

Complaint

IN THE MATTER OF

PFIZER, INC.

AND

WYETHCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5(A) OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 7
OF THE CLAYTON ACT*Docket No. C-4267; File No. 091 0053*
Filed, October 14, 2009 — Decision, January 25, 2010

This consent order addresses the acquisition by Pfizer Inc., of all of the issued and outstanding shares of Wyeth. Pfizer and Wyeth are two of only four major suppliers in the relevant cattle, companion animal, and equine health products markets. In the majority of these markets, the transaction would reduce the number of competitors from four to three and give Pfizer between 50 and 100 percent of the market and the acquisition would create a monopoly in the market for equine joint-injected steroids in the United States. The complaint alleges that the acquisition would cause significant competitive harm to consumers in the relevant U.S. markets for cattle, companion animal, and equine health products by eliminating actual, direct, and substantial competition between Pfizer and Wyeth. The Consent Agreement requires Pfizer to divest to Boehringer Ingelheim Vetmedica, Inc., Wyeth's U.S. animal health business in all areas of overlap, except for equine tapeworm parasiticides and equine herpesvirus vaccines. In the area of equine tapeworm parasiticides, the consent order requires Pfizer to return to Virbac S.A. Pfizer's exclusive distribution rights for these products; and in the area of equine herpesvirus vaccines, Pfizer is ordered to divest to BI Pfizer's equine herpesvirus products. The assets for each of the divestitures include all of the relevant intellectual property, customer lists, research and development information, and regulatory materials, as well as two of Wyeth's three U.S. manufacturing facilities.

Participants

For the *Commission*: Michael R. Barnett, Susan Huber, Lynda Lao, Gregory P Luib, David Von Nirschl, and Kari A. Wallace.

For the *Respondents*: Andrew J. Forman and Charles F. (Rick) Rule, Cadwalader, Wickersham & Taft LLP; Harry T.

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Robins and Scott A. Stempl, Morgan, Lewis, & Bockius LLP; and Joseph F Tringali, Simpson, Thatcher & Bartlett LLP.

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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 Pfizer Inc. ("Pfizer"), a corporation subject to the jurisdiction of the Commission, and Respondent Wyeth ("Wyeth"), a corporation subject to the jurisdiction of the Commission, have agreed to merge 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. RESPONDENTS

1. Respondent Pfizer is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its corporate head office and principal place of business located at 235 East 42nd Street, New York, New York 10017.

2. Respondent Pfizer is engaged in, among other things, the research, development, manufacture, distribution, and sale of human pharmaceutical products, as well as animal health products through its Pfizer Animal Health division.

3. Respondent Wyeth f/k/a American Home Products Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters at 5 Giralda Farms, Madison, New Jersey 07940.

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4. Respondent Wyeth is engaged in, among other things, the research, development, manufacture, distribution, and sale of human pharmaceutical products, as well as animal health products through its Fort Dodge Animal Health ("Fort Dodge") division.

5. Respondents are, and at all times herein have been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and are corporations whose businesses are in or affect commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

II. THE PROPOSED ACQUISITION

6. Pursuant to an Agreement and Plan of Merger among Pfizer, Wagner Acquisition Corp., and Wyeth dated as of January 25, 2009 (the "Merger Agreement"), Pfizer proposes to acquire all of the issued and outstanding shares of Wyeth (the "Acquisition"). The consideration received by Wyeth shareholders is valued at approximately \$68 billion.

III. THE RELEVANT MARKETS

7. For the purposes of this Complaint, the relevant markets in which to analyze the effects of the Acquisition are the manufacture and sale of:

- a. killed cattle vaccines for the prevention or treatment of viral respiratory disease, including infectious bovine rhinotracheitis, bovine virus diarrhea (type 1 and/or 2), disease caused by parainfluenza 3, and/or disease caused by bovine respiratory syncytial virus;
- b. modified-live cattle vaccines for the prevention or treatment of viral respiratory disease, including infectious bovine rhinotracheitis, bovine virus diarrhea (types 1 and/or 2), disease caused by parainfluenza 3,

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and/or disease caused by bovine respiratory syncytial virus;

- c. cattle vaccines for the prevention or treatment of reproductive disease caused by *Leptospira* and/or *Campylobacter fetus* bacteria;
- d. cattle vaccines for the prevention or treatment of disease caused by *Pasteurella multocida* and/or *Mannheimia haemolytica* bacteria ("cattle pasteurella vaccines");
- e. pharmaceutical products for the treatment of "lactating-cow" mastitis;
- f. pharmaceutical products for the treatment of "dry-cow" mastitis;
- g. dairy cattle broad-spectrum antibiotics with low milk-withholding times;
- h. cattle macrocyclic lactone parasiticides;
- i. cattle benzimidazole parasiticides;
- j. canine combination vaccines for the prevention or treatment of disease caused by distemper, adenovirus (type 1 and/or 2), parainfluenza, parvovirus, coronavirus, and/or *Leptospira* bacteria;
- k. canine monovalent vaccines for the prevention or treatment of disease caused by parvovirus;
- l. canine monovalent vaccines for the prevention or treatment of disease caused by coronavirus;

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- m. canine monovalent vaccines for the prevention or treatment of disease caused by *Leptospira* bacteria;
- n. canine vaccines for the prevention or treatment of disease caused by *Bordetella bronchiseptica* bacteria;
- o. feline combination vaccines for the prevention or treatment of feline panleukopenia, rhinotracheitis, chlamydia, and/or disease caused by calicivirus;
- p. feline vaccines for the prevention or treatment of feline leukemia;
- q. companion animal vaccines for the prevention or treatment of rabies;
- r. companion animal cephalosporin antibiotics;
- s. equine tapeworm parasiticides containing praziquantel;
- t. equine vaccines for the prevention or treatment of disease caused by equine herpesvirus; and
- u. equine joint-injected steroids for the prevention or treatment of joint inflammation.

8. 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.

IV. THE STRUCTURE OF THE MARKETS

9. The markets for killed cattle respiratory vaccines are highly concentrated, with Pfizer and Fort Dodge accounting for over 50 percent of all killed respiratory vaccines in the United States. The most commonly used killed respiratory vaccine is the 5-way vaccine, which prevents infectious bovine rhinotracheitis ("IBR"), types 1 and 2 of bovine virus diarrhea ("BVD"),

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parainfluenza 3 (“PI3”), and bovine respiratory syncytial virus (“BRSV”). The proposed acquisition will give Pfizer 61 percent of the market for killed 5-way respiratory vaccines, which represents approximately two-thirds of the \$15.3 million in killed respiratory vaccines sold in the United States, leaving Novartis Animal Health (“Novartis”) as Pfizer’s only other significant competitor in this market.

10. The markets for modified-live cattle respiratory vaccines are highly concentrated, with Pfizer and Fort Dodge accounting for over 53 percent of all modified-live respiratory vaccines in the United States. As is the case in the killed respiratory vaccine markets, the largest portion, approximately 53 percent, of the \$63 million in modified-live respiratory vaccine sales is represented by sales of the 5-way modified-live respiratory vaccine, which prevents IBR, BVD (types 1 and 2), PI3, and BRSV. As a result of the proposed acquisition, Pfizer would control over 68 percent of 5-way modified-live respiratory vaccine sales in the United States.

11. The markets for cattle reproductive vaccines include, most significantly: (1) the market for modified-live 10-way vaccines, which contain modified-live viral respiratory and *Leptospira* antigens; (2) the market for killed 10-way vaccines, which contain killed viral respiratory and *Leptospira* antigens; and (3) the market for leptovibrio vaccines, which contain *Leptospira* and *Campylobacter fetus* antigens. Each of these markets is highly concentrated. Pfizer and Fort Dodge represent 83 percent of the \$13 million modified-live 10-way sales in the United States, with Intervet/Schering-Plough Animal Health (“ISP”), AgriLaboratories, Ltd. (“AgriLabs”), and Boehringer Ingelheim Vetmedica, Inc. (“BI”) accounting for 11 percent, 4 percent, and 2 percent, respectively. The acquisition also would provide Pfizer with 76 percent of sales in killed 10-way vaccines, with Novartis as the only significant remaining competitor with 18 percent, and AgriLabs a distant third with 6 percent of this \$9 million market. Finally, in the \$2.6 million leptovibrio vaccine market, Pfizer and

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Fort Dodge are the third- and second-largest producers, respectively – collectively accounting for almost 39 percent of the market – while Novartis leads the lepto/vibrio market with 41 percent. Pfizer and Novartis would account for nearly 80 percent of lepto/vibrio vaccine sales in the United States following the proposed acquisition.

12. The markets for cattle pasteurella vaccines in the United States are highly concentrated. Currently, Pfizer, Fort Dodge, BI, ISP, and Merial are the only significant suppliers in these markets. The proposed acquisition would reduce the number of competitors in these markets, leaving Pfizer significantly larger than any of its remaining competitors.

13. The markets for lactating-cow and dry-cow mastitis treatments are highly concentrated, with Pfizer and Fort Dodge together accounting for more than 90 percent of sales in each of these markets. The proposed acquisition would increase the Herfindahl-Hirschman Index (“HHI”) by 3,292 points to 8,588 points in the lactating-cow mastitis market, as well as increase the HHI by 4,260 points to 9,011 points in the dry-cow mastitis market.

14. The proposed acquisition would combine two of only three companies that sell dairy cattle broad-spectrum antibiotic products with low milk-withholding times in the United States. Pfizer’s products are considered the most effective antibiotics for dairy cows and have a zero-day withholding period, while Fort Dodge’s product has a low withholding period of two to four days. A generic version of one of Pfizer’s products was recently introduced. As a result of the proposed acquisition, Pfizer would have a near monopoly in the \$162 million market for broad-spectrum antibiotics with low milk-withholding times for dairy cattle.

15. Pfizer, Fort Dodge, and Merial are the only three branded players in the U.S. market for cattle macrocyclic lactone parasiticides. The proposed acquisition would significantly

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increase the concentration in this market, leaving Pfizer with approximately 42 percent of this \$118 million market. Suppliers of generic macrocyclic lactone products do not provide a serious competitive constraint due to their poor reputation in this market. Further, such suppliers sell generic versions of only Merial's product; there are no generic versions of Pfizer's or Fort Dodge's products currently available. The proposed acquisition would increase the HHI in this market by 875 points to 2,381 points.

16. Only Pfizer, Fort Dodge, and ISP offer cattle benzimidazole parasiticides in the United States. ISP accounts for 67 percent of this \$16 million market, with Pfizer and Fort Dodge the only two other market participants. As a result of the proposed acquisition, the HHI in this market would increase by 271 points to a post-acquisition HHI of 5,613 points.

17. Pfizer, Fort Dodge, Merial, and ISP are the only four significant companies that supply canine combination vaccines in the United States. Total U.S. sales of canine combination vaccines are \$126 million. The proposed acquisition would reduce the number of significant suppliers of canine combination vaccines from four to three.

18. Pfizer, Fort Dodge, Merial, and ISP are the only four companies that supply canine monovalent parvovirus vaccines in the United States, a \$2.1 million market. The proposed acquisition would give Pfizer control of 66 percent of the market and would increase the HHI by 2,193 points, from 2,932 to 5,125 points.

19. Pfizer, Fort Dodge, Merial, and ISP are the only four companies that supply canine monovalent coronavirus vaccines in the United States. After the proposed acquisition, Pfizer would have an 81 percent share of this \$2.3 million market. The HHI in this market would increase by 2,155 points to a post-acquisition HHI of 6,869 points.

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20. The proposed acquisition would combine the only two companies that currently supply canine monovalent leptospira vaccines in the United States. Pfizer has a 53 percent share of this \$9.2 million market, and Fort Dodge controls the remaining 47 percent of the market. The proposed acquisition would result in Pfizer having a monopoly in the market for canine monovalent leptospira vaccines, with the HHI increasing from 5,019 to 10,000 points.

21. Pfizer, Fort Dodge, ISP, Merial, and BI are the only five companies that supply canine bordetella vaccines in the United States, sales of which total \$53.3 million. The proposed acquisition would reduce the number of suppliers of canine bordetella vaccines from five to four, with Pfizer significantly larger than its three remaining competitors.

22. Pfizer, Fort Dodge, Merial, and ISP are the only four significant companies that supply feline combination vaccines in the United States. Total U.S. sales of feline combination vaccines are \$28 million. The proposed acquisition would reduce the number of significant suppliers of feline combination vaccines from four to three and produce a firm that is considerably larger than its two remaining competitors.

23. Pfizer, Fort Dodge, Merial, and ISP are the only four companies that supply feline leukemia vaccines in the United States, sales of which total \$38 million. The proposed acquisition would reduce the number of suppliers of feline leukemia vaccines from four to three, with Pfizer again significantly larger than its two remaining competitors.

24. Pfizer, Fort Dodge, Merial, and ISP are the only four companies that offer companion animal rabies vaccines in the United States, sales of which amount to \$60 million. The proposed acquisition would reduce the number of suppliers of companion animal rabies vaccines from four to three.

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25. Pfizer and Fort Dodge are the only two suppliers of branded companion animal cephalosporins in the United States. The only other companion animal cephalosporins are generic human and animal cephalosporin products that may be used to treat companion animals. These products, however, have limited competitive significance because of dosing differences found in the generic human products and a relative lack of technical and research support offered with the generic animal products. After the proposed acquisition, Pfizer would have a 70 percent share of this \$52 million market. The HHI in this market would increase by 709 points to a post-acquisition HHI of 4,900 points.

26. The market for equine tapeworm parasiticides containing praziquantel in the United States is highly concentrated. Pfizer has a 33 percent share of this approximately \$22 million market; Fort Dodge has a 31 percent market share; and Merial has a 36 percent market share. As a result of the proposed acquisition, Pfizer would have 64 percent of the market for equine tapeworm parasiticides, leaving only Merial as a competitor to Pfizer. The HHI in this market would increase by 2,027 points to a post-acquisition HHI of 5,375 points.

27. Pfizer, Fort Dodge, ISP, and BI are the only suppliers of equine herpesvirus vaccines in the United States, sales of which total \$30 million. The proposed acquisition would reduce the number of suppliers of equine herpesvirus vaccines from four to three, with Pfizer significantly larger than its two remaining competitors.

28. The proposed acquisition would combine the only two companies offering joint-injected steroids to treat joint inflammation in equines in the United States. Pfizer has a 60 percent share of this \$7.3 million market, while Wyeth has a 40 percent share. The proposed acquisition would increase the HHI by 4,804 points and create a monopoly in the market for equine joint-injected steroids.

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V. ENTRY CONDITIONS

29. New entry into the relevant markets would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of the Acquisition set forth in Paragraph 31 below. New entry into the relevant markets is a difficult process because of, among other things, the time and cost associated with researching and developing the products, obtaining approval from the United States Food and Drug Administration (in the case of pharmaceutical products) or the United States Department of Agriculture (in the case of biological products) to market the products, and gaining customer acceptance. As a result, new entry into any of these markets sufficient to achieve a significant market impact within two years is unlikely.

30. Expansion by smaller competitors into the relevant markets would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of the Acquisition set forth in Paragraph 31 below.

VI. EFFECTS OF THE ACQUISITION

31. 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 Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the following ways, among others:

- a. by eliminating actual, direct, and substantial competition between Pfizer and Wyeth for the sale of each of the relevant products in the United States;
- b. by increasing the likelihood that the merged entity will exercise market power unilaterally in the U.S. markets for each of the relevant products;

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- c. by increasing the likelihood and degree of coordinated interaction between or among suppliers in the U.S. markets for each of the relevant products;
- d. by reducing the merged entity's incentives to pursue further innovation in the U.S. markets for each of the relevant products; and
- e. by increasing the likelihood that U.S. customers would be forced to pay higher prices for each of the relevant products.

VII. VIOLATIONS CHARGED

32. The Merger Agreement described in Paragraph 6 above constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

33. The Acquisition described in Paragraph 6 above, 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 Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this fourteenth day of October, 2009, issues its Complaint against said Respondents.

By the Commission, Commissioner Harbour and Commissioner Kovacic recused.

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DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Respondent Pfizer Inc. ("Pfizer") of Respondent Wyeth, and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, 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, 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, and having duly considered the comments received from interested persons pursuant to section 2.34 of its Rules, 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 Pfizer is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its corporate head office and principal place of business located at 235 East 42nd St., New York, New York 10017.
2. Respondent Wyeth f/k/a American Home Products Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its headquarters address at 5 Giralda Farms, Madison, New Jersey 07940.
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. “Pfizer” means Pfizer Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Pfizer (including, but not limited to, Wagner Acquisition Corp.), and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each. After the Acquisition, Pfizer shall include Wyeth.
- B. “Wyeth” means Wyeth, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions,

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groups and affiliates in each case controlled by Wyeth (including, but not limited to, Fort Dodge Animal Health), and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.

- C. “Respondent(s)” means Pfizer and Wyeth, individually and collectively.
- D. “Commission” means the Federal Trade Commission.
- E. “Acquirer(s)” means the following:
 - 1. a Person specified by name in this Order to acquire particular assets or rights that 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. a Person approved by the Commission to acquire particular assets or rights that Respondents are required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order.
- F. “Acquisition” means the acquisition contemplated by the Agreement and Plan of Merger among Pfizer Inc., Wagner Acquisition Corp. and Wyeth, dated as of January 25, 2009 (“Agreement and Plan of Merger”).
- G. “Agency(ies)” means any government 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 a Product. The term “Agency” includes,

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without limitation, the United States Food and Drug Administration (“FDA”), and the United States Department of Agriculture (“USDA”).

H. “Agency Manufacturing Standards” means:

1. for any Product regulated by the FDA, current Good Manufacturing Practice, *i.e.*, cGMP, as set forth in the United States Federal Food, Drug, and Cosmetic Act, as amended, and includes all rules and regulations promulgated by the FDA thereunder; or
2. for any Product regulated by the USDA, current manufacturing regulations contained in Title 9 of the Code of Federal Regulations pertaining to veterinary biologics and includes all rules and regulations promulgated by the USDA thereunder.

I. “Animal Health Pipeline Products” means:

1. all Products in Development by Respondent Wyeth prior to the Effective Date and all Products (other than the Animal Health Products) that were in Development (whether or not such Development has been discontinued) by Respondent Wyeth at any time within the five (5) year period immediately preceding the Effective Date for use in the following Fields:
 - a. the following diseases and pathogens within bovines: pneumonia, reproductive disease, neurological disease, musculoskeletal disease, renal disease, production loss disease, hematological disease, ecto and endoparasites (bovine and ovine), leptospirosis, salmonellosis, Johnne’s disease, mastitis,

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parainfluenza-3 virus, bovine viral diarrhea virus, infectious bovine rhinotracheitis virus, pasteurellosis, bovine respiratory syncytial virus, rhinotracheitis, vibriosis, and enteric disease/ diarrhea, and diseases treatable with chlortetracycline, tetracycline, sulfamethazine, sulfachlorpyridazine, ampicillin, cephalixin, cloxacillin, hetacillin, and/or moxidecin;

- b. the following diseases, pathogens, and pharmacological activities within canines: adenoviruses, bordetellosis, borellosis, coronavirus, enteric disease/diarrhea, respiratory disease, infections, dermatological disease, neurological disease, hepatic disease, renal disease, ophthalmological disease, hematological disease, arthropathy, distemper, influenza, leptospirosis, parvovirus, parainfluenza, and rabies, and diseases treatable with ampicillin, hetacillin, cefadroxil, difloxacin, triamcinolone, and/or etodolac;
- c. the following diseases, pathogens, and pharmacological activities within felines: calicivirus, chlamydia, feline immunodeficiency virus, feline leukemia, panleukopenia, pneumonitis, rabies, rhinotracheitis, enteric disease/diarrhea, ophthalmological disease, hematological disease, neurological disease, immunodeficiency, and diseases treatable with ampicillin, hetacillin, cefadroxil, difloxacin, triamcinolone, and/or etodolac; and
- d. the following diseases, pathogens, and pharmacological activities within equines: rabies, musculoskeletal disease, and diseases treatable with etodolac, triamcinolone, and/or

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hyaluronate.

2. all Products in Development by Respondent Pfizer prior to the Effective Date and all Products that were in Development (whether or not such Development has been discontinued) by Respondent Pfizer at any time within the five (5) year period immediately preceding the Effective Date, other than the Animal Health Products, for use in the following Field: herpes virus within equines.
- J. “Animal Health Product Assets” means all of the specified Respondent’s rights, title and interest in and to all assets related to such Respondent’s business within the Geographic Territory related to each of the respective Animal Health Products and Animal Health Pipeline Products to the extent legally transferable, including the research, Development, manufacture, distribution, marketing, and sale of each such Product, including, without limitation, the following:
1. the Animal Health Product Facilities;
 2. all Product Intellectual Property;
 3. all Product Improvements;
 4. all Product Approvals;
 5. all Product Manufacturing Technology;
 6. all Product Marketing Materials;
 7. all Website(s);
 8. a list of all of the Product Code Numbers, and

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rights, to the extent permitted by Law:

- a. to require Respondent(s) to discontinue the use of those Product Code Numbers in the sale or marketing of Products other than with respect to returns, rebates, allowances, and adjustments for Animal Health Products sold prior to the Effective Date;
- b. to prohibit Respondent(s) from seeking from any customer any type of cross- referencing of those Product Code Numbers with any Retained Product(s);
- c. to seek to change any cross-referencing by a customer of those Product Code Numbers with the Retained Product(s) (including the right to receive notification from Respondent(s) of any such cross-referencing that is discovered by Respondent(s));
- d. to seek cross-referencing from a customer of those Product Code Numbers with the Acquirer's Product Code Numbers;
- e. to approve the timing of Respondents' discontinued use of those Product Code Numbers in the sale or marketing of Products other than with respect to returns, rebates, allowances, and adjustments for Animal Health Products sold prior to the Effective Date; and
- f. to approve any notification(s) from Respondent(s) to any customer(s) regarding the use or discontinued use of such Product Code Numbers by Respondent(s) prior to such notification(s) being disseminated to the customer(s);

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9. all rights to all of Respondents' Applications or Veterinary Biological Product Authorization(s), as applicable;
10. the Master Files related to the above-described Applications including, but not limited to, the pharmacology and toxicology data contained in all Application(s);
11. all Product Development Reports and research data and test results;
12. at the Acquirer's option, all Product Assumed Contracts (copies to be provided to the Acquirer on or before the Closing Date);
13. all strategic safety programs submitted to the FDA or USDA, as applicable, that are designed to decrease product risk by using one or more interventions or tools beyond the package insert;
14. all pharmaco and vaccino vigilance data and records, post-marketing surveillance program to collect patient data, laboratory data and identification information required to be maintained by the FDA or USDA, as applicable, to facilitate the investigation of adverse effects;
15. a list of all customers and/or targeted customers for such Animal Health Product(s) and the gross sales (in units and dollars) of such Animal Health Products to such customers on an annual basis for 2007 and 2008, and on monthly a basis for 2009 (year-to-date) including, but not limited to, a separate list specifying the above-described information for the High Volume Accounts and

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including the name of the employee(s) for each High Volume Account that is or has been responsible for the purchase of such Animal Health Products on behalf of the High Volume Account and his or her business contact information;

16. at the Acquirer's option and to the extent approved by the Commission in the relevant Remedial Agreement, all inventory in existence as of the Closing Date including, but not limited to, raw materials, packaging materials, work-in-process and finished goods;
17. copies of all unfilled customer purchase orders for such Animal Health Product(s) as of the Closing Date, to be provided to the Acquirer not later than five (5) days after the Closing Date; and
18. all of the relevant Respondent's books, records, and files directly related to the foregoing or to such Animal Health Product(s) and/or Animal Health Pipeline Products;

provided, however, that "Animal Health Product Assets" shall not include: (1) documents relating to either Respondent's general business strategies or practices relating to marketing or sales of Products, where such documents do not discuss with particularity the Animal Health Products and/or the Animal Health Pipeline Products; (2) shall not include administrative, financial, and accounting records; (3) quality control records that are determined by the Interim Monitor or the Acquirer not to be material to the manufacture of the Animal Health Products and/or the Animal Health Pipeline Product(s); (4) Respondent Wyeth's facility located at 2000 Rockford Road, Charles City, Iowa 50616; and (5) assets licensed to

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the Acquirer pursuant to the Animal Health Product Licenses.

provided further, however, that in cases in which documents or other materials included in the relevant assets to be divested contain information: (1) that relates both to such Animal Health Product(s) and/or such Animal Health Pipeline Product(s) and to other Products or businesses of the Respondent(s) and cannot be segregated in a manner that preserves the usefulness of the information as it relates to such Animal Health Product(s) or such Animal Health Pipeline Product(s); or (2) for which the Respondent(s) has a legal obligation to retain the original copies, the Respondent(s) 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 Acquirer, the Respondent(s) shall provide such 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(s) provides the Acquirer with the above-described information without requiring Respondent(s) completely to divest itself of information that, in content, also relates to Retained Product(s).

- K. “Animal Health Product Core Employee(s)” means the Product Marketing Employees, Product Sales Employees, Product Research and Development Employees and the Product Manufacturing Employees related to each Animal Health Product and/or Animal Health Product Pipeline Product.
- L. “Animal Health Product Divestiture Agreements” means the following agreements:

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1. Amended and Restated Asset Purchase Agreement by and among Pfizer Inc., Wyeth, and Boehringer Ingelheim Vetmedica, Inc., dated September 17, 2009, and all amendments, exhibits, attachments, agreements, and schedules thereto (“Asset Purchase Agreement”);
 2. License Agreement by and among Pfizer Inc., Wyeth, and Boehringer Ingelheim Vetmedica, Inc., in the form attached to the Asset Purchase Agreement, and all amendments, exhibits, attachments, agreements, and schedules thereto;
 3. Master Manufacturing and Supply Agreement by and among Pfizer Inc., Wyeth, and Boehringer Ingelheim Vetmedica, Inc., in the form attached to the Asset Purchase Agreement, and all amendments, exhibits, attachments, agreements, and schedules thereto;
 4. Transitional Services Agreement between Pfizer Inc., and Boehringer Ingelheim Vetmedica, Inc., in the form attached to the Asset Purchase Agreement, and all amendments, exhibits, attachments, agreements, and schedules thereto; and
 5. Transitional Intellectual Property License Agreement by and between Pfizer Inc., Wyeth, and Boehringer Ingelheim Vetmedica, Inc., in the form attached to the Asset Purchase Agreement, and all amendments, exhibits, attachments, agreements, and schedules thereto.
- M. “Animal Health Product Facilities” means all assets comprising each of the facilities of Respondent Wyeth identified below, including, without limitation, all of

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the following: real estate; buildings; warehouses; storage tanks; structures; manufacturing equipment; other equipment; machinery; tools; spare parts; personal property; furniture; fixtures; supplies associated with each particular facility; and other tangible property, owned, leased, or operated on or behalf of Wyeth and located at the locations identified below:

1. 800 Fifth Street NW, Fort Dodge, Iowa, 50501;
and
2. 141 East Riverside, Fort Dodge, Iowa 50501;

provided however, that, at the Acquirer's option, the term "Animal Health Product Facilities" shall exclude such assets located at these facilities as are deemed by the Acquirer, in consultation with the Interim Monitor, to be unnecessary for the Acquirer to Develop, manufacture and sell the Animal Health Products in substantially the same manner as the Respondents.

N. "Animal Health Product Licenses" means all of the following related to the Animal Health Products and/or the Animal Health Pipeline Products:

1. a perpetual, non-exclusive, fully paid-up and royalty-free license(s) with rights to sublicense to all Product Licensed Intellectual Property and all Product Manufacturing Technology related to general manufacturing know-how:
 - a. to research and Develop the Animal Health Products and/or Animal Health Pipeline Products for marketing, distribution or sale within the United States of America;

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- b. to use, make, have made, distribute, offer for sale, promote, advertise, or sell the Animal Health Products and/or Animal Health Pipeline Products within the United States of America;
- c. to import or export the Animal Health Products to or from the United States of America to the extent related to the marketing, distribution or sale of the Animal Health Products and/or Animal Health Pipeline Products in the United States of America; and
- d. to have the Animal Health Products and/or Animal Health Pipeline Products made anywhere in the World for distribution or sale within, or import into the United States of America;

provided further however, that for any Product Licensed Intellectual Property that is the subject of a license from a Third Party to the Respondents, the scope of the rights granted hereunder shall only be required to be equal to the scope of the rights granted by the Third Party to the Respondents;

- 2. a perpetual, exclusive, fully paid-up and royalty-free license(s) with rights to sublicense under all Patents related to the Cydectin[®] Products for all Fields in the Geographic Territory; and
 - 3. a perpetual, non-exclusive, fully paid-up and royalty-free license(s) with rights to sublicense under all Patents related to the InfoVax[®] Patents for all Fields in the Geographic Territory.
- O. “Animal Health Products” means all of the following Products, including without limitation, all dosages, strengths, formulations, salt forms, routes of

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administration, and presentations of a Product, any Product Improvements related to such Products, and any medical and/or veterinary device that are proprietary to the Respondents used for the administration or application of such Products:

1. all of the following Products marketed or sold by Respondent Wyeth prior to the Acquisition for use in animals, but excluding humans:
 - a. “Antivenin Products” means all Products that contain one or more antibodies to one or more venoms from the following viperine snakes: Eastern diamondback (*C. adamanteus*), Western diamondback (*C. atrox*), Central and South American rattlesnake *C. terrificus*, and fer-de-lance (*B. atrox*);
 - b. “Aureomycin Products” means all Products that contain the active pharmaceutical ingredient generically known as chlortetracycline or Aureomycin chlortetra-cycline, together with any salts, esters, metabolites, derivatives, isomers, hydrates, solvates, ethers, quaternary amines, polymorphs and prodrugs thereof; *provided however*, the Aureomycin Products do not include the Aureo[®] trademark.
 - c. “Bronchi-Shield[®] Products” means all Products that contain one or more Antigens derived from, or to stimulate immunity to, one or more strains of the *Bordetella bronchiseptica* bacterium;
 - d. “Calicivax[®] Products” means all Products that contain one or more Antigens derived from, or to stimulate immunity to, one or more strains of

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the calicivirus;

- e. “Cefa-Drops[®] Products” and “Cefa-Tabs[®] Products” means all Products that contain the active pharmaceutical ingredient generically known as cefadroxil, together with any salts, esters, metabolites, derivatives, isomers, hydrates, solvates, ethers, quaternary amines, polymorphs and prodrugs thereof;
- f. “Cydectin[®] Products” means all Products manufactured, marketed, or sold within the Geographic Territory of the United States of America that contain the active pharmaceutical ingredient generically known as moxidectin, together with any salts, esters, metabolites, derivatives, isomers, hydrates, solvates, ethers, quaternary amines, polymorphs and prodrugs thereof; *provided however*, that the term “Cydectin[®] Products” includes only those Products containing moxidectin that are sold under the Cydectin[®] trademark;
- g. “Dicural[®] Products” means all Products that contain the active pharmaceutical ingredient generically known as difloxacin, together with any salts, esters, metabolites, derivatives, isomers, hydrates, solvates, ethers, quaternary amines, polymorphs and prodrugs thereof;
- h. “Dopram[®] Products” means all Products that contain the active pharmaceutical ingredient generically known as doxapram hydrochloride, together with any salts, esters, metabolites, derivatives, isomers, hydrates, solvates, ethers, quaternary amines, polymorphs and prodrugs thereof;

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- i. “Dry-Clox[®] Products” means all Products that contain the active pharmaceutical ingredient generically known as cloxacillin, together with any salts, esters, metabolites, derivatives, isomers, hydrates, solvates, ethers, quaternary amines, polymorphs and prodrugs thereof;
- j. “Duramune[®] Products” means:
 - 1) all Products that contain one or more Antigens derived from, or to stimulate immunity to, one or more strains of the canine distemper virus (CDV);
 - 2) all Products that contain one or more Antigens derived from, or to stimulate immunity to, one or more strains of the canine parvovirus (CPV);
 - 3) all Products that contain one or more Antigens derived from, or to stimulate immunity to, one or more strains of the *Leptospira* bacterium, including without limitation, *Leptospira grippotyphosa*, *Leptospira icterohaemorrhagiae*, *Leptospira canicola*, and *Leptospira pomona*; provided however, that the term “Duramune[®] Products” does not include Products containing these Antigens that are uniquely formulated for use in swine and sold under the Suvaxyn[®] trademark;
 - 4) all Products that contain one or more Antigens derived from, or to stimulate immunity to, one or more strains of the canine Adenovirus Type 2 (CAV-2) virus;

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- 5) all Products that contain one or more Antigens derived from, or to stimulate immunity to, one or more strains of the canine adenovirus Type 1 (CAV-1) virus;
 - 6) all Products that contain one or more Antigens derived from, or to stimulate immunity to, one or more strains of the parainfluenza virus;
 - 7) all Products that contain one or more Antigens derived from, or to stimulate immunity to, one or more strains of the canine coronavirus (CCV); and
 - 8) all Products that contain one or more Antigens derived from, or to stimulate immunity to, one or more strains of the bacteria that causes borreliosis, including without limitation, *Borrelia burgdorferi*, *Borrelia afzelii*, and *Borrelia gattinii*; provided however, that the term "Duramune[®] Products" does not include the existing monovalent Product sold under the Lyme Vax[®] trademark;
- k. "Entervene[®] Products" means all Products that contain one or more Antigens derived from, or to stimulate immunity to, one or more strains of the *Salmonella dublin* bacterium;
- l. "Etogesic[®] Products" means all Products that contain the active pharmaceutical ingredient generically known as etodolac, together with any salts, esters, metabolites, derivatives, isomers, hydrates, solvates, ethers, quaternary amines, polymorphs and prodrugs thereof;

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- m. “Fel-O-Guard[®] Products” and/or “Fel-O-Vax[®] Products” means:
- 1) all Products that contain one or more Antigens derived from, or to stimulate immunity to, one or more strains of the virus that causes panleukopenia;
 - 2) all Products that contain one or more Antigens derived from, or to stimulate immunity to, one or more strains of the calicivirus virus;
 - 3) all Products that contain one or more Antigens derived from, or to stimulate immunity to, one or more strains of the virus that causes feline viral rhinotracheitis (FVR);
 - 4) all Products that contain one or more Antigens derived from, or to stimulate immunity to, one or more strains of the *Chlamydia psittaci* bacterium;
 - 5) all Products that contain one or more Antigens derived from, or to stimulate immunity to, one or more strains of the virus that causes feline leukemia (FeLV); and
 - 6) all Products that contain one or more Antigens derived from, or to stimulate immunity to, one or more strains of the feline immunodeficiency virus;
- n. “Hetacin[®] Products” means all Products that contain the active pharmaceutical ingredient

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generically known as hetacillin, together with any salts, esters, metabolites, derivatives, isomers, hydrates, solvates, ethers, quaternary amines, polymorphs and prodrugs thereof;

- o. "Hyaluronate Products" means all Products that contain the active pharmaceutical ingredient generically known as hyaluronate, together with any salts, esters, metabolites, derivatives, isomers, hydrates, solvates, ethers, quaternary amines, polymorphs and prodrugs thereof;
- p. "Leptovax[®] Products" means all Products that contain one or more Antigens derived from, or to stimulate immunity to, one or more strains of the *Leptospira* bacterium, including without limitation, *Leptospira grippotyphosa*, *Leptospira icterohaemorrhagiae*, *Leptospira canicola*, and *Leptospira pomona*; provided however, that the term "Leptovax[®] Products" does not include Products containing these Antigens that are uniquely formulated for use in swine and sold under the Suvaxyn[®] trademark;
- q. "Mycopar[®] Products" means all Products that contain one or more Antigens derived from, or to stimulate immunity to, one or more strains of the *Mycobacterium paratuberculosis* bacterium;
- r. "Oblets[®] Products" means all Products that contain the active pharmaceutical ingredient generically known as sulfamethazine, together with any salts, esters, metabolites, derivatives, isomers, hydrates, solvates, ethers, quaternary amines, polymorphs and prodrugs thereof;

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- s. "Polyflex[®] Products" means all Products that contain the active pharmaceutical ingredient generically known as ampicillin, together with any salts, esters, metabolites, derivatives, isomers, hydrates, solvates, ethers, quaternary amines, polymorphs and prodrugs thereof;
- t. "Polyotic[®] Products" means all Products that contain the active pharmaceutical ingredient generically known as tetracycline, together with any salts, esters, metabolites, derivatives, isomers, hydrates, solvates, ethers, quaternary amines, polymorphs and prodrugs thereof;
- u. "Presponse[®] Products" means:
 - 1) all Products that contain one or more Antigens derived from, or to stimulate immunity to, one or more strains of the *Pasteurella multocida* bacterium; *provided however*, that the term "Presponse[®] Products" does not include Products containing these Antigens that are uniquely formulated for use in poultry; and
 - 2) all Products that contain one or more Antigens derived from, or to stimulate immunity to, one or more strains of the *Mannheimia haemolytica* bacterium;
- v. "Prism[®] Products" (hybrid killed/modified live virus) means:
 - 1) all Products that contain one or more Antigens derived from, or to stimulate immunity to, one or more strains of the virus that causes infectious bovine

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rhinotracheitis (IBR);

- 2) all Products that contain one or more Antigens derived from, or to stimulate immunity to, one or more strains of the virus that causes bovine viral diarrhea (BVD);
 - 3) all Products that contain one or more Antigens derived from, or to stimulate immunity to, one or more strains of the bovine respiratory syncytial virus (BRSV); and
 - 4) all Products that contain one or more Antigens derived from, or to stimulate immunity to, one or more strains of the parainfluenza-3 virus (PI₃);
- w. "Promace[®] Products" means all Products that contain the active pharmaceutical ingredient generically known as acepromazine, together with any salts, esters, metabolites, derivatives, isomers, hydrates, solvates, ethers, quaternary amines, polymorphs and prodrugs thereof;
- x. "Pyramid[®] Products" (using modified live viruses) means:
- 1) all Products that contain one or more Antigens derived from, or to stimulate immunity to, one or more strains of the virus that causes infectious bovine rhinotracheitis (IBR);
 - 2) all Products that contain one or more Antigens derived from, or to stimulate immunity to, one or more strains of the

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virus that causes bovine viral diarrhea (BVD);

- 3) all Products that contain one or more Antigens derived from, or to stimulate immunity to, one or more strains of the bovine respiratory syncytial virus (BRSV);
 - 4) all Products that contain one or more Antigens derived from, or to stimulate immunity to, one or more strains of the parainfluenza-3 virus (PI₃); and
 - 5) all Products containing any one of the above-described Antigens (1-4) in combination with one or more Antigens derived from, or to stimulate immunity to, one or more strains of *Leptospira* and/or *Mannheimia haemolytica*;
- y. "Rabvac[®] Products" means all Products that contain one or more Antigens derived from, or to stimulate immunity to, one or more strains of the rabies virus marketed and sold by Respondent Wyeth for use in animals prior to the Acquisition;
- z. "Sedazine[®] Products" means all Products that contain the active pharmaceutical ingredient generically known as xylazine, together with any salts, esters, metabolites, derivatives, isomers, hydrates, solvates, ethers, quaternary amines, polymorphs and prodrugs thereof;
- aa. "Sulmet[®] Products" means all Products that contain the active pharmaceutical ingredient generically known as sulfamethazine, together

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with any salts, esters, metabolites, derivatives, isomers, hydrates, solvates, ethers, quaternary amines, polymorphs and prodrugs thereof;

- bb. “Synanthic[®] Products” means all Products that contain the active pharmaceutical ingredient generically known as oxfendazole, together with any salts, esters, metabolites, derivatives, isomers, hydrates, solvates, ethers, quaternary amines, polymorphs and prodrugs thereof;
- cc. “The Puppyshot[®] Products” shall have the same definition as the Duramune[®] Products;
- dd. “ToDAY[®] Products” or “Cefa-Lak[®] Products” means all Products that contain the active pharmaceutical ingredient generically known as cephalixin, together with any salts, esters, metabolites, derivatives, isomers, hydrates, solvates, ethers, quaternary amines, polymorphs and prodrugs thereof;
- ee. “ToMORROW[®] Products” or “Cefa-Dri[®] Products” means all Products that contain the active pharmaceutical ingredient generically known as cephalixin, together with any salts, esters, metabolites, derivatives, isomers, hydrates, solvates, ethers, quaternary amines, polymorphs and prodrugs thereof;
- ff. “Triangle[®] Products” (using killed viruses) means:
 - 1) all Products that contain one or more Antigens derived from, or to stimulate immunity to, one or more strains of the virus that causes infectious bovine rhinotracheitis (IBR);

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- 2) all Products that contain one or more Antigens derived from, or to stimulate immunity to, one or more strains of the virus that causes bovine viral diarrhea (BVD);
 - 3) all Products that contain one or more Antigens derived from, or to stimulate immunity to, one or more strains of the bovine respiratory syncytial virus (BRSV);
 - 4) all Products that contain one or more Antigens derived from, or to stimulate immunity to, one or more strains of the parainfluenza-3 virus (PI₃); and
 - 5) all Products containing any one of the above-described Antigens (1-4) in combination with one or more Antigens derived from, or to stimulate immunity to, one or more strains of *Leptospira* and/or *Mannheimia haemolytica*;
- gg. "Trichguard[®] Products" means all Products that contain one or more Antigens derived from, or to stimulate immunity to, one or more strains of the *Tritrichomonas foetus* protozoan and all Products containing *Trichomonas foetus* Antigen in combination with one or more Antigens derived from, or to stimulate immunity to, one or more strains of *Leptospira* and/or *Campylobacter fetus*;
- hh. "Trivib[®] Products" means all Products that contain one or more Antigens derived from, or to stimulate immunity to, one or more strains of

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any of the following microorganisms:

- 1) *Campylobacter fetus*;
- 2) *Leptospira pomona*;
- 3) *Leptospira hardjo*;
- 4) *Leptospira grippotyphosa*;
- 5) *Leptospira canicola*; and/or
- 6) *Leptospira icterohaemorrhagiae*;

provided however, that the term “Trivib[®] Products” does not include Products containing these Antigens that are uniquely formulated for use in swine and sold under the Suvaxyn[®] trademark;

- ii. “Vetalar[®] Products” means all Products sold under the trademark Vetalar[®] that contain the active pharmaceutical ingredient generically known as ketamine, together with any salts, esters, metabolites, derivatives, isomers, hydrates, solvates, ethers, quaternary amines, polymorphs and prodrugs thereof;
- jj. “Vetalog[®] Products” means all Products sold under the trademark Vetalog[®] that contain the active pharmaceutical ingredient generically known as triamcinolone, together with any salts, esters, metabolites, derivatives, isomers, hydrates, solvates, ethers, quaternary amines, polymorphs and prodrugs thereof; and
- kk. “Vetisulid[®] Products” means all Products that contain the active pharmaceutical ingredient

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generically known as sodium sulfachlorpyridazine, together with any salts, esters, metabolites, derivatives, isomers, hydrates, solvates, ethers, quaternary amines, polymorphs and prodrugs thereof; and

2. all of the following Products marketed or sold by Respondent Pfizer prior to the Acquisition for use in animals, but excluding humans:

- a. “Rhinomune[®] Products” means all Products that contain one or more Antigens derived from, or to stimulate immunity to, one or more strains of the equine herpes virus Type 1 (EHV-1); and
- b. “Rhino-flu[®] Products” means all Products that contain one or more Antigens derived from, or to stimulate immunity to, one or more strains of the equine herpes virus Type 1 (EHV-1).

P. “Antigen” means any substance that when introduced to the body stimulates an immunological response. The term “Antigen” includes, without limitation, live or killed viruses, attenuated viruses, parts of viruses, toxins, bacteria, and foreign blood cells.

Q. “Application(s)” means all of the following, as defined in the United States Federal Food, Drug and Cosmetic Act, as amended: “Investigational New Animal Drug Application” (“INADA”), “New Animal Drug Application” (“NADA”), “Abbreviated New Animal Drug Application” (“ANADA”), or “Conditional New Animal Drug Application” (“CNADA”) for a Product filed or to be filed with the FDA, or its foreign Agency equivalent, and all supplements, amendments, and revisions thereto, any preparatory work, drafts and data

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necessary for the preparation thereof, and all correspondence between Respondents and the FDA or other Agency related thereto. The term “Application” and all of the foregoing terms or abbreviations include the foreign equivalents of the above-referenced filings and activities with the foreign counterpart(s) of the FDA.

R. “Biological Manufacturing and Testing Materials” means:

1. Reagents;
2. assays (including, without limitation, potency and microorganism cell protein assays);
3. Master Cells;
4. Master Seeds;
5. hybridomas;
6. antibodies;
7. cell culture media and similar materials;
8. nutrient feed for cells and microorganisms;
9. challenge materials; and
10. references;

to the extent any of the foregoing are being used, suitable for use, have been used, or are planned to be used, by Respondents for the manufacture, use, Development, or commercialization of the Animal Health Product(s) and/or Animal Health Pipeline Products.

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- S. “Boehringer Ingelheim” means Boehringer Ingelheim Vetmedica, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its headquarters address at 2621 North Belt Highway, St. Joseph, Missouri 64506-2002.
- T. “Clinical Trial(s)” means a controlled study in animals, including the target species with respect to a particular Product, of the safety or efficacy of a Product, and includes, without limitation, such clinical trials as are designed to support expanded labeling or to satisfy the requirements of an Agency in connection with any Product Approval and any other animal study used in research and Development of Animal Health Products and/or Animal Health Pipeline Products.
- U. “Closing Date” means, as to each Divestiture Product, the date on which Respondent(s) (or a Divestiture Trustee) consummates a transaction to assign, grant, license, divest, transfer, deliver, or otherwise convey assets related to such Divestiture Product to an Acquirer pursuant to this Order.
- V. “Component(s)” means any active ingredient, Antigen, nucleic acids encoding an Antigen, adjuvant, and/or other component of a Product that is intended to affect the efficacy or safety of an active ingredient of such Product; *provided however*, that Respondents may retain the right, concurrently with the Acquirer’s rights, to use adjuvants and excipients that are used in Divestiture Products and Retained Products.
- W. “Confidential Business Information” means all information owned by, or in the possession or control of, a Respondent that is not in the public domain and

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that is directly related to the research, Development, manufacture, marketing, commercialization, importation, exportation, cost, supply, sales, sales support, or use of the Divestiture Product(s);

provided however, that the restrictions contained in this Order regarding the Respondents' use, conveyance, provision, or disclosure of "Confidential Business Information" shall not apply to 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 Respondent(s);
2. information related to the Divestiture Products that were researched, Developed, manufactured, marketed, or sold by Respondent Pfizer that Respondent Wyeth can demonstrate it obtained without the assistance of Respondent Pfizer prior to the Acquisition;
3. information related to the Divestiture Products that were researched, Developed, manufactured, marketed, or sold by Respondent Wyeth that Respondent Pfizer can demonstrate it obtained without the assistance of Respondent Wyeth prior to the Acquisition;
4. information that is required by Law to be publicly disclosed;
5. information that does not directly relate to the Divestiture Products;
6. information relating to either Respondent's general business strategies or practices relating to research,

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Development, manufacture, marketing or sales of animal health Products that does not discuss with particularity the Divestiture Products; or

7. information specifically excluded from the Animal Health Product Assets.

X. “Contract Manufacture” means:

1. the manufacture of a Divestiture Product, or ingredient or Component thereof, or
2. the provision of any part of the manufacturing process including, without limitation, the finish, fill, and/or packaging of a Divestiture Product, to be supplied or provided by Respondents to an Acquirer or to the Designee of an Acquirer.

Y. “Contract Manufacture Product” means any Divestiture Product, or ingredient or Component thereof, for which any part of the manufacturing process is performed by the Respondent(s) prior to the Closing Date at a facility that is not subject to divestiture pursuant to this Order.

Z. “Designee” means any Person other than a Respondent that has been designated by an Acquirer to manufacture a Divestiture Product for that Acquirer.

AA. “Development” means all preclinical and clinical drug and biological research and development activities (including formulation), including test method development and stability testing, toxicology, formulation, process development, manufacturing scale-up, development-stage manufacturing, quality assurance/quality control development, statistical analysis and report writing, conducting Clinical Trials

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for the purpose of obtaining any and all approvals, licenses, registrations or authorizations from any Agency necessary for the manufacture, use, storage, import, export, transport, promotion, marketing, and sale of a Product (including any government price or reimbursement approvals), Product approval and registration, and regulatory affairs related to the foregoing. “Develop” means to engage in Development.

- BB. “Direct Cost” means a cost not to exceed the cost of labor, material, travel and other expenditures to the extent the costs are directly incurred to provide the relevant assistance or service. “Direct Cost” to the Acquirer for its use of any of Respondents’ employees’ labor shall not exceed the average hourly wage rate for such employee;

provided, however, in each instance where: (1) an agreement to divest relevant assets is specifically referenced and attached to this Order, and (2) such agreement becomes a Remedial Agreement for a Divestiture Product, “Direct Cost” means such cost as is provided in such Remedial Agreement for that Divestiture Product.

- CC. “Divestiture Product(s)” means the following: the Animal Health Products, the Animal Health Pipeline Products and the Equine Anthelmintic Products, individually and collectively.
- DD. “Divestiture Product Releasee(s)” means the Acquirer for the assets related to a particular Divestiture Product or any Person controlled by or under common control with such Acquirer, or any licensees, sublicensees, manufacturers, suppliers, distributors, and customers of such Acquirer, or of such Acquirer-affiliated entities.

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- EE. “Divestiture Trustee” means the trustee appointed by the Commission pursuant to the relevant provisions of this Order.
- FF. “Domain Name” means the domain name(s), universal resource locators (“URL”), and registration(s) thereof, issued by any Person or authority that issues and maintains the domain name registration. “Domain Name” shall not include any trademark or service mark rights to such domain names other than the rights to the Product Trademarks required to be divested.
- GG. “Effective Date” means the earliest of the following dates:
1. the date the Respondents close on the Acquisition pursuant to the Agreement and Plan of Merger;
 2. the date the merger contemplated by the Agreement and Plan of Merger becomes effective by filing the certificate of merger with the Secretary of State of the State of Delaware; or
 3. the date on which Respondent Pfizer acquires, directly or indirectly, fifty (50) percent or more of the voting securities of Respondent Wyeth.
- HH. “Equine Anthelmintic Product(s)” means all Product(s) that are for use within equines and that contain the active pharmaceutical ingredient Ivermectin and any dose form, presentation, or line extension thereof. “Equine Anthelmintic Product(s)” includes, without limitation, any combination of Ivermectin with any other Product, and any Product marketed or sold, or to be marketed or sold under the Equimax[®] or Equell[®] Product Trademarks.

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- II. “Equine Anthelmintic Product Agreement” means the Protocol and Amendment regarding The License and The Supply Agreements for Equimax[®] and Equell[®] Products of Virbac between Pfizer Inc. and Virbac Corporation, dated as of July 24, 2009, and all amendments, exhibits, attachments, agreements, and schedules thereto.
- JJ. “Equine Anthelmintic Product Assets” means all of the specified Respondent’s rights, title and interest in and to all assets related to such Respondent’s business within the United States of America related to each of the respective Equine Anthelmintic Products to the extent legally transferable, including the distribution, marketing, and sale of each such Product, including, without limitation, the following assets related to each of the Equine Anthelmintic Products:
1. all Product Copyrights;
 2. all Product Trademarks;
 3. all Product Tradedresses;
 4. all Product Marketing Materials;
 5. all Websites;
 6. at Virbac’s option, all Product Assumed Contracts (copies to be provided to Virbac on or before the Effective Date);
 7. all rights to obtain and file for patents, trademarks, and copyrights and registrations thereof;
 8. a list of all customers and/or targeted customers for the Equine Anthelmintic Products and the net sales

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(in either units or dollars) of such Products to such customers on either an annual, quarterly, or monthly basis including, but not limited to, a separate list specifying the above-described information for the High Volume Accounts and including the name of the employee(s) for each High Volume Account that is or has been responsible for the purchase of such Equine Anthelmintic Products on behalf of the High Volume Account and his or her business contact information;

9. at Virbac's option and to the extent approved by the Commission in the relevant Remedial Agreement, 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 Equine Anthelmintic Products;
10. copies of all unfilled customer purchase orders for the Equine Anthelmintic Products as of the Closing Date, to be provided to Virbac not later than five (5) days after the Closing Date;
11. at Virbac's option, subject to any rights of the customer, all unfilled customer purchase orders for the Equine Anthelmintic Products; and
12. all of the relevant Respondent's books, records, and files directly related to the foregoing or to the Equine Anthelmintic Products;

provided, however, that "Equine Anthelmintic Product Assets" shall not include: (1) documents relating to either Respondent's general business strategies or practices relating to marketing or sales of Products,

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where such documents do not discuss with particularity the Equine Anthelmintic Products; and (2) shall not include administrative, financial, and accounting records;

provided further, however, that in cases in which documents or other materials included in the relevant assets to be divested contain information: (1) that relates both to the Equine Anthelmintic Products and to other Products or businesses of the Respondent(s) and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the Equine Anthelmintic Products; or (2) for which the Respondent(s) has a legal obligation to retain the original copies, the Respondent(s) 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 Virbac, the Respondent(s) shall provide Virbac 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(s) provides Virbac with the above-described information without requiring Respondent(s) completely to divest itself of information that, in content, also relates to Retained Product(s).

- KK. Product Marketing Employees related to the Equine Anthelmintic Products.
- LL. “Equine Anthelmintic New Joint Development Partner” means any Person designated by Virbac as its partner to provide any aspect of the research, Development, manufacture, use, import, export, distribution, marketing, or sale related to the Equine Anthelmintic Products.

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- MM. “Field” means the prevention, treatment, diagnosis, or control of a particular disease within a particular family, genus, and/or species of non-human animals.
- NN. “Geographic Territory” shall mean the United States of America, including all its territories and possessions, unless otherwise specified.
- OO. “Government Entity” means any Federal, state, local or non-U.S. government, or any court, legislature, government agency, or government commission, or any judicial or regulatory authority of any government.
- PP. “High Volume Account(s)” means any retailer, wholesaler or distributor whose annual and/or projected annual aggregate purchase amounts (on a company-wide level), in units or in dollars, of a Divestiture Product in the United States of America from the Respondent was, or is projected to be among the top twenty (20) highest of such purchase amounts by the Respondent’s U.S. customers 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 Effective Date; (3) the end of the last quarter that immediately preceded the Closing Date for the relevant assets; or (4) the end of the last quarter following the Acquisition and/or the Closing Date.
- QQ. “InfoVax[®] Patents” means US Patent No. 5,704,648, Canadian Patent No. 2,237,570 and any and all patent rights claiming priority thereto.
- RR. “Interim Monitor” means any monitor appointed pursuant to Paragraph IV of this Order or Paragraph III

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of the related Order to Maintain Assets.

- SS. “Law” means all laws, statutes, rules, regulations, ordinances, and other pronouncements by any Government Entity having the effect of law.
- TT. “Master Cell(s)” means the master cell, working cell, and production cell existing as of the Closing Date required or used in the production of the specified Product(s).
- UU. “Master Files” means submissions made to the FDA in order to provide confidential, detailed information about facilities, processes, or articles used in the manufacturing, processing, packaging, and storing of one or more veterinary drugs, and includes both master files maintained by the FDA Center for Drug Evaluation and Research (generally referred to as drug master files) and those maintained by the FDA Center for Veterinary Medicine (generally referred to as veterinary master files).
- VV. “Master Seed(s)” means the master seed, working seed and production seed existing as of the Closing Date required or used in the production of the specified Products(s).
- WW. “Order Date” means the date on which this Decision and Order becomes final.
- XX. “Order to Maintain Assets” means the Order to Maintain Assets incorporated into and made a part of the Agreement Containing Consent Orders.
- YY. “Ownership Interest” means any and all rights, present or contingent, to hold any voting or nonvoting stock, share capital, equity or other interests, or beneficial ownership in a Person.

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- ZZ. “Patent(s)” means all patents, patent applications, including provisional patent applications, invention disclosures, certificates of invention and applications for certificates of invention 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, additions, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, and all rights therein provided by international treaties and conventions, related to any Product of or owned or licensed by Respondent(s) as of the Closing Date (*except* where this Order specifies a different time).
- AAA. “Person” means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, or other business or Government Entity, and any subsidiaries, divisions, groups or affiliates thereof.
- BBB. “Process and Analytical Documents” means the following documents, whether in paper, electronic or other format, related to the processes and Product Manufacturing Technology used by Respondents to manufacture Animal Health Products and/or Animal Health Pipeline Products and the applicable analytical methods used by Respondents:
1. Master Cell and Master Seed bank documentation, which includes but is not limited to, the following:
 - a. Master Cell Line and Master Seed Generation Technical Report (including: description of the host cell history, cell line generation procedures, vector construction, and

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selection/cloning, if any, and stability data, and transmissible spongiform encephalopathy ("TSE") certificates on ingredients);

- b. Preliminary Master Cell and Master Seed Bank Preparation Technical Report (including: description of banking procedures including storage conditions, vial thaw results, and in-house and contract lab test reports (sterility, mycoplasma, and any other contaminants));
- c. Master Cell and Master Seed Stability Technical Report (including: description of methodology, evaluation of cell growth and Master Seed titers (at increasing cell age), and any results of genetic mutation studies);
- d. Master Cell and Master Seed Banking Process Description (including: list of raw materials and suppliers, list of consumables, list of equipment, media and solution recipes, culture working volumes and conditions, criteria for transfer, seed ratios and process set points);
- e. Master Cell and Master Seed Bank Specification (including: quality assurance approved Master Cell and Master Seed bank specification);
- f. Master Cell and Master Seed Bank Raw Materials Documentation (including: list of raw materials, source and lot numbers used for Master Cell and Master Seed banking and verification of origin);
- g. Master Cell and Master Seed Bank Batch Record (including: executed and released batch records for Master Cell and Master Seed

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bank preparation and methodology and certificate of analysis); and

- h. Master Cell and Master Seed Bank Test Reports (including: copy of test reports for safety and quality assurance testing of Master Cell and Master Seed bank by in-house and contract lab);
2. Drug and Biological Substance Process Information Documentation, which includes the following:
- a. Cell Culture Process Description for Specified Engineering Run (including: list of raw materials and suppliers, list of consumables, list of equipment, media and solution recipes, culture working volumes, criteria for transfer, seed ratios, process set points, sampling requirements, criteria for feeding, and feed schedule);
 - b. Harvest Process Description for Specified Engineering Run (including: list of raw materials and suppliers, list of consumables, list of equipment, solution recipes, process set points, sampling requirements, and criteria for initiating harvest);
 - c. Purification Process Description for Specified Engineering Run (including: list of raw materials and suppliers, list of consumables, list of equipment, solution recipes, process set points, analytic and quality assurance data obtained at the beginning, during and ending of the Run, and sampling requirements);

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- d. Drug Substance Formulation Process Description for Specified Engineering Run (including: list of raw materials and suppliers, list of consumables, list of equipment, solution recipes, process set points, and sampling requirements);
- e. Cell Culture Process Development Reports (*i.e.*, summary of experiments performed during development of the cell culturing process);
- f. Harvest Process Development Reports (*i.e.*, summary of experiments performed during development of the harvesting process);
- g. Purification Process Development Reports (*i.e.*, summary of experiments performed during development of the purification process);
- h. Formulation Process Development Reports (*i.e.*, summary of experiments performed during development of the formulation process);
- i. Viral Clearance Study In-House and Contract Lab Reports (*i.e.*, summary of viral clearance/inactivation study results and conclusions (*i.e.*, total logs clearance));
- j. Drug and Biological Substance Specification (*i.e.*, the quality assurance approved drug substance specification and biological quality standards for all Components);
- k. Drug and Biological Substance Process Raw Materials Documentation (including: list of raw materials used for drug and biological

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substance manufacturing and verification of origin, including specifications and risk assessment);

- l. Batch Records for Agency Manufacturing Standards - Purification (*i.e.*, executed and released batch records, including in-process controls and testing results);
 - m. Batch Records for Agency Manufacturing Standards - Formulation (*i.e.*, executed and released batch records, including in-process controls and testing results);
 - n. Drug Substance Stability Reports (including: summary of drug substance stability); and
 - o. Test Results for Agency Manufacturing Standards (including: antibody concentration, endotoxin, sterility, mycoplasma, *in vitro* viral, and bioburden);
3. Process for Technical Transfer Documentation including: technical transfer plan detailing responsibilities, deliverables and targeted time line; transfer protocols, detailing responsibilities, procedures, sampling plan and criteria for transfer success for each of the following: cell culture process, harvest process, purification process, formulation process; transfer reports summarizing the results of the following transfers: cell culture process, harvest process, purification process, formulation process; and
 4. Analytical Methods for Technical Transfer: potency, identity, and safety assay development report detailing the development and qualification

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of the assay; potency and safety assay transfer protocol, detailing responsibilities, procedures, and criteria for transfer success; and potency assay transfer report summarizing the results of the transfer.

CCC. "Product(s)" means any pharmaceutical, biological, or genetic composition containing any formulation or dosage of a compound referenced as its pharmaceutically, biologically, or genetically active ingredient.

DDD. "Product Approval(s)" means any approvals, registrations, permits, licenses, consents, authorizations, and other approvals, and pending applications and requests therefor, required by applicable Agencies related to the research, Development, manufacture, distribution, finishing, packaging, marketing, sale, storage or transport of the Product within the United States of America, and includes, without limitation, all approvals, registrations, licenses or authorizations granted in connection with any Application or Veterinary Biological Product Authorization.

EEE. "Product Assumed Contracts" means all of the following contracts or agreements (copies of each such contract to be provided to the Acquirer on or before the Closing Date and segregated in a manner that clearly identifies the purpose(s) of each such contract):

1. that make specific reference to the Divestiture Product(s) and pursuant to which any Third Party is obligated to purchase, or has the option to purchase without further negotiation of terms, the Divestiture Product(s) from the Respondent(s) unless such contract applies generally to the Respondent's sales of Products to that Third Party;

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2. pursuant to which Respondent(s) purchases or had planned to purchase the active pharmaceutical ingredient(s), Biological Manufacturing and Testing Materials, Components, or other necessary ingredient(s) from any Third Party for use in connection with the manufacture of the Divestiture Product(s);
3. relating to any Clinical Trials involving the Divestiture Product(s);
4. with universities or other research institutions for the use of the Divestiture Product(s) in scientific research;
5. relating to the particularized marketing of the Divestiture Product(s) or educational matters relating solely to the Divestiture Product(s);
6. pursuant to which a Third Party manufactures or packages the Divestiture Product(s) on behalf of Respondent(s);
7. pursuant to which a Third Party provides the Product Manufacturing Technology related to the Divestiture Product(s) to Respondent(s);
8. pursuant to which a Third Party is licensed by Respondent(s) to use the Product Manufacturing Technology;
9. constituting confidentiality agreements involving the Divestiture Product(s);
10. involving any royalty, licensing, covenant not to sue, or similar arrangement involving the

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Divestiture Product(s);

11. pursuant to which a Third Party provides any specialized services necessary to the research, Development, manufacture or distribution of the Divestiture Products to Respondent(s) including, but not limited to, consultation arrangements; and/or
12. pursuant to which any Third Party collaborates with Respondent(s) in the performance of research, Development, marketing, distribution 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 provide to the 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).

FFF. "Product Code Numbers means:

1. for Products regulated by the FDA, the National Drug Code ("NDC") numbers, including both the labeler code assigned by the FDA and the additional numbers assigned by an Application holder as a product code for a specific Product; or
2. for Products regulated by any Agency other than the FDA, such labeler code assigned by that Agency and any additional number assigned by the holder of the Product Approvals related to the Product that appear on the packaging or labeling of a specific Product.

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GGG. "Product Copyrights" means rights to all original works of authorship of any kind directly related to the Divestiture Product(s) and any registrations and applications for registrations thereof within the Geographic Territory, including, but not limited to, the following: all such rights with respect to all promotional materials for healthcare providers, all promotional materials for animal owners and/or breeders, and educational materials for the sales force; copyrights in all preclinical, clinical and process development data and reports relating to the research and Development of the Divestiture Product(s) or of any materials used in the research, Development, manufacture, marketing or sale of the Divestiture Product(s), including all copyrights in raw data relating to Clinical Trials of the Divestiture Product(s), all case report forms relating thereto and all statistical programs developed (or modified in a manner material to the use or function thereof (other than through user references)) to analyze clinical data, all market research data, market intelligence reports and statistical programs (if any) used for marketing and sales research; all copyrights in customer information, promotional and marketing materials, the Divestiture Product(s) sales forecasting models, medical education materials, sales training materials, and advertising and display materials; all records relating to employees who accept employment with the Acquirer (excluding any personnel records the transfer of which is prohibited by applicable Law); all copyrights in records, including customer lists, sales force call activity reports, vendor lists, sales data, reimbursement data, speaker lists, manufacturing records, manufacturing processes, and supplier lists; all copyrights in data contained in laboratory notebooks relating to the Divestiture Product(s) or relating to its biology; all copyrights in adverse experience reports

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and files related thereto (including source documentation) and all copyrights in periodic adverse experience reports and all data contained in electronic databases relating to adverse experience reports and periodic adverse experience reports; all copyrights in analytical and quality control data; all correspondence with the FDA; and all correspondence with the USDA.

HHH. "Product Development Reports" means:

1. Pharmacokinetic study reports related to the specified Divestiture Product(s);
2. Bioavailability study reports (including reference listed drug information) related to the specified Divestiture Product(s);
3. Bioequivalence study reports (including reference listed drug information) related to the specified Divestiture Product(s);
4. all correspondence to the Respondent(s) from the FDA or USDA, as applicable to the specified Product, and from the Respondent(s) to the FDA or USDA, as applicable to the specified Product, relating to the Application(s) or Veterinary Biological Product Authorization(s) submitted by, on behalf of, or acquired by, the Respondent(s) related to the specified Divestiture Product;
5. annual and periodic reports related to the above-described Application(s) or Veterinary Biological Product Authorization(s), including any safety update reports;
6. FDA or USDA, as applicable to the specified Product, approved Product labeling related to the specified Divestiture Product(s);

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7. currently used product package inserts (including historical change of controls summaries) related to the specified Divestiture Product(s);
 8. FDA or USDA, as applicable to the specified Product, approved circulars for animal owners and/or breeders and information related to the specified Divestiture Product(s);
 9. adverse event/serious adverse event summaries related to the specified Divestiture Product(s);
 10. summary of Product complaints from physicians or veterinarians related to the specified Divestiture Product(s);
 11. summary of Product complaints from customers related to the specified Divestiture Product(s); and
 12. Product recall reports including those filed with the FDA or USDA, as applicable to the specified Product, related to the specified Divestiture Product(s).
- III. "Product Employee Information" means the following, for each employee, as and to the extent permitted by 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:

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- 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 if such appraisal discloses whether the employee has worked on the Divestiture Product;
 - d. the base salary or current wages;
 - e. the most recent bonus paid, aggregate annual compensation for the relevant 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
 - 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 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.
- JJJ. "Product Intellectual Property" means all of the following related to a Divestiture Product (other than Product Licensed Intellectual Property):

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1. Patents;
2. Product Copyrights;
3. Product Trademarks, 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, trademarks, and copyrights and registrations thereof and to bring suit against a Third Party for the past, present or future infringement, misappropriation, dilution, misuse or other violations of any of the foregoing;

provided, however, "Product Intellectual Property" does not include the corporate names or corporate trade dress of "Pfizer" or "Wyeth," or the corporate names or corporate trade dress of any other corporations or companies owned or controlled by Respondents or the related logos thereof.

KKK. "Product Improvements" means all of the following as are in existence as of the Closing Date:

1. for biological preparations, any new, improved or modified composition, formulation or line extension of, or derived from, an Animal Health Product and/or Animal Health Pipeline Product (including, without limitation, the addition, subtraction, substitution and/or modification of one or more Components in an Animal Health Product and/or Animal Health Pipeline Product), including, without limitation, the following:
 - a. the combination of one or more such

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Components with other Components;

- b. the substitution of a Component in an Animal Health Product and/or Animal Health Pipeline Product with a different Component (*e.g.*, without limitation, substitution with an Antigen from the same or a different virus, bacterin, substitution of one strain of virus/bacterium for another, substitution of an Antigen with a nucleic acid encoding an Antigen, substitution of an Antigen by a recombinant Antigen with a nucleic acid encoding an Antigen, and/or substitution of an Antigen by a recombinant Antigen in a viral vector such as baculo-virus vector); and/or
 - c. modification of a Component in an Animal Health Product and/or Animal Health Pipeline Product (*e.g.*, without limitation, modifying the Antigen/virus used in a Product by mutation, chimerization, etc.); and
2. for pharmaceutical preparations, any new, improved or modified composition (*e.g.*, without limitation, structural modifications to the active pharmaceutical ingredients, and/or different salt forms, hydrates or polymorphs of such active pharmaceutical ingredients), combination, formulation or line extension of, or derived from, an Animal Health Product and/or Animal Health Pipeline Product (including, without limitation, the addition, subtraction, substitution and/or modification of one or more Components in an Animal Health Product and/or Animal Health Pipeline Product).

LLL. "Product Licensed Intellectual Property" means the following:

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1. Patents that are related to a Divestiture Product that Respondent(s) can demonstrate have been routinely used, prior to the Effective Date, for a Retained Product(s) that has been marketed or sold on an extensive basis by a Respondent within the two-year period immediately preceding the Acquisition; 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 the Geographic Territory to limit the use or disclosure thereof, that are related to a Divestiture Product and that Respondent(s) can demonstrate have been routinely used, prior to the Effective Date, for a Retained Product(s) that has been marketed or sold on an extensive basis by a Respondent within the two-year period immediately preceding the Acquisition;

provided however, that, in cases where the aggregate retail sales of a Retained Product(s) in dollars within the two-year period immediately preceding the Acquisition collectively are less than the aggregate retail sales in dollars within the same period of the Divestiture Product(s) collectively being divested to a particular Acquirer, the above-described intellectual property shall be considered, at the such Acquirer's option, to be Product Intellectual Property and, thereby, subject to assignment to such Acquirer;

provided further, however, that in such cases, Respondents may take a license back from such Acquirer for such intellectual property for use in connection with the Retained Products and such a

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license to Respondents may be a perpetual, fully paid-up and royalty-free license(s) with rights to sublicense.

MMM. “Product Manufacturing Employees” means all salaried employees of Respondents who have directly participated in the planning, design, implementation or operational management of the Product Manufacturing Technology of the specified Divestiture Product(s) (irrespective of the portion of working time involved unless such participation consisted solely of oversight of legal, accounting, tax or financial compliance) within the eighteen (18) month period immediately prior to the Closing Date.

NNN. “Product Manufacturing Technology” means:

1. all technology, trade secrets, know-how, and proprietary information (whether patented, patentable or otherwise) related to the manufacture of the Divestiture Product(s), including, but not limited to, the following: all techniques and specifications, cell culture processes (including all cell culture processes developed or being developed for use in such manufacture, and results of all experiments used to evaluate such processes), preparation (including vial thaw and inoculum preparation), synthesis, culture (including fed-batch bioreactor culture), recovery and purification (including chromatography and filtration steps), formulation (including concentration, buffer exchange, and excipient addition) and quality control processes, techniques and specifications, analytical methods for process controls and drug substance release, all product specifications, processes, product designs, plans, trade secrets, ideas, concepts, manufacturing, engineering, and other manuals and drawings, standard operating procedures, flow diagrams,

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chemical, safety, quality assurance, quality control, research records, clinical data, compositions, annual product reviews, regulatory communications, control history, current and historical information associated with the FDA Application(s) conformance or Veterinary Biologic Product Authorization(s), as applicable, and Agency Manufacturing Standards compliance, and labeling and all other information related to the manufacturing process, and supplier lists;

2. all Biological Manufacturing and Testing Materials related to the Divestiture Products;
3. all active pharmaceutical ingredients related to the Divestiture Product(s);
4. all Process and Analytical Documents; and
5. for those instances in which the manufacturing equipment is not readily available from a Third Party, at the Acquirer's option, all such equipment used to manufacture the Divestiture Product(s).

OOO. "Product Marketing Employees" means all management level employees of Respondent(s) who directly have participated (irrespective of the portion of working time involved) in the marketing, contracting, or promotion of the specified Divestiture Product(s) in the United States of America 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, veterinary market and other specialty markets, but excluding administrative assistants.

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- PPP. "Product Marketing Materials" means all marketing or promotional materials used specifically in the marketing or sale of a Divestiture Product(s) in the Geographic Territory as of the Closing Date, including, without limitation, all advertising materials, training materials, product data, 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 net purchase information to be provided on the basis of either dollars and/or units for each month, quarter or year), sales forecasting models, educational materials, advertising and display materials, speaker lists, promotional and marketing materials, Website content and advertising and display materials, artwork for the production of packaging components, Product labels, and packaging, television masters and other similar materials related to the Divestiture Product(s).
- QQQ. "Product Research and Development Employees" means all salaried employees of Respondents who directly have participated in the research, Development, or regulatory approval process, or clinical studies of the specified Divestiture Product(s) (irrespective of the portion of working time involved, unless such participation consisted solely of oversight of legal, accounting, tax or financial compliance) within the eighteen (18) month period immediately prior to the Closing Date.
- RRR. "Product Sales Employees" means all employees of Respondent(s) who directly have participated (irrespective of the portion of working time involved) in the detailing, marketing or promotion of the

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Divestiture Product(s) in the United States directly to veterinarians, animal breeders, and/or professional distributors, within the twelve (12) month period immediately prior to the Closing Date. This includes employees trained to perform such detailing for the Divestiture Product(s) within the twelve (12) month period immediately prior to the Closing Date.

- SSS. "Product Trade Dress" means the current trade dress of the Divestiture Product, including but not limited to, Product packaging, and the lettering of the Product trade name or brand name.
- TTT. "Product Trademark(s)" means all proprietary names or designations, trademarks, service marks, trade names, 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 Divestiture Product(s). The term "Product Trademarks" includes, without limitation, all trademarks specifically identified in the definition of Animal Health Products, and any variations of such trademarks.
- UUU. "Proposed Acquirer" means a Person proposed by Respondents (or a Divestiture Trustee) to the 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 Respondents pursuant to this Order.
- VVV. "Reagent(s)" means the reagents, microorganisms antibodies, sera, proteins, clinical and tissue samples and raw materials used to perform the applicable potency, immunogenicity and/or antigen compatibility

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test with respect to the Products, including without limitation, the reference vaccine for any vaccine Product.

WWW. "Remedial Agreement(s)" means the following:

1. any agreement between Respondent(s) and an Acquirer that is specifically referenced and attached to this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights 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;
2. any agreement between Respondent(s) and a Third Party to effect the assignment of assets or rights of Respondent(s) related to a Divestiture Product to the benefit of an Acquirer that is specifically referenced and attached to this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, 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;
3. any agreement between Respondent(s) and an Acquirer (or between a Divestiture Trustee and an 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 or rights to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and that has

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been approved by the Commission to accomplish the requirements of this Order; and/or

4. any agreement between Respondent(s) and a Third Party to effect the assignment of assets or rights of Respondent(s) related to a Divestiture Product to the benefit of an Acquirer that has been approved by the Commission to accomplish the requirements of this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto.

XXX. "Retained Product" means any Product(s) other than a Divestiture Product.

YYY. "Supply Cost" means a cost not to exceed the manufacturer's average direct per unit cost in United States dollars of manufacturing the Divestiture Product for the twelve (12) month period immediately preceding the Effective Date. "Supply Cost" shall expressly exclude any intracompany business transfer profit; *provided, however*, that in each instance where: (1) an agreement to Contract Manufacture is specifically referenced and attached to this Order, and (2) such agreement becomes a Remedial Agreement for a Divestiture Product, "Supply Cost" means the cost as specified in such Remedial Agreement for that Divestiture Product.

ZZZ. "Technology Transfer Standards" means requirements and standards sufficient to ensure that the information and assets required to be delivered pursuant to this Order are delivered in an organized, comprehensive, complete, useful, timely (*i.e.*, ensuring no unreasonable delays in transmission), and meaningful manner. Such standards and requirements shall include, *inter alia*,

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1. designating employees knowledgeable about the Product Manufacturing Technology (and all related intellectual property) related to each of the Divestiture Products who will be responsible for communicating directly with the Acquirer and/or its Designee, and the Interim Monitor, for the purpose of effecting such delivery;
2. preparing technology transfer protocols and transfer acceptance criteria for both the processes and analytical methods related to the specified Divestiture Product(s) that are acceptable to the Acquirer;
3. preparing and implementing a detailed technological transfer plan that contains, *inter alia*, the transfer of all relevant information, all appropriate documentation, all other materials, and projected time lines for the delivery of all such Product Manufacturing Technology (including all related intellectual property) to the Acquirer or its Designee; and
4. providing, in a timely manner, assistance and advice to enable the Acquirer or its Designee to:
 - a. manufacture the specified Divestiture Product(s) in the quality and quantities achieved by the Respondent(s), or the manufacturer and/or developer of such Divestiture Product;
 - b. obtain any Product Approvals necessary for the Acquirer or its Designee, to manufacture, distribute, market, and sell the specified Divestiture Product(s) in commercial quantities and to meet all Agency-approved specifications for such Divestiture Product(s); and

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- c. receive, integrate, and use all such Product Manufacturing Technology and all such intellectual property related to the specified Divestiture Product(s).

AAAA. “Third Party(ies)” means any non-governmental Person other than the following: Respondent Pfizer, Respondent Wyeth, or the Acquirer of the affected assets, rights and Divestiture Product(s).

BBBB. “Veterinary Biological Product Authorization(s)” means all of the following, as defined in Title 9 of the Code of Federal Regulations: a U.S. Veterinary Biological Product License or Permit, and a U.S. Veterinary Biological Establishment License, for a Product filed or to be filed with the USDA, or its foreign Agency equivalent, and all supplements, amendments, and revisions thereto, all outlines of production, protocols, any preparatory work, drafts and data necessary for the preparation thereof, and all correspondence between Respondents and the USDA or other Agency related thereto. The term “Veterinary Biological Product Authorization(s)” and all of the foregoing terms or abbreviations include the foreign equivalents of the above-referenced filings and activities with the foreign counterpart(s) of the USDA.

CCCC. “Virbac” means Virbac Corporation, a company organized, existing, and doing business under the laws of the State of Delaware, with headquarters located at 3200 Meacham Boulevard, Fort Worth, Texas 76137. The term “Virbac” also includes the parent corporation of Virbac Corporation, Virbac SA.

DDDD. “Website” means the content of the Website(s) located at the Domain Names, the Domain Names, and all

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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 Respondents that are incorporated in such Website(s), such as stock photographs used in the Website(s), *except* to the extent that Respondents can convey its rights, if any, therein; or (2) content unrelated to any of the Divestiture Product(s).

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

- A. Not later than ten (10) days after the Effective Date, Respondents shall divest the Animal Health Product Assets and grant the Animal Health Product Licenses, absolutely and in good faith, to Boehringer Ingelheim pursuant to, and in accordance with, the Animal Health Product Divestiture Agreements (which agreements shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that this Order shall not be construed to reduce any rights or benefits of Boehringer Ingelheim or to reduce any obligations of Respondents under such agreements), and each such agreement, if it becomes a Remedial Agreement related to the Animal Health Product Assets is incorporated by reference into this Order and made a part hereof;

provided, however, that if Respondents have divested the Animal Health Product Assets and granted the Animal Health Product Licenses to Boehringer Ingelheim prior to the Order Date, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that Boehringer Ingelheim is not an acceptable purchaser of the Animal Health Product Assets, then Respondents shall

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immediately rescind the transaction with Boehringer Ingelheim, in whole or in part, as directed by the Commission, and shall divest the Animal Health Product Assets and grant the Animal Health Product Licenses, as applicable, within one hundred eighty (180) days from the Order Date, absolutely and in good faith, at no minimum price, to an Acquirer or Acquirers that receive(s) the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission;

provided further that if Respondents have divested the Animal Health Product Assets and granted the Animal Health Product Licenses to Boehringer Ingelheim prior to the Order Date, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that the manner in which the divestiture or license grant was accomplished is not acceptable, the Commission may direct Respondents, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the Animal Health Product Assets or grant of the Animal Health Product Licenses, as applicable, to Boehringer Ingelheim (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.

- B. Prior to the Closing Date, Respondents shall secure all consents and waivers from all Third Parties that are necessary to permit Respondents to divest the Animal Health Product Assets and grant the Animal Health Product Licenses to an Acquirer of the Animal Health Product Assets, and/or to permit such Acquirer to continue the research, Development, manufacture, sale, marketing or distribution of the Animal Health Products and/or Animal Health Pipeline Products;

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

- C. Respondents shall transfer and deliver, or cause to be transferred and delivered, all Product Manufacturing Technology (including all related intellectual property) related to the Animal Health Products and/or Animal Health Pipeline Products that either Respondent owns, and shall transfer and deliver, or cause to be transferred and delivered, all rights to all Product Manufacturing Technology (including all related intellectual property) that is owned by a Third Party and licensed by either Respondent related to the specified Animal Health Products and/or Animal Health Pipeline Products, to the Acquirer of the related Animal Health Product Assets in a manner consistent with the Technology Transfer Standards. Respondents shall obtain any consents from Third Parties required to comply with this provision.
- D. Respondents shall:
 - 1. upon reasonable written notice and request from an Acquirer of the Animal Health Product Assets to Respondents, Contract Manufacture and deliver to the requesting Acquirer, in a timely manner and under reasonable terms and conditions, a supply of each of the Contract Manufacture Products at Respondents' Supply Cost, for a period of time sufficient to allow such Acquirer (or the Designee of the Acquirer) to obtain all of the relevant Product Approvals necessary to manufacture and sell in commercial quantities, and in a manner consistent with Agency Manufacturing Standards, the finished Product independently of Respondents

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and to secure sources of supply of the active pharmaceutical ingredients, Biological Manufacturing and Testing Materials, excipients, other ingredients, and/or necessary Components listed in the specified Respondent's Application(s) or Veterinary Biological Product Authorization(s), as applicable, for the Product from Persons other than the Respondents;

2. extend the period of time covered by any Remedial Agreement to Contract Manufacture without further negotiation of the other terms of such Remedial Agreement should the Interim Monitor, in consultation with staff of the Commission, determine that additional time is necessary for the requesting Acquirer to obtain the relevant Product Approvals described above;
3. make representations and warranties to any Acquirer of the Animal Health Product Assets that the Contract Manufacture Product(s) supplied through Contract Manufacture pursuant to a Remedial Agreement meet the relevant Agency-approved specifications. For the Product(s) to be marketed or sold in the Geographic Territory, Respondents shall agree to indemnify, defend and hold the Acquirer harmless from any and all suits, claims, actions, demands, liabilities, expenses or losses alleged to result from the failure of the Product(s) supplied to the Acquirer pursuant to a Remedial Agreement by Respondents to meet Agency Manufacturing Standards. This obligation may be made contingent upon the Acquirer giving Respondents prompt written notice of such claim and cooperating fully in the defense of such claim. The Remedial Agreement shall be consistent with the obligations assumed by Respondents under this

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Order;

provided, however, that Respondents may reserve the right to control the defense of any such litigation, including the right to settle the litigation, so long as such settlement is consistent with Respondents' responsibilities to supply the ingredients and/or Components in the manner required by this Order;

provided further that this obligation shall not require Respondents to be liable for any negligent act or omission of the Acquirer or for any representations and warranties, express or implied, made by the Acquirer that exceed the representations and warranties made by Respondents to the Acquirer;

provided further that in each instance where: (1) an agreement to divest relevant assets is specifically referenced and attached to this Order, and (2) such agreement becomes a Remedial Agreement for a Divestiture Product, each such agreement may contain limits on Respondents' aggregate liability to the Acquirer resulting from the failure of the Products supplied to the Acquirer pursuant to such Remedial Agreement by Respondents to meet Agency Manufacturing Standards;

4. give priority to supplying a Contract Manufacture Product to any Acquirer of the Animal Health Product Assets over manufacturing and supplying of Products for Respondents' own use or sale;
5. make representations and warranties to any Acquirer of the Animal Health Product Assets that Respondents shall hold harmless and indemnify the

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Acquirer for any liabilities or loss of profits resulting from the failure by Respondents to deliver the Contract Manufacture Products in a timely manner as required by the Remedial Agreement(s) unless Respondents can demonstrate that such failure was entirely beyond the control of Respondents and in no part the result of negligence or willful misconduct by Respondents;

provided, however, that in each instance where: (1) an agreement to divest relevant assets is specifically referenced and attached to this Order, and (2) such agreement becomes a Remedial Agreement for a Divestiture Product, each such agreement may contain limits on Respondents' aggregate liability to the Acquirer for such a breach;

6. during the term of any Contract Manufacture between Respondent(s) and any Acquirer of the Animal Health Product Assets, upon written request of such Acquirer or the Interim Monitor, make available to the Acquirer and the Interim Monitor all records that relate to the manufacture of the relevant Contract Manufacture Products that are generated or created after the Closing Date;
7. during the term of any Contract Manufacture between Respondent(s) and any Acquirer of the Animal Health Product Assets, maintain manufacturing facilities necessary to manufacture each of the relevant Contract Manufacture Products in finished form, *i.e.*, suitable for sale to the ultimate consumer/patient; and
8. pending FDA or USDA approval, as applicable to the specified Product, of any Divestiture Product

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that has not yet been approved for commercial scale-up manufacturing and during the term of any Contract Manufacture between Respondent(s) and an Acquirer of the Animal Health Product Assets, provide consultation with knowledgeable employees of Respondents and training, at the written request of the Acquirer and at a facility chosen by the Acquirer, for the purposes of enabling such Acquirer (or the Designee of such Acquirer) to obtain all Product Approvals to manufacture the Animal Health Products in the same quality achieved by, or on behalf of, the Respondents and in commercial quantities, and in a manner consistent with Agency Manufacturing Standards, independently of Respondents, and sufficient to satisfy management of the Acquirer that its personnel (or the Designee's personnel) are adequately trained in the manufacture of the Animal Health Products;

The foregoing provisions, II.D.1. -8., shall remain in effect with respect to each Divestiture Product until the earliest of: (1) the date each Acquirer (or the Designee(s) of such Acquirer), respectively, is approved by the FDA or the USDA, as applicable to the specified Product, to manufacture and sell such Divestiture Product and able to manufacture and sell such Divestiture Product in commercial quantities, in a manner consistent with Agency Manufacturing Standards, independently of Respondents; (2) the date the Acquirer of a particular Divestiture Product notifies the Commission and the Respondents of its intention to abandon its efforts to manufacture such Divestiture Product; (3) the date of written notification from staff of the Commission that the Interim Monitor, in consultation with staff of the Commission, has determined that the Acquirer of a particular Divestiture Product has abandoned its efforts to manufacture such

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Divestiture Product; or (4) seven (7) years from the Closing Date.

E. Respondents shall:

1. submit to the Acquirer of the Animal Health Product Assets, at Respondents' expense, all Confidential Business Information related to the Animal Health Products and the Animal Health Pipeline Products;
2. deliver such Confidential Business Information to such Acquirer:
 - a. in good faith;
 - b. in a timely manner, *i.e.*, as soon as practicable, avoiding any delays in transmission of the respective information; and
 - c. 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 Acquirer, provide the Acquirer and the Interim Monitor 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 directly related to the Animal Health Products and Animal Health Pipeline 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

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research, Development, manufacturing, marketing, or sale of the Animal Health Products and/or the Animal Health Pipeline Products other than as necessary to comply with the following:

- a. the requirements of this Order;
 - b. Respondents' obligations to the Acquirer of the Animal Health Products under the terms of any Remedial Agreement related to the Animal Health Products; or
 - c. applicable Law;
5. not disclose or convey any such Confidential Business Information, directly or indirectly, to any Person except the Acquirer of the Animal Health Products or other Persons specifically authorized by such Acquirer to receive such information; and
 6. not provide, disclose or otherwise make available, directly or indirectly, any such Confidential Business Information related to the Development, manufacture, marketing or sales of the Animal Health Products or the Animal Health Pipeline Products to the employees associated with business related to those Retained Products that:
 - a. contain the same active biological or pharmaceutical ingredient;
 - b. are approved, or in Development for use, in the same Field as the Animal Health Products;
 - c. are approved, or in Development for use, in the same Field as the Animal Health Pipeline Products.

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- F. Respondents shall not enforce any agreement against a Third Party or an Acquirer to the extent that such agreement may limit or otherwise impair the ability of such Acquirer to acquire or use the Product Manufacturing Technology (including all related intellectual property) related to the Animal Health Products acquired by such Acquirer 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.
- G. 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.F. that allows the Third Party to provide the relevant Product Manufacturing Technology to the relevant Acquirer. Within five (5) days of the execution of each such release, Respondents shall provide a copy of the release to such Acquirer.
- H. Respondents shall:
1. for each Divestiture Product, for a period of twelve (12) months from the Closing Date, provide the Acquirer with the opportunity to enter into employment contracts with the Animal Health Product Core Employees acquired by such Acquirer. Each of these periods is hereinafter referred to as the "Core Employee Access Period(s)";
 2. not later than the earlier of the following dates: (1) ten (10) days after notice by staff of the Commission to Respondents to provide the Product Employee Information; or (2) ten (10) days after written request by an Acquirer, provide such

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Acquirer or Proposed Acquirer(s) with the Product Employee Information related to the Animal Health Product Core Employees. Failure by Respondents to provide the Product Employee Information for any Animal Health Product Core Employee within the time provided herein shall extend the Core Employee Access Period(s) with respect to that employee in an amount equal to the delay;

3. during the Core Employee Access Period(s), not interfere with the hiring or employing by the Acquirer of the Animal Health Product Core Employees related to the particular Animal Health Products acquired by such Acquirer, and remove any impediments within the control of Respondent(s) that may deter these employees from accepting employment with such Acquirer, including, but not limited to, any noncompete or nondisclosure provision of employment with respect to a Divestiture Product or other contracts with Respondent(s) that would affect the ability or incentive of those individuals to be employed by such Acquirer. In addition, Respondents shall not make any counteroffer to such a Animal Health Product Core Employee who has received a written offer of employment from such Acquirer;

provided, however, that, subject to the conditions of continued employment prescribed in this Order, this Paragraph II.H.3. shall not prohibit Respondents from continuing to employ any Animal Health Product Core Employee under the terms of such employee's employment with Respondent(s) prior to the date of the written offer of employment from the Acquirer to such employee;

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

provided, however, that, subject to those conditions of continued employment prescribed in this Order, this Order does not require nor shall be construed to require Respondents to terminate the employment of any employee or to prevent Respondents from continuing to employ the Animal Health Product Core Employees in connection with the Acquisition; and

5. 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 Acquirer with any amount of responsibility related to an Animal Health Product ("Animal Health Product Employee") to terminate his or her employment relationship with the Acquirer; or

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b. hire any Animal Health Product Employee;

provided, however, that Respondents may hire any former Animal Health Product Employee whose employment has been terminated by the Acquirer or who independently applies for employment with Respondents, as long as such employee was not solicited in violation of the nonsolicitation requirements contained herein;

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

- I. Respondents shall require, as a condition of employment following divestiture of the Animal Health Product Assets, that each Animal Health Product Core Employee retained by Respondents, his or her direct supervisor, and any other employee 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 Animal Health Products as 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).
- J. Not later than thirty (30) days after the Closing Date, Respondents shall provide written notification of the restrictions on the use of the Confidential Business Information related to the Animal Health Products by

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Respondents' personnel to all of Respondents' employees who:

1. are or were directly involved in the research, Development, manufacturing, distribution, sale or marketing of any of the Animal Health Products;
2. are directly involved in the research, Development, manufacturing, distribution, sale or marketing of Retained Products that contain the same active biological or pharmaceutical ingredient or that are approved for use, or in Development for use, in the same Field as the Animal Health Products; and/or
3. may have Confidential Business Information related to the Animal Health Products and/or the Animal Health Pipeline 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 Acquirer. Respondents shall maintain complete records of all such agreements at Respondents' registered office within the United States of America 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 Acquirer with copies of all certifications, notifications and reminders sent to Respondents' personnel.

- K. Until Respondents complete the divestitures required by Paragraphs II.A. and fully transfer and deliver, or cause to be transferred and delivered, the related Product Manufacturing Technology, to the Acquirer of the Animal Health Products and Animal Health

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Pipeline Products,

1. Respondents shall take such actions as are necessary to:
 - a. maintain the full economic viability and marketability of the businesses associated with each Animal Health Product and Animal Health Pipeline Product;
 - b. minimize any risk of loss of competitive potential for such business;
 - c. prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets related to each Animal Health Product and Animal Health Pipeline Product;
 - d. ensure the assets required to be divested are transferred and delivered to each Acquirer in a manner without disruption, delay, or impairment of the regulatory approval processes related to the business associated with each Animal Health Product and Animal Health Pipeline Product; and
 - e. ensure the completeness of the transfer and delivery of the Product Manufacturing Technology; and
2. Respondents shall not sell, transfer, encumber or otherwise impair the assets required to be divested (other than in the manner prescribed in this Order) nor take any action that lessens the full economic viability, marketability, or competitiveness of the businesses associated with each Animal Health Product and Animal Health Pipeline Product.

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- L. Respondents shall not join, file, prosecute or maintain any suit, in law or equity, against an Acquirer or the Divestiture Product Releasee(s) of that Acquirer for the research, Development, manufacture, use, import, export, distribution, or sale of the Animal Health Product(s) acquired by that Acquirer under the following:
1. any Patent owned or licensed by Respondents as of the day after the Effective Date (*excluding* those Patents that claim inventions conceived by and reduced to practice after the Effective Date) that claims a method of making, using, or administering, or a composition of matter, relating to the Animal Health Product(s) acquired by that Acquirer, or that claims a device relating to the use thereof;
 2. any Patents owned or licensed by Respondents at any time after the Effective Date (*excluding* those Patents that claim inventions conceived by and reduced to practice after the Effective Date) that claim any aspect of the research, Development, manufacture, use, import, export, distribution, or sale of the Animal Health Product(s) acquired by that Acquirer;

if such suit would have the potential to interfere with such Acquirer's freedom to practice the following: (1) the research, Development, or manufacture of the Animal Health Product(s) anywhere in the World for the purposes of marketing or sale in the United States of America; or (2) the use within, import into, export from, or the supply, distribution, or sale within, the United States of America of a particular Animal Health Product. Respondents shall also covenant to such Acquirer that as a condition of any assignment,

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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 such Acquirer or the related Divestiture Product Releasee(s) under such Patents, if the suit would have the potential to interfere with that Acquirer's freedom to practice the following: (1) the research, Development, or manufacture of the Animal Health Product(s) anywhere in the World for the purposes of marketing or sale in the United States of America; or (2) the use within, import into, export from, or the supply, distribution, or sale within, the United States of America of a particular Animal Health Product;

- M. Upon reasonable written notice and request from an Acquirer to Respondent(s), Respondent(s) shall provide, in a timely manner, at no greater than Direct Cost, assistance of knowledgeable employees of Respondents to assist that Acquirer to defend against, respond to, or otherwise participate in any litigation related to the Product Intellectual Property related to any of the Animal Health Products, if such litigation would have the potential to interfere with the Acquirer's freedom to practice the following: (1) the research, Development, or manufacture of the Animal Health Product(s) acquired by that Acquirer; or (2) the use, import, export, supply, distribution, or sale of such Animal Health Product(s) within the Geographic Territory.
- N. For any patent infringement suit in which either Respondent is alleged to have infringed a Patent of a Third Party prior to the Closing Date or for such suit as such Respondent has prepared or is preparing as of the Closing Date to defend against such infringement claim(s), and where such a suit would have the potential to interfere with the Acquirer's freedom to

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practice the following: (1) the research, Development, or manufacture of the Animal Health Product(s) acquired by that Acquirer; or (2) the use, import, export, supply, distribution, or sale of such Animal Health Product(s), Respondents shall:

1. cooperate with the Acquirer and provide any and all necessary technical and legal assistance, documentation and witnesses from Respondent(s) in connection with obtaining resolution of any pending patent litigation involving such Animal Health Product(s);
2. waive conflicts of interest, if any, to allow either Respondent's outside legal counsel to represent the relevant Acquirer in any ongoing patent litigation involving such Animal Health Product(s); and
3. permit the transfer to the relevant Acquirer of all of the litigation files and any related attorney work-product in the possession of either Respondent's outside counsel relating to such Animal Health Product(s).

O. Respondents shall not, in the Geographic Territory:

1. use the Product Trademarks related to the Animal Health Products or any mark confusingly similar to such Product Trademarks, as a trademark, trade name, 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 relevant Acquirer's

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use and registration of such Product Trademarks;
or

5. challenge or interfere with the relevant Acquirer's efforts to enforce its trademark registrations for and trademark rights in such Product Trademarks against Third Parties;

provided, however, that this paragraph shall not preclude Respondents from continuing to use all trademarks, trade names, or service marks that have been in use in commerce on a Retained Product at any time prior to the Effective Date.

- P. Respondents shall not seek, directly or indirectly, pursuant to any dispute resolution mechanism incorporated in any Remedial Agreement, or in any agreement related to any of the Animal Health Products a decision the result of which would be inconsistent with the terms of this Order and/or the remedial purposes thereof.
- Q. The purpose of the divestiture of the Animal Health Product Assets and the transfer and delivery of the related Product Manufacturing Technology and the related obligations imposed on the Respondents by this Order is:
 1. to ensure the continued use of such assets in the research, Development, and manufacture of each of the Animal Health Products and/or Animal Health Pipeline Products and for the purposes of the business associated with each Animal Health Product and/or Animal Health Pipeline Product within the Geographic Territory;
 2. to provide for the future use of such assets for the distribution, sale and marketing of each of the

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Animal Health Products and/or Animal Health Pipeline Product in the Geographic Territory;

3. to create a viable and effective competitor, that is independent of the Respondents:
 - a. in the research, Development, and manufacture of each of the Animal Health Products and Animal Health Pipeline Products for the purposes of the business associated with each such Product within the Geographic Territory; and
 - b. the distribution, sale and marketing of each of the Animal Health Products in the Geographic Territory; and
4. to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint in a timely and sufficient manner.

III.

IT IS FURTHER ORDERED that:

- A. Not later than ten (10) days after the Effective Date, Respondents shall divest the Equine Anthelmintic Product Assets (to the extent that such assets are not already owned, controlled or in the possession of Virbac), absolutely and in good faith, to Virbac pursuant to and in accordance with the Equine Anthelmintic Product Agreement (which agreement shall not limit or contradict, or be construed to limit 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 Virbac or to reduce any

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obligations of the Respondents under such agreement), and such agreement, if it becomes the Remedial Agreement for the Equine Anthelmintic Product Assets, is incorporated by reference into this Order and made a part hereof. If Respondents do not divest the Equine Anthelmintic Product Assets to Virbac within the time period described above, the Commission may appoint a Divestiture Trustee to divest the Equine Anthelmintic Product Assets;

provided, however, that if the Respondents have divested the Equine Anthelmintic Product Assets to Virbac 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 Respondents, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the Equine Anthelmintic Product Assets to Virbac (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.

- B. Prior to the Closing Date, Respondents shall secure all consents and waivers from all Third Parties that are necessary to permit Respondents to divest the Equine Anthelmintic Product Assets to Virbac, and/or to permit Virbac to continue the research, Development, manufacture, sale, marketing or distribution of the Equine Anthelmintic Products;

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

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- C. Respondents shall not enforce any agreement against a Third Party or Virbac to the extent that such agreement may limit or otherwise impair the ability of Virbac to acquire all Confidential Business Information. Not later than ten (10) days after the Closing Date, Respondents shall grant a release to each such Third Party that allows the Third Party to provide all Confidential Business Information within the Third Party's possession or control to Virbac. This includes, but is not limited to, such releases as may be necessary to permit the transfer to Virbac of any attorney work-product related to the Product Intellectual Property in the possession of Respondent Pfizer's outside counsel. Within five (5) days of the execution of each such release, Respondents shall provide a copy of the release to Virbac.
- D. Until all of Respondent Pfizer's rights to enforce restrictions on the use, disclosure, conveyance or provision of Confidential Business Information are fully assigned or conveyed to Virbac, Respondents shall enforce any agreement against a Third Party to the extent that such agreement prevents or limits the ability of the Third Party to provide any Confidential Business Information to any person or entity other than: (1) Virbac or (2) any Person authorized by Virbac to receive such information.
- E. Upon reasonable notice and request from Virbac to the Respondents, Respondents shall provide, in a timely manner at no greater than Direct Cost, assistance and advice of knowledgeable employees of Respondents as Virbac might reasonably need to transfer the Equine Anthelmintic Product Assets, and shall continue providing such personnel, assistance and training, at the request of Virbac, until such assets are fully transferred to Virbac.

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F. Respondents shall:

1. submit to Virbac, at Respondents' expense, all Confidential Business Information related to the Equine Anthelmintic Products;
2. deliver such Confidential Business Information to Virbac:
 - a. in good faith;
 - b. in a timely manner, *i.e.*, as soon as practicable, avoiding any delays in transmission of the respective information; and
 - c. 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 Virbac, provide Virbac and the Interim Monitor 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 directly related to the Equine Anthelmintic 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 Equine Anthelmintic Products other than as necessary to comply with the following:
 - a. the requirements of this Order;

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- b. Respondents' obligations to Virbac under the terms of any Remedial Agreement related to the Equine Anthelmintic Products; or
 - c. applicable Law;
 - 5. not disclose or convey any such Confidential Business Information, directly or indirectly, to any Person except Virbac or other Persons specifically authorized by Virbac to receive such information; and
 - 6. not provide, disclose or otherwise make available, directly or indirectly, any such Confidential Business Information related to the marketing or sales of the Equine Anthelmintic Products to the employees associated with business related to those Retained Products that contain the same active biological or pharmaceutical ingredient or that are approved for the use in the Field of parasitic worm disease within equines.
- G. Not later than thirty (30) days after the Closing Date, Respondents shall provide written notification of the restrictions on the use of the Confidential Business Information related to the Equine Anthelmintic Products by Respondents' personnel to all of Respondents' employees who:
- 1. are or were directly involved in the research, Development, manufacturing, distribution, sale or marketing of any of the Equine Anthelmintic Products;
 - 2. are directly involved in the research, Development, manufacturing, distribution, sale or marketing of Retained Products that contain the same active

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biological or pharmaceutical ingredient or that are approved for use, or that are in Development for use, in the Field of parasitic worm disease within equines; and/or

3. may have Confidential Business Information related to the Equine Anthelmintic 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 Acquirer. Respondents shall maintain complete records of all such agreements at Respondents' registered office within the United States of America 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 Acquirer with copies of all certifications, notifications and reminders sent to Respondents' personnel.

H. Respondents shall:

1. for each Equine Anthelmintic Product, for a period of twelve (12) months from the Closing Date, provide Virbac and/or the Equine Anthelmintic New Joint Development Partner with the opportunity to enter into employment contracts with the Equine Anthelmintic Core Employees. Each of these periods is hereinafter referred to as the "Equine Anthelmintic Product Core Employee Access Period(s)"; and
2. not later than the earlier of the following dates: (1) ten (10) days after notice by staff of the

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Commission to Respondents to provide the Product Employee Information; or (2) ten (10) days after written request by Virbac, provide Virbac with the Product Employee Information related to the Equine Anthelmintic Core Employees. Failure by Respondents to provide the Product Employee Information for any Equine Anthelmintic Core Employee within the time provided herein shall extend the Equine Anthelmintic Product Core Employee Access Period with respect to that employee in an amount equal to the delay;

3. during the Equine Anthelmintic Product Core Employee Access Period(s), not interfere with the hiring or employing by Virbac and/or the Equine Anthelmintic New Joint Development Partner of the Equine Anthelmintic Core Employees, and remove any impediments within the control of Respondent(s) that may deter these employees from accepting employment with Virbac and/or the Equine Anthelmintic New Joint Development Partner, including, but not limited to, any noncompete or nondisclosure provision of employment with respect to an Equine Anthelmintic Product or other contracts with Respondent(s) that would affect the ability or incentive of those individuals to be employed by Virbac and/or the Equine Anthelmintic New Joint Development Partner. In addition, Respondents shall not make any counteroffer to such an employee who has received a written offer of employment from Virbac and/or the and/or the Equine Anthelmintic New Joint Development Partner;

provided, however, that, subject to the conditions of continued employment prescribed in this Order,

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this Paragraph III.H.3. shall not prohibit Respondents from continuing to employ any employee under the terms of such employee's employment with Respondent(s) prior to the date of the written offer of employment from Virbac and/or the Equine Anthelmintic New Joint Development Partner to such employee;

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

provided, however, that, subject to those conditions of continued employment prescribed in this Order, this Order does not require nor shall be construed to require Respondents to terminate the employment of any employee or to prevent Respondents from continuing to employ an employee in connection with the Acquisition; and

5. 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 Virbac with

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any amount of responsibility related to an Equine Anthelmintic Product (“Equine Anthelmintic Product Employee”) to terminate his or her employment relationship with Virbac; or

- b. hire any Equine Anthelmintic Product Employee;

provided, however, that Respondents may hire any former Equine Anthelmintic Product Employee whose employment has been terminated by Virbac or who independently applies for employment with Respondents, as long as such employee was not solicited in violation of the nonsolicitation requirements contained herein;

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

- I. Respondents shall require, as a condition of employment following divestiture of the Equine Anthelmintic Product Assets, that each Equine Anthelmintic Core Employee retained by Respondents, his or her direct supervisor, and any other employee 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 Animal Health Products as strictly confidential, including the

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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).

- J. Not later than thirty (30) days after the Closing Date, Respondents shall provide written notification of the restrictions on the use of the Confidential Business Information related to the Equine Anthelmintic Products by Respondents' personnel to all of Respondents' employees who:
1. are or were directly involved in the research, Development, manufacturing, distribution, sale or marketing of any of the Equine Anthelmintic Products;
 2. are directly involved in the research, Development, manufacturing, distribution, sale or marketing of Retained Products that contain the same active biological or pharmaceutical ingredient or that are approved for use, or in Development for use, in Field of parasitic worm disease within equines; and/or
 3. may have Confidential Business Information related to the Equine Anthelmintic 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 Virbac. Respondents shall maintain complete records of all such agreements at Respondent's registered office within the United States of America and shall provide an officer's certification to the Commission stating that such acknowledgment program has been implemented and is being complied

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with. Respondents shall provide Virbac with copies of all certifications, notifications and reminders sent to Respondents' personnel.

K. Respondents shall not, in the United States of America:

1. use the Product Trademarks related to the Equine Anthelmintic Products or any mark confusingly similar to such Product Trademarks, as a trademark, trade name, 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 Virbac's use and registration of such Product Trademarks; or
5. challenge or interfere with Virbac's efforts to enforce its trademark registrations for and trademark rights in such Product Trademarks against Third Parties;

provided, however, that this paragraph shall not preclude Respondents from continuing to use all trademarks, tradenames, or service marks that have been in use in commerce on a Retained Product at any time prior to the Effective Date.

L. 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, acquire, directly or indirectly, through subsidiaries or otherwise, any Ownership Interest in Virbac or any

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Person that engages in scientific research, Development, manufacture, distribution, marketing, or selling of the Equine Anthelmintic Product(s). 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 consummating any such transaction (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 consummate the transaction 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.

- M. The purpose of the divestiture of the Equine Anthelmintic Product Assets and the related obligations imposed on the Respondents by this Order is:

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1. to ensure the continued use of such assets in the research, Development, and manufacture of each of the Equine Anthelmintic Products and for the purposes of the business associated with each Equine Anthelmintic Product within the United States of America;
2. to provide for the future use of such assets for the distribution, sale and marketing of each of the Equine Anthelmintic Products in the United States of America;
3. to create a viable and effective competitor, that is independent of the Respondents:
 - a. in the research, Development, and manufacture of each of the Equine Anthelmintic Products for the purposes of the business associated with each Equine Anthelmintic Product within the United States of America; and
 - b. the distribution, sale and marketing of each of the Equine Anthelmintic Products in the United States of America; and
4. to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint in a timely and sufficient manner.

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

- A. The Commission may appoint a monitor or monitors ("Interim Monitor") to assure that Respondents

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expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order, and the Remedial Agreements.

- B. The Commission appoints Dr. Stephen J.D. Bell as Interim Monitor and approves the Monitor Agreement executed by Dr. Bell and Respondents. Dr. Bell shall be subject to all provisions in the Order regarding Interim Monitors.
- C. Respondents shall facilitate the ability of the Interim Monitor to comply with the duties and obligations set forth in this Order, and shall take no action that interferes with or hinders the Interim Monitor's authority, rights and responsibilities as set forth herein, or in any other agreement between the Interim Monitor and Respondents. Respondents may, with the consent of the Interim Monitor, contract with additional consultant(s) to assist the Interim Monitor in carrying out his or her duties, provided that the Interim Monitor shall direct the work of any such consultant(s) and that the rights, duties and responsibilities of such consultant(s) are consistent with the terms of this Order, including, without limitation, the requirement that such consultant shall act in a fiduciary capacity for the benefit of the Commission.
- D. The Interim Monitor's duties and responsibilities shall include the following:
 - 1. the Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission;
 - 2. 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 his

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or her duties and responsibilities in a manner consistent with the purposes of the Order and in consultation with the Commission;

3. the Interim Monitor shall, in his or her sole discretion, consult with third parties in the exercise of his or her duties under this Order, or under any agreement between the Interim Monitor and Respondents;
 4. the Interim Monitor shall evaluate the reports submitted by Respondent pursuant to Paragraph VIII.B. of this Order, and within thirty (30) days from the date the Interim Monitor receives these reports, report in writing to the Commission concerning performance by Respondents of their obligations under the Order;
 5. The Interim Monitor shall report in writing to the Commission concerning Respondents' compliance with its obligations under this Order and the Order to Maintain Assets:
 - a. thirty (30) days after the date this Order becomes final;
 - b. sixty (60) days after the date this Order becomes final;
 - c. every sixty (60) days thereafter through the end of the Interim Monitor's term; and
 - d. in response to a request by the Commission or its staff.
- E. Respondents shall grant and transfer to the Interim Monitor, and such Monitor shall have, all rights,

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powers, and authority necessary to carry out the Monitor's duties and responsibilities, including but not limited to the following:

1. 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 and the Order to Maintain Assets;
2. subject to any demonstrated legally recognized privilege, Respondents shall provide the Interim Monitor full and complete access to Respondents' personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondent's compliance with its obligations under the Order, including, but not limited to, its obligations related to the relevant assets;
3. the Interim Monitor shall serve, without bond or other security, at the expense of Respondent, on such reasonable and customary terms and conditions to which the Monitor and Respondent agree and that the Commission approves;
4. the Interim Monitor shall have authority to employ, at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities;
5. respondents shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any

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

6. 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 or require the Interim Monitor to report to Respondents the substance of communications to or from the Commission or the Acquirer.
- F. 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.
- G. The Interim Monitor shall serve until the earliest of:
1. with respect to each Divestiture Product, the date the Acquirer (or its Designee(s)) is approved by the FDA or the USDA, as applicable to the specified Product, to manufacture such Divestiture Product

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and able to manufacture and market such Divestiture Product in commercial quantities, in a manner consistent with Agency Manufacturing Standards, independently of Respondents;

2. with respect to each Divestiture Product, the date the Acquirer notifies the Commission and the Respondents of its intention to abandon its efforts to manufacture such Divestiture Product; or
3. with respect to each Divestiture Product, the date of written notification from staff of the Commission that the Interim Monitor, in consultation with staff of the Commission, has determined that the Acquirer has abandoned its efforts to manufacture such Divestiture Product;

provided, however, that, with respect to each Divestiture Product, the Interim Monitor's service shall not exceed seven (7) years from the Order Date;

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

- H. If the Commission determines that an Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor:
 1. The Commission shall select the substitute Interim Monitor, subject to the consent of Respondent Pfizer, which consent shall not be unreasonably withheld. If Respondent Pfizer has not opposed, in writing, including the reasons for opposing, the selection of a proposed substitute Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondent Pfizer of the identity of any proposed substitute Interim Monitor,

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Respondents shall be deemed to have consented to the selection of the substitute Interim Monitor.

2. Not later than ten (10) days after the appointment of a substitute Interim Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the substitute Interim Monitor all the rights and powers necessary to permit the substitute Interim Monitor to monitor Respondents' compliance with the relevant requirements of the Order in a manner consistent with the purposes of the Order.
- I. The Commission may on its own initiative, or at the request of an Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Order.
- J. An 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.

V.**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 the Animal Health Product Assets or the Equine Anthelmintic Product Assets as required by this Order, the Commission may appoint a trustee ("Divestiture Trustee") to assign, grant, license, divest, transfer, deliver or otherwise convey these assets in a manner that satisfies the requirements of this Order. In the event that the Commission or the

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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 such 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.

- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent Pfizer, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a Person with experience and expertise in acquisitions and divestitures. If Respondent Pfizer 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 Pfizer 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.

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- 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 believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission; *provided, however*, that 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

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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 Respondents' 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*, that if the Divestiture Trustee receives bona fide offers from more than one acquiring Person, and if the Commission determines to approve more than one such acquiring Person, the Divestiture Trustee shall divest to the acquiring Person selected by Respondents from among those approved by the Commission; *provided further, however*, that Respondents shall select such Person 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 Respondent, 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,

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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 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 gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.
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

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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*, that 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.

VI.

IT IS FURTHER ORDERED that, in addition to any other requirements and prohibitions relating to Confidential Business Information in this Order, Respondents shall assure that Respondents' counsel (including in-house counsel under appropriate confidentiality arrangements) shall not retain unredacted copies of documents or other materials provided to an Acquirer or access original documents provided to an Acquirer,

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except under circumstances where copies of documents are insufficient or otherwise unavailable, and for the following purposes:

- A. To assure Respondents' compliance with any Remedial Agreement, this Order, any Law (including, without limitation, any requirement to obtain regulatory licenses or approvals, and rules promulgated by the Commission), any data retention requirement of any applicable Government Entity, or any taxation requirements; or
- B. To 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 Divestiture Products or assets and businesses associated with those Divestiture Products;

provided, however, that Respondents may disclose such information as necessary for the purposes set forth in this Paragraph VI pursuant to an appropriate confidentiality order, agreement or arrangement;

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

VII.

IT IS FURTHER ORDERED that:

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- A. Any Remedial Agreement shall be deemed incorporated into this Order.
- B. Any failure by a Respondent to comply with any term of any Remedial Agreement shall constitute a failure to comply with this Order.
- C. Respondents shall include in each Remedial Agreement related to each of the Divestiture Products a specific reference to this Order, the remedial purposes thereof, and provisions to reflect the full scope and breadth of each Respondent's obligations to the Acquirer pursuant to this Order.
- D. Respondents shall also include in each applicable Remedial Agreement a representation from the Acquirer that such Acquirer shall use commercially reasonable efforts to secure the Product Approvals necessary to manufacture, or to have manufactured by a Third Party, in commercial quantities, each such Divestiture Product and to have any such manufacture to be independent of Respondents, all as soon as reasonably practicable.
- E. Respondents shall not modify or amend any of the terms of any Remedial Agreement without the prior approval of the Commission.

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 Order Date, and every sixty (60) days thereafter until Respondents have fully

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complied with the following: Paragraphs II.A., II.B., II.C., II.E.1.-3., II.G., II.H.1.-4., II.I., II.J., and II.K., Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order. Respondents shall submit at the same time a copy of their report concerning compliance with this Order to the Interim Monitor. 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 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. Respondents shall notify the Commission prior to consenting and/or entering into any agreement with, and/or proposing any remedial or other action from, a non-U.S. Government Entity that might have the effect of causing the Respondents and/or the Acquirer to sell or otherwise dispose of, any assets or intellectual property rights related to the Animal Health Products that relate to Geographic Territories outside the United States of America. Respondents shall include in such notification, among other things that may be required by the staff of the Commission, a full description of all substantive contacts or negotiations related to the sale or disposal of such assets and/or intellectual property rights 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 the sale

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and/or disposal of such assets and/or intellectual property rights.

- D. One (1) year after the Order Date, annually for the next nine years on the anniversary of the Order Date, 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 they have complied and are complying with the Order.

IX.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

- A. any proposed dissolution of a Respondent;
- B. any proposed acquisition, merger or consolidation of a Respondent; or
- C. any other change in a Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

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 and upon five (5) days notice to any Respondent made to its principal United States offices, registered office of its United States subsidiary, or its headquarters address, such Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

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- A. access, during business office hours of such Respondent 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 such Respondent related to compliance with this Order, which copying services shall be provided by such Respondent at the request of the authorized representative(s) of the Commission and at the expense of such Respondent; and
- B. to interview officers, directors, or employees of such Respondent, who may have counsel present, regarding such matters.

XI.

IT IS FURTHER ORDERED that this Order shall terminate on January 25, 2020.

By the Commission, Commissioner Harbour and Commissioner Kovacic recused.

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NON-PUBLIC APPENDIX II.A

**ANIMAL HEALTH DIVESTITURE PRODUCT
AGREEMENTS**

**[Redacted From the Public Record Version,
But Incorporated By Reference]**

NON-PUBLIC APPENDIX III.A

EQUINE ANTHELMINTIC PRODUCT AGREEMENT

**[Redacted From the Public Record Version,
But Incorporated By Reference]**

NON-PUBLIC APPENDIX IV.A

MONITOR AGREEMENT

**[Redacted From the Public Record Version, But Incorporated
By Reference]**

Order to Maintain Assets

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Respondent Pfizer Inc. ("Pfizer") of Respondent Wyeth ("Wyeth"), and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, 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:

1. Respondent Pfizer is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its corporate head office

Order to Maintain Assets

and principal place of business located at 235 East 42nd St., New York, New York 10017.

2. Respondent Wyeth f/k/a American Home Products Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its headquarters address at 5 Giralda Farms, Madison, New Jersey 07940.
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 this Order to Maintain Assets, the following definitions and the definitions used in the Consent Agreement and the proposed Decision and Order (and when made final, the Decision and Order), which are incorporated herein by reference and made a part hereof, shall apply:

- A. “Pfizer” means Pfizer Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Pfizer (including, but not limited to, Pfizer Animal Health), and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each. After the Acquisition, Pfizer shall include Wyeth.
- B. “Wyeth” means Wyeth, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Wyeth (including, but not limited to, Fort Dodge Animal Health), and the respective directors, officers, employees, agents, representatives,

Order to Maintain Assets

predecessors, successors, and assigns of each.

- C. “Respondent(s)” means Pfizer and Wyeth, individually and collectively.
- D. “Commission” means the Federal Trade Commission.
- E. “Decision and Order” means the:
 - 1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of a final Decision and Order by the Commission; and
 - 2. Final Decision and Order issued by the Commission following the issuance and service of a final Decision and Order by the Commission in this matter.
- F. “Divestiture Assets” means the Animal Health Product Assets and the Equine Anthelmintic Product Assets, as defined in the Decision and Order.
- G. “Divestiture Product Business(es)” means the business of the Respondent(s) within the Geographic Territory specified in the Decision and Order related to each of the Divestiture Products, including the research, Development, manufacture, distribution, marketing, and sale of each Divestiture Product and the assets related to such business, including, without limitation, the Divestiture Assets.
- H. “Divestiture Product Core Employees” means the Animal Health Product Core Employees and the Product Marketing Employees related to the Equine Anthelmintic Products, individually and collectively.
- I. “Interim Monitor” means any monitor appointed pursuant to Paragraph III of this Order to Maintain Assets or

Order to Maintain Assets

Paragraph IV of the Decision and Order.

- J. "Orders" means the Decision and Order and this Order to Maintain Assets.

II.

IT IS FURTHER ORDERED that from the date this Order to Maintain Assets becomes final:

- A. Until the Closing Date, Respondents shall take such actions as are necessary to maintain the full economic viability, marketability and competitiveness of each of the related Divestiture Product Businesses, to minimize any risk of loss of competitive potential for such Divestiture Product Businesses, and to prevent the destruction, removal, wasting, deterioration, or impairment of such Divestiture Product Businesses except for ordinary wear and tear. Respondents shall not sell, transfer, encumber or otherwise impair such Divestiture Assets (other than in the manner prescribed in the Decision and Order) nor take any action that lessens the full economic viability, marketability or competitiveness of the related Divestiture Product Businesses.
- B. Until the Closing Date, Respondents shall maintain the operations of the related Divestiture Product Businesses in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance of the assets of such business) and/or as may be necessary to preserve the marketability, viability, and competitiveness of such Divestiture Product Businesses and shall use their best efforts to preserve the existing relationships with the following: suppliers; vendors and distributors; the High Volume Accounts; customers; Agencies; employees; and others

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having business relations with each of the respective Divestiture Product Businesses. Respondents' responsibilities shall include, but are not limited to, the following:

1. providing each of the respective Divestiture Product Businesses with sufficient working capital to operate at least at current rates of operation, to meet all capital calls with respect to such business and to carry on, at least at their scheduled pace, all capital projects, business plans and promotional activities for such Divestiture Product Business;
2. continuing, at least at their scheduled pace, any additional expenditures for each of the respective Divestiture Product Businesses authorized prior to the date the Consent Agreement was signed by Respondents including, but not limited to, all research, Development, manufacturing, distribution, marketing and sales expenditures;
3. providing such resources as may be necessary to respond to competition against each of the Divestiture Products and/or to prevent any diminution in sales of each of the Divestiture Products during and after the Acquisition process and prior to the complete transfer and delivery of the related Divestiture Assets to an Acquirer;
4. providing such resources as may be necessary to maintain the competitive strength and positioning of each of the Divestiture Products at the related High Volume Accounts;
5. making available for use by each of the respective Divestiture Product Businesses funds sufficient to perform all routine maintenance and all other

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maintenance as may be necessary to, and all replacements of, the assets related to such business, including without limitation, the Divestiture Assets;

6. providing each of the respective Divestiture Product Businesses with such funds as are necessary to maintain the full economic viability, marketability and competitiveness of such Divestiture Product Business;
 7. providing such support services to each of the respective Divestiture Product Businesses as were being provided to such business by Respondent(s) as of the date the Consent Agreement was signed by Respondents; and
 8. maintaining a work force at least as equivalent in size, training, and expertise to what has been associated with the Divestiture Products for the relevant Divestiture Product's last fiscal year.
- C. Until Respondents fully and finally transfer and deliver a particular Divestiture Asset to the Acquirer, Respondents shall maintain the full economic viability, marketability and competitiveness of such Divestiture Asset, shall prevent its destruction, removal, wasting, deterioration, or impairment and shall maintain such Divestiture Asset in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance).
- D. Until the Closing Date for each of the respective Divestiture Assets, Respondents shall provide all the related Divestiture Product Core Employees with reasonable financial incentives to continue in their positions and to research, Develop, and manufacture the relevant Divestiture Products consistent with past

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practices and/or as may be necessary to preserve the marketability, viability and competitiveness of such Divestiture Products pending divestiture. Such incentives shall include a continuation of all employee benefits offered by Respondent(s) until the Closing Date for the divestiture of the relevant Divestiture Assets has occurred, including regularly scheduled raises, bonuses, vesting of pension benefits (as permitted by Law), and additional incentives as may be necessary to prevent any diminution of the relevant Divestiture Product's competitiveness.

E. Respondents shall:

1. for each Divestiture Product, for a period of twelve (12) months from the Closing Date, provide each Acquirer with the opportunity to enter into employment contracts with the Divestiture Product Core Employees related to the Divestiture Products and assets acquired by such Acquirer. Each of these periods is hereinafter referred to as the "Divestiture Product Core Employee Access Period(s)";
2. not later than the earlier of the following dates: (1) ten (10) days after notice by staff of the Commission to Respondents to provide the Product Employee Information; or (2) ten (10) days after written request by an Acquirer, provide such Acquirer or Proposed Acquirer(s) with the Product Employee Information related to the Divestiture Product Core Employees. Failure by Respondents to provide the Product Employee Information for any Divestiture Product Core Employee within the time provided herein shall extend the Divestiture Product Core Employee Access Period(s) with respect to that employee in an amount equal to the

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delay; and

3. during the Divestiture Product Employee Access Period(s), not interfere with the hiring or employing by the relevant Acquirer of Divestiture Product Core Employees, and shall remove any impediments within the control of Respondent(s) that may deter these employees from accepting employment with such Acquirer, including, but not limited to, any noncompete provisions of employment or other contracts with Respondent(s) that would affect the ability or incentive of those individuals to be employed by such Acquirer. In addition, Respondents shall not make any counteroffer to a Divestiture Product Core Employee who receives a written offer of employment from the relevant Acquirer;

provided, however, that, subject to the conditions of continued employment prescribed in this Order, this Paragraph II.E.3. shall not prohibit Respondents from continuing to employ any Divestiture Product Core Employee under the terms of such employee's employment with Respondent(s) prior to the date of the written offer of employment from the Acquirer to such employee.

F. Respondents shall:

1. not use, directly or indirectly, any Confidential Business Information related to the research, Development, manufacturing, marketing, or sale of the relevant Divestiture Product(s) other than as necessary to comply with the following: (1) the requirements of the Orders; (2) Respondents' obligations to an Acquirer under the terms of any Remedial Agreement related to relevant Divestiture Product(s); or (3) applicable Law;

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2. not disclose or convey any such Confidential Business Information, directly or indirectly, to any Person except the relevant Acquirer or Persons specifically authorized by the relevant Acquirer or the Commission to receive such information;
 3. not provide, disclose or otherwise make available, directly or indirectly, any such Confidential Business Information related to the marketing or sales of the relevant Divestiture Products to the employees associated with business related to those Retained Products that contain the same active biological or pharmaceutical ingredient or that are approved for use in the same Field as the Divestiture Products; and
 4. institute procedures and requirements to ensure that the above-described employees:
 - a. do not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information in contravention of this Order to Maintain Assets; and
 - b. do not solicit, access or use any Confidential Business Information that they are prohibited under this Order to Maintain Assets from receiving for any reason or purpose.
- G. Not later than thirty (30) days following the Closing Date, Respondents shall provide to all of Respondents' employees and other personnel who may have access to Confidential Business Information related to the Divestiture Products written or electronic notification of the restrictions on the use of such information by

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Respondents' personnel. At the same time, if not provided earlier, Respondents shall provide a copy of such notification by e-mail with return receipt requested or similar transmission, and keep an electronic file of such receipts for one (1) year after the Closing Date for each of the respective Divestiture Product Assets. Respondents shall provide a copy of the form of such notification to the Acquirer, the Interim Monitor, and the Commission. Respondents shall also obtain from each employee covered by this Paragraph II.G. an agreement to abide by the applicable restrictions. Respondents shall maintain complete records of all such agreements at Respondents' registered office within the United States 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 monitor the implementation by its employees and other personnel of all applicable restrictions, and take corrective actions for the failure of such employees and personnel to comply with such restrictions or to furnish the written agreements and acknowledgments required by this Order to Maintain Assets. Respondents shall provide the relevant Acquirer with copies of all certifications, notifications and reminders sent to Respondents' employees and other personnel.

- H. Respondents shall adhere to and abide by the Remedial Agreements (which agreements shall not vary or contradict, or be construed to vary or contradict, the terms of the Orders, it being understood that nothing in the Orders shall be construed to reduce any obligations of Respondents under such agreement(s)), which are incorporated by reference into this Order to Maintain Assets and made a part hereof.
- I. The purpose of this Order to Maintain Assets is to

Order to Maintain Assets

maintain the full economic viability, marketability and competitiveness of the Divestiture Product Businesses within the Geographic Territory through their full transfer and delivery to an Acquirer, to minimize any risk of loss of competitive potential for the Divestiture Product Businesses within the Geographic Territory, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Divestiture Assets except for ordinary wear and tear.

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

- A. At any time after Respondents sign the Consent Agreement in this matter, the Commission may appoint a monitor or monitors ("Interim Monitor") to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Order to Maintain Assets, the Decision and Order, and the Remedial Agreements.
- B. The Commission appoints Dr. Stephen J.D. Bell as Interim Monitor and approves the Monitor Agreement executed by Dr. Bell and Respondents. Dr. Bell shall be subject to all provisions in this Order to Maintain Assets.
- C. Respondents shall facilitate the ability of the Interim Monitor to comply with the duties and obligations set forth in this Order to Maintain Assets, and shall take no action that interferes with or hinders the Interim Monitor's authority, rights and responsibilities as set forth herein, or in any other agreement between the Interim Monitor and Respondents. Respondents may, with the consent of the Interim Monitor, contract with

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additional consultant(s) to assist the Interim Monitor in carrying out his or her duties, provided that the Interim Monitor shall direct the work of any such consultant(s) and that the rights, duties and responsibilities of such consultant(s) are consistent with the terms of this Order to Maintain Assets, including, without limitation, the requirement that such consultant shall act in a fiduciary capacity for the benefit of the Commission.

- D. The Interim Monitor's duties and responsibilities shall include the following:
1. the Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission;
 2. the Interim Monitor shall have authority to employ, at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities;
 3. the Interim Monitor shall have the power and authority to monitor Respondents' compliance with this Order to Maintain Assets and shall exercise such power and authority and carry out his or her duties and responsibilities in a manner consistent with the purposes of this order and in consultation with the Commission;
 4. the Interim Monitor shall, in his or her sole discretion, consult with third parties in the exercise of his or her duties under this Order to Maintain Assets or under any agreement between the Interim Monitor and Respondents; and
 5. the Interim Monitor shall evaluate the reports

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submitted by Respondents pursuant to Paragraph IV. of this Order to Maintain Assets, and within thirty (30) days from the date the Interim Monitor receives these reports, report in writing to the Commission concerning performance by Respondents of their obligations under the Order.

- 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. The Interim Monitor shall serve until termination of this Order to Maintain Assets pursuant to Paragraph VII.
- G. If the Commission determines that an Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor:
 - 1. The Commission shall select the substitute Interim Monitor, subject to the consent of Respondent Pfizer, which consent shall not be unreasonably withheld. If Respondent Pfizer has not opposed, in writing, including the reasons for opposing, the selection of a proposed substitute Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondent Pfizer of the identity of any proposed substitute Interim Monitor, Respondents shall be deemed to have consented to the selection of the substitute Interim Monitor.
 - 2. Not later than ten (10) days after the appointment of a substitute Interim Monitor, Respondents shall

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execute an agreement that, subject to the prior approval of the Commission, confers on the substitute Interim Monitor all the rights and powers necessary to permit the substitute Interim Monitor to monitor Respondents' compliance with the relevant requirements of this Order and the Decision and Order in a manner consistent with the purposes of each.

- H. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.
- I. The Interim Monitor appointed pursuant to this Order to Maintain Assets may be the same persons appointed as a Divestiture Trustee(s) pursuant to the relevant provisions of the Decision and Order.

IV.

IT IS FURTHER ORDERED that within thirty (30) days after the date this Order to Maintain Assets becomes final, and every thirty (30) days thereafter until Respondents have fully complied with their obligations to assign, grant, license, divest, transfer, deliver or otherwise convey relevant assets as required by Paragraph II.A. and III.A. of the related Decision and Order in this matter, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order to Maintain Assets and the related Decision and Order; *provided, however*, that, after the Decision and Order in this matter becomes final, the reports due under this Order to Maintain Assets may be consolidated with, and submitted to the Commission at the same time as, the reports required to be submitted by Respondents pursuant to Paragraph VIII of the Decision and Order.

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V.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

- A. any proposed dissolution of a Respondent;
- B. any proposed acquisition, merger or consolidation of a Respondent; or
- C. any other change in a Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Orders.

VI.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order to Maintain Assets, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondents made to their principal United States offices or headquarter's address, Respondents shall, without restraint or interference, permit any duly authorized representative of the Commission:

- 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 Respondents related to compliance with this Order, which copying services shall be provided by Respondents at the request authorized representative(s) of the Commission and at the expense of the Respondents; and

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- B. to interview officers, directors, or employees of such Respondent, who may have counsel present, regarding such matters.

VII.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate on the earlier of:

- A. Three (3) days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. The later of:
 - 1. The day after the divestiture of all of the Divestiture Assets, as required by and described in the Decision and Order, has been completed and each Interim Monitor, in consultation with Commission staff and the Acquirer(s), notifies the Commission that all assignments, conveyances, deliveries, grants, licenses, transactions, transfers and other transitions related to such divestitures are complete, or the Commission otherwise directs that this Order to Maintain Assets is terminated; or
 - 2. The day the related Decision and Order becomes final.

By the Commission, Commissioner Harbour and Commissioner Kovacic recused.

Analysis to Aid Public Comment

**ANALYSIS OF PROPOSED AGREEMENT CONTAINING
CONSENT ORDERS TO AID PUBLIC COMMENT****I. Introduction**

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") with Pfizer Inc. ("Pfizer"), which is designed to remedy the anticompetitive effects of its proposed acquisition of Wyeth ("Wyeth"). Under the terms of the Consent Agreement, Pfizer must divest to Boehringer Ingelheim Vetmedica, Inc. ("BI") Wyeth's U.S. animal health business ("Fort Dodge") in all areas of overlap, except for equine tapeworm parasiticides and equine herpesvirus vaccines. In the area of equine tapeworm parasiticides, the consent order requires Pfizer to return to Virbac S.A. ("Virbac") Pfizer's exclusive distribution rights for these products. In the area of equine herpesvirus vaccines, Pfizer is ordered to divest to BI Pfizer's equine herpesvirus products. The assets for each of the divestitures include all of the relevant intellectual property, customer lists, research and development information, and regulatory materials, as well as two of Fort Dodge's three U.S. manufacturing facilities. These divestitures fully preserve the competition that the proposed acquisition would otherwise eliminate.

The proposed Consent Agreement has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the proposed Consent Agreement and the comments received to decide whether it should withdraw from the proposed Consent Agreement, modify it, or make final the accompanying Decision and Order ("Order").

Pursuant to an Agreement and Plan of Merger dated as of January 25, 2009, Pfizer proposes to acquire all of the issued and outstanding shares of Wyeth, whereby each outstanding share of

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Wyeth common stock will be converted into the right to receive \$33 in cash and 0.985 share of Pfizer common stock. Both parties manufacture human and animal health biological and pharmaceutical products. The combined firm would have projected worldwide revenues of almost \$72 billion. The Commission's complaint alleges that the proposed acquisition, if consummated, would violate 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, in U.S. markets for the manufacture and sale of: (1) killed cattle respiratory vaccines; (2) modified-live cattle respiratory vaccines; (3) cattle reproductive vaccines; (4) cattle pasteurella vaccines; (5) lactating-cow mastitis treatments; (6) dry-cow mastitis treatments; (7) dairy cattle broad-spectrum antibiotics with low milk-withholding times; (8) cattle macrocyclic lactone parasiticides; (9) cattle benzimidazole parasiticides; (10) canine combination vaccines; (11) canine monovalent parvovirus vaccines; (12) canine monovalent coronavirus vaccines; (13) canine monovalent leptospira vaccines; (14) canine bordetella vaccines; (15) feline combination vaccines; (16) feline leukemia vaccines; (17) companion animal rabies vaccines; (18) companion animal cephalosporin antibiotics; (19) equine tapeworm parasiticides containing praziquantel; (20) equine herpesvirus vaccines; and (21) equine joint-injected steroids. The proposed Consent Agreement remedies the alleged violations by replacing in each of the relevant markets the lost competition that would result from the acquisition.

II. The Products and Structure of the Markets

The proposed acquisition of Wyeth by Pfizer would combine two of the largest animal health suppliers in the United States. The companies overlap in several animal health markets, and, if consummated, the transaction likely would lead to anticompetitive effects in each of the relevant markets. More specifically, the transaction would decrease the number of competing suppliers in the overlap markets, which number has a direct and substantial effect on the prices of animal health products. The evidence

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shows that customers are able to obtain lower prices by threatening to switch to another supplier or presenting the incumbent supplier with a rival's lower offer. Customers have stated that they generally can negotiate lower prices in markets with more participants and that, historically, they have seen prices rise in markets in which the number of market participants has declined.

Pfizer and Fort Dodge are the market leaders in the area of cattle health products. After the transaction, Pfizer would have over 60 percent of several of the relevant cattle product markets. In the cattle vaccines area, Pfizer and Fort Dodge have broad and significantly overlapping portfolios of respiratory, reproductive, and pasteurella vaccines. Customers can choose the specific vaccine products that most closely match their needs based on several factors, including, among others, disease risk assessments and relative prices.

Killed cattle respiratory vaccines prevent respiratory diseases in pregnant cattle without the risk of causing abortion. Pfizer and Fort Dodge account for over 50 percent of all killed respiratory vaccine sales in the United States. The most commonly used killed respiratory vaccine is the 5-way vaccine, which prevents infectious bovine rhinotracheitis, types 1 and 2 of bovine virus diarrhea, parainfluenza 3, and bovine respiratory syncytial virus. As a result of the acquisition, Pfizer would have 61 percent of the market for killed 5-way respiratory vaccines, leaving Novartis Animal Health ("Novartis") as Pfizer's only other significant competitor.

Modified-live cattle respiratory vaccines prevent the same diseases as killed respiratory vaccines, but contain modified-live rather than killed antigens to stimulate greater protection. Because modified-live respiratory vaccines induce stronger immunities, most customers will use modified-live vaccines for non-pregnant cattle. Pfizer and Fort Dodge account for over 53 percent of all modified-live respiratory vaccine sales in the United

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States. As with killed respiratory vaccines, the 5-way modified-live respiratory vaccine is the most commonly used modified-live cattle respiratory vaccine. As a result of the proposed acquisition, Pfizer would control over 68 percent of the 5-way modified-live respiratory vaccine market.

Cattle reproductive vaccines are used to prevent early- and late-stage abortions in pregnant cattle. The markets for cattle reproductive vaccines include, most significantly: (1) the market for modified-live 10-way vaccines, which contain modified-live viral respiratory and *Leptospira* antigens; (2) the market for killed 10-way vaccines, which contain killed viral respiratory and *Leptospira* antigens; and (3) the market for lepto/vibrio vaccines, which contain *Leptospira* and *Campylobacter fetus* antigens. After the acquisition, Pfizer would have 83 percent of the \$13 million modified-live 10-way market in the United States, with Intervet/Schering-Plough Animal Health (“ISP”), AgriLaboratories, Ltd. (“AgriLabs”), and BI accounting for 11 percent, 4 percent, and 2 percent, respectively. Pfizer also would control 76 percent of sales in killed 10-way vaccines, leaving Novartis with 18 percent and AgriLabs with 6 percent of this \$9 million market. Finally, in the lepto/vibrio vaccine market, Pfizer and Fort Dodge collectively account for almost 39 percent of this \$2.6 million market, and Novartis leads with 41 percent.

Cattle pasteurized vaccines are used to prevent pneumonia as well as lesser respiratory infections in cows caused by *Pasteurella multocida* and *Mannheimia haemolytica* bacteria. Pfizer, Fort Dodge, BI, ISP, and Merial are the only significant suppliers of products in these markets in the United States. The proposed acquisition would reduce the number of competitors in these markets, leaving Pfizer significantly larger than any of its remaining competitors.

Lactating-cow and dry-cow mastitis treatments are used to treat infections of the udder that occur during either lactation or the dry period between pregnancies. The markets for lactating-cow and dry-cow mastitis treatments are highly concentrated, with

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Pfizer and Fort Dodge together accounting for more than 90 percent of sales in each of these markets.

Broad-spectrum antibiotic products with low milk-withholding times can be used to treat a large variety of infections that affect dairy cows.¹ Pfizer's products are considered the most effective antibiotics for dairy cows and have a zero-day withholding period, while Fort Dodge's product has a low withholding period of two to four days. A generic version of one of Pfizer's products was recently introduced. As a result of the proposed acquisition, Pfizer would have a near monopoly in this \$162 million market.

Cattle macrocyclic lactone parasiticides are the newest and most effective class of cattle parasiticides in the United States. They are effective against both internal and external parasites. There are only three branded players in the \$118 million U.S. market: Pfizer, Fort Dodge, and Merial. Although generic versions of Merial's product are available, there are no generic versions of Pfizer's or Fort Dodge's products currently on the market. The proposed acquisition would significantly increase the concentration in this market, leaving Pfizer with approximately 42 percent of the market.

Cattle benzimidazole parasiticides are an older generation of parasiticides used primarily by cattle breeders to treat internal parasites, such as lungworms, tapeworms, and liver flukes. Pfizer, Fort Dodge, and ISP are the only three suppliers to offer

¹ To ensure that antibiotic-contaminated milk is not distributed, the United States Food and Drug Administration ("FDA") has set "withholding times" for each antibiotic product and mandates that any milk that is produced during the withholding period be discarded. A principal consideration for dairy farmers in purchasing antibiotics, therefore, is how quickly they can resume milk production after treatment.

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cattle benzimidazole parasiticides in the United States. After the proposed acquisition, ISP would be the only remaining constraint on Pfizer's ability to raise prices, accounting for 67 percent of this \$16 million market. Pfizer would control the remaining 33 percent of the market.

Beyond cattle health products, Pfizer and Fort Dodge are also two of only four major suppliers in the relevant companion animal vaccines and pharmaceuticals markets. In the majority of these markets, the transaction would reduce the number of competitors from four to three and give Pfizer between 50 and 100 percent of the market. As in the cattle vaccines area, Pfizer and Fort Dodge have broad and significantly overlapping portfolios of companion animal vaccines. Customers can choose the specific vaccine products that most closely match their needs based on several factors, including, among others, vaccination protocols recommended by veterinarians and disease risk assessments.

Canine combination vaccines prevent common canine diseases, such as those caused by canine distemper, adenovirus (types 1 and 2), parainfluenza, parvovirus, coronavirus, and *Leptospira*. Pfizer, Fort Dodge, Merial, and ISP are the only four significant companies that supply canine combination vaccines in the United States. Total U.S. sales of canine combination vaccines are \$126 million. The proposed acquisition would reduce the number of significant suppliers of canine combination vaccines from four to three.

While parvovirus, coronavirus, and leptospira vaccines are all available as part of canine combination vaccines, the monovalent forms are administered as booster shots for puppies that have a particularly high risk of exposure to the disease. Pfizer, Fort Dodge, Merial, and ISP are the only four companies that supply canine monovalent parvovirus vaccines in the United States, a \$2.1 million market. The proposed acquisition would give Pfizer control of 66 percent of the canine monovalent parvovirus vaccines market.

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The same four players – Pfizer, Fort Dodge, Merial, and ISP – are also the only four companies that supply canine monovalent coronavirus vaccines in the United States. The proposed acquisition would further entrench Pfizer as the dominant supplier with an 81 percent share of the \$2.3 million market for canine monovalent coronavirus vaccines.

In the market for canine monovalent leptospira vaccines, the proposed acquisition would combine the only two companies that currently supply such vaccines in the United States. Pfizer currently has a 53 percent share, and Fort Dodge controls the remaining 47 percent of this \$9.2 million market. The proposed acquisition would grant Pfizer complete control over the market for canine monovalent leptospira vaccines.

Canine bordetella vaccines are used primarily to prevent infectious tracheobronchitis, which is the most prevalent upper respiratory infection contracted by dogs in the United States. There are five suppliers of canine bordetella vaccines in the United States: Pfizer, Fort Dodge, ISP, Merial, and BI. Total U.S. sales of canine bordetella vaccines amount to \$53.3 million. The proposed acquisition would reduce the number of suppliers of canine bordetella vaccines from five to four, leaving Pfizer significantly larger than its three remaining competitors.

Feline combination vaccines are used to prevent common feline diseases, such as feline panleukopenia, rhinotracheitis, chlamydia, and calicivirus. Pfizer, Fort Dodge, ISP, and Merial are the only significant suppliers of feline combination vaccines in the United States. Total U.S. sales of feline combination vaccines are \$28 million. The proposed acquisition would reduce the number of significant suppliers of feline combination vaccines from four to three, with Pfizer's sales considerably greater than those of its two remaining competitors.

Feline leukemia vaccines can provide effective protection against feline leukemia, a fatal disease that breaks down a cat's

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immune system to such an extent that it can no longer defend against otherwise harmless invasions by bacteria, viruses, or other sources of disease. Pfizer, Fort Dodge, Merial, and ISP are the only four companies that supply feline leukemia vaccines in the United States, sales of which are \$38 million. The proposed acquisition would reduce the number of suppliers from four to three, with Pfizer significantly larger than its two remaining competitors.

Companion animal rabies vaccines are used to prevent rabies, a fatal and incurable neurological disease. Pfizer, Fort Dodge, Merial, and ISP are the only four companies that offer companion animal rabies vaccines in the United States. U.S. sales of such vaccines total approximately \$60 million, and the proposed acquisition would reduce the number of suppliers of companion animal rabies vaccines from four to three.

Companion animal cephalosporins are a recent generation of broad-spectrum antibiotics that are effective against both gram-positive and gram-negative organisms and can be used to treat a wide range of infections. Pfizer and Fort Dodge are the only two suppliers of branded companion animal cephalosporins in the United States. The only other companion animal cephalosporins are generic human and animal cephalosporin products that may be used to treat companion animals. These products, however, have limited competitive significance because of dosing differences found in the generic human products and a relative lack of technical and research support offered with the generic animal products. As a result of the proposed acquisition, Pfizer would have 70 percent of this \$52 million market.

In addition to cattle and companion animal products, the proposed acquisition also poses competitive concerns in three equine product markets: tapeworm parasiticides; herpesvirus vaccines; and joint-injected steroids. The market for equine tapeworm parasiticides containing praziquantel consists of products used to treat tapeworms and other internal parasites, which are the leading cause of equine colic in the United States.

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Currently, Pfizer has a 33 percent share of this approximately \$22 million market; Fort Dodge has a 31 percent market share; and Merial has a 36 percent market share. The proposed acquisition would give Pfizer 64 percent of the market for equine tapeworm parasiticides, leaving Merial as its only remaining competitor.

Equine herpesvirus vaccines are used primarily for the prevention of equine rhinopneumonitis, an upper respiratory disease, which can cause abortion in pregnant mares. Pfizer, Fort Dodge, ISP, and BI are the only suppliers of equine herpesvirus vaccines in the United States, sales of which total \$30 million. The proposed acquisition would reduce the number of suppliers from four to three, with Pfizer significantly larger than its two remaining competitors.

Equine joint-injected steroids can be used to reduce joint inflammation, treat osteoporosis, and prevent lameness in horses. Pfizer has a 60 percent share of this \$7.3 million market, while Fort Dodge has a 40 percent share. The proposed acquisition would create a monopoly in the market for equine joint-injected steroids in the United States.

III. Entry

Entry into the manufacture and sale of the relevant animal health vaccine and pharmaceutical markets would not be timely, likely, or sufficient in its magnitude, character, or scope to deter or counteract the anticompetitive effects of the proposed acquisition. Developing and obtaining United States Department of Agriculture approval (in the case of vaccines) for the manufacture and sale of each of the relevant products can take as many as five years due to substantial regulatory, technological, and intellectual property barriers. Similarly, obtaining FDA approval (in the case of pharmaceutical products) can take five to seven years for a currently developed product and as many as ten or more years for an entirely new product.

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In addition to the regulatory, developmental, and manufacturing hurdles facing a potential entrant, many of the markets at issue are characterized by particular conditions that make new entry unlikely. For example, some products, such as vaccines for cattle, equine, and companion animals, are particularly difficult to manufacture, have relatively small profit opportunities, and have a high potential for adverse reactions and product failure. In other markets, such as those for companion animal vaccines, a substantial initial investment is necessary because veterinarians tend to purchase all their vaccines from a single supplier; as a result, a new entrant must develop a large portfolio of vaccines in order to be a significant competitor.

IV. Effects of the Acquisition

The proposed acquisition would cause significant competitive harm to consumers in the relevant U.S. markets for cattle, companion animal, and equine health products by eliminating actual, direct, and substantial competition between Pfizer and Wyeth. The transaction would increase the likelihood that Pfizer will be able to unilaterally exercise market power, increase the likelihood of coordinated interaction between or among suppliers, reduce Pfizer's incentives to pursue further research and development, and increase the likelihood that consumers will pay higher prices. In each of the relevant markets, the evidence shows that consumers have experienced lower prices, increased research and development, and better service due to the competitive rivalry that exists between market participants – particularly that which currently exists between Pfizer and Wyeth. The evidence also shows that, when any of the competitors experienced supply problems, the remaining competitors increased their prices, and, conversely, that consumers were able to negotiate lower prices when new rivals entered the relevant markets.

V. The Consent Agreement

The proposed Consent Agreement preserves competition in each of the relevant markets alleged in the complaint by requiring

Analysis to Aid Public Comment

that Pfizer divest the following assets to BI no later than ten days after the acquisition: all of the Fort Dodge assets relating to killed cattle respiratory vaccines, modified-live cattle respiratory vaccines, cattle reproductive vaccines, cattle pasteurella vaccines, lactating-cow and dry-cow mastitis treatments, dairy cattle broad-spectrum antibiotic products with low milk-withholding times, cattle macrocyclic lactone parasiticides, cattle benzimidazole parasiticides, canine combination vaccines, canine monovalent parvovirus vaccines, canine monovalent coronavirus vaccines, canine monovalent leptospira vaccines, canine bordetella vaccines, feline combination vaccines, feline leukemia vaccines, companion animal rabies vaccines, companion animal cephalosporins, and equine joint-injected steroids, as well as the Pfizer assets relating to equine herpesvirus vaccines.

The proposed Consent Agreement contains several provisions designed to ensure that these divestitures are successful. Pfizer must provide various transitional services to enable BI to compete against Pfizer immediately following the acquisition, including any technical assistance that BI may need. Pfizer also must provide BI with the regulatory approvals, brand names, marketing materials, customer contracts, and other assets associated with marketing and selling the divested products in the United States.

BI is a reputable supplier of animal health products and is well positioned to manufacture and market the acquired products divested assets and to compete effectively in the relevant markets. In the United States, BI's animal health revenues totaled approximately \$215 million in 2008. Moreover, the acquisition by BI does not present competitive problems in any of the relevant markets because it currently has either a very limited presence or no presence at all in each of those areas. With its resources, capabilities, and experience marketing animal and human health products, BI is well placed to replicate the competition that would be lost with the proposed acquisition.

Analysis to Aid Public Comment

The proposed Consent Agreement also preserves the existing competition in the equine tapeworm parasiticides market by requiring Pfizer to return to Virbac Pfizer's distribution rights for the relevant parasiticide products no later than ten days after the acquisition. In 2000, Virbac entered into a 15-year licensing agreement with Pfizer, under which Virbac grants Pfizer exclusive distribution rights to market and sell the equine tapeworm parasiticide products in the United States. Virbac is particularly well suited to acquire these assets because it currently manufactures the products and has the resources, technical capabilities, and experience to be successful in restoring the competition that would be lost if the proposed Pfizer/Wyeth transaction were to proceed unremedied.

If the Commission determines that either BI or Virbac is not an acceptable acquirer of the assets to be divested, or that the manner of the divestitures is not acceptable, Pfizer must unwind the sale(s) and divest the assets within six months of the date the Order becomes final to another Commission-approved acquirer. If Pfizer fails to divest within the six months, the Commission may appoint a trustee to divest the relevant assets.

The proposed remedy also allows for the appointment of an Interim Trustee, experienced in obtaining regulatory approval and the manufacture of biologics, to oversee the required technology transfers. As part of the proposed remedy, Pfizer is required to execute an agreement conferring all rights and powers necessary for the Interim Trustee to satisfy his responsibilities under the Order to assure successful divestitures. The Commission has appointed Dr. Stephen J.D. Bell of Tunnell Consulting to be the Interim Monitor and it is anticipated that he will obtain support and assistance from his colleague, Mr. Arlo Millen. The monitors will ensure that the Commission remains informed about the status of the proposed divestitures and asset transfers.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to

Complaint

constitute an official interpretation of the proposed Consent Agreement or to modify its terms in any way.

Complaint

IN THE MATTER OF

AGRIUM INC.

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5(A) OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF
THE CLAYTON ACT

Docket No. C-4277; File No. 091 0068

Filed, December 22, 2009 — Decision, February 3, 2010

This consent order addresses the \$3.6 billion acquisition by Agrium Inc., of CF Industries Holdings. In the Pacific Northwest, Agrium and CF are the only major suppliers of anhydrous ammonia. The complaint alleges that, in the Pacific Northwest and two adjacent areas in Northern Illinois, Agrium's acquisition of CF would eliminate actual, direct, and substantial competition between Agrium and CF; increase Agrium's ability to exercise market power unilaterally; and substantially increase the level of market concentration and enhance the probability of coordination in the two markets in Northern Illinois. The Consent Agreement, requires Agrium to, among other things, divest anhydrous ammonia terminals in Ritzville, Washington, and Marseilles, Illinois to Terra Industries Inc. or another Commission-approved purchaser. Agrium is also required to divest its rights to market and distribute the anhydrous ammonia produced by Rentech at Rentech's East Dubuque, Illinois manufacturing plant back to Rentech.

Participants

For the *Commission*: *E. Eric Elmore, Victoria Luxardo Jeffries, and Victoria Lippincott.*

For the *Respondents*: *Joseph Simons, Paul, Weiss, Rifkind, Wharton & Garrison LLP; and Joshua Gray, Ian John, and Neal Stoll, Skadden, Arps, Slate, Meagher & Flom LLP.*

COMPLAINT

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 Agrium Inc. ("Agrium"), a corporation subject to the jurisdiction of the