

Hive-down and Transfer Agreement

between

Merck KGaA, Darmstadt, Germany

as the transferring entity

and

**Merck Healthcare Holding GmbH, Darmstadt, Germany,
an affiliated company of Merck KGaA, Darmstadt, Germany,**

**Merck Life Science Holding GmbH, Darmstadt, Germany,
an affiliated company of Merck KGaA, Darmstadt, Germany,**

**Merck Performance Materials Holding GmbH, Darmstadt, Germany,
an affiliated company of Merck KGaA, Darmstadt, Germany,**

as the acquiring entities

(Holding Hive-down)

Table of Contents

List of definitions	III
Preamble	1
A. Hive-down, effective dates, Closing Balance Sheet, and continuation of carrying amounts	4
§ 1 Holding Hive-down	4
§ 2 Economic Effective Date, Transfer Date For Tax Purposes, Closing Balance Sheet, Legal Effective Date	4
B. Description of the OpCo Company Shares To Be Hived Down	5
§ 3 Hive-down of the OpCo Healthcare Company Shares	5
§ 4 Hive-down of the OpCo Life Science Company Shares	6
§ 5 Hive-down of the OpCo Performance Materials Company Shares	6
§ 6 Hive-down Balance Sheets	7
C. Consideration and capital measures, profit entitlement, capital reserves	7
§ 7 Consideration for the transfer of the OpCo Company Shares To Be Hived Down and effective date of the profit entitlement	7
§ 8 Capital increase for the purpose of the Holding Hive-down, contribution to the capital reserves	8
D. Granting special rights and benefits	8
§ 9 Granting special rights within the meaning of Sec. 126 (1) (7) <i>UmwG</i>	8
§ 10 Granting special benefits within the meaning of Sec. 126 (1) (8) <i>UmwG</i>	8
E. Consequences for the employees and their representatives	9
§ 11 Consequences of the Operational Hive-down and subsequent business lease for employees and their representatives and the measures planned thus far	9
§ 12 Consequences of the Holding Hive-down for employees and their representatives and the measures planned thus far	12
§ 13 Consequences of the termination of the Business Lease Agreements for employees and their representatives and the measures planned thus far	13
F. Other joint stipulations on the Holding Hive-down	16
§ 14 Obligations to cooperate	16
§ 15 Disclaimer of warranty	16
§ 16 Protection of creditors and internal settlement	16
§ 17 Reservations of consent	17
§ 18 Effective date of the agreement	17
§ 19 Costs and taxes	17
§ 20 Revocation	18
§ 21 Written form requirement	18
§ 22 Annexes	18
§ 23 Severability	18
§ 24 Applicable law; jurisdiction	18
Table of Annexes	19

List of definitions

Business Lease Agreements.....	Preamble (8)
Closing Balance Effective Date	§ 2.2
Closing Balance Sheet	§ 2.2
Collective Bargaining Agreement On Works Council Structure.....	§ 11.4
Company Shares OpCo To Be Hived Down	§ 1 c)
CTA.....	§ 11.7
Economic Effective Date	§ 2.1
EM KG.....	Preamble (1)
Enterprise Resource Planning Systems - ERP Systems.....	Preamble (6)
Euroforum	§ 11.4
Group	Preamble (2)
HC HoldCo	Preamble (5) a)
HC OpCo	Preamble (4) a)
Hive-down Agreement.....	Preamble (1)
HoldCo.....	Preamble (5)
HoldCos	Preamble (5)
Holding Hive-down	Preamble (5)
Holding Hive-down Agreement.....	Preamble (3)
Joint Operations Darmstadt/Gernsheim	§ 11.4
KGaA or Merck KGaA, Darmstadt, Germany	Preamble (1)
Legal Effective Date	§ 2.4
LS HoldCo	Preamble (5) b)
LS OpCo	Preamble (4) b)
MP e.V.	§ 11.7
OpCo	Preamble (4)
OpCo Healthcare Company Shares	§ 1 a)
OpCo Life Science Company Shares.....	§ 1 b)
OpCo Performance Materials Company Shares	§ 1 c)
OpCos	Preamble (4)
Operating Unit	Preamble (3)
Operating Unit KGaA Healthcare,.....	Preamble (3)
Operating Unit KGaA Life Science	Preamble (3)
Operating Unit KGaA Performance Materials	Preamble (3)
Operating Units.....	Preamble (3)
Operational Hive-down.....	Preamble (3)
Operational Hive-down Agreement.....	Preamble (4)
Parties.....	Preamble
PKDW.....	§ 11.8
PM HoldCo.....	Preamble (5) c)
PM OpCo	Preamble (4) c)
Secured Direct Commitments	§ 11.7
Secured Time Accounts	§ 11.9
Transfer Date For Tax Purposes	§ 2.1
Transitioning Employees	§ 11.1
Transitions Contingent On The Lease	§ 11.1
Works Council Of Joint Works.....	§ 11.4

Preamble

- (1) Merck Kommanditgesellschaft auf Aktien, Darmstadt, Germany (**Merck KGaA, Darmstadt, Germany** or the **KGaA**), headquartered in Darmstadt, is registered in the commercial register of the Darmstadt local court under HRB 6164. The total capital of KGaA, upon signing of this hive-down and transfer agreement (**Hive-down Agreement**), is EUR 565,211,241.95 and consists of the equity interest held by the general partner E. Merck KG, Darmstadt, Germany (**EM KG**), totaling EUR 397,196,314.35 and the share capital divided into shares totaling EUR 168,014,927.60. The share capital is divided into 129,242,252 non-par value bearer shares.
- (2) KGaA, together with its German and foreign subsidiaries (**Group**), is a globally operating science and technology company and is divided into the three group-wide business sectors Healthcare, Life Science, and Performance Materials (also referred to as **Business Sectors**).
- (3) The operational activities of the Healthcare, Life Science, and Performance Materials Business Sectors operated within KGaA in Darmstadt and Gernsheim, as well as the associated assets and liabilities (hereinafter the **Operating Unit KGaA Healthcare**, the **Operating Unit KGaA Life Science**, and/or the **Operating Unit KGaA Performance Materials** and, regardless of the Business Sector, each an **Operating Unit** or collectively **Operating Units**), shall be, in accordance with Sec. 20 of the German Reorganization Tax Act (*Umwandlungsteuergesetz – UmwStG*), hived down to separate subsidiaries by way of a hive-down by absorption pursuant to Sec. 123 (3) (1) German Reorganization Act (*Umwandlungsgesetz – UmwG*) by way of partial universal legal succession at carrying amounts, as well as in part by measures granting beneficial ownership (the **Operational Hive-down**). The Operational Hive-down is the subject of a separate hive-down and transfer agreement (Part A. of this notarial deed; the **Operational Hive-down Agreement**). The acquiring entities under the Operational Hive-down shall be:
 - a) for the Operating Unit KGaA Healthcare, Merck Healthcare Germany GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany (**HC OpCo**), headquartered in Darmstadt, registered in the commercial register of the Darmstadt local court under HRB 96240;
 - b) for the Operating Unit KGaA Life Science, Merck Life Science Germany GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany (**LS OpCo**), headquartered in Darmstadt, registered in the commercial register of the Darmstadt local court under HRB 93771; and

- c) for the Operating Unit KGaA Performance Materials, Merck Performance Materials Germany GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany (**PM OpCo**), headquartered in Darmstadt, registered in the commercial register of the Darmstadt local court under HRB 93768.

HC OpCo, LS OpCo, and PM OpCo, each of whose share capital upon signing of this Hive-down Agreement is EUR 25,000.00 and each of whose only company share is held by KGaA, are hereinafter also referred to, regardless of the Business Sector, as **OpCos** and/or each individually as **OpCo**. Domination and profit and loss transfer agreements have each been entered into between the KGaA as the controlling company and each of the OpCos as the controlled companies.

- (4) Immediately after the Operational Hive-down goes into effect, all company shares held by KGaA in the OpCos, including the new company shares granted to KGaA as consideration in the scope of the Operational Hive-down by way of another hive-down by absorption pursuant to Sec. 123 (3) (1) *UmwG*, shall be hived down to separate intermediate holding companies, each in return for granting a new company share in the intermediate holding companies (the **Holding Hive-down**; and this Agreement entered into for its implementation, the **Holding Hive-down Agreement**). The acquiring entities under the Holding Hive-down shall be:

- a) for the company shares in HC OpCo, Merck Healthcare Holding GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany (**HC HoldCo**), headquartered in Darmstadt, registered in the commercial register of the Darmstadt local court under HRB 97141;
- b) for the company shares in LS OpCo, Merck Life Science Holding GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany (**LS HoldCo**), headquartered in Darmstadt, registered in the commercial register of the Darmstadt local court under HRB 97051; and
- c) for the company shares in PM OpCo, Merck Performance Materials Holding GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany (**PM HoldCo**), headquartered in Darmstadt, registered in the commercial register of the Darmstadt local court under HRB 97192.

HC HoldCo, LS HoldCo, and PM HoldCo, each with a share capital upon signing of this Hive-down Agreement of EUR 25,000.00 and each of whose

only company share is held by KGaA, are hereinafter also referred to, regardless of the Business Sector, as **HoldCos** and/or each individually as **HoldCo**.

- (5) The Operational Hive-down and the related separation of the operational activities of the Healthcare, Life Science, and Performance Materials Business Sectors operated within KGaA in Darmstadt and Gernsheim to three subsidiaries support the introduction of global, Business Sector-specific company management systems (**Enterprise Resource Planning Systems** or **ERP systems**) for the German business. At the same time, the business activities of the Operating Units thus far operated within KGaA can be integrated more efficiently into the management of the global Business Sectors. In addition, the Operational Hive-Down, in conjunction with the subsequent Holding Hive-Down, serves to align the structure of the German business, which is currently managed within KGaA as “operational parent company” (*Stammhauskonzern*), with the globally applicable structural principles of the Group. This strengthens the Group’s ability to respond quickly and flexibly to available strategic options and also strengthens the adaptability of the Business Sectors to changes in the market environment. The Group’s global innovation and growth strategy is in this way also implemented in Germany.
- (6) The remaining German and foreign subsidiaries of KGaA – and thus the by far largest part of its balance sheet assets – will not be subject to the hive-down measures. The hive-down measures also do not aim at establishing “global sub-groups” under separate Business Sector holdings. The strategic management of the global Business Sectors Healthcare, Life Science, and Performance Materials shall continue to be carried out directly by KGaA.
- (7) Since the technical requirements for introducing the (business sector-specific) ERP systems currently do not exist at the OpCos - the introduction is planned for the period from early 2019 to 2020, depending on the Business Sector - it is intended that the business activities hived down to the OpCos be temporarily leased back to KGaA until the introduction of the ERP systems in the respective OpCo. This temporary lease(back) of the respective business operations is the subject of three business lease agreements within the meaning of Sec. 292 (1) (3) German Stock Corporation Act (*Aktiengesetz - AktG*) between the respective OpCo and KGaA which shall also be concluded today in notarized form (Parts C., D., and E. of this notarial deed; the **Business Lease Agreements**). Upon introduction of the ERP system for the respective OpCo, the respective business lease shall be terminated.
- (8) The measures described above are part of a joint entrepreneurial concept and shall be presented to the Annual General Meeting of KGaA as a single transaction on April 27, 2018 for its approval. The Parties shall work to ensure when registering the measures to the commercial register that the Business Lease

Agreements and the Holding Hive-down are only registered in the commercial register after the Operational Hive-down has become effective.

NOW THEREFORE, KGaA as the transferring entity and HC HoldCo, LS HoldCo, and PM HoldCo as the acquiring entities (collectively, the *Parties*) agree as follows:

**A. Hive-down, effective dates, Closing Balance Sheet,
and continuation of carrying amounts**

§ 1

Holding Hive-down

KGaA as the transferring entity shall transfer by way of a hive-down by absorption pursuant to Sec. 123 (3) (1) *UmwG*

- a) the company shares in HC OpCo described in detail in § 3, including all rights and obligations thereunto appertaining (the *OpCo Healthcare Company Shares*) as a whole to HC HoldCo as the acquiring entity against a new company share in HC HoldCo to KGaA pursuant to § 7.1 a) of this Holding Hive-down Agreement;
- b) the company shares in LS OpCo described in detail in § 4, including all rights and obligations thereunto appertaining (the *OpCo Life Science Company Shares*) as a whole to LS HoldCo as the acquiring entity against a new company share in LS HoldCo to KGaA pursuant to § 7.1 b) of this Holding Hive-down Agreement;
- c) the company shares in PM OpCo described in detail in § 5, including all rights and obligations thereunto appertaining (the *OpCo Performance Materials Company Shares*) as a whole to PM HoldCo as the acquiring entity against a new company share in PM HoldCo to KGaA pursuant to § 7.1 c) of this Holding Hive-down Agreement.

The OpCo Healthcare Company Shares, the OpCo Life Science Company Shares, and the OpCo Performance Materials Company Shares are hereinafter collectively referred to as *OpCo Company Shares To Be Hived Down*.

§ 2

**Economic Effective Date, Transfer Date For Tax Purposes,
Closing Balance Sheet, Legal Effective Date**

- 2.1 The Holding Hive-down described in § 1 shall take place with economic effect as of January 1, 2018, 0:00 hours (*Economic Effective Date*). As of that date, internally between KGaA and the individual acquiring entities, the actions and

transactions of KGaA that affect the respective Company Shares To Be Hived Down shall be deemed undertaken on behalf of the respective acquiring entity. The transfer date for tax purposes is the date of registration of the Holding Hive-down in the commercial register of KGaA (Sec. 21 *UmwStG*) (***Transfer Date For Tax Purposes***).

- 2.2 The balance sheet of KGaA as of December 31, 2017, 24:00 hours (***Closing Balance Effective Date***), which was audited and granted an unqualified audit opinion by KPMG AG Wirtschaftsprüfungsgesellschaft, Berlin, shall be used as the closing balance sheet of KGaA's financial statements under commercial law pursuant to Sec. 125 s. 1, Sec. 17 (2) *UmwG* for the Holding Hive-down (***Closing Balance Sheet***).
- 2.3 The acquiring entities shall continue to record the OpCo company shares transferred to them in their accounting under German commercial law and in their tax balance sheet at the respective authoritative carrying amounts (continued carrying amounts in accordance with Sec. 24 *UmwG*, continuation of carrying amounts under tax law upon application in accordance with Sec. 21 (1) s. 2 *UmwStG*).
- 2.4 The transfer of the OpCo Company Shares To Be Hived Down shall be effected in rem with effect as of the time of registration of the Hive-down in the commercial register of KGaA (***Legal Effective Date***). The representative bodies of the entities involved in the Holding Hive-down shall ensure, when filing the applications for registration of the Holding Hive-down in the commercial register, that the Legal Effective Date of the Holding Hive-down is after the registration date of the Operational Hive-down in the commercial register of KGaA.
- 2.5 KGaA shall, during the period between the signing of this Holding Hive-down Agreement and the Legal Effective Date of the Holding Hive-down, manage and dispose of the OpCo Company Shares To Be Hived Down in the proper course of business and with due diligence, while meeting the requirements of this Holding Hive-down Agreement in the process.

B. Description of the OpCo Company Shares To Be Hived Down

§ 3

Hive-down of the OpCo Healthcare Company Shares

The OpCo Healthcare Company Shares include

- a) the existing company share in HC OpCo with the consecutive number 1 and a nominal amount of EUR 25,000.00;

- b) the company share in HC OpCo with the consecutive number 2 and a nominal amount of EUR 975,000.00 newly granted to KGaA as consideration in the course of the Operational Hive-down;

in each case including all rights and obligations associated with these company shares, including any profit participation right for the period beginning on the Economic Effective Date.

§ 4

Hive-down of the OpCo Life Science Company Shares

The OpCo Life Science Company Shares include

- a) the existing company share in LS OpCo with the consecutive number 1 and a nominal amount of EUR 25,000.00;
- b) the company share in LS OpCo with the consecutive number 2 and a nominal amount of EUR 975,000.00 newly granted to KGaA as consideration in the course of the Operational Hive-down;

in each case including all rights and obligations associated with these company shares, including any profit participation right for the period beginning on the Economic Effective Date.

§ 5

Hive-down of the OpCo Performance Materials Company Shares

The OpCo Performance Materials Company Shares include

- a) the existing company share in PM OpCo with the consecutive number 1 and a nominal amount of EUR 25,000.00;
- b) the company share in PM OpCo with the consecutive number 2 and a nominal amount of EUR 975,000.00 newly granted to KGaA as consideration in the course of the Operational Hive-down;

in each case including all rights and obligations associated with these company shares, including any profit participation right for the period beginning on the Economic Effective Date.

§ 6

Hive-down Balance Sheets

As a mere precautionary measure, the respective OpCo Company Shares To Be Hived Down are shown at their carrying amounts in “Financial assets” in the Hive-down Balance Sheets as of January 1, 2018, 0:00 hours, attached as **Annex 6.a**, **Annex 6.b**, and **Annex 6.c**. The basis for the hive-down balance sheets in each case is the assumption that the Operational Hive-down has become effective and KGaA hives down to the respective HoldCo both the company shares already existing on December 31, 2017, 24:00 hours, and the new company shares in the respective OpCo received in the scope of the Operational Hive-down as consideration.

C. Consideration and capital measures, profit entitlement, capital reserves

§ 7

Consideration for the transfer of the OpCo Company Shares To Be Hived Down and effective date of the profit entitle- ment

- 7.1 As consideration for the transfer of the OpCo Healthcare Company Shares, the OpCo Life Science Company Shares, and the OpCo Performance Materials Company Shares to the respective HoldCo, KGaA shall receive in each case one company share in the HoldCos, based on the following conditions:
- a) for the transfer of the OpCo Healthcare Company Shares to HC HoldCo, a company share in HC HoldCo with the consecutive number 2 and a nominal amount of EUR 1,000.00,
 - b) for the transfer of the OpCo Life Science Company Shares to LS HoldCo, a company share in LS HoldCo with the consecutive number 2 and a nominal amount of EUR 1,000.00,
 - c) for the transfer of the OpCo Performance Materials Company Shares to PM HoldCo, a company share in PM HoldCo with the consecutive number 2 and a nominal amount of EUR 1,000.00.
- 7.2 The company shares in the HoldCos to be granted to KGaA shall be entitled to profits for the financial years beginning on (and including) January 1, 2018.
- 7.3 The company shares to be granted pursuant to § 7.1 are new company shares to be created in each case by way of the capital increases as per § 8.

§ 8

Capital increase for the purpose of the Holding Hive-down, contribution to the capital reserves

- 8.1 In order to complete the Holding Hive-down and grant the consideration, the HoldCos shall each increase their share capital, namely as follows:
- a) HC HoldCo from currently EUR 25,000.00 by EUR 1,000.00 to EUR 26,000.00 by issuing a new company share in HC HoldCo in the nominal amount of EUR 1,000.00 with the consecutive number 2;
 - b) LS HoldCo from currently EUR 25,000.00 by EUR 1,000.00 to EUR 26,000.00 by issuing a new company share in LS HoldCo in the nominal amount of EUR 1,000.00 with the consecutive number 2;
 - c) PM HoldCo from currently EUR 25,000.00 by EUR 1,000.00 to EUR 26,000.00 by issuing a new company share in PM HoldCo in the nominal amount of EUR 1,000.00 with the consecutive number 2.
- 8.2 The contribution on the company shares granted by the HoldCos to KGaA shall be provided as a contribution in kind by transferring the respective OpCo company shares.
- 8.3 If the value at which the contribution in kind provided by KGaA is assumed by the respective HoldCo exceeds the nominal amount of the respective newly created company share, the relevant amount shall be transferred to the capital reserves of the respective HoldCo pursuant to Sec. 272 (2) (1) German Commercial Code (*Handelsgesetzbuch – HGB*).

D. Granting special rights and benefits

§ 9

Granting special rights within the meaning of Sec. 126 (1) (7) *UmwG*

No special rights as defined in Sec. 126 (1) (7) *UmwG* shall be granted to individual shareholders or holders of special rights, and no special measures are planned in respect of such persons.

§ 10

Granting special benefits within the meaning of Sec. 126 (1) (8) *UmwG*

Special benefits as set out in Sec. 126 (1) (8) *UmwG* shall not be granted to members of a representative or a supervisory body of the entities involved in

the Holding Hive-down, any managing partner, partner, statutory auditor, or other auditor as defined in Sec. 126 (8) *UmwG*.

E. Consequences for the employees and their representatives

§ 11

Consequences of the Operational Hive-down and subsequent business lease for employees and their representatives and the measures planned thus far

11.1 Upon the Operational Hive-down becoming effective, the employment relationships of the Transitioning Healthcare Employees within the meaning of § 11.1 of the Operational Hive-down Agreement, the Transitioning Life Science Employees within the meaning of § 23.1 of the Operational Hive-down Agreement, and the Transitioning Performance Materials Employees Operational within the meaning of § 35.1 of the Operational Hive-down Agreement (collectively, the ***Transitioning Employees***), with all resulting rights and obligations, shall be transferred from KGaA to the respective OpCo, including the pension entitlements granted to them as defined by the German Company Pensions Act (*Betriebsrentengesetz*).

Immediately thereafter, the employment relationships of the Transitioning Employees as a result of the Business Lease Agreements as detailed in Sec. 613 a German Civil Code (*Bürgerliches Gesetzbuch – BGB*), shall be retransferred with all rights and obligations from the respective acquiring entity to KGaA (collectively, the ***Transitions Contingent On The Lease***).

11.2 The years in service rendered at or recognized by KGaA will not be interrupted by the transfer of the employment relationships to the OpCos in the course of the Operational Hive-down and the Transitions Contingent On The Lease to KGaA. The Protection Against Dismissal Act (*Kündigungsschutzgesetz*) continues to be applicable. In addition, Sec. 323 (1) *UmwG* provides that the Transitioning Employees' position under German dismissal law due to the Operational Hive-down shall not deteriorate for the period of two years from the Operational Hive-down becoming effective. According to the details of the position paper concluded with the Works Council Of Joint Works (as defined in § 11.4) dated June 26, 2017, in addition, notices of termination for operational reasons and notices of termination for the deterioration of material working conditions are generally excluded until December 31, 2021. Furthermore, the Transitioning Employees' employment contracts shall not be terminated due to the Transitions Contingent On The Lease by KGaA or by the respective OpCo (Sec. 613a (4) *BGB*).

- 11.3 KGaA shall remain liable for all obligations arising from the employment relationships of the Transitioning Employees even after the Operational Hive-down and the Transitions Contingent On The Lease become effective. In addition, the OpCos shall be jointly and severally liable with KGaA for liabilities arising from the Transitioning Employees' employment relationships transferred to them pursuant to Sec. 131 (1) s. 1 *UmwG* if the liabilities arose before the respective Transition Contingent On The Lease and fall due within one year of the respective Transition Contingent On The Lease. If such liabilities fall due after the effective date of the respective Transition Contingent On The Lease, the respective OpCo shall be liable only to the extent that such liabilities relate to the assessment period that has expired at the effective date of the Transition Contingent On The Lease (Sec. 613a (2) s. 2 *BGB*). The transferred pension obligations, time accounts, and other employee-related obligations described in § 11.7, § 11.10, § 11.11, § 23.7, § 23.10, § 23.11, and § 35.7, § 35.10, § 35.11 of the Operational Hive-down Agreement and the Assumptions Of Joint Liability declared by the OpCos in the respective Business Lease Agreements shall remain unaffected hereby.
- 11.4 The Operational Hive-down and the Transitions Contingent On The Lease will not have any effect on the office or responsibilities of the existing employee representative bodies.

KGaA has a works council of joint works (hereinafter referred to as ***Works Council Of Joint Works***) constituted on the basis of a collective bargaining agreement on works council structure (***Collective Bargaining Agreement On Works Council Structure***) that is responsible for the joint operation in Darmstadt and Gernsheim (***Joint Operation Darmstadt/Gernsheim***). The Works Council Of Joint Works shall remain in charge and continue to be the competent body for the employees and apprentices of KGaA and for the acquiring entities in the Joint Operation Darmstadt/Gernsheim, particularly also for the Transitioning Employees after the Operational Hive-down and the Transitions Contingent On The Lease. The same applies to the youth and apprentices council, the representative body for severely disabled employees, and the economic committee constituted on the basis of the Collective Bargaining Agreement On Works Council Structure.

The position and the responsibility of the Group Works Council of KGaA and the Euroforum established at KGaA (***Euroforum***) shall also remain unaffected by the Operational Hive-down and the Transitions Contingent On The Lease. The Group Works Council and the Euroforum shall continue to be responsible for the Transitioning Employees even after the Operational Hive-down and the Transitions Contingent On The Lease.

The committee representing the senior employees of KGaA shall remain in office and continue to represent the senior employees of KGaA even after the Operational Hive-down and the Transitions Contingent On The Lease.

- 11.5 The Operational Hive-down and the Transitions Contingent On The Lease have no impact on the works agreements concluded with the Works Council Of Joint Works, on the Group works agreements concluded with the Group Works Council of KGaA, and on the agreements concluded with the committee representing the senior employees. Said agreements continue to apply to the Transitioning Employees under collective bargaining laws without any changes even after the Operational Hive-down and the Transitions Contingent On The Lease.
- 11.6 The collective bargaining agreements applicable to the Transitioning Employees' employment relationships shall also continue to apply under collective bargaining laws without any changes even after the Operational Hive-down and the Transitions Contingent On The Lease, if this was also the case previously. If the corresponding collective agreements are applicable to the employment relationships with the Transitioning Employees on the basis of individual agreements (in particular due to a reference clause in the respective employment contract), they shall continue to apply even after the Operational Hive-down and the Transitions Contingent On The Lease.
- 11.7 It is planned that, upon the Operational Hive-down and the Transitions Contingent On The Lease becoming effective, the OpCos each declare in the respective Business Lease Agreements the assumption of joint liability for the direct commitments that are transferred to the OpCos in the course of the Operational Hive-down and then to the KGaA in the course of the Transitions Contingent On The Lease (***Secured Direct Commitments***). In addition, there shall be a pro-rata allocation of the trust assets from the Contractual Trust Arrangement (***CTA***) of KGaA to the CTA of the respective OpCo at Merck Pensionstreuhand e.V., Darmstadt, Germany, a company closely related to Merck KGaA, Darmstadt, Germany (***MP e.V.***). For the duration of assumption of joint liability, the Secured Direct Commitments shall be secured with MP e.V. by way of the CTA of the respective OpCo.
- 11.8 With regard to the company pension scheme, which is implemented via direct insurance or the Pension Fund for the German Economy VVaG (***Pensionkasse für die Deutsche Wirtschaft VVaG, PKDW***), the employment relationships of the Transitioning Employees shall not be affected. In particular, KGaA shall, for the term of the lease agreements, continue to pay the amounts to the respective pension provider in accordance with the pension provider's regulations and the respective pension entitlement.

- 11.9 It is planned that, upon the Operational Hive-down and the Transitions Contingent On The Lease becoming effective, the OpCos each declare in the respective Business Lease Agreements the assumption of joint liability for the time account agreements that are transferred to the OpCos in the course of the Operational Hive-down and then to KGaA in the course of the Transitions Contingent On The Lease (*Secured Time Accounts*). In addition, there shall be a pro-rata transfer of trust assets from the Contractual Trust Arrangement (CTA) of KGaA to the CTA of the respective OpCo at Metzler Trust e.V and Höchster Pension Benefits Services GmbH. For the duration of the assumption of joint liability, the Secured Time Accounts shall be secured by way of the CTA of the respective OpCo with Metzler Trust e.V. and Höchster Pension Benefits Services GmbH.
- 11.10 It is additionally planned that, upon the Operational Hive-down and the Transitions Contingent On The Lease becoming effective, the OpCos declare in the respective Business Lease Agreements the assumption of joint liability for the other employee-related obligations (in particular, anniversary bonus payments and vacation provisions) that are transferred to the OpCos in the course of the Operational Hive-down and then to KGaA in the course of the Transitions Contingent On The Lease.
- 11.11 The Operational Hive-down and the Transitions Contingent On The Lease have no other effects on the employment and apprenticeships. In particular, no special measures are currently planned in respect of the Operational Hive-down and the Transitions Contingent On The Lease. The consequences of the termination of the Business Lease Agreements are outlined in § 13.

§ 12

Consequences of the Holding Hive-down for employees and their representatives and the measures planned thus far

The HoldCos do not have any employees or employee representatives. Since, on the basis of this Holding Hive-down Agreement, only company shares of the OpCos are hived down, the Holding Hive-down has no effect on the employment relationships existing at the OpCos. In particular, the transfer of the company shares in the OpCos to the HoldCos does not meet the prerequisites of a transfer of undertaking within the meaning of Sec. 613a *BGB*. Therefore, no employment relationships are transferred from the OpCos to the HoldCos in the course of the Holding Hive-down. Overall, the Holding Hive-down does not have any impact on the employees and their representative bodies and no special measures are planned with respect to the Holding Hive-down. As for the presentation of the effects of the Operational Hive-down, the Transitions

Contingent On The Lease, and the termination of the Business Lease Agreements, please refer to the explanatory comments in § 11 and § 13.

§ 13

Consequences of the termination of the Business Lease Agreements for employees and their representatives and the measures planned thus far

- 13.1 Upon termination of the respective Business Lease Agreement, the employment relationships allocated in each case to the operation of the Operating Unit KGaA Healthcare, the Operating Unit KGaA Life Science, or the Operating Unit KGaA Performance Materials shall be transferred from KGaA to the respective OpCo at the respective termination date, including the pension entitlements granted under the German Company Pensions Act (*Betriebsrentengesetz*) as detailed in Sec. 613a *BGB*, including all rights and obligations. The years of service rendered at KGaA or recognized by KGaA shall apply in full as performed at the specific OpCo. Furthermore, the employment and apprenticeships transferred pursuant to Sec. 613a *BGB* shall not be terminated due to the transfer of undertaking (Sec. 613a (4) *BGB*).
- 13.2 The apprenticeships of the apprentices of KGaA shall not be covered by the transfers of the operations to the OpCos upon termination of the Business Lease Agreements, even if they were deployed in the respective Operating Unit at the respective termination date. The apprenticeships exist even after the termination of the Business Lease Agreements with KGaA and do not transition to the OpCos. As a result, there will be no adverse effects on the apprenticeships. The existing structure of the apprenticeships shall be continued by KGaA and the OpCos.
- 13.3 As detailed in Sec. 613a *BGB*, the respective OpCo shall be liable for all obligations arising from the employment relationships transferred from KGaA in the course of the termination of the Business Lease Agreement. In addition to the respective OpCos, KGaA shall be liable for obligations arising from the transferred obligations if the liabilities arose before the respective transfer of undertaking and fall due within one year of the respective transfer of undertaking. If such liabilities fall due after the effective date of the respective transfer of undertaking, KGaA shall be liable only to that extent that such liabilities relate to the assessment period that has expired at the effective date of the transfer of undertaking (Sec. 613a (2) s. 2 *BGB*).
- 13.4 The termination of the Business Lease Agreements shall have no impact on the position and responsibilities of the existing employee representatives.

The OpCos shall accede to the Collective Bargaining Agreement On Works Council Structure no later than upon the termination of the respective Business

Lease Agreement. The Works Council Of Joint Works thus remains in office and will continue to be responsible for the employees whose employment relationships transition to the OpCos even after termination of the Business Lease Agreements. The same applies to the youth and apprentices council, the representative body for severely disabled employees, and the economic committee constituted on the basis of the Collective Bargaining Agreement On Works Council Structure.

The office and the responsibility of the Group Works Council of KGaA and the Euroforum established at KGaA shall also remain unaffected by the termination of the Business Lease Agreements. The Group Works Council and the Euroforum will continue to be responsible also for those employees whose employment relationships transition to the OpCos.

The committee representing the senior employees of KGaA shall remain in office and continue to represent the senior employees whose employment relationships are transferred to the OpCos even after the termination of the Business Lease Agreements.

- 13.5 The termination of the Business Lease Agreements has no impact on the works agreements concluded with the Works Council Of Joint Works, the group works agreements concluded with the Group Works Council of KGaA, and the agreements concluded with the committee representing the senior employees. These continue to apply without any changes under collective bargaining laws to the employees whose employment contracts are transferred to the respective OpCo as a result of the termination of the Business Lease Agreements even after the termination of the Business Lease Agreements.
- 13.6 The OpCos shall join the employers' association which is a party to collective bargaining agreements, at the latest effective upon termination of the Business Lease Agreements. The relevant collective bargaining agreements shall apply without any changes under the collective bargaining laws to the employees whose employment relationships are transferred to the respective OpCo as a result of the termination of the Business Lease Agreements, even after the termination of the Business Lease Agreements, if this was the case previously. If the corresponding collective bargaining agreements apply based on individual agreements (in particular due to a reference clause in the respective employment contract), this shall also apply after termination of the Business Lease Agreements.
- 13.7 KGaA currently has a Supervisory Board that is staffed in accordance with the provisions of the German Co-Determination Act (*Mitbestimmungsgesetz*) equally with shareholder representatives and employee representatives. The termination of the Business Lease Agreements does not have any impact on

the existence, composition, and time in office of the Supervisory Board. The employees whose employment relationships are transferred to the respective OpCos as a result of the termination of the Business Lease Agreements shall remain entitled to be voted into the Supervisory Board of KGaA.

- 13.8 Currently, the OpCos do not have supervisory boards. Upon termination of the respective Business Lease Agreements, HC OpCo and PM OpCo are expected to each employ more than 2,000 employees in Germany, so that for these companies, after the termination of the respective Business Lease Agreement, a Supervisory Board shall be formed in accordance with the German Co-Determination Act. Upon termination of the Business Lease Agreement, LS OpCo is expected to employ more than 500 but not more than 2,000 employees in Germany, so that for the company, after termination of the Business Lease Agreement, a Supervisory Board shall be formed in accordance with the German One-Third Participation Act (*Drittelbeteiligungsgesetz*).
- 13.9 If, upon termination of the respective Business Lease Agreement, the Secured Direct Commitments, Secured Time Accounts, and other personnel-related obligations secured by assumption of joint liability of the OpCo are transferred to the respective OpCo in the course of the Transitions Contingent On The Lease, assumption of joint liability granted by the OpCo in the course of the Transitions Contingent On The Lease shall lapse according to the corresponding provisions.
- 13.10 KGaA and the respective OpCo shall make their best efforts to ensure that the Asset and Liabilities Items to finance the transfer of pension entitlements are provided to the OpCo, and that the agreements in this regard can be continued with the previous pension providers at the same terms and conditions. This shall include in particular the transfer of the direct insurances as regards the employment relationships transitioning to the OpCo and the application for a status as the treasury entity (*Kassenfirma*) for the OpCo with the Pension Fund for the German Economy VVaG (*Pensionskasse für die Deutsche Wirtschaft VVaG, PKDW*), unless such status already exists.
- 13.11 The termination of the Business Lease Agreements has no other effects on the employment and apprenticeships. In particular, no special measures are currently planned relating to the termination of the Business Lease Agreements.
- 13.12 The other details of the transfers of undertaking to the acquiring entities are governed in a position paper dated June 26, 2017 and in an implementation agreement with the Works Council Of Joint Works dated November 1, 2017.

F. Other joint stipulations on the Holding Hive-down

§ 14

Obligations to cooperate

The Parties shall, in connection with the transfer of the company shares described in § 3 to § 5, initiate all necessary and appropriate measures and legal acts and cooperate to transfer the OpCo Company Shares To Be Hived Down.

§ 15

Disclaimer of warranty

KGaA represents vis-à-vis the HoldCos that it is the holder of the OpCo Company Shares To Be Hived Down and that these company shares are free of any third-party rights. Any claims and rights of the HoldCos against KGaA due to the condition and existence of the OpCo Company Shares To Be Hived Down, irrespective of their nature and regardless of the legal basis, shall herewith be expressly excluded to the extent legally admissible.

§ 16

Protection of creditors and internal settlement

- 16.1 If, pursuant to the remaining provisions of the Hive-down Agreement, no other distribution of obligations and liabilities results from or in connection with the OpCo Company Shares To Be Hived Down, the following provisions shall apply.
- 16.2 If and to the extent that KGaA is held liable by creditors for liabilities, obligations, or uncertain liabilities which, according to this Hive-down Agreement, shall be transferred to a HoldCo under the provisions in Sec. 133 *UmwG* or any other provisions, or if claims are brought forward against KGaA for obligations from future statutory obligation relationships which arise in conjunction with the OpCo Healthcare Company Shares, OpCo Life Science Company Shares, or OpCo Performance Materials Company Shares, the respective HoldCo shall indemnify KGaA upon first request from the respective liability, obligation, or uncertain liability. The same shall apply if KGaA is held liable by such creditors for granting collateral.
- 16.3 If and to the extent, *vice versa*, a HoldCo is held liable by creditors for liabilities, obligations, or uncertain liabilities which, according to this Hive-down Agreement, shall not be transferred to the affected HoldCo due to the provisions in Sec. 133 *UmwG* or any other provisions, KGaA shall indemnify the respective HoldCo upon first request from the respective liability, obligation,

or uncertain liability. The same shall apply if a HoldCo is held liable by such creditors for granting collateral.

§ 17

Reservations of consent

In order to be valid, this Hive-down Agreement is subject to the approval of the Annual General Meeting of KGaA and the approval of the shareholders' meetings of the HoldCos.

§ 18

Effective date of the agreement

- 18.1 The Holding Hive-down Agreement comes into effect upon its registration in the commercial register of KGaA.
- 18.2 The Parties to this Agreement shall work to ensure that this Agreement only becomes effective upon registration of the Operational Hive-down Agreement in the commercial register of KGaA. Another condition precedent of the Holding Hive-down is the registration of the Operational Hive-down in the commercial register of KGaA.

§ 19

Costs and taxes

- 19.1 Unless agreed upon otherwise in this Hive-down Agreement, KGaA shall bear all costs incurred in conjunction with the preparation and implementation of the Holding Hive-down and any taxes. These include in particular the costs incurred in conjunction with the notarization of this Hive-down Agreement and its execution.
- 19.2 The costs of the capital increases in kind and their implementation at HoldCo level shall be borne by HC HoldCo, LS HoldCo, and PM HoldCo, respectively. Each Party shall bear its own costs relating to the Annual General Meeting and the individual shareholders' meetings and the costs of applying for registration and registering the Holding Hive-down in the respective commercial register.

§ 20
Revocation

If the Holding Hive-down has not taken effect by February 28, 2019, any Party may revoke this Holding Hive-down Agreement by written declaration to the other Parties.

§ 21
Written form requirement

Any modifications to or amendments of this Holding Hive-down Agreement, including the waiver of this written form requirement, shall be in writing, except where any stricter form is required.

§ 22
Annexes

The preamble and the annexes shall form integral parts of the Holding Hive-down Agreement.

§ 23
Severability

In the event that one or more provision/s of this Holding Hive-down Agreement is/are or become/s void, invalid or unenforceable, either in whole or in part, this shall not affect the validity or enforceability of the Holding Hive-down Agreement or its other provisions. In place of the void, invalid or unenforceable provision, such provision shall apply which comes closest in form, content, time, measure, and scope to what the Parties intended according to the economic rationale and purpose of the void, invalid or unenforceable provision. The same shall apply with regard to any omissions in this Holding Hive-down Agreement.

§ 24
Applicable law; jurisdiction

- 24.1 This Hive-down Agreement is governed by German law.
- 24.2 The place of jurisdiction for all disputes arising from this Hive-down Agreement is Darmstadt.

Table of Annexes

Annex 6.a	HC HoldCo Hive-down Balance Sheet
Annex 6.b	LS HoldCo Hive-down Balance Sheet
Annex 6.c	PM HoldCo Hive-down Balance Sheet

Annex 6.a

Hive-down Balance Sheet HC HoldCo

HC HoldCo Hive-down Balance Sheet per 1.1.2018, in €

Assets		Equity and liabilities	
<i>Fixed assets</i>		<i>Equity</i>	
Financial assets	356,663,352	Equity	356,663,352
Total fixed assets	356,663,352	Total equity	356,663,352
<i>Total assets</i>	<i>356,663,352</i>	<i>Total equity and liabilities</i>	<i>356,663,352</i>

Annex 6.b

Hive-down Balance Sheet LS HoldCo

LS HoldCo Hive-down Balance Sheet per 1.1.2018, in €

Assets		Equity and liabilities	
<i>Fixed assets</i>		<i>Equity</i>	
Financial assets	294,441,941	Equity	294,441,941
Total fixed assets	294,441,941	Total equity	294,441,941
<i>Total assets</i>	<i>294,441,941</i>	<i>Total equity and liabilities</i>	<i>294,441,941</i>

Annex 6.c

Hive-down Balance Sheet PM HoldCo

PM HoldCo Hive-down Balance Sheet per 1.1.2018, in €

Assets		Equity and liabilities	
<i>Fixed assets</i>		<i>Equity</i>	
Financial assets	374,319,652	Equity	374,319,652
Total fixed assets	374,319,652	Total equity	374,319,652
<i>Total assets</i>	<i>374,319,652</i>	<i>Total equity and liabilities</i>	<i>374,319,652</i>