

# SH01

## Return of allotment of shares



You can use the WebFiling service to file this form online.  
Please go to [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

☒ **What this form is for**  
You may use this form to give  
notice of shares allotted following  
incorporation.

☐ **What this form is NOT for**  
You cannot use this form to give  
notice of shares taken by sub  
on formation of the company  
for an allotment of a new class  
shares by an unlimited company

WEDNESDAY



\*AINGPGTT\*  
A44 20/01/2010 101  
COMPANIES HOUSE

### 1 Company details

Company number 0 5 3 8 2 2 6 2

Company name in full Lab 21 Limited

→ **Filling in this form**  
Please complete in typescript or in  
bold black capitals.

All fields are mandatory unless  
specified or indicated by \*

### 2 Allotment dates ①

From Date d1 d1 m1 m1 y2 y0 y0 y9  
To Date d d m m y y y y

① **Allotment date**  
If all shares were allotted on the  
same day enter that date in the  
'from date' box. If shares were  
allotted over a period of time,  
complete both 'from date' and 'to  
date' boxes.

### 3 Shares allotted

Please give details of the shares allotted, including bonus shares.

② **Currency**  
If currency details are not  
completed we will assume currency  
is in pound sterling.

Class of shares (E.g. Ordinary/Preference etc.)	Currency ②	Number of shares allotted	Nominal value of each share	Amount paid (including share premium)	Amount (if any) unpaid (including share premium)
A Ordinary		2123	0.01	0.01	

If the allotted shares are fully or partly paid up otherwise than in cash, please  
state the consideration for which the shares were allotted.

Details of non-cash consideration. 2,112,916 shares in Biotec Laboratories Limited as in the Sale Purchase Agreement dated 23 January 2009.

If a PLC, please attach  
valuation report (if  
appropriate)

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Return of allotment of shares

**Statement of capital**

**Section 4** (also **Section 5** and **Section 6**, if appropriate) should reflect the company's issued capital at the date of this return.

**4 Statement of capital (Share capital in pound sterling (£))**

Please complete the table below to show each class of shares held in pound sterling. If all your issued capital is in sterling, only complete **Section 4** and then go to **Section 7**.

Class of shares (E.g. Ordinary/Preference etc.)	Amount paid up on each share ①	Amount (if any) unpaid on each share ①	Number of shares ②	Aggregate nominal value ③
Ordinary	£0.01		50000	£ 500.00
A Ordinary	£0.01		755154	£ 7,551.54
			0	£
				£
<b>Totals</b>			805154	£ 8,051.54

**5 Statement of capital (Share capital in other currencies)**

Please complete the table below to show any class of shares held in other currencies.  
Please complete a separate table for each currency.

Currency				
Class of shares (E.g. Ordinary / Preference etc.)	Amount paid up on each share ❶	Amount (if any) unpaid on each share ❶	Number of shares ❷	Aggregate nominal value ❸
Totals				

Currency				
Class of shares (E.g. Ordinary/Preference etc.)	Amount paid up on each share ❶	Amount (if any) unpaid on each share ❶	Number of shares ❷	Aggregate nominal value ❸
Totals				

**6 Statement of capital (Totals)**

	Please give the total number of shares and total aggregate nominal value of issued share capital.	<b>④ Total aggregate nominal value</b> Please list total aggregate values in different currencies separately. For example: £100 + €100 + \$10 etc.
Total number of shares		
Total aggregate nominal value ④		

① Including both the nominal value and any share premium.

③ E.g. Number of shares issued multiplied by nominal value of each share.

② Total number of issued shares in this class.

**Continuation Pages**

Please use a Statement of Capital continuation page if necessary.

7

**Statement of capital (Prescribed particulars of rights attached to shares)**

Please give the prescribed particulars of rights attached to shares for each class of share shown in the statement of capital share tables in **Section 4** and **Section 5**.

Class of share	Ordinary
Prescribed particulars ①	<p>Voting rights: one vote on a show of hands per shareholder. No vote during Default Period as set out in Article 4.2.</p> <p>Any profits resolved to be distributed in any financial year or period shall be distributed amongst all the shareholders, pari passu as if the same are one and the same class of share, pro rata to the number of shares respectively held by them.</p> <p>On liquidation and sale, the assets of the Company remaining after payment of its debts and liabilities all shareholders are paid balance pro rata after the <u>A ordinary share receive twice the issue price of their shares.</u></p>
Class of share	A Ordinary
Prescribed particulars ①	<p>Voting rights: one vote on a show of hands per shareholder. Entitled to vote during the Default Period as set out in Article 4.2.</p> <p>Any profits resolved to be distributed in any financial year or period shall be distributed amongst all the shareholders, pari passu as if the same are one and the same class of share, pro rata to the number of Equity Shares respectively held by them.</p> <p>On liquidation and sale, the assets of the Company remaining after payment of its debts and liabilities A ordinary share receive twice the issue price of their shares.</p>
Class of share	
Prescribed particulars ①	

**① Prescribed particulars of rights attached to shares**

The particulars are:

- a particulars of any voting rights, including rights that arise only in certain circumstances;
- b particulars of any rights, as respects dividends, to participate in a distribution;
- c particulars of any rights, as respects capital, to participate in a distribution (including on winding up); and
- d whether the shares are to be redeemed or are liable to be redeemed at the option of the company or the shareholder and any terms or conditions relating to redemption of these shares.

A separate table must be used for each class of share.

**Continuation page**

Please use a Statement of Capital continuation page if necessary.

8

**Signature**

Signature

I am signing this form on behalf of the company.

Signature



This form may be signed by  
Director ②, Secretary, Person authorised ③, Administrator, Administrative receiver,  
Receiver, Receiver manager, CIC manager

**② Societas Europaea**

If the form is being filed on behalf of a Societas Europaea (SE) please delete 'director' and insert details of which organ of the SE the person signing has membership

**③ Person authorised**

Under either section 270 or 274 of the Companies Act 2006.

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## Return of allotment of shares



### Presenter information

You do not have to give any contact information, but if you do it will help Companies House if there is a query on the form. The contact information you give will be visible to searchers of the public record.

Contact name

Company name

Pitmans

Address

Post town

County/Region

Postcode

R

G

1

7

S

R

Country

DX DX: 146420 Reading 21

Telephone 0118 958 0224



### Checklist

We may return the forms completed incorrectly or with information missing.

Please make sure you have remembered the following:

- ☐ The company name and number match the information held on the public Register.
- ☐ You have shown the date(s) of allotment in section 2.
- ☐ You have completed all appropriate share details in section 3.
- ☐ You have completed the appropriate sections of the Statement of Capital.
- ☐ You have signed the form.



### Important information

Please note that all information on this form will appear on the public record.



### Where to send

You may return this form to any Companies House address, however for expediency we advise you to return it to the appropriate address below:

**For companies registered in England and Wales:**  
The Registrar of Companies, Companies House,  
Crown Way, Cardiff, Wales, CF14 3UZ.  
DX 33050 Cardiff.

**For companies registered in Scotland:**  
The Registrar of Companies, Companies House,  
Fourth floor, Edinburgh Quay 2,  
139 Fountainbridge, Edinburgh, Scotland, EH3 9FF.  
DX ED235 Edinburgh 1  
or LP - 4 Edinburgh 2 (Legal Post).

**For companies registered in Northern Ireland:**  
The Registrar of Companies, Companies House,  
First Floor, Waterfront Plaza, 8 Laganbank Road,  
Belfast, Northern Ireland, BT1 3BS.  
DX 481 N.R. Belfast 1.



### Further information

For further information please see the guidance notes on the website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk) or email [enquiries@companieshouse.gov.uk](mailto:enquiries@companieshouse.gov.uk)

This form is available in an alternative format. Please visit the forms page on the website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

# SH01 - continuation page

## Return of allotment of shares

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### Statement of capital (Prescribed particulars of rights attached to shares)

Class of share	A Ordinary shares	
Prescribed particulars	<p>On liquidation and sale, the assets of the Company remaining after payment of its debts and liabilities all shareholders are paid balance pro rata after the A ordinary share receive twice the issue price of their shares.</p> <p>Rights on issue of shares in the capital of the Company. Other than pursuant to any option granted in accordance with the terms of any share option scheme in accordance with the Investment Agreement at a price per share of less than the Issue Price for the 'A' Shares then the Company shall procure by way of capitalisation additional 'A' shares to the holders of 'A' shares to bring their shareholding to what it would have been if they had subscribed for their 'A' shares at this lower issue price.</p> <p>Rights on floatation. Steps shall be taken to issue each holder of A Ordinary Shares such number of new A ordinary shares that he would have received following a Sale based on a valuation of the Company at that date.</p> <p>Special Director and Investor Consent are required for certain action as set out in article 5.1 and 5.2. These are special rights of the A Ordinary Shares and breach of articles 5.1 and 5.2 shall be deemed a breach and variation of the class rights.</p> <p>There are new share issue rights under article 7.1.</p> <p>Special transfer restrictions are outlined at Article 11.</p> <p>Expressly permitted transfers are set out at Article 12.</p> <p>Mandatory transfers are set out at Article 13.</p> <p>Rights under the drag along and tag along provisions at Article 14.</p> <p>There are rights to appoint persons as Directors at Article 18.</p> <p>There are rights under the third party transfers procedure outlined at Article 15.</p>	

# SH01 - continuation page

## Return of allotment of shares

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### Statement of capital (Prescribed particulars of rights attached to shares)

Class of share	Ordinary shares	
Prescribed particulars	<p>There are new share issue rights under Article 7.1.</p> <p>Special transfer restrictions are outlined at Article 11.</p> <p>Expressly permitted transfers are set out at Article 12.</p> <p>Mandatory transfers are set out at Article 13.</p> <p>There are drag along and tag along provisions at Article 14.</p> <p>There are rights under the third party transfers procedure outlined at Article 15.</p>	

DATED 23rd January 2009

TUESDAY

COMPANIES HOUSE

LAB 21 LIMITED

and

THE SHAREHOLDERS

I hereby certify this  
to be a true copy  
of original.

Pitmans 18.11.09

Pitmans Solicitors  
The Anchorage  
34 Bridge Street  
Reading RG1 2LU

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SALE/PURCHASE AGREEMENT  
relating to the entire issued share capital of  
BIOTEC LABORATORIES LIMITED

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COMPANIES HOUSE

pitmans

The Anchorage  
34 Bridge Street  
Reading RG1 2LU

Ref: PHW

Reading Room  
34 Bridge Street  
The Anchorage  
Pittman Solicitors



THIS AGREEMENT is dated 23rd January 2009

## **PARTIES**

- (1) THE PERSONS names in Schedule 1 ("the **Sellers**");
- (2) LAB 21 LIMITED incorporated and registered in England and Wales with company number 05382262 whose registered office is at 184 Cambridge Science Park, Cambridge CB4 0GA ("the **Buyer**").

## **BACKGROUND**

The Sellers have agreed to sell and the Buyer has agreed to buy the Sale Shares subject to the terms and conditions of this Agreement.

## **AGREED TERMS**

### **1. INTERPRETATION**

- 1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

**"Accounts"** Company Accounts and Pty Accounts;

**"Accounts Date"** 31 December 2007;

**"Business Day"** a day (other than a Saturday, Sunday or public holiday) when banks in the City of London are open for business;

**"Buyer's Solicitors"** Pitmans, The Anchorage, 34 Bridge Street, Reading RG1 2LU;

**"CAA 2001"** the Capital Allowances Act 2001;

**"Claim"** a claim for breach of any of the Warranties. A Claim is **connected** with another Claim or Substantiated Claim if they all arise out of the occurrence of the same event or relate to the same subject matter;

**"Company"** BIOTEC LABORATORIES LIMITED, a company incorporated and registered in England and Wales with company number 02815000 whose registered office is at 32 Anson Road, Martlesham Heath, Ipswich, Suffolk IP5 3RG further details of which are set out in Part 1 of Schedule 2;

**"Company Accounts"** the unaudited financial statements of the Company as at and to the Accounts Date, comprising the individual accounts of the Company, including the balance sheet, profit and loss account together with the notes thereon;

**"Companies Acts"** the Companies Act 1985 and the Companies Act 2006 (to the extent in force);

**"Completion"** completion of the sale and purchase of the Sale Shares in accordance with this Agreement;

**"Completion Date"** the date on which the matters set out in Clauses 4.1.1 and 4.1.2 are satisfied or waived;

**"Confidential Information"** all information relating to the Company and Pty which is not public knowledge;

**"Connected"** in relation to a person, has the meaning contained in section 839 of the ICTA 1988;

**"Consideration Shares"** 40,376 A ordinary shares of £0.01 each in the capital of the Buyer;

**"Consideration Share Value"** means the higher of £30 per share and the Fair Value;

**"Director"** each person who is a director or shadow director of the Company or Pty, the names of whom are set out in Part 1 of Schedule 1;

**"Disclosed"** fairly disclosed (with sufficient details to identify the nature and scope of the matter disclosed) in or under the Disclosure Letter and "Disclose" and "Disclosing" shall be construed accordingly;

**"Disclosure Letter"** the letter from the Sellers to the Buyer in the agreed form dated on the same date as the Completion Date Disclosing matters which may be inconsistent with the Warranties, including the bundle of documents attached to it (**"Disclosure Bundle"**);

**"Encumbrance"** any interest or equity of any person (including any right to acquire, option or right of pre-emption) or any mortgage, charge, pledge, lien, assignment, hypothecation, security, interest, title, retention or any other security agreement or arrangement;

**"Event"** has the meaning given in Schedule 5;

**"Fair Value"** means the price per Consideration Share agreed by the Warrantors and the Buyer. If the Warrantors and the Buyer are unable to agree a price per Consideration Share within 21 days of the date on which it is necessary to calculate the Consideration Share Value, such price per Consideration Share will instead be the price which the Independent Expert shall certify to be in his opinion a fair value. In arriving at his opinion, the Independent Expert will value the Consideration Shares:

- (a) as at the date on which it is necessary to calculate the Fair Value;
- (b) on a going concern basis as between a willing seller and a willing buyer;
- (c) ignoring any reduction in value which may be ascribed to the Consideration Shares by virtue of the fact that they represent a minority interest; and

- (d) on the assumption that the Consideration Shares are capable of transfer without restriction.

The decision of the Independent Expert as to the Fair Value shall be final and binding.

**"FSMA"** the Financial Services and Markets Act 2000;

**"Group"** in relation to a company (wherever incorporated) that company, its Subsidiaries any company of which it is a Subsidiary (its holding company) and any other Subsidiaries of any such holding company; and each company in a group is a member of the group;

Unless the context otherwise requires, the application of the definition of Group to any company at any time will apply to the company as it is at that time;

**"ICTA 1988"** the Income and Corporation Taxes Act 1988;

**"IHTA 1984"** the Inheritance Tax Act 1984;

**"Independent Expert"** means an independent chartered accountant nominated by the parties concerned or in the event of disagreement as to nomination appointed, on the application of either party, by the President for the time being of the Institute of Chartered Accountants of England and Wales;

**"Intellectual Property Rights"** has the meaning given in paragraph 17.1 of Part 1 of Schedule 4;

**"Management Accounts"** the unaudited consolidated balance sheet and the unaudited consolidated profit and loss account of the Company and Pty (including any notes thereon) in each case for the period of twelve months ended 31 December 2008 (a copy of which is attached to the Disclosure Letter);

**"Mr Dalglish"** IGM Dalglish of St. Lawrence House, The Crescent, Dunblane FK15 0DL;

**"Mr Ellis"** Peter Ellis of 17 Thurloe Court, Fulham Road, London, SW3 6SB;

**"Novation Agreements"** the novation agreements entered into between (respectively) Matthew Durdy, Mr Ellis, Michael Hodgson-Hess and Timothy Maskell and the Company in the agreed form;

**"Percentage Surrender Value"** means the percentage of a Substantial Claim, Resolved Claim or other claim under this Agreement which shall be borne by each of the Warrantors as set opposite their respective names in Schedule 1 Part B;

**"Previously-owned Land and Buildings"** has the meaning given in paragraph 22.1 of Part 1 of Schedule 4;

**"Properties"** has the meaning given in paragraph 22.1 of Part 1 of Schedule 4;

**"Pty"** Biotec Laboratories South Africa (Proprietary) Limited;

**"Pty Accounts"** the unaudited financial statement of Pty as at and to the Accounts Date, comprising the individual accounts of Pty, including the balance sheet, profit and loss account together with the notes thereon;

**"Purchase Price"** the purchase price for the Sale Shares to be paid by the Buyer to the Sellers in accordance with clause 3;

**"Resolved"** in respect of any claim (other than a Claim) (including a claim under the Tax Covenant) on an order or decree of a court of competent jurisdiction being given and no right of appeal lies in respect of such order or decree, or the parties are debarred by passage of time or otherwise from making an appeal;

**"Sale Shares"** the 2,496,480 of 10 pence each in the Company, all of which have been issued and are fully paid;

**"Sellers' Representative"** the person appointed by the Sellers pursuant to clause 24.1;

**"Subsidiary"** in relation to a company wherever incorporated (a holding company) means a "subsidiary" as defined in section 736 of the Companies Act 1985 and any other company which is a subsidiary (as so defined) of a company which is itself a subsidiary of such holding company;

Unless the context otherwise requires, the application of the definition of Subsidiary to any company at any time will apply to the company as it is at that time;

**"Substantiated Claim"** a Claim or a claim under Tax Covenant in respect of which liability is admitted by the party against whom such Claim is brought, or which has been adjudicated on by a court of competent jurisdiction and no right of appeal lies in respect of such adjudication, or the parties are debarred by passage of time or otherwise from making an appeal or where such Claim is settled by written agreement of the relevant parties;

**"Surrender Value"** means the lesser of (i) the sum of £30 per Consideration Share and (ii) the Fair Value per Consideration Share;

**"Tax or Taxation"** has the meaning given in Schedule 5;

**"Tax Covenant"** the tax covenant as set out in Schedule 5;

**"Tax Claim"** has the meaning given in Schedule 5;

**"Tax Warranties"** the Warranties in Part 2 of Schedule 4;

**"Taxation Authority"** has the meaning given in Schedule 5;

**"Taxation Statute"** has the meaning given in Schedule 5;

“**TCGA 1992**” the Taxation of Chargeable Gains Act 1992;

“**TMA 1970**” the Taxes Management Act 1970;

“**Transaction**” the transaction contemplated by this Agreement or any part of that transaction;

“**VATA 1994**” the Value Added Tax Act 1994;

“**Warranties**” the warranties in clause 5 and Schedule 4;

“**Warrantors**” means together those individuals set out in Schedule 1 Part B and “**Warrantor**” shall be construed accordingly;

- 1.2 Clause and schedule headings do not affect the interpretation of this Agreement.
- 1.3 A **person** includes a corporate or unincorporated body.
- 1.4 Words in the singular include the plural and in the plural include the singular.
- 1.5 A reference to one gender includes a reference to the other gender.
- 1.6 A reference to a particular statute, statutory provision or subordinate legislation is a reference to it as it is in force at the date of this Agreement, taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts and subordinate legislation for the time being in force made under it.
- 1.7 **Writing** or **written** includes faxes but not e-mail.
- 1.8 Documents in **agreed form** are documents in the form agreed by the parties or on their behalf and initialled by them or on their behalf for identification.
- 1.9 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule.
- 1.10 References to this Agreement include this Agreement as amended or varied in accordance with its terms.
- 1.11 References to “Subsidiary” or “Subsidiaries” are references to a Subsidiary or Subsidiaries of the Company.

## **2. SALE AND PURCHASE**

- 2.1 On the terms of this Agreement, each Seller shall sell and the Buyer shall buy, with effect from Completion, the Sale Shares registered in the name of such Seller with full title guarantee, free from all Encumbrances and together with all rights that attach (or may in the future attach) to such Sale Shares including, in particular, the right to receive all dividends and distributions declared, made or paid on or after the date of this Agreement.
- 2.2 Each of the Sellers hereby waives all rights of pre-emption, other restrictions on transfer and rights of veto or otherwise held by each such Seller under the Articles of Association of the Company or otherwise in respect of the transfer of the Sale Shares to the Buyer and hereby waives any other rights which each such Seller may have under the Articles of Association of the Company.

## **3. PURCHASE PRICE**

- 3.1 The Purchase Price is £1,211,280 which shall be satisfied by the issue by the Buyer to the Sellers of the number of Consideration Shares set opposite their respective names in Column 5 of Schedule 1 Part A, being in aggregate 40,376 Consideration Shares.
- 3.2 The Purchase Price shall be deemed to be reduced by the amount of any payment made to the Buyer:
- 3.2.1 for a breach of any Warranty; or
  - 3.2.2 under the Tax Covenant; or
  - 3.2.3 pursuant to paragraph 5 of Schedule 7.

## **4. CONDITIONS AND COMPLETION**

- 4.1 Completion of this Agreement is subject to:
- 4.1.1 the delivery by the Sellers of all the items referred to in Part 1 of Schedule 3 and the holding of the board meeting referred to in Part 2 of Schedule 3;
  - 4.1.2 the delivery of the Disclosure Letter containing disclosures which would not (in the reasonable opinion of the Buyer) result in losses or damages in excess of £25,000 being suffered by the Company or Pty outside of the ordinary course of business of the Company or Pty as at the date hereof, in connection with a matter disclosed;
  - 4.1.3 there being no material breach by the Sellers or Mr Dalglish of Clause 24;

- 4.1.4 there being no disclosures made which would (in the reasonable opinion of the Buyer) cause Pty to have to stop trading within 3 months after the date hereof;
  - 4.1.5 there being no disclosures against warranties 2 and 13.
- 4.2 If any of the Conditions are not satisfied or waived by 5:30 pm on 13<sup>th</sup> February 2009 (or such later date as the Buyer may notify to the Sellers' Representative in writing on or before 13<sup>th</sup> February 2009, such date not to be later than 30 March 2009) this Agreement shall cease to have effect immediately after that date.
- 4.3 The Buyer may, to such extent as it thinks fit and is legally entitled to do so, waive any of the conditions referred to in clause 4.1 above by written notice to the Sellers' Representative provided always that, in the event of a disclosure being made in the Disclosure Letter which would in the reasonable opinion of the Buyer result in losses or damages in excess of £25,000 being suffered by the Company or Pty outside the ordinary course of business of the Company as at the date hereof in connection with a matter disclosed and the Buyer waives the condition contained in Clause 4.1.2, the Warrantors shall be entitled to make such disclosure.
- 4.4 Completion shall take place on the Completion Date:
  - 4.4.1 at the offices of the Buyer's Solicitors; or
  - 4.4.2 at any other place or time as agreed in writing by the Sellers and the Buyer.
- 4.5 At Completion each Seller shall comply with its obligations under paragraphs 1.1 and 1.2 of Schedule 3 and the Sellers shall:
  - 4.5.1 deliver or cause to be delivered the documents and evidence set out in paragraphs 2.1 to 2.7(inclusive) of Schedule 3; and
  - 4.5.2 procure that a board meeting of the Company and Pty is held at which the matters identified in Part 2 of Schedule 3 are carried out.
- 4.6 At Completion the Buyer shall:
  - 4.6.1 issue the number of Consideration Shares to each Seller as set out opposite their respective names in Column 5 of Schedule 1 Part A;
  - 4.6.2 deliver a certified copy of the consent to the issue of the Consideration Shares signed by Merlin General Partner III Limited;
  - 4.6.3 deliver a certified copy of the resolution adopted by the board of directors of the Buyer authorising the Transaction and the execution

and delivery by the officers specified in the resolution of this Agreement, and any other documents referred to in this Agreement as being required to be delivered by it.

- 4.7 As soon as possible after Completion the Sellers shall to the extent in their possession send to the Buyer (at the Buyer's registered office for the time being) all records, correspondence, documents, files, memoranda and other papers relating to the Company and Pty not required to be delivered at Completion and which are not kept at any of the Properties.

## 5. WARRANTIES

- 5.1 The Buyer is entering into this Agreement on the basis of, and in reliance on, the Warranties.
- 5.2 Each Warrantor severally warrants to the Buyer that each Warranty is true, accurate and not misleading in any material respect on the date of this Agreement except as Disclosed in the Disclosure Letter.
- 5.3 Warranties qualified by the expression **so far as the Warrantors are aware** (or any similar expression) are deemed to be given to the best of the knowledge, information and belief of the Warrantors after they have made reasonable enquiries of the other Sellers and Mr Ellis.
- 5.4 Each of the Warranties is separate and, unless otherwise specifically provided, is not limited by reference to any other Warranty or any other provision in this Agreement.

## 6. LIMITATIONS ON CLAIMS

- 6.1 This clause limits the liability of the Warrantors in relation to any claim under this Agreement including, where expressly referred to, any claim under the Tax Covenant.
- 6.2 The liability of each Warrantor for all Substantiated Claims, Resolved claims and all claims under the Tax Covenant when taken together shall not exceed the Surrender Value of the Consideration Shares held by them respectively from time to time.
- 6.3 No Warrantor shall be liable for a Claim unless:



- 6.3.1 the amount of a Substantiated Claim, or of a series of connected Substantiated Claims of which that Substantiated Claim is one, exceeds £4,500;
- 6.3.2 the amount of all Substantiated Claims that are not excluded under clause 6.3.1 when taken together, exceeds £45,000, in which case the whole amount (and not just the amount by which the limit in this clause 6.3.2 is exceeded) is recoverable by the Buyer.
- 6.4 No Warrantor shall be liable for any Claim to the extent that the Claim:
  - 6.4.1 relates to matters Disclosed; or
  - 6.4.2 relates to any matter specifically and fully provided for in the Accounts, the Management Accounts or the Completion Accounts;
- 6.5 No Warrantor shall be liable for any Claim to the extent that the any liability is increased or arises whether wholly or partly from:
  - 6.5.1 the enactment law, regulations or directive, requirement or any practice of any government department or agency or regulatory body (including extra statutory concessions of H M Revenue & Customs) after the date hereof (which was not announced prior to the date hereof) whether or not having retrospective effect;
  - 6.5.2 any amendment to any legislation which is enacted or comes into force after the date of this Agreement;
  - 6.5.3 from an act or omission occurring after Completion at the request of or with the consent of any member of the Buyer's Group; or
  - 6.5.4 from an act or omission compelled by law.
- 6.6 If the Warrantors make any payment pursuant to the Warranties and after making such payment any member of the Buyer's Group or the Company recovers from a third party any amount which is referable to the subject matter of the claim in respect of which the payment was made, the Buyer shall or shall procure that the relevant member of the Buyer's Group or the Company (as the case may be) shall upon receipt thereof forthwith pay to the Warrantors an amount equal to the lesser of:
  - 6.6.1 the amount recovered; and
  - 6.6.2 a sum in cash equal to the Consideration Share Value of the Consideration Shares transferred or reduced in accordance with clause 7.2 of this Agreement by the Warrantors in or towards settlement of the Claim.

- 6.7 The Warrantors shall not be liable for any Claim which would not have arisen but for a voluntary act or failure to act, omission or transaction on the part of the Buyer and/or by the Company occurring after Completion or pursuant to any governmental or regulatory requirement or request or legal obligation and which the Buyer was or should have been aware would or would be likely to give rise to a Claim.
- 6.8 The Warrantors shall not be liable to pay any sum in respect of the same matter under the Warranties and the Buyer shall not be entitled to make double recovery in respect of the same matter under different Warranties or under different parts of the same Warranty.
- 6.9 The Buyer shall (and shall procure that the Company and each member of the Buyer's Group shall) take all reasonable steps to avoid or mitigate any loss or liability which may give rise to a claim under the Warranties.
- 6.10 If at any time during the period from the Completion Date up to the date falling 3 years after the Completion Date:
- 6.10.1 the amount of any provision, reserve or liability contained in, or otherwise taken into account in the preparation of, the Completion Accounts is found to be in excess of the matter for which such provision or reserve was made; or
  - 6.10.2 a liability is discharged or satisfied below the amount attributed to such liability in the Completion Accounts; or
  - 6.10.3 the value of assets contained in, or otherwise taken into account in, or in the preparation of the Completion Accounts is found to have been understated (whether by reference to the position as at Completion or as a result of subsequent events),
- the Warrantors shall be entitled to set off against any sums owing by them to the Purchaser pursuant to a claim by the Purchaser under the Warranties, the amount of: (i) such excess as set out in clause 6.10.1; (ii) the difference between the discharged or satisfied liability and the amount attributed to such liability in the Completion Accounts as set out in paragraph 6.10.2 of this Schedule; and (iii) such understatement as set out in clause 6.10.3 of this Schedule.
- 6.11 No Warrantor shall be liable for a Claim, a claim under the Tax Covenant or any other claim under this Agreement unless the Buyer has given such Warrantor notice in writing of the Claim or the claim under the Tax Covenant, summarising the nature of the Claim or claim under the Tax Covenant as far as it is known to the Buyer and the amount claimed:

- 6.11.1 in the case of a claim made under the Tax Warranties or the Tax Covenant, within the period of seven years beginning with the Completion Date; and
- 6.11.2 in any other case, within the period of eighteen months beginning with the Completion Date,
- 6.12 Nothing in this clause 6 applies to a Claim or a claim under the Tax Covenant the extent to which such arises or is delayed as a result of dishonesty, fraud, or wilful concealment by the Warrantors, their agents or advisers.
- 6.13 The Sellers shall not plead the Limitation Act 1980 in respect of any claims made under the Tax Warranties or Tax Covenant up to seven years after the Completion Date.
- 6.14 The liability of the Warrantors in respect of both the Warranties and the Tax Covenant shall be several only and shall be limited to the Surrender Value of their respective Consideration Shares.
- 6.15 In respect of any claim under this Agreement, each Warrantor shall only be liable for the proportion of such claim as is equal to the Percentage Surrender Value set out opposite such Warrantors name in Schedule 1 Part B.
- 6.16 The Buyer hereby agrees that it shall not bring any Claim or claim against the Sellers or the Warrantors in respect of any payment required to be made by the Company pursuant to clause 13.18 of the Lease.

## **7. SATISFACTION OF CLAIMS AND TAX COVENANT CLAIMS**

- 7.1 The Buyer hereby agrees the Warrantors shall not be required to settle any liability for any Claim or any other claim under this Agreement (including a claim under the Tax Covenant) by the payment of cash.
- 7.2 The Buyer and the Warrantors hereby agree that the Warrantors' liability for any claim under this Agreement which is Settled or Resolved shall be discharged by either (at the Buyer's discretion)
  - (i) the reduction in the number of Consideration Shares held by the Warrantors equal to the amount of the Claim or any other claim under this Agreement (calculated on the basis of the greater of (a) £30 per Consideration Share and (b) the Consideration Share Value per Consideration Share on the date of such claim becoming a Substantiated Claim or being Resolved) or

- (ii) the transfer (to such third party as the Buyer shall nominate) of such number of Consideration Shares held by the Warrantors equal to the amount of the Claim or any other claim under this Agreement (calculated on the basis of the greater of (a) £30 per Consideration Share and (b) the Consideration Share Value on the date of such claim becoming a Substantiated Claim or being Resolved) at a price of 1p per Consideration Share.

7.3 Each Warrantor shall use all reasonable endeavours to execute all such documents and do all such acts and things as may reasonably be required in connection with the reduction or transfer of Consideration Shares pursuant to clause 7.2 including without limitation:

- 7.3.1 passing any resolution required in connection therewith;
- 7.3.2 executing a stock transfer form in respect of the Consideration Shares; and
- 7.3.3 waiving any applicable pre-emption rights.

7.4 If a Warrantor fails to comply with his obligations under clause 7.3 such Warrantor hereby irrevocably and by way of security for their obligations under this Agreement appoints any one director of the Buyer nominated in writing by the Buyer as their attorney, to execute all such documents and do all such acts and things (including, without limitation, voting the Consideration Shares) as may reasonably be required in connection with the reduction or transfer of Consideration Shares pursuant to clause 7.2.

7.5 The Buyer hereby undertakes that the only remedy available to it in respect of any breach of the Warranties or otherwise shall be damages and the Buyer shall not be entitled to rescind or terminate this Agreement.

## **8. TAX COVENANT**

The provisions of Schedule 5 apply in this Agreement.

## **9. RESTRICTIONS ON THE WARRANTORS**

9.1 Each Warrantor covenants with the Buyer that they shall not:

- 9.1.1 at any time during the period of three years beginning with the Completion Date, in any geographic areas in which any business of the Company or Pty was carried on at the Completion Date, carry on or be employed, engaged or interested in any business which would be in competition with any part of any business carried on at the Completion Date by the Company or Pty; or

- 9.1.2 at any time during the period of three years beginning with the Completion Date, deal with any person who is at the Completion Date, or who has been at any time during the period of 12 months immediately preceding that date, a client or customer of the Company or Pty for the purpose of competing with the business carried on by the Company or Pty at the Completion Date; or
- 9.1.3 at any time during the period of three years beginning with the Completion Date, canvass, solicit or otherwise seek the custom of any person who is at the Completion Date, or who has been at any time during the period of 12 months immediately preceding that date, a client or customer of the Company or Pty for the purpose of competing with the business carried on by the Company or Pty at the Completion Date; or
- 9.1.4 at any time during the period of three years beginning with the Completion Date:
  - 10.1.4.1 offer employment to, enter into a contract for the services of, or attempt to entice away from the Company or Pty, any individual who is at the time of the offer or attempt, and was at the Completion Date, employed directly or indirectly engaged in an executive or managerial position with the Company or Pty; or
  - 10.1.4.2 procure or facilitate the making of any such offer or attempt by any other person; or
- 9.1.5 at any time after Completion, use in the course of any business:
  - 10.1.5.1 the word "BIOTEC"; or
  - 10.1.5.2 any trade or service mark, business or domain name, design or logo which, at Completion, was or had been used by the Company or any of the Subsidiaries; or
  - 10.1.5.3 anything which is, in the reasonable opinion of the Buyer, capable of confusion with such words, mark, name, design or logo; or
- 9.1.6 at any time during a period of three years beginning with the Completion Date, solicit or entice away from the Company or Pty any supplier to the Company or Pty who had supplied goods and/or services to the Company or Pty at any time during the twelve months immediately preceding the Completion Date, if that solicitation or enticement causes or would cause such supplier to cease supplying, or materially reduce its supply of, those goods and/or services to the Company or Pty.

- 9.2 The covenants in this clause 9 are intended for the benefit of the Buyer, the Company and Pty and apply to actions carried out by the Warrantors in any capacity and whether directly or indirectly, on the Warrantors own behalf, on behalf of any other person or jointly with any other person.
- 9.3 Nothing in this clause 9 prevents the Warrantors from holding for investment purposes only:
- 9.3.1 any units of any authorised unit trust; or
- 9.3.2 not more than 5% of any class of shares or securities of any company traded on the London Stock Exchange Plc.
- 9.4 Each of the covenants in this clause 9 is a separate undertaking by the Warrantors and shall be enforceable by the Buyer separately and independently of its right to enforce any one or more of the other covenants contained in this clause 9. Each of the covenants in this clause 10 is considered fair and reasonable by the parties, but if any restriction is found to be unenforceable, but would be valid if any part of it were deleted or the period or area of application reduced, the restriction shall apply with such modifications as may be necessary to make it valid and enforceable.
- 9.5 The consideration for the undertakings contained in this clause 10 is included in the Purchase Price.

## **10. CONFIDENTIALITY AND ANNOUNCEMENTS**

- 10.1 Except so far as may be required by law, and in such circumstances only after prior consultation with the Buyer, the Sellers shall not at any time disclose to any person or use to the detriment of the Company this Agreement or any trade secret or other Confidential Information which it holds in relation to the Company, Pty and its affairs.
- 10.2 No party shall make any announcement relating to this Agreement or its subject matter without the prior written approval of the other party except as required by law or by any legal or regulatory authority (in which case the parties shall co-operate, in good faith, in order to agree the content of any such announcement so far as practicable prior to it being made).

## **11. FURTHER ASSURANCE**

Subject to compliance by the Buyer of its obligations hereunder the Sellers shall (at the Buyer's expense) promptly execute and deliver all such documents, and do all such things, as the Buyer may from time to time

reasonably require for the purpose of giving full effect to the provisions of this Agreement.

## **12. ASSIGNMENT**

12.1 Except as provided otherwise in this Agreement, no party may assign, or grant any Encumbrance or security interest over, any of its rights under this Agreement or any document referred to in it.

12.2 Each party that has rights under this Agreement is acting on its own behalf.

12.3 The Buyer may assign its rights under this Agreement (or any document entered into in accordance with the terms of this Agreement) but not its obligations to a member of its Group or to any person to whom it transfers the Sale Shares.

12.4 If there is an assignment:

12.4.1 the Sellers may discharge their obligations under this Agreement to the assignor until they receive notice of the assignment; and

12.4.2 the assignee may enforce this Agreement as if it were a party to it, but the Buyer shall remain liable for any obligations under this Agreement.

## **13. WHOLE AGREEMENT**

13.1 This Agreement, and any documents to be entered into pursuant to or in connection with this Agreement, constitute the whole agreement between the parties and supersede any arrangements, understanding or previous agreement between them relating to the subject matter they cover.

13.2 Nothing in this clause 13 operates to limit or exclude any liability for fraud.

## **14. VARIATION AND WAIVER**

14.1 Any variation of this Agreement shall be in writing and signed by or on behalf of the parties.

14.2 Any waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given and shall not prevent the party who has given the waiver from subsequently relying on the provision it has waived.

- 14.3 No failure to exercise or delay in exercising any right or remedy provided under this Agreement or by law constitutes a waiver of such right or remedy or shall prevent any future exercise in whole or in part thereof.
- 14.4 No single or partial exercise of any right or remedy under this Agreement shall preclude or restrict the further exercise of any such right or remedy.
- 14.5 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

## **15. COSTS**

Unless otherwise provided, all costs in connection with the negotiation, preparation, execution and performance of this Agreement, and any documents referred to in it, shall be borne by the party that incurred the costs.

## **16. NOTICE**

- 16.1 A notice given under this Agreement:

16.1.1 shall be in writing;

16.1.2 shall be sent for the attention of the person, and to the address or fax number, specified in this clause 16 (or such other address, fax number or person as each party may notify to the others in accordance with the provisions of this clause 16); and

16.1.3 shall be:

16.1.3.1 delivered to the addressee personally; or

16.1.3.2 sent by fax; or

16.1.3.3 sent by pre-paid first-class post or recorded delivery; or

16.1.3.4 (if the notice is to be served by post outside the country from which it is sent) sent by airmail.

- 16.2 The addresses for service of notice are:

### **16.2.1 WARRANTORS**

16.2.1.1 address: the respective Warrantor's address as set out in Part B of Schedule 1

### **16.2.2 LAB 21 LIMITED**

16.2.2.1 address: 184 Cambridge Science Park, Cambridge CB4 0GA



16.2.2.2 for the attention of: Maddy Kennedy

16.2.2.3 fax number: 01223 395451

16.3 A notice is deemed to have been received:

16.3.1 if delivered personally, at the time of delivery; or

16.3.2 in the case of fax, at the time of transmission; or

16.3.3 in the case of pre-paid first class post, recorded delivery, two Business days from the date of posting; or

16.3.4 if deemed receipt under the previous paragraphs of this clause 16.3 is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of receipt), when business next starts in the place of receipt.

16.4 To prove service, it is sufficient to prove that the notice was transmitted by fax to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

16.5 The Sellers (excluding for the purpose of this Clause 16.5, the Warrantors) acknowledge that notice to the Sellers' Representative shall constitute valid notice to each of them.

## **17. SEVERANCE**

17.1 If any provision of this Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

17.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

## **18. AGREEMENT SURVIVES COMPLETION**

This Agreement (other than obligations that have already been fully performed) remains in full force after Completion.

**19. THIRD PARTY RIGHTS**

- 19.1 This Agreement and the documents referred to in it are made for the benefit of the parties and their successors and permitted assigns and are not intended to benefit, or be enforceable by, anyone else.
- 19.2 Each party represents to the other that their respective rights to agree any amendment, variation, waiver or settlement under this Agreement are not subject to the consent of any person that is not a party to this Agreement.

**20. SUCCESSORS**

The rights and obligations of the Sellers and the Buyer under this Agreement shall continue for the benefit of, and shall be binding on, their respective successors and assigns.

**21. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which is an original and which together have the same effect as if each party had signed the same document.

**22. GOVERNING LAW AND JURISDICTION**

- 22.1 This Agreement and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England.
- 22.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement.

**23. SELLERS' REPRESENTATIVE**

- 23.1 The Sellers shall appoint one person (being a Seller) from time to time to be the representative of the Sellers for the purposes described at clause 23.3 below.
- 23.2 The Sellers' Representative shall at any given time be Mr Dalgleish, unless expressly agreed otherwise by each and every one of the Sellers in writing.

23.3 Each of the Sellers irrevocably authorises the Sellers' Representative to be his or her representative for the purposes of giving any consent, approval or agreement on the part of the Sellers generally for the purposes of:

23.3.1 receiving the notice referred to in clauses 24.2 (if any); and

23.3.2 to deal with all matters pursuant to Schedule 7.

23.4 The Sellers recognise that when Mr Dalglish is acting as the Sellers' Representative, he shall owe no fiduciary or other duty to the Sellers save as provided for in this Agreement and each of the Sellers agrees to indemnify and keep indemnified Mr Dalglish from all costs, losses, expenses or liabilities whatsoever brought or established against him in his capacity as the Sellers' Representative arising out of any act or omission of the Sellers' Representative.

## **24. CONDUCT BETWEEN EXCHANGE AND COMPLETION**

24.1 Mr Dalglish shall procure that the business of the Company and Pty shall be conducted in the manner provided in this clause 24 from the date of this Agreement to Completion.

24.2 The Company shall and shall procure that Pty shall carry on business of the Company and Pty in the normal course.

24.3 Subject to Clause 24.4 the Company shall not and shall procure that Pty shall not:

24.3.1 dispose of any material assets used or required for the operation of its business; or

24.3.2 allot or agree to allot any shares or other securities or repurchase, redeem or agree to repurchase or redeem any of the shares; or

24.3.3 pass any resolution; or

24.3.4 enter into, modify or agree to terminate any Material Contract (as defined in paragraph 10.1 of Schedule 4; or

24.3.5 incur any capital expenditure on any individual item in excess of £10,000; or

24.3.6 borrow any sum in excess of £10,000; or

24.3.7 enter into any lease, lease-hire or hire-purchase agreement or agreement for payment on deferred terms; or

24.3.8 pay any dividend or make any other distribution of its assets; or

- 24.3.9 make, or agree to make, material alterations to the terms of employment (including benefits) of any of its directors, officers or employees; or
  - 24.3.10 provide or agree to provide any non-contractual benefit to any director, officer, employee or their dependants; or
  - 24.3.11 dismiss any of its employees or employ or engage (or offer to employ or engage) any person; or
  - 24.3.12 create any Encumbrance over any of its assets or its undertaking; or
  - 24.3.13 institute, settle or agree to settle any legal proceedings relating to its business, except debt collection in the normal course of business; or
  - 24.3.14 grant, modify, agree to terminate or permit the lapse of any Intellectual Property Rights or enter into any agreement relating to any such rights; or
  - 24.3.15 pay any management charge to the Sellers; or
  - 24.3.16 incur any liability to the Sellers, other than trading liabilities incurred in the normal course of business; or
  - 24.3.17 vary the terms on which it holds any of the Properties or settle any rent review; or
  - 24.3.18 make any material change to the accounting procedures or principles by reference to which its accounts are drawn up.
- 24.4 The Company or Pty may do anything falling within Clause 24.3 if the Buyer has given prior written consent (such consent not to be unreasonably held or delayed).
- 24.5 Mr Dalglish shall give to the Buyer as soon as possible such details as are known to him of any material change in the business, financial position or assets of the Company or any of Pty (having made regular enquiries of Mr Ellis of the same).
- 24.6 Mr Dalglish shall not:
- 24.6.1 induce, or attempt to induce, any of the employees of the Company or Pty whether directly or indirectly, to terminate their employment before the Completion Date; or
  - 24.6.2 incur any liabilities to the Company or Pty, other than trading liabilities incurred in the normal course of business.

This agreement has been entered into on the date stated at the beginning of it.

## Schedule 1

## Part A - The Sellers

Column 1	Column 2	Column 3	Column 4	Column 5
Name	Address	Biotec Shares Held	Percentage Shareholding	Consideration Shares to be issued
Keith Thomson	Limetree House, The Street High Easter Essex CM1 4QS	25,000 Ordinary Shares	1.0%	404
Ulrike Uhlmann and Ernst Uhlmann	c/o Fela Management TAG Basadinstrasse 18 CXH 8253 Diessenhofen Switzerland	271 Ordinary Shares	0.000099%	4
Chinwe Roy	Gleivering Mill Wickham Market Ipswich Suffolk IP13 0EY	363,054 Ordinary Shares	14.5%	5,872
T W O C Maskell	Sandy Lane House, 1 Sandy Lane Melton Mowbray Leics	51,568 Ordinary Shares	2.1%	834
QUA Tendis Limited	Gleivering Mill Wickham Market Nr Woodbridge, Suffolk	11,707 Ordinary Shares	0.5%	189
Martin Loessner <i>Stuhlenstr. 39 8123 Ebnetingen Switzerland</i>	<del>Lebensmittelmikrobiologie Institute FUR Lebensmittel-UN- Ernahrungswissenschaften ETH Zurich LEO G18 Schmelzberghstrasse 9 CH-8002 Zurich Switzerland</del>	100 Ordinary Shares	0.000049%	2
Cactus Asset Management Ltd	Masons Yard, 34 High Street Wimbledon	6,418 Ordinary Shares	0.3%	104

	London SW19 5BY			
Siegfried Scherer	Dept Biosciences Technische Universitate Muchen Weihestephaner Berg 3 85354 Fresing Germany	2,239 Ordinary Shares	0.1%	36
Systems Data Technologies	3 First Close Whitchurch Aylesbury Bucks HP22 4OH	133 Ordinary Shares	0.000049%	2
Nina Jennings	5 Mansfields House Manor Fields Putney SW15 3NQ	1,897 Ordinary Shares	0.1%	31
Eric F Kohn	Chemin De Carabot 10A CH 1213 Onex Geneva Switzerland	91,989 Ordinary Shares	3.7%	1,488
Notice Ltd	University of Nottingham University Park Nottingham NG7 2RD	2,568 Ordinary Shares	0.1%	42
L. Stewart	14 James Avenue Loughborough Leics	2,040 Ordinary Shares	0.1%	33
Lucian Pollington	10 Johnson Road Great Baddow Chelmsford Essex CM2 7JL	50,000 Ordinary Shares	2.0%	809
Peter Evans and Karen Evans	Amstel Boulevard 178 1096 HI Amsterdam Netherlands	312 Ordinary Shares	0.00012%	5
IGM Dagleish	St. Lawrence House The Crescent Dunblane FK15 0DL	1,381,998 Ordinary Shares	55.4%	22,352
David Calderwood	43c Alma Road Windsor SL4 5HN	247 Ordinary Shares	0.000099%	4
W Hyde	2 Calder Avenue	90 Ordinary	0.000024%	1

	Hindley Green Wigan Lancs	Shares		
S P Denyer	11 Pentland Rise Bedford MK41 9AW	76,132 Ordinary Shares	3.0%	1,231
<del>Siegfried</del> Jassim Sabah	Prof Microbiology Dept Biosciences Technische Universitate Munich, Germany	240 Ordinary Shares	0.0%	4
Ian George Mitchell Dalglish and Turcan Connell (Trustees) Limited	Turcan Connell Princes Exchange 1 Earl Grey Street Edinburgh EH3 9EE	129,045 Ordinary Shares	5.2%	2,087
University of Brighton Trading Company Limited	Mithras House Lewes Road Brighton BN2 4AT	1,940 Ordinary Shares	0.1%	31
David Wade	Lodge House Hacheston Nr Woodbridge Suffolk	6,300 Ordinary Shares	0.3%	102
<del>Terry Riley</del> Rosemary Desforais	Carpenters Cottage 10 Wakerley Road Harringworth Northamptonshire NN17 3AH	12,590 Ordinary Shares	0.5%	204
Michael Hodgson- Hess	5A Kings Mews Woodbridge Suffolk	1,680 Ordinary Shares	0.1%	27
Xena Overseas Limited	Nerine Chambers Road Town Tortolla British Virgin Islands PO Box 905	230,769 Ordinary Shares	9.2%	3,732
Charles Young	Flat 3 46 Lennox Gardens London SW1X 0DJ	46,153 Ordinary Shares	1.8%	746


**Part B - The Warrantors**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Name</b>	<b>Address</b>	<b>Consideration Shares to be Held</b>	<b>Percentage Surrender Value</b>
Ian Dalglish	St. Lawrence House The Crescent Dunblane FK15 0DL	22,352	60.6%
Xena Overseas Limited	Nevine Chambers Road Town Tortolla British Virgin Islands PO Box 905	3,732	9.2%
Chinwe Roy	Gleveing Mill Wickham Market Ipswich Suffolk IP13 0EY	5,872	14.5%



**Schedule 2 Particulars of the Company and Pty****Part 1 - The Company**

<b>Name:</b>	Biotec Laboratories Limited
<b>Registration number:</b>	02815000
<b>Registered office:</b>	32 Anson Road, Martlesham Heath, Ipswich, Suffolk IP5 3RG
<b>Authorised share capital</b> <b>Amount: £[TOTAL AMOUNT OF</b> <b>AUTHORISED CAPITAL]</b> <b>Divided into: [NUMBER AND CLASS</b> <b>OF SHARES]</b>	[Peter Ellis to insert]
<b>Issued share capital</b> <b>Amount: £TOTAL AMOUNT OF</b> <b>ISSUED CAPITAL</b> <b>Divided into: NUMBER AND CLASS OF</b> <b>SHARES</b>	£249,648  £2,496,480 ordinary shares of [10 pence] each ("Ordinary Shares")
<b>Registered shareholders (and* number of</b> <b>Sale Shares held):</b>	Keith Thomson Limetree House, The Street High Easter Essex CM1 4QS 25,000 Ordinary Shares  Ulrike Uhlmann and Ernst Uhlmann c/o Fela Management TAG Basadinstrasse 18 CXH 8253 Diessenhofen Switzerland 271 Ordinary Shares  Chinwe Roy Glevering Mill Wickham Market Ipswich Suffolk IP13 0EY 363,054 Ordinary Shares  T W O C Maskell Sandy Lane House, 1 Sandy Lane Melton Mowbray Leics

 <p>Stuhlenstr. 35 8123 Ebmatingen Switzerland</p>	<p>51,568 Ordinary Shares</p> <p>QUA Tendis Limited Glevering Mill Wickham Market Nr Woodbridge, Suffolk 11,707 Ordinary Shares</p> <p>Martin Loessner <del>Lebensmittelmikrobiologie Institute FUR</del> <del>Lebensmittel-UN</del> <del>Ernährungswissenschaften ETH Sucri</del> <del>LEO G18 Schmelzbergstrasse 9</del> <del>CH9802 Zurich Switzerland</del> 100 Ordinary Shares</p> <p>Cactus Asset Management Ltd Masons Yard, 34 High Street Wimbledon London SW19 5BY 6,418 Ordinary Shares</p> <p>Siegfried Scherer Dept Biosciences Technische Universitate Muchen Weihestephaner Berg 3 85354 Fresing Germany 2,239 Ordinary Shares</p> <p>Systems Data Technologies 3 First Close Whitchurch Aylesbury Bucks HP22 4OH 133 Ordinary Shares</p> <p>Nina Jennings 5 Mansfields House Manor Fields Putney SW15 3NQ 1,897 Ordinary Shares</p> <p>Eric F Kohn Chemin De Carabot 10A CH 1213 Onex Geneva</p>
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	<p>Switzerland 91,989 Ordinary Shares</p> <p>Notice Ltd University of Nottingham University Park Nottingham NG7 2RD 2,568 Ordinary Shares</p> <p>L. Stewart 14 James Avenue Loughborough Leics 2,040 Ordinary Shares</p> <p>Lucian Pollington 10 Johnson Road Great Baddow Chelmsford Essex CM2 7JL 50,000 Ordinary Shares</p> <p>Peter Evans and Karen Evans Amstel Boulevard 178 1096 HI Amsterdam Netherlands 312 Ordinary Shares</p> <p>IGM Dalglish St. Lawrence House The Crescent Dunblane FK15 0DL 1,381,998 Ordinary Shares</p> <p>David Calderwood 43c Alma Road Windsor SL4 5HN 247 Ordinary Shares</p> <p>W Hyde 2 Calder Avenue Hindley Green Wigan Lancs</p>
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	<p>90 Ordinary Shares</p> <p>[S P Denyer] 11 Pentland Rise Bedford MK41 9AW 76,132 Ordinary Shares</p> <p>Siegfried Jassim Prof Microbiology Dept Biosciences Technische Universitate Munich, Germany 240 Ordinary Shares</p> <p>Ian George Mitchell Dalgleish and Turcan Connell (Trustees) Limited Turcan Connell Princes Exchange 1 Earl Grey Street Edinburgh EH3 9EE 129,045 Ordinary Shares</p> <p>University of Brighton Trading Co Mithras House Lewes Road Brighton BN2 4AT 1,940 Ordinary Shares</p> <p>David Wade Lodge House Hacheston Nr Woodbridge Suffolk 6,300 Ordinary Shares</p> <p>Terry Riley Carpenters Cottage 10 Wakerley Road Harringworth Northamptonshire NN17 3AH 12,590 Ordinary Shares</p> <p>Michael Hodgson-Hess 5A Kings Mews Woodbridge Suffolk 1,680 Ordinary Shares</p>
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	<p>Xena Overseas Limited Nevine Chambers Road Town Tortolla British Virgin Islands PO Box 905 230,769 Ordinary Shares</p> <p>Charles Young Flat 3 46 Lennox Gardens London SW1X 0DJ 46,153 Ordinary Shares</p>
<b>Directors and shadow directors:</b>	Ian Dalglesh Peter Ellis
<b>Secretary:</b>	Lucian Pollington
<b>Auditor</b>	
<b>Registered charges</b>	Debenture in favour of Midland Bank plc created 12 March 1998 Loan Agreement in favour of Matthew Durley and others

## Part 2 - Pty

<b>Name:</b>	Biotec Laboratories South Africa (Proprietary) Limited
<b>Registration number:</b>	
<b>Registered office:</b>	
<b>Authorised share capital</b> <b>Amount: £[TOTAL AMOUNT OF</b> <b>AUTHORISED CAPITAL]</b> <b>Divided into: [NUMBER AND CLASS</b> <b>OF SHARES]</b>	
<b>Issued share capital</b> <b>Amount: £[TOTAL AMOUNT OF</b> <b>ISSUED CAPITAL]</b> <b>Divided into: [NUMBER AND CLASS</b> <b>OF SHARES]</b>	
<b>Registered shareholders (and number of shares held):</b>	
<b>Beneficial owners of shares (if different) (and number of shares held):</b>	
<b>Directors and shadow directors:</b>	
<b>Secretary:</b>	
<b>Auditor</b>	

<b>Registered charges</b>	
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**[NB: Peter Ellis to complete]**

### **Schedule 3 Completion**

#### **Part 1 - What the Sellers shall deliver to the Buyer at Completion**

1. At Completion, each Seller shall deliver or cause to be delivered to the Buyer the following documents and evidence:
  - 1.1 transfers of the Sale Shares registered in such Seller's name executed by the registered holders in favour of the Buyer;
  - 1.2 the share certificates for the Sale Shares in the names of the registered holders or an indemnity in the agreed form for any lost certificates,
2. At Completion, the Sellers shall deliver or cause to be delivered to the Buyer the following documents and evidence:
  - 2.1 certificates in respect of 2,496,480 shares in the capital of Pty and transfers, in favour of any person the Buyer directs, of all shares in Pty held by a nominee for the Company;
  - 2.2 in relation to the Company, the statutory registers and minute books (written up to the time of Completion), the common seal, certificate of incorporation and any certificates of incorporation on change of name;
  - 2.3 the written resignation, executed as a deed and in the agreed form, of the directors and secretaries of the Company from their offices and employment with the Company.
  - 2.4 all title deeds and other documents relating to the Properties as listed in the Disclosure Letter;
  - 2.5 evidence, in agreed form, that any indebtedness or other liability of the kind described in paragraph 12 of Part 1 of Schedule 4 has been discharged .
  - 2.6 in relation to all charges, mortgages, debentures and guarantees to which the Company and/or Pty is a party:
    - 2.6.1 a sealed discharge or release in the agreed form; and
    - 2.6.2 if applicable, a sworn and completed Form 403a (declaration that part of the property or undertaking charged has been released from the charge) (in the case of the Company) and any equivalent document required to be completed for Pty; and
  - 2.7 evidence, in the agreed form, that the shareholders of Pty (other than the Company) have been consulted in relation to the sale/purchase of the Sale Shares;

- 2.8 execution by Matthew Durdy, Mr Ellis, Michael Hodgson-Hess and Timothy Maskell of the Novation Agreements.

**Part 2 - Matters for the board meetings at Completion**

1. The Sellers shall cause a board meeting of the Company and Pty to be held at Completion at which the matters set out in this Part 2 of this Schedule 2 shall take place.
2. A resolution to register the transfer of the Sale Shares shall be passed at such board meeting of the Company, subject to the transfers being stamped at the cost of the Buyer.
3. All directors, and the secretary of the Company shall resign from their offices and employment with the Company with effect from the end of the relevant board meeting.
4. The persons the Buyer nominates shall be appointed as directors and secretary of the Company and of Pty. The appointments shall take effect at the end of the board meeting.



## **Schedule 4     Warranties**

### **Part 1 - General warranties**

#### **1.     POWER TO SELL THE COMPANY**

- 1.1     Each Seller has all requisite power and authority to enter into and perform this Agreement in accordance with its terms and the other documents referred to in it.
- 1.2     Each Seller undertakes that, this Agreement and the other documents entered into pursuant to the terms of this Agreement constitute (or shall constitute when executed) valid, legal and binding obligations on each Seller in the terms of the agreement and such other documents.
- 1.3     Each Seller undertakes that, compliance with the terms of this Agreement and the documents referred to in it shall not breach or constitute a default under any of the following:
  - 1.3.1     any agreement or instrument to which such Seller is a party or by which it is bound; or
  - 1.3.2     any order, judgment, decree or other restriction applicable to such Seller.

#### **2.     SHARES IN THE COMPANY AND SUBSIDIARIES**

- 2.1     The Sale Shares constitute the whole of the allotted and issued share capital of the Company and are fully paid.
- 2.2     Each Seller is the sole legal and beneficial owner of the Sale Shares registered in his name.
- 2.3     The Company is the sole legal and beneficial owner of 51% of the allotted and issued share capital of Pty.
- 2.4     The issued shares of the Subsidiaries are fully paid up.
- 2.5     Each Seller undertakes that the Sale Shares registered in his name and the issued shares of Pty are free from all Encumbrances and no commitment has

been given to create an Encumbrance affecting the Sale Shares registered in his name or the issued shares of Pty.

2.6 No right has been granted to any person to require the Company or Pty to issue any share capital and no Encumbrance has been created and no commitment has been given to create an Encumbrance in favour of any person affecting any unissued shares or debentures or other unissued securities of the Company or any of Pty.

2.7 The Company has no interest (whether legal or beneficial) in any shares in any company (apart from Pty).

### **3. INFORMATION**

3.1 The particulars relating to the Company set out in Schedule 2 to this Agreement are accurate and not misleading.

### **4. COMPLIANCE WITH LAWS**

Each of the Company and Pty have at all times conducted its business in accordance with its respective memorandum and articles of association and in all material respects with all applicable laws and regulations.

### **5. LICENCES AND CONSENTS**

5.1 The Company and Pty has all necessary licences, consents, permits and authorities necessary to carry on its business in the places and in the manner in which its business is now carried on, all of which are valid and subsisting.

5.2 The Warrantors are not aware of any reason why any of those licences, consents, permits and authorities should be suspended, cancelled, revoked or not renewed on the same terms.

### **6. INSURANCE**

6.1 The particulars of the insurance policies held by the Company are set out in the Disclosure Letter and are accurate and not misleading.

6.2 There are no material outstanding claims under, or in respect of the validity of, any of those policies and so far as the Sellers are aware, there are no circumstances likely to give rise to any claim under any of those policies.

- 6.3 All the insurance policies are in full force and effect, are not void or voidable, nothing has been done or not done by the Sellers, the Company or Pty which could make any of them void or voidable and Completion will not terminate, or entitle any insurer to terminate, any such policy.

## **7. POWER OF ATTORNEY**

There are no powers of attorney in force given by the Company or Pty and no person, as agent or otherwise, is entitled or authorised to bind or commit the Company Pty to any obligation not in the ordinary course of the Company's or Pty's.

## **8. DISPUTES AND INVESTIGATIONS**

- 8.1 Neither the Company nor Pty nor any of their respective Directors nor any person for whom the Company or Pty is vicariously liable (in respect of matters relating to such vicarious liability):

8.1.1 is engaged in any litigation, administrative, mediation or arbitration proceedings or other proceedings or hearings before any statutory or governmental body, department, board or agency (except for debt collection in the normal course of business); or

8.1.2 is (so far as the Warrantors are aware) the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body.

- 8.2 No such proceedings, investigation or inquiry as are mentioned in paragraph 8.1 of this Schedule 4 are pending or (so far as the Warrantors are aware) have been threatened and so far as the Warrantors are aware there are no circumstances likely to give rise to any such proceedings.

## **9. DEFECTIVE PRODUCTS**

So far as the Warrantors are aware, neither the Company nor Pty has manufactured or sold any products which were, at the time they were manufactured or sold, faulty or defective or did not comply with warranties or representations expressly made or implied by or on behalf of the Company or Pty.

## **10. CONTRACTS**

- 10.1 The definition in this paragraph applies in this Agreement.

**“Material Contract”** an agreement or arrangement to which the Company or Pty is a party or is bound by and which is of material importance to the business, profits or assets of the Company or Pty.

- 10.2 Except for the agreements and arrangements Disclosed, neither the Company nor Pty is a party to or subject to any agreement or arrangement which:
- 10.2.1 is a Material Contract; or
  - 10.2.2 is of a long term, unusual or exceptional nature or restricts the freedom of the Company or Pty; or
  - 10.2.3 is not in the ordinary and usual course of business of the Company or Pty; or
  - 10.2.4 involves agency or distributorship; or
  - 10.2.5 involves partnership, joint venture, consortium, joint development, shareholders or similar arrangements; or
  - 10.2.6 involves or is likely to involve an aggregate consideration payable by or to the Company or Pty in excess of £20,000; or
  - 10.2.7 is not on arm's length terms.
- 10.3 Each Material Contract is in full force and effect and binding on the parties to it. Neither the Company nor Pty have defaulted under or breached a Material Contract and:
- 10.3.1 so far as the Warrantors are aware, no other party to a Material Contract has defaulted under or breached such a contract; and
  - 10.3.2 so far as the Warrantors are aware no such default or breach by the Company or Pty or any other party is likely or has been threatened.
- 10.4 No notice of termination of a Material Contract has been received or served by the Company or Pty and so far as the Warrantors are aware there are no grounds for determination, rescission, avoidance, repudiation or a material change in the terms of any such contract.

## **11. TRANSACTIONS WITH THE SELLERS**

- 11.1 There is no outstanding indebtedness or other liability (actual or contingent) and no outstanding contract, commitment or arrangement between the Company and any of the following, or between Pty and any of the following:
- 11.1.1 the Sellers or any member of the Sellers' Group or any person Connected with the Sellers; or

11.1.2 any director of a member of the Sellers' Group or any person Connected with such a member or director.

11.2 Neither the Sellers, nor any person Connected with the Sellers, is entitled to a claim of any nature against the Company or Pty or has assigned to any person the benefit of a claim against the Company or Pty to which the Sellers or a person Connected with the Sellers would otherwise be entitled.

## **12. FINANCE AND GUARANTEES**

12.1 No guarantee, mortgage, charge, pledge, lien, assignment or other security agreement or arrangement has been given by or entered into by the Company or Pty or any third party in respect of borrowings or other obligations of the Company or Pty.

12.2 Neither the Company nor Pty has any outstanding loan capital, or has lent any money that has not been repaid, and there are no debts owing to the Company or Pty other than debts that have arisen in the normal course of business.

12.3 Neither the Company nor Pty has:

12.3.1 factored any of its debts or discounted any of its debts or engaged in financing of a type which would not need to be shown or reflected in the Accounts; or

12.3.2 waived any right of set-off it may have against any third party.

12.4 All debts (less any provision for bad and doubtful debts) owing to the Company or Pty reflected in the Accounts and all debts subsequently recorded in the books of the Company and Pty have prior to the date of this Agreement been realised and none of those debts nor any part of them has been outstanding for more than two months from its due date for payment.

12.5 Full particulars of all money borrowed by the Company and Pty (including full particulars of the terms on which such money has been borrowed) have been Disclosed.

12.6 No indebtedness of the Company or Pty is due and payable and no security over any of the assets of the Company or Pty is now enforceable, whether by virtue of the stated maturity date of the indebtedness having been reached or otherwise. Neither the Company nor Pty has received any notice whose terms have not been fully complied with and/or carried out from any creditor requiring any payment to be made and/or intimating the enforcement of any security which it may hold over the assets of the Company or Pty.

### **13. INSOLVENCY**

#### **13.1 Neither the Company nor Pty:**

13.1.1 is insolvent or unable to pay its debts within the meaning of the Insolvency Act 1986 or any other insolvency legislation applicable to the company concerned; and

13.1.2 has stopped paying its debts as they fall due.

#### **13.2 So far as the Warrantors are aware, no step has been taken to initiate any process by or under which:**

13.2.1 the ability of the creditors of the Company, or Pty, to take any action to enforce their debts is suspended, restricted or prevented; or

13.2.2 some or all of the creditors of the Company or Pty accept, by agreement or in pursuance of a court order, an amount less than the respective sums owing to them in satisfaction of those sums with a view to preventing the dissolution of the Company or Pty; or

13.2.3 a person is appointed to manage the affairs, business and assets of the Company, or Pty, on behalf of the Company's or Pty's creditors; or

13.2.4 the holder of a charge over the Company's assets or over any of Pty's assets is appointed to control the business and assets of the Company or Pty.

#### **13.3 In relation to the Company and Pty:**

13.3.1 no administrator has been appointed;

13.3.2 no documents have been filed with the court for the appointment of an administrator; and

13.3.3 no notice of intention to appoint an administrator has been given by the Company or Pty, its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986).

#### **13.4 No process has been initiated which could lead to the Company or Pty being dissolved and its assets being distributed among the relevant company's creditors, shareholders or other contributors.**

#### **13.5 No distress, execution or other similar process has been levied on an asset of the Company or Pty.**

### **14. ASSETS**

- 14.1 The Company is the full legal and beneficial owner of, and has good and marketable title to, all the assets included in the Company's Accounts, any assets acquired since the Accounts Date except for those disposed of since the Accounts Date in the normal course of business and those assets the subject of leasing arrangements, such assets are free from any Encumbrance.
- 14.2 Pty is the full legal and beneficial owner of and has good and marketable title to all the assets included in Pty's Accounts except for those disposed of since [the Accounts Date] in the normal course of business and assets are free from any incumbrance.
- 14.3 None of the assets shown in the Accounts or acquired by the Company or Pty since the Accounts Date or used by the Company or Pty is the subject of any lease, lease hire agreement, hire purchase agreement or agreement for payment on deferred terms or is the subject of any licence or factoring arrangement.
- 14.4 The Company or Pty is in possession and control of all the assets included in the Accounts, or acquired since the Accounts Date and all other assets used by the Company or Pty, except for those Disclosed as being in the possession of a third party in the normal course of business.
- 14.5 The assets of the Company and Pty comprise all the assets necessary for the continuation of the relevant company's business.

## **15. CONDITION OF PLANT AND EQUIPMENT AND STOCK IN TRADE**

- 15.1 The plant, machinery, equipment and vehicles used in connection with any business carried on at Completion by the Company or Pty:
- 15.1.1 are in satisfactory working order having regard to their age and have been properly maintained;
  - 15.1.2 are capable of doing the work for which they were designed; and
  - 15.1.3 are not surplus to the current or proposed requirements of the Company and Pty.
- 15.2 The stock-in-trade (including work-in-progress) of the Company and Pty is in good condition, is not excessive and is adequate in relation to current trading requirements of the Company and Pty and is capable of being sold by the Company or Pty in the ordinary course of its business in accordance with its current price list without discount, rebate or allowance to a buyer.

## **16. INTELLECTUAL PROPERTY**

16.1 The definition in this paragraph applies in this Agreement.

**“Intellectual Property Rights”** patents, rights to inventions, copyright and related rights, trade marks, trade names and domain names, rights to goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

16.2 With the exception of rights in confidential information, no Intellectual Property Rights material to the business are owned or used by the Company or Pty, in connection with any business carried on at Completion by the Company or Pty. As far as the Warrantors are aware, in relation to rights in confidential information:

16.2.1 the Company and Pty have not disclosed or permitted to be disclosed any such information (other than to the extent necessary in the ordinary course of business or for the purpose of disclosure to their professional advisers) to any person except the Buyer; and

16.2.2 the Company and Pty do not own rights in any confidential information which may be capable of patent protection or which, if disclosed other than subject to conditions of confidentiality, might have a material adverse effect on any business carried on at Completion by the Company or Pty.

16.3 As far as the Warrantors are aware, the activities of the Company and Pty as carried on at the date of Completion, and of any licensee of Intellectual Property Rights granted by the Company or Pty, have not infringed any Intellectual Property Rights of any third party, nor do such activities constitute any breach of confidence, passing off or actionable unfair competition in any jurisdiction, or given rise to any obligation to pay any royalty, fee, compensation or any other sum.

## **17. INFORMATION TECHNOLOGY**

17.1 The definitions in this paragraph apply in this Agreement.

**“IT System”** all computer hardware (including network and telecommunications equipment) and software (including associated preparatory materials, user manuals and other related documentation) owned, used, leased or licensed by or in relation to any business carried on at Completion by the Company or Pty.



- 17.2 The Company is the owner, licensor or lessee of the IT System, and has obtained all necessary rights from third parties to enable it to make exclusive and unrestricted use of the IT System.
- 17.3 As far as the Warrantors are aware, the elements of the IT System:
- 17.3.1 are functioning properly and in accordance with all applicable specifications;
  - 17.3.2 are not defective in any material respect;
  - 17.3.3 have sufficient capacity and performance to meet the current requirements of the business carried on at Completion by the Company or Pty;
  - 17.3.4 have not been and will not be affected by any changes in dates (past, present or future); and
  - 17.3.5 are capable of performing functions in multiple currencies, including the euro.

## 18. DATA PROTECTION

As far as the Warrantors are aware, the Company and Pty have fully complied with the requirements of all applicable legislation concerning rights in respect of privacy and personal data.

## 19. EMPLOYMENT

- 19.1 The definitions in this paragraph apply in this Agreement.

**“Employment Legislation”** legislation applying in England and Wales affecting contractual or other relations between employers and their employees or workers, including but not limited to any legislation and any amendment, extension or re-enactment of such legislation and any claim arising under European treaty provisions or directives enforceable against the Company or Pty by any Employee or Worker;

**“Employee”** any person employed by the Company or Pty under a contract of employment;

**“Worker”** any person who personally performs work for the Company or Pty but who is not in business on their own account or in a client/customer relationship.

- 19.2 The name of each person who is a Director is set out in *Schedule 2*.

- 19.3 The Disclosure Letter includes anonymised details of all Employees and Workers of the Company and Pty, the particulars of each Employee and Worker and the principal terms of each contract including:
- 19.3.1 the company which employs or engages them;
  - 19.3.2 their remuneration (including any benefits and privileges provided or which the Company or Pty is bound to provide to them or their dependants, whether now or in the future);
  - 19.3.3 the commencement date of each contract and, if an Employee, (where different to the commencement date) the date on which continuous service began;
  - 19.3.4 the length of notice necessary to terminate each contract, or if a fixed term, the expiry date of the fixed term and details of any previous renewals; and
  - 19.3.5 the type of contract (whether full or part-time or other).
- 19.4 The Disclosure Letter includes anonymised details of all persons who are not Workers and who are providing services to the Company or Pty under an agreement which is not a contract of employment with the Company or Pty (including, in particular, where the individual acts as a consultant or is on secondment from a company which is not a member of the Company's Group) and the particulars of the terms on which the individual provides services, including:
- 19.4.1 the company which engages them;
  - 19.4.2 the remuneration of each individual (including any benefits and privileges provided or which the Company or Pty is bound to provide);and
  - 19.4.3 the length of notice necessary to terminate each agreement or, if a fixed term, the expiry date of the fixed term and details of any previous renewals.
- 19.5 The Disclosure Letter includes anonymised details of all Employees and Workers of the Company and Pty who are on secondment, maternity, paternity, adoption or other leave or who have been absent due to ill-health or for any other reason for a period exceeding 21 days at the date of this Agreement.
- 19.6 No notice to terminate the contract of employment of any Employee or Worker of the Company or Pty (whether given by the relevant employer or by the Employee or Worker) is, so far as the Warrantors are aware, pending, outstanding or threatened and no dispute under any Employment Legislation or otherwise is ongoing between the Company or Pty and any of the current or

former Employees or Workers relating to the relevant contract, its termination and any reference given by the Company or Pty regarding them.

- 19.7 So far as the Warrantors are aware, no questionnaire has been served on the Company or Pty by an Employee or Worker under any Employment Legislation which remains unanswered in full or in part.
- 19.8 No offer of employment or engagement has been made by the Company or by Pty that has not yet been accepted, or which has been accepted but where the employment or engagement has not yet started.
- 19.9 All contracts between the Company or Pty and their Employees and Workers are terminable at any time on three months' notice or less without compensation (other than for unfair dismissal or a statutory redundancy payment) or any liability other than wages, commission or pension.
- 19.10 Neither the Company nor Pty is a party to, bound by or proposing to introduce in respect of any of its Directors or Employees any redundancy payment scheme in addition to statutory redundancy pay, and there is no agreed procedure for redundancy selection.
- 19.11 Neither the Company nor Pty is a party to, bound by or proposing to introduce in respect of any of its Directors, Employees or Workers any share option, profit sharing, bonus, commission or any other scheme relating to the profit or sales of the Company or Pty.
- 19.12 Neither the Company nor Pty has incurred any actual or contingent liability which remains outstanding in connection with any termination of employment of its Employees (including redundancy payments) or for failure to comply with any order for the reinstatement or re-engagement of any Employee.
- 19.13 Neither the Company nor Pty in the last 12 months has made or agreed to make a payment or provided or agreed to provide a benefit to a present or former Director, officer, Employee or Worker or to their dependants in connection with the actual or proposed termination or suspension of employment or variation of an employment contract.
- 19.14 Neither the Company nor Pty is currently involved in any material industrial or trade dispute or negotiation regarding a claim with any trade union, group or organisation of employees or their representatives representing Employees or Workers and, so far as the Warrantors are aware, there is nothing reasonably likely to give rise to such a dispute or claim.

- 19.15 There are no sums owing to or from any Employee or Worker other than reimbursement of expenses, wages and benefits for the current salary period and holiday pay for the current holiday year.
- 19.16 Neither the Company nor Pty has offered, promised or agreed to any future variation in the contract of any Employee or Worker.
- 19.17 The Disclosure Letter includes complete:
- 19.17.1 anonymised copies of all contracts, handbooks, policies and other documents which apply to the Employees and Workers;
  - 19.17.2 copies of all agreements or arrangements with any trade union, employee representative or body of employees or their representatives (whether binding or not) and details of any such unwritten agreements or arrangements which may affect any Employee or Worker.
- 19.18 In respect of each Employee and Worker, the Company and Pty have, so far as the Warrantors are aware:
- 19.18.1 performed to a material extent all obligations and duties they are required to perform (and settled all outstanding claims), whether or not legally binding and whether arising under contract, statute, at common law or in equity or under any treaties including the EC Treaty or laws of the European Community or otherwise;
  - 19.18.2 complied to a material extent with the terms of any relevant agreement or arrangement with any trade union, employee representative or body of employees or their representatives (whether binding or not); and
  - 19.18.3 maintained to a material extent adequate, suitable and up to date records.

## 20. ENVIRONMENTAL

- 20.1 The definitions in this paragraph apply in this Agreement.

**“Environment”** air, water and land, all living organisms and natural or man-made structures;

**“Environmental Law”** any law in so far as it relates to Environmental Matters;

**“Environmental Matters”** the protection of human health, the protection and condition of the Environment, the condition of the workplace, the generation, transportation, storage, treatment, emission, deposit and disposal of any Hazardous Substance or Waste;

**"Hazardous Substance"** any natural or artificial substance (whether solid, liquid or gas and whether alone or in combination with any other substance or radiation), capable of causing harm to any human or other living organism or the Environment;

**"Waste"** all waste, including any unwanted or surplus substance irrespective of whether it is capable of being recycled or recovered or has any value.

- 20.2 All permits, consents and licences required or issued under Environmental Law which are necessary for carrying on the business of the Company or Pty are in full force and effect and have been complied with and there are no circumstances (including, but not limited to, the sale of the Sale Shares to the Buyer) likely to give rise to the modification, suspension or revocation of, or lead to the imposition of unusual or onerous conditions on, or to prejudice the renewal of, any of those permits, consents or licences.
- 20.3 The Company and Pty have at all times complied with all Environmental Laws
- 20.4 There are no Hazardous Substances or Waste at any of the Properties in circumstances which constitute a breach of Environmental Law or which may lead to a liability, obligation or duty being imposed under Environmental Law on the Company or Pty by any competent authority or third party.

## 21. PROPERTY

- 21.1 The definitions in this paragraph apply in this Agreement.

**"Previously-owned Land and Buildings"** any land and buildings that has or have, at any time before the date of this Agreement, been owned (under whatever tenure) and/or occupied and/or used by the Company or Pty, but which are either:

- (a) no longer owned, occupied or used by the Company or Pty, or
- (b) owned, occupied or used by one of them but pursuant to a different lease, licence, transfer or conveyance.

**"Properties"** the freehold and leasehold land and buildings, short particulars of which are set out in Schedule 6 and includes any part or parts of them and **"Property"** means any one of them or any part or parts of any one of them.

- 21.2 The particulars of the Properties set out in Schedule 6 are true, complete and accurate.
- 21.3 The Properties are the only land and buildings owned, used or occupied by the Company and Pty.

- 21.4 Neither the Company nor Pty has any right of ownership, right to use, option, right of first refusal or contractual obligation to purchase or any other legal or equitable right affecting any land and buildings other than the Properties.
- 21.5 Neither the Company, nor any company that is or has at any time been a Subsidiary, has any actual or contingent liability in respect of Previously-owned Land and Buildings.
- 21.6 Neither the Company, nor any company that is or has at any time been a Subsidiary, has given any guarantee or indemnity for any liability relating to any of the Properties, any Previously-owned Land and Buildings or any other land and buildings.
- 21.7 All written replies given by or on behalf of the Sellers, any company within the Sellers' Group, the Company or Pty in response to any written enquiries by or on behalf of the Buyer in relation to the Properties were complete and accurate at the date they were given and would still be complete and accurate if the replies were instead being given on the Completion Date.

## **22. ACCOUNTS**

- 22.1 The Accounts have been prepared in accordance with the Companies Acts and with accounting standards, policies, principles and practices generally accepted in the UK and give a true and fair view of the state of affairs of the Company as a whole as at the Accounts Date and of the profit and loss of the Company for the financial year ended on that date
- 22.2 The Accounts are not affected by any unusual or non-recurring items.
- 22.3 The Accounts have been prepared on a basis consistent with the audited accounts of, as the case may be, the Company and Pty, for the two prior accounting periods without any change in accounting policies used.
- 22.4 The Company's Management Accounts have been prepared on a basis consistent with that employed in preparing the Company's Accounts and fairly represent the assets and liabilities and the profits and losses of the Company as at and to the date for which they have been prepared.
- 22.5 Pty's Management Accounts have been prepared on a basis consistent with that employed in preparing Pty's Accounts and fairly represent the assets and liabilities of Pty as at and to the date for which they have been prepared.

## **23. ACCOUNTING, FINANCIAL AND OTHER RECORDS**

- 23.1 All accounting, financial and other records of the Company and Pty (including the statutory books of the Company and Pty):
- 23.1.1 constitute an accurate record of all matters required by law to appear in them;
  - 23.1.2 are in the possession of the Company or the Subsidiary to which they relate.
- 23.2 No notice has been received or allegation made that any of those records have not been construed in the manner set out in 23.1.1.

## **24. CHANGES SINCE ACCOUNTS DATE**

Since the Accounts Date:

- 24.1.1 the Company and Pty have conducted their business in the normal course and as a going concern;
- 24.1.2 there has been no material adverse change in the turnover, financial position or prospects of the Company or Pty nor the loss of any supplier or customer;
- 24.1.3 neither the Company nor Pty have issued or agreed to issue any share or loan capital;
- 24.1.4 no dividend or other distribution of profits or assets has been, or agreed to be, declared, made or paid by the Company or Pty;
- 24.1.5 neither the Company nor Pty has borrowed or raised any money or taken any form of financial security and no capital expenditure has been incurred on any individual item by the Company or Pty in excess of £15,000 and neither the Company nor Pty has acquired, invested or disposed of (or agreed to acquire, invest or dispose of) any individual item by the Company or Pty in excess of £15,000; and
- 24.1.6 no shareholder resolutions of the Company or Pty have been passed other than as routine business at an annual general meeting;

## **25. EFFECT OF SALE OF SALE SHARES**

Neither the acquisition of the Sale Shares by the Buyer nor compliance with the terms of this Agreement will:

- 25.1.1 cause the Company or Pty to lose the benefit of any right or privilege it presently enjoys; or

- 25.1.2 relieve any person of any obligation to the Company or Pty (whether contractual or otherwise), or enable any person to determine any such obligation or any right or benefit enjoyed by the Company or Pty, or to exercise any right in respect of the Company or Pty; or
- 25.1.3 so far as the Warrantors are aware, result in any officer or senior Employee leaving the Company or Pty or receiving any payment or benefit.

## **26. RETIREMENT BENEFITS**

- 26.1 Neither the Company nor Pty has or may have any obligation (whether or not legally binding) to provide or contribute towards pension, lump sum, death, ill-health, disability or accident benefits in respect of its past or present officers and employees ("**Pensionable Employees**") and no proposal or announcement has been made to any Employee or officer of the Company or Pty about the introduction, continuance, increase or improvement of, or the payment of a contribution towards, any pension, lump sum, death, ill-health, disability or accident benefit.
- 26.2 The Company and Pty have facilitated access for its Pensionable Employees to a designated stakeholder scheme to the extent legally required by Section 3 of the Welfare Reform and Pensions Act 1999.



## **Part 2 - Tax warranties**

### **1. GENERAL**

- 1.1 All notices, returns (including any land transaction returns), reports, accounts, computations, statements, assessments and registrations and any other necessary information submitted by the Company or Pty to any Taxation Authority for the purposes of Taxation have been made on a proper basis, were submitted within applicable time limits, were accurate and complete when supplied and remain accurate and complete in all material respects. None of the above is, nor so far as the Warrantors are aware is likely to be, the subject of any material dispute with any Taxation Authority.
- 1.2 All Taxation (whether of the UK or elsewhere), for which the Company or Pty has been liable or is liable to account for, has been duly paid (insofar as such Taxation ought to have been paid).
- 1.3 The Company and Pty have, within and for applicable time limits, maintained all records in relation to Taxation which they are required by any Taxation Statute to maintain.
- 1.4 Neither the Company nor Pty has paid, within the past three years ending on the date of this Agreement, nor so far as the Warrantors are aware will by reference to any circumstances currently existing become liable to pay, any penalty, fine, surcharge or interest charged by virtue of the TMA 1970 or any other Taxation Statute.
- 1.5 All Taxation and national insurance deductible and payable under the PAYE system and/or any other Taxation Statute has, so far as is required to be deducted, been deducted from all payments made (or treated as made) by the Company or Pty. All amounts due to be paid to the relevant Taxation Authority prior to the date of this Agreement have been so paid, including without limitation all Tax chargeable on benefits provided for directors, employees or former employees of the Company or Pty or any persons required to be treated as such.
- 1.6 Neither the Company nor Pty is involved in any dispute with any Taxation Authority and has not, within the past 12 months, been subject to any visit, audit, investigation, discovery or access order by any Taxation Authority. The Warrantors are not aware of any circumstances existing which make it likely that a (non-routine) visit, audit, investigation, discovery or access order will be made in the next 12 months.

1.7 The Disclosure Letter contains details of any concession, agreements or other formal or informal arrangement (that is, an arrangement which is not based on a strict interpretation of all relevant Taxation legislation, published extra-statutory concessions and published statements of practice) with any Taxation Authority.

1.8 The Disclosure letter contains copies of all relevant applications for clearances and copies of all clearances obtained in connection with all transactions, schemes or arrangements in respect of which the Company or Pty has been a party or has otherwise been involved. All such clearances have been obtained on the basis of full and accurate disclosure of all material facts and considerations relating thereto. All such transactions, schemes or arrangements have been implemented strictly in accordance with the terms of such clearances.

1.9

Neither the Company nor Pty is, nor, so far as the Warrantors are aware on the basis of currently existing circumstances, will become, liable to make to any person (including any Taxation Authority) any payment in respect of any liability to Taxation (other than PAYE and National Insurance) which is primarily or directly chargeable against, or attributable to, any other person (other than the Company or Pty).

## **2. CHARGEABLE GAINS**

The book value shown in, or adopted for the purposes of, the Accounts as the value of each of the assets of the Company, on the disposal of which a chargeable gain or allowable loss could arise, does not exceed the amount which on a disposal of such asset at the date of this Agreement would be deductible, in each case, disregarding any statutory right to claim any allowance or relief other than amounts deductible under section 38 of TCGA 1992.

## **3. CAPITAL LOSSES**

No capital loss has accrued to the Company that is a loss within the meaning of either section 8 or section 16A of TCGA 1992.

## **4. CAPITAL ALLOWANCES**

4.1 If any asset of the Company were disposed of at Completion for its book value as shown in, or adopted for the purpose of, the Accounts, or for the value of consideration actually given for it on its acquisition (if such asset were

acquired since the Accounts Date), no balancing charge under CAA 2001 (or any other legislation relating to capital allowances) or similar clawback of relief in jurisdictions outside the UK would be made on the Company.

## **5. DISTRIBUTIONS AND OTHER PAYMENTS**

- 5.1 No distribution or deemed distribution, within the meaning of sections 209, 210 or 211 of ICTA 1988, has been made (or will be deemed to have been made) by the Company after 5 April 1965, except dividends shown in their audited accounts, and the Company is not bound to make any such distribution.
- 5.2 Except for items of a similar nature to those customarily disallowed and reflected in the Company's or Pty's tax computations for past years, no rents, interest, annual payments or other sums of an income nature, paid or payable by the Company or Pty, or which the Company or Pty is under an existing obligation to pay in the future, are or as for as the Warrantors are aware may be wholly or partially disallowable as deductions, management expenses or charges in computing taxable profits for Taxation purposes.
- 5.3 The Company has not, within the period of seven years preceding Completion, been engaged in, nor been a party to, any of the transactions set out in sections 213 to 218 (inclusive) of ICTA 1988, nor has it made or received a chargeable payment as defined in section 218(1) of ICTA 1988.

## **6. LOAN RELATIONSHIPS**

All interests, discounts and premiums payable by the Company in respect of its loan relationships (within the meaning of section 81 of the Finance Act 1996) are eligible to be brought into account by the Company as a debit for the purposes of Chapter II of Part IV of the Finance Act 1996 at the time, and to the extent that such debits are recognised in the statutory accounts of the Company.

## **7. CLOSE COMPANIES**

The Company has not, nor has ever been a close company within the meaning of sections 414 and 415 of ICTA 1988.

## **8. GROUP RELIEF**

Except as provided in the Company's Accounts, the Company is not, nor will be, obliged to make or be entitled to receive any payment in pursuance of an

agreement as respects amounts surrendered by way of Group Relief to or by the Company in respect of any period ending on or before Completion.

## 9. INTANGIBLE ASSETS

For the purposes of this paragraph 9, references to “**intangible fixed assets**” mean intangible fixed assets and goodwill within the meaning of Schedule 29 to the Finance Act 2002 to which that Schedule applies. References to an “**intangible fixed asset**” shall be construed accordingly.

- 9.1 The Disclosure Letter sets out the amount of expenditure on each of the intangible fixed assets of the Company and provides the basis on which any debit relating to that expenditure has been taken into account in the Accounts.
- 9.2 No claims or elections have been made by the Company under Part 7 of, or paragraph 86 of Schedule 29 to, the Finance Act 2002 in respect of any intangible fixed asset of the Company.

## 10. COMPANY RESIDENCE, TREASURY CONSENTS AND OVERSEAS INTERESTS

- 10.1 The Company has, throughout the past seven years, been resident in the UK for corporation tax purposes and has not, at any time in the past seven years, been treated as resident in any other jurisdiction for the purposes of any double taxation arrangements having effect under section 249 of the Finance Act 1994, section 788 of ICTA 1988 or for any other tax purpose.
- 10.2 The Company has not caused, permitted or entered into any of the transactions specified in section 765 of ICTA 1988 (migration of companies) without the prior written consent of HM Treasury, or without falling within a general consent and having duly provided any required information to HM Revenue & Customs (as appropriate).
- 10.3 The Company does not hold shares in a company which is not resident in the UK and which would be a close company if it were resident in the UK in circumstances such that a chargeable gain accruing to the company not resident in the UK could be apportioned to the Company pursuant to section 13 of TCGA 1992.
- 10.4 The Company is not holding, nor has held in the past seven years, any interest in a controlled foreign company within section 747 of ICTA 1988. The Company has no material interest in an offshore fund as defined in section 759 of ICTA 1988.

## **11. ANTI-AVOIDANCE**

All transactions or arrangements made by the Company have been made on arm's length terms. So far as the Warrantors are aware, there are no circumstances in which section 770A of, or Schedule 28AA to, ICTA 1988 or any other rule or provision could apply allowing any Taxation Authority to make an adjustment to the terms on which such transaction or arrangement is treated as being made for Taxation purposes, and no notice or enquiry has been made by any Taxation Authority in connection with any such transactions or arrangements.

## **12. INHERITANCE TAX**

12.1 The Company has not:

12.1.1 made any transfer of value within sections 94 and 202 of IHTA 1984;  
or

12.1.2 received any value such that liability might arise under section 199 of IHTA 1984; or

12.1.3 been a party to associated operations in relation to a transfer of value as defined by section 268 of IHTA 1984.

12.2 There is no unsatisfied liability to inheritance tax attached to, or attributable to, the Sale Shares or any asset of the Company.

12.3 There are not in existence any circumstances whereby any asset owned by the Company, or the Sale Shares, are liable to be subject to any sale, mortgage or charge by virtue of section 212(1) of IHTA 1984.

## **13. VALUE ADDED TAX**

13.1 The Company is a taxable person and is registered for the purposes of VAT.

## **14. STAMP DUTY, STAMP DUTY LAND TAX AND STAMP DUTY RESERVE TAX**

14.1 Any document to which the Company is a party and which forms part of its title to any asset which is owned by the Company at Completion is duly stamped or certified for stamp duty purposes. No such documents which are outside the UK would attract stamp duty if they were brought into the UK.

14.2 Neither entering into this Agreement nor Completion will result in the withdrawal of any stamp duty or stamp duty land tax relief granted on or before Completion which will affect the Company.

14.3 The Disclosure Letter sets out full and accurate details of any chargeable interest (as defined under section 48 of the Finance Act 2003) acquired or held by the Company before Completion in respect of which the Warrantors are aware that an additional land transaction return will be required to be filed with a Taxation Authority and/or a payment of stamp duty land tax made on or after Completion.

14.4 The Company has paid all Stamp Duty Reserve Tax to which it has been liable.

## **15. TAX SHARING**

The Company is not bound by or party to any Taxation indemnity, Taxation sharing or any Taxation allocation agreement in respect of which claims against the Company would not be time barred.

## **16. PTY**

Save in respect of PAYE (or its equivalent in South Africa) and VAT (or its equivalent in South Africa) Pty has no outstanding liability for Taxation (as defined in Schedule 5 but with the substitution of "Pty" for "the Company") and so far as the Warrantors are aware will not have any liability for Taxation in respect of any event, act or omission of Pty prior to Completion.

## **Schedule 5 Tax covenant**

### **1. INTERPRETATION**

- 1.1 The definitions and rules of interpretation in this paragraph apply in this Tax Covenant.

**“Buyer’s Relief”** means:

- (a) any Accounts Relief (as defined in paragraph (a) of the definition of Liability for Taxation) or Repayment Relief (as defined in paragraph (b) of the definition of Liability for Taxation);
- (b) any Post-Completion Relief of the Company or Pty (as defined in paragraph (c) of the definition of Liability for Taxation); and
- (c) any Relief, whenever arising, of the Buyer or any member of the Buyer's Tax Group other than the Company or Pty.

**“Buyer's Tax Group”** the Buyer and any other company or companies which either are or become after Completion, or have within the seven years ending at Completion, been treated as members of the same group as, or otherwise connected or associated in any way with, the Buyer for any Tax purpose;

**“Degrouping Charge”** any Liability for Taxation of the Company or Pty as a result of the Company or Pty ceasing to be, or ceasing to be treated as, a member of a group of companies for Tax purposes as a result of Completion or of entering into this Agreement, or of the satisfaction of any condition in this Agreement;

**“Event”** includes (without limitation) the expiry of a period of time, the Company or Pty becoming or ceasing to be associated with any other person for any Tax purpose or ceasing to be or becoming resident in any country for any Tax purpose, the death or the winding up or dissolution of any person, and any transaction (including the execution and completion of all provisions of this Agreement), event, act or omission whatsoever, and any reference to an Event occurring on or before a particular date shall include Events which, for Tax purposes, are deemed to have, or are treated or regarded as having, occurred on or before that date;

**“Group Relief”** any or all of the following:

- (a) relief surrendered or claimed pursuant to Chapter IV Part X ICTA 1988;
- (b) advance corporation tax surrendered or claimed pursuant to section 240 ICTA 1988 (set off of company's surplus advance corporation tax against subsidiary's liability to corporation tax);

- (c) a Tax refund relating to an accounting period as defined in section 102(3) of the Finance Act 1989 (surrender of company Tax refund etc within group) in respect of which a notice has been given pursuant to section 102(2) of that statute; and
- (d) eligible unrelieved foreign Tax surrendered or claimed pursuant to The Double Taxation Relief (Surrender of Relievable Tax within a Group) Regulations 2001.

**“Liability for Taxation”** any liability of the Company or Pty to make a payment of Tax, whether or not the same is primarily payable by the Company or Pty and whether or not the Company or Pty has or may have any right of reimbursement against any other person or persons and shall also include:

- (a) the Loss of any Relief (**“Accounts Relief”**) where such Relief has been taken into account in computing and so reducing or eliminating any provision for deferred Tax which appears in the Completion Accounts (or which, but for such Relief, would have appeared in the Completion Accounts) or where such Relief was treated as an asset of the Company or Pty in the Completion Accounts or was taken into account in computing any deferred Tax asset which appears in the Completion Accounts (**“Loss of an Accounts Relief”**), in which case the amount of the Liability for Taxation shall be the amount of Tax which would (on the basis of Tax rates current at the date of such Loss) have been saved but for such Loss, assuming for this purpose that the Company or Pty had sufficient profits or was otherwise in a position to use the Relief;
- (b) the Loss of any right to repayment of Tax (including any repayment supplement) (**“Repayment Relief”**) which was treated as an asset in the Completion Accounts (**“Loss of a Repayment Relief”**), in which case the amount of the Liability for Taxation shall be the amount of the Loss of the right to repayment and any related repayment supplement;
- (c) the set off or use against income, profits or gains earned, accrued or received or against any Tax chargeable in respect of an Event occurring on or before Completion of any Relief (**“Post-Completion Relief”**) which is not available before Completion, but arises after Completion in circumstances where, but for such set off or use, the Company or Pty would have had a liability to make a payment of Tax for which the Buyer would have been able to make a claim against the Warrantors under this Tax Covenant (**“Loss of a Post-Completion Relief”**), in which case the amount of the Liability for Taxation shall be the amount of Tax saved by the Company or Pty as a result of such set off or use;
- (d) any liability to repay (other than to the Company or Pty) in whole or in part any payment received or receivable by the Company or Pty or a



liability of the Company or Pty to make any payment (other than to the Company or Pty) for the surrender of Group Relief pursuant to any arrangement or agreement entered into on or before Completion (save to the extent that such repayment or payment is reflected in the Completion Accounts), in which case the amount of the Liability for Taxation shall be the amount of such liability (disregarding any set off);

- (e) the loss in whole or in part of any payment received or receivable by the Company or Pty (other than from the Company or Pty) for the surrender of Group Relief pursuant to any arrangement or agreement entered into on or before Completion (save to the extent that such loss is reflected in the Completion Accounts), in which case the amount of the Liability for Taxation shall be the amount taken into account in the Completion Accounts; and
- (f) any liability of the Company or Pty to make a payment pursuant to an indemnity, guarantee or covenant entered into before Completion under which the Company or Pty has agreed to meet or pay a sum equivalent to or by reference to another person's Tax liability, in which case the Liability for Taxation shall be equal to the amount of the liability.

**"Loss"** any reduction, modification, loss, counteraction, nullification, utilisation, disallowance or clawback for whatever reason;

**"Overprovision"** the amount by which any provision in the Completion Accounts relating to Tax (other than a provision for deferred Tax) is overstated (except to the extent that such overstatement results from the utilisation of a Buyer's Relief), applying the accounting policies, principles and practices adopted in relation to the preparation of the Completion Accounts (and ignoring the effect of any change in law made after Completion);

**"Relief"** includes any loss, relief, allowance, credit, exemption or set off in respect of Tax or any deduction in computing income, profits or gains for the purposes of Tax;

**"Retained Group"** the Warrantors and any other company or companies (other than the Company or Pty) which either are or become after Completion, or have within the seven years ending at Completion been, treated as members of the same group, or otherwise connected or associated in any way with the Warrantors for Tax purposes;

**"Saving"** (i) any repayment of Tax or (ii) the reduction or elimination of any liability of the Company or Pty to make an actual payment of corporation tax in respect of which the Warrantors would not have been liable under paragraph 2, by the use of any Relief in either case (i) or (ii) arising wholly as a result of a Liability for Taxation in respect of which the Warrantors have

made a payment under paragraph 2 of this Tax Covenant or as a result of a matter for which the Warrantors have made a payment under the Tax Warranties;

**“Tax”** all forms of taxation and statutory, governmental, state, federal, provincial, local, government or municipal charges, duties, imposts, contributions, levies, withholdings or liabilities wherever chargeable and whether of the UK or any other jurisdiction, and any penalty, fine, surcharge, interest, charges or costs relating thereto and payable to a Taxation Authority, and **“Taxation”** shall have the same meaning;

**“Tax Claim”** any assessment (including self-assessment), notice, demand, letter or other document issued or action taken by or on behalf of any Taxation Authority from which it appears that the Buyer, the Company or Pty is or may be subject to a Liability for Taxation or other liability in respect of which the Warrantors are or may be liable under this Tax Covenant or the Tax Warranties;

**“Taxation Authority”** the Inland Revenue, HM Customs & Excise, HM Revenue & Customs, the Department of Social Security and any other governmental or other authority whatsoever competent to impose any Tax, whether in the United Kingdom or elsewhere;

**“Taxation Statute”** any directive, statute, enactment, law or regulation wheresoever enacted or issued, coming into force or entered into and providing for or imposing any Tax and including orders, regulations, instruments, bye-laws or other subordinate legislation made under the relevant statute or statutory provision and any directive, statute, enactment, law, order, regulation or provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same.

- 1.2 References to **“gross receipts”**, **“income”**, **“profits”** or **“gains”** earned, accrued or received shall include any gross receipts, income, profits or gains deemed pursuant to the relevant Taxation Statute to have been or treated or regarded as earned, accrued or received.
- 1.3 References to a **“repayment of Tax”** shall include any repayment supplement or interest in respect of it.
- 1.4 Any reference to something occurring **in the ordinary course of business** shall, without prejudice to the generality thereof, inter alia be deemed not to include:
  - 1.4.1 anything which involves, or leads directly or indirectly to, any liability of the Company or Pty to Tax that is the primary liability of, or properly attributable to, or due from another person (other than a

- member of the Buyer's Tax Group), or is the liability of the Company or Pty only because some other person, other than a member of the Buyer's Tax Group, has failed to pay it or is the liability of the Company or Pty because it has elected to be regarded as taxable or liable or to be regarded as having made a disposal; or
- 1.4.2 anything which relates to or involves the acquisition or disposal of an asset or the supply of services (including the lending of money, or the hiring or licensing of tangible or intangible property) in a transaction which is not entered into on arm's length terms; or
- 1.4.3 anything which relates to or involves the making of a distribution for Tax purposes, the creation, cancellation or re-organisation of share or loan capital, the creation, cancellation or repayment of any intra-Group debt or the Company or Pty becoming or ceasing to be or being treated as ceasing to be a member of a Group or as becoming or ceasing to be associated or connected with any other company for any Tax purposes; or
- 1.4.4 anything which relates to a transaction or arrangement which includes, or a series of transactions or arrangements which include, any step or steps having no commercial or business purpose apart from the reduction, avoidance or deferral of a Liability for Taxation; or
- 1.4.5 anything which gives rise to a Liability for Taxation on deemed (as opposed to actual) profits or to the extent that it gives rise to a Liability for Taxation on an amount of profits greater than the difference between the sale proceeds of an asset and the amount attributable to that asset in the Accounts or, in the case of an asset acquired since the Accounts Date, the cost of that asset; or
- 1.4.6 anything which involves, or leads directly or indirectly to, a change of residence of the Company or Pty for Tax purposes.
- 1.5 Unless the contrary intention appears, words and expressions defined in this Agreement have the same meaning in this Tax Covenant and any provisions in this Agreement concerning matters of construction or interpretation also apply in this Tax Covenant.
- 1.6 For the avoidance of doubt, references to any Liability for Taxation of the Company or Pty which results from any gains earned or received on or before Completion or any Event on or before Completion include a reference to any Liability for Taxation of the Company or Pty resulting from the sale of the Sale Shares pursuant to this Agreement (including, without limitation, any liability arising under section 179 of TCGA 1992).

## **2. COVENANT**

- 2.1 The Warrantors severally covenant with the Buyer that, subject to the provisions of this Tax Covenant and this Agreement, the Warrantors shall pay (in accordance with the provisions of clause 7 of this Agreement) to the Buyer in proportion to each Warrantor's share of the Surrender Value of the Consideration Shares, his or her proportion of an amount equal to any:
- 2.1.1 Liability for Taxation resulting from or by reference to any Event occurring on or before Completion or in respect of any gross receipts, income, profits or gains earned, accrued or received by the Company or Pty on or before Completion;
  - 2.1.2 Liability for Taxation whensoever arising which arises solely as a result of the relationship for Tax purposes of the Company or Pty with any person prior to Completion (other than a person who is a member of the Buyer's Tax Group);
  - 2.1.3 payment of interest or penalties for which the Company or Pty is liable as a result of the Company or Pty failing to make any instalment payment under the Corporation Tax (Instalment Payments) Regulations 1998 in any period ending on or before Completion sufficient to avoid such interest or penalties;
  - 2.1.4 Liability for Taxation falling within paragraph (a) to paragraph (f) of the definition of Liability for Taxation;
  - 2.1.5 costs and expenses referred to in paragraph 11.
- 2.2 Any payment under this Tax Covenant shall, to the extent possible, but not so as to limit the amount payable where not wholly possible, be a reduction in the Purchase Price for the Sale Shares.
- 2.3 For the avoidance of doubt, no cash sum shall be payable in respect of any claim by the Buyer under any paragraph of this Tax Covenant.

## **3. PAYMENT DATE AND INTEREST**

- 3.1 Where the Warrantors are liable to make any payment in respect of any claim under paragraph 2 (including any payment pursuant to paragraph 2.1.6), the due date for the making of that payment (in accordance with clause 7) ("**Due Date**") shall be the later of the date falling seven days after the Buyer has served a notice on the Warrantors demanding that payment and in a case:
- 3.1.1 that involves an actual payment of Tax by the Company or Pty (including any payment pursuant to paragraph 2.1.6), the date on

which the Tax in question would have had to have been paid to the relevant Taxation Authority in order to prevent a liability to interest or a fine, surcharge or penalty from arising in respect of the Liability for Taxation in question; or

- 3.1.2 that falls within paragraph (a) of the definition of Liability for Taxation, the last date on which the Tax is or would have been required to be paid to the relevant Taxation Authority in respect of the period in which the Loss of the Relief occurs (assuming for this purpose that the Company or Pty had sufficient profits or was otherwise in a position to use the Relief); or
  - 3.1.3 that falls within paragraph (b) of the definition of Liability for Taxation, the date on which the repayment was due from the relevant Taxation Authority; or
  - 3.1.4 that falls within paragraph (c) of the definition of Liability for Taxation, the date on which the Tax saved by the Company or Pty is or would have been required to be paid to the relevant Taxation Authority in order to prevent a liability to interest or a fine, surcharge or penalty from arising; or
  - 3.1.5 that falls within paragraph (e) of the definition of Liability for Taxation not later than the Business Day prior to the day on which the right to a payment is lost; or
  - 3.1.6 that falls within paragraph (d) of the definition of Liability for Taxation or paragraph (f) of the definition of Liability for Taxation, not later than the day before the day on which the Company or Pty is due to make the payment or repayment.
- 3.2 If any sums required to be paid by the Warrantors under this Tax Covenant are not paid on the Due Date then, except to the extent that the Warrantors' liability under paragraph 2 compensates the Buyer for the late payment by virtue of it extending to interest and penalties, such sums shall bear interest (which shall accrue from day to day after as well as before any judgment for the same) at the rate of 2% per annum over the base rate from time to time of the Bank of England from the day following the Due Date up to and including the day of actual payment of such sums, such interest to be compounded quarterly (and such interest shall be included in determining the number of Consideration Shares required under clause 7 to discharge the liability).

#### **4. EXCLUSIONS**

- 4.1 The covenant contained in paragraph 2 shall not cover any Liability for Taxation to the extent that:

- 4.1.1 a provision or reserve in respect of such matter is made in the Completion Accounts; or
- 4.1.2 it arises or is increased as a result only of any change in the law of Tax coming into force after Completion (whether relating to rates of Tax or otherwise) or the withdrawal of any extra-statutory concession previously made, or published practice or interpretation applied, by a Taxation Authority (whether or not the change purports to be effective retrospectively in whole or in part); or
- 4.1.3 it would not have arisen but for a change after Completion in the accounting bases, dates or policies adopted by Company or Pty values its assets (other than a change made in order to comply with UK GAAP where such accounts do not already, but should, comply); or
- 4.1.4 the Buyer is compensated for any such matter under any other provision of this Agreement; or
- 4.1.5 it would not have arisen but for or is increased by a voluntary act or transaction carried out by the Buyer, the Company or Pty after Completion, being an act which:
  - (a) is not in the ordinary course of business of the relevant company as carried on at Completion; or
  - (b) could reasonably have been avoided; or
  - (c) the Company or Pty was not legally committed to do under a commitment that existed on or before Completion; or
- 4.1.6 the Liability for Taxation is a Degrouping Charge which, whether by election or otherwise, is treated as accruing not to the Company or Pty but to the Warrantors or any member of the Retained Group.
- 4.1.7 it would not have arisen but for or is increased by a disclaimer by the Company or Pty and/or the Buyer after Completion of capital allowances or any other Relief available to and claimed by the Company or Pty or the Buyer or any member of the Buyer's Group before Completion in respect of any period commencing before the Completion Date; or
- 4.1.8 any Relief or right to repayment of Taxation (other than a Buyer's Relief) is available to reduce the Liability for Taxation which is the subject of the relevant claim; or
- 4.1.9 it would not have arisen but for or is increased by the failure of the Buyer to comply with its obligations under paragraph 9 of this Part 5 of the Schedule (conduct of tax claims); or
- 4.1.10 it would not have arisen but for or is increased by the cessation or transfer or any change in the nature or conduct of any trade or business

of the Company or Pty after Completion (or for any other reason where any of sections 768-768E ICTA 1988 apply); or

- 4.1.11 it would not have arisen but for or has been increased by a disclaimer, claim or election made or notice or consent given by the Buyer or the Company or Pty other than at the request of or with the written consent of the Warrantors; or
- 4.1.12 the income, profits or gains in respect of or by reference to which the Liability for Taxation which is the subject of the relevant claim arises were actually earned, accrued or received by the Company or Pty but were not reflected in the Completion Accounts; or
- 4.1.13 the Liability for Taxation which is the subject of the relevant claim would not have arisen but for or is increased by a failure or omission by the Company or Pty or the Buyer to make any claim, election, surrender or disclaimer or give any notice or consent or do any other thing after Completion the making, giving or doing of which was taken into account or assumed in computing the provision or reserve for Taxation or deferred tax in the Completion Accounts or accompanying computations; or
- 4.1.14 the Liability for Taxation which is the subject of the relevant claim arises or is increased in consequence of the provision for Taxation in the Completion Accounts proving to be insufficient in consequence of the profits which are subject to corporation tax ceasing, in consequence of Completion, to be subject to the small companies' rate of corporation tax as set out in Section 13 ICTA 1988; or
- 4.1.15 the Liability for Taxation which is the subject of the relevant claim arises because any expenditure of the Company or Pty or any Relief, provision or reserve treated in the Completion Accounts as deductible or allowable for Taxation purposes is not deductible or allowable in respect of that accounting period, but it will be deductible or allowable in a later accounting period; or
- 4.1.16 it would not have arisen but for, or is increased by, the failure by the Buyer or the Company after Completion to make timeous payment of any Taxation or other liability.

## **5. OVERPROVISIONS**

- 5.1 If, on or before the seventh anniversary of Completion the Buyer, the Company or Pty becomes aware of any matter which has or may give rise to an Overprovision, that person shall as soon as practicable give notice and details to the Warrantors and the auditors of the Company or Pty (as the case may be). The auditors shall consult with the parties and provide them with an opportunity to seek to agree the extent of any Overprovision for 7 days. If no

such agreement is reached, the auditors shall determine (at the request of the Warrantors and at the expense of the Warrantors) whether there is an Overprovision. If there is an Overprovision (agreed by the parties or determined by the auditors), then:

5.1.1 the amount of any Overprovision shall first be set off against any payment then due from the Warrantors under this Tax Covenant or the Tax Warranties;

5.1.2 to the extent that there is an excess, a refund shall be made to the Warrantors of any previous payment or payments made by the Warrantors under this Tax Covenant or the Tax Warranties (and not previously refunded under this Tax Covenant) up to the amount of such excess; and

5.1.3 to the extent that such excess as referred to in paragraph 5.1.2 is not exhausted, the remainder of that excess shall be carried forward and set off against any future payment or payments which become due from the Warrantors under this Tax Covenant or the Tax Warranties.

5.2 In determining any matter under paragraph 5 or 6 of this Tax Covenant the auditors shall act as experts and not as arbitrators.

## **6. SAVINGS**

6.1 If the Company, Pty or the Buyer becomes aware of any matter which has or may give rise to a Saving, that person shall as soon as practicable give notice and details to the Warrantors and the auditors of the Company or Pty (as the case may be). The auditors shall consult with the parties and provide them with an opportunity to seek to agree the extent of any Saving for 7 days. If no such agreement is reached, then (at the Warrantors request and at the Warrantors expense) the auditors for the time being of the Company or Pty shall determine whether the Company or Pty has obtained a Saving. If so, the Buyer shall, as soon as reasonably practicable thereafter, repay to the Warrantors the lesser of:

6.1.1 the amount of the Saving (as determined by the auditors or agreed by the parties) less any costs incurred by the Buyer, the Company or Pty; and

6.1.2 the amount paid by the Warrantors under paragraph 2 in respect of the Liability for Taxation (or under the Tax Warranties, as the case may be) which gave rise to the Saving less any part of that amount previously repaid to the Warrantors under any provision of this Tax Covenant.

6.2 If:



- 6.2.1 any expenditure of any the Company or Pty or Relief or provision or reserve for or on account of any matter has been treated as deductible or allowable for Taxation purposes in computing the provision for Taxation in the Completion Accounts; and
- 6.2.2 the Warrantors have made a payment under this Taxation Covenant because the expenditure, Relief, provision or reserve (or a part thereof) is not deductible or allowable in respect of that accounting period, but it becomes deductible or allowable in a later accounting period,
- 6.2.3 the amount of the Tax saved as a result of the deduction or allowance obtained in the relevant later accounting period is to be treated as a Saving for the purposes of this paragraph.

## **7. RECOVERY FROM THIRD PARTIES**

- 7.1 Where the Warrantors are or may be liable in respect of a claim made, or have paid an amount under, the Tax Warranties or under paragraph 2 in respect of any Liability for Taxation and the Buyer, the Company or Pty is or becomes entitled to recover from some other person (not being the Buyer, the Company or Pty or any other company within the Buyer's Tax Group) any amount in respect of such Liability for Taxation, the Buyer shall or shall procure that the Company or Pty shall:
  - 7.1.1 notify the Warrantors of its entitlement as soon as reasonably practicable; and
  - 7.1.2 if required by the Warrantors and, subject to the Buyer, the Company or Pty being indemnified by the Warrantors against any Tax that may be suffered on receipt of that amount and any costs and expenses incurred in recovering that amount, take or procure that the Company or Pty takes all reasonable steps to enforce that recovery against the person in question (keeping the Warrantors fully informed of the progress of any action taken), provided that the Buyer shall not be required to take any action pursuant to this paragraph 7.1 (other than an action against:
    - (a) a Taxation Authority; or
    - (b) a person who has given Tax advice to the Company or Pty on or before Completion),which, in the Buyer's reasonable opinion, is likely to harm its, the Company's or Pty's commercial relationship (potential or actual) with that or any other person.
- 7.2 If the Buyer, the Company or Pty recovers any amount referred to in paragraph 7.1, the Buyer shall reduce the amount of any outstanding claim

under the Tax Warranties or under paragraph 2 of the Taxation Covenant by such amount (less any costs and expenses incurred in recovering it and any Tax suffered on it, save to the extent covered by 7.1.2), or, in the case where a payment has been made under the Tax Warranties or under paragraph 2 of the Tax Covenant, account to the Warrantors for the lesser of:

7.2.1 any amount recovered (including any related interest or related repayment supplement) less any Tax suffered in respect of that amount and any costs and expenses incurred in recovering that amount (save to the extent that amount has already been made good by the Warrantors under paragraph 7.1.2); and

7.2.2 the amount paid by the Warrantors under the Tax Warranties or under paragraph 2 of the Tax Covenant in respect of the Liability for Taxation in question.

## **8. CORPORATION TAX RETURNS**

8.1 The Warrantors or their duly authorised agent shall prepare the corporation tax returns and computations of the Company and Pty for all accounting periods ended on or before or current at the Completion Date (to the extent that the same have not been prepared before Completion) and submit them to the Buyer.

8.2 The Buyer shall procure that the returns and computations referred to in paragraph 8.1 shall be authorised, signed and submitted to the relevant Taxation Authority without amendment or with such reasonable amendments as the Buyer reasonably considers to be necessary and as are agreed with the Warrantors and shall give the Warrantors or their agent all such assistance as may reasonably be required to agree those returns and computations with the relevant Taxation Authority, provided that the Buyer shall not be obliged to take any such action as is mentioned in this paragraph 8.2 in relation to any return that is not full, true and accurate in all material respects.

8.3 The Warrantors or their duly authorised agent shall, at the Warrantors' cost and expense, prepare all documentation and shall have conduct of all matters (including correspondence) relating to the corporation tax returns and computations of the Company and Pty for all accounting periods ended on or prior or current at to the Completion Date, provided that the Warrantors shall not, without the prior written consent of the Buyer (not to be unreasonably withheld or delayed), transmit any communication (written or otherwise) to the relevant Taxation Authority or agree any matter with the relevant Taxation Authority.

- 8.4 The Buyer shall procure that the Company and Pty afford such access to their books, accounts and records as is necessary and reasonable to enable the Warrantors or their duly authorised agent to prepare the corporation tax returns and computations of the Company and Pty for all accounting periods ended on or before or current at the Completion Date and conduct matters relating to them in accordance with this paragraph 8.
- 8.5 The Warrantors shall take all reasonable steps to ensure that the corporation tax returns and computations of the Company and Pty for all accounting periods ended on or before or current at the Completion Date are prepared and agreed with the relevant Taxation Authority as soon as possible.
- 8.6 The Warrantors will ensure (to the extent permitted by law and for no consideration) that any Degrouping Charge for which recovery would otherwise be available under this Tax Covenant or under the Tax Warranties is treated as accruing not to the Company or Pty but to the Warrantors or a member of the Retained Group and the Buyer will procure that the Company or Pty executes all claims, elections, consents or other documents relevant for that purpose.
- 8.7 For the avoidance of doubt:
- 8.7.1 where any matter relating to Tax gives rise to a Tax Claim, the provisions of paragraph 9 shall take precedence over the provisions of this paragraph 8; and
- 8.7.2 the provisions of this paragraph 8 shall not prejudice the rights of the Buyer to make a claim under this Tax Covenant in respect of any Liability for Taxation.
- 8.8 All properly incurred costs and expenses of all matters within this paragraph 8 shall be borne by the Company or Pty, as the case may be (subject to the prior approval, not to be unreasonably withheld, of such costs or expenses by the Buyer if materially in excess of such costs and expenses incurred in prior years).

## **9. CONDUCT OF TAX CLAIMS**

- 9.1 If the Buyer, the Company or Pty becomes aware of a Tax Claim, the Buyer shall give or procure that notice in writing is given to the Warrantors as soon as is reasonably practicable, provided that if the Warrantors receive any Tax Claim for whatever reason, they shall notify the Buyer in writing as soon as is reasonably practicable and the Buyer shall be deemed, on receipt of such

notification, to have given the Warrantors notice of such Tax Claim in accordance with the provisions of this paragraph 9.

- 9.2 Provided the Warrantors indemnify the Buyer and the Company or Pty to the Buyer's reasonable satisfaction against all liabilities, costs, damages or expenses which may be incurred thereby including any additional Liability for Taxation, the Buyer shall take and shall procure that the Company or Pty shall take such action as the Warrantors may reasonably request by notice in writing given to the Buyer, the Company or Pty to avoid, dispute, defend, resist, appeal or compromise any Tax Claim (such a Tax Claim where action is so requested being hereinafter referred to as a **"Dispute"**), provided that neither the Buyer, the Company nor Pty shall be obliged to appeal or procure an appeal against any assessment to Tax raised on any of them if, the Warrantors having been given written notice of the receipt of such Tax Claim, the Buyer, the Company or Pty have not within 14 days of the date of the notice received instructions in writing from the Warrantors to do so.

9.3 If:

- 9.3.1 the Warrantors do not request the Buyer, the Company or Pty to take any action under paragraph 9.2 or fails to indemnify the Buyer, the Company or Pty to the Buyer's reasonable satisfaction within a period of time (commencing with the date of the notice given to the Warrantors) that is reasonable, having regard to the nature of the Tax Claim and the existence of any time limit in relation to avoiding, disputing, defending, resisting, appealing or compromising such Tax Claim, and which period shall not in any event exceed a period of 14 days; or
- 9.3.2 the Warrantors (or the Company or Pty before Completion) have been involved in a case involving fraudulent conduct or wilful default in respect of the Liability for Taxation which is the subject matter of the Dispute; or
- 9.3.3 the Dispute involves an appeal against a determination by the General or Special Commissioners of the VAT and Duties Tribunal, unless the Warrantors have obtained the opinion of Tax counsel of at least 5 years' standing that there is a reasonable prospect that the appeal will succeed,

the Buyer, the Company or Pty shall have the conduct of the Dispute absolutely (without prejudice to its rights under this Tax Covenant) and shall be free to pay or settle the Tax Claim on such terms as the Buyer, the Company or Pty may in its absolute discretion consider fit.

- 9.4 Subject to paragraph 9.3, by agreement in writing between the Buyer and the Warrantors, the conduct of a Dispute may be delegated to the Warrantors on such terms as may be agreed from time to time between the Buyer and the Warrantors provided that, unless the Buyer and the Warrantors specifically agree otherwise in writing, the following terms shall be deemed to be incorporated into any such agreement:
- 9.4.1 the Buyer, the Company or Pty shall promptly be kept fully informed of all matters pertaining to a Dispute and shall be entitled to see and keep copies of all correspondence and notes or other written records of telephone conversations or meetings and, in the event that there is no written record, shall be given an immediate report of all telephone conversations with any Taxation Authority to the extent that it relates to a Dispute;
  - 9.4.2 the appointment of solicitors or other professional advisers shall be subject to the written approval of the Buyer, such approval not to be unreasonably withheld or delayed;
  - 9.4.3 all material written communications pertaining to the Dispute which are to be transmitted to the relevant Taxation Authority shall first be submitted to the Buyer, the Company or Pty for approval and shall only be finally transmitted if such approval is given, such approval not to be unreasonably withheld or delayed; and
  - 9.4.4 the Warrantors shall make no settlement or compromise of the Dispute or agree any matter in the conduct of the Dispute which is likely to affect the amount thereof or the future liability to Tax of the Buyer, the Company or Pty without the prior approval of the Buyer, the Company or Pty (as may be appropriate), such approval not to be unreasonably withheld or delayed.
- 9.5 The Buyer shall provide and shall procure that the Company or Pty provides to the Warrantors and the Warrantors' professional advisors reasonable access to premises and personnel and to any relevant assets, documents and records within their power, possession or control for the purpose of investigating the matter and enabling the Warrantors to take such action as is referred to in this paragraph 9.
- 9.6 Neither the Buyer, the Company nor Pty shall be subject to any claim by or liability to the Warrantors for non-compliance with any of the foregoing provisions of this paragraph 9 if the Buyer, the Company or Pty has bona fide acted in accordance with the instructions of the Warrantors.

## **10. GROSSING UP**

- 10.1 All sums payable by the Warrantors to the Buyer under this Tax Covenant shall be paid free and clear of all deductions or withholdings whatsoever unless the deduction or withholding is required by law. If any deductions or withholdings are required by law to be made from any of the sums payable under this Tax Covenant, the Warrantors shall pay to the Buyer such sum as will, after the deduction or withholding has been made, (but taking into account any tax credit or refund which will be received) leave the Buyer with the same amount as it would have been entitled to receive in the absence of any such requirement to make a deduction or withholding.
- 10.2 If the Buyer incurs a taxation liability which results from, or is calculated by reference to, any sum paid under this Tax Covenant, the amount so payable shall be increased by such amount as will ensure that, after payment of the taxation liability, the Buyer is left with a net sum equal to the sum it would have received had no such taxation liability arisen.
- 10.3 If the Buyer would, but for the availability of a Buyer's Relief, incur a taxation liability falling within paragraph 10.2, it shall be deemed for the purposes of that paragraph to have incurred and paid that liability.

## **11. COSTS AND EXPENSES**

The covenant contained in paragraph 2 of this Tax Covenant shall extend to all reasonable costs and expenses properly incurred by the Buyer, the Company or Pty in connection with any matter for which a successful claim is made under this Tax Covenant.

## **12. COUNTER INDEMNITY**

- 12.1 The Buyer shall pay to the Warrantors, on the date determined in accordance with paragraph 12.2, a sum equal to the amount of any Taxation liability, (together with all interest, penalties, and costs and expenses reasonably incurred by the Warrantors in respect thereof) for which the Warrantors (or any person connected with the Warrantors within the meaning of Section 839 ICTA 1988) becomes liable or accountable pursuant to the provisions of:-
- 12.1.1 Section 767A ICTA 1988 in the circumstances where the taxpayer company (as referred to in Section 767A(1) ICTA 1988) is the Company or Pty; and/or
- 12.1.2 Section 767AA ICTA 1988 in the circumstances where the transferred company (as referred to in Section 767AA(1) ICTA 1988) is the Company or Pty; and/or
- 12.1.3 Section 132 FA 1988,

or resulting from any failure by the Company or Pty to pay any Taxation when due after Completion, provided that the Buyer shall have no liability under this paragraph 12 to the extent that the Taxation liability in question of the Company or Pty:-

- (a) is or could be the subject of a claim by the Buyer under this Schedule 5; or
- (b) has been recovered under Section 767B(2) ICTA 1988 or any other relevant statutory provision (and the Warrantors shall procure that no such recovery is sought to the extent that payment is made hereunder).

- 12.2 The due date for the making of any payment under this paragraph 12 shall be the date which is the later of (a) five Business Days before the date on which the Taxation liability in question is due to be paid to the relevant Taxation Authority and (b) five Business Days after the date on which the Buyer receives a demand in respect thereof from the Warrantors.
- 12.3 Any payment pursuant to this paragraph 12 shall carry interest from the due date until actual payment at the rate specified in paragraph 3.
- 12.4 The Warrantors shall be entitled to set off against any amount which it is liable to pay to the Buyer under this Schedule 5 any amount which the Buyer is liable to pay to the Warrantors under this paragraph 12.
- 12.5 If any payment received by the Warrantors under this paragraph (other than interest payable is subject to Taxation, the Buyer shall pay to the Warrantors such additional amount (after taking into account any Taxation payable in respect of such additional amount) as will ensure that the Warrantors receive a net amount equal to the full amount which they would have received and retained had the payment not been subject to Taxation.

**Schedule 6 Particulars of properties****Leasehold properties****Company**

<b>Description of the Property</b>	Unit 32, Anson Road, Martlesham Heath Business Park, Martlesham Heath, Ipswich, Suffolk		
<b>Owner</b>	Ipswich Trustee (No1) Limited and Ipswich Trustee (No 2) Limited as trustees to the Ipswich Unit Trust		
<b>Contractual date of termination of lease</b>	31 <sup>st</sup> December 2008		

**(Pty)**

<b>Description of the Property</b>	Northgate Business Park		
<b>Owner</b>			
<b>Contractual date of termination of lease</b>			



## **Schedule 7 Determination of Completion Net Assets**

### **1. DEFINITIONS**

**"Accounts Adjustments"** the accounting adjustments set out in paragraph 4.2.1 of this Schedule 7;

**"Buyer's Accountants"** Ernst & Young, Cambridge;

**"Completion Accounts"** means the profit and loss account and balance sheet of the Company including the notes thereon for the Completion Period and stating the amount of the Completion Net Assets prepared in accordance with and subject to the provisions of paragraph 2 of this Schedule 7.

**"Completion Net Assets"** means the tangible assets less all liabilities as shown in the Completion Accounts;

**"Completion Period"** means the period commencing on 1<sup>st</sup> January 2008 up to and including the Completion Date;

**"Draft Completion Accounts"** means a draft of the Completion Accounts prepared in accordance with the requirements of paragraph 2 of this Schedule 7;

**"Estimated Completion Net Assets"** means ~~£150,000\*~~ £62,000

**"Expert"** means a person appointed in accordance with paragraph 3 of this Schedule 7 to resolve any dispute arising in the preparation of the Completion Accounts;

**"Seller's Accountants"** means Beatons, Ipswich; and

**"UK GAAP"** means generally accepted accounting principles applied in the UK, incorporating Statements of Standard Accounting Practice and Financial Reporting Standards.

### **2. PREPARATION OF COMPLETION ACCOUNTS**

- 2.1 The Sellers shall procure that the Sellers or the Sellers' Accountants prepare the Draft Completion Accounts within sixty (60) days of the Completion Date.

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\* ~~[To be agreed]~~

- 2.2 Subject to the preparation of the Draft Completion Accounts in accordance with paragraph 2.1, the Sellers shall deliver a copy of the Draft Completion Accounts to the Buyer no later than seventy (70) days after the Completion Date.
- 2.4 The Buyer shall ensure that, within forty five (45) days starting on the day after delivery of the Draft Completion Accounts to the Buyer, the Buyer submits to the Sellers a report stating whether or not it agrees with the Completion Accounts (and in the case of disagreement the areas of dispute).
- 2.5 If the Buyer agrees the Draft Completion Accounts, the parties shall ensure that the Buyer and the Sellers certify the Draft Completion Accounts as being the Completion Accounts within ten (10) days of the Sellers receiving the report referred to in paragraph 2.4 and the Completion Accounts shall then become final and binding on the parties for the purposes of this Agreement.
- 2.6 If the Sellers or the Buyer disagree with the Draft Completion Accounts, the parties shall within twenty eight (28) days after the expiry of the 10 day period set out in paragraph 2.5 above endeavour to agree any matter in dispute. If the matter in dispute is resolved by agreement between the parties, the Buyer and the Seller shall within 14 days of the date of such agreement, certify the Draft Completion Accounts (subject to any amendment agreed between the parties) as being the Completion Accounts and they shall become final and binding on the parties for the purpose of this agreement.
- 2.7 If the parties are unable to resolve any disagreement within forty five (45) days of the delivery of the report of the Seller's Accountants to the Buyer, the disagreement shall be referred to an Expert to be appointed pursuant to paragraph 3 below.
- 2.8 Save as provided in paragraph 3 below, the Buyer and the Sellers shall be responsible for their own costs (including legal costs and the costs of their respective accountants fees) and expenses incurred in connection with the preparation and agreement of the Draft Completion Accounts and Completion Accounts.
3. **EXPERT**
- 3.1 An Expert is a person appointed in accordance with this paragraph 3 to resolve a dispute arising in relation to the Completion Accounts.
- 3.2 If an Expert is to be appointed under paragraph 2.7 above the parties shall as soon as possible after the expiry of the 45 day period referred to in paragraph

- 2.4 above agree in writing on the appointment of an independent Expert, being a practising Chartered Accountant.
- 3.3 If the parties are unable to agree on an Expert within seven (7) days of the date of the decision to appoint an Expert, either party may request the President of the Institute of Chartered Accountants in England and Wales to appoint an Expert.
- 3.4 The Expert shall prepare a written decision and give notice (including a copy) of the decision to the parties within thirty (30) days of the matter being referred to him.
- 3.5 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by paragraph 3.4 above:
- 3.5.1 either party may apply to the President of the Chartered Accountants in England and Wales to discharge the Expert and to appoint a replacement Expert with the required expertise; and
- 3.5.2 this paragraph 3 applies in relation to the new Expert as if he were the first Expert appointed.
- 3.6 All matters under this paragraph 3 shall be conducted and the Expert's decision shall be written, in the English language.
- 3.7 The parties are entitled to make submissions to the Expert including oral submissions and shall provide (or procure that others provide) the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision.
- 3.8 To the extent not provided for by this paragraph 3, the Expert may in his reasonable discretion, determine such other procedures to assist with the conduct of the determination as he considers just or appropriate.
- 3.9 Each party shall, promptly, supply the other with all information and give each other access to all documentation and personnel as each other reasonably requires to make a submission under this paragraph 3.
- 3.10 The Expert shall act as an expert and not as an arbitrator. The Expert shall determine any dispute relating to the Completion Accounts which may include any issue involving the interpretation of any provision of this Agreement relating to the Completion Accounts his jurisdiction to determine the matters and issues referred to him or his terms of reference. The Expert's written decision on the matters referred to him shall be final and binding in the absence of manifest error or fraud.

- 3.11 Each party shall bear its own costs in relation to the Expert. The Expert's fees and any costs properly incurred by him in arriving at his determination (including any fees and costs or any advisers appointed by the Experts) shall be borne by the parties equally.

#### **4. BASIS OF COMPUTATION**

##### **4.1 UK GAAP**

- 4.1.1 The Completion Accounts shall be prepared in accordance with UK GAAP and the accounting principles, practices, policies and procedures applied in the Accounts (to the extent that these are consistent with UK GAAP), subject in each case to the Accounts Adjustments.

- 4.2.1 In determining the Completion Net Assets the following Accounts Adjustments will be made:

4.2.1.1 there shall be deemed to be included in Net Profit for the Completion Period all revenue and costs including provisions for Taxation but after providing for deferred income;

4.2.1.2 no provision shall be included in respect of the Company's obligations under clause 13.18 of the Lease or any other dilapidation payments payable under the Lease; and

4.2.1.3 there shall be taken into account the release of the liabilities pursuant to the Novation Agreements.

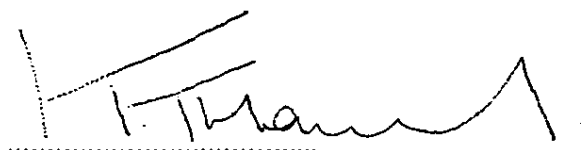
#### **5. REDUCTION IN PURCHASE PRICE**

In the event that the Completion Net Assets are more than £20,000 less than the Estimated Completion Net Assets (the "Overpayment") then the Sellers shall transfer (to such third party as the Buyer shall nominate) such proportion of their respective holding of the Consideration Shares equal to the amount of the Overpayment (calculated on the basis £30 per Consideration Share.

6. **INCREASE IN PURCHASE PRICE**

In the event that the Completion Net Tangible Net Assets are more than £20,000 greater than the Estimated Completion Net Assets (the "Underpayment") then the Buyer shall issue to the Sellers in proportion to their percentage shareholding as set out in Column 4 of Schedule 1 Part A such number of additional A ordinary shares of £0.01 each in the capital of the Buyer (the "**Additional Shares**") having a value equal to the amount of the Underpayment (calculated on the basis £30 per Additional Share).

Signed by Keith Thomson



Signed by Ulrike Uhlmann

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Signed by Ernst Uhlmann

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Signed by Chinwe Roy

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Signed by T W O C Maskell

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Signed by

.....

for and on behalf of QUA Tendis  
Limited

Director

Signed by Martin Loessner

.....

for and on behalf of  
Lebensmittelmikrobiologie Institute

Director

Signed by

.....

for and on behalf of Cactus Asset  
Management Ltd

Director

Signed by Siegfried Scherer

.....

for and on behalf of Dept Biosciences  
Technische Universitate Muchen

Signed by

.....

for and on behalf of Systems Data  
Technologies

[Director]

Signed by Keith Thomson

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Signed by Ulrike Uhlmann

*U. Uhlmann*

Signed by Ernst Uhlmann

*E. Uhlmann*

Signed by Chinwe Roy

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Signed by T W O C Maskell

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Technische Universitate Muchen

Signed by

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for and on behalf of Systems Data  
Technologies

[Director]

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TO: 01786821632

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Signed by Keith Thomson

Signed by Ulrike Uhlmann

Signed by Ernst Uhlmann

Signed by Chinwe Roy

Signed by T W O C Maskell

Signed by

for and on behalf of QUA Tendis  
Limited

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for and on behalf of  
Lebensmittelmikrobiologie Institute

Signed by

for and on behalf of Cactus Asset  
Management Ltd

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for and on behalf of Dept Biosciences  
Technische Universitate Muehen

Signed by

for and on behalf of Systems Data  
Technologies

Director

Director

Director

[Director]



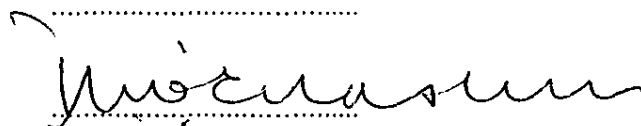
Signed by Keith Thomson .....

Signed by Ulrike Uhlmann .....

Signed by Ernst Uhlmann .....

Signed by Chinwe Roy .....

Signed by T W O C Maskell .....



Signed by .....

for and on behalf of QUA Tendis  
Limited Director

Signed by Martin Loessner .....

for and on behalf of  
Lebensmittelmikrobiologie Institute Director

Signed by .....

for and on behalf of Cactus Asset  
Management Ltd Director

Signed by Siegfried Scherer .....

for and on behalf of Dept Biosciences  
Technische Universitate Muchen

Signed by .....

for and on behalf of Systems Data  
Technologies [Director]

Signed by Keith Thomson .....

Signed by Ulrike Uhlmann .....

Signed by Ernst Uhlmann .....

Signed by Chinwe Roy .....

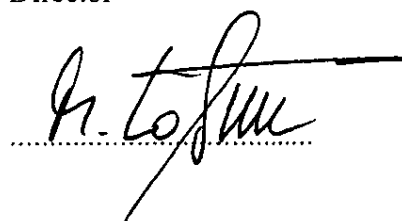
Signed by T W O C Maskell .....

Signed by .....

for and on behalf of QUA Tendis  
Limited

Director

Signed by Martin Loessner



~~for and on behalf of~~  
~~Leibniz-Institut für Mikrobiologie~~

~~Director~~

Signed by .....

for and on behalf of Cactus Asset  
Management Ltd

Director

Signed by Siegfried Scherer .....

for and on behalf of Dept Biosciences  
Technische Universitte Mchen

Signed by .....

for and on behalf of Systems Data  
Technologies

[Director]

Signed by Keith Thomson .....

Signed by Ulrike Uhlmann .....

Signed by Ernst Uhlmann .....

Signed by Chinwe Roy .....

Signed by T W O C Maskell .....

Signed by .....

for and on behalf of QUA Tendis  
Limited Director

Signed by Martin Loessner .....

for and on behalf of  
Lebensmittelmikrobiologie Institute Director

Signed by .....

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Signed by Siegfried Scherer

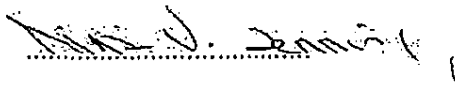
 Prof. Dr. Siegfried Scherer

for and on behalf of Dept Biosciences  
Technische Universitate Muchen

Signed by .....

for and on behalf of Systems Data  
Technologies [Director]

Signed by Nina Jennings

  
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Signed by Eric F Kohn

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Signed by

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for and on behalf of Notice Ltd

Director

Signed by L. Stewart

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Signed by Lucian Pollington

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Signed by Peter Evans

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Signed by Karen Evans

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Signed by

.....

for and on behalf of IGM Dalgleish

Director

Signed by David Calderwood

.....

Signed by W Hyde

.....

Signed by S P Denyer

.....

Signed by Seigfried Jassim

.....

for and on behalf of Technische  
Universitate Muchen

Signed by Ian George Mitchell  
Dalgleish and Turcan Connell  
(Trustees Limited) as trustees of the

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Signed by Nina Jennings

Signed by Eric F Kohn 

Signed by

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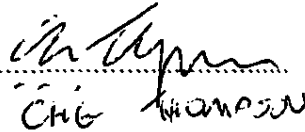
Signed by Nina Jennings

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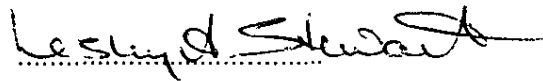
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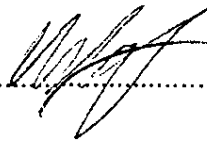
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Dagleish and Turcan Connell  
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IGM Dagleish 1991 Trust .....

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Signed by Nina Jennings .....

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*W a Hyde*

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Signed by Seigfried Jassim

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Universitate Muchen

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(Trustees Limited) as trustees of the  
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Signed by Karen Evans .....

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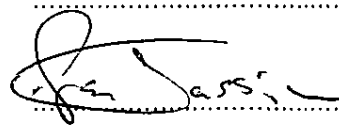
for and on behalf of IGM Dalglish Director

Signed by David Calderwood .....

Signed by W Hyde .....

Signed by S P Denyer .....

Sabah A-A  
Signed by ~~Sigfried~~ Jassim



for and on behalf of Technische  
Universitate Muchen

Signed by Ian George Mitchell .....  
Dalglish and Turcan Connell .....  
(Trustees Limited) as trustees of the .....

~~[ ] Trust~~

Signed by

  
.....

for and on behalf of University of  
Brighton Trading Company Limited

Director

COLIN MONIC.

Signed by David Wade

.....

Signed by Terry Riley

.....

Signed by Michael Hodgson-Hess

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Signed by

.....

for and on behalf of Xena Overseas  
Limited

Signed by Charles Young

.....

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[ ] Trust

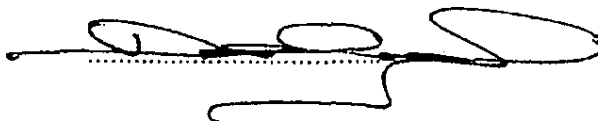
Signed by

.....

for and on behalf of University of  
Brighton Trading Company Limited

Director

Signed by David Wade



Signed by Terry Riley

.....

Signed by Michael Hodgson-Hess

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Signed by

.....

for and on behalf of Xena Overseas  
Limited

Signed by Charles Young

.....

[ ] Trust

Signed by

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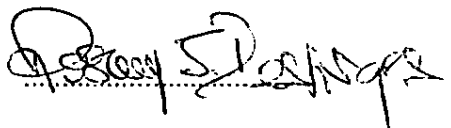
for and on behalf of University of  
Brighton Trading Company Limited

Director

Signed by David Wade

.....

Signed by Rosemary Jane Desforges



Signed by Michael Hodgson-Hess

.....

Signed by

.....

for and on behalf of Xena Overseas  
Limited

Signed by Charles Young

.....



[ ] Trust

Signed by .....

for and on behalf of University of  
Brighton Trading Company Limited

Director

Signed by David Wade .....

Signed by Terry Riley .....

Signed by Michael Hodgson-Hess

*M. Hodgson-Hess*

Signed by .....

for and on behalf of Xena Overseas  
Limited

Signed by Charles Young .....

[            ] Trust

Signed by

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Brighton Trading Company Limited

Director

Signed by David Wade

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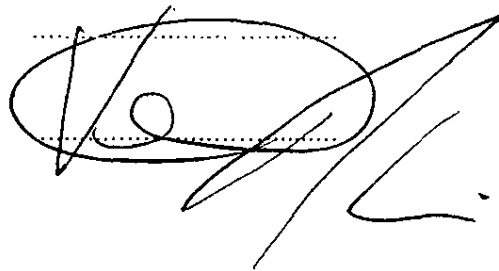
Signed by Terry Riley

.....

Signed by Michael Hodgson-Hess

.....

Signed by

A handwritten signature in black ink, consisting of a large, stylized 'M' followed by a series of loops and a long horizontal stroke.

for and on behalf of Xena Overseas  
Limited

Signed by Charles Young

.....



D051\001\EH3436638.1

[ ] Trust

Signed by

.....

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Brighton Trading Company Limited

Director

Signed by David Wade

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Signed by Terry Riley

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Signed by Michael Hodgson-Hess

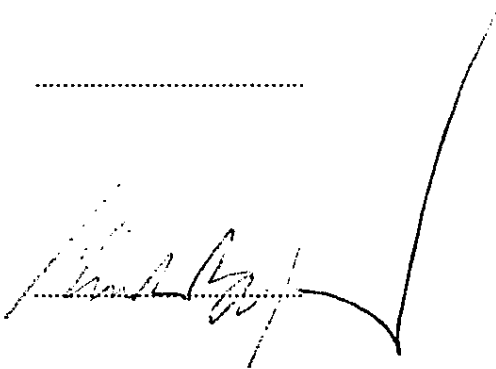
.....

Signed by

.....

for and on behalf of Xena Overseas  
Limited

Signed by Charles Young

A handwritten signature in black ink, appearing to read 'Charles Young', is written over a horizontal dotted line. A large, sweeping checkmark is drawn to the right of the signature.

[ ] Trust

Signed by .....

for and on behalf of University of  
Brighton Trading Company Limited

Director

Signed by David Wade .....

Signed by Terry Riley .....

Signed by Michael Hodgson-Hess .....

Signed by .....

for and on behalf of Xena Overseas  
Limited

Signed by Charles Young .....

Signed on behalf of  
Lab 21

C D Mullis

C. Mullis  
Mrs Carole Mullis  
8 Badger Way,  
Ewshot,  
Farnham,  
Surrey  
GU10 5TE