

Complaint

IN THE MATTER OF

**THE PROCTER & GAMBLE COMPANY, AND THE
GILLETTE COMPANY**CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE
COMMISSION ACT*Docket C-4151; File No. 0510115**Complaint, September 29, 2005--Decision, December 15, 2005*

This consent order addresses the acquisition by Respondent The Procter & Gamble Company – one of the largest and most diversified suppliers of consumer products in the world – of Respondent The Gillette Company, another large supplier of consumer products. The order, among other things, requires the respondents to divest Gillette's Rembrandt® at-home teeth whitening business to a Commission-approved acquirer, within three months. The order also requires the respondents to divest Procter & Gamble's Crest® SpinBrush™ battery-powered and rechargeable toothbrush business to Church & Dwight or another Commission-approved acquirer, and to divest Gillette's Right Guard® men's antiperspirant/deodorant business to a Commission-approved acquirer within four months. In addition, the order requires Procter & Gamble to amend its joint venture agreement with Philips Oral Healthcare, Inc. -- regarding the Crest® Sonicare® IntelliClean System rechargeable toothbrush -- to allow Philips to independently market and sell the IntelliClean product. An accompanying Order to Maintain Assets requires the respondents to maintain the viability of the Rembrandt and Right Guard businesses as competitive operations until the businesses are transferred to acquirers approved by the Commission.

Participants

For the Commission: *Norman A. Armstrong, Jr., Stephanie C. Bovee, Andrew J. Forman, Stephanie A. Parks, Sylvia M. Brooks, Daniel Kane, Jacob Swanton, Matthew J. Reilly, Michael R. Moiseyev, Kenneth Libby, David von Nirschl, Michele Cerullo, Roberta Baruch, John Yun, Steven Tenn, Michael G. Vita and Mark Frankena.*

For the Respondent: *Joe Sims, Jones Day, and Arthur F. Golden, Davis Polk & Wardwell.*

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Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that Respondent The Procter & Gamble Company (“Procter & Gamble”), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Respondent The Gillette Company (“Gillette”), a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENT PROCTER & GAMBLE

1. Respondent Procter & Gamble is a corporation organized, existing and doing business under the laws of Ohio with its office and principal place of business located at One Procter & Gamble Plaza, Cincinnati, Ohio, 45202.
2. Respondent Procter & Gamble, among other things, is engaged in the research, development, manufacture, distribution, and sale of consumer products, including at-home teeth whitening products, adult battery-powered toothbrushes, and men’s antiperspirants/deodorants.
3. Respondent Procter & Gamble had worldwide net sales of approximately \$51.4 billion in its 2004 fiscal year.
4. Respondent Procter & Gamble is, and at all times relevant herein has been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. §12, and is a corporation whose business is in or affects commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

II. RESPONDENT GILLETTE

5. Respondent Gillette is a corporation organized, existing, and doing business under the laws of Delaware with its office and principal place of business located at the Prudential Tower Building, Suite 4800, Boston, Massachusetts, 02199.

6. Respondent Gillette, among other things, is engaged in the research, development, manufacture, distribution, and sale of consumer products, including at-home teeth whitening products, adult battery-powered toothbrushes, rechargeable toothbrushes, and antiperspirants/deodorants.

7. Respondent Gillette had worldwide net sales of approximately \$10.5 billion in its 2004 fiscal year.

8. Respondent Gillette is, and at all times herein has been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affects commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

III. THE PROPOSED ACQUISITION

9. Pursuant to an Agreement and Plan of Merger dated January 27, 2005, Respondent Procter & Gamble proposed to acquire 100 percent of the voting securities of Respondent Gillette for approximately \$57 billion (the “Acquisition”).

IV. THE RELEVANT MARKETS

10. For the purposes of this Complaint, the relevant lines of commerce in which to analyze the effects of the Acquisition are the research, development, manufacture, distribution, and sale of: (a) at-home teeth whitening products; (b) adult-battery powered toothbrushes; (c) rechargeable toothbrushes; and (d) men’s

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antiperspirants/deodorants.

11. At-home teeth whitening products whiten teeth by bleaching them with either hydrogen or carbamide peroxide. These products are typically sold over-the-counter through food, drug, club, and mass merchandise channels and are marketed to be used by consumers at home. There are several different types of at-home teeth whitening products, including whitestrips, gels, pens and sticks. Whitestrips and gel products account for the vast majority of sales of at-home teeth whitening products in the United States.

12. Adult battery-powered toothbrushes are usually powered by AA or AAA batteries and either have oscillating or pulsating brush heads. The majority of adult battery-powered toothbrushes are sold for between \$5 and \$8, and the batteries and brush heads can be replaced on some, but not all, products. Adult battery-powered toothbrushes are typically marketed as upgrades over manual toothbrushes, while at the same time more affordable than sophisticated rechargeable toothbrushes.

13. Rechargeable toothbrushes contain a rechargeable battery that powers high-speed oscillating, pulsating, or vibrating brush heads. They have a separate recharging unit that needs to be plugged into an electrical outlet to recharge the battery contained in the toothbrush. Brush heads for these products are almost always replaceable. Rechargeable toothbrushes typically range in price from \$20 to \$150, and are marketed as the premium brushing option for consumers.

14. Antiperspirants/deodorants are applied under the arms to enhance personal hygiene, and are typically combined together for complete under-arm protection. Antiperspirants/deodorants are sold to specific gender-based segments in various forms, including roll-ons, traditional solids, invisible solids, gels, and aerosols. Men's antiperspirants/deodorants are unique in, among other things, their branding, packaging, fragrances, marketing, strength, and location on the shelf.

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15. For the purposes of this Complaint, the United States is the relevant geographic area in which to analyze the effects of the Acquisition in each of the relevant lines of commerce.

V. THE STRUCTURE OF THE RELEVANT MARKETS

16. The relevant market for the manufacture, distribution, and sale of at-home teeth whitening products in the United States is highly concentrated whether measured by the Herfindahl-Hirschman Index (“HHI”) or two- or four-firm concentration ratios. Respondents Procter & Gamble and Gillette are the two largest suppliers of at-home teeth whitening products in the United States and are the only significant suppliers of branded at-home teeth whitening strips. Procter & Gamble is the market leader with its Crest Whitestrips® and Crest Night Effects® products, while Gillette is the second leading supplier with its Oral-B® Rembrandt® and Rembrandt® products. Together, they account for over 80% of the sales in this highly concentrated market. Accordingly, the Acquisition would significantly increase the concentration level in the United States market for at-home teeth whitening products, leaving Procter & Gamble as the dominant supplier. Respondents are actual competitors in this relevant market.

17. The relevant market for the research, development, manufacture, distribution, and sale of adult battery-powered toothbrushes in the United States is highly concentrated whether measured by HHI or two- or four-firm concentration ratios. Respondents Procter & Gamble and Gillette are the two largest suppliers of adult battery-powered toothbrushes in the United States. Procter & Gamble markets its adult battery-powered products under the Crest® SpinBrush™ brand name, while Gillette sells its adult battery-powered products under the Oral-B® brand name. Together, Respondents account for over 85% of this highly concentrated market. Accordingly, the Acquisition would significantly increase the concentration level in the United

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States market for adult battery-powered toothbrushes, leaving Procter & Gamble as the dominant supplier. Respondents are actual competitors in this relevant market.

18. The relevant market for the research, development, manufacture, distribution, and sale of rechargeable toothbrushes in the United States is highly concentrated whether measured by HHI or two- or four-firm concentration ratios. Respondent Gillette and Philips Oral Health Care, Inc. (“Philips”) are the only significant suppliers of rechargeable toothbrushes in the United States. Gillette markets a full line of rechargeable toothbrush products (*i.e.*, low-end to high-end) under the Oral-B® Braun® brand name, while Philips sells mostly mid to high-end products under the Philips® Sonicare® brand name. Respondent Procter & Gamble and Philips are joint venture partners in the development and marketing of the Crest® Sonicare® IntelliClean System (“IntelliClean”), the first integrated toothbrush/dentifrice product (*i.e.*, toothbrush that self dispenses toothpaste) sold in the United States. Pursuant to the Acquisition, Respondent Procter & Gamble would acquire the only significant competitor to its joint venture partner, Philips.

19. The relevant market for the research, development, manufacture, distribution, and sale of men’s antiperspirants/deodorants in the United States is highly concentrated whether measured by the HHI or two- or four-firm concentration ratios. Respondents are the two largest suppliers of men’s antiperspirants/deodorants in the United States. Procter & Gamble markets its men’s antiperspirants/deodorants under the Old Spice® brand name, while Gillette sells its products under the Right Guard® and Gillette Series® brand names. Together, Respondents account for over 50% of the sales in this highly concentrated market. Accordingly, the Acquisition would significantly increase the concentration level in the United States market for men’s antiperspirants/deodorants, leaving Procter & Gamble as the dominant supplier. Respondents are actual competitors in this relevant market.

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VI. ENTRY CONDITIONS

20. Entry into any relevant line of commerce would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of the Acquisition set forth in Paragraph 21 below. Entry into any of these markets would require the investment of extremely high sunk costs to, among other things, develop products, establish a brand name, and provide promotional funding and advertising to support the product(s), which would be difficult to justify given the market structure in the affected markets. Additionally, patents and other intellectual property create significant barriers to entry in the at-home teeth whitening, adult battery-powered, and rechargeable toothbrush markets. Even if a new entrant were willing to take on such investments, it would also face the difficult task of convincing retailers to carry its products. As a result, new entry into any of these markets sufficient to achieve a significant market impact within two years is unlikely.

VII. EFFECTS OF THE ACQUISITION

21. The effects of the Acquisition, if consummated, may be to substantially lessen competition and to tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, in the following ways, among others:

- a. by eliminating actual, direct, and substantial competition between Respondents Procter & Gamble and Gillette for the research, development, manufacture, distribution, and sale of at-home teeth whitening products, adult battery-powered toothbrushes, and men's antiperspirants/deodorants in the United States;
- b. by reducing the merged entity's incentives to adequately support and promote the IntelliClean product and joint venture;

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- c. by increasing the ability of the merged entity to unilaterally raise prices of at-home teeth whitening products, adult battery-powered toothbrushes, and men's antiperspirants/deodorants in the United States; and
- d. by reducing the merged entity's incentives to improve service or product quality for at-home teeth whitening products, adult battery-powered toothbrushes, rechargeable toothbrushes, and men's antiperspirants/deodorants in the United States.

VII. VIOLATIONS CHARGED

22. The Acquisition described in Paragraph 9 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

23. The Acquisition described in Paragraph 9, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-ninth day of September, 2005, issues its Complaint against said Respondent.

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The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Respondent The Procter & Gamble Company ("P&G") of Respondent The Gillette Company ("Gillette"), hereinafter referred to as "Respondents," and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Maintain Assets (attached to this Order as Appendix I), and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

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1. Respondent P&G is a corporation organized, existing and doing business under and by virtue of the laws of the state of Ohio, with its offices and principal place of business located at One Procter & Gamble Plaza, Cincinnati, Ohio 45202.
2. Respondent Gillette is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its offices and principal place of business located at Prudential Tower, Boston, Massachusetts 02199.
3. The Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in the Order, the following definitions shall apply:

- A. "P&G" means The Procter & Gamble Company, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by P&G, and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each. After the Acquisition, P&G shall include Gillette.
- B. "Gillette" means The Gillette Company, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Gillette, and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.

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- C. "Respondents" means P&G and Gillette, individually and collectively.
- D. "Church & Dwight" means Church & Dwight Co., Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, having its principal place of business located at 469 North Harrison Street, Princeton, NJ 08543.
- E. "Philips" means Philips Oral Healthcare, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its offices and principal place of business located at 35301 Center Street, Snoqualmie, Washington 98065, together with its affiliates.
- F. "Acquisition" means the acquisition contemplated by the "Agreement and Plan of Merger" dated as of January 27, 2005, among The Procter & Gamble Company, Aquarium Acquisition Corp. and The Gillette Company.
- G. "Commission" means the Federal Trade Commission.
- H. "Acquisition Date" means the earlier of the following dates:
1. the date the Respondents close on the Acquisition pursuant to the Acquisition Agreement; or
 2. the date the merger contemplated by the Acquisition Agreement becomes effective by filing the certificate of merger with the Secretary of State of the State of Delaware.
- I. "Agency(ies)" means any governmental regulatory authority or authorities in the world responsible for granting approval(s), clearance(s), qualification(s), license(s), or permit(s) for any aspect of the research, Development, manufacture, marketing, distribution, or sale of the

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Divestiture Products or the IntelliClean Products, respectively.

- J. “APDO Assets” means all of Respondent Gillette’s rights, title and interest in and to all assets related to Respondent Gillette’s worldwide business related to the APDO Products to the extent legally transferable, including the research, Development, manufacture, distribution, marketing, and sale of the APDO Products including, without limitation, the following:
1. all Product Intellectual Property related to the APDO Products (which shall also include the following Product Trademarks: Power Stripe[®]; Power Caps[®] and Cool Spray[®], or any variations or derivatives of such Product Trademarks; *provided however*, that Respondents may receive a transitional license back for a limited period of time (as is approved by the Commission in the Remedial Agreements related to the APDO Products) to these three Product Trademarks for the purposes of winding up the use of such Product Trademarks in Respondent Gillette’s businesses associated with such Product Trademarks);
 2. perpetual, fully paid-up and royalty-free license(s) with rights to sublicense to all Product Licensed Intellectual Property to use, make, distribute, offer for sale, promote, advertise, sell, import, export, or have used, made, distributed, offered for sale, promoted, advertised, sold, imported, or exported the APDO Products anywhere in the world;
 3. all Product Manufacturing Technology related to the APDO Products;
 4. all Product Marketing Materials related to the APDO Products;
 5. all Website(s) related to the APDO Products;

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6. at the Commission-approved Acquirer's option, all Product Assumed Contracts related to the APDO Products (copies to be provided to the Commission-approved Acquirer on or before the Closing Date);
7. all Respondent Gillette's books, records, and files related to the foregoing or to the APDO Products; *provided, however*, that in cases in which documents or other materials included in the APDO Assets contain information: (1) that relates both to the APDO Products and to other Products or businesses of Respondent Gillette and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the APDO Products; or (2) for which Respondent Gillette has a legal obligation to retain the original copies, Respondent Gillette shall be required to provide only copies or relevant excerpts of the documents and materials containing this information. In instances where such copies are provided to the Commission-approved Acquirer, Respondent Gillette shall provide the Commission-approved Acquirer access to original documents under circumstances where copies of documents are insufficient for evidentiary or regulatory purposes. The purpose of this proviso is to ensure that Respondent Gillette provides the Commission-approved Acquirer with the above-described information without requiring Respondent Gillette completely to divest itself of information that, in content, also relates to Products and businesses other than the APDO Products;
8. list of all customers and/or targeted customers for the APDO Products and the pricing and/or planned or proposed pricing of the APDO Products for such customers;
9. at the Commission-approved Acquirer's option, all inventory in existence as of the Closing Date including, but not limited to, raw materials, packaging materials,

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work-in-process and finished goods related to the APDO Products;

10. all unfilled customer orders for finished goods as of the Closing Date related to the APDO Products (a list of such orders is to be provided to the Commission-approved Acquirer within two (2) days after the Closing Date); and
 11. at the Commission-approved Acquirer's option, the APDO Manufacturing Equipment.
- K. "APDO Core Employee(s)" means the Product Manufacturing Employees, the Product Marketing Employees, the Product Research and Development Employees and the Product Sales Employees related to the APDO Products.
- L. "APDO Manufacturing Equipment" means all manufacturing and other equipment located at Respondent Gillette's facility located in Andover, Massachusetts, that was used, within the one (1) year period immediately prior to the Acquisition and/or within the one (1) year period immediately prior to the Closing Date, in the research, Development, manufacture, or packaging of the APDO Products.
- M. "APDO Products" means all Products Developed, in Development, manufactured, distributed, marketed or sold by Respondent Gillette prior to the Acquisition that were marketed or sold or to be marketed or sold as Products using the Product Trademark Right Guard® or any variations or derivatives of such Product Trademark; *provided however*, that, at the Commission-approved Acquirer's option, "APDO Products" shall also include all Products Developed, in Development, manufactured, distributed, marketed or sold by Respondent Gillette prior to the Acquisition that were marketed or sold or to be marketed or sold as Products using any of the Product

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Trademarks Soft&Dri[®] and Dry Idea[®] or any variations or derivatives of such Product Trademarks; *provided further*, that, pending Commission approval of the divestiture of the APDO Assets, “APDO Products” includes Products using the Product Trademarks Soft&Dri[®] and Dry Idea[®] for the purposes of any requirements under this Order or the Order to Maintain Assets to maintain assets; *provided further*, that “APDO Products” does not include Products Developed, in Development, manufactured, distributed, marketed or sold by Respondent Gillette prior to the Acquisition that were marketed or sold or to be marketed or sold as Products using the Product Trademark Gillette Series[®] or any variations or derivatives of such Product Trademark.

- N. “APDO Releasees” means the Commission-approved Acquirer for the APDO Products or any entity controlled by or under common control with such Commission-approved Acquirer, or any licensees, sublicensees, manufacturers, suppliers, distributors, and customers of such Commission-approved Acquirer, or of such Commission-approved Acquirer-affiliated entities.
- O. “Closing Date” means as to each Divestiture Product the date on which Respondent (or a Divestiture Trustee) closes on the divestiture of the assets relevant to such Divestiture Product pursuant to this Order.
- P. “Commission-approved Acquirer” means the following: (1) an entity that is specifically identified in this Order to acquire particular assets that the Respondents are required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order and that has been approved by the Commission to accomplish the requirements of this Order in connection with the Commission’s determination to make this Order final; or (2) an entity approved by the Commission to acquire particular assets that the Respondents are required to assign, grant, license, divest,

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transfer, deliver, or otherwise convey pursuant to this Order.

- Q. “Confidential Business Information” means all information owned by, or in the possession or control of, Respondents that is not in the public domain and that is related to the research, Development, manufacture, marketing, commercialization, importation, exportation, cost, pricing, supply, sales, sales support or use of the Divestiture Product(s) or the IntelliClean Products, respectively; provided however, that “Confidential Business Information” shall not include, the following:
1. information that subsequently falls within the public domain through no violation of this Order or breach of confidentiality or non-disclosure agreement with respect to such information by Respondents;
 2. information related to the SpinBrush Products that Respondent Gillette can demonstrate it obtained without the assistance of Respondent P&G prior to the Acquisition;
 3. information related to the Rembrandt Products that Respondent P&G can demonstrate it obtained without the assistance of Respondent Gillette prior to the Acquisition;
 4. information related to the APDO Products that Respondent P&G can demonstrate it obtained without the assistance of Respondent Gillette prior to the Acquisition;
 5. information related to the IntelliClean Products that Respondent Gillette can demonstrate it obtained without the assistance of Respondent P&G prior to the Acquisition;
 6. information that is required by Law to be publically disclosed; or

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7. information that does not relate to the Divestiture Product(s) or the IntelliClean Products.
- R. "Contract Manufacture" means the manufacture of a Divestiture Product or the IntelliClean Products to be supplied by Respondent or a Designee.
- S. "Designee" means any entity other than Respondents that will manufacture a Divestiture Product for a Commission-approved Acquirer.
- T. "Development" means formulation, design (including packaging design), process development, manufacturing scale-up, development-stage manufacturing, quality assurance/quality control development, Product approval and registration. "Develop" means to engage in Development.
- U. "Direct Cost" means a cost not to exceed the cost of direct labor and direct material used to provide the relevant assistance or service. "Direct Cost" to the Commission-approved Acquirer's for its use of any of the Respondents' employees shall not exceed the average hourly wage rate for such employee.
- V. "Divestiture Product" means a Product that is the subject of a divestiture under this Order, *i.e.*, the APDO Products, the Rembrandt Products, or the SpinBrush Products, individually and collectively.
- W. "Divestiture Trustee" means the trustee appointed by the Commission pursuant to the relevant provisions of this Order.
- X. "Domain Name" means the domain name(s) (universal resource locators) and registration(s) thereof, issued by any entity or authority that issues and maintains the domain name registration. "Domain Name" shall not include any

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trademark or service mark rights to such domain names other than the rights to the Product Trademarks related to the Divestiture Products.

- Y. “Governmental Entity” means any Federal, state, local or non-U.S. government, or any court, legislature, governmental agency, or governmental commission, or any judicial or regulatory authority of any government.
- Z. “High Volume Retail Account” means any retailer or distributor whose annual and/or projected aggregate annual sales in units or in dollars of a Divestiture Product in the United States on a company-wide level was or is among the top twenty highest of such sales within the United States on any of the following dates: 1) the end of the last quarter that immediately preceded the date of the public announcement of the proposed Acquisition; 2) the end of the last quarter that immediately preceded the Acquisition Date; or 3) the end of the last quarter that immediately preceded the Closing Date for the relevant assets.
- AA. “IntelliClean Products” means all Products Developed, in Development, manufactured, distributed, marketed or sold pursuant to the IntelliClean Agreement. This includes those toothbrushes marketed using the Sonicare[®] trademark and any variations or derivatives of such trademark and the dentifrice Product used in connection with the rechargeable toothbrush(es) that are a part of the IntelliClean Products.
- BB. “IntelliClean Agreement” means the “Commercialization Agreement (ONYX Advanced)” between Philips Oral Healthcare, Inc. and The Procter & Gamble Company dated as of August 1, 2003 including all amendments, exhibits, attachments, agreements, and schedules thereto entered into prior to the public announcement of the Acquisition, including, but not limited to, the “P&G/Philips Joint Evaluation Agreement Project

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ONYX” dated October 23, 2001. The IntelliClean Agreement is attached to this Order and contained in non-public Appendix III.

- CC. “IntelliClean Amended Agreement” means the “Agreement to Amend Commercialization Agreement (ONYX Advanced)” between Philips Oral Healthcare, Inc. and The Procter & Gamble Company dated September 21, 2005, and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the Product IntelliClean, that have been approved by the Commission to accomplish the requirements of this Order. The IntelliClean Amended Agreement is attached to this Order and contained in non-public Appendix III. Upon amendment of the IntelliClean Agreement in accordance with the above-described agreement to amend, the “IntelliClean Amended Agreement” shall mean the “IntelliClean Agreement” as so amended.
- DD. “Interim Monitor” means any monitor appointed pursuant to Paragraph VI of this Order or Paragraph III of the related Order to Maintain Assets.
- EE. “Law” means all laws, statutes, rules, regulations, ordinances, and other pronouncements by any Governmental Entity having the effect of law.
- FF. “Order to Maintain Assets” means the Order to Maintain Assets incorporated into and made a part of the Agreement Containing Consent Orders. The Order to Maintain Assets is attached to this Order and contained in Appendix I.
- GG. “Patents” means all patents, patent applications, and statutory invention registrations, in each case existing as of the Closing Date (*except* where this Order specifies a different time), and includes all reissues, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations

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thereof, all inventions disclosed therein, all rights therein provided by international treaties and conventions, and all rights to obtain and file for patents and registrations thereto in the world, related to any Product of or owned by Respondent(s) as of the Closing Date.

- HH. “Person” means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, joint venture, or other business or governmental entity, and any subsidiaries, divisions, groups or affiliates thereof.
- II. “Product” means a retail consumer good Developed, made, distributed, marketed or sold by Respondent(s).
- JJ. “Product Assumed Contracts” means all of the following contracts or agreements:
1. pursuant to which any Third Party purchases the Divestiture Product(s) from the Respondent(s);
 2. pursuant to which the Respondent(s) purchases any materials from any Third Party for use in connection with the manufacture of the Divestiture Product(s);
 3. relating to any quality control trials involving the Divestiture Product(s);
 4. relating to the marketing of the Divestiture Product(s) or educational matters relating to the Divestiture Product(s) including, but not limited to, the slotting and/or shelf spacing assignments of the Divestiture Product with the High Volume Retail Accounts;
 5. relating to the manufacture of the Divestiture Product(s);
 6. constituting confidentiality agreements involving the Divestiture Product(s);

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7. involving any royalty, licensing, or similar arrangement involving the Divestiture Product(s);
8. pursuant to which any services are provided with respect to the Divestiture Product(s) or the Divestiture Product(s) business, including consultation arrangements; and/or
9. pursuant to which any Third Party collaborates with the Respondent(s) in the performance of research, Development, marketing or selling of the Divestiture Product(s) or the Divestiture Product(s) business;

provided, however, that where any such contract or agreement also relates to a Retained Product(s), Respondent(s) shall assign the Commission-approved Acquirer all such rights under the contract or agreement as are related to the Divestiture Product(s), but concurrently may retain similar rights for the purposes of the Retained Product(s).

KK. “Product Copyrights” means rights to all original works of authorship of any kind related to the Divestiture Product(s) or the IntelliClean Products and any registrations and applications for registrations thereof, including, but not limited to, the following: all promotional materials for retailers; all promotional materials for customers; copyrights in Development data and reports relating to the research and Development of the Divestiture Product(s) or the IntelliClean Products or of any materials used in the research, Development, manufacture, marketing or sale of the Divestiture Product(s) or the IntelliClean Products, including all raw data relating to quality trials of the Product(s), customer information, promotional and marketing materials, the Divestiture Product(s) or the IntelliClean Products sales forecasting models, Website content and advertising and display materials; all records relating to employees who accept employment with the Commission-approved Acquirer (excluding any personnel records the transfer of

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which is prohibited by applicable Law); all records, including customer lists, sales force call activity reports, vendor lists, sales data, slotting allowance data, speaker lists, manufacturing records, manufacturing processes, and supplier lists; all data contained in laboratory notebooks relating to the Divestiture Product(s) or the IntelliClean Products.

LL. “Product Employee Information” means the following, as and to the extent permitted by the Law:

1. a complete and accurate list containing the name of each relevant employee (including former employees who were employed by Respondent(s) within ninety (90) Days of the execution date of any Remedial Agreement);
2. with respect to each such employee, the following information:
 - a. the date of hire and effective service date;
 - b. job title or position held;
 - c. a specific description of the employee’s responsibilities related to the relevant Divestiture Product; *provided, however*, in lieu of this description, Respondent(s) may provide the employee’s most recent performance appraisal;
 - d. the base salary or current wages;
 - e. the most recent bonus paid, aggregate annual compensation for the Respondent’s last fiscal year and current target or guaranteed bonus, if any;
 - f. employment status (*i.e.*, active or on leave or disability; full-time or part-time); and

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- g. any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and
 - 3. at the Commission-approved Acquirer's option or the Proposed Acquirer's option (as applicable), copies of all employee benefit plans and summary plan descriptions (if any) applicable to the relevant employees.
- MM. "Product Intellectual Property" means all of the following related to a Divestiture Product or the IntelliClean Products (other than Product Licensed Intellectual Property):
- 1. Patents;
 - 2. Product Copyrights;
 - 3. Product Trademarks, trade names, Product Trade Dress, trade secrets, know-how, techniques, data, inventions, practices, methods, and other confidential or proprietary technical, business, research, Development and other information; and
 - 4. rights to obtain and file for patents and registrations thereof;

provided, however, "Product Intellectual Property" does not include the names or trade dress of "Procter & Gamble", "P&G", "Gillette", "Oral-B", "Crest", "Blend-a-Med", "Blend-a-Dent", "Blendi", "Ipana", "AZ", "Series", or the names or trade dress of any other corporations, companies, or brands owned or sold by Respondents or related logos to the extent used on Respondent P&G's or Respondent Gillette's Retained Products.

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NN. “Product Licensed Intellectual Property” means the following:

1. Patents that are related to a Divestiture Product or the IntelliClean Products that Respondent(s) can demonstrate have been routinely used, prior to the Acquisition Date, by either Respondent P&G or Respondent Gillette (as applicable) for a Retained Product(s) that: 1) have been marketed or sold on an extensive basis by the relevant Respondent within the two-year period immediately preceding the Acquisition; or 2) for which, prior to the announcement of the Acquisition, there was an approved brand or marketing plan to market or sell such a Retained Product on an extensive basis by the Respondents; and
2. trade secrets, know-how, techniques, data, inventions, practices, methods, and other confidential or proprietary technical, business, research, Development, and other information, and all rights in any jurisdiction to limit the use or disclosure thereof, that are related to a Divestiture Product or the IntelliClean Products and that Respondent(s) can demonstrate have been routinely used, prior to the Acquisition Date, by either Respondent P&G or Respondent Gillette (as applicable) for Retained Product(s) that: 1) have been marketed or sold on an extensive basis by the relevant Respondent within the two-year period immediately preceding the Acquisition; or 2) for which, prior to the announcement of the Acquisition, there was an approved brand or marketing plan to market or sell such a Retained Product on an extensive basis by the Respondents;

provided however, that, in cases where the aggregate retail sales in dollars within the two-year period immediately preceding the Acquisition of the Retained Product(s) collectively are less than the aggregate retail sales in dollars within the same period of the Divestiture Product(s) collectively, the above-described intellectual property shall be

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considered, at the Commission-approved Acquirer's option, Product Intellectual Property and, thereby, subject to assignment to the Commission-approved Acquirer; *provided further, however*, that in such cases, Respondents may take a license back from the Commission-approved Acquirer for such intellectual property for use in connection with the Retained Products.

OO. "Product Manufacturing Employees" means all salaried employees of Respondent(s) who directly have participated (irrespective of the portion of working time involved, unless such participation was part of a broad executive management portfolio above the level of value stream manager at Respondent Gillette, or consisted of oversight of legal, accounting, tax or financial compliance) in the manufacture of the Product(s), including, but not limited to, those involved in the quality assurance and quality control of the Product(s), within the eighteen (18) month period immediately prior to the Closing Date.

PP. "Product Manufacturing Technology" means all technology, trade secrets, know-how, and proprietary information (whether patented, patentable or otherwise) related to the manufacture (including, at the Commission-approved Acquirer's option, all equipment used to manufacture) the Divestiture Products or the IntelliClean Products, respectively, including, but not limited to all product specifications, processes, product designs, plans, trade secrets, ideas, concepts, manufacturing, engineering, and other manuals, and drawings, standard operating procedures, flow diagrams, chemical, safety, quality assurance, quality control, research records, clinical data, compositions, annual product reviews, regulatory communications, and labeling and all other information related to the manufacturing process, and supplier lists.

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- QQ. “Product Marketing Employees” means salaried management level employees of Respondent(s) who directly have participated (irrespective of the portion of working time involved, unless such participation was a part of a broad executive management portfolio above the brand manager level, or of oversight of legal, accounting, tax or financial compliance) in the marketing, contracting, or promotion of the Divestiture Product(s) in the United States within the eighteen (18) month period immediately prior to the Closing Date. These employees include, without limitation, all management level employees having any responsibilities in the areas of sales management, brand management, sales training, market research, but excluding administrative assistants.
- RR. “Product Marketing Materials” means all marketing materials used anywhere in the world related to the Divestiture Product(s) as of the Closing Date, including, without limitation, all advertising materials, training materials, product data, price lists, mailing lists, sales materials (e.g., detailing reports; vendor lists; sales data), marketing information, (e.g., competitor information; research data; market intelligence reports; statistical programs (if any) used for marketing and sales research; customer information, including customer sales information; sales forecasting models; educational materials; Website content and advertising and display materials; speaker lists), promotional and marketing materials, artwork for the production of packaging components, television masters and other similar materials related to the Divestiture Product(s).
- SS. “Product Research and Development Employees” means all salaried employees of Respondent(s) who directly have participated (irrespective of the portion of working time involved, unless such participation was a part of a broad executive management portfolio above the section head

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level at Respondent P&G or above the level of associate director at Respondent Gillette (for the APDO Products) or above the level of director at Respondent Gillette (for the Rembrandt Products), or of oversight of legal, accounting, tax or financial compliance) in the research, Development, or quality control approval process of the Divestiture Product(s) within the eighteen (18) month period immediately prior to the Closing Date.

- TT. “Product Sales Employees” means all salaried employees of Respondent(s) who have participated (irrespective of the portion of working time involved, unless such participation was a part of a broad executive management portfolio above the level of the manager for a category of Products within the customer business development team for a High Volume Retail Account or of oversight of legal, accounting, tax or financial compliance) in the marketing or promotion of the Divestiture Product(s) in the United States directly to a High Volume Retail Account for the Divestiture Product(s) during the twelve (12) month period immediately prior to the Acquisition Date until the Closing Date for the assets related to such Divestiture Product(s).
- UU. “Product Trade Dress” means the current trade dress of the Product, including but not limited to, Product packaging, and the lettering of the Product trade name or brand name.
- VV. “Product Trademark(s)” means all proprietary names or designations, trademarks, service marks, tradenames, and brand names, including registrations and applications for registration therefor (and all renewals, modifications, and extensions thereof) and all common law rights, and the goodwill symbolized thereby and associated therewith, for the Product(s).
- WW. “Proposed Acquirer” means an entity proposed by the Respondent(s) (or a Divestiture Trustee) to the

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Commission and submitted for the approval of the Commission as the acquirer for particular assets required to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed by Respondent(s) pursuant to this Order.

- XX. “Rembrandt Assets” means all Respondent Gillette’s rights, title and interest in and to all assets related to Respondent Gillette’s worldwide business related to the Rembrandt Products to the extent legally transferable, including the research, Development, manufacture, distribution, marketing, and sale of the Rembrandt Products, including, without limitation, the following:
1. all Product Intellectual Property related to the Rembrandt Products;
 2. perpetual, fully paid-up and royalty-free license(s) with rights to sublicense to all Product Licensed Intellectual Property to use, make, distribute, offer for sale, promote, advertise, sell, import, export, or have used, made, distributed, offered for sale, promoted, advertised, sold, imported, or exported the Rembrandt Products worldwide;
 3. all Product Manufacturing Technology related to the Rembrandt Products;
 4. all Product Marketing Materials related to the Rembrandt Products;
 5. all Website(s) related to the Rembrandt Products;
 6. at the Commission-approved Acquirer’s option, all Product Assumed Contracts related to the Rembrandt Products (copies to be provided to the Commission-approved Acquirer on or before the Closing Date);

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7. all Respondent Gillette's books, records, and files related to the foregoing or to Rembrandt Products; *provided, however*, that in cases in which documents or other materials included in the Rembrandt Assets contain information: (1) that relates both to the Rembrandt Products and to other Products or businesses of Respondent Gillette and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the Rembrandt Products; or (2) for which Respondent Gillette has a legal obligation to retain the original copies, Respondent Gillette shall be required to provide only copies or relevant excerpts of the documents and materials containing this information. In instances where such copies are provided to the Commission-approved Acquirer, Respondent Gillette shall provide the Commission-approved Acquirer access to original documents under circumstances where copies of documents are insufficient for evidentiary or regulatory purposes. The purpose of this proviso is to ensure that Respondent Gillette provides the Commission-approved Acquirer with the above-described information without requiring Respondent Gillette completely to divest itself of information that, in content, also relates to Products and businesses other than the Rembrandt Products;
8. list of all customers and/or targeted customers for the Rembrandt Products and the pricing and/or planned or proposed pricing of the Rembrandt Products for such customers;
9. at the Commission-approved Acquirer's option, all inventory in existence as of the Closing Date including, but not limited to, raw materials, packaging materials, work-in-process and finished goods related to the Rembrandt Products; and
10. all unfilled customer orders for finished goods related to the Rembrandt Products as of the Closing Date (a list of

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such orders is to be provided to the Commission-approved Acquirer within two (2) days after the Closing Date).

- YY. “Rembrandt Core Employee(s)” means the Product Marketing Employees, the Product Sales Employees, and the Product Research and Development Employees related to the Rembrandt Products.
- ZZ. “Rembrandt Key Employee(s)” means those employees of Respondents specifically identified in Appendix IV of this Order.
- AAA. “Rembrandt IP Protected Products” means all Rembrandt Products *except* any Rembrandt Product that, as of the Closing Date, is in an earlier stage of research or Development than Stage 3 of Respondent Gillette’s SPEED (New Development Process) Program (as such program was applied to Products and in effect within the one (1) year period prior to the Acquisition Date); *provided however*, “Rembrandt IP Protected Products” also includes all Rembrandt Products specifically identified in Appendix V attached to this Order.
- BBB. “Rembrandt Products” means all Products Developed, in Development, manufactured, distributed, marketed or sold by Respondent Gillette prior to the Acquisition that were marketed or sold or to be marketed or sold as teeth whitening agents and/or as Products using such Product Trademarks Rembrandt® or any variation or derivative of such Product Trademarks.
- CCC. “Rembrandt Releasee(s)” means the Commission-approved Acquirer for the Rembrandt Products or any entity controlled by or under common control with such Commission-approved Acquirer, or any licensees, sublicensees, manufacturers, suppliers,

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distributors, and customers of such Commission-approved Acquirer, or of such Commission-approved Acquirer-affiliated entities.

- DDD. “Remedial Agreement” means the following: (1) any agreement between Respondent(s) and a Commission-approved Acquirer that is specifically referenced and attached to this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and that has been approved by the Commission to accomplish the requirements of the Order in connection with the Commission’s determination to make this Order final; and/or (2) any agreement between the Respondent(s) and a Commission-approved Acquirer (or between a Divestiture Trustee and a Commission-approved Acquirer) that has been approved by the Commission to accomplish the requirements of this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and that has been approved by the Commission to accomplish the requirements of this Order.
- EEE. “Retained Product” means any Product(s) other than a Divestiture Product.
- FFF. “SpinBrush Assets” means all Respondent P&G’s rights, title and interest in and to all assets related to Respondent P&G’s worldwide business related to the SpinBrush Products, to the extent legally transferable, including the research, Development, manufacture, distribution, marketing, and sale of the SpinBrush Products including, without limitation, the following:

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1. all Product Intellectual Property related to the SpinBrush Products;
2. perpetual, fully paid-up and royalty-free license(s) with rights to sublicense to all Product Licensed Intellectual Property to use, make, distribute, offer for sale, promote, advertise, sell, import, export, or have used, made, distributed, offered for sale, promoted, advertised, sold, imported, or exported the SpinBrush Products anywhere in the world; *provided however*, such license for the Product Licensed Intellectual Property shall also include the rights to use Respondent P&G's Crest® trademark in connection with the marketing of the SpinBrush Products for a limited period as is approved by the Commission in the Remedial Agreements related to the SpinBrush Assets;
3. all Product Manufacturing Technology related to the SpinBrush Products;
4. all Product Marketing Materials related to the SpinBrush Products;
5. all Website(s) related to the Spinbrush Products;
6. at the Commission-approved Acquirer's option, all Product Assumed Contracts related to the SpinBrush Products (copies to be provided to the Commission-approved Acquirer on or before the Closing Date);
7. all Respondent P&G's books, records, files related to the foregoing or to SpinBrush Products; *provided, however*, that in cases in which documents or other materials included in the SpinBrush Assets contain information:
(1) that relates both to the SpinBrush Products and to other Products or businesses of Respondent P&G and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the

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SpinBrush Products; or (2) for which Respondent P&G has a legal obligation to retain the original copies, Respondent P&G shall be required to provide only copies or relevant excerpts of the documents and materials containing this information. In instances where such copies are provided to the Commission-approved Acquirer, Respondent P&G shall provide the Commission-approved Acquirer access to original documents under circumstances where copies of documents are insufficient for evidentiary or regulatory purposes. The purpose of this proviso is to ensure that Respondent P&G provides the Commission-approved Acquirer with the above-described information without requiring Respondent P&G completely to divest itself of information that, in content, also relates to Products and businesses other than the SpinBrush Products;

8. list of all customers and/or targeted customers for the SpinBrush Products and the pricing and/or planned or proposed pricing of the SpinBrush Products for such customers;
 9. at the Commission-approved Acquirer's option, all inventory, including raw materials, packaging materials, work-in-process and finished goods related to the SpinBrush Products; and
 10. all unfilled customer orders for finished goods related to the SpinBrush Products as of the Closing Date (a list of such orders is to be provided to the Commission-approved Acquirer within two (2) days after the Closing Date).
- G.G.G. "SpinBrush Asset Purchase Agreement" means the "Asset Sale and Purchase Agreement" among The Procter & Gamble Company, certain of its affiliates and Church & Dwight Co., Inc. dated September 23, 2005, and all amendments, exhibits, attachments,

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agreements, and schedules thereto, related to the SpinBrush Assets to be divested, that have been approved by the Commission to accomplish the requirements of this Order. The SpinBrush Asset Purchase Agreement is attached to this Order and contained in non-public Appendix II.

HHH. “SpinBrush Core Employee(s)” means the Product Marketing Employees, Product Sales Employees, and Product Research and Development Employees related to the SpinBrush Products.

III. “SpinBrush Products” means all Products Developed, in Development, manufactured, distributed, marketed or sold by Respondent P&G prior to the Acquisition that were marketed or sold or to be marketed or sold as non-rechargeable battery-powered toothbrushes and/or as Products using the Product Trademark SpinBrush® or any variation or derivative on or prior to the Closing Date. “SpinBrush Products” includes, but is not limited to, those rechargeable battery-powered toothbrush Products Developed or in Development under Respondent P&G “Project Franklin” designation.

JJJ. “SpinBrush Releasee(s)” means the Commission-approved Acquirer for the SpinBrush Products or any entity controlled by or under common control with such Commission-approved Acquirer, or any licensees, sublicensees, manufacturers, suppliers, distributors, and customers of such Commission-approved Acquirer, or of such Commission-approved Acquirer-affiliated entities.

KKK. “Supply Cost” means a cost not to exceed the manufacturer’s average direct per unit cost of manufacturing the Divestiture Product for the twelve (12) month period immediately preceding the Acquisition Date. “Supply Cost” shall expressly exclude any intracompany business transfer profit.

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- LLL. “Third Party(ies)” means any private entity other than the following: (1) the Respondents; or (2) the Commission-approved Acquirer.
- MMM. “Website(s)” means the content of the Website(s) located at the Domain Names, and all copyrights in such Website(s), to the extent owned by Respondents; *provided, however*, “Website” shall not include the following: (1) content owned by Third Parties and other Product Intellectual Property not owned by Respondent(s) that are incorporated in such Website(s), such as stock photographs used in the Website(s), *except* to the extent that Respondent(s) can convey its rights, if any, therein; or (2) content unrelated to the Divestiture Product(s).

II.**IT IS FURTHER ORDERED** that:

- A. Not later than ninety (90) days after the date this Order becomes final, Respondents shall divest the Rembrandt Assets, absolutely and in good faith, and at no minimum price. Respondents shall divest the Rembrandt Assets to a Commission-approved Acquirer and only in a manner that receives the prior approval of the Commission.
- B. Any Remedial Agreement related to the Rembrandt Assets shall be deemed incorporated into this Order, and any failure by Respondents to comply with any term of such Remedial Agreement related to the Rembrandt Assets shall constitute a failure to comply with this Order.
- C. Respondents shall include in any Remedial Agreement related to the Rembrandt Assets the following provisions:

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1. upon reasonable notice and request from the Commission-approved Acquirer to the Respondents, Respondents shall provide in a timely manner at no greater than Direct Cost the following:
 - a. assistance and advice to enable the Commission-approved Acquirer (or the Designee of the Commission-approved Acquirer) to obtain all necessary permits and approvals from any Agency or Governmental Entity to manufacture and sell the Rembrandt Products;
 - b. assistance to the Commission-approved Acquirer (or the Designee of the Commission-approved Acquirer) to manufacture Rembrandt Products in substantially the same manner and quality employed or achieved by or on behalf of Respondent Gillette; and
 - c. consultation with knowledgeable employees of Respondents and training, at the request of the Commission-approved Acquirer and at a facility chosen by the Commission-approved Acquirer sufficient to satisfy management of the Commission-approved Acquirer that its personnel (or the Designee's personnel) are adequately trained in the manufacture of the Rembrandt Products;
2. upon reasonable notice and request from the Commission-approved Acquirer to Respondents, Respondents shall provide, in a timely manner, at no greater than Direct Cost, assistance of knowledgeable employees of the Respondents to assist the Commission-approved Acquirer to defend against, respond to, or otherwise participate in any litigation related to the Product Intellectual Property;
3. Respondents shall covenant to the Commission-approved Acquirer that Respondents shall:

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- a. not join, file, prosecute or maintain any suit, in law or equity, against the Commission-approved Acquirer under Patents that are owned or licensed by Respondents as of the Acquisition Date, if such suit would have the potential to interfere with the Commission-approved Acquirer's freedom to practice in the research, Development, manufacture, use, import, export, distribution or sale of the Rembrandt IP Protected Products; *provided however*, that Respondents may receive a covenant from the Commission-approved Acquirer not to assert any Patent related to the Rembrandt Products that is assigned to the Commission-approved Acquirer from the Respondents pursuant to this Order against the Respondents for Respondents' infringement of such Patent in connection with those Products marketed or sold by Respondent P&G as teeth whitening agents immediately prior to the Acquisition Date;
 - b. not use any Confidential Business Information related to the Rembrandt Products obtained by Respondents from any person who was an employee of Respondent Gillette within the two (2) year period immediately prior to the Acquisition in any suit against the Commission-approved Acquirer under Patents that are owned or licensed by Respondents as of the Acquisition Date, if such suit would have the potential to interfere with the Commission-approved Acquirer's freedom to practice in the research, Development, manufacture, use, import, export, distribution or sale of the Rembrandt Products; and
4. Respondents shall covenant to the Commission-approved Acquirer that: (1) as a condition of any assignment, transfer or license to a Third Party of the Patents described in Paragraph II.C.3.a., the Third Party shall agree to provide a covenant whereby the Third Party covenants not to sue the Rembrandt Releasees under such

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Patents, if the suit would have the potential to interfere with the Commission-approved Acquirer's freedom to practice in the research, Development, manufacture, use, import, export, distribution or sale of the Rembrandt IP Protected Products; and (2) with respect to any Third Party rights licensed to Respondents as of or after the Acquisition Date, and as to which Respondents do not control the right of prosecution of any legal action, Respondents shall not actively induce, assist or participate in any legal action or proceeding relating to Rembrandt IP Protected Products against the Rembrandt Releasees, unless required by Law or contract (such contract not to be solicited or entered into for the purpose of circumventing any of the requirements of this Order).

D. Respondents shall:

1. submit to the Commission-approved Acquirer, at Respondents' expense, all Confidential Business Information related to the Rembrandt Products;
2. deliver such Confidential Business Information as follows: (1) in good faith; (2) as soon as practicable, avoiding any delays in transmission of the respective information; and (3) in a manner that ensures its completeness and accuracy and that fully preserves its usefulness;
3. pending complete delivery of all such Confidential Business Information to the Commission-approved Acquirer, provide the Commission-approved Acquirer and the Interim Monitor (if any has been appointed) with access to all such Confidential Business Information and employees who possess or are able to locate such information for the purposes of identifying the books, records, and files related to the Rembrandt Products that contain such Confidential Business Information and facilitating the delivery in a manner consistent with this

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Order;

4. not use, directly or indirectly, any such Confidential Business Information related to the research, Development, manufacturing, marketing, or sale of the Rembrandt Products (other than as necessary to comply with the following: (1) the requirements of this Order; (2) the Respondents' obligations to the Commission-approved Acquirer under the terms of any Remedial Agreement related to the Rembrandt Assets; or (3) applicable Law); and
 5. not disclose or convey any such Confidential Business Information, directly or indirectly, to any person except the Commission-approved Acquirer;
 6. shall not provide, disclose or otherwise make available, directly or indirectly, any such Confidential Business Information related to the marketing or sales of the Rembrandt Assets to the employees associated with business related to the teeth whitening Products marketed and sold by Respondent P&G prior to the Acquisition (including, but not limited to, those employees with work responsibilities related to the Crest® trademark and any variations or derivatives of such trademark).
- E. Respondents shall not enforce any agreement against a Third Party or the Commission-approved Acquirer to the extent that such agreement may limit or otherwise impair the ability of the Commission-approved Acquirer to acquire the Product Manufacturing Technology related to the Rembrandt Products or related equipment from the Third Party. Such agreements include, but are not limited to, agreements with respect to the disclosure of Confidential Business Information related to such Product Manufacturing Technology.

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- F. Not later than ten (10) days after the Closing Date, Respondents shall grant a release to each Third Party that is subject to an agreement as described in Paragraph II.E. that allows the Third Party to provide the relevant Product Manufacturing Technology or related equipment to the Commission-approved Acquirer. Within five (5) days of the execution of each such release, Respondents shall provide a copy of the release to the Commission-approved Acquirer.
- G. Respondents shall:
1. for a period of at least six (6) months from the Closing Date, provide the Commission-approved Acquirer with the opportunity to enter into employment contracts with the Rembrandt Core Employees and Rembrandt Key Employees. This period is hereinafter referred to as the “Rembrandt Access Period”; and
 2. not later than the earlier of the following dates: (1) ten (10) days after notice by staff of the Commission to the Respondents to provide the Product Employee Information; or (2) ten (10) Days after the Closing Date, Respondents shall provide the Commission-approved Acquirer or the Proposed Acquirer with the Product Employee Information related to the Rembrandt Core Employees and Rembrandt Key Employees. Failure by Respondents to provide the Product Employee Information for any relevant employee within the time provided herein shall extend the Rembrandt Access Period with respect to that employee in an amount equal to the delay.
- H. Respondents shall:
1. during the Rembrandt Access Period, not interfere with the hiring or employing by the Commission-approved Acquirer of Rembrandt Core Employees and Rembrandt

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Key Employees, and remove any impediments within the control of Respondents that may deter these employees from accepting employment with the Commission-approved Acquirer, including, but not limited to, any noncompete or nondisclosure provisions of employment or other contracts with Respondents that would affect the ability or incentive of those individuals to be employed by the Commission-approved Acquirer. In the case of the Rembrandt Key Employees, Respondents shall waive, for the benefit of the Commission-approved Acquirer, any attorney-client privilege as it pertains to the Rembrandt Products. In addition, Respondents shall not make any counteroffer to a Rembrandt Core Employee or Rembrandt Key Employee who receives a written offer of employment from the Commission-approved Acquirer;

provided, however, that this Paragraph II.H.1 shall not prohibit the Respondents from making offers of employment to or employing any Rembrandt Core Employee or Rembrandt Key Employee during the Rembrandt Access Period where the Commission-approved Acquirer has notified the Respondents in writing that the Commission-approved Acquirer does not intend to make an offer of employment to that employee;

provided further that if the Respondents notify the Commission-approved Acquirer in writing of their desire to make an offer of employment to a particular Rembrandt Core Employee or Rembrandt Key Employee and the Commission-approved Acquirer does not make an offer of employment to that employee within twenty (20) Days of the date the Commission-approved Acquirer receives such notice, the Respondents may make an offer of employment to that employee;

2. until the Closing Date, provide all Rembrandt Core Employees and Rembrandt Key Employees with reasonable financial incentives to continue in their

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positions and to market and promote the Rembrandt Products consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of the Rembrandt Products and to ensure successful execution of the pre-Acquisition marketing plans related to the Rembrandt Products. Such incentives shall include a continuation of all employee compensation and benefits offered by Respondents until the Closing Date for the divestiture of the Rembrandt Assets has occurred, including regularly scheduled raises, bonuses, and vesting of pension benefits (as permitted by Law). In addition to the foregoing, Respondents shall provide to each Rembrandt Key Employee who accepts employment with the Commission-approved Acquirer, an incentive equal to fifty (50) percent of such employee's base annual salary to be paid upon the employee's completion of one (1) year of employment with the Commission-approved Acquirer;

provided, however, that nothing in this Order requires or shall be construed to require the Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of Rembrandt Core Employees or Rembrandt Key Employees (other than those conditions contained in this Order) in connection with the Acquisition or prevents the Respondents from continuing the employment of the Rembrandt Core Employees or Rembrandt Key Employees in connection with the Acquisition; and

3. for a period of one (1) year from the Closing Date, not:
 - a. directly or indirectly, solicit or otherwise attempt to induce any employee of the Commission-approved Acquirer with any amount of responsibility related to the Rembrandt Products ("Rembrandt Employee") to terminate his or her employment relationship with the Commission-approved Acquirer; or

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- b. hire any Rembrandt Employee; *provided, however*, Respondents may hire any former Rembrandt Employee whose employment has been terminated by the Commission-approved Acquirer or who independently applies for employment with the Respondents, as long as such employee was not solicited in violation of the nonsolicitation requirements contained herein;

provided, however, Respondents may do the following: (1) advertise for employees in newspapers, trade publications or other media not targeted specifically at the Rembrandt Employees; or (2) hire a Rembrandt Employee who contacts Respondents on his or her own initiative without any direct or indirect solicitation or encouragement from the Respondents;

- 4. for a period of two (2) years from the Closing Date, use any Rembrandt Key Employee for work specifically related to Products for use as teeth whitening agents.
- I. Prior to the Closing Date, Respondents shall secure all consents and waivers from all Third Parties that are necessary for the divestiture of the Rembrandt Assets to the Commission-approved Acquirer, or for the continued research, Development, manufacture, sale, marketing or distribution of the Rembrandt Products by the Commission-approved Acquirer; *provided, however*, Respondents may satisfy this requirement by certifying that the Commission-approved Acquirer has executed all such agreements directly with each of the relevant Third Parties.
- J. Respondents shall require, as a condition of continued employment post-divestiture of the Rembrandt Assets, that each Rembrandt Core Employee retained by Respondents, the direct supervisor(s) of any such employee, and any other employee retained by Respondents and designated by the Interim Monitor sign a confidentiality agreement pursuant to

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which such employee shall be required to maintain all Confidential Business Information related to the Rembrandt Products strictly confidential, including the nondisclosure of such information to all other employees, executives or other personnel of Respondents (other than as necessary to comply with the requirements of this Order).

- K. Respondents shall provide written notification of the restrictions on the use of the Confidential Business Information related to the Rembrandt Products by Respondents' personnel to all of Respondents' employees who:
1. are or were involved in the research, Development, manufacturing, distribution, sale or marketing of the Rembrandt Products;
 2. are involved in the research, Development, manufacturing, distribution, sale or marketing of Products for use as teeth whitening agents for Respondent P&G; and/or
 3. may have Confidential Business Information related to the Rembrandt Products.

Respondents shall give such notification by e-mail with return receipt requested or similar transmission, and keep a file of such receipts for one (1) year after the Closing Date. Respondents shall provide a copy of such notification to the Commission-approved Acquirer. Respondents shall maintain complete records of all such agreements at Respondents' corporate headquarters and shall provide an officer's certification to the Commission stating that such acknowledgment program has been implemented and is being complied with. Respondents shall provide the Commission-approved Acquirer with copies of all certifications, notifications and reminders sent to Respondents' personnel.

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- L. Upon reasonable notice and request by the Commission-approved Acquirer, Respondents shall make available to the Commission-approved Acquirer, at no greater than Direct Cost, such personnel, assistance and training as the Commission-approved Acquirer might reasonably need to transfer the Rembrandt Assets, and shall continue providing such personnel, assistance and training, at the request of the Commission-approved Acquirer the Rembrandt Assets are completely transferred to the Commission-approved Acquirer or its Designee in a manner that fully preserves their usefulness.
- M. Pending divestiture of the Rembrandt Assets, Respondents shall take such actions as are necessary to maintain the full economic viability and marketability of the business associated with the Rembrandt Assets, to minimize any risk of loss of competitive potential for such business, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Rembrandt Assets except for ordinary wear and tear.
- N. Counsel for Respondents (including in-house counsel under appropriate confidentiality arrangements) may retain unredacted copies of all documents or other materials provided to the Commission-approved Acquirer and may have access to original documents (under circumstances where copies of documents are insufficient or otherwise unavailable) provided to the Commission-approved Acquirer only in order to do the following:
 - 1. comply with any Remedial Agreement, this Order, any Law (including, without limitation, any requirement to obtain regulatory licenses or approvals), any data retention requirement of any applicable Governmental Entity, or any taxation requirements; or
 - 2. defend against, respond to, or otherwise participate in any litigation, investigation, audit, process, subpoena or other

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proceeding relating to the divestiture or any other aspect of the Rembrandt Assets or Rembrandt business; *provided, however*, that Respondents may disclose such information as necessary for the purposes set forth in this Paragraph pursuant to an appropriate confidentiality order, agreement or arrangement;

provided, however, that pursuant to this Paragraph II.N., Respondents shall: (1) require those who view such unredacted documents or other materials to enter into confidentiality agreements with the Commission-approved Acquirer (but shall not be deemed to have violated this requirement if the Commission-approved Acquirer withholds such agreement unreasonably); and (2) use their best efforts to obtain a protective order to protect the confidentiality of such information during any adjudication.

O. Respondents shall not join, file, prosecute or maintain any suit, in law or equity, against the Commission-approved Acquirer or the Rembrandt Releasee(s) for the research, Development, manufacture, use, import, export, distribution, or sale of the Rembrandt IP Protected Products in connection with the Commission-approved Acquirer's research, Development, manufacture, use, import, export, distribution, or sale of the Rembrandt IP Protected Products under the following:

1. any Patents owned or licensed by Respondents as of the Acquisition Date that claim the use of the Rembrandt IP Protected Products;
2. any Patents owned or licensed at any time after the Acquisition Date by Respondents that claim any aspect of the research, Development, manufacture, use, import, export, distribution, or sale of the Rembrandt IP Protected Products, other than such Patents that claim inventions conceived by and reduced to practice after the Acquisition Date.

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- P. Respondents shall not join, file, prosecute or maintain any suit, in law or equity, against the Commission-approved Acquirer or the Rembrandt Releasee(s) for the research, Development, manufacture, use, import, export, distribution, or sale of the Rembrandt Products in connection with the Commission-approved Acquirer's research, Development, manufacture, use, import, export, distribution, or sale of the Rembrandt Products using any Confidential Business Information related to the Rembrandt Products obtained by Respondents from any person who was an employee of Respondent Gillette within the two (2) year period immediately prior to the Acquisition.
- Q. Respondents shall not, in any jurisdiction throughout the world: (1) use the Product Trademarks related to the Rembrandt Products or any mark confusingly similar to such Product Trademarks, as a trademark, tradename, or service mark; (2) attempt to register such Product Trademarks; (3) attempt to register any mark confusingly similar to such Product Trademarks; (4) challenge or interfere with the Commission-approved Acquirer's use and registration of such Product Trademarks; or (5) challenge or interfere with the Commission-approved Acquirer's efforts to enforce its trademark registrations for and trademark rights in such Product Trademarks against Third Parties; *provided however*, that nothing in this Order shall preclude Respondents from continuing to use those trademarks, tradenames, or service marks related to the Retained Products as of the Acquisition Date.
- R. The purpose of the divestiture of the Rembrandt Assets is to ensure the continued use of the Rembrandt Assets in the same business, independent of Respondents, in which the Rembrandt Assets were engaged at the time of the announcement of the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

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III.

IT IS FURTHER ORDERED that:

- A. Not later than ten (10) days after the Acquisition Date, Respondents shall divest the SpinBrush Assets, absolutely and in good faith, to Church & Dwight pursuant to and in accordance with the SpinBrush Asset Purchase Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of Church & Dwight or to reduce any obligations of the Respondents under such agreement), and such agreement, if it becomes the Remedial Agreement related to the SpinBrush Assets, is incorporated by reference into this Order and made a part hereof;

provided, however, that if Respondents have divested the SpinBrush Assets to Church & Dwight prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that Church & Dwight is not an acceptable purchaser of the SpinBrush Assets, then Respondents shall immediately rescind the transaction with Church & Dwight and shall divest the SpinBrush Assets within one hundred eighty (180) days from the date the Order becomes final, absolutely and in good faith, at no minimum price, to a Commission-approved Acquirer and only in a manner that receives the prior approval of the Commission;

provided further that if the Respondents have divested the SpinBrush Assets to Church & Dwight prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies the Respondents that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct the

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Respondents, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the SpinBrush Assets to Church & Dwight (including, but not limited to, entering into additional agreements or arrangements) as the Commission may determine are necessary to satisfy the requirements of this Order.

provided further, however, the Respondents requirement as to the timing to divest the Spinbrush Assets shall be tolled pending any required approvals for such divestiture from the Commission of the European Communities but, in any event, shall not be later than ten (10) days of the Respondents' receipt of such approval.

- B. Any Remedial Agreement related to the SpinBrush Assets shall be deemed incorporated into this Order, and any failure by Respondents to comply with any term of such Remedial Agreement related to the SpinBrush Assets shall constitute a failure to comply with this Order.
- C. Respondents shall include in any Remedial Agreement related to the SpinBrush Assets the following provisions:
 - 1. upon reasonable notice and request from the Commission-approved Acquirer to the Respondents, Respondents shall provide in a timely manner at no greater than Direct Cost the following:
 - a. assistance and advice to enable the Commission-approved Acquirer (or the Designee of the Commission-approved Acquirer) to obtain all necessary permits and approvals from any Agency or Governmental Entity to manufacture and sell the SpinBrush Products;
 - b. assistance to the Commission-approved Acquirer (or the Designee of the Commission-approved Acquirer) to manufacture the SpinBrush Products in

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substantially the same manner and quality employed or achieved by or on behalf of Respondent P&G; and

- c. consultation with knowledgeable employees of Respondents and training, at the request of the Commission-approved Acquirer and at a facility chosen by the Commission-approved Acquirer sufficient to satisfy management of the Commission-approved Acquirer that its personnel (or the Designee's personnel) are adequately trained in the manufacture of the SpinBrush Products;
2. upon reasonable notice and request from the Commission-approved Acquirer to Respondents, Respondents shall provide, in a timely manner, at no greater than Direct Cost, assistance of knowledgeable employees of the Respondents to assist the Commission-approved Acquirer to defend against, respond to, or otherwise participate in any litigation related to the Product Intellectual Property;
3. Respondents shall covenant to the Commission-approved Acquirer that Respondents shall not join, file, prosecute or maintain any suit, in law or equity, against the Commission-approved Acquirer under Patents that are owned or licensed by Respondents as of the Acquisition Date, if such suit would have the potential to interfere with the Commission-approved Acquirer's freedom to practice in the research, Development, manufacture, use, import, export, distribution or sale of the SpinBrush Products; *provided however*, that Respondents may receive a covenant from the Commission-approved Acquirer not to assert against the Respondents any Patent related to the SpinBrush Products that is assigned to the Commission-approved Acquirer from the Respondents pursuant to this Order; and

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4. Respondents shall covenant to the Commission-approved Acquirer that: (1) as a condition of any assignment, transfer or license to a Third Party of the above-described Patents, the Third Party shall agree to provide a covenant whereby the Third Party covenants not to sue the SpinBrush Releasees under such Patents, if the suit would have the potential to interfere with the Commission-approved Acquirer's freedom to practice in the research, Development, manufacture, use, import, export, distribution or sale of the SpinBrush Products; and (2) with respect to any Third Party rights licensed to Respondents as of or after the Acquisition Date, and as to which Respondents do not control the right of prosecution of any legal action, Respondents shall not actively induce, assist or participate in any legal action or proceeding relating to the SpinBrush Products against the SpinBrush Releasees, unless required by Law or contract (such contract not to be solicited or entered into for the purpose of circumventing any of the requirements of this Order).

D. Respondents shall:

1. submit to the Commission-approved Acquirer, at Respondents' expense, all Confidential Business Information related to the SpinBrush Products;
2. deliver such Confidential Business Information as follows: (1) in good faith; (2) as soon as practicable, avoiding any delays in transmission of the respective information; and (3) in a manner that ensures its completeness and accuracy and that fully preserves its usefulness;
3. pending complete delivery of all such Confidential Business Information to the Commission-approved Acquirer, provide the Commission-approved Acquirer and the Interim Monitor (if any has been appointed) with access to all such Confidential Business Information and

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employees who possess or are able to locate such information for the purposes of identifying the books, records, and files related to the SpinBrush Products that contain such Confidential Business Information and facilitating the delivery in a manner consistent with this Order;

4. not use, directly or indirectly, any such Confidential Business Information related to the research, Development, manufacturing, marketing, or sale of the SpinBrush Products (other than as necessary to comply with the following: (1) the requirements of this Order; (2) the Respondents' obligations to the Commission-approved Acquirer under the terms of any Remedial Agreement related to the SpinBrush Assets; or (3) applicable Law);
 5. not disclose or convey any such Confidential Business Information, directly or indirectly, to any person except the Commission-approved Acquirer; and
 6. shall not provide, disclose or otherwise make available, directly or indirectly, any such Confidential Business Information related to the marketing or sales of the SpinBrush Assets to the employees associated with business related to the non-rechargeable battery operated toothbrush Products marketed and sold by Respondent Gillette prior to the Acquisition (including, but not limited to, those employees with work responsibilities related to the Oral-B[®] trademark and any variations or derivatives of such trademark).
- E. Respondents shall not enforce any agreement against a Third Party or the Commission-approved Acquirer to the extent that such agreement may limit or otherwise impair the ability of the Commission-approved Acquirer to acquire the Product Manufacturing Technology related to the SpinBrush Products or related equipment from the Third

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Party. Such agreements include, but are not limited to, agreements with respect to the disclosure of Confidential Business Information related to such Product Manufacturing Technology.

- F. Not later than ten (10) days after the Closing Date, Respondents shall grant a release to each Third Party that is subject to an agreement as described in Paragraph III.E. that allows the Third Party to provide the relevant Product Manufacturing Technology or related equipment to the Commission-approved Acquirer. Within five (5) days of the execution of each such release, Respondents shall provide a copy of the release to the Commission-approved Acquirer.
- G. Respondents shall:
1. for a period of at least six (6) months from the Closing Date, provide the Commission-approved Acquirer with the opportunity to enter into employment contracts with the SpinBrush Core Employees. This period is hereinafter referred to as the “SpinBrush Access Period”; and
 2. not later than the earlier of the following dates: (1) ten (10) Days after notice by staff of the Commission to the Respondents to provide the Product Employee Information; or (2) ten (10) Days after the Closing Date, provide the Commission-approved Acquirer or the Proposed Acquirer with the Product Employee Information related to the SpinBrush Core Employees. Failure by Respondents to provide the Product Employee Information for any relevant employee within the time provided herein shall extend the SpinBrush Access Period with respect to that employee in an amount equal to the delay.

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H. Respondents shall:

1. during the SpinBrush Access Period, not interfere with the hiring or employing by the Commission-approved Acquirer of SpinBrush Core Employees, and remove any impediments within the control of Respondents that may deter these employees from accepting employment with the Commission-approved Acquirer, including, but not limited to, any noncompete or nondisclosure provisions of employment or other contracts with Respondents that would affect the ability or incentive of those individuals to be employed by the Commission-approved Acquirer. In addition, Respondents shall not make any counteroffer to an SpinBrush Core Employee who receives a written offer of employment from the Commission-approved Acquirer;

provided, however, that this Paragraph III.H.1 shall not prohibit the Respondents from making offers of employment to or employing any SpinBrush Core Employee during the SpinBrush Access Period where the Commission-approved Acquirer has notified the Respondents in writing that the Commission-approved Acquirer does not intend to make an offer of employment to that employee;

provided further that if the Respondents notify the Commission-approved Acquirer in writing of their desire to make an offer of employment to a particular SpinBrush Core Employee and the Commission-approved Acquirer does not make an offer of employment to that employee within twenty (20) Days of the date the Commission-approved Acquirer receives such notice, the Respondents may make an offer of employment to that employee;

2. until the Closing Date, provide all SpinBrush Core Employees with reasonable financial incentives to continue in their positions and to market and promote the

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SpinBrush Products consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of the SpinBrush Products and to ensure successful execution of the pre-Acquisition marketing plans to relaunch certain SpinBrush Products. Such incentives shall include a continuation of all employee compensation and benefits offered by Respondents until the Closing Date for the divestiture of the SpinBrush Assets has occurred, including regularly scheduled raises, bonuses, and vesting of pension benefits (as permitted by Law);

provided, however, that nothing in this Order requires or shall be construed to require the Respondents to terminate the employment of any employee or prevents the Respondents from continuing the employment of the SpinBrush Core Employees (other than those conditions contained in this Order) in connection with the Acquisition; and

3. for a period of one (1) year from the Closing Date, not:
 - a. directly or indirectly, solicit or otherwise attempt to induce any employee of the Commission-approved Acquirer with any amount of responsibility related to SpinBrush ("SpinBrush Employee") to terminate his or her employment relationship with the Commission-approved Acquirer; or
 - b. hire any SpinBrush Employee; *provided, however*, Respondents may hire any former SpinBrush Employee whose employment has been terminated by the Commission-approved Acquirer or who independently applies for employment with the Respondents, as long as such employee was not solicited in violation of the nonsolicitation requirements contained herein;

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provided, however, Respondents may do the following: (1) advertise for employees in newspapers, trade publications or other media not targeted specifically at the SpinBrush Employees; or (2) hire an SpinBrush Employee who contacts Respondents on his or her own initiative without any direct or indirect solicitation or encouragement from the Respondents.

- I. Prior to the Closing Date, Respondents shall secure all consents and waivers from all Third Parties that are necessary for the divestiture of the SpinBrush Assets to the Commission-approved Acquirer, or for the continued research, Development, manufacture, sale, marketing or distribution of the SpinBrush Products by the Commission-approved Acquirer;

provided, however, Respondents may satisfy this requirement by certifying that the Commission-approved Acquirer has executed all such agreements directly with each of the relevant Third Parties.

- J. Respondents shall require, as a condition of continued employment post-divestiture of the SpinBrush Assets, that each SpinBrush Core Employee retained by Respondents, the direct supervisor(s) of any such employee, and any other employee retained by Respondents and designated by the Interim Monitor sign a confidentiality agreement pursuant to which such employee shall be required to maintain all Confidential Business Information related to the SpinBrush Products strictly confidential, including the nondisclosure of such information to all other employees, executives or other personnel of Respondents (other than as necessary to comply with the requirements of this Order).

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- K. Respondents shall provide written notification of the restrictions on the use of the Confidential Business Information related to the SpinBrush Products by Respondents' personnel to all of Respondents' employees who:
1. are or were involved in the research, Development, manufacturing, distribution, sale or marketing of the SpinBrush Products;
 2. are involved in the research, Development, manufacturing, distribution, sale or marketing of Products for use as battery operated toothbrushes for Respondent Gillette prior to the Acquisition; and/or
 3. may have Confidential Business Information related to the SpinBrush Products.

Respondents shall give such notification by e-mail with return receipt requested or similar transmission, and keep a file of such receipts for one (1) year after the Closing Date.

Respondents shall provide a copy of such notification to the Commission-approved Acquirer. Respondents shall maintain complete records of all such agreements at Respondents' corporate headquarters and shall provide an officer's certification to the Commission stating that such acknowledgment program has been implemented and is being complied with. Respondents shall provide the Commission-approved Acquirer with copies of all certifications, notifications and reminders sent to Respondents' personnel.

- L. Upon reasonable notice and request by the Commission-approved Acquirer, Respondents shall make available to the Commission-approved Acquirer, at no greater than Direct Cost (or, if the SpinBrush Asset Purchase Agreement is the Remedial Agreement for the SpinBrush Assets, then at such cost as may be provided therein), such personnel, assistance and training as the Commission-approved Acquirer might

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reasonably need to transfer the SpinBrush Assets, and shall continue providing such personnel, assistance and training, at the request of the Commission-approved Acquirer, until the SpinBrush Assets are completely transferred to the Commission-approved Acquirer or its Designee in a manner that fully preserves their usefulness.

- M. Pending divestiture of the SpinBrush Assets, Respondents shall take such actions as are necessary to maintain the full economic viability and marketability of the business associated with the SpinBrush Assets, to minimize any risk of loss of competitive potential for such business, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the SpinBrush Assets except for ordinary wear and tear.
- N. Counsel for Respondents (including in-house counsel under appropriate confidentiality arrangements) may retain unredacted copies of all documents or other materials provided to the Commission-approved Acquirer and may have access to original documents (under circumstances where copies of documents are insufficient or otherwise unavailable) provided to the Commission-approved Acquirer only in order to do the following:
 - 1. comply with any Remedial Agreement, this Order, any Law (including, without limitation, any requirement to obtain regulatory licenses or approvals), any data retention requirement of any applicable Governmental Entity, or any taxation requirements; or
 - 2. defend against, respond to, or otherwise participate in any litigation, investigation, audit, process, subpoena or other proceeding relating to the divestiture or any other aspect of the SpinBrush Assets or SpinBrush business; *provided, however*, that Respondents may disclose such information as necessary for the purposes set forth in this Paragraph pursuant to an appropriate confidentiality order,

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agreement or arrangement;

provided, however, that pursuant to this Paragraph III.N., Respondents shall: (1) require those who view such unredacted documents or other materials to enter into confidentiality agreements with the Commission-approved Acquirer (but shall not be deemed to have violated this requirement if the Commission-approved Acquirer withholds such agreement unreasonably); and (2) use their best efforts to obtain a protective order to protect the confidentiality of such information during any adjudication.

- O. Respondents shall not join, file, prosecute or maintain any suit, in law or equity, against the Commission-approved Acquirer or the SpinBrush Releasee(s) for the research, Development, manufacture, use, import, export, distribution, or sale of SpinBrush under the following:
 - 1. any Patents owned or licensed by Respondents as of the Acquisition Date that claim the use of the SpinBrush Products;
 - 2. any Patents owned or licensed at any time after the Acquisition Date by Respondents that claim any aspect of the research, Development, manufacture, use, import, export, distribution, or sale of the SpinBrush Products, other than such Patents that claim inventions conceived by and reduced to practice after the Acquisition Date.
- P. Respondents shall not, in any jurisdiction throughout the world: (1) use the Product Trademarks related to the SpinBrush Products or any mark confusingly similar to such Product Trademarks, as a trademark, tradename, or service mark; (2) attempt to register such Product Trademarks; (3) attempt to register any mark confusingly similar to such Product Trademarks; (4) challenge or interfere with the Commission-approved Acquirer's use and registration of such Product Trademarks; or (5) challenge or interfere with

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the Commission-approved Acquirer's efforts to enforce its trademark registrations for and trademark rights in such Product Trademarks against Third Parties; *provided however*, that nothing in this Order shall preclude Respondents from continuing to use those trademarks, tradenames, or service marks related to the Retained Products as of the Acquisition Date.

- Q. The purpose of the divestiture of the SpinBrush Assets is to ensure the continued use of the SpinBrush Assets in the same business, independent of Respondents, in which the SpinBrush Assets were engaged at the time of the announcement of the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

IV.

IT IS FURTHER ORDERED that:

- A. Not later than one hundred twenty (120) days after the date this Order becomes final, Respondents shall divest the APDO Assets, absolutely and in good faith, and at no minimum price. Respondents shall divest the APDO Assets to a Commission-approved Acquirer and only in a manner that receives the prior approval of the Commission.
- B. Any Remedial Agreement related to the APDO Assets shall be deemed incorporated into this Order, and any failure by Respondents to comply with any term of such Remedial Agreement related to the APDO Assets shall constitute a failure to comply with this Order.
- C. Respondents shall include in any Remedial Agreement related to the APDO Assets the following provisions:

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1. Respondents shall Contract Manufacture and deliver to the Commission-approved Acquirer, in a timely manner and under reasonable terms and conditions, a supply of finished APDO Product(s) at Respondent Gillette's Supply Cost, for a period of time sufficient to allow the Commission-approved Acquirer (or the Designee of the Commission-approved Acquirer) to be able to manufacture and to obtain all the relevant Agency approvals necessary to manufacture finished APDO Product(s) independently of Respondents;
2. during the term of the Contract Manufacture between Respondent(s) and the Commission-approved Acquirer, upon request of the Commission-approved Acquirer or Interim Monitor (if applicable), Respondents shall make available to the Commission-approved Acquirer and the Interim Monitor (if applicable) all records that relate to the manufacture of the APDO Products that are generated or created after the Closing Date;
3. upon reasonable notice and request from the Commission-approved Acquirer to the Respondents, Respondents shall provide in a timely manner at no greater than Direct Cost the following:
 - a. assistance and advice to enable the Commission-approved Acquirer (or the Designee of the Commission-approved Acquirer) to obtain all necessary permits and approvals from any Agency or Governmental Entity to manufacture and sell the APDO Products;
 - b. assistance to the Commission-approved Acquirer (or the Designee of the Commission-approved Acquirer) to manufacture the APDO Products in substantially the same manner and quality employed or achieved by or behalf of Respondent Gillette; and

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- c. consultation with knowledgeable employees of Respondents and training, at the request of the Commission-approved Acquirer and at a facility chosen by the Commission-approved Acquirer sufficient to satisfy management of the Commission-approved Acquirer that its personnel (or the Designee's personnel) are adequately trained in the manufacture of the APDO Products;
4. upon reasonable notice and request from the Commission-approved Acquirer to Respondents, Respondents shall provide, in a timely manner, at no greater than Direct Cost, assistance of knowledgeable employees of the Respondents to assist the Commission-approved Acquirer to defend against, respond to, or otherwise participate in any litigation related to the Product Intellectual Property;
5. Respondents shall covenant to the Commission-approved Acquirer that Respondents shall not join, file, prosecute or maintain any suit, in law or equity, against the Commission-approved Acquirer under Patents that are owned or licensed by Respondents as of the Acquisition Date, if such suit would have the potential to interfere with the Commission-approved Acquirer's freedom to practice in the research, Development, manufacture, use, import, export, distribution or sale of the APDO Products; *provided however*, that Respondents may receive a covenant from the Commission-approved Acquirer not to assert against the Respondents any Patent related to the APDO Products that is assigned to the Commission-approved Acquirer from the Respondents pursuant to this Order; and
6. Respondents shall covenant to the Commission-approved Acquirer that: (1) as a condition of any assignment, transfer or license to a Third Party of the above-described Patents, the Third Party shall agree to provide a covenant

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whereby the Third Party covenants not to sue the APDO Releasees under such Patents, if the suit would have the potential to interfere with the Commission-approved Acquirer's freedom to practice in the research, Development, manufacture, use, import, export, distribution or sale of the APDO Products; and (2) with respect to any Third Party rights licensed to Respondents as of or after the Acquisition Date, and as to which Respondents do not control the right of prosecution of any legal action, Respondents shall not actively induce, assist or participate in any legal action or proceeding relating to the APDO Products against the APDO Releasees, unless required by Law or contract (such contract not to be solicited or entered into for the purpose of circumventing any of the requirements of this Order).

D. Respondents shall:

1. submit to the Commission-approved Acquirer, at Respondents' expense, all Confidential Business Information related to the APDO Products;
2. deliver such Confidential Business Information as follows: (1) in good faith; (2) as soon as practicable, avoiding any delays in transmission of the respective information; and (3) in a manner that ensures its completeness and accuracy and that fully preserves its usefulness;
3. pending complete delivery of all such Confidential Business Information to the Commission-approved Acquirer, provide the Commission-approved Acquirer and the Interim Monitor (if any has been appointed) with access to all such Confidential Business Information and employees who possess or are able to locate such information for the purposes of identifying the books, records, and files related to the APDO Products that contain such Confidential Business Information and

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facilitating the delivery in a manner consistent with this Order;

4. not use, directly or indirectly, any such Confidential Business Information related to the research, Development, manufacturing, marketing, or sale of the APDO Products (other than as necessary to comply with the following: (1) the requirements of this Order; (2) the Respondents' obligations to the Commission-approved Acquirer under the terms of any Remedial Agreement related to the APDO Assets; or (3) applicable Law;

provided however, Respondents may use such Confidential Business Information that also relates to those Retained Products that have been marketed and sold as antiperspirants or deodorants under the Gillette Series[®] trademarks prior to the Acquisition to the extent necessary for Respondents to continue to manufacture, market, and sell such Retained Products; *provided, further*, Respondents shall take such actions, as may be practicable, to prevent the exploitation or use of the most recent brand plan(s) related to the APDO Products by Respondents' employees with responsibilities relating to the Retained Products to be marketed or sold as antiperspirants or deodorants;

5. not disclose or convey any such Confidential Business Information (other than as otherwise permitted under this Order), directly or indirectly, to any person except the Commission-approved Acquirer; and
6. shall not provide, disclose or otherwise make available, directly or indirectly, any such Confidential Business Information (other than as otherwise permitted under this Order) related to the marketing or sales of the APDO Assets to the employees associated with business related to Retained Products that are marketed and sold as antiperspirants or deodorants prior to the Acquisition (including, but not limited to, such employees with work

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responsibilities related to the Retained Products that have been marketed and sold as antiperspirants or deodorants under the Old Spice® trademark and any variations or derivatives of such trademark prior to the Acquisition).

- E. Respondents shall not enforce any agreement against a Third Party or the Commission-approved Acquirer to the extent that such agreement may limit or otherwise impair the ability of the Commission-approved Acquirer to acquire the Product Manufacturing Technology related to the APDO Products or related equipment from the Third Party. Such agreements include, but are not limited to, agreements with respect to the disclosure of Confidential Business Information related to such Product Manufacturing Technology.
- F. Not later than ten (10) days after the Closing Date, Respondents shall grant a release to each Third Party that is subject to an agreement as described in Paragraph IV.E. that allows the Third Party to provide the relevant Product Manufacturing Technology or related equipment to the Commission-approved Acquirer. Within five (5) days of the execution of each such release, Respondents shall provide a copy of the release to the Commission-approved Acquirer.
- G. Respondents shall:
 - 1. for a period of at least six (6) months from the Closing Date, provide the Commission-approved Acquirer with the opportunity to enter into employment contracts with the APDO Core Employees. This period is hereinafter referred to as the “APDO Access Period”; and
 - 2. not later than the earlier of the following dates: (1) ten (10) Days after notice by staff of the Commission to the Respondents to provide the Product Employee Information; or (2) ten (10) Days after the Closing Date,

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provide the Commission-approved Acquirer or the Proposed Acquirer with the Product Employee Information related to the APDO Core Employees. Failure by Respondents to provide the Product Employee Information for any relevant employee within the time provided herein shall extend the APDO Access Period with respect to that employee in an amount equal to the delay.

H. Respondents shall:

1. during the APDO Access Period, not interfere with the hiring or employing by the Commission-approved Acquirer of the APDO Core Employees, and remove any impediments within the control of Respondents that may deter these employees from accepting employment with the Commission-approved Acquirer, including, but not limited to, any noncompete or nondisclosure provisions of employment or other contracts with Respondents that would affect the ability or incentive of those individuals to be employed by the Commission-approved Acquirer. In addition, Respondents shall not make any counteroffer to an APDO Core Employee who receives a written offer of employment from the Commission-approved Acquirer;

provided, however, that this Paragraph IV.H.1 shall not prohibit the Respondents from making offers of employment to or employing any APDO Core Employee during the APDO Access Period where the Commission-approved Acquirer has notified the respondents in writing that the Commission-approved Acquirer does not intend to make an offer of employment to that employee;

provided further that if the Respondents notify the Commission-approved Acquirer in writing of their desire to make an offer of employment to a particular APDO Core Employee and the Commission-approved Acquirer does not

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make an offer of employment to that employee within twenty (20) days of the date the Commission-approved Acquirer receives such notice, the Respondents may make an offer of employment to that employee;

2. until the Closing Date, provide all APDO Core Employees with reasonable financial incentives to continue in their positions and to market and promote the APDO Products consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of the APDO Products and to ensure successful execution of the pre-Acquisition marketing plans related to the APDO Products. Such incentives shall include a continuation of all employee compensation and benefits offered by Respondents until the Closing Date for the divestiture of the APDO Assets has occurred, including regularly scheduled raises, bonuses, and vesting of pension benefits (as permitted by Law);

provided, however, that nothing in this Order requires or shall be construed to require the Respondents to terminate the employment of any employee or prevents the Respondents from continuing the employment of the APDO Core Employees (other than those conditions contained in this Order) in connection with the Acquisition; and

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3. for a period of one (1) year from the Closing Date, not:
- a. directly or indirectly, solicit or otherwise attempt to induce any employee of the Commission-approved Acquirer with any amount of responsibility related to APDO ("APDO Employee") to terminate his or her employment relationship with the Commission-approved Acquirer; or
 - b. hire any APDO Employee; *provided, however*, Respondents may hire any former APDO Employee whose employment has been terminated by the Commission-approved Acquirer or who independently applies for employment with the Respondents, as long as such employee was not solicited in violation of the nonsolicitation requirements contained herein;

provided, however, Respondents may do the following: (1) advertise for employees in newspapers, trade publications or other media not targeted specifically at the APDO Employees; or (2) hire an APDO Employee who contacts Respondents on his or her own initiative without any direct or indirect solicitation or encouragement from the Respondents.

- I. Prior to the Closing Date, Respondents shall secure all consents and waivers from all Third Parties that are necessary for the divestiture of the APDO Assets to the Commission-approved Acquirer, or for the continued research, Development, manufacture, sale, marketing or distribution of the APDO Products by the Commission-approved Acquirer;

provided, however, Respondents may satisfy this requirement by certifying that the Commission-approved Acquirer has executed all such agreements directly with each of the relevant Third Parties.

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- J. Respondents shall require, as a condition of continued employment post-divestiture of the APDO Assets, that each APDO Core Employee retained by Respondents, the direct supervisor(s) of any such employee, and any other employee retained by Respondents and designated by the Interim Monitor sign a confidentiality agreement pursuant to which such employee shall be required to maintain all Confidential Business Information related to the APDO Products strictly confidential, including the nondisclosure of such information to all other employees, executives or other personnel of Respondents (other than as necessary to comply with the requirements of this Order).
- K. Respondents shall provide written notification of the restrictions on the use of the Confidential Business Information related to the APDO Products by Respondents' personnel to all of Respondents' employees who:
1. are or were involved in the research, Development, manufacturing, distribution, sale or marketing of the APDO Products;
 2. are involved in the research, Development, manufacturing, distribution, sale or marketing of Respondent P&G's antiperspirant or deodorant Products;
 3. are involved in the research, Development, manufacturing, distribution, sale or marketing of Respondent Gillette's antiperspirant or deodorant Retained Products; and/or
 4. may have Confidential Business Information related to APDO.

Respondents shall give such notification by e-mail with return receipt requested or similar transmission, and keep a file of such receipts for one (1) year after the Closing Date.

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Respondents shall provide a copy of such notification to the Commission-approved Acquirer. Respondents shall maintain complete records of all such agreements at Respondents' corporate headquarters and shall provide an officer's certification to the Commission stating that such acknowledgment program has been implemented and is being complied with. Respondents shall provide the Commission-approved Acquirer with copies of all certifications, notifications and reminders sent to Respondents' personnel.

- L. Upon reasonable notice and request by the Commission-approved Acquirer, Respondents shall make available to the Commission-approved Acquirer, at no greater than Direct Cost such personnel, assistance and training as the Commission-approved Acquirer might reasonably need to transfer the APDO Assets, and shall continue providing such personnel, assistance and training, at the request of the Commission-approved Acquirer, until the Commission-approved Acquirer (or the Designee of the Commission-approved Acquirer) is fully able to manufacture APDO Products independently of the Respondents;

provided, however, the Commission may eliminate, or limit the duration of, the Respondents' obligation under this provision if the Commission determines that the Commission-approved Acquirer is not using commercially reasonable best efforts to enable itself or its Designee to manufacture the APDO Products in a facility that is independent of Respondents.

- M. Pending divestiture of the APDO Assets, Respondents shall take such actions as are necessary to maintain the full economic viability and marketability of the business associated with the APDO Assets, to minimize any risk of loss of competitive potential for such business, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the APDO Assets except for ordinary wear and tear.

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- N. Counsel for Respondents (including in-house counsel under appropriate confidentiality arrangements) may retain unredacted copies of all documents or other materials provided to the Commission-approved Acquirer and may have access to original documents (under circumstances where copies of documents are insufficient or otherwise unavailable) provided to the Commission-approved Acquirer only in order to do the following:
1. comply with any Remedial Agreement, this Order, any Law (including, without limitation, any requirement to obtain regulatory licenses or approvals), any data retention requirement of any applicable Governmental Entity, or any taxation requirements; or
 2. defend against, respond to, or otherwise participate in any litigation, investigation, audit, process, subpoena or other proceeding relating to the divestiture or any other aspect of the APDO Assets or APDO business; *provided, however,* that Respondents may disclose such information as necessary for the purposes set forth in this Paragraph pursuant to an appropriate confidentiality order, agreement or arrangement;
- provided, however,* that pursuant to this Paragraph IV.N., Respondents shall: (1) require those who view such unredacted documents or other materials to enter into confidentiality agreements with the Commission-approved Acquirer (but shall not be deemed to have violated this requirement if the Commission-approved Acquirer withholds such agreement unreasonably); and (2) use their best efforts to obtain a protective order to protect the confidentiality of such information during any adjudication.
- O. Respondents shall maintain manufacturing facilities for the APDO Products that are fully capable of producing the APDO Products until the earlier of the following: 1) the Commission-approved Acquirer (or the Designee of the

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Commission-approved Acquirer) is otherwise fully able to manufacture the APDO Products in a facility that is independent of Respondents; or 2) the Respondents have provided to the Commission-approved Acquirer inventory of finished APDO Products sufficient to cover at least all demand anticipated by the Commission-approved Acquirer for the APDO Products during the period of time estimated for the removal, transfer, and reassembly, in a fully operational format (including any potential for delays in such removal, transfer and reassembly in such format), of the APDO Equipment to the Commission-approved Acquirer (or the Designee of the Commission-approved Acquirer);

provided, however, the Commission may eliminate, or limit the duration of, the Respondents' obligation under this provision if the Commission determines that the Commission-approved Acquirer is not using commercially reasonable best efforts to enable it to manufacture the APDO Products in a facility that is independent of Respondents.

- P. Respondents shall not join, file, prosecute or maintain any suit, in law or equity, against the Commission-approved Acquirer or the APDO Releasee(s) for the research, Development, manufacture, use, import, export, distribution, or sale of the APDO Products under the following:
1. any Patents owned or licensed by Respondents as of the Acquisition Date that claim the use of the APDO Products;
 2. any Patents owned or licensed at any time after the Acquisition Date by Respondents that claim any aspect of the research, Development, manufacture, use, import, export, distribution, or sale of the APDO Products, other than such Patents that claim inventions conceived by and reduced to practice after the Acquisition Date.

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- Q. Respondents shall not, in any jurisdiction throughout the world: (1) use the Product Trademarks related to APDO or any mark confusingly similar to the Product Trademarks, as a trademark, tradename, or service mark; (2) attempt to register the Product Trademarks; (3) attempt to register any mark confusingly similar to the Product Trademarks; (4) challenge or interfere with the Commission-approved Acquirer's use and registration of the Product Trademarks; or (5) challenge or interfere with the Commission-approved Acquirer's efforts to enforce its trademark registrations for and trademark rights in the Product Trademarks against Third Parties; *provided however*, that nothing in this Order shall preclude Respondents from continuing to use those trademarks, tradenames, or service marks related to the Retained Products as of the Acquisition Date.
- R. The purpose of the divestiture of the APDO Assets is to ensure the continued use of the APDO Assets in the same business, independent of Respondents, in which the APDO Assets were engaged at the time of the announcement of the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

V.**IT IS FURTHER ORDERED** that:

- A. Not later than twenty (20) days after the Acquisition Date, Respondents shall amend the IntelliClean Agreement in accordance with the IntelliClean Amended Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of Philips (other than with respect to any noncompete provisions contained

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in the IntelliClean Agreement) or to reduce any obligations of Respondents (other than with respect to any noncompete provisions contained in the IntelliClean Agreement) under the IntelliClean Amended Agreement).

- B. The IntelliClean Agreement as amended in accordance with the IntelliClean Amended Agreement shall be deemed incorporated by reference into this Order and made a part hereof, and any failure by Respondents to comply with any term of the IntelliClean Amended Agreement, if such agreement is approved by the Commission in connection with the Commission's determination to make this Order final shall constitute a failure to comply with this Order. Any other Remedial Agreement related to the IntelliClean Products shall also be deemed incorporated into this Order, and any failure by Respondents to comply with any term of such Remedial Agreement related to the IntelliClean Products shall constitute a failure to comply with this Order.
- C. Respondents shall:
1. grant a perpetual, fully paid-up and royalty-free license(s) with rights to sublicense to all Product Intellectual Property, Product Licensed Intellectual Property, and the Product Manufacturing Technology to use, make, distribute, offer for sale, promote, advertise, sell, import, export, or have used, made, distributed, offered for sale, promoted, advertised, sold, imported, or exported the IntelliClean Products anywhere in the world; *provided however*, such license for the Product Intellectual Property shall also include the rights to use Respondent P&G's Crest® trademark in the United States and Canada in connection with the marketing of the IntelliClean Products for a limited period as is approved by the Commission in the Remedial Agreements related to the IntelliClean Products;

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2. as reflected in the IntelliClean Amended Agreement, Contract Manufacture and deliver to Philip or its Designee, in a timely manner and under reasonable terms and conditions (such terms and conditions to be in a manner that preserves the full economic viability and competitiveness of the IntelliClean Products) a supply of the finished dentifrice Product used in connection with the rechargeable toothbrush(es) that are a part of the IntelliClean Products;
3. upon reasonable notice and request from Philips to the Respondents, provide in a timely manner at no greater than Direct Cost the following:
 - a. assistance and advice to enable Philips or its Designee to obtain all necessary permits and approvals from any Agency or Governmental Entity to manufacture and sell the dentifrice used in connection with the rechargeable toothbrush(es) that are a part of the IntelliClean Products;
 - b. assistance to Philips or its Designee to manufacture the dentifrice used in connection with the rechargeable toothbrush(es) that are a part of the IntelliClean Products in substantially the same manner and quality employed or achieved by or behalf of Respondent P&G; and
 - c. consultation with knowledgeable employees of Respondents and training, at the request of Philips and at a facility chosen by Philips sufficient to satisfy management of Philips that its personnel (or the Designee's personnel) are adequately trained in the manufacture of the dentifrice used in connection with the rechargeable toothbrush(es) that are a part of the IntelliClean Products.

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D. Respondents shall:

1. submit to Philips, at Respondents' expense, copies of all Confidential Business Information related to the research, Development, manufacture, distribution, marketing or sale of IntelliClean Products;
2. deliver such Confidential Business Information as follows: (1) in good faith; (2) as soon as practicable, avoiding any delays in transmission of the respective information; and (3) in a manner that ensures its completeness and accuracy and that fully preserves its usefulness; and
3. pending complete delivery of all such Confidential Business Information to Philips, provide Philips and the Interim Monitor (if any has been appointed) with access to all such Confidential Business Information and employees who possess or are able to locate such information for the purposes of identifying the books, records, and files related to the IntelliClean Products that contain such Confidential Business Information and facilitating the delivery in a manner consistent with this Order.

E. Respondents shall not enforce any agreement against a Third Party or Philips to the extent that such agreement may limit or otherwise impair the ability of Philips to acquire the Product Manufacturing Technology related to the IntelliClean Products or related equipment from the Third Party. Such agreements include, but are not limited to, agreements with respect to the disclosure of Confidential Business Information related to such Product Manufacturing Technology.

F. Not later than ten (10) days after the Closing Date, Respondents shall grant a release to each Third Party that is subject to an agreement as described in Paragraph V.E. that

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allows the Third Party to provide the relevant Product Manufacturing Technology or related equipment to Philips. Within five (5) days of the execution of each such release, Respondents shall provide a copy of the release to Philips.

- G. For a period commencing on the date this Order becomes final and continuing for ten (10) years, Respondents shall not, without providing advance written notification to the Commission, terminate the IntelliClean Amended Agreement. Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as “the Notification”), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such Notification. Notification shall be filed with the Secretary of the Commission, Notification need not be made to the United States Department of Justice, and Notification is required only of the Respondents and not of any other party to the transaction. Respondents shall provide two (2) complete copies (with all attachments and exhibits) of the Notification to the Commission at least thirty (30) days prior to terminating the IntelliClean Amended Agreement (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondents shall not terminate IntelliClean Amended Agreement until thirty (30) days after substantially complying with such request. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition; *provided, however*, that prior notification shall not be required by this Paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

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- H. The purpose of Paragraph V of this Order is to ensure the continued marketing and sale of the IntelliClean Products independently of Respondents and for the same purposes which it was researched, developed, manufactured, marketed and sold by Philips and Respondent P&G at the time of the announcement of the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

VI.

IT IS FURTHER ORDERED that:

- A. At any time after Respondents sign the Consent Agreement in this matter, the Commission may appoint a monitor ("Interim Monitor") to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order, the Order to Maintain Assets and the Remedial Agreements.
- B. The Commission shall select the Interim Monitor, subject to the consent of Respondent P&G, which consent shall not be unreasonably withheld. If Respondent P&G has not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondent P&G of the identity of any proposed Interim Monitor, Respondents shall be deemed to have consented to the selection of the proposed Interim Monitor.
- C. Not later than ten (10) days after the appointment of the Interim Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondents' compliance with the relevant requirements of

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the Order in a manner consistent with the purposes of the Order.

- D. If an Interim Monitor is appointed, Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Interim Monitor:
1. The Interim Monitor shall have the power and authority to monitor Respondents' compliance with the divestiture and asset maintenance obligations and related requirements of the Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of the Order and in consultation with the Commission.
 2. The Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission.
 3. The Interim Monitor shall serve until the later of:
 - a. the completion by Respondents of the divestiture of all relevant assets required to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed pursuant to this Order in a manner that fully satisfies the requirements of the Order and notification by the Commission-approved Acquirer to the Interim Monitor that it is fully capable of producing the relevant Product(s) acquired pursuant to a Remedial Agreement independently of Respondents; and fulfillment of the Respondents obligations under this Order with respect to the IntelliClean Products; or
 - b. the completion by Respondents of the last obligation under the Order pertaining to the Interim Monitor's service;

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provided, however, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Order.

4. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondents' compliance with their obligations under the Order, including, but not limited to, their obligations related to the relevant assets. Respondents shall cooperate with any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondents' compliance with the Order.
5. The Interim Monitor shall serve, without bond or other security, at the expense of Respondents on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ, at the expense of the Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.
6. Respondents shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence,

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willful or wanton acts, or bad faith by the Interim Monitor.

7. Respondents shall report to the Interim Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondents, and any reports submitted by the Commission-approved Acquirer with respect to the performance of Respondents' obligations under the Order or the Remedial Agreement. Within thirty (30) Days from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under the Order.
 8. Respondents may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.
- F. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph.
- G. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional

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orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Order.

- H. The Interim Monitor appointed pursuant to this Order may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order.

VII.

IT IS FURTHER ORDERED that:

- A. If Respondents have not fully complied with the obligations to assign, grant, license, divest, transfer, deliver or otherwise convey relevant assets as required by this Order, the Commission may appoint a trustee (“Divestiture Trustee”) to assign, grant, license, divest, transfer, deliver or otherwise convey the assets required to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed pursuant to each of the relevant Paragraphs in a manner that satisfies the requirements of each such Paragraph. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to assign, grant, license, divest, transfer, deliver or otherwise convey the relevant assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.

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- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent P&G, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent P&G has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondent P&G of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestiture required by this Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver or otherwise convey the assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed.
 2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan of divestiture or

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believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission; *provided, however*, the Commission may extend the divestiture period only two (2) times.

3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall Develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.
4. The Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondent from

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among those approved by the Commission; and, *provided further, however*, that Respondent shall select such entity within five (5) days after receiving notification of the Commission's approval.

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of the Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.
6. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.

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7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order; *provided, however*, that the Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Interim Monitor pursuant to the relevant provisions of the Order to Maintain Assets in this matter.
 8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
 9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- E. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph.
- F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

VIII.**IT IS FURTHER ORDERED** that:

- A. Within five (5) days of the Acquisition, Respondents shall submit to the Commission a letter certifying the date on which the Acquisition occurred.
- B. Within thirty (30) days after the date this Order becomes final, and every sixty (60) days thereafter until Respondents have fully complied with, the following:
 - 1. Paragraphs II.A, Paragraphs III.A. and IV.A. (*i.e.*, has assigned, licensed, divested, transferred, delivered or otherwise conveyed all relevant assets to the relevant Commission-approved Acquirer in a manner that fully satisfies the requirements of the Order) and Paragraph V.A. of this Order,
 - 2. Paragraphs II.C., II.D., II.F., III.C., III.D., III.F., IV.C., IV.D., IV.F., V.A., V.D., and V.F.; and
 - 3. and all its responsibilities to render transitional services to the relevant Commission-approved Acquirer as provided by this Order and the Remedial Agreement(s),

Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondent shall submit at the same time a copy of its report concerning compliance with this Order to the Interim Monitor, if any Interim Monitor has been appointed.

Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with the relevant Paragraphs of the Order, including a full description of all substantive contacts or negotiations related to the divestiture of the relevant

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assets and the identity of all Persons contacted, including, copies of all written communications to and from such Persons, all internal memoranda, and all reports and recommendations concerning completing the obligations.

- C. One (1) year after the date this Order becomes final, annually for the next nine years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with the Order.

IX.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed (1) dissolution of such Respondent, (2) acquisition, merger or consolidation of Respondents, or (3) any other change in the Respondents that may affect compliance obligations arising out of the Order, including, but not limited to, assignment and the creation or dissolution of subsidiaries.

X.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents made to their principal United States offices, Respondents shall permit any duly authorized representative of the Commission:

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- A. access, during business office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondent related to compliance with this Order; and
- B. upon five (5) days' notice to Respondents and without restraint or interference from Respondent, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

XI.

IT IS FURTHER ORDERED that this Order shall terminate ten (10) years from the date on which the Order becomes final.

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**PUBLIC
APPENDIX I
ORDER TO MAINTAIN ASSETS**

**NON-PUBLIC APPENDIX II
AGREEMENTS RELATED TO
THE SPINBRUSH ASSETS
[Redacted From the Public Record Version But Incorporated
By Reference]**

**NON-PUBLIC
APPENDIX III
AGREEMENTS RELATED TO
THE INTELICLEAN PRODUCTS
[Redacted From the Public Record Version But Incorporated
By Reference]**

**NON-PUBLIC
APPENDIX IV
REMBRANDT KEY EMPLOYEES
[Redacted From the Public Record Version But Incorporated
By Reference]**

**NON-PUBLIC
APPENDIX V
RELATED TO THE DEFINITION OF
REMBRANDT IP PROTECTED PRODUCTS
[Redacted From the Public Record Version But Incorporated
By Reference]**

Order

IN THE MATTER OF
THE PROCTER & GAMBLE COMPANY
ORDER TO MAINTAIN ASSETS

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Respondent The Procter & Gamble Company ("P&G") of Respondent The Gillette Company ("Gillette"), hereinafter referred to as "Respondents," and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined to accept the executed Consent Agreement and to place such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues this Order to Maintain Assets: