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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 Rexall Pharmacy Group Ltd., an affiliate of McKesson Canada Corporation, of the pharmacy, medical clinic, and benefits management administration and claims adjudication businesses carried on by Katz Group Canada Inc. and its affiliates;

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 :

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE <b>REGISTERED / ENREGISTRÉ</b> FILED / PRODUIT CT-2016-016 December 14, 2016 Andrée Bernier for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	# 1

THE COMMISSIONER OF COMPETITION

Applicant

– and –

McKESSON CANADA CORPORATION and  
REXALL PHARMACY GROUP LTD.

Respondents

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CONSENT AGREEMENT

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**RECITALS:**

**A.** Rexall Pharmacy Group Ltd. (“RPG”) proposes to purchase the pharmacy, medical clinic, and benefits management administration and claims adjudication businesses carried on by Katz Group Canada Inc. and its Affiliates pursuant to the Transaction Agreement (the “Transaction”).

**B.** McKesson Canada Corporation (“McKesson Canada”) is an Affiliate of RPG and carries on the Wholesale Business (as defined below) in Canada.

**C.** The Commissioner has concluded that: (i) the Transaction is likely to result in a substantial lessening and/or prevention of competition in the wholesale and retail sale of certain pharmacy products and services, including pharmaceutical and OTC products in

certain local areas; 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.** McKesson Canada and RPG do 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 wholesale and retail sale of certain pharmacy products and services, including pharmaceutical and OTC products in certain local areas; 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.

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

**THEREFORE**, McKesson Canada, RPG 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) **“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;
- (c) **“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;
- (d) **“Applicable Law”** means any domestic, foreign, federal, provincial, state, local or municipal statute, law (including the common law), ordinance, rule, regulation, regulatory policy or guideline, by-law (zoning or otherwise), or any consent, exemption or approval of any Governmental Authority, that applies in whole or in part to the relevant Person(s);
- (e) **“Business Day”** means a day on which the Competition Bureau's Gatineau, Quebec office is open for business;

- (f) **“ClaimSecure”** means ClaimSecure Inc., a Subsidiary of RPG, and each of its directors, officers, employees, agents, representatives, successors and assigns;
- (g) **“ClaimSecure Business”** means the claims adjudication business operated by ClaimSecure including the development, licensing and/or provision of health benefit claims management, health plan administrative services, claims adjudication and related services to corporations and other health benefit plan sponsors;
- (h) **“ClaimSecure Confidential Information”** means all transaction data provided to or generated by ClaimSecure for the purposes of dispensing patient prescriptions, determining patient eligibility under drug benefit plans, or adjudicating and processing drug benefit claims, including the final selling price of all prescription drug reimbursements processed by the ClaimSecure Business, that is not in the public domain, except that ClaimSecure Confidential Information shall not include aggregated data in a de-identified format that ClaimSecure sells or makes available to Third Parties generally. For greater certainty, where the Retail Business provides transaction data to ClaimSecure, only the data that is in the possession or control of ClaimSecure shall be ClaimSecure Confidential Information and transaction data that is in the possession or control of the Retail Business shall be Retail Confidential Information;
- (i) **“Closing”** means the completion of the Transaction under the Transaction Agreement;
- (j) **“Closing Date”** means the date on which Closing occurs;
- (k) **“Commissioner”** means the Commissioner of Competition appointed under the Act and includes his authorized representatives;
- (l) **“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;
- (m) **“Corporate Distribution Agreement”** means the Corporate Distribution Agreement among McKesson Canada, Pharma Plus Drugmarts Ltd. and Pharmx Rexall Drug Stores Ltd., dated April 1, 2011, as amended August 13, 2013;
- (n) **“CSBD Personnel”** means the employees within the Corporate Strategy and Business Development Group of McKesson Corporation and the

Finance and Legal Groups of McKesson Corporation that are identified and approved pursuant to Paragraph 30(h) of this Agreement;

- (o) **“Designated Personnel”** means the employees of Respondents listed in Schedule E, as modified from time to time by agreement of Respondents and the Commissioner, who shall have signed a confidentiality agreement in a form satisfactory to the Commissioner;
- (p) **“Divested Business”** means the retail pharmacy businesses identified in Schedule B to this Agreement subject to Confidential Schedule D;
- (q) **“Divestiture”** means the sale, conveyance, transfer, assignment or other disposal of the Divestiture Assets to a Purchaser or Purchasers, as the case may be, pursuant to this Agreement and with the prior approval of the Commissioner, such that Respondents and their Affiliates will have no direct or indirect interest in the Divestiture Assets, except that McKesson Canada, through the Wholesale Business, may supply products and services to the Divestiture Assets following the Divestiture;
- (r) **“Divestiture Agreement”** means a binding and definitive agreement between Respondents and a Purchaser or Purchasers to effect the Divestiture of one or more retail pharmacies identified in Schedule B pursuant to this Agreement and subject to the prior approval of the Commissioner;
- (s) **“Divestiture Applicant”** means Respondents during the Initial Sale Period or the Divestiture Trustee during the Divestiture Trustee Sale Period;
- (t) **“Divestiture Assets”** means all of the right, title and interest in, to and under, or relating to, the tangible assets, Intangible Assets, pharmacy records and files, property and undertaking owned or used by Respondents or held by Respondents for use in, or relating to, the Divested Business;
- (u) **“Divestiture Process Agreement”** means the agreement described in Section 6 of this Agreement;
- (v) **“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;
- (w) **“Divestiture Trustee Sale”** means the Divestiture to be conducted by the Divestiture Trustee pursuant to Part III of this Agreement;
- (x) **“Divestiture Trustee Sale Period”** means the 6 month period commencing upon expiry of the Initial Sale Period;

- (y) **“First Reference Date”** shall have the meaning set out in Paragraph 21(d) of this Agreement;
- (z) **“Governmental 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;
- (aa) **“HABA”** means health and beauty products, including vitamins, deodorants, soaps, dental care, baby care, hair care, razors and skin care products;
- (bb) **“Initial Sale Period”** means the period that commences at Closing and ends at the time set out in Confidential Schedule A to this Agreement;
- (cc) **“Intangible Assets”** means intellectual property of any nature and kind required to operate the Divestiture Assets or Divested Business, including:
  - (i) patents, copyrights, trademarks and software;
  - (ii) trade dress, industrial designs, distinguishing guises, trade secrets, know-how, techniques, data, inventions, practices, methods and other confidential or proprietary technical, business, research, development and other information, and all rights in any jurisdiction to limit the use or disclosure thereof;
  - (iii) rights to obtain and file for patents and copyrights and registrations thereof; and
  - (iv) rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation or breach of any of the foregoing.

For greater certainty, Intangible Assets do not include the “Rexall” or “Rexall Pharma Plus” brands or related intellectual property, or intellectual property relating to proprietary brands owned by the Retail Business;

- (dd) **“KGCI”** means Katz Group Canada Inc. and its directors, officers, employees, agents, representatives, successors and assigns;
- (ee) **“Material Contracts, Approvals and Authorizations”** means the lease, if any, in respect of the real property at which the applicable Divested Business is conducted and the approval of the applicable College of Pharmacists to the transfer of the applicable Divestiture Assets and other

licenses, approvals, permits and authorizations required to operate the applicable Divested Business;

- (ff) **“McKesson Canada”** means McKesson Canada Corporation and its Subsidiaries and each of their respective directors, officers, employees, agents, representatives, successors and assigns;
- (gg) **“McKesson Confidential Information”** means ClaimSecure Confidential Information, Retail Confidential Information and Wholesale Confidential Information;
- (hh) **“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;
- (ii) **“Monitor Agreement”** means the agreement described in Section 38 of this Agreement;
- (jj) **“Operational Coordinator”** means the person, function or position within the Wholesale Business listed as such in Schedule E. All changes to Operational Coordinator shall be in accordance with the procedures described in Part VIII of this Agreement;
- (kk) **“OTC”** means pharmaceutical products that are to be sold from the self-selection area of a pharmacy that is operated under the direct supervision of a pharmacist;
- (ll) **“Person”** means any individual, corporation or partnership, sole proprietorship, trust or other unincorporated organization capable of conducting business, and any Affiliates thereof;
- (mm) **“Planogram Personnel”** means the persons, functions or positions within the Wholesale Business listed as such in Schedule E. All changes to Planogram Personnel shall be in accordance with the procedures described in Part VIII of this Agreement;
- (nn) **“Procurement Personnel”** means the persons, functions or positions within the Wholesale Business listed as such in Schedule E. All changes to Procurement Personnel shall be in accordance with the procedures described in Part VIII of this Agreement;
- (oo) **“Promotional Personnel”** means the persons, functions or positions within the Wholesale Business listed as such in Schedule E. All changes to Promotional Personnel shall be in accordance with the procedures described in Part VIII of this Agreement;

- (pp) **“Purchaser”** means a Person that acquires Divestiture Assets pursuant to this Agreement;
- (qq) **“Records”** means records within the meaning of subsection 2(1) of the Act;
- (rr) **“Respondents”** means McKesson Canada, RPG and ClaimSecure;
- (ss) **“Retail Business”** means the retail pharmacy business operating in Canada as “Rexall” or “Rexall Pharma Plus” and includes the mail order pharmacy operated by Pharma Plus Drugmarts Ltd.;
- (tt) **“Retail Business Personnel”** means persons, functions or positions of or within the Retail Business that are listed as such in Schedule E to this Agreement and all individuals who report directly or indirectly to those persons, functions or positions, and the Rexall Sales Team and shall not include Shared Services Personnel, Senior Management Personnel, CSBD Personnel or persons, functions or positions that are responsible for the Wholesale Business. All changes to Retail Business Personnel shall be in accordance with the procedures described in Part VIII of this Agreement;
- (uu) **“Retail Confidential Information”** means competitively sensitive or proprietary information that is not in the public domain and that is owned by or pertains to the Retail Business, and includes, but is not limited to:
  - (i) RPG business plans, competitive strategies and competitive tactics;
  - (ii) RPG pharmacy performance information, including pharmacy script counts and profit and loss information;
  - (iii) RPG sales data, such as product prices, product volume, product mix, sales margins, planograms, script counts, and customer information;
  - (iv) RPG product procurement terms, including prices, vendor programs, performance incentives, discounts, and professional allowances;
  - (v) RPG store operations and cost information, including costs of goods, real estate costs, employee payroll information and other costs associated with running a retail pharmacy business;
  - (vi) RPG store acquisition strategies, including any information RPG would receive for the purpose of acquiring or valuating a pharmacy; and
  - (vii) RPG promotions, including pricing, type of promotion, volumes required, timing and markets.

Retail Confidential Information does not include information that is received from a Third Party provider of market research, data or information, such as IMS Health or Nielsen, or their successors;

- (vv) **“Rexall Sales Team”** means the persons, functions or positions of or within the Retail Business that are listed as such in Schedule E. All changes to the Rexall Sales Team shall be in accordance with the procedures described in Part VIII of this Agreement;
- (ww) **“Second Reference Date”** shall have the meaning set out in Paragraph 21(e) of this Agreement;
- (xx) **“Senior Management Personnel”** means the persons, functions or positions of or within McKesson Canada and its Affiliates that are listed as such in Schedule E. All changes to Senior Management Personnel shall be in accordance with the procedures described in Part VIII of this Agreement;
- (yy) **“Shared Services Personnel”** means the persons, functions or positions of or within McKesson Canada that are listed as such in Schedule E. All changes to Shared Services Personnel shall be in accordance with the procedures described in Part VIII of this Agreement;
- (zz) **“Subsidiary”** means subsidiary within the meaning of subsection 2(3) of the Act;
- (aaa) **“Third Party”** means any Person other than the Commissioner, Respondents and their Affiliates, or a Purchaser;
- (bbb) **“Transaction”** means the transaction described in the first recital to this Agreement;
- (ccc) **“Transaction Agreement”** means the Purchase Agreement between McKesson Canada and KGCI, Daryl Katz and certain Affiliates of KGCI dated February 24, 2016, as assigned to RPG and certain of its Subsidiaries by way of an assignment and assumption of purchase agreement dated April 22, 2016, and as amended on August 10, 2016, October 24, 2016 and December 9, 2016, pursuant to which RPG and certain of its Subsidiaries have agreed to purchase the pharmacy, medical clinic, and benefits management administration and claims adjudication businesses carried on by KGCI and its Affiliates;
- (ddd) **“Tribunal”** means the Competition Tribunal established by the *Competition Tribunal Act*, R.S.C. 1985, c.19 (2<sup>nd</sup> Supp.);
- (eee) **“Wholesale Business”** means the wholesale supply of pharmaceutical, OTC, HABA, cosmetics, confectionery and consumer products, and the provision of pharmacy automation solutions, pharmacy technology



solutions, and banner or franchise services by McKesson Canada to retail pharmacy operations in Canada, including but not limited to the Retail Business;

- (fff) **“Wholesale Business Personnel”** means persons, functions or positions of or within the Wholesale Business that are listed as such in Schedule E to this Agreement and all individuals who report directly or indirectly to those persons, functions or positions, and Shared Services Personnel, and shall not include Senior Management Personnel, CSBD Personnel, or persons, functions or positions that are responsible for the Retail Business. All changes to Wholesale Business Personnel shall be in accordance with the procedures described in Part VIII of this Agreement; and
- (ggg) **“Wholesale Confidential Information”** means competitively sensitive or proprietary information that is not in the public domain and that is owned by or pertains to the Wholesale Business, and includes, but is not limited to:
  - (i) McKesson Canada customer wholesale distribution agreements and supplier contracts including upcharge rates, compliance rates, volume commitments, financial incentives, supplier incentives, fees for services and payment terms;
  - (ii) McKesson Canada sales data, such as product price, customer product mix, sales margins, and volume (including sales to a banner or franchise, sales to a store or sales to a region);
  - (iii) McKesson Canada customer promotions, including pricing, type of promotion, timing and markets;
  - (iv) McKesson Canada customer private label listings; and
  - (v) McKesson Canada supplier consignment inventory information or inventory on allocation.

Wholesale Confidential Information does not include information that is received by RPG or its Affiliates, other than McKesson Canada and its Subsidiaries, directly from a Third Party manufacturer or supplier of products or services;

## **II. OBLIGATION TO COMPLETE DIVESTITURE**

- [2] Respondents shall use commercially reasonable efforts to complete the Divestiture.
- [3] During the Initial Sale Period, Respondents shall use commercially reasonable efforts to complete the Divestiture in accordance with the provisions of this Part and Confidential Schedule A and subject to Part IV.

- [4] During the Initial Sale Period, Respondents shall provide to the Commissioner and to the Monitor every 21 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. Respondents shall, within 3 Business Days, respond to any request by the Commissioner for additional information regarding the status of Respondents' efforts to complete the Divestiture. An officer or other duly authorized representative of Respondents 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 Respondents fail 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, Respondents 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 Respondents 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 Respondents 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, Respondents consent 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 Respondents 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 22;
  - (iii) to enter into a Divestiture Agreement with a Purchaser that will be legally binding on Respondents;
  - (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 Respondents, 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 21 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 Respondents 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 Respondents a copy of any executed Divestiture Agreement upon receipt of the Commissioner's approval of the Divestiture contemplated in such Divestiture Agreement.
- [9] Except as provided herein, Respondents 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 Respondents have contact with prospective Purchasers during the Divestiture Trustee Sale Period, except to the extent that a prospective Purchaser seeks to negotiate for the supply of products and services from McKesson Canada through the Wholesale Business. Any such communications between a prospective Purchaser and McKesson Canada shall be limited to the types of information that are typically exchanged between McKesson Canada and a potential customer seeking to negotiate the supply of products and services from the Wholesale Business. The Monitor shall review all proposed communications between a prospective Purchaser and McKesson Canada before such communications occur. If McKesson Canada currently supplies products and services from the Wholesale Business to the prospective Purchaser, McKesson Canada and the prospective

Purchaser may exchange the type of information that was exchanged prior to the Transaction and the Monitor shall have access to any such communications.

- [10] Respondents shall take no action that interferes with or impedes, directly or indirectly, the Divestiture Trustee's efforts to complete the Divestiture.
- [11] Respondents and the Monitor shall fully and promptly respond to all requests from the Divestiture Trustee and shall provide all information the Divestiture Trustee may request. Respondents shall identify an individual who shall have primary responsibility for fully and promptly responding to such requests from the Divestiture Trustee on behalf of Respondents.
- [12] Respondents 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 Respondents.
- [13] Respondents 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. Respondents shall pay all reasonable invoices submitted by the Divestiture Trustee within 30 days after receipt and, without limiting this obligation, Respondents 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) Respondents shall promptly pay any invoice approved by the Commissioner. Any outstanding monies owed to the Divestiture Trustee by Respondents shall be paid out of the proceeds of the Divestiture.
- [14] 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 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.
- [15] Respondents 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.

- [16] 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.
- [17] Respondents 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.
- [18] 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.
- [19] 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**

- [20] The Divestiture 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.
- [21] 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 21(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 21(b), the Commissioner may request additional information concerning the proposed Divestiture from any or all of Respondents, 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 Respondents shall certify that he or she has examined the additional information provided by Respondents 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, Respondents, 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 21(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 21(d) in regard to the further additional information provided. The date on which the last of the Divestiture Trustee, Respondents, 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 21(b) or, if he requests any additional information under Paragraph 21(d) or further additional information under Paragraph 21(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.

**[22]** 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 Respondents; provided, however, the Commissioner may approve a Purchaser that has a contract(s), or that has agreed to enter into a contract(s), for the supply of products and services from McKesson Canada through the Wholesale Business;
- (b) Respondents will have no direct or indirect interest in the Divestiture Assets following the Divestiture; provided, however, McKesson Canada through the Wholesale Business may supply products and services to 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 retail pharmacy business, including the operating of retail stores and the provision of related services; 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**

[23] In order to preserve the Divestiture Assets pending completion of the Divestiture, Respondents 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, Respondents shall make reasonable efforts to ensure that KGCI and its Affiliates preserve the Divestiture Assets in a manner consistent with this Part V of this Agreement. Without limiting the generality of the foregoing, Respondents 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 Divestiture Assets 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, registrations, consents, licences, permits, waivers, and other authorizations that are, in Monitor's view subject to consultation with Respondents, advisable for the operation of the Divestiture Assets and Divested Business;

- (f) take commercially reasonable steps to honour all customer contracts and to maintain quality and service standards for customers of the Divestiture Assets 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 Divestiture Assets or Divested Business, except with the prior approval of the Monitor;
  - (h) not alter, or cause to be altered, the management of the Divestiture Assets 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 Divestiture Assets, without the prior approval of the Monitor;
  - (j) ensure that the Divestiture Assets are staffed with sufficient employees to ensure their 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) maintain inventory levels and payment terms consistent with the practices of the Retail Business that existed, with respect to the Divestiture Assets, during the fiscal year prior to the date of this Agreement; and
  - (l) 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.
- [24]** Pending completion of the Divestiture, Respondents shall not, without the Commissioner's prior written approval:
- (a) create any new encumbrances on the Divestiture Assets or 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 Divested Business, except as necessary to comply with this Agreement; or
  - (c) make any material changes to the Divestiture Assets or Divested Business, except as required to comply with this Agreement.

- [25] Respondents 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 Respondents have not provided, are 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 Respondents must provide. Respondents shall comply with any determination made by the Commissioner on this issue.

**VI. THIRD PARTY CONSENTS**

- [26] It shall be a condition in any Divestiture Agreement (whether negotiated by Respondents or by the Divestiture Trustee) that Respondents shall, as a condition of closing, obtain any consents and waivers from Third Parties that are necessary to permit the assignment to, and assumption by, a Purchaser(s) of all Material Contracts, Approvals and Authorizations relating to the Divestiture Assets; provided, however, that Respondents may satisfy this requirement by certifying that the Purchaser(s) has executed agreements directly with one or more Third Parties which make such assignment and assumption unnecessary.

**VII. INTERIM SUPPLY COMMITMENTS**

- [27] Pending the completion of the Divestiture, McKesson Canada shall supply the Divested Business with such products and services, including the supply of pharmaceutical, HABA and OTC products, in amounts and on terms and conditions that are consistent with the annual period prior to the date of this Agreement (including terms related to pricing, such as pricing formulæ) that are no less favourable than those applicable to other pharmacies purchased by the Respondents under the Transaction Agreement that are supplied with like products in the same or similar region as the Divested Businesses.
- [28] At the discretion of the Purchaser(s), McKesson Canada shall continue to supply products and services, including the supply of pharmaceutical, HABA and OTC products to the Divested Business following the Divestiture for a period of 12 months after Closing on terms and conditions related to pricing, payment, performance standards, delivery schedules, and service level commitments that are consistent with the annual period prior to the date of this Agreement; provided, however, that where a Purchaser(s) already obtains products and services, from McKesson Canada through the Wholesale Business under an existing contract(s), McKesson Canada shall, at the discretion of the Purchaser(s), continue to supply such products and services to such Purchaser(s) for a period of 12 months after Closing pursuant to the terms and conditions of such existing contract(s). For greater certainty, nothing in this Section 28 limits the ability of McKesson Canada and a Purchaser(s) to agree upon terms for supply of such products and services by

McKesson Canada to the Purchaser(s) following the 12 month period after Closing.

**VIII. CONFIDENTIALITY OBLIGATIONS**

[29] From and after the Closing Date, Respondents and their Affiliates shall not use McKesson Confidential Information for any purpose except as expressly provided in this Agreement.

[30] Respondents and their Affiliates shall develop and implement procedures with respect to McKesson Confidential Information, with the advice, assistance and approval of the Monitor, to comply with the requirements of this Agreement. Such procedures shall ensure, without limitation, that except as otherwise expressly provided in this Agreement:

- (a) ClaimSecure Confidential Information is maintained confidentially by the ClaimSecure Business, is used only in connection with the operation of the ClaimSecure Business and is not used in connection with the Wholesale Business or the Retail Business even if the ClaimSecure Confidential Information is not itself revealed;
- (b) Retail Confidential Information is maintained confidentially by the Retail Business, is used only in connection with the operation of the Retail Business, and is not used in connection with the operation of the Wholesale Business even if the Retail Confidential Information is not itself revealed;
- (c) Wholesale Confidential Information is maintained confidentially by the Wholesale Business, is used only in connection with the operation of the Wholesale Business, and is not used in connection with the operation of the Retail Business even if the Wholesale Confidential Information is not itself revealed;
- (d) For greater certainty, Paragraphs 30(a)-(c) do not restrict the ClaimSecure Business, the Retail Business or the Wholesale Business from disclosing ClaimSecure Confidential Information, Retail Confidential Information or Wholesale Confidential Information, respectively, to a Third Party on the condition that: (i) such Third Party does not directly or indirectly disclose such information to any representative of the Respondents or their Affiliates who is not permitted by this Agreement to receive such information; and (ii) a Third Party receiving Retail Confidential Information is not a competitor of the Retail Business (except that disclosure can be made to such a competitor pursuant to clean team arrangements to be notified to the Monitor within at least 5 days before such disclosure is made, in the context of a proposed merger, acquisition, joint venture or similar business transaction);

- (e) Notwithstanding Paragraphs 30(b) and (c), the type of Retail Confidential Information that was provided, disclosed or otherwise made available by the Retail Business to Wholesale Business Personnel and the type of Wholesale Confidential Information that was provided, disclosed or otherwise made available by the Wholesale Business to Retail Business Personnel pursuant to the Corporate Distribution Agreement between McKesson Canada and the Retail Business prior to the Transaction may continue to be provided, disclosed or otherwise made available to only the Wholesale Business Personnel or Retail Business Personnel, as applicable, to whom the information was provided, disclosed or otherwise made available prior to the Transaction; provided, however, the types of Retail Confidential Information provided, disclosed or otherwise made available to Planogram Personnel and Promotional Personnel prior to the Transaction, shall only be provided, disclosed, or otherwise made available to these personnel and not to any other Wholesale Business Personnel.
- (f) Notwithstanding Paragraph 30(b), Retail Confidential Information may be provided, disclosed or otherwise made available to Shared Services Personnel, unless prohibited by reason other than this Agreement only to the extent necessary to comply with securities laws and internal accounting and disclosure controls, prepare financial and regulatory reports, tax returns, assist with internal and external audit function, develop and implement intercompany accounting systems and processes, manage employee compensation and benefits, operate information technology systems, provide legal advice and implement compliance programs, defend litigation and comply with Applicable Law and this Agreement. Any such information shall be: (1) accessible to the Monitor prior to its receipt by any Shared Services Personnel; (2) maintained in a separate confidential file that is accessible only to the Shared Services Personnel; and (3) used only for the purposes set forth in this Section;
- (g) ClaimSecure Confidential Information, Retail Confidential Information and Wholesale Confidential Information shall not be provided, disclosed or otherwise made available to Senior Management Personnel; provided, however, Senior Management Personnel may receive Retail Confidential Information and Wholesale Confidential Information, excluding information relating to promotions (including pricing, type of promotion, timing and markets), that is aggregated to at least a provincial level only to the extent necessary for the management and oversight of the Retail Business and Wholesale Business, respectively. For greater certainty, Senior Management Personnel may receive Budget Reviews, Long Range Plans, Finance Updates, Operating Reviews and Monthly Reports relating to the Wholesale Business of the type and form received by Senior Management Personnel prior to Closing provided that the information contained in these reports is aggregated to at least a provincial level. Where Senior Management Personnel otherwise require access to Retail

Confidential Information or Wholesale Confidential Information, Senior Management Personnel may receive such information only where approved by the Commissioner pursuant to the following procedure:

- (i) McKesson Canada shall submit to the Monitor and the Commissioner the specific information that is necessary to be shared, a statement of the reasons for the need to share the information, and the time period during which the information is intended to be shared;
  - (ii) Within five days of receiving the notification under (i) above, the Monitor shall advise the Commissioner whether the information sought to be shared is commercially sensitive;
  - (iii) In exercising his discretion to approve the request, the Commissioner shall take into account the commercially sensitive nature of the information and the likely impact of sharing the information on competition. Where the Commissioner does not object in writing to the Senior Management Personnel receiving the Retail Confidential Information or Wholesale Confidential Information set out in the notice within ten days of receiving the notification under (i) above, the Senior Management Personnel set out in the notification shall be entitled to receive the Retail Confidential Information or Wholesale Confidential Information; and
  - (iv) If the Commissioner does object in writing within ten days of receiving the notification under (i) above, the Senior Management Personnel set out in the notification shall not receive the Retail Confidential Information or Wholesale Confidential Information.
- (h) Notwithstanding Paragraphs 30(b) and (c), either Retail Confidential Information or Wholesale Confidential Information necessary for identifying and evaluating strategic options outside the ordinary course of either the Retail Business or the Wholesale Business, including investments, acquisitions and divestitures, for Respondents' operations or the global operations of McKesson Corporation and its Affiliates may be provided, disclosed or otherwise made available to CSBD Personnel pursuant to the following procedure:
- (i) Respondents shall submit to the Monitor and the Commissioner a notification containing the name, position and function of the relevant CSBD Personnel, a statement of the reasons for the disclosure of either Retail Confidential Information or Wholesale Confidential Information, the specific types of information that are necessary to be shared, and a detailed statement of all types of Retail Confidential Information, where access to Wholesale

Confidential Information is being sought, or all types of Wholesale Confidential Information, where access to Retail Confidential Information is being sought that the relevant CSBD Personnel has had access to previously;

- (ii) Within five days of receiving the notification under (i) above, the Monitor may request additional information if required to assess whether the sharing of such information with the relevant CSBD Personnel would result in the relevant CSBD Personnel having access to both Retail Confidential Information and Wholesale Confidential Information;
  - (iii) Within five days of receiving sufficient information to assess whether the sharing of such information with the relevant CSBD Personnel would result in the relevant CSBD Personnel having access to both Retail Confidential Information and Wholesale Confidential Information, the Monitor shall advise the Commissioner whether the sharing of such information with the relevant CSBD Personnel would result in the relevant CSBD Personnel having access to both Retail Confidential Information and Wholesale Confidential Information;
  - (iv) In exercising his discretion to approve the request, the Commissioner shall take into account the commercially sensitive nature of the information, whether as a result of sharing the information the relevant CSBD Personnel would have access to both Retail Confidential Information and Wholesale Confidential Information and the likely impact of sharing the information on competition. Where the Commissioner does not object in writing to the relevant CSBD Personnel receiving the Retail Confidential Information or Wholesale Confidential Information set out in the notice within ten days of receiving the advice under (iii) above, the relevant CSBD Personnel set out in the notification shall be entitled to receive the information; and
  - (v) If the Commissioner does object in writing within ten days of receiving the advice under (iii) above, the relevant CSBD Personnel set out in the notification shall not receive the Retail Confidential Information or Wholesale Confidential Information.
- (i) Notwithstanding Paragraph 30(b), Retail Confidential Information relating to the Divestiture Assets that is aggregate financial and operational information may be provided, disclosed or otherwise made available to Designated Personnel only to the extent it is necessary to comply with securities laws, prepare financial and regulatory reports, tax returns, administer employee benefits, defend litigation and comply with this Agreement. Any such information shall be: (i) reviewed by the Monitor

prior to its receipt by any Designated Personnel; (ii) maintained in a separate confidential file that is accessible only to the Designated Personnel; and (iii) used only for the purposes set forth in this Paragraph;

- (j) Notwithstanding Paragraph 30(b), Retail Confidential Information may be provided, disclosed or otherwise made available to Procurement Personnel only to the extent necessary to identify opportunities for and implement purchasing initiatives on behalf of the Retail Business and the businesses of McKesson Canada. Such Retail Confidential Information provided to Procurement Personnel shall only be provided, disclosed, or otherwise made available to such personnel and not to any other Wholesale Business Personnel.
- (k) Notwithstanding Paragraph 30(b), Retail Confidential Information may be provided, disclosed or otherwise made available to the Operational Coordinator only to the extent necessary to manage logistical and operational issues between the Retail Business and the Wholesale Business. For greater certainty, the Operational Coordinator shall have no involvement in, and shall not disclose Retail Confidential Information for the purposes of, wholesale supply contract negotiations with customers and potential customers of the Wholesale Business.
- (l) Notwithstanding Paragraph 30(c), Wholesale Confidential Information relating solely to the Retail Business may be provided, disclosed or otherwise made available to the Rexall Sales Team, only to the extent necessary to manage logistical and operational issues between the Retail Business and the Wholesale Business..

**[31]** Respondents shall ensure, without limitation, that such procedures include:

- (a) monitoring compliance;
- (b) enforcing compliance with appropriate remedial action in the event of non-compliant use or disclosure;
- (c) distributing information regarding the procedures annually to each of their own and their Affiliates' directors, officers, employees and agents having managerial responsibility for any obligations under this Agreement; and
- (d) requiring that all employees of Respondents and their Affiliates associated with the ClaimSecure Business, Retail Business or Wholesale Business comply with the requirements of this Agreement.

**[32]** Each person specifically identified in Schedule E must sign a confidentiality agreement in a form satisfactory to the Commissioner and a statement attesting that he or she has received a copy of this Agreement, will comply with its terms, and will take all reasonable steps to ensure that employees that report to him or her will comply with its terms. Such materials shall be submitted:



- (a) for each person specifically identified in Schedule E, no later than twenty days after the Closing Date; and
  - (b) for each person who replaces any of those specifically identified in Schedule E or who are given any subset of responsibilities of those people specifically identified in Schedule E, no later than ten days after assuming those responsibilities.
- [33]** Respondents and their Affiliates shall change Retail Business Personnel, Senior Management Personnel, and Wholesale Business Personnel only pursuant to the following procedures:
- (a) replacing or adding employees of the Retail Business or the Wholesale Business who report (directly or indirectly) to the people, functions, or positions specifically identified in Schedule E shall be in accordance with the usual and customary business practices of the Retail Business or the Wholesale Business, as applicable;
  - (b) replacing any employees of the Retail Business or the Wholesale Business specifically identified in Schedule E or reorganizing functions or positions of the Retail Business or the Wholesale Business specifically identified in Schedule E, which for greater certainty includes the addition of new functions not specifically identified in Schedule E and the splitting or amalgamation of positions that are specifically identified in Schedule E, shall be in accordance with the usual and customary business practices of the Retail Business or the Wholesale Business, as applicable, and Respondents shall provide notice to the Monitor within 14 days of the change; and
  - (c) notwithstanding Paragraphs 33(a) and (b), where replacing any individual specifically identified in Schedule E or any individual who reports (directly or indirectly) to any person, function, or position specifically identified in Schedule E, or reorganizing functions or positions specifically identified in Schedule E or adding new functions or positions that are not specifically identified in Schedule E, would result in: (A) a Retail Business Personnel becoming a Wholesale Business Personnel (or vice versa), (B) a Retail Business Personnel or Wholesale Business Personnel having both Retail Confidential Information and Wholesale Confidential Information or (C) an individual who had access to disaggregated Retail Confidential Information or disaggregated Wholesale Confidential Information pursuant to Paragraphs 30(f), (h), (i), (j), (k) or (l) becoming a Senior Management Personnel, Respondents shall submit prior notification to the Monitor and the Commissioner in accordance with the following:

- (i) if the Commissioner does not object in writing to the change within ten days of receiving the notification, Respondents and their Affiliates shall be permitted to make the change; and
- (ii) if the Commissioner, in his discretion, objects in writing to the change within ten days of receiving the notification, Respondents and their Affiliates shall not be permitted to make the change.

**IX. EMPLOYEES**

**[34]** Respondents (during the Initial Sale Period) and the Divestiture Trustee (during the Divestiture Trustee Sale Period) shall 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.

**[35]** Respondents 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 Respondents;
- (c) remove any impediment created by Respondents 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) pay or transfer to or maintain for the employees subsequently employed by the Purchaser all current and accrued bonuses, pensions and other current and accrued benefits to which such employees would otherwise have been entitled had they remained in the employment of Respondents.

**[36]** For a period of one year following completion of the Divestiture, Respondents 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.

**X. FAILURE OF DIVESTITURE TRUSTEE SALE**

[37] 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.

**XI. MONITOR**

[38] The Commissioner shall appoint a Monitor, responsible for monitoring compliance by Respondents 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 Respondents' compliance with this Agreement.

[39] Within 5 Business Days after the appointment of the Monitor, Respondents 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 Respondents with this Agreement.

[40] Within 5 Business Days after receipt of the proposed Monitor Agreement referred to in Section 39, the Commissioner shall advise Respondents 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 Respondents shall incorporate into a final Monitor Agreement with the Monitor and the Commissioner.

[41] Respondents consent 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 Respondents' compliance with this 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 Respondents, 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 Respondents.
  - (f) The Monitor may undertake independent audits to confirm that Respondents have protected McKesson Confidential Information and otherwise complied with this Agreement.
  - (g) The Monitor shall evaluate all reports submitted to the Monitor by Respondents. Within 30 days from the date the Monitor receives these reports, the Monitor shall report in writing to the Commissioner concerning the performance by Respondents of their obligations under this Agreement.
  - (h) The Monitor shall provide to the Commissioner every 30 days after the date of the Monitor's appointment until the Divestiture is complete and thereafter within 30 days from the date the Monitor receives a report from Respondents, a written report concerning performance by Respondents of their obligations under this Agreement. The Monitor shall, within 3 Business Days, respond to any request by the Commissioner for additional information regarding Respondents' compliance.
- [42] Subject to any legally recognized privilege, Respondents shall provide to the Monitor full and complete access to all personnel, Records, information (including Confidential Information) and facilities relevant to monitoring Respondents' compliance with this Agreement.
- [43] Respondents shall take no action that interferes with or impedes, directly or indirectly, the Monitor's efforts to monitor Respondents' compliance with this Agreement.
- [44] Respondents shall fully and promptly respond to all requests from the Monitor and shall provide all information the Monitor may request relevant to monitoring the Respondents' compliance with this Agreement. Respondents shall identify an individual who shall have primary responsibility for fully and promptly responding to such requests from the Monitor on behalf of Respondents.
- [45] Respondents 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.

- [46] 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.
- [47] Respondents 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. Respondents shall pay all reasonable invoices submitted by the Monitor within 30 days after receipt and, without limiting this obligation, Respondents 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) Respondents shall promptly pay any invoice approved by the Commissioner. Any outstanding monies owed to the Monitor by Respondents shall be paid out of the proceeds of the Divestiture.
- [48] Respondents 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.
- [49] 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.
- [50] The Monitor shall serve for the duration of this Agreement.

## **XII. COMPLIANCE**

- [51] Within 5 Business Days after the Closing Date, Respondents shall provide written confirmation to the Commissioner of the date on which the Transaction was completed.
- [52] Respondents shall provide a copy of this Agreement to each of their own and their Affiliates' directors, officers, employees and agents having managerial responsibility for any obligations under this Agreement, within 3 Business Days after the date of registration of this Agreement. Respondents shall ensure that its directors, officers, employees and agents with responsibility for any obligations under this Agreement receive sufficient training respecting Respondents' responsibilities and duties under this Agreement, and the steps that such individuals must take in order to comply with this Agreement.

- [53] Respondents and their Affiliates 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.
- [54] For a period of 2 years after the date when the Divestiture is completed, Respondents and their Affiliates 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, except where such interest is limited to the supply of products or services by McKesson Canada through the Wholesale Business, any retail pharmacy in the areas identified in Schedule B; or
  - (b) consummate any merger or other combination that would result in Respondents acquiring a retail pharmacy in the areas identified in Schedule B.

If a transaction described (a) or (b) is one for which notice is not required under section 114 of the Act, Respondents shall supply to the Commissioner the information described in section 16 of the Notifiable Transactions Regulations at least 30 days before completing such transaction. Respondents 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 Respondents instead of such information. The Commissioner may, within 30 days after receiving the information described in this Section, request that Respondents 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, Respondents 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 Respondents have supplied all such requested information in the form specified by the Commissioner.

- [55] Six months after the date of registration of this Agreement and annually on the 6 month anniversary of the date of registration, and at such other times as the Commissioner may require, Respondents shall provide the Commissioner and the Monitor with a report and an affidavit or certificate, substantially in the form of Schedule C to this Agreement, certifying their compliance with Parts VII, VIII, IX 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.

- [56] Respondents shall report to the Monitor in accordance with the requirements of the Agreement. For greater certainty, in addition to providing the Monitor with a

copy of its reports concerning compliance with this Agreement, Respondents shall provide the Monitor with, amongst other things, all source materials, working papers and all other information used by Respondents to respond to each audit conducted and to confirm that Respondents have protected McKesson Confidential Information in accordance with this Agreement.

**[57]** If any of Respondents, 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. Respondents shall provide confirmation of their compliance with this provision in all affidavits and certificates of compliance filed with the Commissioner pursuant to Section 55 of this Agreement.

**[58]** Respondents shall notify the Commissioner at least 30 days prior to:

- (a) any proposed dissolution of Respondents; or
- (b) any other change in Respondents 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 Respondents' incorporating statutes.

**[59]** For purposes of determining or securing compliance with this Agreement, and subject to any legally recognized privilege, Respondents shall, upon written request given at least 5 Business Days in advance to Respondents, permit any authorized representative(s) of the Commissioner, without restraint or interference:

- (a) to access, during regular office hours of Respondents on any Business Day(s), all facilities and to inspect and copy all Records in the possession or control of Respondents related to compliance with this Agreement, which copying services shall be provided by Respondents at their expense; and
- (b) to interview such officers, directors or employees of Respondents 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; and
- (b) Part VII of this Agreement shall be effective only until the interim supply 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; 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, 21<sup>st</sup> Floor  
50 Victoria Street, Phase I  
Gatineau, Quebec K1A 0C9

Attention: Commissioner of Competition  
Fax: (819) 953-5013  
Email address: [ic.avisdefusionmergnotification.ic@canada.ca](mailto:ic.avisdefusionmergnotification.ic@canada.ca)

with copies to:

Executive Director and Senior General Counsel  
Competition Bureau Legal Services  
Department of Justice  
Place du Portage, 22<sup>nd</sup> 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](mailto:ic.cb_lsu_senior_general_counsel-avocat_general_principal_usj_bc.ic@canada.ca)

if to McKesson Canada:

McKesson Canada Corporation  
4705 Dobrin Street



Saint Laurent, Quebec H4R 2P7

Attention: Jennifer Zerczy

Fax: (514) 832-8004

Email address: [jennifer.zerczy@mckesson.ca](mailto:jennifer.zerczy@mckesson.ca)

with a copy to:

Davies Ward Phillips & Vineberg LLP

155 Wellington Street West

Toronto, Ontario M5V 3J7

Attention: John Bodrug

Fax: (416) 863-0871

Email address: [jbodrug@dwpv.com](mailto:jbodrug@dwpv.com)

if to RPG:

Rexall Pharmacy Group Ltd.

c/o McKesson Canada Corporation

4705 Dobrin Street

Saint Laurent, Quebec H4R 2P7

Attention: Jennifer Zerczy

Fax: (514) 832-8004

Email address: [jennifer.zerczy@mckesson.ca](mailto:jennifer.zerczy@mckesson.ca)

with a copy to:

Davies Ward Phillips & Vineberg LLP

155 Wellington Street West

Toronto, Ontario M5V 3J7

Attention: John Bodrug

[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. Respondents hereby consent to such registration. Following the filing of this Agreement, the Commissioner shall promptly issue a letter to Respondents 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 be made public upon the expiry of the Initial Sale Period. Information in Confidential Schedule D shall be made public after the Divestiture is complete.

- [67] The Commissioner may, after informing Respondents, extend any of the time periods contemplated by this Agreement other than Sections 53, 54 and 60. If any time period is extended, the Commissioner shall promptly notify Respondents of the revised time period.

- [68] Nothing in this Agreement precludes Respondents or the Commissioner from bringing an application under section 106 of the Act. Respondents 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 wholesale and retail sale of certain pharmacy products and services, including pharmaceutical and OTC products in certain local areas; 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] Respondents attorn to the jurisdiction of the Tribunal for the purposes of this Agreement and any proceeding initiated by the Commissioner relating to this Agreement.
- [70] Until Closing, Respondents shall make reasonable efforts to ensure that KGCI and its Affiliates preserve the Divested Business in a manner consistent with Part V of this Agreement.
- [71] This Agreement constitutes the entire agreement between the Commissioner and Respondents, and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral, with respect to the subject matter hereof.
- [72] 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.
- [73] In the event of a dispute regarding compliance with or the interpretation, implementation or application of this Agreement, the Commissioner or Respondents 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.
- [74] 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.

The undersigned hereby agree to the filing of this Agreement with the Tribunal for registration.

DATED this 13<sup>th</sup> day of December, 2016

[ORIGINAL SIGNED BY “John Pecman”]  
Commissioner of Competition  
John Pecman

[ORIGINAL SIGNED BY “Jennifer Zerczy”]  
Corporate Secretary  
McKesson Canada Corporation  
Jennifer Zerczy

[ORIGINAL SIGNED BY “Jennifer Zerczy”]  
Corporate Secretary  
Rexall Pharmacy Group Ltd  
Jennifer Zerczy

**CONFIDENTIAL SCHEDULE A  
INITIAL SALE PERIOD**

**CONFIDENTIAL.**

## SCHEDULE B

## DIVESTITURE BUSINESSES

AREA	CIVIC ADDRESS
Inuvik	125 Mackenzie Rd, Inuvik, NT, X0E 0T0
Sechelt	5740 Teredo St, Sechelt, BC, V0N 3A0
Burns Lake	418 Yellowhead Hwy, Burns Lake, BC, V0J 1E0
Ladysmith	370 Trans Canada Hwy #1, Ladysmith, BC, V9G 1T9
High Prairie	5004 – 53 <sup>rd</sup> Ave, High Prairie, AB, T0G 1E0
	5109 – 49 <sup>th</sup> St, High Prairie, AB, T0G 1E0
Athabasca	4923 – 50 <sup>th</sup> St, Athabasca, AB, T9S 1E1
Jasper	602 Patricia St, Jasper, AB, T0E 1E0
Barrhead	5028 – 50 <sup>th</sup> St, Barrhead, AB, T7N 1A2
Banff	317 Banff Ave, Banff, AB, T1L 1C3
Fort MacLeod	220 – 24 <sup>th</sup> St, Fort MacLeod, AB, T0L 0Z0
Blairmore	12749 – 20 <sup>th</sup> Ave, Blairmore, AB, T0K 0E0
Kamsack	432 – 3 <sup>rd</sup> Ave South, Kamsack, SK, S0A 1S0
Shaunavon	353 Centre St, Shaunavon, SK, S0N 2M0
Moosomin	608 Birtle Street, Moosomin, SK, S0G 3N0
Sioux Lookout	60-A Front St, Sioux Lookout, ON, P8T 1A3
	14 Fourth Avenue, Sioux Lookout, ON, P8T 1C5
Iroquois Falls	201 Ambridge Dr, Iroquois Falls, ON, P0K 1G0
Englehart	63 – 5 <sup>th</sup> St, Englehart, ON, P0J 1H0
Sturgeon Falls	228 King St, Sturgeon Falls, ON, P2B 1R9
Stayner	7377 Highway 26, Stayner, ON, L0M 1S0
Lindsay	51 Kent St W, Lindsay, ON, K9V 2X9
Campbellford	16 Grand Rd, Campbellford, ON, K0L 1L0
Deep River	11 Champlain St, Deep River, ON, K0J 1P0
Vanderhoof	188 East Stewart St, Vanderhoof, BC, V0J 3A0
Durham	203 -207 Garafraxa St N, Durham, ON, N0G 1R0
Wingham	55 Josephine St, Wingham, ON, N0G 2W0
Smithville	144 Griffin St, Smithville, ON, L0R 2A0

## SCHEDULE C

### FORM OF COMPLIANCE CERTIFICATION/AFFIDAVIT

I, **[name]**, of **[place]**, hereby certify in accordance with the terms of the Registered Consent Agreement dated • between McKesson Canada Corporation, Rexall Pharmacy Group Ltd. (collectively, “Respondents”) and the Commissioner of Competition, that:

1. I am the **[title]** of **[Respondent]**, 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]**, Respondents entered into a Consent Agreement (the “Consent Agreement”) with the Commissioner of Competition (the “Commissioner”) in connection with the acquisition by Rexall Pharmacy Group Ltd., an affiliate of McKesson Canada Corporation, of the pharmacy, medical clinic, and benefits management administration and claims adjudication businesses carried on by Katz Group Canada Inc. and its affiliates (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 55 of the Consent Agreement, Respondents are required to file **[annual reports/reports when requested by the Commissioner]** certifying its compliance with Parts VII, VIII, IX and XII of the Consent Agreement.

#### Oversight of Compliance

6. **[Names/titles]** have primary responsibility for overseeing compliance with this Agreement. In so doing, **[Names/Titles]** shall report to the Monitor in accordance with the requirements of the Consent Agreement. For greater certainty, in addition to providing the Monitor with a copy of its reports concerning compliance with this Consent Agreement, **[Names/Titles]** have provided the Monitor with, amongst other things, all source materials, working papers and all other information used by Respondents to respond to each audit conducted and to confirm that Respondents have protected McKesson Confidential Information in accordance with the Consent Agreement.

#### Closing Date

7. Pursuant to Section 51 of the Consent Agreement, Respondents are 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 52 of the Consent Agreement, Respondents are required to provide a copy of the Consent Agreement to each of their own and their Affiliates' directors, officers, employees and agents having managerial responsibility for any obligations under the Consent Agreement, within 3 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 52 of the Consent Agreement, Respondents are required to ensure that their directors, officers, employees and agents with responsibility for any obligations under the Consent Agreement receive sufficient training respecting Respondents' 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]**

### **Transitional Support Arrangements**

10. Pursuant to Section 27 of the Consent Agreement and pending the completion of the Divestiture, McKesson Canada at the request of **[Purchaser]** is supplying the Divested Business with such products and services, including the supply of pharmaceutical, HABA and OTC products, in amounts and on terms and conditions that are consistent with the annual period prior to the date of the Consent Agreement (including terms related to pricing, such as pricing formulæ) that are no less favourable than those applicable to other pharmacies purchased by the Respondents under the Transaction Agreement that are supplied with like products in the same or similar region as the Divested Businesses.
11. Pursuant to Section 28 of the Consent Agreement, at the request of the **[Purchaser(s)]**, McKesson Canada is continuing to supply products and services, including the supply of pharmaceutical, HABA and OTC products to the Divested Business following the Divestiture for a period of 12 months after Closing on terms and conditions related to pricing, payment, performance standards, delivery schedules, and service level commitments that are consistent with the annual period prior to the date of this Consent Agreement, provided, however, that where a Purchaser(s) already obtains products and services, from McKesson Canada through the Wholesale Business under an existing contract(s), McKesson Canada shall, at the discretion of the Purchaser(s), continue to supply such products and services to such Purchaser(s) for a period of 12 months after Closing pursuant to the terms and conditions of such existing contract(s).

### **Employees**

12. Sections 34 and 35 of the Consent Agreement require Respondents to take various steps in regard to its employees whose responsibilities involved the operation of the Divestiture Assets. Respondents have fully complied with the terms of those Sections and, more particularly:



**Notification of Breach**

13. 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 ●.

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**Commissioner of Oaths**

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**Name and Title of Certifying Officer**

**CONFIDENTIAL SCHEDULE D**

**CONFIDENTIAL**

## SCHEDULE E

### 1. Designated Personnel

#### Legal

- Jennifer Zerczy, SVP Legal Affairs, Compliance and GMP, McKesson Canada
- Sara Joli-Coeur, Legal Consultant, McKesson Canada
- Michele Lau, Senior Vice President, Governance Relations, McKesson Corp.
- Scott Willoughby, Senior Counsel, M&A, McKesson Corp.

#### Project Management

- Erin Hughes, Director, Rexall PMO, McKesson Canada

#### CSBD

- Ann Mao, Senior Vice President, Corporate Strategy and Business Development, M&A, McKesson Corp.
- Chris Dimos, Senior Vice President, Corporate Strategy and Business Development, McKesson Corp.

#### Finance

- Rob Gerber, Vice President, Corporate M&A Finance, McKesson Corp.
- George Limantzakis, Senior Director, Finance, McKesson Canada

### 2. Retail Business Personnel

President, RPG and all individuals who report directly or indirectly to this position, who at the time of Closing will include:

- Jurgen Schreiber, Chief Executive Officer
- Joyce Lee, EVP & Chief Financial Officer
- Brian McLaughlin, EVP Human Resources & Corporate Relations
- Warren Jeffery, Chief Operating Officer
- Victor DiRisio, Chief Technology Officer
- Paul Dale, EVP Corporate Store Operations
- Mary Kelly, EVP & Chief Pharmacy Officer
- Andy Williams, EVP & Chief Merchandising Officer
- Manasi Kulkarni, VP, Corporate Development, Strategy & Acquisitions
- President RPG – To be determined

#### Rexall Sales Team

Rexall Account Manager and all individuals who report directly or indirectly to this position, who at the time of Closing will be:

- Elizabeth Fajarczuk, Account Manager
- Deepti Tebeck, Analyst
- Gary Mithra, Analyst
- Manny Dhillon, Analyst

### **3. Wholesale Business Personnel**

President, McKesson Canada and all individuals who report directly or indirectly to this position, who at the time of Closing will include:

- Paula Keays, President
- Dimitris Polygenis, Senior Vice President Purchasing and Pharma Solutions
- Ravi Deshpande, Senior Vice President Strategy and Business Development
- Genevieve Fortier, Senior Vice President HR and Public Affairs
- Todd Baldanzi, Chief Financial Officer
- Richard Brennan, Senior Vice President Retail Banner Management Services
- George Attar, Senior Vice President CIO and CTO
- Jennifer Zerczy, Senior Vice President Legal Affairs, Compliance and GMP

#### Operational Coordinator

TBD

#### Planogram Personnel

- Marc Owieczka, Manager, Listing Governance and Operational Improvement
- Caroline Morin, Analyst, Listing Governance
- Amy Bakos, Specialist, Product Assortment and Listing
- Craig Bridges, Specialist, Product Assortment and Listing
- Karen Walsh, Specialist, Product Assortment and Listing

#### Procurement Personnel

- Loris Zancan, Vice President Strategic Procurement and Manufacturer Relations
- Claudio Dilollo, Senior Director, Brand and Generic Purchasing
- Sebastien Paquet, Director, Purchasing and Manufacturer Relations
- John Kappos, Senior Manager OTC/Consumer Purchasing
- Lise Ethier, Procurement Strategic Advisor
- Carl Dragoun, Manager, Procurement
- Olivier Seguin, Manager, Procurement
- Terri-Lea Arless, Manager, Procurement
- Brett Murphy, Sr. Buyer Planner
- Kristen Foster, Sr. Buyer Planner
- Neil Fraser, Sr. Buyer Planner
- Sandra St-Hilaire, Sr. Buyer Planner
- Deanna Ainslee, Buyer Planner
- Helene Raposo, Buyer Planner
- Jose Rendon, Buyer Planner
- Anthony Lepore, Buyer Planner
- Brad Davis, Buyer Planner
- Lianos Vassilios, Buyer Planner
- Marie Panconi, Buyer Planner
- Richard Lamarre, Buyer Planner
- Tania Altavilla, Buyer Planner

- Masis Kundubekian, Category Advisor
- Joe Mattia, Category Advisor
- Paul Galego, Category Advisor
- Ramzi Koleilat, Sr Manager, Procurement Strategy
- Christina Crevier, Category Manager
- Isabelle Belanger, Formulary Supervisor
- Melissa de Oliveira, Formulary Analyst
- Andrea Tomkins, Formulary Analyst
- Liane Carangi, Formulary Analyst

Promotions Personnel

Manager Promotions and all individuals who report directly or indirectly to this position, who at the time of Closing will be:

- Mary Raspa, Manager, Promotions
- Josee Gourdeau, Supervisor, Promotions
- Chantal Brunet, Supervisor, Promotions
- Nathanielle Crevier, Analyst
- John Lewis, Analyst
- Nanci Andrade, Analyst
- Malamo Moustis, Analyst

**4. Shared Services Personnel**

Shared Services Personnel shall be the following persons who hold the following functions and positions and their respective executive assistants and secretaries:

(a) Legal and Compliance Group

- Jennifer Zerczy, SVP Legal Affairs, Compliance and GMP
- Mark Ng, VP Legal Affairs, Retail
- Claude Jolicoeur, Director Regulatory Affairs/Corporate GMP, Legal Affairs
- Josie Romanelli, Director Legal Affairs
- Nathalie Gosset, Senior Director Corporate Quality, Regulatory and Compliance, Legal Services

(b) Finance Group

- Todd Baldanzi, SVP CFO
- Carlo D'Amico, VP Finance, Pharmaceutical Distribution
- Nathalie Henault, VP Finance, Procurement and Manufacturing Solutions

(c) Information Technology Group

- George Attar, SVP Chief Technology and Information Officer
- Carl Boucher, VP IT
- Jean-Philippe Blouin, VP Technology Solutions
- Steve Savoie, VP, GM Pharmacy Technology Solutions

(d) Human Resources Group

- Genevieve Fortier, SVP HR & Public Affairs
- Carole l'Italien, Interim VP HR
- Caroline Morin, Director of Compensation Benefits and Shared Services

(e) Government Affairs and Communications

- David Simmonds, Vice President, Public Affairs

**5. Senior Management Personnel**

Senior Management Personnel shall be the following persons who hold the following functions and positions and their respective executive assistants and secretaries:

(a) McKesson Canada CEO

- TBD

(b) McKesson Corporation Executive Committee

- John Hammergren, Chairman, President and CEO, McKesson Corporation
- James Beer, Executive VP and CFO, McKesson Corporation
- Paul Julian, Executive VP and Group President, McKesson Corporation
- Patrick Blake, Executive VP and Group President, McKesson Corporation
- Jorge Figueredo, Executive VP, Human Resources, McKesson Corporation
- Kathy McElligott, Executive VP, CIO and CTO, McKesson Corporation
- Bansi Nahji, Executive VP CSBD, McKesson Corporation
- Lori Schechter, Executive VP, General Counsel and CCO, McKesson Corporation
- Marc Owen, Chairman of Celesio
- Stanton McComb, President of McKesson Medical-Surgical

(c) McKesson Corporation Board of Directors

- Andy Bryant
- Wayne Budd
- N. Anthony Coles
- M. Christine Jacobs
- Donald Knauss
- Marie Knowles
- Edward Mueller
- Susan Salka