

COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, and the *Competition Tribunal Rules*, SOR/2008-141;

AND IN THE MATTER OF the proposed acquisition by Abbott Laboratories, or an affiliate thereof, of all of the issued and outstanding shares of St. Jude Medical, Inc.;

AND IN THE MATTER OF the filing and registration of a consent agreement pursuant to sections 92 and 105 of the *Competition Act*.

B E T W E E N :

THE COMMISSIONER OF COMPETITION

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE REGISTERED / ENREGISTRÉ FILED / PRODUIT December 28, 2016 CT-2016-018 Jos LaRose for / pour REGISTRAR / REGISTRAIRE		Applicant
– and – ABBOTT LABORATORIES		Respondent
OTTAWA, ONT	# 2	

CONSENT AGREEMENT

RECITALS:

A. Abbott Laboratories, or an affiliate thereof, proposes to acquire all of the issued and outstanding shares of St. Jude Medical, Inc. or an affiliate thereof (the “Transaction”).

B. The Commissioner has concluded that the Transaction is likely to result in a substantial lessening and/or prevention of competition in the supply of vascular closure devices in Canada, and that the implementation of this Agreement is necessary to ensure that any substantial lessening and/or prevention of competition will not result from the Transaction.

C. Abbott does not admit but will not for the purposes of this Agreement, including execution, registration, enforcement, variation or rescission, contest the Commissioner’s conclusions that (i) the Transaction is likely to result in a substantial lessening and/or prevention of competition in the supply of vascular closure devices in Canada; and (ii)

the implementation of this Agreement is necessary to ensure that any substantial lessening and/or prevention of competition will not result from the Transaction.

D. Nothing in this Agreement affects any investigation, inquiry or proceeding other than under section 92 of the Act in respect of the Transaction.

THEREFORE Abbott and the Commissioner agree as follows:

I. DEFINITIONS

[1] Whenever used in this Agreement, the following words and terms have the meanings set out below:

- (a) **“Act”** means the *Competition Act*, R.S.C. 1985, c. C-34, as amended;
- (b) **“Abbott”** means Abbott Laboratories and its Affiliates and their respective directors, officers, employees, agents, representatives, successors and assigns;
- (c) **“Affiliate”** means, in respect of a Person, any other Person controlling, controlled by or under common control with such first Person, whether directly or indirectly, and **“control”** means directly or indirectly hold securities or other interests in a Person (i) to which are attached more than 50% of the votes that may be cast to elect directors or persons exercising similar functions or (ii) entitling the holder to receive more than 50% of the profits of the Person or more than 50% of its assets on dissolution;
- (d) **“Agency”** means any government regulatory authority in Canada responsible for granting approvals, clearances, qualifications, licenses or permits for any aspect of the research, Development, manufacture, marketing, distribution, or sale of a Product;
- (e) **“Agreement”** means this Consent Agreement, including the schedules hereto, and references to a “Part”, “Section”, “Paragraph” or “Schedule” are, unless otherwise indicated, references to a part, section, paragraph or schedule of or to this Agreement;
- (f) **“Business Day”** means a day on which the Competition Bureau’s Gatineau, Quebec office is open for business;
- (g) **“Closing”** means the completion of the Transaction under the Transaction Agreement;
- (h) **“Closing Date”** means the date on which Closing occurs;

- (i) **“Commissioner”** means the Commissioner of Competition appointed under the Act and includes his authorized representatives;
- (j) **“Confidential Information”** means competitively sensitive, proprietary and all other information that is not in the public domain, and that is owned by or pertains to a Person or a Person’s business, and includes, but is not limited to, manufacturing, operations and financial information, customer lists, price lists, contracts, cost and revenue information, marketing methods, patents, technologies, processes, or other trade secrets;
- (k) **“Contracts”** means all real and personal property leases, software licenses, Divestiture Product Intellectual Property licenses, warranties, guaranties, insurance agreements, employment contracts, all contracts of any kind relating to construction, customer contracts, sales contracts, distribution contracts, supply agreements, utility contracts, collective bargaining agreements, confidentiality agreements, non-disclosure agreements, and other contracts or agreements of any kind;
- (l) **“Development”** means all preclinical and clinical drug and medical device development activities, including formulation, biological research and development activities, test method development and stability testing, toxicology, formulation, process development, manufacturing scale-up, development-stage manufacturing, quality assurance and quality control development, statistical analysis and report writing, conducting clinical trials for the purpose of obtaining any and all Product Approvals, and regulatory affairs related to the foregoing;
“Direct Cost” means a cost not to exceed the cost of labour, material, travel, and other expenditures to the extent such costs are directly incurred to provide the Divestiture Products, inputs, components, goods, assistance or services; provided, however, in each instance where: (i) an agreement to divest relevant assets is specifically referenced and attached to this Consent Agreement; and (ii) an agreement becomes a Remedial Agreement for the Divestiture Assets, “Direct Cost” means such cost as is provided in such Remedial Agreement;
- (m) **“Divestiture”** means the sale, conveyance, transfer, assignment or other disposal of the Divestiture Assets to a Purchaser pursuant to this Agreement and with the prior approval of the Commissioner, such that Abbott will have no direct or indirect interest in the Divestiture Assets;

- (n) **“Divestiture Agreement”** means a binding and definitive agreement between Abbott and a Purchaser to effect the Divestiture pursuant to this Agreement and subject to the prior approval of the Commissioner, and, in the event Terumo is the Purchaser, the Terumo Divestiture Agreement;
- (o) **“Divestiture Applicant”** means Abbott during the Initial Sale Period or the Divestiture Trustee during the Divestiture Trustee Sale Period;
- (p) **“Divestiture Assets”** means all of Abbott’s assets related to the Divestiture Products, and all of Abbott’s rights, title and interest in and to all such assets to the extent legally transferable, including the research, Development, manufacture, distribution, marketing, and sale of the Divestiture Products, including, without limitation, the following:
 - i. all Divestiture Product Intellectual Property;
 - ii. all Divestiture Product Manufacturing Technology and Equipment, including, at the Purchaser’s option, the Specified VCD Manufacturing Equipment, provided, however, that the Specified VCD Manufacturing Equipment may be divested to the Purchaser only after completion by Abbott and St. Jude of any Transitional Manufacturing and Supply Agreements using such equipment;
 - iii. all Divestiture Product Marketing Materials;
 - iv. all Scientific and Regulatory Material;
 - v. the Puerto Rico Facility and all Facility Assets related thereto; provided, however, that this includes only the portion of the lease agreement between St. Jude and the Puerto Rico Industrial Development Company applicable to the Puerto Rico Facility;
 - vi. all Contracts related to the Puerto Rico Facility;
 - vii. all Contracts related to the research, Development, manufacture, marketing, sale and distribution of the Divestiture Products and Divestiture Product Components at the Minnesota Facility, in each case only to the extent they are related to, and only upon completion of Abbott and St. Jude’s obligations under any Transitional Manufacturing and Supply Agreement

for the supply of the Divestiture Products and Divestiture Product Components to the Purchaser;

- viii. all Product Approvals for the Divestiture Products;
- ix. all applications and rights to applications for all Product Approvals for the Divestiture Products granted by any Agency, and all supplements, amendments, and revisions thereto, any preparatory work, drafts and data necessary for the preparation thereof, and all correspondence between Abbott or St. Jude, as applicable, and the relevant Agency related thereto;
- x. all inventories, stores and supplies related to the Puerto Rico Facility of any semi-finished and finished Divestiture Product(s) and work in progress, and of raw materials and other materials relating to the research, Development, manufacture, finishing, packaging, labelling, distribution, marketing, or sale of any Divestiture Product(s), including all books, records, and files, databases, printouts, and all other documents of any kind, whether stored or maintained in hard copy format, by means of electronic, optical, or magnetic media or devices, photographic or video images, or any other format or media, including, without limitation: customer files, vendor lists, correspondence, advertising, and marketing materials, marketing analyses, sales materials, price lists, cost information, employee lists and contracts, salary and benefits information, personnel files, financial and accounting records and documents, financial statements, financial plans and forecasts, operating plans, studies reports, regulatory materials, applications, Agency filings and submissions, Agency correspondence, operating guides, technical information, manuals, policies and procedures, service and warranty records, maintenance logs, equipment logs, registrations, and permits;

Provided, however, that “Divestiture Assets” shall not include the Retained Products or Retained Business, or any part of the Divestiture Assets if not needed by the Purchaser, as evidenced by its exclusion from the Divestiture Agreement; or documents containing information: (i) that relates both to the Divestiture Assets and to Retained Products or the Retained Business and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the Divestiture Assets; or (ii) for which Abbott has a legal obligation to retain the original copies, Abbott shall be required to provide only copies or relevant excerpts of, or

access to, the relevant documents containing this information, in each case pursuant to the terms of any Divestiture Agreement. In instances where such copies are provided to the Purchaser, Abbott shall provide the Purchaser with access to original documents under circumstances where copies of documents are insufficient for evidentiary or regulatory purposes;

- (q) **“Divested Business”** means the research, Development, manufacture, marketing, sale and distribution of the Divestiture Products conducted by St. Jude as of the Closing Date and as maintained by Abbott up to the Divestiture Date;
- (r) **“Divestiture Date”** means the date on which Abbott during the Initial Sale Period or a Divestiture Trustee during the Divestiture Trustee Sale Period complete the Divestiture;
- (s) **“Divestiture Process Agreement”** means the agreement described in Section 6 of this Agreement;
- (t) **“Divestiture Product(s)”** means vascular closure devices composed of an absorbable collagen sponge and absorbable polymer anchor, each connected by a self-tightening suture, and any related Products or devices, researched, Developed manufactured, marketed, promoted, sold in, into or for Canada by St. Jude prior to the Transaction, including all Divestiture Products marketed and sold under the Trademark Angio-Seal;
- (u) **“Divestiture Product Components”** means the components specified and described in the Manufacturing and Supply Agreement between St. Jude and Terumo and the Terumo Purchase Agreement in Confidential Schedule A;
- (v) **“Divestiture Product Copyrights”** means rights to all original works of authorship of any kind directly related to a Divestiture Product, and any registrations and applications for registrations thereof, within Canada;
- (w) **“Divestiture Product Intellectual Property”** means the following intellectual property owned, controlled, or licensed by St. Jude in Canada as of the Closing Date and related to a Divestiture Product:
 - a. Patents, Divestiture Product Copyrights, Divestiture Product Trademarks, Divestiture Product Marketing Materials and Divestiture Product Software;
 - b. trade dress, industrial designs, distinguishing guises, trade secrets, Divestiture Product Know-How, techniques, data,

inventions, practices, methods, and other confidential or proprietary technical, business, research, Development and other information, and all rights in Canada to limit the use or disclosure thereof;

- c. rights to obtain and file for Patents and copyrights and registrations thereof in Canada; and
- d. rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation or breach of any of the foregoing;

provided, however, “Divestiture Product Intellectual Property” does not include the corporate name of Abbott or St. Jude or the corporate names of any other corporations or companies owned or controlled by Abbott or the related logos thereof; or the business marks specified on Schedule 5.07(a) of the Terumo Divestiture Agreement;

- (x) **“Divestiture Product Know-How”** means all the know-how that is used for the Divestiture Products, including (i) all specifications, processes, designs, plans, trade secrets, ideas, concepts and inventions, (ii) manufacturing, engineering and other manuals and drawings, (iii) standard operating procedures, formulae and flow diagrams, (iv) toxicological, biological and physical analytical studies or reports, (v) information pertaining to safety, stability, supply, selection, constitution, or use of any raw material, (vi) quality assurance, quality control and clinical data, (vii) technical information and (viii) research records;
- (y) **“Divestiture Product Manufacturing Technology and Equipment”** means all technology and equipment to make a Divestiture Product, including, but not limited to:
 - i. all technology, trade secrets, formulas and proprietary information (whether patented, patentable or otherwise) related to the manufacture of a Divestiture Product including, but not limited to: all product specifications; processes; product designs; plans; trade secrets; ideas; concepts; manufacturing, engineering, and other manuals and drawings; standard operating procedures; flow diagrams; quality assurance and quality control systems; research records; clinical data; compositions; annual product reviews; regulatory communications; control history; current and historical information associated with Product Approval application conformance and GMP compliance; labeling and all

other information related to the manufacturing process;
and supplier lists;

ii. all ingredients, materials, or components used in the
manufacture of a Divestiture Product; and,

iii. all machinery, equipment, mechanical and spare parts,
supplies, tools, tooling, jigs, molds, dies, production
supplies, samples, media, and fixtures used to
manufacture, finish and package a Divestiture Product
("Manufacturing Equipment");

(z) **"Divestiture Product Marketing Materials"** means all
marketing materials used specifically in the marketing or sale of a
Divestiture Product in Canada as of the date of the Divestiture;

(aa) **"Divestiture Product Software"** means computer programs,
including all software implementation of algorithms, models and
methodologies whether in source code or object code form,
databases and compilations, including any and all data and
collections of data, all documentation, including user manuals and
training materials, related to any of the foregoing and the content
and information contained on any website, used in connection
with the analysis of clinical trial data for a Divestiture Product,
other than software that is readily purchasable or licensable and
which has not been modified in a manner material to the use or
function thereof (other than through user preference settings);

(bb) **"Divestiture Product Trade-marks"** means all proprietary
names or designations, trade-marks, 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, all in Canada, for
the Divestiture Products;

(cc) **"Divestiture Trustee"** means the Person appointed pursuant to
Part III of this Agreement (or any substitute appointed thereto)
and any employees, agents or other Persons acting for or on
behalf of the Divestiture Trustee;

(dd) **"Divestiture Trustee Sale"** means the Divestiture to be
conducted by the Divestiture Trustee pursuant to Part III of this
Agreement;

(ee) **"Divestiture Trustee Sale Period"** means the 12 month period
commencing upon expiry of the Initial Sale Period;

- (ff) **“First Reference Date”** shall have the meaning set out in Paragraph 22(d) of this Agreement;
- (gg) **“Facility Assets”** means all of Abbott’s rights, title and interests in and to the following:
- i. all real property interests, including all rights, title, and interests in and to owned or leased property, together with all easements, rights of way, buildings, improvements, and appurtenances “Facility(ies)”;
 - ii. all applicable federal, state, and local regulatory registrations, permits, and applications, and all documents related thereto, necessary for the operation and conduct of the Divested Business at such Facility(ies) to the extent held by Abbott and with respect to which the transfer thereof is permitted by law; provided, however, that Abbott shall cooperate with the Purchaser in securing any federal, state, or local regulatory registrations, permits, and applications for which transfer is not permitted by law; and,
 - iii. all fixtures, equipment, machinery, tools, dies, vehicles, personal property, or tangible property of any kind located at such Facility(ies) that are owned or leased by Abbott, or that Abbott has the legal right to use, or over which Abbott has custody or control, that are related to:
 - a. the research, Development, production, manufacture, marketing or sale of any Divestiture Product; or
 - b. compliance with any statute, ordinance, regulation, rule, or other legal requirement (including, but not limited to, environmental laws) of any Government Authority;
- (hh) **“Government Authority”** means (i) any federal, provincial, state, territorial, municipal, local or other government or governmental or public ministry, department, agency, tribunal, commission, board, bureau or instrumentality, domestic or foreign, (ii) any subdivision, or authority of any of the foregoing, and (iii) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for account of any of the above;
- (ii) **“GMP”** means current Good Manufacturing Practice, as set forth in the *Food and Drugs Act*, R.S.C. 1985, c. F-27, as amended, and all rules and regulations promulgated thereunder;

- (jj) **“Initial Sale Period”** means the period that commences at Closing and ends 90 days from the Closing Date;
- (kk) **“Minnesota Facility”** means St. Jude’s manufacturing facility located in Minnetonka, Minnesota as specified in the Manufacturing and Supply Agreement between St. Jude and Terumo which will be executed and become effective on the Divestiture Date, submitted as part of the Terumo Divestiture Agreement;
- (ll) **“Monitor”** means the Person appointed pursuant to Part XI of this Agreement (or any substitute appointed thereto), and any employees, agents or other Persons acting for or on behalf of the Monitor, provided that if no Monitor is appointed, other than in Part XI of this Agreement, Monitor means the Commissioner;
- (mm) **“Monitor Agreement”** means the agreement described in Section 40 of this Agreement;
- (nn) **“Patent”** means any Canadian patent or patent application, 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 Agreement specifies a different time), and includes, without limitation, all inventions disclosed therein, and all rights therein provided by international treaties and conventions, related to any Divestiture Product in Canada as of the Closing Date;
- (oo) **“Person”** means any individual, corporation or partnership, sole proprietorship, trust or other unincorporated organization capable of conducting business, and any Affiliates thereof;
- (pp) **“Puerto Rico Facility”** means Building B of the premises located at Zona Industrial Oeste Lot 20, Calle B, Caguas, Puerto Rico;
- (qq) **“Product”** means any vascular closure devices used to facilitate secure closure of the vascular access site after coronary and peripheral catheterizations;
- (rr) **“Product Approvals”** means any approvals, registrations, permits, licences, consents, authorizations, and other approvals, and pending applications and requests therefor, required by any Agency related to the research, Development, manufacture, use, distribution, finishing, packaging, promotion, marketing, sale, storage, transport, import or export of a Product within, into or from Canada;

- (ss) **“Purchaser”** means Terumo or any Person that acquires Divestiture Assets pursuant to this Agreement and a Divestiture Agreement;
- (tt) **“Records”** means records within the meaning of subsection 2(1) of the Act;
- (uu) **“Remedial Agreement”** means any agreement, including the Divestiture Agreement, between Abbott and a Purchaser, or between a Divestiture Trustee (on behalf of Abbott) and a Purchaser or a Third Party (to effect the assignment of assets or rights of Abbott related to the Divestiture Products to the benefit of a Purchaser), that has been approved by the Commissioner and that is specifically referenced in this Agreement as constituting a Remedial Agreement;
- (vv) **“Retained Business”** means (i) all assets, tangible or intangible, businesses, and goodwill related to all of the Retained Products of Abbott; and (ii) cash and cash equivalents, accounts receivable arising prior to the Divestiture Date, compensation or benefit plans; and tax assets;
- (ww) **“Retained Product(s)”** means any product researched, developed, manufactured, marketed, promoted, sold or distributed by Abbott or St. Jude prior to the Transaction other than the Divestiture Products;
- (xx) **“Scientific and Regulatory Material”** means all technological, scientific, chemical, biological, pharmacological, toxicological, regulatory, and clinical trial materials and information;
- (yy) **“Second Reference Date”** shall have the meaning set out in Paragraph 22(e) of this Agreement;
- (zz) **“St. Jude”** means St. Jude Medical, Inc. and its Affiliates and their respective directors, officers, employees, agents, representatives, successors and assigns;
- (aaa) **“Specified VCD Manufacturing Equipment”** means all machinery, equipment, mechanical and spare parts, supplies, tools, jigs, molds, dies, production supplies, samples, media, and fixtures located at the Minnesota Facility that are exclusively related to the manufacture of the Divestiture Products produced at the Minnesota Facility;
- (bbb) **“Terumo”** means Terumo Corporation, and its Affiliates and their directors, officers, employees, agents, representatives, successors and assigns;

- (ccc) **“Terumo Divestiture Agreement”** means the “Terumo Purchase Agreement” among Abbott, St. Jude and Terumo dated December 6, 2016, and all amendments, exhibits, attachments, agreements and schedules thereto, including, but not limited to: Transition Services Agreement between Abbott and Terumo, the Manufacturing and Supply Agreement between St. Jude and Terumo, and Quality Agreement between St. Jude and Terumo, each of which will be executed and become effective on the Divestiture Date, that have been approved by the Commissioner to accomplish the requirements of this Agreement. The “Terumo Purchase Agreement” is attached as Confidential Schedule A to this Agreement;
- (ddd) **“Third Party”** means any Person other than the Commissioner, Abbott, St. Jude or a Purchaser;
- (eee) **“Transaction”** means the transaction described in the first recital to this Agreement;
- (fff) **“Transaction Agreement”** means the Agreement and Plan of Merger dated April 27, 2016 between St. Jude and Abbott;
- (ggg) **“Transition Services”** means technical services, personnel, assistance, training, and other logistical, administrative and transitional support as required by the Purchaser and approved by the Commissioner to facilitate the transfer of the Divestiture Assets from Abbott to the Purchaser, including, but not limited to, services, training, personnel, and support related to: audits, finance and accounting, accounts receivable, accounts payable, employee benefits, payroll, pensions, human resources, information technology and systems, maintenance and repair of facilities and equipment, manufacturing, purchasing, quality control, research and development support, technology transfer, regulatory compliance, sales and marketing, customer service, and supply chain management and customer transfer logistics;
- (hhh) **“Transition Services Agreement”** means any agreement(s) that receives prior approval of the Commissioner between Abbott and the Purchaser to provide, at the option of the Purchaser, Transition Services (or training for the Purchaser to provide services for itself) necessary to transfer the Divestiture Assets to the Purchaser in a manner consistent with the purposes of this Agreement;
- (iii) **“Transitional Manufacturing and Supply Agreement(s)”** means any agreement(s) that receives prior approval of the Commissioner between Abbott or St. Jude and the Purchaser to

provide, at the option of the Purchaser, sufficient quantities of Divestiture Products and Divestiture Product Components for a period of time sufficient to allow the Purchaser to obtain all of the relevant Product Approvals necessary to manufacture the Divestiture Products and Divestiture Product Components in commercial quantities, and in a manner consistent with GMP, independently of Abbott, and to secure relevant Manufacturing Equipment and sources of supply of Divestiture Product Components from a Third Party; and

(jjj) **“Tribunal”** means the Competition Tribunal established by the *Competition Tribunal Act*, R.S.C. 1985, c.19 (2nd Supp.).

II. OBLIGATION TO COMPLETE DIVESTITURE

- [2] Abbott shall use commercially reasonable efforts to complete the Divestiture.
- [3] During the first 45 days of the Initial Sale Period, Abbott shall use commercially reasonable efforts to complete the Divestiture to Terumo pursuant to the Terumo Divestiture Agreement or to a Purchaser other than Terumo during the remaining 45 days of the Initial Sale Period, in accordance with the provisions of this Part and subject to Part IV.
- [4] During the Initial Sale Period, Abbott shall provide to the Commissioner and to the Monitor every 30 days a written report describing the progress of its efforts to effect the Divestiture. The report shall include a description of contacts, negotiations, due diligence and offers regarding the Divestiture Assets, the name, address and phone number of all parties contacted and of prospective Purchasers who have come forward. Abbott shall, within 3 Business Days, respond to any request by the Commissioner for additional information regarding the status of Abbott’s efforts to complete the Divestiture. An officer or other duly authorized representative of Abbott shall certify that he or she has examined the information provided in any such response and that such information is, to the best of his or her knowledge and belief, correct and complete in all material respects.

III. DIVESTITURE TRUSTEE SALE PROCESS

- [5] In the event that Abbott fails to complete the Divestiture during the Initial Sale Period, the Commissioner shall appoint a Divestiture Trustee to complete the Divestiture in accordance with this Agreement. Such appointment may be made at any time prior to the expiry of the Initial Sale Period or on such later date as the Commissioner determines.
- [6] Within 5 Business Days after the appointment of the Divestiture Trustee, Abbott shall submit to the Commissioner for approval the terms of a proposed Divestiture Process Agreement with the Divestiture Trustee and the Commissioner that

confers on the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the Divestiture.

- [7] Within 5 Business Days after receipt of the proposed Divestiture Process Agreement referred to in Section 6, the Commissioner shall advise Abbott whether or not he approves the terms of the proposed Divestiture Process Agreement. If the Commissioner does not approve the terms of the proposed Divestiture Process Agreement, he shall prescribe alternative terms that Abbott shall incorporate into a final Divestiture Process Agreement with the Divestiture Trustee and the Commissioner.
- [8] Without limiting the Commissioner's discretion to require additional terms, Abbott consents to the following terms and conditions regarding the Divestiture Trustee's rights, powers and duties, and shall include such terms in the Divestiture Process Agreement:
- (a) The Divestiture Trustee shall complete the Divestiture as expeditiously as possible, and in any event prior to expiry of the Divestiture Trustee Sale Period.
 - (b) The Divestiture Trustee shall use reasonable efforts to negotiate terms and conditions for the Divestiture that are as favourable to Abbott as are reasonably available at that time; however, the Divestiture shall not be subject to any minimum price. The Divestiture Trustee's opinion of what constitutes favourable terms and conditions and what constitutes reasonably available terms and conditions, is subject to review and approval by the Commissioner.
 - (c) Subject to oversight and approval by the Commissioner, the Divestiture Trustee shall have full and exclusive authority during the Divestiture Trustee Sale Period:
 - i. to complete the Divestiture in accordance with the provisions of this Part;
 - ii. to solicit interest in a possible Divestiture by whatever process or procedure the Divestiture Trustee believes is suitable to allow a fair opportunity for one or more prospective good faith Purchasers to offer to acquire the Divestiture Assets, and for greater certainty, in determining whether to pursue negotiations with a prospective Purchaser, may have regard to the approval criteria in Section 23;
 - iii. to enter into a Divestiture Agreement with a Purchaser that will be legally binding on Abbott;

- iv. to negotiate reasonable commercial covenants, representations, warranties and indemnities to be included in a Divestiture Agreement; and
 - v. to employ, at the expense of Abbott, such consultants, accountants, legal counsel, investment bankers, business brokers, appraisers, and other representatives and assistants as the Divestiture Trustee believes are necessary to carry out the Divestiture Trustee's duties and responsibilities.
- (d) Where any Person makes a good faith inquiry respecting a possible purchase of Divestiture Assets, the Divestiture Trustee shall notify such Person that the Divestiture is being made and shall provide to such Person a copy of this Agreement, with the exception of the provisions hereof that are confidential pursuant to Section 66 of this Agreement.
- (e) Where, in the opinion of the Divestiture Trustee, a Person has a good faith interest in purchasing Divestiture Assets and has executed a confidentiality agreement, in a form satisfactory to the Commissioner, with the Divestiture Trustee protecting any Confidential Information that such Person may receive in the course of its due diligence review of the Divestiture Assets, the Divestiture Trustee shall:
- i. promptly provide to such Person all information respecting the Divestiture Assets that is determined by the Divestiture Trustee to be relevant and appropriate;
 - ii. permit such Person to make reasonable inspection of the Divestiture Assets and of all financial, operational or other non-privileged Records and information, including Confidential Information, that may be relevant to the Divestiture; and
 - iii. give such Person as full and complete access as is reasonable in the circumstances to the personnel involved in managing the Divestiture Assets.
- (f) The Divestiture Trustee shall have no obligation or authority to operate or maintain the Divestiture Assets.
- (g) The Divestiture Trustee shall provide to the Commissioner and to the Monitor, within 14 days after the later of the Divestiture Trustee's appointment and the commencement of the Divestiture Trustee Sale Period and thereafter every 60 days, a written report describing the progress of the Divestiture Trustee's efforts to

complete the Divestiture. The report shall include a description of contacts, negotiations, due diligence and offers regarding the Divestiture Assets, the name, address and phone number of all parties contacted and of prospective Purchasers who have come forward. The Divestiture Trustee shall, within 3 Business Days, respond to any request by the Commissioner for additional information regarding the status of the Divestiture Trustee's efforts to complete the Divestiture.

- (h) The Divestiture Trustee shall notify Abbott and the Commissioner immediately upon the signing of any letter of intent or agreement in principle relating to the Divestiture Assets, and shall provide to Abbott a copy of any executed Divestiture Agreement upon receipt of the Commissioner's approval of the Divestiture contemplated in such Divestiture Agreement.

- [9] Abbott shall not be involved in the Divestiture process during the Divestiture Trustee Sale Period or in any negotiations with prospective Purchasers undertaken by the Divestiture Trustee, nor will Abbott have contact with prospective Purchasers during the Divestiture Trustee Sale Period.
- [10] Subject to any legally recognized privilege, Abbott shall provide to the Divestiture Trustee full and complete access to all personnel, Records, information (including Confidential Information) and facilities relating to the Divestiture Assets, to enable the Divestiture Trustee to conduct its own investigation of the Divestiture Assets and to provide access and information to prospective Purchasers.
- [11] Abbott shall take no action that interferes with or impedes, directly or indirectly, the Divestiture Trustee's efforts to complete the Divestiture.
- [12] Abbott shall fully and promptly respond to all requests from the Divestiture Trustee and shall provide all information the Divestiture Trustee may request. Abbott shall identify an individual who shall have primary responsibility for fully and promptly responding to such requests from the Divestiture Trustee on behalf of Abbott.
- [13] Abbott will do all such acts and execute all such documents, and will cause the doing of all such acts and the execution of all such documents as are within its power to cause the doing or execution of, as may be reasonably necessary to ensure that the Divestiture Assets are divested in the Divestiture Trustee Sale Period and that agreements entered into by the Divestiture Trustee are binding upon and enforceable against Abbott.
- [14] Abbott shall be responsible for all reasonable fees and expenses properly charged or incurred by the Divestiture Trustee in the course of carrying out the Divestiture Trustee's duties and responsibilities under this Agreement. The Divestiture Trustee shall serve without bond or security, and shall account for all fees and

expenses incurred. Abbott shall pay all reasonable invoices submitted by the Divestiture Trustee within 60 days after receipt and, without limiting this obligation, Abbott shall comply with any agreement it reaches with the Divestiture Trustee regarding interest on late payments. In the event of any dispute: (i) such invoice shall be subject to the approval of the Commissioner; and (ii) Abbott shall promptly pay any invoice approved by the Commissioner. Any outstanding monies owed to the Divestiture Trustee by Abbott shall be paid out of the proceeds of the Divestiture.

- [15] Abbott 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 or defence of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from malfeasance, gross negligence or bad faith by the Divestiture Trustee.
- [16] Abbott shall indemnify the Commissioner and hold the Commissioner 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 or defence of any claim, whether or not resulting in any liability.
- [17] If the Commissioner determines that the Divestiture Trustee has ceased to act or has failed to act diligently, the Commissioner may remove the Divestiture Trustee and appoint a substitute Divestiture Trustee. The provisions of this Agreement respecting the Divestiture Trustee shall apply in the same manner to any substitute Divestiture Trustee.
- [18] Abbott may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, legal counsel, investment bankers, business brokers, appraisers, and other representatives and assistants to sign an appropriate confidentiality agreement in a form satisfactory to the Commissioner; provided, however, that such agreement shall not restrict the Divestiture Trustee from providing any information to the Commissioner.
- [19] The Commissioner may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, legal counsel, investment bankers, business brokers, appraisers, and other representatives and assistants to sign an appropriate confidentiality agreement relating to materials and information the Divestiture Trustee may receive from the Commissioner in connection with the performance of the Divestiture Trustee's duties.
- [20] Notwithstanding any term of this Agreement, the rights, powers and duties of the Divestiture Trustee under this Agreement shall not expire until the Divestiture is completed.

IV. COMMISSIONER APPROVAL OF DIVESTITURE

[21] In the event that the Divestiture pursuant to the Terumo Divestiture Agreement is not completed, then the Divestiture shall be made to a Purchaser and may proceed only with the prior approval of the Commissioner in accordance with this Part. For greater certainty, if a Divestiture is a notifiable transaction nothing in this Agreement affects the operation of Part IX of the Act.

[22] The Divestiture Applicant shall comply with the following process for seeking and obtaining a decision of the Commissioner regarding his approval of a proposed Divestiture:

- (a) The Divestiture Applicant shall promptly:
 - i. inform the Commissioner of any negotiations with a prospective Purchaser that may lead to a Divestiture; and
 - ii. forward to the Commissioner copies of any agreement that is signed with a prospective Purchaser, including non-binding expressions of interest.
- (b) The Divestiture Applicant shall immediately notify the Commissioner that it intends to enter a Divestiture Agreement with a prospective Purchaser, or has entered into an agreement that, if approved by the Commissioner, will be a Divestiture Agreement within the meaning of this Agreement. If the Divestiture Applicant has entered into or intends to enter into more than one agreement in respect of the same Divestiture Assets, the Divestiture Applicant shall identify the agreement in respect of which it seeks the Commissioner's approval and the remainder of this Part shall apply only to that agreement unless the Divestiture Applicant designates a substitute agreement.
- (c) The notice described in Paragraph 22(b) shall be in writing and shall include: the identity of the proposed Purchaser; the details of the proposed Divestiture Agreement and any related agreements; and information concerning whether and how the proposed Purchaser would, in the view of the Divestiture Applicant, likely satisfy the terms of this Agreement.
- (d) Within 14 days following receipt of the notice described in Paragraph 22(b), the Commissioner may request additional information concerning the proposed Divestiture from any or all of Abbott, the Monitor, the prospective Purchaser and, in the Divestiture Trustee Sale Period, the Divestiture Trustee. These Persons shall each provide any additional information requested

from them. When they have provided a complete response to the Commissioner's request, these Persons shall comply with the following procedures:

- i. the Divestiture Trustee shall provide written confirmation to the Commissioner that the Divestiture Trustee has provided to the Commissioner all additional information requested from the Divestiture Trustee;
- ii. the Monitor shall provide written confirmation to the Commissioner that the Monitor has provided to the Commissioner all additional information requested from the Monitor;
- iii. an officer or other duly authorized representative of Abbott shall certify that he or she has examined the additional information provided by Abbott in response to the Commissioner's request and that such information is, to the best of his or her knowledge and belief, correct and complete in all material respects; and
- iv. an officer or other duly authorized representative of the prospective Purchaser shall certify that he or she has examined the additional information provided by the prospective Purchaser in response to the Commissioner's request and that such information is, to the best of his or her knowledge and belief, correct and complete in all material respects.

The date on which the last of the Divestiture Trustee, Abbott, the Monitor, and the prospective Purchaser provides to the Commissioner a confirmation or certification required under this Paragraph is the **"First Reference Date"**.

- (e) Within 7 days after the First Reference Date, the Commissioner may request further additional information concerning the proposed Divestiture from any or all of the Persons identified in Paragraph 22(d). These Persons shall each provide any further additional information requested from them. When they have provided a complete response to the Commissioner's request, if any, these Persons shall comply with the procedures outlined in Paragraph 22(d) in regard to the further additional information provided. The date on which the last of the Divestiture Trustee, Abbott, the Monitor, and the prospective Purchaser provides to the Commissioner a confirmation or certification required under this Paragraph is the **"Second Reference Date"**.

- (f) The Commissioner shall notify the Divestiture Applicant of the approval of, or the objection to, the proposed Divestiture as soon as possible, and in any event within 14 days after the date on which the Commissioner receives the notice described in Paragraph 22(b) or, if he requests any additional information under Paragraph 22(d) or further additional information under Paragraph 22(e), within 14 days after the later of:
 - i. the First Reference Date; and
 - ii. the Second Reference Date, if any.
- (g) The Commissioner's determination as to whether to approve a proposed Divestiture shall be in writing.

[23] In exercising his discretion to determine whether to approve a proposed Divestiture, the Commissioner shall take into account the likely impact of the Divestiture on competition, and may consider any other factor he considers relevant. Prior to granting his approval, the Commissioner must also be satisfied that:

- (a) the proposed Purchaser is fully independent of and operates at arm's length from Abbott;
- (b) Abbott will have no direct or indirect interest in the Divestiture Assets following the Divestiture;
- (c) the proposed Purchaser is committed to carrying on the Divested Business;
- (d) the proposed Purchaser has the managerial, operational and financial capability to compete effectively in the supply of the Divestiture Products; and,
- (e) the proposed Purchaser will (i) if the Commissioner grants his approval during the Initial Sale Period, complete the Divestiture prior to the expiry of the Initial Sale Period; or (ii) if the Commissioner grants his approval during the Divestiture Trustee Sale Period, complete the Divestiture during the Divestiture Trustee Sale Period.

V. PRESERVATION OF DIVESTITURE ASSETS

[24] In order to preserve the Divestiture Assets pending completion of the Divestiture, Abbott shall maintain the economic viability, marketability and competitiveness of the Divestiture Assets and Divested Business, and shall comply with any decision of or direction given by the Monitor that relates to preservation of the Divestiture

Assets. Until Closing, Abbott shall make reasonable efforts to ensure St. Jude preserves the Divestiture Assets and Divestiture Business in a manner consistent with this Part V of this Agreement. Without limiting the generality of the foregoing, Abbott shall:

- (a) maintain and hold the Divestiture Assets in good condition and repair, normal wear and tear excepted, and to standards that are, in the view of the Monitor, at least equal to those that existed at Closing;
- (b) ensure that the management and operation of the Divested Business continues in the ordinary course of business and in a manner that is, in the view of the Monitor, reasonably consistent in nature, scope and magnitude with past practices and generally accepted industry practices, and in compliance with all applicable laws;
- (c) not knowingly take or allow to be taken any action that, in the view of the Monitor, adversely affects the competitiveness, operations, financial status or value, viability and saleability of the Divestiture Assets;
- (d) ensure that the Divestiture Assets are not engaged in any type of business other than the type of business conducted as of the date of this Agreement, except with the prior approval of the Monitor and the Commissioner;
- (e) maintain all approvals, including Products Approvals, registrations, consents, licences, permits, waivers, and other authorizations that are, in Monitor's view subject to consultation with Abbott, advisable for the operation of the Divested Business;
- (f) take commercially reasonable steps to honour all customer contracts and to maintain quality and service standards for customers of the Divested Business that are, in the view of the Monitor, at least equal to the standards that existed during the fiscal year prior to this Agreement;
- (g) not curtail marketing, sales, promotional or other activities of the Divested Business, except with the prior approval of the Monitor;
- (h) not alter, or cause to be altered, the management of the Divested Business as it existed during the fiscal year prior to the date of this Agreement, except with the prior approval of the Monitor;
- (i) not terminate or alter any employment, salary or benefit agreements, as they existed at the date of this Agreement, for

Persons employed in connection with the Divested Business, without the prior approval of the Monitor;

- (j) ensure that the Divested Business is staffed with sufficient employees to ensure its viability and competitiveness, including by replacing any departing employees with other qualified employees provided that the Monitor has approved both the qualifications and the need for such replacement employees;
- (k) not communicate any Confidential Information related to the Divested Business or the Divestiture Assets to anyone other than any Government Authority, Abbott's legal or financial advisors (to the extent necessary for the provision of their services), the Monitor, a Person with a good faith interest in purchasing the Divestiture Assets who has executed a confidentiality agreement, or as otherwise permitted in this Agreement;
- (l) maintain inventory levels and payment terms consistent with the practices of St. Jude that existed, with respect to the Divested Business, during the fiscal year prior to the date of this Agreement; and,
- (m) maintain in accordance with Canadian generally accepted accounting principles, separate and adequate financial ledger books and records of material financial information with respect to the Divestiture Assets and the Divested Business.

[25] Pending completion of the Divestiture, Abbott shall not, without the Commissioner's prior written approval:

- (a) create any new encumbrances on the Divestiture Assets or the Divested Business, other than ordinary course obligations that are not due or delinquent;
- (b) enter into, withdraw from, amend or otherwise take steps to alter any obligations in material contracts relating to the Divestiture Assets or the Divested Business, except as necessary to comply with this Agreement; or
- (c) make any material changes to the Divestiture Assets or Divestiture Business, except as required to comply with this Agreement.

[26] Prior to the Closing Date, St. Jude, and as of the Closing Date, Abbott, shall provide sufficient financial resources, including general funds, capital funds, working capital and reimbursement for any operating, capital or other losses, to maintain the Divestiture Assets in accordance with this Part. If the Monitor believes that St. Jude (prior to the Closing Date) or Abbott (as of the Closing

Date) has not provided, is not providing or will not provide sufficient financial and other resources under this Part, the Monitor shall forthwith refer the matter to the Commissioner, who shall make a final determination respecting the financial and other resources that St. Jude or Abbott, as applicable, must provide. St. Jude or Abbott, as applicable, shall comply with any determination made by the Commissioner on this issue.

VI. THIRD PARTY CONSENTS

- [27] It shall be a condition in any Divestiture Agreement (whether negotiated by Abbott or by the Divestiture Trustee) that Abbott shall, as a condition of closing, obtain all consents required to transfer any material contracts, approvals, and authorizations from Third Parties and Agencies that are necessary to complete the Divestiture and for the continued research, Development, manufacture, distribution, marketing or sale of the Divestiture Assets; provided, however, that Abbott may satisfy this requirement by certifying that the Purchaser has executed agreements directly with one or more Third Parties which make such assignment and assumption unnecessary.

VII. TRANSITIONAL SUPPORT ARRANGEMENTS

- [28] Abbott, or the Divestiture Trustee on behalf of Abbott, shall enter into a Transition Services Agreement, at the option of the Purchaser and subject to the approval of the Commissioner, to provide Transition Services to the Purchaser for a period of two years from the Divestiture Date; provided, however, that such Transition Services Agreement shall provide that (1) it may be terminated by the Purchaser at any time, without cost or penalty to the Purchaser, upon commercially reasonable notice to Abbott; and (2) at the Purchaser's request, Abbott shall file with the Commissioner any request for prior approval to extend the term of a Transition Services Agreement as provided in this Section. The Transition Services provided shall be at no greater than Abbott's Direct Costs for such personnel, technical support, assistance, training, and other services as are necessary to transfer the Divestiture Assets to the Purchaser and enable the Purchaser to operate the Divestiture Assets in a manner consistent with the purposes of this Agreement.
- [29] Abbott or the Divestiture Trustee on behalf of Abbott, shall enter into a Transitional Manufacturing and Supply Agreement, at the option of the Purchaser and subject to the approval of the Commissioner, to supply the Purchaser with Divestiture Products and Divestiture Product Components for a period of two years from the Divestiture Date; provided, however, that such Transitional Manufacturing and Supply Agreement shall provide that (1) it may be terminated by the Purchaser at any time, without cost or penalty to the Purchaser, upon commercially reasonable notice to Abbott; and (2) at the Purchaser's request, Abbott shall file with the Commissioner any request for prior approval to extend the term of a Transitional Manufacturing and Supply Agreement as provided in this Section for such period of time as necessary to manufacture the Divestiture

Products and Divestiture Products Components from Persons other than Abbott. The Divestiture Products and Divestiture Product Components supplied by Abbott to the Purchaser pursuant to such Transitional Manufacturing and Supply Agreement shall be at no greater than the Abbott's Direct Costs.

VIII. EMPLOYEES

[30] Abbott (during the Initial Sale Period) or the Divestiture Trustee (during the Divestiture Trustee Sale Period) shall upon request provide to any prospective Purchaser, the Commissioner and the Monitor information relating to the employees whose responsibilities involve the operation of the Divestiture Assets, to enable such Purchaser to make decisions regarding offers of employment to such employees. The Monitor shall review the information provided to ensure that it is sufficient to enable the Purchaser to make such decisions.

[31] Abbott shall:

- (a) not interfere, directly or indirectly, with any negotiations by a Purchaser to employ any employees whose responsibilities involve the operation of the Divestiture Assets;
- (b) not offer any incentive to such employees to decline employment with the Purchaser or to accept other employment with Abbott;
- (c) remove any impediment within the control of Abbott that may deter such employees from accepting employment with the Purchaser;
- (d) waive any non-compete or confidentiality provisions of employment or other contracts that could impair the ability of such employees to be employed by the Purchaser; and
- (e) transfer to the Purchaser or, if requested by the Purchaser, retain for the employees subsequently employed by any Purchaser, the obligations to pay all current and accrued bonuses, pensions and other current and accrued benefits to which such employees would otherwise have been entitled.

[32] For a period of one year following completion of the Divestiture, Abbott shall not, without the prior written consent of the Commissioner, directly or indirectly solicit or employ any Persons employed in connection with the Divestiture Assets who has accepted an offer of employment with the Purchaser unless such Person's employment has been terminated by the Purchaser.

IX. FAILURE OF DIVESTITURE TRUSTEE SALE

- [33] If, by the end of the Divestiture Trustee Sale Period, the Divestiture has not been completed, or if the Commissioner is of the opinion that the Divestiture likely will not be completed prior to the end of the Divestiture Trustee Sale Period, the Commissioner may apply to the Tribunal, at his election, for either (i) such order as is necessary to complete the Divestiture; or (ii) such order as is necessary to ensure that the Transaction is not likely to prevent or lessen competition substantially.

X. REMEDIAL AGREEMENTS

- [34] Any Remedial Agreement shall be deemed incorporated into this Agreement.
- [35] Abbott shall include in each Remedial Agreement related to the Divestiture Products a specific reference to this Agreement and provisions to reflect the full scope and breadth of each of Abbott's obligations to the Purchaser pursuant to this Agreement, recognizing that the Terumo Divestiture Agreement satisfies Abbott's obligations set out in this Section.
- [36] Any failure by Abbott to comply with any term of a Remedial Agreement shall constitute a failure to comply with this Agreement.
- [37] Abbott shall not modify or amend any of the terms of any Remedial Agreement without the prior approval of the Commissioner.
- [38] Abbott 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 Divestiture Products, a decision the result of which would be inconsistent with the terms of this Agreement.

XI. MONITOR

- [39] The Commissioner shall appoint Edward J. Buthusiem as Monitor, responsible for monitoring compliance by Abbott with this Agreement. Such appointment may occur at any time following registration of this Agreement. A reference in this Agreement to specific monitoring functions or tasks that are to be undertaken by the Monitor shall in no way detract from the Monitor's general right, power and duty to monitor all aspects of Abbott's compliance with this Agreement.
- [40] Within 5 Business Days after the appointment of the Monitor, Abbott shall submit to the Commissioner for approval the terms of a proposed Monitor Agreement with the Monitor and the Commissioner that confers on the Monitor all rights and powers necessary to permit the Monitor to monitor compliance by Abbott with this Agreement.
- [41] Within 5 Business Days after receipt of the proposed Monitor Agreement referred to in Section 40, the Commissioner shall advise Abbott whether or not he approves the terms of the proposed Monitor Agreement. If the Commissioner does

not approve the terms of the proposed Monitor Agreement, he shall prescribe alternative terms for the Monitor Agreement that Abbott shall incorporate into a final Monitor Agreement with the Monitor and the Commissioner.

[42] Abbott consents to the following terms and conditions regarding the Monitor's rights, powers and duties, and shall include such terms in the Monitor Agreement:

- (a) The Monitor shall have the power and authority to monitor Abbott's compliance with this Agreement, and any Remedial Agreement, including any Transition Services Agreement and Transitional Manufacturing and Supply Agreement, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of this Agreement and in consultation with the Commissioner.
- (b) The Monitor shall have the authority to employ, at the expense of Abbott, such consultants, accountants, legal counsel and other representatives and assistants as the Monitor believes are necessary to carry out the Monitor's duties and responsibilities.
- (c) The Monitor shall have no obligation or authority to operate or maintain the Divestiture Assets.
- (d) The Monitor shall act for the sole benefit of the Commissioner, maintain all confidences and avoid any conflict of interest.
- (e) The Monitor shall have no duties of good faith, of a fiduciary nature, or otherwise, to Abbott.
- (f) The Monitor shall provide to the Commissioner a written report concerning performance by Abbott of its obligations under this Agreement: (i) 60 days after the date of registration of this Agreement and every 30 days thereafter until the Divestiture is complete; (ii) every 60 days after the Divestiture is complete until Abbott has fully complied with Parts V, VII, VIII, XI and XII (except Sections 54 and 55) of this Agreement; and (iii) at any other time the Commissioner requests. The Monitor shall, within 3 Business Days, respond to any request by the Commissioner for additional information regarding Abbott's compliance.

[43] Subject to any legally recognized privilege, Abbott shall provide to the Monitor full and complete access to all personnel, Records, information (including Confidential Information) and facilities relevant to monitoring Abbott's compliance with this Agreement.

[44] Abbott shall take no action that interferes with or impedes, directly or indirectly, the Monitor's efforts to monitor Abbott's compliance with this Agreement.

- [45] Abbott shall fully and promptly respond to all requests from the Monitor and shall provide all information the Monitor may request. Abbott shall identify an individual who shall have primary responsibility for fully and promptly responding to such requests from the Monitor on behalf of Abbott.
- [46] Abbott may require the Monitor and each of the Monitor's consultants, accountants, legal counsel and other representatives and assistants to sign an appropriate confidentiality agreement in a form satisfactory to the Commissioner; provided, however, that such agreement shall not restrict the Monitor from providing any information to the Commissioner.
- [47] The Commissioner may require the Monitor and each of the Monitor's consultants, accountants, legal counsel and other representatives and assistants to sign an appropriate confidentiality agreement relating to materials and information the Monitor may receive from the Commissioner in connection with the performance of the Monitor's duties.
- [48] Abbott shall be responsible for all reasonable fees and expenses properly charged or incurred by the Monitor in the course of carrying out the Monitor's duties under this Agreement. The Monitor shall serve without bond or security, and shall account for all fees and expenses incurred. Abbott shall pay all reasonable invoices submitted by the Monitor within 60 days after receipt and, without limiting this obligation, Abbott shall comply with any agreement it reaches with the Monitor regarding interest on late payments. In the event of any dispute: (i) such invoice shall be subject to the approval of the Commissioner; and (ii) Abbott shall promptly pay any invoice approved by the Commissioner. Any outstanding monies owed to the Monitor by Abbott shall be paid out of the proceeds of the Divestiture.
- [49] Abbott shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation or defence of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from malfeasance, gross negligence or bad faith by the Monitor.
- [50] If the Commissioner determines that the Monitor has ceased to act or has failed to act diligently, the Commissioner may remove the Monitor and appoint a substitute Monitor. The provisions of this Agreement respecting the Monitor shall apply in the same manner to any substitute Monitor.
- [51] The Monitor shall serve for the duration of this Agreement.

XII. COMPLIANCE

- [52] Within 5 Business Days after the Closing Date, Abbott shall provide written confirmation to the Commissioner of the date on which the Transaction was completed.
- [53] Abbott shall provide a copy of this Agreement to each of its own and its Affiliates' directors, officers, employees and agents having managerial responsibility for any obligations under this Agreement, within 10 Business Days after the date of registration of this Agreement. Abbott shall ensure that its directors, officers, employees and agents with responsibility for any obligations under this Agreement receive sufficient training respecting Abbott's responsibilities and duties under this Agreement, and the steps that such individuals must take in order to comply with this Agreement.
- [54] Abbott shall not, for a period of 10 years after the date when the Divestiture is completed, directly or indirectly acquire any interest in the Divestiture Assets, without the prior written approval of the Commissioner.
- [55] For a period of 2 years after the date when the Divestiture is completed, Abbott shall not, without providing advance written notification to the Commissioner in the manner described in this Section, directly or indirectly:
- (a) acquire any assets or shares of, or any other interest in, any supplier of vascular closure devices in Canada or any Person expected to supply vascular closure devices in Canada within 2 years after the date of such acquisition; or
 - (b) consummate any merger or other combination relating to the vascular closure devices business in Canada.

If a transaction described in (a) or (b) is one for which notice is not required under section 114 of the Act, Abbott shall supply to the Commissioner the information described in section 16 of the *Notifiable Transactions Regulations* at least 30 days before completing such transaction. Abbott shall certify such information in the same manner as would be required if section 118 of the Act applied. The Commissioner may accept a competitive impact brief from Abbott instead of such information. The Commissioner may, within 30 days after receiving the information described in this Section, request that Abbott supply additional information that is relevant to the Commissioner's assessment of the transaction. In the event that the Commissioner issues such a request for additional information, Abbott shall supply information to the Commissioner in the form specified by the Commissioner and shall not complete such transaction until at least 30 days after Abbott has supplied all such requested information in the form specified by the Commissioner.

- [56]** One year after the date of registration of this Agreement and annually thereafter for the next nine years, and at such other times as the Commissioner may require, Abbott shall file an affidavit or certificate, substantially in the form of Schedule B to this Agreement, certifying its compliance with Parts VII, VIII and XII of this Agreement and setting out the following information in detail:
- (a) the steps taken to ensure compliance;
 - (b) the controls in place to verify compliance; and
 - (c) the names and titles of employees who have oversight of compliance.
- [57]** If any of Abbott, the Divestiture Trustee or the Monitor becomes aware that there has been a breach or possible breach of any of the terms of this Agreement, such Person shall, within 5 Business Days after becoming aware of the breach or possible breach, notify the Commissioner thereof, and shall provide details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or possible breach, provided that notification of a possible breach is not required if such Person determines within those 5 Business Days that it could not reasonably be considered a breach of any of the terms of this Agreement. Abbott shall provide confirmation of its compliance with this provision in all affidavits and certificates of compliance filed with the Commissioner pursuant to Section 56 of this Agreement.
- [58]** Abbott shall notify the Commissioner at least 30 days prior to:
- (a) any proposed dissolution of Abbott; or
 - (b) any other change in Abbott if such change may affect compliance obligations arising out of this Agreement including, but not limited to, a reorganization, material acquisition, disposition or transfer of assets, or any fundamental change for purposes of Abbott's incorporating statute.
- [59]** For purposes of determining or securing compliance with this Agreement, and subject to any legally recognized privilege, Abbott shall, upon written request given at least 5 Business Days in advance to Abbott, permit any authorized representative(s) of the Commissioner, without restraint or interference:
- (a) to access, during regular office hours of Abbott on any Business Day(s), all facilities and to inspect and copy all Records in the possession or control of Abbott related to compliance with this Agreement, which copying services shall be provided by Abbott at its expense; and
 - (b) to interview such officers, directors or employees of Abbott as the Commissioner requests regarding such matters.

XIII. DURATION

[60] This Agreement shall become effective on the date when it is registered, and shall remain in effect for 10 years following the Divestiture, except that:

- (a) Parts II, III, IV, V and VI of this Agreement shall be effective only until the Divestiture is completed;
- (b) Part VII of this Agreement shall be effective only until the Transitional Services Agreements are terminated; and
- (c) Part X of this Agreement shall be effective only until each Remedial Agreement is terminated.

XIV. NOTICES

[61] A notice or other communication required or permitted to be given under this Agreement is valid if it is:

- (a) in writing and delivered by personal delivery, registered mail, courier service, facsimile (or electronic mail if to the Commissioner); and
- (b) addressed to the receiving party at the address(es) listed below, or to any other address designated by the receiving party in accordance with this Section.

if to the Commissioner:

Commissioner of Competition
Competition Bureau Canada
Place du Portage, 21st Floor
50 Victoria Street, Phase I
Gatineau, Quebec K1A 0C9

Attention: Commissioner of Competition
Fax: (819) 953-5013
Email address: ic.avisdefusionmergernotification.ic@canada.ca

with a copy to:

Executive Director and Senior General Counsel
Competition Bureau Legal Services
Department of Justice
Place du Portage, 22nd Floor
50 Victoria Street, Phase I

Gatineau, Quebec K1A 0C9
Fax: (819) 953-9267
Email address: ic.cb_lsu_senior_general_counsel-
avocat_general_principal_usj_bc.ic@canada.ca

if to Abbott:

Vice President, Abbott Transition Organization
100 Abbott Park Road
Abbott Park, Illinois 60064-3500
Abbott Laboratories
100 Abbott Park Road
TRTM-F&A-TRANSITION TEAM
Bldg. AP6C
Abbott Park, Illinois 60064-6010
USA
Office: 224.668.1263
Fax: 224 668 5313

with a copy to:

Division Counsel, Antitrust, Licensing & Acquisitions
100 Abbott Park Road
Abbott Park, Illinois 60064-3500
Dept. 322, Bldg. AP6A-2
Abbott Park, Illinois 60064-6010
USA
Office: 224.667.4795
Fax: 847.938.1206

and to:

Dany Assaf
Torys
79 Wellington Street West, 30th Floor
Box 270, TD South Tower
Toronto, Ontario M5K 1N2
Email address: dassaf@torys.com

[62] A notice or other communication under this Agreement is effective on the day that it is received by the receiving party and is deemed to have been received as follows:

- (a) if it is delivered in person, by registered mail or by courier, upon receipt as indicated by the date on the signed receipt;

- (b) if it is delivered by facsimile, upon receipt as indicated by the time and date on the facsimile confirmation slip; or
- (c) if it is delivered by electronic mail, when the recipient, by an email sent to the email address for the sender stated in this Section or by a notice delivered by another method in accordance with this Section, acknowledges having received that email, with an automatic “read receipt” not constituting acknowledgment of an email for purposes of this Section.

If a notice or other communication is received after 5:00 p.m. local time, or on a day that is not a Business Day, it shall be deemed to have been received on the next Business Day.

- [63] Notwithstanding Sections 61 and 62, a notice or other communication that is not communicated in accordance with Sections 61 and 62 is valid if a representative of the party to this Agreement that is the recipient of such communication confirms the receipt of such communication and does not, at the time of such confirmation, request that it be delivered differently.

XV. GENERAL

- [64] In this Agreement:

- (a) **Number and Gender** – Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.
- (b) **Time Periods** – Computation of time periods shall be in accordance with the *Interpretation Act*, R.S.C. 1985, c. I-21, and the definition of “holiday” in the *Interpretation Act* shall include Saturday.

- [65] The Commissioner shall file this Agreement with the Tribunal for registration in accordance with section 105 of the Act. Abbott hereby consents to such registration. Following the filing of this Agreement, the Commissioner shall promptly issue a letter to Abbott indicating that, subject to the implementation of this Agreement, the Commissioner does not intend to make an application under section 92 of the Act in respect of the Transaction.

- [66] Information in Confidential Schedule A shall remain confidential at all times and shall survive the termination of this Agreement; provided, however, the Commissioner may communicate or allow to be communicated such information for the purposes of the administration or enforcement of the Act.

- [67] The Commissioner may, after informing Abbott, extend any of the time periods contemplated by this Agreement other than Sections 54, 55 and 60. If any time

period is extended, the Commissioner shall promptly notify Abbott of the revised time period.

- [68] Nothing in this Agreement precludes Abbott or the Commissioner from bringing an application under section 106 of the Act. Abbott will not, for the purposes of this Agreement, including execution, registration, enforcement, variation or rescission, contest the Commissioner's conclusions that (i) the Transaction is likely to result in a substantial lessening and/or prevention of competition in the supply of vascular closure devices in Canada; and (ii) the implementation of this Agreement is necessary to ensure that any substantial lessening and/or prevention of competition will not result from the Transaction.
- [69] Abbott attorns to the jurisdiction of the Tribunal for the purposes of this Agreement and any proceeding initiated by the Commissioner relating to this Agreement.
- [70] This Agreement constitutes the entire agreement between the Commissioner and Abbott, and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral, with respect to the subject matter hereof.
- [71] This Agreement shall be governed by and interpreted in accordance with the laws of Ontario and the laws of Canada applicable therein, without applying any otherwise applicable conflict of law rules.
- [72] In the event of a dispute regarding compliance with or the interpretation, implementation or application of this Agreement, the Commissioner or Abbott may apply to the Tribunal for directions or an order. In the event of any discrepancy between the English language version of this Agreement and the French language version of this Agreement, the English language version of this Agreement shall prevail. In no event shall any dispute suspend the Initial Sale Period or the Divestiture Trustee Sale Period.
- [73] This Agreement may be executed in two or more counterparts, each of which shall be an original instrument, but all of which shall constitute one and the same Agreement.
- [74] The undersigned hereby agree to the filing of this Agreement with the Tribunal for registration.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

DATED this 28th day of December, 2016

COMMISSIONER OF COMPETITION

“John Pecman”

Name: John Pecman
Title: Commissioner of Competition

ABBOTT LABORATORIES

“Frank Weitekamper”

I have authority to bind the corporation

Name: Frank Weitekamper
Title: Vice President, Abbott Transition Organization

CONFIDENTIAL SCHEDULE A

TERUMO DIVESTITURE AGREEMENT

SCHEDULE B

FORM OF COMPLIANCE CERTIFICATION/AFFIDAVIT

I, [name], of [place], hereby certify in accordance with the terms of the Registered Consent Agreement dated • between Abbott Laboratories (“Abbott”) and the Commissioner of Competition, that:

1. I am the [title] of Abbott, and have personal knowledge of the matters deposed to herein, unless they are stated to be on information and belief, in which cases I state the source of such information and believe it to be true.
2. On [date], Abbott entered into a Consent Agreement (the “Consent Agreement”) with the Commissioner of Competition (the “Commissioner”) in connection with the proposed acquisition of St. Jude Medical, Inc. (the “Transaction”).
3. The Transaction closed on [date] (the “Closing Date”).
4. The Divestiture (as defined in the Consent Agreement) to [Purchaser] was completed on [date].
5. Pursuant to Section 56 of the Consent Agreement, Abbott is required to file [annual reports/reports when requested by the Commissioner] certifying its compliance with Parts VII and XI of the Consent Agreement.

Oversight of Compliance

6. [Names/titles] have primary responsibility for overseeing compliance with this Agreement.

Closing Date

7. Pursuant to Section 52 of the Consent Agreement, Abbott is required to provide written confirmation to the Commissioner of the date on which the Transaction was completed. Such notice was provided on [date].

Circulation of Consent Agreement

8. Pursuant to Section 53 of the Consent Agreement, Abbott is required to provide a copy of the Consent Agreement to each of its own and its Affiliates’ directors, officers, employees and agents having managerial responsibility for any obligations under the Consent Agreement, within 10 Business Days after the date of registration of the Consent Agreement. The Consent Agreement was circulated by [whom] to [provide list] on [dates].
9. Pursuant to Section 53 of the Consent Agreement, Abbott is required to ensure that its directors, officers, employees and agents with responsibility for any obligations under the Consent Agreement receive sufficient training respecting

Abbott's responsibilities and duties under the Consent Agreement. The following training has been provided: **[provide list of who was trained and by whom as well as a general statement of the content of the training]**

Contract Manufacturing

10. **[Describe compliance with contract manufacturing provisions.]**

Notification of Breach

11. Based on my personal knowledge and my inquiries of **[provide names]**, I am not aware of any breach or possible breach of any of the terms of the Consent Agreement within the meaning of Section 57 of the Consent Agreement.

DATED ●.

Commissioner of Oaths

Name and Title of Certifying Officer