietary information and the assignment to the Company of such Intellectual Property. All current and former consultants and independent contractors to the Company or any of its Subsidiaries who are or have been involved in the creation or development of Company Intellectual Property material to the manufacture, use, sale, offer for sale or importation of any Company Pharmaceutical Products have executed and delivered to the Company an agreement providing for the protection of proprietary information and the assignment to the Company of such Intellectual Property.

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(g) Neither the Company nor any of its Subsidiaries is a party to any Proceeding under any applicable Law relating to their employees or former employees, nor is the Company aware of any factual or legal basis on which any such Proceeding might be commenced.

(h) Neither the Company nor any of its Subsidiaries is or has been required to maintain an affirmative action plan.

(i) The Company and each of its Subsidiaries is and has been in material compliance with all applicable Laws respecting employment, employment practices, terms and conditions of employment, superannuation, worker classification, Tax withholding, prohibited discrimination, equal employment, fair employment practices, meal and rest periods, immigration status, employee safety and health, wages (including overtime wages), compensation, and hours of work, and, in each case, with respect to employees of the Company or any of its Subsidiaries: (A) is not liable for any arrears of wages, severance pay or any Taxes or any penalty for failure to comply with any of the foregoing, (B) is not liable for any payment to any trust or other fund governed by or maintained by or on behalf of any Governmental Entity, with respect to unemployment compensation benefits, social security or other benefits or obligations for employees of the Company or any of its Subsidiaries (other than routine payments to be made in the ordinary course of business) and (C) the Company and its Subsidiaries have not received notice of any complaint filed by any of the employees against the Company or its Subsidiaries claiming that the Company or any Subsidiary has violated employment or labour laws.

(j) There are no unsatisfied judgments or awards against the Company or any of its Subsidiaries by any current or former employee and, to the knowledge of the Company, pending or threatened audit by any Governmental Entity related to any of the employment practices of the Company or any of its Subsidiaries.

(k) There is, to the knowledge of the Company, no pending or threatened or reasonably anticipated Proceeding against the Company or any of its Subsidiaries under any worker's compensation policy or long-term disability policy or for claims of harassment or wrongful termination.

(l) Neither the Company nor any of its Subsidiaries is party to a conciliation agreement, consent decree or other agreement or Order with any Governmental Entity with respect to employment practices.

(m) The services provided by each employee of the Company or any of its Subsidiaries in any jurisdiction (other than Canada, Australia and the United Kingdom) is terminable at the will of the Company or any of its Subsidiaries and any such termination would result in no Liabilities to the Company.

(n) To the knowledge of the Company, neither the Company nor any of its Subsidiaries has any Liabilities with respect to any misclassification of: (A) any person as an independent contractor rather than as an employee, (B) any employee leased from another employer, or (C) any employee currently or formerly classified as exempt from overtime wages.

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(o) The Company and its Subsidiaries: (A) are in material compliance with all applicable Laws with respect to its independent contractors; and (B) have withheld, reported and paid all material amounts required by applicable Laws or by contract to be withheld, reported and paid with respect to any current or former independent contractors or directors.

#### 18. Intellectual Property.

(a) Section 18(a) of the Company Disclosure Letter contains a complete and accurate list of all Company Registered IP. Section 18(a)(A) of the Company Disclosure Letter sets forth the jurisdictions in which such Company Registered IP has issued, or applications have been filed, the name of the owner, the application or registration number, the filing date, and as applicable the date of registration and the expiration date of such Intellectual Property. The Company is the sole and exclusive beneficial and, with respect to applications and registrations, record owner of all of the Company Registered IP, and to the knowledge of the Company, all Company Registered IP is valid, subsisting and enforceable. No Company Registered IP is subject to any outstanding order, judgment or decree adversely affecting the Company's or any of its Subsidiaries' use thereof or rights thereto. The Company has provided to the Parent complete and accurate copies of all relevant applications, prosecution file histories for Patents for the Key Product that are not publicly available.

(b) All necessary registration, maintenance and renewal fees for the Company Registered IP have been paid and all necessary documents and certificates have been filed with the relevant Governmental Entity for the purpose of maintaining such Company Registered IP. Section 18(b) of the Company Disclosure Letter accurately identifies and describes each action, filing, and payment that must be taken or made on or before the date that is one hundred twenty days after the date of this Agreement in order to maintain the Company Registered IP in full force and effect (but excluding any such action, filing or payment the requirement for which first comes into being after the date of this Agreement and was unknown prior to the date of this Agreement).

(c) The Company or one of its Subsidiaries owns, or, to the knowledge of the Company, has a valid right to use all Company Intellectual Property. Without limiting the foregoing: (A) all documents and instruments necessary to establish, perfect and maintain the rights of the Company and its Subsidiaries in any Company Intellectual Property have been validly executed, delivered, filed and/or recorded in a timely manner with the appropriate Governmental Entity, (B) all officers, employees and contractors (as applicable) of Company and its Subsidiaries are obligated to assign to Company or its Subsidiary, as applicable, all inventions and other Intellectual Property made in the performance of their duties to Company or its Subsidiaries, and (C) to the knowledge of the Company, no officer or employee of the Company or any of its Subsidiaries is subject to any Contract with any other person that requires such officer or employee to assign any interest in inventions or other Intellectual Property to such other person.

(d) To the knowledge of the Company, (A) neither the Company nor any of its Subsidiaries has infringed, misappropriated, or otherwise violated the Intellectual Property of any third party; and (B) no person is infringing, misappropriating, or otherwise violating the Intellectual Property owned by or exclusively licensed to the Company or any of its Subsidiaries. There has been no claim asserted or threatened in writing directed to the Company (including in the form of written offers or invitations to obtain a patent license) that the Company or any of its Subsidiaries is infringing, misappropriating, or otherwise violating the Intellectual Property of any third party, and to the knowledge of the Company, there is no basis for any such claim.

(e) None of the Company nor any of its Subsidiaries is obligated to indemnify, defend, hold harmless any other person with respect to the infringement, misappropriation or other violation of any Intellectual Property.

(f) Section 18(f) of the Company Disclosure Letter contains a complete and accurate list of all (A) IP Contracts and (B) agreements between the Company or one of its Subsidiaries and any contract research organization with respect to any Company Pharmaceutical Product other than non-disclosure agreements entered into in the ordinary course of business. Each of the IP Contracts and other agreements described in the foregoing clause (B) is valid and binding on the Company or its Subsidiary and, to the knowledge of the Company, each other party thereto, and is in full force and effect. None of the Company, any of its Subsidiaries or, to the knowledge of the Company, any other party, is in breach of, or default under, in any material respect, any such IP Contracts or agreement described in the foregoing clause (B), and no event has occurred that with notice or lapse of time or both would constitute such a breach or default thereunder in any material respect by the Company or any of its Subsidiaries, or, to the knowledge of the Company, any other party thereto. Neither the Company nor any of its Subsidiaries has received any written notice or other communication regarding any actual or possible violation or breach of or default under, or intention to cancel or modify, any such IP Contract described in the foregoing clause (A) or agreement described in the foregoing clause (B).

(g) To the knowledge of the Company, no Company Intellectual Property owned or exclusively licensed by the Company or any of its Subsidiaries is subject to any outstanding injunction, judgment, order, decree, ruling, charge, settlement, or other disposition of a dispute.

(h) The Company and its Subsidiaries, to the extent applicable and material to the business, have taken commercially reasonable measures to protect the confidentiality of Trade Secrets that are owned by the Company or any of its Subsidiaries and such Trade Secrets have not been disclosed by the Company or any of its Subsidiaries to any person except pursuant to written nondisclosure agreements.

(i) The consummation of the Transactions will not result in the loss or impairment of or payment of any additional amounts with respect to, nor require the consent of any other person in respect of, the Company's or any of its Subsidiaries' right to own or use any of the Company Intellectual Property.

(j) Neither the Company nor any of its Subsidiaries has received any written notice from any third party challenging or threatening to challenge the right, title or interest of the Company or its Subsidiaries in, to or under the Company Intellectual Property, or the validity, enforceability or claim construction, as applicable, of any Company Intellectual Property.

(k) There is no IP Contract under which the Company or any of its Subsidiaries has granted a license under Company Intellectual Property to any person to commercialize any Company Pharmaceutical Product.

19. Product Liabilities. None of the Company or any of its Subsidiaries has received any written claim, and to the knowledge of the Company any other claim, and, to the knowledge of the Company, there are no incidents that could reasonably be expected to give rise to a claim for or based upon breach of product warranty (other than warranty service and repair claims in the ordinary course of business not material in amount or significance), strict liability in tort, negligent manufacture of product, negligent provision of services or any product complaint, adverse event report or any other similar allegation of liability, including or resulting in product recalls and including or resulting in bodily injury or property damage, arising from the materials, design, testing, manufacture, packaging, labeling (including instructions for use), clinical trials of or



sale of the Company Pharmaceutical Products or from the provision of services, and to the knowledge of the Company, there is no basis for any such claim. Except for compassionate use, the Company does not sell and has never sold any Company Pharmaceutical Products.

20. Insurance. Except as, individually or in the aggregate with other similar exceptions, has not had, or would not reasonably be expected to have, a Company Material Adverse Change, all insurance policies maintained by the Company and each of its Subsidiaries are in full force and effect, all premiums due and payable thereon have been paid, and the Company and each of its Subsidiaries are otherwise in compliance with the terms and conditions of such policies. Section 20 of the Company Disclosure Letter (A) contains a complete and accurate list of all material insurance policies maintained by or on behalf of the Company and each of its Subsidiaries as of the date hereof, and (B) a complete and accurate list of any and all claims submitted by the Company or any of its subsidiaries under any such policies. Neither the Company nor any of its Subsidiaries has received any notice of cancellation, termination or non-renewal of any such policy or arrangement or any notice of material adjustment in the amount of the premiums payable with respect to any such policy, and there is no material claim pending under any of such policies or arrangements as to which coverage has been questioned, denied or disputed by the underwriters of such policies or arrangements. There are no self-insurance arrangements in effect as of the date hereof with respect to the Company or any of its Subsidiaries.

21. Brokers and Finders. Except for Merrill Lynch Canada Inc. (a true and correct copy of whose engagement letter has been furnished to the Parent prior to the date hereof), there is no investment banker, broker, finder or other person that has been retained by or is authorized to act on behalf of the Company or any of its Subsidiaries who would be entitled to any fee or commission in connection with the Arrangement or the Transactions.

22. Suppliers. Of the top 20 suppliers to the Company and its Subsidiaries during the fiscal year ended June 30, 2012, set forth in Section 22 of the Company Disclosure Letter is a complete and accurate list of the names of the top suppliers of raw materials, packaging, active ingredients, intermediates, excipients, finished products (including capsules, tablets, bottling and labeling) and distribution services to the Company and its Subsidiaries (the "Company Suppliers"). Except as set forth in Section 22 of the Company Disclosure Letter, there exists no actual or threatened in writing, or to the knowledge of the Company otherwise threatened, termination, cancellation or limitation of, or any adverse change in, the business relationship of the Company or any of its Subsidiaries with any Company Supplier.

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23. Export Control and Import Laws.

(a) The Company and each of its Subsidiaries have complied in all material respects with all applicable U.S. Laws and regulations, as well as any applicable non-US Laws and regulations regarding export and reexport controls ("Export Controls"), including (A) the Export Administration Regulations maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control ("OFAC") and the International Traffic in Arms Regulations maintained by the Department of State and any applicable anti-boycott compliance regulations, and (B) the Export and Import Permits Act, Special Economic Measures Act, United Nations Act (including regulations under these various statutes) and other export control measures and trade and economic sanctions maintained or administered by the Canadian Department of Foreign Affairs and International Trade and/or the Canada Border Services Agency, as well as the Nuclear Safety Act and Control Act administered by the Canadian Nuclear Safety Commission. Neither the Company nor any of its Subsidiaries has directly or indirectly sold, exported, reexported, transferred, diverted, or otherwise disposed of any products, software, or technology (including products derived from or based on such technology) to any destination, entity, or person prohibited by the Export Controls without obtaining prior authorization from the competent Governmental Entities as required by those Export Controls. The Company and its Subsidiaries are in material compliance with all applicable import Laws ("Import Restrictions"), including (A) Title 19 of the U.S. Code and Title 19 of the Code of Federal Regulations, and (B) the Special Import Measures Act and all regulations thereunder.

(b) Section 23(b) of the Company Disclosure Letter accurately describes all of (A) the countries to which the goods, services, items, software, technology, or technical data of the Company or any of its Subsidiaries have been exported; and (B) the authority for the exports, including license number, license exception or no license required, for each good, service, item, software, technology, and technical data of the Company and its Subsidiaries. Any such exports were in compliance with the applicable Laws and regulations of the country from which they were exported and all other applicable laws. No license is required under Export Controls to transfer any relevant goods, services, items, software,

technology, or technical data from Company and its Subsidiaries to the Parent or its Subsidiaries.

(c) None of the Company, any of its Subsidiaries or, to the knowledge of the Company, any manager, director, officer, agent, distributor, employee or other person acting on behalf of or in the name of the Company or any of its Subsidiaries: (A) is, or is owned or controlled by, a person located in or subject to the sanctions administered by OFAC, including but not limited to the economic sanctions against Cuba, Iran, North Korea, Sudan or Syria; or (B) is included on any list of restricted entities, persons or organizations published by the government of the United States of America including the List of Specially Designated Nationals and Blocked Persons, Denied Persons List, Entities List, Debarred Parties List, Excluded Parties List and Terrorism Exclusion List, or any other applicable Law.

(d) No Proceeding, claim, request for information, or subpoena is pending, or to the knowledge of the Company, threatened, concerning or relating to any export or import activity of the Company or any of its Subsidiaries. No voluntary self disclosures have been filed by or for the Company or any of its Subsidiaries with respect to known or possible violations of any Export Controls or Import Restrictions.

(e) To the knowledge of the Company, neither the Company nor any of its Subsidiaries is aware of any fact or circumstance that could result in any Liability for violation of any Export Controls or Import Restrictions.

(f) The Company and its Subsidiaries, or where permitted by applicable Law, its customs brokers and/or freight forwarders, have maintained in all material respects all records required to be maintained in the Company's and its Subsidiaries' possession as required under the Export Controls and Import Restrictions.

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#### 24. Related Party Transactions.

(a) Except as set forth in the Company Reports or compensation or other employment arrangements in the ordinary course of business, there are no transactions, agreements, arrangements or understandings between the Company or any of its Subsidiaries, on the one hand, and any affiliate (including any officer or director, but not including any wholly owned Subsidiary of the Company) thereof or any shareholder that beneficially owns 5% or more of the Common Shares, on the other hand.

(b) Neither the Company nor any of its Subsidiaries is indebted to any director, officer, employee or agent of, or independent contractor to, the Company or any of its Subsidiaries or any of their respective affiliates or associates (except for amounts due in the ordinary course of business as salaries, bonuses, director's fees, amounts owing under any contracting agreement with any such independent contractor or the reimbursement of expenses in the ordinary course of business).

(c) No related party of the Company (within the meaning of MI 61-101) together with its associated entities, beneficially owns or exercises control or direction over one (1)% or more of the outstanding Common Shares, except for related parties who will not receive a "collateral benefit" (within the meaning of such instrument) as a consequence of the transactions contemplated by this Agreement.

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#### SCHEDULE D

## REPRESENTATIONS AND WARRANTIES OF THE PARENT AND THE PURCHASER

1. Organization, Good Standing and Qualification. Each of the Parent and the Purchaser is a legal entity duly organized, validly existing and in good standing under the Laws of its respective jurisdiction of organization and has all requisite corporate power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted and is qualified to do business and is in good standing in each jurisdiction where the ownership, leasing or operation of its assets or properties or conduct of its business requires such qualification, except where the failure to be so organized, qualified or in good standing, or to have such power or authority, would not individually or in the aggregate with other such failures, reasonably be expected to prevent, materially delay or materially impair the consummation of the Transactions (a "Parent Material Adverse Change").

2. Corporate Authority. Each of the Parent and the Purchaser has all requisite corporate power, authority and capacity to execute and deliver this Agreement, to perform their obligations under this Agreement and to consummate the Transactions. The execution and delivery by the Parent and the Purchaser of this Agreement, the performance by the Parent and the Purchaser of their obligations under this Agreement and the consummation by the Parent and the Purchaser of the Transactions have been duly authorized by the boards of directors of the Parent and the Purchaser and no other corporate proceedings on the part of the Parent or the Purchaser are necessary to authorize the execution and delivery by the Parent and the Purchaser of this Agreement, the performance by the Parent and the Purchaser of their obligations under this Agreement or the consummation by the Parent and the Purchaser of the Transactions. This Agreement has been duly executed and delivered by each of the Parent and the Purchaser and, assuming this Agreement constitutes the valid and binding agreement of the Company, constitutes a valid and binding agreement of the Parent and the Purchaser enforceable against each of the Parent and the Purchaser in accordance with its terms, subject to the Bankruptcy and Equity Exception.

3. Governmental Filings; No Violations.

(a) Other than (A) the Interim Order and any approvals required by the Interim Order, (B) the Final Order, (C) the Arrangement Filings under the NSCA, (D) the Regulatory Clearances (and making the Competition Filings), (E) compliance with any Applicable Securities Laws, including the rules and policies of the Exchanges and (F) except as, individually or in the aggregate, would not reasonably be expected to result in a Parent Material Adverse Change, no notices, reports or other filings are required to be made by the Company or any of its Subsidiaries with, nor are any consents, registrations, approvals, Permits or authorizations required to be obtained by the Company or any of its Subsidiaries from, any Governmental Entity, in connection with the execution and delivery by the Parent and the Purchaser of this Agreement, the performance by the Parent and the Purchaser of their obligations under this Agreement or the consummation by the Parent and the Purchaser of the Transactions.

(b) The execution and delivery of this Agreement by the Parent and the Purchaser do not, and the performance by the Parent and the Purchaser of its respective obligations under this Agreement and the consummation by the Parent and the Purchaser of the Transactions will not, constitute or result in (A) a breach or violation of, or a default (or an event which with notice or lapse of time or both would become a default) under, the certificate of incorporation or bylaws of the Parent or the Purchaser (or the comparable governing documents), (B) a breach or violation of, a termination or cancelation (or right of termination or cancelation) or a default (or an event which with notice or lapse of time or both would become a default) under, the creation or acceleration of any Liabilities under, or any change in the rights, benefits or obligations of any party under, any Contract or Permit to which the Parent or any of its Subsidiaries is a party or by which the Parent, any of its Subsidiaries or any of their respective properties or assets may be bound, (C) assuming compliance with the matters referred to in Section 3(a) of Schedule D and receipt of the Requisite Shareholder Approval at the Company Meeting, a violation of any Law or Order to which the Parent, any of its Subsidiaries or any of their respective properties or assets may be subject or (D) the creation of a Lien on any of the assets or properties of the Parent or any of its Subsidiaries, except, in the case of clause (B) or (D) above, for any such breach, violation, termination, default, creation, acceleration, change, loss, impairment or payment that, individually or in the aggregate, would not reasonably be expected to, result in a Parent Material Adverse Change.

4. Legal Proceedings. As of the date of this Agreement, there are no Proceedings pending or, to the knowledge of the Parent, threatened against the Parent or the Purchaser that seek to enjoin, or would reasonably be expected to have the effect of preventing, making illegal, or otherwise interfering with, any of the Transactions, except for those that, individually or in the aggregate, have not had, and would not reasonably be expected to have, a Parent Material Adverse Change.

5. Funds Available. The Parent will have at the Effective Time sufficient funds or have made adequate arrangements to ensure that the required funds are available to effect payment in full of the Consideration for all the Common Shares acquired pursuant to the Transactions.

7. Investment Canada Act. The Parent is a WTO investor within the meaning of the Investment Canada Act.

8. No Collateral Benefit. As of the date hereof, to the knowledge of the Parent and the Purchaser, except as set forth in the Company Disclosure Letter, no related party of the Company (within the meaning of MI 61-101) is, or will be, entitled to receive a "collateral benefit" (within the meaning of such instrument) as a consequence of any transaction contemplated under this Agreement; or is, or will be, a part to any "connected transaction" (within the meaning of such instrument) to any transaction contemplated under this Agreement.

9. No Other Voting Agreements. Other than this Agreement and the Voting Support Agreements, none of the Parent, the Purchaser, any of their affiliates or any person acting jointly or in concert with any of them is party to any agreement, arrangement or understanding with any holder of securities of the Company directly or indirectly relating to any such securities or the Company, including the voting, sale or other transfer of such securities.

10. Finders' Fees. There is no investment banker, broker, finder or other intermediary that has been retained by or is authorized to act on behalf of the Purchaser or the Parent or their affiliates who might be entitled to any fee or commission from the Company or any of its Subsidiaries upon consummation of the transactions contemplated by this Agreement.

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## SCHEDULE E

### PROCEDURES FOR REQUESTING CONSENT OF THE PARENT UNDER SECTION 5.1(1)

If the Company desires to take an action which, without the prior written consent of the Parent, would be prohibited pursuant to Section 5.1, prior to taking such action the Company must request such written consent by sending an email addressed to both of the following individuals, and may not take such action until such consent has been received in writing from either of the following individuals; provided, however, that in the event the Company does not receive a response from either such individual within five business days of such email request (or, in any event, does not receive a response from either such individual either granting or denying such consent request within ten business days of such email request), the Company shall be permitted to take such action, the lack of response being deemed to be consent by the Parent for such action:

Brian Sander

Email address: Brian.Sander@gilead.com

Liz Bhatt

Email address: Liz.Bhatt@gilead.com