PUBLIC VERSION

CT-2014-008

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 acquisition of Covidien plc by Medtronic, Inc.;

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

B E T W E E N:

THE COMMISSIONER OF COMPETITION

Applicant

– and –

MEDTRONIC, INC. and COVIDIEN PLC

Respondents

CONSENT AGREEMENT

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A. Medtronic Holdings Limited, or a wholly-owned subsidiary thereof ("New Medtronic"), proposes to acquire Covidien plc ("Covidien") pursuant to a transaction agreement dated June 15, 2014 between Medtronic, Inc. ("Medtronic"), Covidien, New Medtronic, Makani II Limited, Aviation Acquisition Co., and Aviation Merger Sub, LLC (the "Transaction");

B. The Commissioner has concluded that the Transaction is likely to result in a substantial prevention of competition in the supply of drug-coated balloons in Canada, and that the implementation of this Agreement is necessary to ensure that any substantial prevention of competition will not result from the Transaction;

C. The Respondents 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 prevention of competition in the supply of drug-coated balloons in Canada; and (ii) the implementation of this Agreement is necessary to ensure that any substantial prevention of competition will not result from the Transaction in Canada.

D. The Respondents have entered, or intend to enter, into a consent agreement with the United States Federal Trade Commission (the "FTC Agreement") and the Parties desire to reflect certain aspects of the FTC Agreement in this Agreement.

THEREFORE the Respondents 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) **"Actual Cost"** means the actual cost incurred to provide the relevant goods or services, including the cost of direct labour and direct material used and allocation of overhead that is consistent with past custom and practice;

   (c) **"Affiliate"** means an affiliated corporation, partnership or sole proprietorship within the meaning of subsection 2(2) of the Act;

   (d) **"Agency(ies)"** means any government regulatory authority or authorities in the world responsible for granting approval(s), clearance(s), qualification(s), license(s), or permit(s) for any aspect of the research, Development, manufacture, marketing, distribution, or sale of Drug-Coated Balloons. The term "Agency" includes, without limitation, the United States Food and Drug Administration ("FDA") and Health Canada;

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(e) **"Agreement"** means this Consent Agreement, including the schedules hereto, and references to a "Part", "Section", "Paragraph" or "Schedule" are, unless otherwise indicated, references to a part, section, paragraph or schedule of or to this Agreement;

(f) **"Background IP"** means all patents, copyrights, trade secrets, or other intellectual property rights owned by Covidien as of the Divestiture Date (other than trademarks or trade dress), that are used in or would otherwise be infringed by the Drug-Coated Balloon Business or the research, Development, and manufacture of PTA Products for the incorporation of such PTA Products into Drug-Coated Balloons as of the Divestiture Date but that are not included in the Drug-Coated Balloon Business, the PTA License, and the PTA Materials;

(g) **"Background IP License"** means a royalty-free, fully paid-up, perpetual, irrevocable, worldwide, non-exclusive license to Spectranetics or the Purchaser, as applicable, under any Background IP to operate the Drug-Coated Balloon Business, including the research, Development, manufacture, distribution, marketing, or sale of Drug-Coated Balloons anywhere in the world and the research, Development, and manufacture of PTA Products for the incorporation of such PTA Products into Drug-Coated Balloons anywhere in the world;

(h) **"Business Day"** means a day on which the Competition Bureau's Gatineau, Quebec office is open for business;

(i) **"Clinical Trial(s)"** means a controlled study in humans of the safety or efficacy of a product, and includes, without limitation, such clinical trials as are designed to satisfy the requirements of an Agency in connection with any product and any other human study used in research and Development of a product;

(j) **"Closing"** means the completion of the Transaction under the Transaction Agreement;

(k) **"Closing Date"** means the date on which Closing occurs;

(l) **"Commissioner"** means the Commissioner of Competition appointed under the Act;

(m) **"Confidential Business Information"** means all information owned by, or in the possession or control of, any Respondent that is not in the public domain and that is directly related to the conduct of the Drug-Coated Balloon Business. The term "Confidential Business Information" excludes the following:

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1. Information relating to any Respondent's general business strategies or practices that does not discuss with particularity the Drug-Coated Balloon Business;

2. Information that is contained in Records of any Respondent that are provided to Spectranetics or the Purchaser, as applicable, by a Respondent that is unrelated to the Drug-Coated Balloon Business acquired by Spectranetics or the Purchaser or that is exclusively related to the Retained Business;

3. Information that is protected by the solicitor work product, solicitor-client, joint defense or other privilege prepared in connection with the Transaction and relating to any Canadian, foreign competition or antitrust Laws;

4. Information that subsequently falls within the public domain through no violation of this Agreement or breach of confidentiality or non-disclosure agreement with respect to such information by the Respondents;

5. Information related to the Drug-Coated Balloon Business that Medtronic can demonstrate it obtained without the assistance of Covidien prior to the Transaction;

6. Information that is required by Law to be disclosed;

7. Information that does not directly relate to the Drug-Coated Balloon Business; and

8. Information that the Respondents demonstrate to the satisfaction of the Commissioner, in the Commissioner's sole discretion:

(i) is necessary to be included in the Respondents' mandatory regulatory filings, provided, however, that the Respondents shall make all reasonable efforts to maintain the confidentiality of such information in the regulatory filings;

(ii) is information the disclosure of which is consented to by Spectranetics or the Purchaser, as applicable;

(iii) is necessary to be exchanged in the course of consummating the Transaction or the Divestiture; or

(iv) is disclosed in complying with this Agreement;

(n) **"Covidien"** means Covidien plc, and each of its directors, officers, employees, agents, representatives, successors and assigns; and all joint ventures, subsidiaries, divisions, groups and Affiliates controlled by

Covidien, and the directors, officers, employees, agents, representatives, successors and assigns of each. Covidien shall not include Medtronic;

(o) **"Development"** means all preclinical and clinical drug and medical device development activities (including formulation), including test method development and stability testing, toxicology, formulation, process development, manufacturing scale-up, development-stage manufacturing, quality assurance/quality control development, statistical analysis and report writing, conducting Clinical Trials for the purpose of obtaining any and all approvals, licenses, registrations or authorizations from any Agency necessary for the manufacture, use, storage, import, export, transport, promotion, marketing, and sale of a product (including any government price or reimbursement approvals), product approval and registration, and regulatory affairs related to the foregoing. "Develop" means to engage in Development;

(p) **"Divestiture"** means the sale, conveyance, transfer, assignment or other disposal of the Divestiture Assets to Spectranetics or a Purchaser pursuant to this Agreement and with the prior approval of the Commissioner, such that the Respondents will have no direct or indirect interest in the Divestiture Assets;

(q) **"Divestiture Agreement"** means a binding and definitive agreement between the Respondents and a Purchaser to effect the Divestiture pursuant to this Agreement and subject to the prior approval of the Commissioner;

(r) **"Divestiture Assets"** means the Drug-Coated Balloon Business, the PTA License, the PTA Materials and the Background IP License;

(s) **"Divestiture Date"** means the date on which the Respondents (or a Divestiture Trustee) complete the Divestiture;

(t) **"Divestiture Process Agreement"** means the agreement described in Section 10 of this Agreement;

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

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

(w) **"Divestiture Trustee Sale Period"** means the one (1) year period commencing upon expiry of the Initial Sale Period;

(x) **"Drug-Coated Balloon(s)"** means Covidien's over the wire percutaneous transluminal angioplasty balloon catheters with paclitaxel coated balloons

for peripheral vascular use; provided, however, that Drug-Coated Balloons shall not include PTA Products that do not contain a paclitaxel coated balloon;

(y) **"Drug-Coated Balloon Business"** means all of Covidien's right, title and interest in and to the assets, tangible and intangible, businesses and goodwill as of the Divestiture Date, that are primarily related to the research, Development, manufacture, marketing, sale or distribution of Drug-Coated Balloons, including, without limitation, all of Covidien's right, title and interest as of the Divestiture Date, in and to the following:

1. All Drug-Coated Balloon Intellectual Property;

2. The Drug-Coated Balloon Plant Lease;

3. All Drug-Coated Balloon Manufacturing Technology;

4. All Drug-Coated Balloon Scientific and Regulatory Material;

5. All of Covidien's Records to the extent primarily related to the research, Development, manufacture, marketing, distribution, or sale of Drug-Coated Balloons;

6. All Drug-Coated Balloon Manufacturing Equipment and the Plymouth Facility Manufacturing Equipment;

7. All contracts entered into with any Third Party in the ordinary course of business with suppliers, personal property lessors, personal property lessees, licensors, licensees, consignors, and consignees, to the extent primarily related to the research, Development, manufacture, marketing, distribution, or sale of Drug-Coated Balloons;

8. All inventory, including raw materials, packaging materials, work-in-process, and finished goods, in each case to the extent consisting of, or intended for use in the manufacture or packaging of, Drug-Coated Balloons; and

9. All commitments and orders for the purchase of goods that have not been shipped, to the extent consisting of, or intended for use in the manufacture of, Drug-Coated Balloons;

Provided, however, that "Drug-Coated Balloon Business" does not include the Retained Business or any assets, tangible or intangible, businesses or goodwill that relate to PTA Products (other than as used in the incorporation of such PTA Products into Drug-Coated Balloons); and

Provided, further, however, that with respect to documents or other materials included in the Drug-Coated Balloon Business that contain information (a) that relates both to Drug-Coated Balloons and to other products of the Respondents or (b) for which the Respondents have a legal obligation to retain the original copies, the Respondents shall be required to provide only copies or, at their option, relevant excerpts of such documents and materials, but the Respondents shall provide Spectranetics or the Purchaser, as applicable, access to the originals of such documents as necessary, it being a purpose of this proviso to ensure that the Respondents not be required to divest themselves completely of Records or information that relate to products other than Drug-Coated Balloons;

(z) **"Drug-Coated Balloon Employees"** means all employees of Covidien whose job responsibilities are primarily related to the research, Development, manufacture, distribution, marketing or sale of Drug-Coated Balloons, in each case as listed in Confidential Schedule A;

(aa) **"Drug-Coated Balloon Intellectual Property"** means all of the following to the extent primarily related to the research, Development, manufacture, marketing, distribution, or sale of Drug-Coated Balloons:

1. Canadian and foreign patents and patent applications in each case filed, or in existence, on or before the Divestiture Date and covered under the patent families listed in Confidential Schedule B, and any renewal, derivation, divisions, reissues, continuation, continuations in-part, modifications, or extensions thereof; and

2. Trademarks, trade dress, copyrights, trade secrets, know-how, techniques, data, inventions, practices, methods, and other confidential or proprietary technical, business, research, Development and other information; in each case, other than patents or patent applications (which are addressed in Item 1, above);

(bb) **"Drug-Coated Balloon Manufacturing Equipment"** means all machinery and equipment, molds, dies and other tools primarily used or held for use in the manufacture of Drug-Coated Balloons, wherever located, other than with respect to packaging or labeling;

(cc) **"Drug-Coated Balloon Manufacturing Technology"** means all tangible technology, trade secrets, know-how, formulas, and proprietary information (whether patented, patentable or otherwise), in each case to the extent primarily related to the manufacture of Drug-Coated Balloons, including, but not limited to, the following: all product specifications, processes, analytical methods, product designs, plans, trade secrets, ideas, concepts, manufacturing, engineering, and other manuals and drawings, standard operating procedures, flow diagrams, chemical, safety, quality assurance, quality control, research records, clinical data, compositions,

annual product reviews, regulatory communications, control history, current and historical information associated with the FDA or Health Canada Approval(s) conformance, and labeling and all other information related to the manufacturing process, and supplier lists;

(dd) **"Drug-Coated Balloon Plant Lease"** means the lease of the facility currently used by Covidien in Fremont, California, dated February 8, 2012, as amended from time to time, by and among Covidien LP (as successor-in-interest to CV Ingenuity Corp.), John Arrillaga, or his Successor Trustee, UTA dated 7/20/77, as amended, and Richard T. Perry, or his Successor Trustee, UTA dated 7/20/77, as amended;

(ee) **"Drug-Coated Balloon Scientific and Regulatory Material"** means all technological, scientific, chemical, biological, pharmacological, toxicological, regulatory and Clinical Trial materials and information, to the extent each of the foregoing are primarily related to the research, Development, manufacture, marketing, distribution, or sale of Drug-Coated Balloons;

(ff) **"First Reference Date"** shall have the meaning set out in Paragraph 4(c) of this Agreement;

(gg) **"Government Entity"** means any Federal, provincial, local or non-Canadian government, or any court, legislature, Agency, or government commission, or any judicial or regulatory authority of any government;

(hh) **"Interpretation Act"** means the *Interpretation Act*, R.S.C. c. I-21, as amended;

(ii) **"Initial Sale Period"** means, in the event the Respondents are unable to complete the Divestiture pursuant to the Spectranetics Divestiture Agreement and this Agreement, the period that ends 180 days after Closing;

(jj) **"Law"** means all laws, statutes, rules, regulations, ordinances, and other pronouncements by any Government Entity having the effect of law;

(kk) **"Medtronic"** means Medtronic, Inc. and each of its directors, officers, employees, agents, representatives, successors and assigns; and all joint ventures, subsidiaries, divisions, groups and Affiliates controlled by Medtronic, and the directors, officers, employees, agents, representatives, successors and assigns of each. After the Closing, Medtronic shall include Covidien and Medtronic plc;

(ll) **"Monitor"** means David Painter of Compass Lexecon or any other substitute appointed thereto pursuant to Part XI this Agreement, and any employees, agents or other Persons acting for or on behalf of the Monitor;

(mm) **"Monitor Agreement"** means the agreement attached as Schedule "E" to this Agreement or where a substitute Monitor is appointed the agreement described in Section 47 of this Agreement;

(nn) **"New Medtronic"** means Medtronic Holdings Limited (f/k/a Kalani I Limited), which will become Medtronic plc, the new Irish holding company that will exist after the acquisition of Covidien by Medtronic;

(oo) **"Parties"** means the Commissioner and the Respondents collectively, and **"Party"** means any one of them;

(pp) **"Person"** means any individual, sole proprietorship, partnership, joint venture, firm, corporation, unincorporated organization, trust, or other business or Government Entity, and any subsidiaries, divisions, groups or Affiliates thereof;

(qq) **"Plymouth Facility Manufacturing Equipment"** means all assets purchased by Covidien for exclusive use in the manufacture, research, and Development of Drug-Coated Balloons at its Plymouth, Minnesota plant;

(rr) **"PTA Intellectual Property"** means all of the following owned by Covidien as of the Divestiture Date to the extent primarily related to the research, Development, and manufacture of PTA Products (except to the extent related to any Retained Product):

1. Canadian and foreign patents and patent applications in each case filed, or in existence, on or before the Divestiture Date and covered under the patent families listed in Confidential Schedule B, and any renewal, derivation, divisions, reissues, continuation, continuations in-part, modifications, or extensions thereof; and

2. Copyrights, trade secrets, know-how, techniques, data, inventions, practices, methods, and other confidential or proprietary technical, business, research, Development and other information; in each case, other than patents or patent applications (which are addressed in Item 1, above);

(ss) **"PTA License"** means a royalty-free, fully paid up, perpetual, irrevocable, worldwide, non-exclusive license to Spectranetics or to the Purchaser, as applicable, under any PTA Intellectual Property and PTA Product Manufacturing Technology to operate the Drug-Coated Balloon Business, including (i) to make, have made, use, offer to sell, sell, import and export any Drug-Coated Balloons and (ii) the research, Development, and manufacture of PTA Products for the incorporation of such PTA Products into Drug-Coated Balloons;

(tt) **"PTA Materials"** means copies of the following items (or relevant excerpts thereof) owned by and in possession of Covidien as of the Divestiture Date (except to the extent related to any Retained Product):

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1. All PTA Product Scientific and Regulatory Material;

2. All books and Records with respect to PTA Intellectual Property; and

3. All books and Records with respect to PTA Product Manufacturing Technology or otherwise to the extent primarily related to the research, Development, and manufacture of PTA Products;

(uu) **"PTA Product(s)"** means the following:

1. Covidien's EverCross™ .035 percutaneous transluminal angioplasty balloon catheter;

2. Covidien's NanoCross Elite™ .014 percutaneous transluminal angioplasty balloon catheter;

3. Covidien's PowerCross™ .018 percutaneous transluminal angioplasty balloon catheter; and

4. Covidien's RapidCross™ .014 percutaneous transluminal angioplasty balloon catheter;

provided, however, that PTA Products shall not include any Retained Product;

(vv) **"PTA Product Manufacturing Technology"** means all tangible technology, trade secrets, know-how, formulas, and proprietary information (whether patented, patentable or otherwise), in each case to the extent primarily related to the manufacture of PTA Products, including, but not limited to, the following: all product specifications, processes, analytical methods, product designs, plans, trade secrets, ideas, concepts, manufacturing, engineering, and other manuals and drawings, standard operating procedures, flow diagrams, chemical, safety, quality assurance, quality control, research records, clinical data, compositions, annual product reviews, regulatory communications, control history, current and historical information associated with the FDA or Health Canada Approval(s) conformance, and labeling and all other information related to the manufacturing process, and supplier lists;

(ww) **"PTA Product Scientific and Regulatory Material"** means all technological, scientific, chemical, biological, pharmacological, toxicological, regulatory and Clinical Trial materials and information, to the extent each of the foregoing are primarily related to the research, Development, or manufacture of PTA Products;

(xx) **"Purchaser"** means a Person that acquires the Divestiture Assets pursuant to this Agreement and a Divestiture Agreement. None of Spectranetics,

Covidien, Medtronic, New Medtronic or any Affiliate of the foregoing shall constitute a Purchaser for the purposes of this Agreement;

(yy) **"Records"** means records within the meaning of subsection 2(1) of the Act;

(zz) **"Respondents"** means Medtronic and Covidien;

(aaa) **"Retained Business"** means:

1. All right, title and interest in and to the name "Covidien," together with all variations thereof and all trademarks and trade dress containing, incorporating or associated with any of the foregoing, and any trademark and trade dress other than Stellarex™;

2. Any of the assets, tangible or intangible, businesses or goodwill that relate to the Retained Products;

3. Cash and cash equivalents; tax assets; stock in any entity; corporate and tax records of any entity; insurance policies; benefit plans; and accounts receivable arising prior to the Divestiture Date; and

4. Any assets, tangible or intangible, businesses or goodwill owned by Medtronic;

(bbb) **"Retained Product"** means any product researched, Developed, manufactured, marketed, sold, or distributed by Covidien other than Drug-Coated Balloons or PTA Products, and includes but is not limited to (i) any balloon-expandable stent, including the Visi-Pro® Peripheral Stent System and (ii) any high-pressure balloon product;

(ccc) **"Second Reference Date"** shall have the meaning set out in Paragraph 4(d) of this Agreement;

(ddd) **"Spectranetics"** means The Spectranetics Corporation, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by the Spectranetics Corporation, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each;

(eee) **"Spectranetics Divestiture Agreement"** means the "Asset Purchase Agreement" by and between Covidien LP and Spectranetics dated as of October 31, 2014, and all amendments, exhibits, attachments, agreements and schedules, in each case thereto or contemplated thereby, related to the Divestiture Assets, that have been approved by the Commissioner to accomplish the requirements of this Agreement. The Spectranetics

Divestiture Agreement is attached as Confidential Schedule **C** to this Agreement;

(fff) **"Third Party"** means any Person other than the Commissioner, the Respondents or a Purchaser;

(ggg) **"Transaction"** means the transaction described in the first recital to this Agreement;

(hhh) **"Transaction Agreement"** means the transaction agreement dated June 15, 2014, between Medtronic, Inc. Covidien plc, New Medtronic, Makani II Limited, Aviation Acquisition Co., and Aviation Merger Sub, LLC pursuant to which Medtronic has agreed to acquire Covidien;

(iii) **"Transition Services Agreement"** means an agreement by the Respondents to provide all advice, consultation, and assistance reasonably necessary for Spectranetics or any Purchaser, as applicable, to receive and use, in any manner related to achieving the purposes of this Agreement, any assets, right, or interest relating to the Divestiture Assets; and

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

II. DIVESTITURE TO SPECTRANETICS

2. Not later than ten (10) days after the Closing Date, Covidien shall complete the Divestiture to Spectranetics pursuant to the Spectranetics Divestiture Agreement.

III. COMMISSIONER APPROVAL OF DIVESTITURE

3. In the event that the Divestiture pursuant to the Spectranetics Divestiture Agreement is not completed, then the Divestiture shall be made to a Purchaser and may proceed only with the prior approval of the Commissioner in accordance with this Part.

4. The Respondents (during the Initial Sale Period) or the Divestiture Trustee (during the Divestiture Trustee Sale Period), as the case may be, shall comply with the following process for seeking and obtaining a decision of the Commissioner regarding his approval of a proposed Divestiture:

(a) The Respondents or the Divestiture Trustee, as the case may be, 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 Respondents or the Divestiture Trustee, as the case may be, 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. Such notice 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 Respondents or the Divestiture Trustee, likely satisfy the terms of this Agreement.

(c) Within seven (7) days following receipt of the notice described in Paragraph 4(b), the Commissioner may request additional information concerning the proposed Divestiture from any or all of the Respondents, the Divestiture Trustee or the Monitor and the prospective Purchaser. 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 the Respondents shall certify that he or she has examined any additional information provided by the Respondents to the Commissioner 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 any additional information provided by the prospective Purchaser to the Commissioner 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, the Monitor, the Respondents and the prospective Purchaser provides to the Commissioner a confirmation or certification required under this Paragraph is the **"First Reference Date"**.

(d) Within seven (7) days after the First Reference Date, the Commissioner may request further additional information concerning the proposed Divestiture from any or all of the Respondents, the Divestiture Trustee, the Monitor and the prospective Purchaser. 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 4(c)(i)-(v) in regard to the further additional information provided. The date on which the last of the Divestiture Trustee, the Monitor, the Respondents and the prospective Purchaser provides to the Commissioner a confirmation or certification required under this Paragraph is the **"Second Reference Date"**.

(e) The Commissioner shall notify the Respondents or the Divestiture Trustee, as the case may be, of the approval of, or the objection to, the proposed Divestiture as soon as possible, and in any event within seven (7) days after the date on which the Commissioner receives that notice described in Paragraph 4(b) or, if he requests any additional information under Paragraph 4(c) or further additional information under Paragraph 4(d), within fourteen (14) days after the later of:

(i) the First Reference Date; and

(ii) the Second Reference Date, if any.

(f) The Commissioner's determination as to whether to approve a proposed Divestiture shall be in writing.

5. The Commissioner has sole discretion to determine whether to approve a proposed Divestiture. In exercising such discretion, 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 the Respondents;

(b) the Respondents will have no direct or indirect interest in the Divestiture Assets following the Divestiture, subject to Section 54 below;

(c) the proposed Purchaser is committed to carrying on the business of the Divested Assets;

(d) the proposed Purchaser has the managerial, operational and financial capability to compete effectively in the supply of drug-coated balloons; 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.

IV. INITIAL SALE PERIOD

6. In the event, the Respondents are unable to complete the Divestiture pursuant to the Spectranetics Divestiture Agreement within ten (10) days after the Closing Date, they shall use commercially reasonable efforts to complete the Divestiture to another Purchaser during the Initial Sale Period in accordance with Agreement.

7. The Respondents shall provide the Commissioner and the Monitor every thirty (30) days a written report describing the progress of its efforts to effect the Divestiture. The report shall include a description of contacts, negotiations, due diligence and offers regarding the Divestiture Assets, the name, address and phone number of all parties contacted and of prospective Purchasers who have come forward. The Respondents shall, within three (3) Business Days, respond to any request by the Commissioner for additional information regarding the status of the Respondents' efforts to complete the Divestiture. An officer or other duly authorized representative of the Respondents shall certify that they have examined the information provided in any such response and that such information is, to the best of his or his knowledge and belief, correct and complete in all material respects.

V. DIVESTITURE TRUSTEE SALE PROCESS

8. In the event that the Respondents fail to complete the Divestiture to Spectranetics or to another Purchaser during the Initial Sale Period, the Commissioner may 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.

9. In the event, the 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.

10. Within 5 Business Days after the appointment of the Divestiture Trustee, the Respondents shall submit to the Commissioner for approval the terms of a proposed Divestiture Process Agreement with the Divestiture Trustee and the

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Commissioner that transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the Divestiture.

11. Within 5 Business Days after receipt of the proposed Divestiture Process Agreement referred to in Section 10, the Commissioner shall advise the 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.

12. If a Divestiture Trustee is appointed by the Commissioner, without limiting the Commissioner's discretion to require additional terms, the Respondents consent to the following terms and conditions regarding the Divestiture Trustee's rights, powers, duties, authority and responsibilities, 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. The Divestiture Trustee shall use reasonable efforts to negotiate terms and conditions for the Divestiture that are as favourable to the 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. 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;

        (iii) to enter into a Divestiture Agreement with a Purchaser that will be legally binding on the 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 the 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.

(b) 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.

(c) 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 only, with the Divestiture Trustee protecting any Confidential Business 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 Business 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.

(d) The Divestiture Trustee shall have no obligation or authority to operate or maintain the Divestiture Assets.

(e) The Divestiture Trustee shall provide to the Commissioner and the Monitor every sixty (60) days, a written report describing the progress of the Divestiture Trustee's efforts to complete the Divestiture. The report shall include a description of contacts, negotiations, due diligence and offers regarding the Divestiture Assets, the name, address and phone number of all parties contacted and of prospective Purchasers who have come forward. The Divestiture Trustee shall, within three (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.

(f) The Divestiture Trustee shall notify the 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 the Respondents a copy of any executed Divestiture Agreement upon

receipt of Commissioner approval of the Divestiture contemplated in such Divestiture Agreement.

13. The 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.

14. Subject to any legally recognized privilege, the Respondents shall provide to the Divestiture Trustee full and complete access to all personnel, Records, information (including Confidential Business Information) and facilities relating to the Divestiture Assets, to enable the Divestiture Trustee to conduct its own investigation of the Divestiture Assets and to provide access and information to prospective Purchasers.

15. The Respondents shall take no action that interferes with or impedes, directly or indirectly, the Divestiture Trustee's efforts to complete the Divestiture.

16. The Respondents shall fully and promptly respond to all requests from the Divestiture Trustee and shall provide all information the Divestiture Trustee may request. The 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 the Respondents.

17. The 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 the Respondents.

18. The 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 compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the timely completion of the Divestiture contemplated by this Agreement. The Divestiture Trustee shall serve without bond or security, and shall account for all monies derived from the Divestiture and all fees and expenses incurred. After approval by the Commissioner of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of the Respondents, and the Divestiture Trustee's power shall be terminated.

19. The Respondents shall pay all reasonable invoices submitted by the Divestiture Trustee within thirty (30) days after receipt.

20. The 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.

21. The 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.

22. 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.

23. The 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 only; provided, however, that such agreement shall not restrict the Divestiture Trustee from providing any information to the Commissioner.

24. 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.

25. The Divestiture Trustee appointed pursuant to this Part may be the same Person appointed as Monitor pursuant to the relevant provisions of this Agreement.

26. Notwithstanding any term of this Agreement, the obligations and powers of the Divestiture Trustee under this Agreement shall not expire until the Divestiture is completed.

VI. THIRD PARTY CONSENTS

27. The Respondents shall secure all consents and waivers with respect to any rights expressly granted to Covidien by Third Parties or Government Entities, or to Third Parties or Government Entities by Covidien, from all Third Parties or Government Entities necessary for the Divestiture to Spectranetics or the Purchaser, as applicable, or for the continued research, Development, manufacture, distribution,

marketing or sale of Drug-Coated Balloons or the continued research, Development, or manufacture of PTA Products for the incorporation of such PTA Products into Drug-Coated Balloons by Spectranetics or the Purchaser. The Respondents obligations shall be satisfied as follows:

1. Prior to the Divestiture Date, the Respondents shall provide all required notices to Third Parties and Government Entities in connection with agreements where no consent from such Third Parties and Government Entities is required to assign the rights granted to Covidien, including complying with any required notice requirements as to time prior to the transfer;

2. Prior to the Divestiture Date, the Respondents shall secure all consents or waivers to assign to Spectranetics or the Purchaser, as applicable, all the agreements listed on Confidential Schedule D; and

3. Within fifteen (15) days after the Divestiture Date, the Respondents shall secure all the consents or waivers to assign to Spectranetics or the Purchaser, as applicable, at least 90 percent of the agreements listed in Confidential Schedule E.

VII. TRANSITIONAL SUPPORT ARRANGEMENTS

28. The Respondents shall:

(a) enter into an agreement approved by the Commissioner to supply PTA Products to Spectranetics or the Purchaser, as applicable, at no more than the Respondents' Actual Cost for a period of one (1) year following the Divestiture Date; and

(b) at Spectranetics' or the Purchaser's option, as applicable, renew the supply agreement for PTA Products for up to two (2) additional one-year terms under such terms and conditions as approved by the Commissioner.

29. The Respondents shall enter into, at the option of Spectranetics or the Purchaser, as applicable, a Transition Services Agreement, subject to the approval of the Commissioner, provided, however, the term of any Transition Services Agreement shall be at the option of Spectranetics or the Purchaser, as applicable, but not longer than two (2) years from the Divestiture Date unless extended due to breach by the Respondents.

VIII. EMPLOYEES

30. Not later than fifteen (15) days before the Divestiture Date, the Respondents or the Divestiture Trustee (during the Divestiture Trustee Sale Period) shall provide to Spectranetics or any prospective Purchaser a list of all Drug-Coated Balloon

Employees and in compliance with Laws, allow Spectranetics or the Purchaser, as applicable, to inspect the personnel files and other documentation relating to such Drug-Coated Balloon Employees, to enable Spectranetics or such Purchaser to make decisions regarding offers of employment to such employees. The Monitor shall review the information provided to ensure that it is sufficient to enable the Purchaser to make such decisions.

31. The Respondents shall:

1. Not later than fifteen (15) days before the Divestiture Date provide an opportunity for Spectranetics or the Purchaser, as applicable, (a) to meet personally, and outside the presence or hearing of any employee or agent of the Respondents, with any one or more of the Drug-Coated Balloon Employees; and (b) to make offers of employment to any one or more of the Drug-Coated Balloon Employees;

2. Not interfere, directly or indirectly, with the hiring or employing by the Spectranetics or the Purchaser, as applicable, of Drug-Coated Balloon Employees, and shall remove any impediments or incentives within the control of Respondents that may deter these employees from accepting employment with the Spectranetics or the Purchaser, as applicable, including, but not limited to, any non-compete provisions of employment or other contracts with Respondents that would affect the ability or incentive of those individuals to be employed by Spectranetics or the Purchaser, as applicable. In addition, Respondents shall not make any counteroffer to a Drug-Coated Balloon Employee who receives a written offer of employment from Spectranetics or the Purchaser, as applicable; and

3. Not, for a period of one (1) year following the Divestiture Date, without the prior written consent of Spectranetics or the Purchaser, as applicable, directly or indirectly solicit or employ any of the Drug-Coated Balloon Employees to terminate their employment with Spectranetics or the Purchaser, as applicable, provided, however, that Respondents may:

   (a) Advertise for employees in newspapers, trade publications or other media not targeted specifically at Drug-Coated Balloon Employees, or

   (b) Hire Drug-Coated Balloon Employees who apply for employment with Respondents, as long as such employees were not solicited by Respondents in violation of this Section.

Provided, however, that this Section shall not prohibit Respondents from making offers of employment to or employing any Drug-Coated Balloon Employee after the Divestiture Date where Spectranetics or the Purchaser, as applicable, has

notified Respondents in writing that it does not intend to make an offer of employment to that Drug-Coated Balloon Employee.

IX. CONFIDENTIAL BUSINESS INFORMATION

32. Respondents shall:

1. submit to Spectranetics or the Purchaser, at Respondents' expense, all Confidential Business Information related to the Divestiture Assets;

2. deliver all Confidential Business Information related to the Divestiture Assets to Spectranetics or the Purchaser, as applicable:

   a. in good faith;

   b. in a timely manner, *i.e.*, as soon as practicable, avoiding any delays in transmission of the respective information; and

   c. in a manner that ensures its completeness and accuracy and that fully preserves its usefulness;

3. pending complete delivery of all such Confidential Business Information to Spectranetics or the Purchaser, as applicable, provide Spectranetics or the Purchaser and the Monitor (if any has been appointed) with access to all such Confidential Business Information and employees who possess or are able to locate such information for the purposes of identifying the books, records, and files directly related to the Divestiture Assets that contain such Confidential Business Information and facilitating the delivery in a manner consistent with this Agreement.

33. Respondents shall not use, directly or indirectly, any Confidential Business Information (other than as necessary to comply with the requirements of this Agreement, any Divestiture Agreement or any Law) related to the Drug-Coated Balloon Business, and shall not disclose or convey such Confidential Business Information, directly or indirectly, to any Person except in connection with the Divestiture, to the Monitor, if any, and to the Divestiture Trustee, if any, provided, however, that this section shall not apply to any:

(a) Confidential Business Information related to the Drug-Coated Balloon Business that Respondents can demonstrate to the Commissioner that Medtronic obtained other than in connection with the Transaction;

(b) Confidential Business Information to the extent related to Retained Products, the Retained Business or PTA Products;

(c) use of Confidential Business Information by Respondents in complying with the requirements or obligations of the Laws of Canada or other countries;

(d) use of Confidential Business Information by Respondents to defend against legal claims brought by any Third Party, or investigations or enforcement actions by Government Entities; and

(e) use of Confidential Business Information by Respondents to the extent consented to by Spectranetics or the Purchaser, as applicable;

provided, however, that Respondents shall require any Covidien employees or agents who as of the Divestiture Date have access to Confidential Business Information related to the Drug-Coated Balloon Business to enter into, no later than thirty (30) days after the Divestiture Date, confidentiality agreements with Respondents and Spectranetics or the Purchaser, as applicable, not to disclose such Confidential Business Information except as set forth in this Section 33.

X. FAILURE OF DIVESTITURE TRUSTEE SALE

34. 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

35. The Commissioner has appointed David Painter of Compass Lexecon as Monitor responsible for monitoring compliance by Respondents with this Agreement. The Commissioner, Respondents, and Mr. Painter have entered into a Monitor Agreement attached hereto as Schedule "E".

36. 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 power and duty to monitor all aspects of Respondents' compliance with this Agreement.

37. The Respondents consent to the following terms and conditions regarding the rights, powers, duties, authority and responsibilities of the Monitor and shall include such terms in the Monitor Agreement:

(a) The Monitor shall have the power and authority to monitor the Respondents' compliance with this Agreement, and shall exercise such power and authority and carry out the duties and responsibilities of a 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 are reasonably necessary to carry out the duties and responsibilities of the Monitor.

(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 Respondents shall report to the Monitor in accordance with the requirements of this Agreement, the Monitor Agreement and/or as otherwise provided in any agreement approved by the Commissioner. The Monitor shall evaluate the reports submitted to the Monitor by Respondents, and any reports submitted by Spectranetics or the Purchaser, as applicable, with respect to the performance of Respondents' obligations under this Agreement. Within thirty (30) days from the date the Monitor receives these reports, the Monitor shall report in writing to the Commissioner concerning performance by Respondents of their obligations under this Agreement.

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

39. The Respondents shall take no action that interferes with or impedes, directly or indirectly, the efforts of the Monitor, as applicable, to monitor the Respondents' compliance with this Agreement.

40. The Respondents shall fully and promptly respond to all requests from the Monitor and shall provide all information the Monitor may request. The 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.

41. The Respondents may require the Monitor and each of the consultants, accountants, legal counsel and other representatives and assistants of the Respondents to sign an appropriate confidentiality agreement in a form satisfactory to the Commissioner only; provided, however, that such agreement shall not restrict the Monitor from providing any information to the Commissioner.

42. 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.

43. The 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 and the Monitor Agreement. The Monitor shall serve without bond or security, and shall account for all fees and expenses incurred. At their own expense, Respondents may retain an independent auditor to verify the Monitor's invoices. The Monitor and Respondents shall submit any disputes about invoices to the Commissioner and the United States Federal Trade Commission for assistance in resolving such disputes.

44. The Respondents shall pay all reasonable invoices submitted by the Monitor within thirty (30) days after receipt. Any outstanding monies owed to the Monitor by the Respondents shall be paid out of the proceeds of the Divestiture.

45. The 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.

46. The 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 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.

47. 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.

48. Within five (5) Business Days after the appointment of the substitute Monitor pursuant to section 47, Respondents shall submit to the Commissioner for approval the terms of a proposed Monitor Agreement with the substitute Monitor and the Commissioner that transfers to the Monitor all rights and powers necessary to permit the substitute Monitor to monitor compliance by Respondents with this Agreement.

49. Within five (5) Business Days after receipt of the proposed Monitor Agreement referred to in section 48, 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 substitute Monitor and the Commissioner.

50. The Monitor shall serve until the date of completion by Respondents of the Divestiture in a manner that fully satisfies the requirements of this Agreement. The Monitor shall serve at least until the termination of the Supply Agreement described in Section 28 and the Transition Services Agreement described in Section 29.

51. The Monitor appointed pursuant to this Agreement may be the same Person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Agreement.

XII. COMPLIANCE

52. Within five (5) days after the Closing Date, the Respondents shall provide written confirmation to the Commissioner of the date on which the Transaction was completed.

53. The Respondents shall provide a copy of this Agreement to each of its own and its Affiliates' directors, officers, employees and agents having managerial responsibility for any obligations under this Agreement, within three (3) Business Days after the date of registration of this Agreement. The Respondents shall ensure that its directors, officers, employees and agents with responsibility for any obligations under this Agreement receive sufficient training respecting the Respondents responsibilities and duties under this Agreement, and the steps that such individuals must take in order to comply with this Agreement.

54. Medtronic shall not, for a period of ten (10) years after the date when the Divestiture is completed, directly or indirectly acquire any interest in the Divestiture Assets, without the prior written approval of the Commissioner.

55. Within thirty (30) days after the date of registration of this Agreement, and every thirty (30) days thereafter until Respondents have fully complied with Section 2 and 32 of this Agreement, and every sixty (60) days thereafter until Respondents have fully complied with Sections 28, 31 and 32 of this Agreement, Respondents shall submit to the Commissioner a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Agreement. Respondents shall submit at the same time a copy of their report concerning compliance with this Agreement to the Monitor. Respondents shall include in their reports, among other things that are required from time to time:

    1. A full description of the efforts being made to comply with the relevant Sections of this Agreement;

2. A detailed plan to deliver all Confidential Business Information required to be delivered to Spectranetics or the Purchaser, as applicable, pursuant to Section 32 and agreed upon by Spectranetics or the Purchaser and the Monitor (if applicable) and any updates or changes to such plan;

3. A description of Confidential Business Information delivered to Spectranetics or the Purchaser, including the type of information delivered, method of delivery, and date(s) of delivery;

4. A description of the Confidential Business Information currently remaining to be delivered and a projected date(s) of delivery; and

5. A description of all technical assistance provided to Spectranetics or the Purchaser, as applicable, during the reporting period.

56. At other times as the Commissioner shall request, the Respondents shall submit to the Commissioner a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Agreement.

57. If any of the 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 two (2) 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. The Respondents shall provide confirmation of its compliance with this provision in all affidavits and certificates of compliance filed with the Commissioner.

58. The Respondents shall notify the Commissioner at least thirty (30) days prior to:

(a) any proposed dissolution of any Respondent;

(b) any other change in any of the Respondents including, but not limited to, a reorganization, material acquisition, disposition or transfer of assets, or any fundamental change for purposes of the Respondents' incorporating statute, if such change may affect compliance obligations arising out of this Agreement.

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

(a) to access, during regular office hours of the Respondents on any Business Day(s), all facilities and to inspect and copy all Records in the possession or control of the Respondents related to compliance with this Agreement,

which copying services shall be provided by the Respondents at their expense; and

(b) to interview such officers, directors or employees of the 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 complete;

(b) Part VII of this Agreement shall be effective only until the supply agreement and Transition Services Agreement are terminated; and

(c) Sections 20, 21, 45 and 46 shall survive the expiry of this Agreement.

XIV. NOTICES

61. For a notice, report, consent, approval, written confirmation or other communication required or permitted to be given under this Agreement to be valid,

(a) it must be in writing and the sending party must use one of the following methods of delivery: (1) personal delivery; (2) registered mail; (3) courier service; (4) facsimile; or (5) electronic mail; and

(b) it must be addressed to the receiving party at the address(es) listed below, or to any other address designated by the receiving party in accordance with this Section.

if to the Commissioner:

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

Attention: Commissioner of Competition
Fax: (819) 953-5013
Email address: MergerNotification@cb-bc.gc.ca

with copies to:

PUBLIC VERSION

Jonathan Chaplan
Executive Director and Senior General Counsel
Competition Bureau Legal Services
Department of Justice
Place du Portage, 22nd Floor
50 Victoria Street, Phase I
Gatineau, Quebec K1A 0C9
Fax: (819) 953-9267
Email address: Jonathan.Chaplan@cb-bc.gc.ca

and

if to Respondent:

Medtronic, Inc.
710 Medtronic Parkway
Minneapolis, MN 55432
Fax: (763) 572-5459
Attn: General Counsel
Vice President – Corporate Development

with a copy to:

Cleary Gottlieb Steen & Hamilton LLP
2000 Pennsylvania Avenue NW
Washington, DC 20006
Fax: (202) 974-1999
Attn: George S. Cary
Jeremy Calsyn

and a copy to:

Stikeman Elliott LLP
5300 Commerce Court West, 199 Bay Street
Toronto, Ontario M5L 1B9
Fax: (416) 947-0866
Attn: Paul Collins

62. A notice, consent or approval under this Agreement is effective on the day that it is received by the receiving Party. A notice, consent or approval 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;

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

63. Notwithstanding Sections 61 and 62, a notice, report, consent, approval, written confirmation 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 and sufficiency of such communication.

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. The Respondents hereby consent to such registration.

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

67. The Commissioner may, after informing the Respondents, extend any of the time periods contemplated by this Agreement. If any time period is extended, the Commissioner shall promptly notify the Respondents of the revised time period.

68. Nothing in this Agreement precludes the Respondents or the Commissioner from bringing an application under section 106 of the Act. The 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 prevention of competition in the supply of drug-coated balloons; and (ii) the implementation of this Agreement is necessary to ensure that any substantial prevention of competition will not result from the Transaction.

69. The 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. This Agreement constitutes the entire agreement between the Commissioner and the Respondents, and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral, with respect to the subject matter hereof.

71. This Agreement shall be governed by and interpreted in accordance with the laws of Ontario and the laws of Canada applicable therein, without applying any otherwise applicable conflict of law rules.

72. In the event of a dispute regarding the interpretation, implementation or application of this Agreement, the Commissioner or the 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.

73. This Agreement may be executed in two or more counterparts, each of which shall be an original instrument, but all of which shall constitute one and the same Agreement.

PUBLIC VERSION

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

COMMISSIONER OF COMPETITION

[Originally signed by John Pecman]

Name: John Pecman

Title: Commissioner of Competition

MEDTRONIC, INC.

[Originally signed by Christopher Cleary]

I have authority to bind the Corporation

Name: Christopher Cleary

Title: Vice President, Corporate Development

COVIDIEN PLC

[Originally signed by John W. Kapples]

I have authority to bind the Corporation

Name: John W. Kapples

Title: Vice-President and Secretary

PUBLIC VERSION

Confidential Schedule A
Drug-Coated Balloon Employees

[CONFIDENTIAL]

PUBLIC VERSION

Confidential Schedule B

Drug-Coated Balloon Intellectual Property

[CONFIDENTIAL]

PUBLIC VERSION

Confidential Schedule C

Spectranetics Divestiture Agreement

[CONFIDENTIAL]

PUBLIC VERSION

Confidential Schedule D

Third Party Consents

[CONFIDENTIAL]

PUBLIC VERSION

Schedule E

Monitor Agreement

SCHEDULE E TO CONSENT AGREEMENT

MONITOR AGREEMENT

THIS AGREEMENT is made on November 19, 2014

BETWEEN:

MEDTRONIC, INC. and **COVIDIEN PLC**

(the "Respondents")

- and –

David Painter (the "Monitor")

- and –

The Commissioner of Competition

(the "Commissioner")

A. Medtronic Holdings Limited, or a wholly-owned subsidiary thereof ("New Medtronic"), proposes to acquire Covidien plc ("Covidien") pursuant to a transaction agreement dated June 15, 2014 between Medtronic, Inc. ("Medtronic"), Covidien, New Medtronic, Makani II Limited, Aviation Acquisition Co., and Aviation Merger Sub, LLC (the "Transaction");

B. The Respondents and the Commissioner have entered into a Consent Agreement which is being submitted for immediate registration with the Competition Tribunal (the "Consent Agreement");

B. The Consent Agreement requires the Respondents to divest certain assets and to comply with certain supply commitments, and provides for the appointment of a Monitor, to be selected by the Commissioner in his sole discretion, to ensure that the Respondents comply with their obligations under the Consent Agreement;

C. The Commissioner has appointed David Painter of Compass Lexecon as the Monitor under the Consent Agreement and Mr. Painter has consented to such appointment; and

D. The Respondents seek to transfer to the Monitor, and the Monitor agrees to assume, all rights and powers necessary to permit the Monitor to monitor the Respondents' compliance with the terms of the Consent Agreement.

THEREFORE the Parties of this Monitor Agreement agree as follows:

I. DEFINITIONS

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

(a) **"Consent Agreement"** means Consent Agreement as defined in the recitals to this Monitor Agreement;

(b) **"Monitor Agreement"** means this Monitor Agreement, including Confidential Schedule A hereto, and references to any "Section", "Part" or "Paragraph" shall, unless otherwise indicated, mean a section, part or paragraph of this Monitor Agreement;

(c) **"Parties"** means the Commissioner, the Monitor and the Respondents collectively, and "**Party**" means any one of them;

(d) **"Substitute Monitor"** means a substitute Monitor under section 47 of the Consent Agreement; and

(e) "**Third Party**" means any Person other than the Commissioner, the Monitor, the Respondents or a Purchaser.

[2] Capitalized terms used and not specifically defined herein shall have the definitions given to them in the Consent Agreement.

II. RIGHTS AND OBLIGATIONS OF THE PARTIES OF THIS MONITOR AGREEMENT

[3] The terms of the Consent Agreement that pertain to the monitor are hereby incorporated by reference into this Monitor Agreement. The Monitor shall have all of the rights, powers, duties, obligations, responsibilities and protections that are possessed by or apply to the monitor under the Consent Agreement. Without limiting the generality of the foregoing, the Respondents hereby grant to the Monitor all rights and powers as are necessary to permit the Monitor to monitor the Respondents' compliance with the Consent Agreement.

[4] The Monitor shall have authority to employ, at the expense of the Respondents, such consultants, accountants, legal counsel and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities.

[5] The Monitor shall have no obligation or authority to operate or maintain the Divestiture Assets.

[6] The Monitor shall act for the sole benefit of the Commissioner, maintain all confidences and avoid any conflict of interest.

[7] The Monitor shall have no duties of good faith, of a fiduciary nature, or otherwise, to the Respondents.

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

[9] The Respondents shall take no action that interferes with or impedes, directly or indirectly, the Monitor's efforts to monitor the Respondents' compliance with the Consent Agreement.

[10] The Respondents shall fully and promptly respond to all requests from the Monitor and shall provide all information the Monitor may request. The Respondents shall identify an individual who shall have primary responsibility for responding fully and promptly to such requests from the Monitor on behalf of the Respondents.

[11] The 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, such agreement shall not restrict the Monitor from providing any information to the Commissioner.

[12] 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.

[13] The Respondents shall provide to the Monitor electronic or hard copies, as appropriate, of all reports submitted by the Respondents to the Commissioner pursuant to the Consent Agreement, simultaneously with the submission of such reports to the Commissioner, for the duration of the Monitor's term under this Monitor Agreement.

[14] The Respondents and the Monitor shall be reasonably available to one another to discuss any questions or issues either Party to this Monitor Agreement may have concerning compliance with the Consent Agreement.

[15] The Monitor shall be permitted, and the Respondents shall be required (during the Initial Sale Period), to notify any and all Purchasers or prospective Purchasers of the Monitor's appointment.

[16] The Monitor shall report to the Commissioner in accordance with the terms of the Consent Agreement. The Respondents acknowledge that the Monitor will not provide to the Respondents copies of his reports to the Commissioner, nor will the

Monitor provide to the Respondents any information respecting the Monitor's dealings with the Commissioner.

III. COMPENSATION

[17] The 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 Monitor Agreement. The Monitor shall serve, without bond or other security, at the expense of the Respondents on the terms set out in Confidential Schedule A to this Monitor Agreement. The Monitor shall account for all fees and expenses incurred. At their own expense, the Respondents may retain an independent auditor to verify the Monitor's invoices. The Monitor and the Respondents shall submit any disputes about invoices to the Commissioner and the United States Federal Trade Commission for assistance in resolving such disputes.

[18] The Respondents shall pay all reasonable invoices submitted by the Monitor (or by consultants, accountants, attorneys and other representatives and assistants retained by the Monitor) within 30 days after receipt. Any outstanding monies owed to the Monitor by the Respondents shall be paid out of the proceeds of the Divestiture.

IV. CONFIDENTIALITY

[19] The Monitor shall maintain the confidentiality of Confidential Business Information provided to the Monitor. Such Confidential Business Information shall be used by the Monitor only in connection with the performance of the Monitor's duties pursuant to this Monitor Agreement. Such Confidential Business Information shall not be disclosed by the Monitor to any Third Party other than:

(a) employees of the Monitor who have signed a confidentiality acknowledgement requiring them to abide by the confidentiality terms of this Monitor Agreement,

(b) consultants, attorneys, lawyers or other representatives or assistants employed by the Monitor who have signed a confidentiality agreement requiring them to abide by the terms of this Monitor Agreement,

(c) staff or counsel working on this matter at the Competition Bureau, the U.S. Federal Trade Commission or European Commission;

(d) the Divestiture Trustee;

(e) persons employed by the Respondents (but only as regards Confidential Business Information); or

(f) other persons if consented to by the Respondents and the Commissioner.

[20] The Monitor shall maintain a record of and inform the Commissioner of all Persons (other than representatives of the Commissioner) to whom Confidential Business Information related to this Monitor Agreement has been disclosed.

[21] Upon termination of the Monitor's duties under this Monitor Agreement, the Monitor shall promptly (i) return to the Respondents all Records provided to the Monitor by the Respondents; and (ii) destroy any Records prepared by the Monitor that contain or reflect any Confidential Business Information of the Respondents. The Monitor shall make no use of any Confidential Business Information of the Respondents, or any information derived directly or indirectly from any Confidential Business Information of the Respondents, following termination of its duties. Nothing herein shall abrogate the Monitor's duty of confidentiality, including the obligation to keep any Confidential Business Information of the Respondents confidential in perpetuity after the termination of this Monitor Agreement.

[22] The Monitor shall also keep confidential in perpetuity (i) all other aspects of the performance of the Monitor's duties under this Monitor Agreement and any Confidential Business Information relating thereto; and (ii) its reports to, and any other correspondence with, the Commissioner.

V. INDEMNITIES AND RIGHTS OF ACTION

[23] The 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.

[24] The 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 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.

[25] The Monitor shall have no claim against the Commissioner arising out of the performance of the Monitor's duties under this Monitor Agreement or the Consent Agreement.

VI. TERM AND TERMINATION

[26] This Monitor Agreement shall terminate on the earlier of: (i) the date on which it is terminated in accordance with this Part; (ii) the date on which the last obligation under this Monitor Agreement and the Consent Agreement has been fully performed; and (iii) ten years following the registration of the Consent Agreement.

[27] The Monitor may terminate this Agreement without penalty upon [30] days notice to the Respondents and to the Commissioner. In such instance, the Monitor shall provide reasonable support to the Commissioner, the Respondents and to any Substitute Monitor to facilitate the transition of the Monitor's monitoring role to the Substitute Monitor.

[28] Parts IV and V of this Monitor Agreement shall survive its termination.

[29] If, during the term of this Monitor Agreement, the Monitor becomes aware that the Monitor has or may have a conflict of interest that may affect or could have the appearance of affecting the performance by the Monitor of any of its duties under this Monitor Agreement, the Monitor shall immediately inform both the Respondents and the Commissioner of such conflict or potential conflict.

[30] If the Commissioner advises the Parties of this Monitor Agreement that he has determined, in his sole discretion, that there is cause for removal of the Monitor and appointment of a Substitute Monitor, whether due to an actual or perceived conflict of interest or otherwise in accordance with the Consent Agreement, this Monitor Agreement shall immediately terminate without notice or penalty. Notwithstanding such termination, the Monitor shall provide reasonable support to the Commissioner, the Respondents and to any Substitute Monitor to facilitate the transition of the Monitor's monitoring role to the Substitute Monitor.

[31] David Painter's employer, Compass Lexecon, may accept other retentions during the term of this Monitor Agreement and thereafter, provided that during the pendency of this Monitor Agreement, Compass Lexecon agrees not to accept any other engagement which would result in Compass Lexecon's working in a position directly adverse to the Commissioner, the Canadian Competition Bureau, the Respondents, Spectranetics or the Purchaser, as applicable, in this specific matter. The preceding sentence does not apply to other divisions of Compass Lexecon's corporate parent, FTI Consulting, Inc. ("FTI"); Compass Lexecon is a separate business unit within FTI and is operated as such, and Compass Lexecon does not recognize conflicts with other divisions of FTI.

VII. GENERAL

[32] In the event that there is a disagreement or dispute between the Respondents and the Monitor concerning the Respondents' obligations under the Consent Agreement, and such disagreement or dispute cannot be resolved by the Parties of this Monitor Agreement, either Party of this Monitor Agreement may seek the assistance of the Commissioner to resolve the dispute.

[33] This Monitor 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.

[34] It is understood that the Monitor will serve under this Monitor Agreement as an independent contractor and that the relationship of employer and employee shall not exist between the Monitor and the Respondents.

[35] 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.

VIII. NOTICES

[36] The Parties of this Monitor Agreement shall rely on the procedures and addresses for giving notice contained in Part XIII of the Consent Agreement. Communications addressed to the Monitor shall be addressed to:

David Painter
208 Lindebergh Avenue
Frederick, MD 21701

IN WITNESS OF WHICH the Parties of this Monitor Agreement have executed this Agreement.

MEDTRONIC, INC.

[Originally signed by Christopher Cleary]

_____

I have authority to bind the Corporation

Name: Christopher Cleary

Title: Vice President, Corporate Development

COVIDIEN PLC

[Originally signed by John W. Kapples]

_____

I have authority to bind the Corporation

Name: John W. Kapples

Title: Vice-President and Secretary

DAVID PAINTER, COMPASS LEXECON

[Originally signed by David T. Painter]

_____

Name: David T. Painter

Title: Executive Vice-President

COMMISSIONER OF COMPETITION

[Originally signed by John Pecman]

_____

Name: John Pecman

Title: Commissioner of Competition

CONFIDENTIAL SCHEDULE A TO THIS MONITOR AGREEMENT

[CONFIDENTIAL]