

**Merck Kommanditgesellschaft auf Aktien**

**Darmstadt**

**Germany**

**- ISIN DE 000 659 990 5 -**

**- Securities Identification No. 659 990 -**

The shareholders of our company are hereby invited to attend the

**Annual General Meeting**

**on Friday, April 27, 2018 at 10:00 a.m. CEST**

held at the

**Jahrhunderthalle Frankfurt, Pfaffenwiese 301, 65929 Frankfurt am Main,  
Germany.**



# Section A.

## Agenda

**1. Presentation of the annual financial statements approved by the Supervisory Board, as well as the consolidated financial statements approved by the Supervisory Board and the combined management report (including the explanatory report on the information in accordance with Section 289a (1), Section 315a (1) HGB) for fiscal 2017 and the Report of the Supervisory Board**

The Supervisory Board has approved the annual financial statements and the consolidated financial statements which were prepared by the Executive Board in accordance with Section 171 of the German Stock Corporation Act, hereinafter "AktG". In accordance with Section 286 (1) AktG, Article 29 (3) of the Articles of Association, the annual financial statements are to be adopted by the General Meeting (Item 2 of the Agenda). The aforementioned documents will be available on the company's website as of the date on which the Annual General Meeting is convened. In addition, they will be available for inspection by the limited shareholders (also referred to hereinafter as "shareholders") at the business offices of the company once the Annual General Meeting has been convened (for more information see the section titled "Information and Documents for the Annual General Meeting; company website"). No resolution is required for Item 1 of the Agenda.

**2. Resolution on the adoption of the annual financial statements for fiscal 2017**

The Executive Board and the Supervisory Board propose that the presented annual financial statements of the company for the year ended December 31, 2017 be approved.

**3. Resolution authorizing the appropriation of the net retained profit for fiscal 2017**

The Executive Board and the Supervisory Board propose that the share of the net retained profit of the company attributable to the shareholders amounting to € 187,045,271.48 be appropriated as follows:

- a) Payment of a dividend of € 1.25 per no par value share of the dividend-bearing share capital as of the date of this Annual General Meeting, being € 161,552,815.00 in total.

- b) Carryforward of the remaining amount of € 25,492,456.48 to new account.

Dividends are payable on the third business day after the General Meeting passing the resolution on the dividend, i.e. on [May 3, 2018].

**4. Resolution on the approval of the actions of the Executive Board for fiscal 2017**

The Executive Board and the Supervisory Board propose that the actions of the members of the Executive Board in office in fiscal 2017 be approved for their activities in fiscal 2017.

**5. Resolution on the approval of the actions of the Supervisory Board for fiscal 2017**

The Executive Board and the Supervisory Board propose that the actions of the members of the Executive Board in office in fiscal 2017 be approved for their activities in fiscal 2017.

**6. Resolution on the election of the auditors of the annual financial statements and the consolidated financial statements for fiscal 2018 as well as the auditors for the audit review of the interim financial statements and management report of the Group as of June 30, 2018**

The Supervisory Board proposes the election of

**KPMG AG Wirtschaftsprüfungsgesellschaft, Berlin,**

as auditors of the annual financial statements and the consolidated financial statements for fiscal 2018 as well as for the audit review of the interim financial statements and management report of the Group as of June 30, 2018.

**7. Resolution on the approval of the compensation system for the Executive Board**

With regard to stock corporations, according to Section 120 (4) AktG the General Meeting can decide on the approval of the compensation system for the members of the management board of the company. Many of the rules applicable to German stock corporations do not apply to Merck KGaA, Darmstadt, Germany, which is a corporation with general partners. This also includes Section 120 (4) AktG, since at Merck KGaA, Darmstadt, Germany – in contrast to stock corporations – it is not the Supervisory

Board that decides on the compensation of the members of the Executive Board. Instead, this personnel responsibility for the Executive Board of Merck KGaA, Darmstadt, Germany, belongs to the Personnel Committee of the Board of Partners of E. Merck KG, Darmstadt, Germany, upon which the General Meeting of Merck KGaA, Darmstadt, Germany, has no influence.

Although there is no legal obligation to do so, Merck KGaA, Darmstadt, Germany, has, most recently in the General Meeting of April 28, 2017, given its shareholders the possibility to express their opinion on the then applicable compensation system of the Executive Board. The system for the compensation of the Executive Board members was reviewed through regular exchanges with our investors (and their voting advisors) and with the help of an independent compensation consultant and consequently adapted with effect of January 1, 2018 and shall be submitted to the General Meeting again this year for approval.

Both the previous and the amended compensation systems for the members of the Executive Board are presented in the compensation report, which was published as part of the Statement on Corporate Governance in the Corporate Governance Report of the Annual Report for 2017.

The Executive Board and the Supervisory Board propose that the compensation system for the members of the Executive Board in the version applicable as of January 1, 2018, be approved.

**8. Revocation of an existing authorization and creation of a new authorization to issue warrant and/or convertible bonds, participation rights or participation bonds, or a combination of these instruments, and authorization to exclude the subscription right of these warrant and/or convertible bonds, participation rights or participation bonds, or a combination of these instruments together with simultaneous creation of contingent capital and corresponding amendment of the Articles of Association.**

The authorization granted by the General Meeting on May 9, 2014 to issue warrant and/or convertible bonds, participation rights or participation bonds or a combination of these instruments shall be renewed. The hitherto unused authorization expires on May 8, 2019. Since the Annual General Meeting may possibly only take place after this date and the subsequently necessary entry of new contingent capital in the commercial register would occur even later, the existing authorization and Contingent Capital II shall be revoked now and replaced by a new authorization and a new Contingent Capital II. This ensures that the company will continue to be able to access the warrant bond and convertible bond financial instruments at any time in the years to come.

The Executive Board and the Supervisory Board propose the adoption of the following resolution:

**a) Revocation of the authorization of May 9, 2014 and revocation of the Contingent Capital II**

The authorization granted to the Executive Board by the General Meeting of May 9, 2014, with the consent of E. Merck KG, Darmstadt, Germany, to issue warrant bonds and convertible bonds totaling up to € 2,000,000,000.00 up until May 8, 2019, and the contingent capital created for this purpose in Section 5 (5) of the Articles of Association, shall be revoked upon entry in the commercial register of the amendment to the Articles of Association proposed in Item 8 d) of this Agenda, below.

**b) Authorization to issue warrant and/or convertible bonds, participation rights or participation bonds, or a combination of these instruments, and authorization to exclude the subscription right of these warrant and/or convertible bonds, participation rights or participation bonds, or a combination of these instruments.**

aa) General

The Executive Board shall be authorized, with the approval of E. Merck KG, Darmstadt, Germany, to issue bearer or registered warrant and/or convertible bonds, participation rights or participation bonds, or a combination of these instruments (together "bonds") on one occasion or in instalments over several occasions up to April 26, 2023 for the total nominal amount of up to € 2,000,000,000.00 with or without restrictions on term, and to grant or impose option rights or option obligations on the bearers or creditors of warrant bonds or option participation certificates or option participation bonds (together "warrant bonds"), or to grant or impose conversion rights or obligations for up to 12,924,224 no-par value bearer shares of the company with a total pro rata amount of the share capital of up to € 16,801,491.20, pursuant to the conditions of the bonds, on the bearers or creditors of convertible bonds or convertible participation certificates or convertible participation bonds (together "convertible bonds"). The bonds can be issued in return for a cash payment, but also against contributions in kind, in particular participation in other undertakings.

The bonds can also be issued via a subordinate Group company. In this case, the Executive Board shall be authorized to assume the guarantee for the bonds on behalf of the company and to grant or impose option rights or option obligations or conversion rights or conversion obligations for company no-par value bearer shares on the bearers or creditors of these bonds. Other than in euros, the bonds may also be issued in the legal currency of an OECD country, as long as the amount corresponds to the equivalent in euros.

bb) Option and conversion rights

The bonds are divided into notes.

If warrant bonds are issued, one or more warrants will be attached to each note, which entitle the bearer to subscribe to no-par value bearer shares of the company at option conditions to be defined by the Executive Board. The option conditions may stipulate that the option price is fulfilled by transfer of notes and if applicable, a cash payment. In the event of share fractions, in line with the option or bond conditions, it can be stipulated that such fractions can be added together for the purposes of acquiring complete shares, if applicable, against a cash payment.

If convertible bonds are issued, bearers of bearer notes, or otherwise creditors of notes, receive the right to convert their notes into no-par value bearer shares in the company, pursuant to the convertible bond conditions defined by the Executive Board. The conversion ratio is determined by dividing the nominal amount or the issue amount of a note issued below the nominal amount by the conversion price stipulated for one bearer share in the company and can be rounded up or down to a full number. An additional cash payment, or combined amounts or compensation for fractions which are not convertible, can also be stipulated. The bond conditions may stipulate a variable conversion ratio and determination of the conversion price (subject to the minimum price determined below) within a given range, depending on the development of the company's share price during the term of the bond.

Under no circumstances may the pro-rata amount of the share capital per bond of the shares to be issued in the event of an option being exercised, or of conversion, exceed the nominal amount and the issue amount of the convertible or warrant bonds.

cc) Option obligation and conversion obligation

The bond conditions may also provide for an option obligation or a conversion obligation up until the end of the term (or until an earlier time or a certain event). The pro-rata amount of the share capital of the shares in the company to be issued in the event of an option being exercised, or of a conversion, may not exceed the nominal amount of the bonds. The company may be entitled in the conditions of the bonds to wholly or partially compensate in cash a potential difference between the nominal amount or a potentially lower issue amount of the bond and the product of the option or conversion price and the exchange ratio. Section 9 (1) AktG and Section 199 AktG remain unaffected.

dd) Substitution authorization

If options are converted or exercised, the bond conditions may stipulate the right of the company not to grant new shares but to pay a sum of money

corresponding to the volume-weighted average value of the stock exchange prices of the company's no-par value shares in Xetra trading (or a comparable successor system on the Frankfurt Stock Exchange) during a period specified in the bond conditions. The bond conditions may also stipulate that bonds, which are attached with option rights or obligations or conversion rights or obligations, are converted into existing shares in the company instead of new shares from contingent capital, or that the option rights can be fulfilled by delivering such shares or, in the event of an option obligation, can be serviced by delivery of such shares or using other forms of fulfillment. The bond conditions may also stipulate a combination of these forms of fulfillment.

On final maturity of the bond – which is attached with option rights or option obligations or conversion rights or conversion obligations – the bond conditions may also stipulate the right of the company to grant, in whole or in part, shares in the company instead of paying the sum of money due, or to use other forms of fulfillment.

ee) Option and conversion price

With the exception of cases where a substitution authorization or an option obligation or a conversion obligation is stipulated, the option or conversion price for a company no-par value share, which is to be stipulated, must be at least 80% of the volume-weighted average value of the stock exchange prices of the company's no-par value in Xetra trading (or a comparable successor system on the Frankfurt Stock Exchange) on the last ten trading days before the day of the resolution on the issue of bonds by the Executive Board, which are endowed with option rights or option obligations or conversion rights or conversion obligations, or – if subscription rights are granted – at least 80% of the volume-weighted average value of the stock exchange prices of the company's shares in Xetra trading (or a comparable successor system on the Frankfurt Stock Exchange) during the subscription period (with the exception of the days of the subscription period, which are required so that the conversion price can be announced in a timely manner), in accordance with Section 186 (2) sentence 2 AktG. Sections 9 (1) and 199 AktG remain unaffected.

In the cases of the substitution authorization and the option obligation or conversion obligation, the option or conversion price pursuant to the bond conditions must be at least the minimum price stated above, or correspond to the volume-weighted average stock exchange prices of the company's no-par value shares in Xetra trading (or a comparable successor system on the Frankfurt Stock Exchange) on the last ten trading days before the day of final maturity or the other defined point, even if this average price is under the minimum price stated above (80%). Sections 9 (1) and 199 AktG remain unaffected.

ff) Dilution protection

The authorisation also covers the option in certain cases in accordance with the details of the relevant provisions to grant bond holders dilution protection or to make adjustments. In particular, provision may be made for dilution protection or adjustments if there are capital changes at the company during the term of the bonds (such as a capital increase or a capital decrease or a share split), but also in connection with dividend payments, the issuance of additional convertible bonds or warrant bonds, conversion measures as well as in the case of other events affecting the value of the conversion rights or option rights which occur during the term of the bonds (such as acquisition of control by a third party). In particular, provision may be made for dilution protection or adjustments by granting subscription rights, by changing the conversion/warrant price and by changing or granting cash components. Section 9 (1) AktG and Section 199 AktG remain unaffected.

gg) Subscription right and authorization to exclude the subscription right

In the event that shareholders are not permitted to acquire the bonds directly, then the shareholders shall be granted the statutory subscription right in such a way that the bonds are assumed by a bank or a consortium of banks, on condition that they are offered for sale to shareholders. If bonds are issued by a subordinate Group company, the company must ensure that the company's shareholders are granted their statutory subscription rights in line with the above sentence.

However, the Executive Board is authorized to exclude the subscription right of the shareholders, with the approval of the Supervisory Board, in the following cases:

- (i) for bonds issued against cash, if the Executive Board, after due examination, is of the opinion that the issue price for the bonds is not significantly lower than the theoretical market price of the bonds as calculated using recognized mathematical methods. However, this authorization to exclude subscription rights only applies to bonds issued with option rights or option obligations or conversion rights or conversion obligations, with an option right or option obligation or conversion right or conversion obligation to shares with a pro rata amount of the share capital not exceeding 10% in total, namely either at the time the authorization becomes effective or – if this amount is lower – at the time when the authorization is exercised. Shares shall be calculated against the aforementioned 10% limit which in direct or analogous application of Section 186 (3) sentence 4 AktG are issued or sold during the term of this authorization until the time of their use. Furthermore, shares shall be calculated against this amount which are



to be issued or granted due to a conversion or warrant bond issued during the term of this authorization with the exclusion of the subscription rights pursuant to Section 186 (3) sentence 4 AktG.

- (ii) if required, to grant a subscription right to bearers of option rights or conversion rights or option obligations or conversion obligations previously issued by the company or its Group companies, to the extent that they would be entitled after exercising the option right or conversion right or upon fulfillment of a conversion obligation or option obligation as shareholder;
- (iii) to exclude subscription rights to any fractional amounts; and
- (iv) if bonds are issued against contributions in kind, in particular in the context of mergers or in relation to the acquisition (including indirect acquisitions) of undertakings, parts of undertakings, participations in undertakings, receivables or other economic goods.

If participation rights or participation bonds without conversion rights/obligations or option rights/obligations are issued, the Executive Board shall be authorized to exclude in full the subscription rights of the shareholders with the approval of the Supervisory Board, if these participation rights or participation bonds are designed as obligations, i.e. they do not substantiate membership rights in the company, do not grant an interest in liquidation proceeds and the amount of interest is not calculated on the basis of the amount of the net income for the year, the net retained profit or the dividend. In addition, in such cases the interest and the issue amount of the participation rights or participation bonds must be in line with current market conditions at the time of issue.

hh) Limiting the total volume of the subscription right exclusion

The total bonds issued under the existing authorizations with the exclusion of subscription rights are limited to that number of bonds with an option right or conversion right, or an option obligation or conversion obligation to shares, with a pro rata value of the share capital that may not exceed 20% of the share capital in total, namely either at the time the present authorization becomes effective or – if this amount is lower – at the time the present authorization is exercised. Own shares shall be calculated against the aforementioned 20% limit which were issued during the term of this authorization on the basis of other capital measures with the exclusion of the shareholder subscription rights. In particular, this includes shares which are to be issued or granted from authorized capital or due to a bond issued during the term of this authorization on the basis of the use of a different authorization with the exclusion of the subscription rights.

ii) Implementation of the authorization

The Executive Board shall be authorized to determine the further details of the issue and features of the bonds, including in particular the interest rate, issue price, term and denomination, dilution protection provisions, option or conversion period and the conversion or option price, or to determine such details in consultation with the boards of the Group company issuing the warrant or convertible bond.

**c) Creation of contingent capital**

The share capital shall be contingently increased by up to € 16,801,491.20 (in words: sixteen million, eight hundred and one thousand, four hundred and ninety-one euros and twenty cents), composed of up to 12,924,224 new, no-par value bearer shares (Contingent Capital II)." The increase in contingent capital serves to grant the no-par value bearer shares when exercising the option or conversion rights (or when fulfilling the corresponding option obligations or conversion obligations) or when exercising an option of the company option, of granting in whole or in part no-par value shares in the company instead of paying the sum of money due to the bearer or creditor as the case may be of warrant bonds, option participation certificates, option participation bonds, convertible bonds, convertible participation certificates or convertible participation bonds (or combinations of these instruments) that are issued by the company or a subordinate Group company against contributions on the basis of the authorization resolution of the Annual General Meeting of April 27, 2018 to April 26, 2023. Each issue of new shares shall take place at the determined option or conversion price, pursuant to the authorization resolution mentioned above.

The increase in contingent capital is to be implemented only in the case of an issue of bonds that are endowed with option rights or option obligations or conversion rights or conversion obligations, pursuant to the authorization resolution of the Annual General Meeting of April 27, 2018, and only insofar as option rights or conversion rights are utilized, or bearers or creditors of bonds with a conversion obligation or option obligation are obliged to fulfill their conversion obligation or option obligation, or insofar as the company exercises an option, wholly or in part, of granting shares in the company instead of paying the sum of money due and to that extent, a cash settlement is not granted, or own shares or other forms of fulfillment are used. The new shares issued participate in the profit from the beginning of the fiscal year in which they are created; insofar as this is legally permissible, the Executive Board may, with the approval of the Supervisory Board, stipulate that the new shares also participate in the profit for this and, in deviation from Section 60 (2) AktG, also for a past fiscal year.

The Executive Board shall be authorized, with the approval of the Supervisory Board and of E. Merck KG, Darmstadt, Germany, to stipulate the further details of the implementation of the increase in contingent capital.

**d) Amendment of the Articles of Association**

In Article 5 of the Articles of Association, the following new paragraph 5 shall be inserted, taking into consideration the entry of the revocation of the current Article 5 (5) in the commercial register:

*"[5] <sup>1</sup>The share capital is contingently increased by up to € 16,801,491.20 (in words: sixteen million, eight hundred and one thousand, four hundred and ninety-one euros and twenty cents), composed of up to 12,924,224 new, no-par value bearer shares (Contingent Capital II). <sup>2</sup>The increase in contingent capital is only to be implemented insofar as the bearers or creditors of option or conversion rights or the conversion or option obligations on warrant bonds, option participation certificates, option participation bonds, convertible bonds, convertible participation certificates or convertible participation bonds issued against contributions that are issued or guaranteed by the company or a subordinate Group company on the basis of the authorization resolution of the Annual General Meeting of April 27, 2018 to April 26, 2023 utilize their option or conversion rights or, to fulfill their conversion or option obligation insofar as they are obliged to fulfill their conversion or option obligation, or insofar as the company exercises an option, wholly or in part, of granting shares in the company instead of paying the sum of money due and to the extent, that in each case a cash settlement is not granted, or own shares or other forms of fulfillment are used. <sup>3</sup>Each issue of new shares shall take place at the determined option or conversion price, pursuant to the aforementioned authorization resolution. <sup>4</sup>The new shares participate in the profit from the beginning of the fiscal year in which they are created; insofar as this is legally permissible, the Executive Board may, with the approval of the Supervisory Board stipulate that the new shares also participate in the profit for this and, in deviation from Section 60 (2) AktG, also for a past fiscal year. <sup>5</sup>The Executive Board is authorized, with the approval of the Supervisory Board and of E. Merck KG, Darmstadt, Germany, to stipulate the further details of the implementation of the increase in contingent capital."*

**e) Authorization to amend the Articles of Association**

The Supervisory Board is authorized to amend Article 5 (1) (2) and (5) of the Articles of Association according to each issue of subscription shares and to perform all other amendments to the Articles of Association in relation to this that concern only the amendment. This applies accordingly in the case where the authorization to bonds is not utilized by the end of the period of authorization, and in the case where the contingent capital is not utilized by the end of the period for issuing options or conversion rights or for fulfilling conversion or option obligations.

**f) Instruction for registering the amendment of the Articles of Association**

Revocation of the existing authorization and of the corresponding existing Contingent Capital II and the creation of the new authorization and of the corresponding new Contingent Capital II pursuant to above numbers 1 to 5 constitute a uniform resolution; without the new Contingent Capital II being entered in the commercial register, the revocation of the authorization agreed by the General Meeting on May 9, 2014 in Agenda Item 10 to issue conversion/warrant bonds and the corresponding Contingent Capital II in the amount of € 2,000,000,000.00 shall not come into effect. Accordingly, the Executive Board is instructed to register the revocation of the current Contingent Capital II and the resolution on the creation of the new Contingent Capital II with the commercial register with the proviso that entry of the revocation of the existing Contingent Capital II only occurs once it is certain that the resolution on Article 5 (5) of the Articles of Association will be entered directly afterwards.

**Report of the Executive Board to the Annual General Meeting on agenda item 8 in accordance with Section 278 (3) and Section 221 (4) sentence 2 AktG in conjunction with Section 186 (4) sentence 2 AktG**

The Executive Board was authorized by resolution of the Annual General Meeting on May 9, 2014 under agenda item 10, to issue warrant and/or convertible bonds, participation rights or participation bonds, or a combination of these instruments to a total nominal amount of up to € 2,000,000,000.00. A Contingent Capital II amounting to € 16,801,491.20 was created to service the authorization in 2014 (Article 5 (5) of the Articles of Association), and has continued up to the date of publication of the invitation to this Annual General Meeting in its original amount.

The Executive Board and the Supervisory Board inter alia consider it expedient to increase flexibility to revoke the existing authorization from 2014 as well as the existing Contingent Capital II and to replace it with a new authorization and a new contingent capital (Contingent Capital II). The proposed authorization to issue warrant and/or convertible bonds, participation rights or participation bonds or a combination of these instruments ("bonds") for the total nominal amount of up to € 2,000,000,000.00 and to create associated contingent capital of up to € 16,801,491.20 should expand the options of the company for financing its activities described in more detail below and allow the Executive Board access to flexible and timely financing in the interests of the company, especially if there are favorable market conditions. The authorization is to be issued for a five-year term until April 26, 2023.

**Benefits of the financing instrument**

Adequate capital resources are an essential foundation for business development and a successful market presence of the company. By issuing convertible and/or warrant bonds ("bonds"), the company can, depending on the current market conditions, use attractive financing options and terms raise capital for the ccompany at low interest rates. Conversion and/or warrant premiums achieved benefit the company. In addition, the issuance of bonds, possibly in conjunction with other instruments such as a capital increase, may open up new investor groups. The possibility provided of also establishing conversion right and/or option rights in addition to granting conversion obligations and/or option obligations broadens the scope of this financing instrument. The proposed authorization provides the company with the flexibility to issue the bonds itself or through a subsidiary of the company. Bonds can also be issued in other legal currencies of OECD countries other than euros. In addition, the fulfillment of the bonds should be possible by a delivery of shares of the company or payment of an equivalent value in cashCompany.

**Issue price**

With the exception of cases where a substitution authorization or an option obligation or conversion obligation is stilpulated, the issue price for the new shares must

correspond to at least 80% of the market price of the company's no-par-value shares immediately prior to the issue of the bonds that are attached with the option rights or conversion rights. By allowing a surcharge (which may be increased depending on the term of the warrant or convertible bond), the condition for this is created, so that the conditions of the convertible or warrant bonds may take the respective changes in market circumstances at the time that they are issued into consideration.

In the cases of a substitution authorization or a option/conversion obligation, the issue price of the new shares pursuant to the bond conditions can be at least either the minimum price stated above, or correspond to the volume-weighted average exchange price of the company's no-par-value shares in Xetra trading (or a comparable successor system on the Frankfurt Stock Exchange) on the last ten trading days before the day of final maturity or the other defined point, even if this average price is under the minimum price stated above (80%).

Without prejudice to Section 9 (1) and Section 199 (2) AktG, the conversion/option price may be adjusted as a result of a dilution protection clause or adjustment clause in accordance with the further provisions of the conditions underlying the respective bond, if in particular the company changes its capital structure during the term of the bonds, e.g. through a capital increase, a capital decrease or a stock split. Moreover dilution protection and/or other adjustments may be provided for in connection with dividend payouts, the issue of additional convertible and/or warrant bonds, transformation measures, and in the case of other events affecting the value of the options or conversion rights that may occur during the term of the bonds (e.g. control gained by a third party). Dilution protection or other adjustments may be provided in particular by granting subscription rights, by changing the conversion or option price, and by amending or introducing cash components.

### **Subscription rights of shareholders**

The shareholders are generally entitled to the statutory subscription right on the bonds (Sections 278 (3), 221 (4) in conjunction with Section 186 (1) AktG). To facilitate the handling, the option should also be utilized to issue the bonds to a bank or a consortium of banks on the condition that the bonds are offered to the shareholders, according to their subscription right (indirect subscription rights as defined by Section 186 (5) AktG).

### **Exclusion of subscription rights in the case of fractional amounts**

The exclusion of subscription rights in the case of fractional amounts permits the utilization of the requested authorization with full amounts. This facilitates the handling of the shareholders' subscription right. This case of excluding subscription rights is thus in the interests of the company and the shareholders.

**Exclusion of subscription rights for outstanding warrant and convertible bonds**

The exclusion of subscription rights in favor of bearers, or creditors of the conversion rights/obligations and option rights/obligations already issued, has the advantage that the conversion or option price for the conversion rights or option rights or conversion rights or conversion obligations already issued does not need to be reduced, thus permitting a higher total inflow of funds. This case of excluding subscription rights as well is thus in the interests of the company and the shareholders.

**Exclusion of subscription rights when issuing bonds for contributions in kind**

The bonds can also be issued in exchange for contributions in kind, provided this is in the interest of the company. In this case, the Executive Board is authorized, with the approval of the Supervisory Board, to exclude the subscription rights of the shareholders, provided that the value of the contribution in kind is appropriate in relation to the theoretical fair market value of the bonds as calculated Debt Instruments in suitable individual cases as currency for acquisitions, for e.g., in connection with the acquisition of companies, participations (although these can also be achieved via merger or other legal transformation measures) or other assets.

The option of offering bonds as a consideration is essential, especially in the international competition for interesting acquisition targets, and creates the necessary scope to take advantage of opportunities arising to acquire companies, participations in companies or other assets while preserving liquidity. This can also be useful from the point of view of an optimal financing structure. In each individual case the Executive Board will carefully examine whether to use the authorization to issue bonds with conversion rights or conversion obligations and option rights or option obligations in exchange for contributions in kind, with the exclusion of subscription rights. The Executive Board will only do so when it is in the interests of the company and therefore its shareholders.

**Exclusion of subscription rights in accordance with Sections 278 (3), 221 (4), 186 (3) sentence 4 AktG**

Furthermore, the Executive Board shall be authorized, with the approval of the Supervisory Board, to fully exclude shareholders' subscription rights if the issue price of these bonds is not materially lower than the market price. As a result, the company obtains the option to exploit favorable market situations at very short notice and quickly, and to achieve better terms when defining interest rates, option or conversion prices and issue prices of warrant or convertible bonds by stipulating terms in line with the market. It would not be possible to stipulate terms in line with the market and to achieve uncomplicated placement of the shares if the subscription rights were preserved. Section 186 (2) AktG does permit publication of the subscription price (and thus the publication of the terms applicable to the bonds) up until three days before the end of the subscription period. However, given the frequently observed volatility

on the stock markets, there is still a market risk lasting several days. This leads to precautionary discounts when setting the terms of the bond, thus creating terms that are not in line with the market. Also when subscription rights exist, successful placement with third parties is endangered or can involve additional expense due to the uncertainty about how they will be exercised (subscription behavior). Lastly, if subscription rights are granted, owing to the length of the subscription period the company cannot respond at short notice to favorable or unfavorable changes in market circumstances, but is exposed to declining share prices during the subscription period, which can result in an unfavorable procurement of capital for the company.

In this case of complete exclusion of subscription rights, in accordance with Sections 278 (3), 221 (4) sentence 2 AktG, the provisions of Section 186 (3) sentence 4 AktG apply *mutatis mutandis*. The limit for the exclusion of subscription rights, regulated therein, of 10% of the share capital is to be complied with, pursuant to the content of the resolution. The volume of maximum contingent capital, which in this case is to be made available to ensure the option rights or conversion rights and/or option obligations or conversion obligations, amounts to just under 10% of the company's current share capital. A corresponding provision in the authorization resolution likewise ensures that, even in the case of a capital reduction, the 10% limit is not exceeded, since pursuant to the authorization to exclude subscription rights, exceeding 10% of the share capital is expressly not permitted, neither at the time the authorization becomes effective nor – if this amount is lower – at the time that this authorization is exercised.

When determining this limit of 10% of the registered share capital, shares shall also be taken into account which, during the term of this authorization until its exercise, are issued or sold by direct or analogous application of § 186 (3) sentence 4 AktG. Furthermore, also shares to be issued or granted on the basis of a convertible bond or warrant bond issued during the term of this authorization with the exclusion of shareholders' subscription rights in accordance with § 186 (3) sentence 4 shall count towards this limit of 10% of the registered share capital. This way, it is ensured that no bonds are issued with the exclusion of the shareholders' subscription rights if this would result in the exclusion of a subscription right of the shareholder for new or own shares of the Company within a scope of more than 10% of the currently outstanding shares, taking into consideration any capital increases or certain placements of own shares in direct, *mutatis mutandis* or analogous application of § 186 (3) sentence 4 AktG.

Section 186 (3) sentence 4 AktG also indicates that the issue price may not be materially lower than the market price. This aims to ensure that there is no notable economic dilution of the share value. Whether such a diluting effect occurs for the issue without subscription rights of warrant bonds, option participation certificates, option participation bonds, convertible bonds, convertible participation certificates or convertible participation bonds can be determined by calculating the hypothetical stock market price of the warrant bonds, option participation certificates, option



participation bonds, convertible bonds, convertible participation certificates or convertible participation bonds on the basis of mathematical methods, and comparing it against the issue price. If, after due examination, this issue price is only insignificantly below the hypothetical price on the stock market at the time of issue of the bonds, then in line with the meaning and purpose of Section 186 (3) sentence 4 AktG, an exclusion of subscription rights is permitted due to the only insignificant discount. The resolution thus stipulates that after due examination and before the issue of bonds, the Executive Board must be of the opinion that the expected issue price will not lead to any notable dilution of the share value as the issue price of the bonds is not significantly lower than their hypothetical market value determined in accordance with recognized methods, in particular financial mathematical methods. The calculated market price of a subscription right would then sink to almost nil, so that the shareholders do not suffer any notable economic disadvantage as a result of the exclusion of subscription rights. This ensures that there is no notable dilution of the value of shares as a result of the exclusion of subscription rights.

In addition, by buying shares on the stock market the shareholders can retain their stake in the company's share capital at any time, even after exercising conversion or option rights. In contrast, the authorization to exclude subscription rights permits the company to stipulate terms in line with the market, the highest level of possible security in terms of placement with third parties and to take advantage of favorable market situations at short notice.

**Exclusion of subscription rights for participation rights or participation bonds with no option right or conversion right or obligation**

If participation rights or participation bonds are to be issued without option or conversion rights or obligations, the Executive Board shall be authorized, with the approval of the Supervisory Board, to exclude in full the subscription rights of the shareholders, if these participation rights or participation bonds have the features of obligations, i.e. they do not substantiate membership rights in the company, do not grant an interest in liquidation proceeds or do not calculate the amount of interest on the basis of the amount of the net income for the year, the net retained profit or the dividend. A further requirement is that the interest and the issue amount of the participation rights or participation bonds must be in line with current market conditions at the time of issue. If the cited conditions are fulfilled, then the shareholders do not suffer any disadvantage as a result of the exclusion of subscription rights, since the participation rights or participation bonds do not substantiate membership rights, or grant any stake of liquidation proceeds or the profit of the company.

**Limiting the total volume of capital increases with no subscription rights**

Under this authorization, bonds may only be issued in exchange for cash and in-kind considerations with the exclusion of subscription rights if the total of the new shares

of the company to be issued on the basis of such bonds does not exceed in aggregate a calculated portion of 20 percent of the share capital, either at the time when such authorization takes effect or – in the event this amount is lower – at the time this authorization is utilized. The company's shares that were issued during the term of this authorization based on other capital measures with the exclusion of shareholders' subscription rights should be credited against this maximum level of 20 percent. This includes in particular shares issued or granted from authorized capital or in connection with a bond issued during the term of this authorization on the basis of the utilization of another authorization with the exclusion of the subscription right. Applying these credits limits a possible dilution of voting rights for the shareholders excluded from subscription rights.

The Contingent Capital II is required in order to be able to settle the conversion and/or option rights and conversion and/or option obligations or tender rights with respect to shares of the company in connection with bonds, unless other types of fulfillment are used to ensure delivery.

There are currently no concrete plans to utilize the authorization to issue convertible bonds and/or warrant bonds. The Executive Board will carefully review in each case whether the use of the authorization is in the interests of the company and its shareholders. It will only exclude the subscription rights of the shareholders if this is in the well-understood interest of the company.

The Executive Board will inform the Annual General Meeting about each use of this authorization at the subsequent Annual General Meeting.

**9. Resolution on the approval of a Hive-Down and Transfer Agreement regarding the transfer of the operational activities of the Company in the business sectors Healthcare, Life Science and Performance Materials to subsidiaries, of a Hive-Down and Transfer Agreement regarding the transfer of the shares (*Geschäftsanteile*) of the three acquiring subsidiaries to intermediate holding companies and on three Business Lease Agreements**

The operational activities of the Healthcare, Life Science, and Performance Materials business sectors operated within Merck KGaA, Darmstadt, Germany, and the associated assets and liabilities (hereinafter referred to as the **Operating Unit KGaA Healthcare**, the **Operating Unit KGaA Life Science**, and the **Operating Unit KGaA Performance Materials**) are to be hived-down by Merck KGaA Darmstadt, Germany to the three subsidiaries specified below, pursuant to the provisions of the German Reorganization Act [*Umwandlungsgesetz*] (the **Operational Hive-Down**):

- The Operating Unit KGaA Healthcare to Merck Healthcare Germany GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt,

Germany, registered in the commercial register of the Darmstadt Local Court under HRB 96240 (hereinafter also referred to as **HC OpCo**);

- the Operating Unit KGaA Life Science to Merck Life Science Germany GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany, registered in the commercial register of the Darmstadt Local Court under HRB 93771 (hereinafter also referred to as **LS OpCo**);
- the Operating Unit KGaA Performance Materials to Merck Performance Materials Germany GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany, registered in the commercial register of the Darmstadt Local Court under HRB 93768 (hereinafter also referred to as **PM OpCo**).

Domination and and profit and loss transfer agreements have been entered into between Merck KGaA, Darmstadt, Germany as the controlling company and each of the subsidiaries indicated.

The shares of HC OpCo, LS OpCo and PM OpCo are to be transferred immediately after the Operational Hive-Down becoming effective, also as indicated in the provisions of the German Reorganization Act, to the three intermediate holding companies specified below (the **Holding Hive-Down**):

- The company shares of HC OpCo to Merck Healthcare Holding GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany, registered in the commercial register of the Darmstadt Local Court under HRB 97141 (hereinafter also referred to as **HC HoldCo**);
- the company shares of LS OpCo to Merck Life Science Holding GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany, registered in the commercial register of the Darmstadt Local Court under HRB 97051 (hereinafter also referred to as **LS HoldCo**);
- the company shares of PM OpCo to Merck Performance Materials Holding GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany, registered in the commercial register of the Darmstadt Local Court under HRB 97192 (hereinafter also referred to as **PM HoldCo**).

The global Healthcare, Life Science, and Performance Materials Business Sectors of Merck KGaA, Darmstadt, Germany (hereinafter also referred to as **KGaA**) act on different markets with distinct business models and products. These circumstances lead to business processes that differ significantly from each other and consequently also result in varying requirements regarding the IT systems in which these business processes are captured, planned, and controlled (so-called **Enterprise Resource Planning Systems** or **ERP systems**). The Executive Board of KGaA decided already in 2015 to meet these divergent requirements by implementing three global, business sector-specific ERP systems. The transfer of the Operating Units to three separate entities supports the introduction of these global, business sector-specific 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 more quickly and with flexibility to available strategic development options and, in addition, the adaptability of the Business Sectors to changes in the market environment. By aligning the legal entity structure of KGaA, the Group's global innovation and growth strategy is therefore more consequently reflected also in German legal entity structures.

Since the technical requirements for introducing the (businesssector-specific) ERP systems do currently not exist at HC OpCo, LS OpCo and PM OpCo 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 HC OpCo, LS OpCo and PM OpCo are, until the respective ERP introduction, temporarily leased back to KGaA on the basis of business lease agreements entered into with the relevant OpCos. Until the introduction of the respective ERP system, KGaA will therefore continue to manage the hived-down businesses in its own name and on its own account. The business leases on which this lease-back is based require, as "other enterprise agreements" within the meaning of Section 292 AktG, the approval of the shareholders' meetings of HC OpCo, LS OpCo and PM OpCo, as they each enter into the "typical" obligation (*vertragstypische Leistung*) as lessees. An approval of the Annual General Meeting of KGaA is, in principle, not required. However, as the business lease agreements have a direct economic and legal connection with the Operational Hive-Down, also the business lease agreements shall be submitted to the Annual General Meeting of KGaA for approval.

To implement the Operational Hive-Down, the Holding Hive-Down and the respective Business Leases, which shall be implemented only together and shall be proposed to the shareholders meeting for approval as a joint transaction, the KGaA concluded on March 2, 2018 in notarial form two Hive-Down and Transfer Agreements and three Business Lease Agreements with the counterparts mentioned above, respectively (Deed No. 92/2018 of the Notary Public Dr. Andreas von Werder in Frankfurt am Main). The agreement on the Operational Hive-down is set-out or explained in Section B, the agreement on the Holding Hive-down in Section C, and the business lease agreements in Section D of this invitation. The management of KGaA and the management of HC OpCo, LS OpCo and PM OpCo as well as HC HoldCo, LS HoldCo and PM HoldCo have outlined and explained the Operational Hive-Down, the Holding Hive-Down and the Business Lease under legal and economic aspects, in a consolidated and joint report. This report is also deemed a hive-down report as defined in Sections 123 (3) number 1, 125 and 127 UmwG on the Operational Hive-Down and the Holding Hive-Down as well as a report on the conclusion for each of the

Business Lease Agreements according to Section 293a (1) AktG. In addition, the Business Lease Agreements were reviewed, as a precautionary measure, by Warth & Klein Grant Thornton AG, Düsseldorf, as court appointed auditor within the meaning of Section 293b AktG. The auditor has rendered a written report on the result of its review.

The joint report and the reports prepared by the court appointed auditor will be accessible on the company's website together with other documents to be published and can also be inspected at the Company from the calling of the Annual General Meeting. Upon request, each shareholder will receive a copy of the abovementioned documents without undue delay and free of charge. The relevant details are set-out in the section "Information and documents on the Annual General Meeting; website".

The Executive Board and the Supervisory Board propose that the following resolution is passed:

The Hive-Down and Transfer Agreement dated March 2, 2018 between the Company as transferring entity and (i) Merck Healthcare Germany GmbH, Darmstadt, Germany, (ii) Merck Life Science Germany GmbH, Darmstadt, Germany, and (iii) Merck Performance Materials Germany GmbH, Darmstadt, Germany, each of which is an affiliate of Merck KGaA, Darmstadt, Germany, (in the following each an OpCo) as acquiring entities (Operational Hive-down Agreement), the Hive-Down and Transfer Agreement dated March 2, 2018 between the Company as the transferring entity and (i) Merck Healthcare Holding GmbH, Darmstadt, Germany, (ii) Merck Life Science Holding GmbH, Darmstadt, Germany, and (iii) Merck Performance Materials Holding GmbH, Darmstadt, Germany, each an affiliated company of Merck KGaA, Darmstadt, Germany, as the acquiring entities (Holding Hive-down Agreement) and the three Business Lease Agreements dated March 2, 2018 between each of the OpCos as lessors and the Company as lessee (all of the aforementioned agreements notarized in the Deed-No. 92/2018 of the notary Dr. Andreas von Werder in Frankfurt am Main) are hereby approved.

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### **Requirements for participating in the Annual General Meeting and exercising voting rights**

#### **1. Registration and evidence of share ownership**

In accordance with Article 22 (1) and (2) of the Articles of Association of the company, to be eligible to participate in the Annual General Meeting and to exercise voting rights, shareholders must have registered with the company by no later than **April 20, 2018, 24:00 CEST** under the following address and submitted evidence of

share ownership related to the beginning of **April 6, 2018** (0:00 CEST, “record date”) and issued by the custodial bank or financial institute to the following address:

**Merck KGaA**  
**Darmstadt, Germany**  
**c/o Deutsche Bank AG**  
**Securities Production**  
**General Meetings**  
**Postbox 20 01 07**  
**60605 Frankfurt am Main**  
**Germany**  
**or telefax: +49 69 12012-86045**  
**or email: wp.hv@db-is.com**

Registration and evidence of share ownership must be in text form (Section 126b German Civil Code - BGB) in either German or English.

Following receipt of registration and evidence of share ownership, the admission ticket to the Annual General Meeting will be sent to the shareholder entitled to participate in the Annual General Meeting or his/her authorized representative. In order to ensure the timely receipt of the admission tickets, we kindly request shareholders to be sure to send their registration and evidence of share ownership to the company in a timely manner. In contrast to registration, however, the admission ticket not required for participation, instead serving merely to simplify the process at admission control for entry to the General Meeting.

## **2. Meaning of the record date**

The record date is the date that determines the extent and exercise of participation and voting rights at the Annual General Meeting. In relation to the company, individuals who wish to participate in the Annual General Meeting or to exercise voting rights must be deemed to be shareholders by having submitted evidence of share ownership by the record date. Eligibility to participate or the extent of voting rights is determined exclusively by share ownership on the record date. Changes in share ownership after the record date have no significance here. The record date does not involve a suspension of the ability to sell the shares held. Also in the event of the complete or partial sale of the shares owned after the record date, share ownership on the record date is exclusively definitive for participation and exercising voting rights. This means that the sale of shares after the record date has no impact on eligibility to participate or to exercise voting rights. This applies accordingly to the acquisition of additional shares after the record date. Persons who do not yet own shares as of the record date, and only become shareholders thereafter, are only entitled to participate or to vote for the shares they hold insofar as they are authorized by the previous shareholder to represent them or to exercise their rights on their behalf. The record date is of no relevance to a possible dividend entitlement.

## **3. Voting by proxy**

Shareholders who do not wish to attend the Annual General Meeting personally may also have their voting rights exercised by an authorized representative, e.g. by a bank or shareholder association, or by a proxy appointed by the company who is bound to vote in accordance with the shareholder's instructions or by another third party. Pursuant to the aforementioned provisions, timely registration and evidence of share ownership are also required in the case of voting right proxies.

The authorization, its revocation and evidence thereof vis-à-vis the company must be given in text form or electronically via a Web-based authorization system on the company's website ([www.merckkgaa-darmstadt-germany.com/agm](http://www.merckkgaa-darmstadt-germany.com/agm)) if neither a credit institution, an institution or an undertaking or equal status within the meaning of Sections 135 (10) and 125 (5) AktG nor a shareholder association or person within the meaning of Section 135 (8) AktG is authorized to exercise the voting rights.

Shareholders wishing to authorize a proxy are kindly requested to use the form provided by the company. It is sent to persons who register correctly together with the admission ticket.

Shareholders can use the Web-supported proxy authorization system for proxy authorization. In order to use the Web-supported authorization system, it is necessary to enter the admission ticket number as well as a special code that can also be found on the admission ticket.

The Web-supported authorization system simultaneously serves as an electronic means of transmitting evidence to the company of having appointed a proxy. For



organizational reasons, the use of the Web-supported authorization system on the day of the Annual General Meeting (April 27, 2018) can only be offered until the end of the speech by the Chairman of the Executive Board.

The authorization, its revocation and evidence of having authorized a proxy can also be transmitted to the company prior to the Annual General Meeting by surface mail, by fax or by e-mail to the following address:

**Merck KGaA**  
**Darmstadt, Germany**  
**c/o Computershare Operations Center**  
**80249 Munich**  
**Germany**  
**or telefax: +49 89 30903-74675**  
**or email: MRK-hv2018@computershare.de**

Providing evidence to the company of having authorized a proxy can also proceed on the day of the Annual General Meeting if the proxy presents the evidence (e.g. the original or a copy of the authorization) at the registration desk.

When authorizing credit institutions or institutes or companies of equal status pursuant to Section 135 (10) in conjunction with Section 125 (5) AktG as well as shareholder's associations or persons of equal status pursuant to Section 135 (8) AktG to exercise voting rights, the authorization must be recorded by the proxy holder in a verifiable manner. The authorization must be completed in full and may only contain statements related to the exercise of voting rights. Shareholders wishing to authorize credit institutions or institutes or companies of equal status pursuant to Section 135 (10) in conjunction with Section 125 (5) AktG as well as shareholder's associations or persons of equal status pursuant to Section 135 (8) AktG should come to an agreement with this party about the form of the authorization.

In addition, we continue to offer our shareholders the possibility to exercise their voting rights through a proxy appointed by our company. For this purpose, these proxies must be given the required authorization and instructions on how the votes are to be cast. The proxies are obliged to vote in line with the instructions given to them; without instructions from the shareholder, the proxies appointed by the company are not authorized to exercise the shareholder's voting rights. In case of absence of express and clear instructions, the proxy representative specified by the company shall abstain from voting on the relevant voting item. They will not accept any instructions relating to requests to speak, asking questions or bringing forward motions or nominations, or the filing of objections against resolutions by the General Meeting.

Prior to the Annual General Meeting, authorizations and instructions to the proxies appointed by the company can be granted electronically via the form entitled "Authorizations and Instructions for proxy voting by representatives appointed by the



company", which can be found on the admission ticket which is sent to shareholders after registration. Authorizations and instructions to the proxies appointed by the company that are submitted to the company by surface post, by fax or by e-mail must be received by the company no later than April 26, 2018 (15:00 CEST) at the following address:

**Merck KGaA**  
**Darmstadt, Germany**  
**c/o Computershare Operations Center**  
**80249 Munich**  
**Germany**  
**or telefax: +49 89 30903-74675**  
**or email: MRK-hv2018@computershare.de**

The same applies if shareholders wish to revoke the authorization granted to the proxy appointed by the company via the aforementioned procedure. Authorizations and instructions may also be granted, amended or revoked via the Web-based authorization system even during the Annual General Meeting (April 27, 2018) until the Chairman of the Executive Board has completed his speech.

Also in the event of the shareholder being represented by a third party or by the proxy appointed by the company, it is necessary to register and to submit evidence of share ownership before the specified deadlines as described in the foregoing.

If the shareholder authorizes more than one person, the company may reject one or more of them.

Shareholders will receive further details on participating in the Annual General Meeting as well as on granting authorization and issuing voting instructions together with the admission ticket or by visiting the website of the company ([www.merckkgaa-darmstadt-germany.com/agm](http://www.merckkgaa-darmstadt-germany.com/agm)).

**Disclosure of rights of shareholders in accordance with**  
**Section 278 (3) in conjunction with Sections 122 (2), 126 (1),**  
**127, 131 (1) AktG**

**1. Motions to add agenda items pursuant to Sections 278 (3) and**  
**122 (2) AktG**

Pursuant to Sections 278 (3) and 122 (2) AktG, shareholders whose shares amount in aggregate to not less than a twentieth of the share capital or represent an amount of the share capital corresponding to €500,000.00, may demand that items are put on the agenda and published. Each new item shall be accompanied by an explanation or a draft proposal. Such requests are to be made in writing and must be received by the company at least 30 days before the General Meeting, i.e., at the latest by the end of March 27, 2018 (24:00 CEST) at the following address:

**Merck KGaA**  
**Darmstadt, Germany**  
**- HV-Büro -**  
**Frankfurter Strasse 250**  
**64293 Darmstadt**  
**Germany**

Those submitting such requests must document that they have been the owners of the shares for the duration of at least 90 days prior to the day of the receipt of the request and hold the shares until such time as a decision of the Executive Board is rendered regarding their request (Section 278 (3), Section 122 (2), Section 122 (1) sentence 3 AktG and Section 70 AktG).

The announcement and provision of requests for supplements is carried out in the same way as convening notices.

**2. Motions and nominations by shareholders pursuant to Sections 278 (3), 126 (1) and 127 AktG**

Shareholders of the company may submit countermotions against proposals of the Executive Board and the Supervisory Board with respect to specific Agenda Items as well as nominations for the election of the auditor. If countermotions are meant to be made accessible, they must include an explanatory statement; nominations do not require an explanatory statement.

Any countermotions and nominations received by the company at the following address no later than 14 days before the day of the General Meeting, i.e. by April 12, 2018, 24:00 (CEST), will be published immediately after receipt on the internet at ([www.merckkgaa-darmstadt-germany.com/agm](http://www.merckkgaa-darmstadt-germany.com/agm)) including the name of the shareholder and – in case of motions – including the explanatory statement under the further conditions of Sections 278 (3), 126 and 127 AktG. Possible statements by the administration will also be published at the same internet address.

Countermotions to the Agenda and nominations are to be directed exclusively to the following address of the company:

**Merck KGaA**  
**Darmstadt, Germany**  
**- HV-Büro -**  
**Frankfurter Strasse 250**  
**64293 Darmstadt**  
**Germany**  
**or telefax: +49 6151 72-9877**  
**or email: [hauptversammlung@merckkgaa-darmstadt-germany.com](mailto:hauptversammlung@merckkgaa-darmstadt-germany.com)**

Any countermotions sent to any other addresses cannot be considered.

### **3. Shareholders' right to information in accordance with Section 131 (1) AktG**

Upon request, every shareholder will be provided with information by the Executive Board at the Annual General Meeting regarding the company's affairs, to the extent that such information is necessary to permit a proper evaluation of an agenda item. The duty to provide information also extends to the company's legal and business relations with any affiliate as well as to the situation of the Group and the entities included in the consolidated financial statements.

### **4. Further details on the rights of shareholders**

Further details on the rights of shareholders pursuant to Section 278 (3) AktG in conjunction with Sections 122 (2), 126 (2), 126 (1), 127, and 131 (1) AktG can be found on the website of the company ([www.merckkgaa-darmstadt-germany.com/agm](http://www.merckkgaa-darmstadt-germany.com/agm)).

#### **Information and Documents for the Annual General Meeting; company website**

The information pursuant to Section 124a AktG and further information relating to the Annual General Meeting is available on the following website of the company once the Annual General Meeting has been convened:

**[www.merckkgaa-darmstadt-germany.com/agm](http://www.merckkgaa-darmstadt-germany.com/agm)**

In particular, the documents mentioned or referred to in agenda items 1, 8 and 9 are available there.

These documents can also be inspected at the business offices of

**Merck KGaA  
Darmstadt, Germany  
Visitor Reception  
Frankfurter Strasse 131  
64293 Darmstadt  
Germany**

Upon request, each shareholder will receive a copy of the abovementioned documents without undue delay and free of charge. The request is to be sent to the address referred to above in number 2 (Motions by shareholders pursuant to Section 126 (1) AktG).

The documents that are required to be made available will also be accessible and available for inspection during the Annual General Meeting.

Any requests from shareholders for items to be included on the agenda, countermotions and nominations of candidates for election that require publication will also be made available on the aforementioned website.

**Total number of shares and voting rights  
when the General Meeting is convened**

As of the date on which the General Meeting is convened, the subscribed capital of the company amounts to € 168,014,927.60 (in words: one hundred and sixty-eight million, fourteen thousand nine hundred twenty-seven euros and sixty cents), divided into 129,242,251 no par value bearer shares plus one registered share. Each of the total number of 129,242,252 shares grants the holder one vote, which means that as of the date on which the General Meeting is convened, 129,242,252 voting rights exist.

**Broadcasting of the Annual General Meeting  
on the Web**

As authorized by the Chairman of the Meeting, all shareholders as well as interested members of the public can follow the Annual General Meeting live on the website of the company ([www.merckkgaa-darmstadt-germany.com/agm](http://www.merckkgaa-darmstadt-germany.com/agm)) on April 27, 2018 from 10:00 a.m. CEST until the Chairman of the Executive Board completes his speech. The speech by the Chairman of the Executive Board as well as the voting results will likewise be published on the aforementioned website after the Annual General Meeting.

Darmstadt, Germany, March 2018

Merck Kommanditgesellschaft auf Aktien

The Executive Board

## Section B.

Hive-down and Transfer Agreement between Merck KGaA, Darmstadt, Germany and Merck Healthcare Germany GmbH, Darmstadt, Germany, Merck Life Science Germany GmbH, Darmstadt, Germany, and Merck Performance Materials Germany GmbH, Darmstadt, Germany, all affiliated companies of Merck KGaA, Darmstadt, Germany, dated March 2, 2018 (Operational Hive-down Agreement as Part A. of Deed No. 92/2018 of the notary public Dr. Andreas von Werder in Frankfurt am Main, Germany)

The text of the agreement reads as follows:

### **Hive-down and Transfer Agreement**

between

**Merck KGaA, Darmstadt, Germany**

as the transferring entity

and

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

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

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

as the acquiring entities

**(Operational Hive-down)**

### **Preamble**

- (1) Merck Kommanditgesellschaft auf Aktien, Darmstadt, Germany (**KGaA**, or **Merck KGaA, Darmstadt, Germany**) 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*).
- a) In its Group-wide Healthcare business sector (**Healthcare Business Sector**), the Group develops, produces, and markets prescription and OTC pharmaceuticals to treat illnesses, as well as various non-prescription OTC dietary supplements and medical devices. The Healthcare Business Sector includes the four businesses Biopharma, Consumer Health, Allergopharma, and (since 2017) Medical Devices.
- b) In the Group-wide Life Science business sector (**Life Science Business Sector**), the Group develops, produces and markets products that are used in the research, development and production of pharmaceuticals of chemical or biotechnological origin as well as in research and application laboratories and in the food and beverage industry. The Life Science Business Sector includes the three business units Research Solutions, Process Solutions, and Applied Solutions.
- c) In the Group-wide Performance Materials business sector (**Performance Materials Business Sector**), the Group operates its specialty chemicals business. This portfolio includes the development of high-tech chemicals for applications in fields such as consumer electronics, lighting, coatings, printing technology, paints, plastics, and cosmetics. The Performance Materials Business Sector consists of the four business units Display Materials, Integrated Circuit Materials, Pigments & Functional Materials, and Advanced Technologies. During the course of 2018, these four business units are to be consolidated into the three business units Display Solutions, Semiconductor Solutions, and Surface Solutions.
- (3) The operational activities of the Healthcare, Life Science, and Performance Materials Business Sectors operated within KGaA at the sites in Darmstadt and Gernsheim and described particularly in **Annex V.3**, along with the related 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, irrespective of the Business Sector, one **Operating Unit** or collectively **Operating Units**), are to be hived down in accordance with Sec. 20 of the German Reorganization Tax Act (**UmwStG**) to

three separate subsidiaries via a hive-down by absorption pursuant to Sec. 123 (3) (1) German Reorganization Act (**UmwG**) by way of partial universal legal succession and partly by measures of transferring or granting beneficial ownership (the **Operational Hive-down**). The Operational Hive-down does not cover (i) the KGaA's subsidiaries and associated companies (apart from a few exceptions), (ii) the KGaA's the land and buildings, and (iii) the KGaA's central group functions (**KGaA Group Functions**), (iv) the site-related functions and central infrastructure facilities of KGaA on the premises in Darmstadt and Gernsheim (**KGaA Site Operations**), as well as (v) other local functions, in particular the KGaA Betriebskrankenkasse (*Health Insurance Fund*), KGaA Zeitservice (*Time Service*), and the Ausbildung & Learning (*Training & Learning*) Germany unit (**KGaA Local Functions**).

- (4) The acquiring entities 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 with a share capital upon conclusion of this Hive-down Agreement of EUR 25,000.00 and each of whose only company share is held by KGaA, are hereinafter referred to, also regardless of the Business Sector, as **OpCos** or **acquiring entities** and/or each individually as **OpCo** or **acquiring entity**. Domination and profit and loss transfer agreements (*Beherrschungs- und Gewinnabführungsverträge*) have been entered into between KGaA as the controlling company and each of the OpCos as the controlled companies.

- (5) Immediately after the Operational Hive-down becomes effective, all company shares held by KGaA in each of the OpCos, including the company shares granted as consideration under the Operational Hive-down, shall be hived down to separate holding companies by way of a hive-down by absorption pursuant to Sec. 123 (3) (1) *UmwG* (the **Holding Hive-down**). The acquiring entities shall be

- a) for the company shares of HC OpCo, Merck Healthcare Holding GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany (**HC HoldCo**), registered in the commercial register of the Darmstadt local court under HRB 97141;
- b) for the company shares of LS OpCo, Merck Life Science Holding GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany (**LS HoldCo**), registered in the commercial register of the Darmstadt local court under HRB 97051; and
- c) for the company shares of PM OpCo, Merck Performance Materials Holding GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany (**PM HoldCo**), 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 conclusion of this Hive-down Agreement of EUR 25,000.00 and each of whose only company share is held by KGaA, are hereinafter referred to, also regardless of the Business Sector, as **HoldCos** and each individually as **HoldCo**. The agreement on the Holding Hive-down shall also be concluded in a notarized form between KGaA and the HoldCos (Part B. of this notarial deed, the **Holding Hive-down Agreement**).

- (6) The Operational Hive-down and the resulting separation of the operational activities of the Healthcare, Life Science, and Performance Materials Business Sectors operated within KGaA in Darmstadt and Gernsheim into three subsidiaries supports 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 Operating Units' business activities 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.
- (7) The remaining German and foreign subsidiaries of KGaA – and thus the by far largest part of its balance sheet assets – are not subject to the hive-down measures. The hive-down measures are also not aimed at establishing "global sub-groups" under separate business sector holdings. The strategic management of the global Business Sectors Healthcare, Life Science, and Performance Materials continues to be carried out directly by KGaA.



- (8) Since the technical requirements for the introduction of the (business sector-specific) ERP systems do not exist yet at the OpCos – the introduction is planned for the period from early 2019 to 2020, depending on the Business Sector, the business activities hived down to the OpCos are to 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 executed today in notarized form (the **Business Lease Agreements**). Upon introduction of the ERP system for the respective OpCo, the corresponding business lease shall be terminated.
- (9) 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 OpCo, LS OpCo, and PM OpCo as the acquiring entities (collectively, the **Parties**), agree as follows:

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

**§ 1**

**Operational Hive-down**

- 1.1 KGaA as the transferring entity shall transfer by way of a hive-down by absorption pursuant to Sec. 123 (3) (1) *UmwG* and according to the further stipulations of this Hive-down Agreement (e.g., provisions for the transfer or granting of beneficial ownership)
- a) the Operating Unit KGaA Healthcare with the assets described in § 3 to § 14 as a whole to HC OpCo as the acquiring entity against a new company share in HC OpCo to KGaA pursuant to § 40.1.a of this Hive-down Agreement; additional (other) considerations in terms of Sec. 20 (2) s. 2 (4), s. 4 *UmwStG* shall not be granted;
  - b) the Operating Unit KGaA Life Science with the assets described in § 15 to § 26 as a whole to LS OpCo as the acquiring entity against a new company share in LS OpCo to KGaA pursuant to § 40.1.b of this Hive-down Agreement; additional (other) considerations in terms of Sec. 20 (2) s. 2 (4), s. 4 *UmwStG* shall not be granted;

- c) the Operating Unit KGaA Performance Materials with the assets described in § 27 to § 38 as a whole to PM OpCo as the acquiring entity against a new company share in PM OpCo to KGaA pursuant to § 40.1.c of this Hive-down Agreement; additional (other) considerations in terms of Sec. 20 (2) s. 2 (4), s. 4 *UmwStG* shall not be granted.

The overall assets and liabilities transferred according to the above paragraphs a) to c) are hereinafter referred to as a whole as the **Operating Assets To Be Transferred**.

- 1.2 The Operational Hive-down and the Operating Assets To Be Transferred include only assets and liabilities items of KGaA. To the extent that reference is made to a Group-wide Business Sector to determine the Operating Assets To Be Transferred, the transfer is limited to the assets and liabilities items of KGaA attributable to this Business Sector. Insofar as the term "**Assets And Liabilities Item**" or "**Assets And Liabilities Items**" is used in this Hive-down Agreement, this shall include, subject to any provisions to the contrary herein, assets and liabilities items of KGaA as set out in Sec. 126 (1) (9) *UmwG*, including intangible assets, tangible assets, contractual relationships, and other legal relationships of any kind, receivables and liabilities, uncertain liabilities, contingent liabilities, and future receivables and liabilities, whose legal basis has already been established.
- 1.3 The Operating Assets To Be Transferred shall in principle be transferred by way of partial universal succession pursuant to Sec. 123 (3) (1), Sec. 131 (1) (1) *UmwG*. In deviation from this, for individual items of the Operating Assets To Be Transferred in this Hive-down Agreement, other transfer methods by transfer or granting (only) of beneficial ownership pursuant to Sec. 39 (2) (1) German Fiscal Code (*Abgabenordnung - AO*) in conjunction with lit. 20.01 (1), in conjunction with lit. 15.07 (2) 2011 German Reorganization Tax Decree (=BMF letter of November 11, 2011, Federal Tax Gazette I 2011 p. 1314 – *2011 UmwSt-Erlass*) (**Beneficial Ownership**) by establishing a trust agreement in the meaning of § 1.4 or by granting a right of use that is irrevocable by ordinary termination, permanent and free of charge (such as e.g., mixed-use software or umbrella brands). Insofar as this is the case, legal title of ownership or formal ownership of rights to these items remains with KGaA, while beneficial ownership of the specific asset shall be transferred to the respective OpCo or "duplicated" by granting a right of use. The same applies, for example, to the transfer of beneficial ownership of the so-called plan assets within the meaning of Sec. 246 (2) (2) German Commercial Code (*Handelsgesetzbuch - HGB*) for securing the CTA-Backed Direct Commitments and the time account agreements, insofar as they are part of the Operating Assets To Be Transferred.
- 1.4 If, pursuant to this Hive-down Agreement, trust agreements are concluded between the Parties, the Parties shall agree that such trust agreements are

entered into under this Agreement and each shall meet the requirements of Sec. 39 (2) (1) AO in accordance with a decision by the German Federal Finance Court (*Bundesfinanzhof - BFH*) dated July 15, 1997 – Case No. VIII R 56/93 (**Trust Agreement**), i.e., in each case there is an obligation of KGaA as the trustee to be subject to instructions and an obligation to return or surrender at any time any trust property upon the request of the respective OpCo as the trustor. In so doing, the trustee's actions shall be carried out in the interest of the third party, the trustor. The trust property shall be assigned to the trustor for tax purposes upon termination of the Transfer Date For Tax Purposes and shall accordingly be disclosed in the trustor's balance sheet (and no longer in KGaA's balance sheet).

## § 2

### **Economic Effective Date, Transfer Date For Tax Purposes, Closing Balance Sheet, Legal Effective Date, continuation of carrying amounts**

- 2.1 The Operational Hive-down described in § 1 shall occur with economic effect as of January 1, 2018, 0:00 hours (**Economic Effective Date**). From this time on, in the internal relationship between KGaA and the individual acquiring entities, the actions and transactions of KGaA which concern the respective transferred assets shall be considered as entered into for the account of the respective acquiring entity. The Parties shall be deemed to be in such a position as if the respective Operating Assets To Be Transferred had already been transferred to the respective acquiring entity on the Economic Effective Date. The transfer date for tax purposes shall be December 31, 2017, 24:00 hours (**Transfer Date For Tax Purposes**). The retroactive effect for tax purposes is carried out at the request of the OpCos in accordance with Sec. 20 (5) s. 1, (6) s. 1 and 2 *UmwStG*.
- 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 Operational Hive-down (**Closing Balance Sheet**).
- 2.3 The acquiring entities will continue to record the Operating Assets To Be Transferred 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. 20 (2) s. 2 *UmwStG*).
- 2.4 The transfer of the Operating Assets To Be Transferred shall be effected *in rem* with effect from the time of the registration of the Operational Hive-down in the commercial register of KGaA (**Legal Effective Date**), unless in an individual case otherwise set forth in this Hive-down Agreement.

## B. Description of the Operating Assets To Be Transferred

### I.

#### Hive-down of the Operating Unit KGaA Healthcare

### § 3

#### Transfer of the assets and liabilities of the Operating Unit KGaA Healthcare

- 3.1 KGaA shall transfer to HC OpCo the entire Operating Unit KGaA Healthcare with all assets and liabilities items of KGaA attributable directly or indirectly, legally or economically to this operating unit (the **Healthcare Assets To Be Transferred**).
- 3.2 The hive-down of the Operating Unit KGaA Healthcare includes the transfer of the "KGaA Healthcare Darmstadt" part of the operation at the Darmstadt site as part of the joint operation Darmstadt/Gernsheim (**Joint Operation Darmstadt/Gernsheim**) (Sec. 126 (1) (9) *UmwG*). The transfer of the employment relationships attributable to this operation is regulated separately in § 11.
- 3.3 The Healthcare Assets To Be Transferred include in particular the assets and liabilities items disclosed in the segment balance sheet of the Operating Unit KGaA Healthcare derived from the Closing Balance Sheet as of January 1, 2018, 0:00 hours (**Healthcare Hive-down Balance Sheet**). The Healthcare Hive-down Balance Sheet is attached to the Hive-down Agreement as **Annex 3.3**. However, the recording the Assets And Liabilities Items of the Healthcare Assets To Be Transferred in the Healthcare Hive-down Balance Sheet is not a prerequisite for their transfer. The Healthcare Assets To Be Transferred also include – subject to deviating provisions in this Agreement – all items, rights, and obligations that are not required to be recorded in the balance sheet or cannot be recorded in the balance sheet, respectively, and are not disclosed in the balance sheet (including warranty risks and other liability relationships) that are attributable to the Operating Unit KGaA Healthcare from an economic perspective, particularly all assets that are attributable to the fiscal operations in line with Sec. 20 (1) *UmwStG* of the Operating Unit KGaA Healthcare that shall be hived down to HC OpCo, each on a "functionally essential operational basis" or as "assets attributable based on economic contexts" in terms of lit. 20.06 s. 1 in conjunction with lit. 15.02 s. 2 2011 *UmwSt-Erlass*.
- 3.4 The Healthcare Assets To Be Transferred include in particular the Assets And Liabilities Items that are described in detail in § 4 to § 14. In addition, the Healthcare Assets To Be Transferred include the plant-related and environmental law approvals attributable to the Operating Unit KGaA Healthcare and specified in § 48.2 as well as drug and product approvals which KGaA holds in favor of HC

OpCo in trust for the duration of the business lease; the details are set forth in § 48.

## § 4 Intangible Assets

IP-related definitions. In the scope of this Hive-down Agreement, the following definitions apply:

**Intangible Assets** refers to all industrial property rights, copyrights, ancillary copyrights, and other legally protected intangible legal positions, but does not refer to know-how (cf. § 5 and § 17 and § 29).

**Trademarks and Brands** refers to brands, trade designations, company names, domains, registered designs, and designs (including registrations for these).

**Patent Rights** refers to patents (including patent-like rights such as patent term extensions and supplementary protection certificates), utility models, and patentable employee inventions (including registrations for these).

**Registered Property Rights** refers to intangible assets to be registered with an official register (e.g., patent office, trademark office, domain administration office) in order to become legally effective. These include, in particular, patents, utility models, brands, domains, and registered designs, as well as the respective registrations for such rights.

4.1 Single Use IP Healthcare. Unless stated otherwise in § 4.2, the Healthcare Assets To Be Transferred include all Intangible Assets attributable exclusively to the Healthcare Business Sector (**Single Use IP Healthcare**), in each case to the extent to which KGaA is authorized to use them at the Legal Effective Date. Unless stated otherwise in § 4.2 these also include all rights of use in Intangible Assets of third parties attributable exclusively to the Healthcare Business Sector, to the extent that KGaA is authorized to use them at the Legal Effective Date.

4.2 Unless stated otherwise in the last paragraph of this § 4.2, Single Use IP Healthcare include in particular

- all Patent Rights of KGaA used exclusively in the Healthcare Business Sector, including all rights of compensation for infringements that occurred before the Legal Effective Date and all claims to enforce the priority on the basis of the respective patent rights (for patent rights held jointly with third parties, the respective share);
- all Trademarks and Brands of KGaA attributed exclusively to the Healthcare Business Sector, including all rights of compensation for infringements that

occurred before the Legal Effective Date (for Trademarks and Brands held jointly with third parties, the respective share);

- all copyrights and ancillary copyrights of KGaA attributed exclusively to the Healthcare Business Sector, and all rights of exploitation of the KGaA in copyrights attributed exclusively to the Healthcare Business Sector, including all rights of compensation for infringements that occurred before the Legal Effective Date (for rights held jointly with third parties, the respective share)

(collectively, the **Transferred Healthcare Property Rights**); and

- all rights of use of KGaA in Intangible Assets of third parties used exclusively in the Healthcare Business Sector (the **Transferred Healthcare Rights Of Use**).

The Transferred Healthcare Property Rights include in particular the Intangible Assets listed in **Annex 4.2.a**. The Transferred Healthcare Rights Of Use include in particular the in-licensed rights of use on the basis of the license agreements listed in **Annex 10.2**. The Single Use IP Healthcare also include the reported Intangible Assets listed in **Annex 4.2.b**.

Contrary to the provisions above, such copyrights or rights of use in software exercised not only by KGaA but also by other companies of the Group (e.g., ERP systems and associated software) are not included in the Transferred Healthcare Property Rights or the Transferred Healthcare Rights Of Use, not even if they are assigned exclusively to the Healthcare Business Sector. These copyrights and rights of use shall instead remain with KGaA and shall be licensed to HC OpCo pursuant to the provisions of § 4.4.

4.3 The Transferred Healthcare Property Rights shall be transferred as follows:

- a) Insofar as the Transferred Healthcare Property Rights are held by third parties (e.g., Merck Patent GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany (**MPT GmbH**)) in trust for KGaA, the respective Trust Agreements shall be transferred to HC OpCo by way of partial universal legal succession under Sec. 123 (3) (1) and Sec. 131 (1) (1) *UmwG* and according to § 10 of this Hive-down Agreement.
- b) Insofar as the Transferred Healthcare Property Rights are Registered Property Rights the registration of which is requested or which are registered on behalf of KGaA, they shall be transferred by entering into a trust agreement that is hereby established between KGaA and HC OpCo, according to which KGaA holds these Registered Property Rights in trust for HC OpCo from the Economic Effective Date. The details of this Trust Agreement are set out in **Annex 4.3.b**. The Registered Property Rights of

the Transferred Healthcare Property Rights include in particular the Trademarks and Brands listed in **Annex 4.2.a**.

- c) All other Transferred Healthcare Property Rights shall be transferred by way of partial universal succession pursuant to Sec. 123 (3) (1), Sec. 131 (1) (1) *UmwG*.

The Transferred Healthcare Rights Of Use shall be transferred by way of transfer of the relevant agreements, also by way of partial universal legal succession, pursuant to the provisions of § 10 of this Hive-down Agreement, unless § 4.5 of this Hive-down Agreement specifies otherwise for software.

- 4.4 **Shared IP Healthcare** The hive-down of Intangible Assets of KGaA that are also but not exclusively used in the Healthcare Business Sector, as well as software that is used not only by KGaA but also by other companies of the Group (***Shared IP Healthcare***), shall not be contributed by transferring these items by way of partial universal legal succession, but rather by granting a right of use that is irrevocable by ordinary termination, permanent, and free of charge ("duplication of beneficial ownership"). For this purpose, KGaA hereby grants HC OpCo, according to the provisions in **Annex 4.4**, an unlimited, irrevocable, non-exclusive, free-of-charge, non-transferrable (sub-)license for any Shared IP Healthcare, in each case to the extent to which KGaA is authorized to dispose of these at the Legal Effective Date, in particular relating to

- a) Trademarks and Brands of KGaA that are also but not exclusively used in the Healthcare Business Sector, including the Trademarks and Brands listed in **Annex 4.4.a**,
- b) Patent Rights of KGaA that are also but not exclusively used in the Healthcare Business Sector, including the patent rights listed in **Annex 4.4.b**, and
- c) copyrights and ancillary copyrights of KGaA as well as rights of exploitation of KGaA of copyrights that (i) are also but not exclusively used in the Healthcare Business Sector, or (ii) refer to software that is not used only by KGaA but also by other companies of the Group (e.g., ERP systems and associated software),

(collectively, the ***Licensed Healthcare Property Rights***); and

- d) rights of use to which KGaA is entitled to in respect of third-party Intangible Assets that (i) are also but not exclusively used in the Healthcare Business Sector, or (ii) refer to software that is not used only by KGaA but also by other companies of the Group (e.g., ERP systems and associated software), including the rights of use listed in **Annex 4.4.d**



(the **Licensed Healthcare Rights Of Use**),

in each case only for use within the Healthcare Business Sector. In the event of a CoC Event at HC OpCo or its legal successors, KGaA may terminate for cause the licenses granted. If KGaA exercises its right of termination for cause, all rights and obligations of the license granted under this § 4.4 shall be terminated with immediate effect without compensation, at the earliest at the time of occurrence of the CoC Event. A **CoC Event** is deemed to have occurred when a third party which is not an "associated company" in terms of Sec. 15 et seq. *AktG*, solely or jointly with other third parties directly or indirectly, acquires more than 50% of the company shares of HC OpCo or its legal successor or otherwise exercises a controlling influence on it, whether such control is obtained by acquiring company shares, by way of a merger, or as a result of other statutory or contractual measures.

#### 4.5 Software-specific transfer provisions.

- a) Transfer of Single Use Software Healthcare. Insofar as the Transferred Healthcare Property Rights according to § 4.2 include copyrights or rights to exploit software (Single Use Software Healthcare), KGaA shall transfer to HC OpCo the entire source and object code relating to this software, including the corresponding documentation, in each case to the extent to which KGaA is authorized to dispose of these at the Legal Effective Date, by way of partial universal legal succession under Sec. 123 (3) (1), Sec. 131 (1) (1) *UmwG*.
- b) Transfer of Rights Of Use in Third-Party Software. Insofar as the Transferred Healthcare Rights Of Use include rights of use in software products of third parties (**Healthcare Third-Party Software**) which are administered centrally by KGaA on the basis of contracts with the third party, the following shall apply:
  - (i) If the rights of use according to the contract concluded with the third party are transferrable to HC OpCo, they shall be transferred from KGaA to HC OpCo at the Legal Effective Date by way of partial universal legal succession under Sec. 123 (3) (1), Sec. 131 (1) (1) *UmwG*.
  - (ii) If the consent of the third party is required to transfer the rights of use, § 4.6 shall apply.
  - (iii) If a transfer of rights of use is permitted under the provisions of this § 4.5 b), KGaA shall provide HC OpCo, in addition to the respective right of use, with a copy of the relevant object code and, to the extent that KGaA can dispose of it, the relevant source



code of the third-party software, to the extent that this is permitted under the contract concluded with the third party.

- 4.6 Insofar as for the Intangible Assets or Rights Of Use to be transferred or licensed according to this § 4 the consent of a third party is required, KGaA shall undertake to obtain the third-party consent for the respective transfer or licensing at the expense of HC OpCo. If the request for a required consent is rejected by the third party and KGaA is authorized under the contract concluded with the third party to grant sub-licenses to HC OpCo, KGaA shall grant HC OpCo at their request sub-licenses to the extent that HC OpCo would have been authorized to transfer or license the respective Intangible Asset or Right Of Use pursuant to this § 4. If the third party withholds the necessary consent and if KGaA is not authorized under the contract concluded with the third party to grant sub-licenses to HC OpCo, the Parties shall agree on other suitable measures to enable HC OpCo to access the respective Intangible Assets (e.g., direct in-licensing of the Intangible Assets by HC OpCo from the third party). § 56 shall remain unaffected.
- 4.7 Insofar as KGaA must pay a fee for the Intangible Assets or Rights Of Use of third parties transferred pursuant to this § 4, HC OpCo shall reimburse KGaA for the fees incurred for use by HC OpCo for time periods starting on the Economic Effective Date; the same shall apply on a prorated basis to the assets or Rights Of Use licensed under this § 4 according to the provisions in **Annex 4.4** if the fee is incurred for use by HC OpCo. Insofar as KGaA incurs costs for the Intangible Assets or Rights Of Use transferred pursuant to this § 4, KGaA can pass the charges on to HC OpCo for the costs incurred for use by HC OpCo for time periods starting on the Economic Effective Date; the same shall apply on a prorated basis to the assets or Rights Of Use licensed pursuant to this § 4 in accordance with the provisions of **Annex 4.4** insofar as the costs for use are incurred by HC OpCo.
- 4.8 HC OpCo shall recognize that the Intangible Assets and Rights Of Use transferred or licensed pursuant to this § 4 are only transferred or licensed with the content and to the extent that corresponds to the powers of KGaA at the Legal Effective Date. The Parties expressly agree that all rights and licenses granted or agreed upon with third parties before the Legal Effective Date shall remain unaffected. Insofar as the use of the rights provided on the basis of contracts with third parties pursuant to this § 4 is subject to restrictions, HC OpCo shall be obligated to comply with these restrictions when using the rights provided according to this § 4. § 56 shall remain unaffected.

## **§ 5**

### **Know-how**

- 5.1 The Healthcare Assets To Be Transferred also include all know-how of KGaA used in the Healthcare Business Sector, in each case to the extent to which KGaA is

authorized to dispose of such know-how at the Legal Effective Date. This includes, in particular,

- business or trade secrets relating to the Healthcare Business Sector;
- research and development know-how used in the Healthcare Business Sector (for instance, non-patentable or undisclosed inventions), biological insights; chemical insights through basic research and strategic research to discover active substances for pharmaceuticals, clinical or non-clinical study results;
- medical knowledge and experience used in the Healthcare Business Sector about the prophylactic, diagnostic and therapeutic treatment of the human and animal body, including gene therapy and pharmacological and toxicological findings on active substances and pharmaceuticals for humans and animals;
- knowledge and experience used in the Healthcare Business Sector on building equipment to produce test devices for diagnostic tests and the reagents used in the test devices;
- media material (photos, videos, graphics, audio material, etc.) used in the Healthcare Business Sector which was administered or (co-)produced by the Healthcare Business Sector;
- other study results used in the Healthcare Business Sector for all pharmaceuticals and diagnostics and substances that are in the research and development stage;
- production and process know-how used in the Healthcare Business Sector;
- sales and marketing know-how used in the Healthcare Business Sector; and
- the customer base used in the Healthcare Business Sector.

5.2 KGaA hereby transfers to HC OpCo all know-how of KGaA assigned exclusively to the Healthcare Business Sector. If know-how is also used in the Healthcare Business Sector but not exclusively, KGaA shall grant to HP OpCo, according to the provisions in **Annex 4.4** an unlimited, irrevocable, non-exclusive, free-of-charge, non-transferrable (sub-)license, in each case to the extent to which KGaA is authorized to dispose of these at the Legal Effective Date ("duplication of beneficial ownership").

5.3 To the extent that know-how attributed to the Healthcare Business Sector and transferred or licensed as per this § 5 is contained in records, documents, on data carriers or other embodiments or storage media which are not attributed to the Healthcare Business Sector, KGaA shall grant HC OpCo ownership of these embodiments or storage media (or, if the know-how is also used by other Business

Sectors, of copies hereof). Insofar as such know-how is stored in databases of KGaA that are not transferred to HC OpCo under this Agreement, KGaA shall grant to HC OpCo a right of access to this know-how in these databases.

- 5.4 § 4.6 shall apply accordingly to the know-how transferred or licensed according to this § 5.
- 5.5 Insofar as KGaA must pay third parties a fee for the know-how transferred pursuant to this § 5, HC OpCo shall reimburse KGaA for the fees incurred for use by HC OpCo for time periods starting on the Economic Effective Date; the same shall apply on a prorated basis to the know-how licensed pursuant to this § 5 if the fee is incurred for use by HC OpCo. Insofar as KGaA incurs costs for the know-how transferred pursuant to this § 5, KGaA may pass the costs incurred for use by HC OpCo on to HC OpCo for time periods as of the Economic Effective Date; the same shall apply on a prorated basis to know-how licensed pursuant to this § 5 as far as the costs incurred for use by HC OpCo.
- 5.6 Insofar as use of the know-how transferred or licensed pursuant to this § 5 under contracts with third parties is subject to restrictions, HC OpCo is obligated to comply with these restrictions when using the know-how.

## **§ 6**

### **Tangible assets**

- 6.1 The Healthcare Assets To Be Transferred include all tangible assets attributable exclusively or, per their usage, predominantly to the Operating Unit KGaA Healthcare, including
- technical equipment and machinery, the assets under construction, and other moveable items of tangible assets;
  - plant and office equipment and low-value assets;
- with the exception, however, of the land and buildings owned by KGaA (cf. § 39.1 e). The Healthcare Assets To Be Transferred include in particular the tangible assets in the internal cost centers of KGaA attributable to the Operating Unit KGaA Healthcare, particularly those listed in detail in **Annex 6.1**.
- 6.2 If the items specified under § 6.1 are classified as essential components of land or a building of KGaA within the meaning of Sec. 94 German Civil Code (*Bürgerliches Gesetzbuch – BGB*), KGaA hereby transfers (only) beneficial ownership with regard to the land and buildings to HC OpCo by granting a right to use these items that shall be irrevocable by ordinary termination, permanent, and free of charge.

- 6.3 Insofar as KGaA is entitled to one of the items specified under § 6.1 solely under co-ownership or joint ownership, the co-ownership share or joint ownership share shall be transferred. Items that are not free of third-party rights (this also includes items to which KGaA has granted third-party beneficial (co-)ownership) shall be transferred with the corresponding rights of these third parties.
- 6.4 Insofar as the items specified under § 6.1 are subject to any reservation of title or assigned as security, instead of the title the corresponding entitlement right, alternatively the claim regarding a transfer or retransfer of ownership under the law of obligations, shall be transferred. Insofar as the items specified above are used by KGaA on the basis of leasing agreements, long-term rental, lease or other transfer of rights of use agreements, the contracts on which they are based shall be transferred to HC OpCo with all rights and obligations in accordance with § 10 of this Hive-down Agreement.
- 6.5 If the tangible assets transferred to HC OpCo on the Closing Balance Effective Date are also used by other Operating Units, HC OpCo shall conclude an agreement with the respective OpCo and/or KGaA that ensures future use of the specific items to the extent necessary for the respective OpCo or KGaA.

## **§ 7**

### **Receivables and financial assets**

- 7.1 Furthermore, KGaA shall transfer to HC OpCo KGaA receivables and financial assets attributable to the Operating Unit KGaA Healthcare, including
- trade accounts receivable (also those from affiliated companies);
  - receivables from the Transitioning Healthcare Employees (as defined in § 11.1) and the Former Healthcare Employees (as defined in § 11.2);
  - other receivables and other assets.

In the event that a receivable is attributable to the Operating Unit KGaA Healthcare on a pro rata basis only, such receivable shall be transferred only to the extent that it is attributable to the Operating Unit. Insofar as the transferred receivables are secured by items or rights, such items or rights shall also be transferred to HC OpCo (if applicable, on a pro rata basis).

- 7.2 The Healthcare Assets To Be Transferred include in particular the receivables attributable to the Operating Unit KGaA Healthcare or the receivables attributable on a pro rata basis using KGaA's accounting system on the basis of document numbers, particularly those listed in detail in **Annex 7.2**. The Healthcare Assets To Be Transferred also include the investment of KGaA in the entity specified in **Annex 7.2**.

## § 8

### Inventories and other current assets

- 8.1 The Healthcare Assets To Be Transferred also include the inventories and other items of the current assets attributable to the Operating Unit KGaA Healthcare, in particular raw materials and supplies, unfinished products and finished products and merchandise, irrespective of whether they are at sites, in transit or on consignment, as well as advance payments on inventories.
- 8.2 Insofar as the inventories attributable to the Operating Unit KGaA Healthcare are subject to any reservation of title, the Healthcare Assets To Be Transferred shall include the entitlement right existing in this respect.
- 8.3 The Healthcare Assets To Be Transferred include in particular the inventories and other current assets in the accounting system of KGaA on the basis of item numbers (*Stock Keeping Units – SKUs*) attributable to the Operating Unit KGaA Healthcare, particularly those listed in detail in **Annex 8.3**.
- 8.4 Furthermore, the fixed-term deposits disclosed in the Hive-down Balance Sheet Healthcare under the item “Other assets” at Merck Financial Services GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany (***MFS GmbH***), shall be transferred.

## § 9

### Liabilities and provisions

- 9.1 The Healthcare Assets To Be Transferred shall include in particular all provisions and liabilities recorded in the Healthcare Hive-down Balance Sheet, as well as all other liabilities, uncertain liabilities, uncertain liabilities, and future obligations and liability relationships of KGaA attributable to the Operating Unit KGaA Healthcare the legal basis of which has already been constituted, regardless of whether these liabilities can be reported in the balance sheet or not. In the event that a liability, uncertain liability, or future liability is attributable to the Operating Unit KGaA Healthcare on a prorated basis only, such liability shall be transferred only in the amount of this share.
- 9.2 The liabilities of KGaA transferred to HC OpCo (if required, on a pro rata basis) include in particular the following items attributable to the Operating Unit KGaA Healthcare
- liabilities from advance payments received on orders;
  - trade accounts payable (also those to affiliated companies);
  - liabilities from recourse factoring;

- other liabilities;
  - employee-related provisions for obligations from bonus payments, jubilee payments, vacation and time account agreements, long-term variable remuneration programs, and provisions for pension obligations towards the Transitioning Healthcare Employees (as defined in § 11.1) and the Former Healthcare Employees (as defined in § 11.2);
  - liabilities or uncertain liabilities relating to pollutants at plants, remnants of plants, machinery or machine parts transferred to HC OpCo;
  - other provisions, such as, for example, provisions for uncertain liabilities or for impending losses from pending transactions; and
  - deferred income.
- 9.3 In addition, the liabilities of KGaA to be hived down to HC OpCo include in particular all warranty risks and liability relationships (particularly guarantees, suretyships and letters of comfort) attributable to the Operating Unit KGaA Healthcare.
- 9.4 The Healthcare Assets To Be Transferred include in particular the liabilities and uncertain liabilities in the accounting system of KGaA on the basis of item numbers attributable to the Operating Unit KGaA Healthcare (if required, on a pro rata basis), particularly those listed in detail in **Annex 9.4.a** (liabilities) and **Annex 9.4.b** (uncertain liabilities, taking into account the corresponding provisions). Insofar as "liabilities," "provisions," or "deferred income" are transferred pursuant to this § 9, the transfer shall refer to the legal relationships and risk items on which these items are based. Insofar as and as long as a transfer of liabilities (including uncertain liabilities, irrespective of whether provisions have been recorded for them or not) is not permitted or not feasible by way of the hive-down, HC OpCo shall assume, as the joint debtor, all obligations of KGaA from the corresponding liability or provision and, in accordance with the BFH decision dated April 26, 2012 – Case No. IV R 43/09, shall in the internal relationship release KGaA from the (uncertain) liability in question, so that these (uncertain) liabilities are accounted for exclusively by HC OpCo ("assumption of joint liability with discharging effect").

## § 10

### Contractual relationships

- 10.1 The Healthcare Assets To Be Transferred include, to the extent exclusively attributable to the Healthcare Business Sector,
- all contractual relationships of KGaA,

- other pre-closing or post-closing legal relationships of KGaA, including legal positions from contract offers, contractual negotiations, orders and legal relationships from contracts already executed that continue to have an effect, in particular rights or obligations on the basis of warranties, and
- legal relationships of KGaA that amend, modify, extend, terminate, or replace the contractual or other legal relationships referred to above,

(collectively, the **Transferred Healthcare Contractual Relationships**)

each including all rights and obligations as well as ancillary rights and obligations, whether under private or public law, and in each case only to the extent that the contractual position of KGaA is affected. The transfer of employment relationships and employee-related assets and liabilities items is subject to § 11.

10.2 The Transferred Healthcare Contractual Relationships pursuant to § 10.1, include, *inter alia*, all of the following agreements exclusively attributable to the Healthcare Business Sector:

- contracts of KGaA on the acquisition of fixed assets (with the exception of land or buildings), or of current assets, purchase and supply contracts;
- rental, lease and leasing contracts of KGaA, including those for services to Transitioning Healthcare Employees (as defined in § 11.1);
- service and work contracts, consultancy agreements, and maintenance contracts of KGaA;
- distribution agreements and contracts for logistics services of KGaA;
- research and development contracts, production contracts, cooperation contracts, license agreements (insofar as they involve Transferred Healthcare Rights Of Use), supply agreements, marketing contracts, co-existence and prerogative agreements, and trust agreements of KGaA, with the exception of those that were entered into under this Agreement;
- contracts of KGaA regarding reimbursements, grants, and subsidies;
- contracts of KGaA regarding the confidential provision of materials (so-called material transfer agreements);
- confidential disclosure or non-disclosure agreements of KGaA;
- contracts on the exchange of information in the field of drug safety (safety data exchange agreements);
- quality agreements;

- data processing agreements to the extent that they relate to contracts transferred to HC OpCo; and
- intercompany contracts of all kinds with other companies in the Group.

The Transferred Healthcare Contractual Relationships include in particular the contractual relationships of KGaA attributable exclusively to the Healthcare Business Sector in the contracts databases of KGaA using contract numbers, including those listed in detail in **Annex 10.2**.

- 10.3 Rights and obligations from contractual relationships that are also but not exclusively attributable to the Healthcare Business Sector (***Shared Agreements Healthcare***) shall remain with KGaA. The Shared Agreements Healthcare shall be subject to § 49 of this Hive-down Agreement, to which reference is hereby made. The last paragraph of § 4.2 shall remain unaffected.
- 10.4 HC OpCo agrees to comply in particular with all contractual obligations to tolerate and cease-and-desist obligations of KGaA, in particular obligations arising from exclusivity agreements, to the extent that they are attributable to the Healthcare Business Sector.
- 10.5 The trust agreements of KGaA with Metzler Trust e.V. on securing operational time accounts and with Merck Pensionstreuhand e.V., Darmstadt, Germany, a company closely related to Merck KGaA, Darmstadt, Germany (***MP e.V.***), to secure retirement benefit rights are not included in the Transferred Healthcare Contractual Relationships (cf. on this § 11.8 and § 11.10).
- 10.6 The internal service agreements or relationships that exist between the Operating Unit KGaA Healthcare and (i) the functions remaining with KGaA or (ii) the other Operating Units of KGaA, including deliveries of products, services, infrastructure-related services (such as waste removal), shall continue to apply from the Legal Effective Date as at arm's length contractual agreements between the companies involved. The Parties shall conclude corresponding contracts and put themselves in such position internally as if these contracts had been effectively concluded at the Economic Effective Date. This shall not result in any agreements to the contrary by and between the Parties after the Economic Effective Date of the Hive-down.

## **§ 11**

### **Employment relationships, employee-related assets and liabilities items**

- 11.1 KGaA shall transfer to HC OpCo the employment relationships, including all rights and obligations resulting therefrom, with all employees



- who at the Closing Balance Effective Date were allocated to the "KGaA Healthcare Darmstadt" part of the operations according to the "Gauss HR" system (with the exception of the employees who at this time were already in the passive phase of partial retirement) (**Healthcare Employees**), provided that they are allocated to the "KGaA Healthcare Darmstadt" part of the operations on the Legal Effective Date as well, and
- who in the time after the Closing Balance Effective Date until (and including) the Legal Effective Date establish or have established an employment relationship with KGaA in the "KGaA Healthcare Darmstadt" part of the operations or are allocated or were allocated to this part of the operations according to the "Gauss HR" system, in each case provided that they continue to be allocated to the "KGaA Healthcare Darmstadt" part of the operations on the Legal Effective Date (**New Healthcare Employees**)

(hereinafter collectively the **Transitioning Healthcare Employees**). The Healthcare Employees are identified in detail using position keys in **Annex 11.1**.

#### 11.2 Furthermore, KGaA transfers to HC OpCo

- all rights and obligations resulting from terminated employment relationships with Healthcare Employees whose employment relationships ended or are ending in the time period after the Closing Balance Effective Date until (and including) the Legal Effective Date;
- rights and obligations arising from terminated employment contracts with employees who establish or established an employment relationship with KGaA during the period after the Closing Balance Effective Date, depart before the Legal Effective Date, and at the time of their departure were attributable to the "KGaA Healthcare Darmstadt" part of the operations;
- rights and obligations arising from terminated employment contracts with employees who on the Closing Balance Effective Date were assigned to another area of KGaA than the Operating Units, depart after the Closing Balance Effective Date until (and including) the Legal Effective Date, and at the time of their departure are attributable to the "KGaA Healthcare Darmstadt" part of the operations

(hereinafter collectively the **Former Healthcare Employees**). Rights and obligations arising from terminated employment relationships with employees of KGaA who departed until (including) the Closing Balance Effective Date shall not be transferred.

- 11.3 KGaA shall transfer to HC OpCo all other contracts and legal relationships relating to the employment relationships of the Transitioning Healthcare Employees and the Former Healthcare Employees' (terminated) employment relationships.
- 11.4 KGaA shall transfer to HC OpCo all rights and obligations arising from reinstatement guarantees that it has granted to Former Healthcare Employees and other employees who left until (and including) the Closing Balance Effective Date and who were attributed to the "KGaA Healthcare Darmstadt" part of the operations at the time of their departure, on the basis of No. 11 of the Group Works Agreement on the Group-internal Employee Deployment in Germany dated November 23, 2016 (**GWA On Group-internal Employee Deployment**) or, independent of the provisions of the GWA On Group-internal Employee Deployment, in the course of their departing under certain prerequisites.
- 11.5 Rights and obligations arising from the apprenticeships of (active or former) apprentices of KGaA shall in particular not be transferred to HC OpCo. This also shall apply to the apprenticeships of apprentices who were deployed in the "KGaA Healthcare Darmstadt" part of the operations on the Closing Balance Effective Date and/or on the Legal Effective Date.
- 11.6 The transfer of rights and obligations arising from employment relationships with the Healthcare Employees who, in the time after the Closing Balance Effective Date until (and including) the Legal Effective Date, are or were assigned to a different Operating Unit, is defined in § 23.1, § 35.1.
- 11.7 Upon the transfer of the employment relationships pursuant to § 11.1 and § 11.2, all pension commitments as defined by the German Company Pensions Act (*Betriebsrentengesetz*) made to the Transitioning Healthcare Employees and the Former Healthcare Employees shall be transferred from KGaA to HC OpCo. Immediately thereafter, the pension commitments to Transitioning Healthcare Employees, but not, however, the pension commitments to the Former Healthcare Employees, together with the employment contracts resulting from the Business Lease Agreement between HC OpCo and KGaA as detailed in Sec. 613 a *BGB*, shall be retransferred to KGaA. As for the pension commitments transitioning to KGaA as a result of the Business Lease Agreement, HC OpCo, in § 21 of the Business Lease Agreement, declares assumption of joint liability (*Schuldbeitritt*) with the obligation to perform internally towards KGaA (**Healthcare Assumption Of Joint Liability**).
- 11.8 KGaA shall secure all direct commitments to the Transitioning Healthcare Employees and the Former Healthcare Employees in the form of a Contractual Trust Arrangement (**CTA**) with MP e.V. (**CTA-Secured Direct Commitments Healthcare**). HC OpCo and MP e.V. have in turn concluded a trust agreement in notarized form on February 23, 2018 that is attached to this Hive-down Agreement

as **Annex 11.8.a**. This trust agreement secures the CTA-Secured Direct Commitments Healthcare that in each case are transferred to HC OpCo. The securing of the CTA-Secured Direct Commitments Healthcare shall also remain effective under the CTA concluded by HC OpCo during the term of the Healthcare Assumption Of Joint Liability under the business lease. For the establishment of this new CTA security, KGaA, HC OpCo, and MP e.V. have concluded a transfer agreement on February 23, 2018 in notarized form regarding the Transitioning Healthcare Employees and the Former Healthcare Employees that will become effective as of the Legal Effective Date and that is attached to this Hive-down Agreement as **Annex 11.8.b**. In that agreement, the trust assets from the CTA of KGaA accumulated on a prorated basis by Transitioning Healthcare Employees and Former Healthcare Employees are assigned to the new CTA of HC OpCo with economic effect as of the Economic Effective Date. Any compensation for Switching Employees (as defined in § 52.1) remains unaffected and is subject to § 52.

11.9 Insofar as pension commitments were made to the Transitioning Healthcare Employees in the form of direct insurance or as commitment to a pension scheme at the Pension Fund for the German Economy VVaG (*Pensionskasse für die Deutsche Wirtschaft VVaG – PKDW*), the legal position of KGaA vis-à-vis the external pension provider shall be economically transferred to HC OpCo by way of a trust agreement that is hereby concluded on the basis of the provisions in 11.9. A transfer of the position as the insured party in the direct insurance policies or of the status as treasury entity (*Kassenfirma*) at a pension fund shall not take place in the course of the Operational Hive-down for the Transitioning Healthcare Employees. As regards the Former Healthcare Employees, HC OpCo shall continue the external pension commitment. For this purpose, upon consent of the external pension provider, it shall take the further steps necessary. To the extent that legal positions vis-à-vis external pension providers transition in this context to HC OpCo, KGaA and HC OpCo shall transfer the legal positions to HC OpCo – subject to consent of the respective external pension provider. If such an agreement with the external pension provider is not reached, KGaA shall ensure that HC OpCo is placed in a position as if such an agreement had been concluded, namely by undertaking to provide a position as insured party vis-à-vis the direct insurance companies and a status as treasury entity at PKDW.

11.10 As for time account agreements, the provisions of § 11.7 and § 11.8 shall apply accordingly. HC OpCo, Metzler Trust e.V., and Höchster Pensions Benefits Services GmbH have in this context concluded a CTA trust agreement on February 26, 2018 in notarized form to continue the bankruptcy protection for time account agreements and together with KGaA an agreement on transfer of trust assets accounted for on a prorated basis for the Former and Transitioning Healthcare Employees; these are attached to this Agreement as **Annex 11.10.a** and **Annex 11.10.b**.

- 11.11 In addition, provision is made that HC OpCo shall agree in the Business Lease Agreement to assumption of joint liability with an internal obligation to perform for other employee-related obligations (in particular, anniversary bonus payments and vacation entitlements). In this respect, § 11.7 shall apply *mutatis mutandis*.

## § 12

### Litigation and legal proceedings

- 12.1 Furthermore, KGaA shall transfer to HC OpCo the Healthcare Assets And Liabilities Items transferred in conjunction with this Hive-down Agreement or litigation proceedings otherwise exclusively attributable to the Operating Unit KGaA Healthcare and other legal proceedings, in particular civil-law actions, dunning procedures, independent procedures of collecting evidence, proceedings in interim legal proceedings, execution proceedings, as well as fines proceedings, social court proceedings and arbitration proceedings, regardless of whether KGaA is involved as a party or otherwise (e.g., as a summoned party), and including the rights and obligations of KGaA asserted in these litigation and legal proceedings. This shall not apply to litigation and other legal proceedings relating to registered property rights which are subject to the trust agreement under § 4.3 b); such litigation and other proceedings shall be continued by KGaA as per the trust agreement.
- 12.2 Furthermore, KGaA shall transfer to HC OpCo, subject to the provisions of § 48.6 of this Hive-down Agreement, all administrative law proceedings and other proceedings under public law exclusively attributable to the Operating Unit KGaA Healthcare (e.g., appeal proceedings), as well as administrative and constitutional disputes.
- 12.3 The Healthcare Assets To Be Transferred include in particular the legal proceedings listed in detail in **Annex 12.3**.
- 12.4 Furthermore, the Healthcare Assets To Be Transferred include all procedural legal relationships with third parties and all contractual agreements with third parties that involve the recognition and corresponding implementation or results of legal proceedings or the assertion of rights that are reserved to the parties in the proceedings and are attributable to the Healthcare Business Sector, in particular those arising from titles and settlements.
- 12.5 Together with the litigation and other procedural legal proceedings specified in § 12.1, the advisory and consulting relationships with third parties attributable to them shall also be transferred to HC OpCo.
- 12.6 To the extent that, according to the provisions of the applicable procedural rules, the transfer of party status in full from KGaA to HC OpCo depends on other circumstances, such as the consent of the other process participant(s), the Parties

shall undertake for these steps to be taken and for HC OpCo to replace KGaA as a party in the litigation and other procedural legal relationships subject to this provision.

- 12.7 If no change of party pursuant to § 12.1 or § 12.6 occurs, KGaA shall continue the proceedings as the institution of legal standing. Proceedings shall be conducted for the account of HC OpCo. Internally, the ongoing management of proceedings shall be assumed by HC OpCo. KGaA shall thus not conduct any procedural acts (particularly agree on any settlement, waiver, acknowledgement, confession, withdrawal, or amendment of actions) without the prior consent of HC OpCo. HC OpCo shall indemnify KGaA with regard to any liabilities and costs resulting from any litigation and other procedural legal relationships that are subject to this provision. KGaA shall support HC OpCo in such proceedings with the objective of minimizing the economic damage resulting from the proceedings.
- 12.8 Procedural law relationships and other legal relationships under procedural law that are only partially attributable to the Healthcare Business Sector shall be continued by KGaA. § 12.7 shall apply accordingly in respect of the part attributable to the Healthcare Business Sector.

### **§ 13**

#### **Memberships**

To the extent that memberships of KGaA in associations, federations, societies, collectives, and associations of persons, including collective bargaining associations and tariff communities, are of relevance to the Operating Unit KGaA Healthcare, KGaA and HC OpCo shall decide by the Legal Effective Date on the future classification of these memberships relating to the Operating Unit KGaA Healthcare and, in the cases in which HC OpCo is to assume membership from KGaA or retain membership in the future beside KGaA, shall make their best efforts to transfer or split the respective membership. Insofar as the intended transfer or split of a membership is not feasible under the applicable law or in fact, HC OpCo shall, if necessary, re-apply for the membership.

### **§ 14**

#### **Insurance policies**

KGaA shall ensure the inclusion of HC OpCo in the master insurance policies existing at KGaA to ensure that HC OpCo has the insurance coverage (building insurance, operational insurance, etc.) necessary for its business operations at all times; HC OpCo shall reimburse KGaA proportionately for the costs incurred for such insurance coverage. If necessary or appropriate, HC OpCo shall conclude separate insurance contracts.

## II.

### Hive-down of the Operating Unit KGaA Life Science

#### § 15

#### Transfer of the assets and liabilities of the Operating Unit KGaA Life Science

- 15.1 KGaA shall transfer to LS OpCo the entire Operating Unit KGaA Life Science with all assets and liabilities items of KGaA attributable directly or indirectly, legally or economically to this operating unit (the **Life Science Assets To Be Transferred**).
- 15.2 The hive-down of the Operating Unit KGaA Life Science includes the transfer of the "KGaA Life Science Darmstadt" part of the operation at the Darmstadt site as part of the Joint Operation Darmstadt/Gernsheim (Sec. 126 (1) (9) *UmwG*). The transfer of the employment relationships attributable to this operation is regulated separately by § 23.
- 15.3 The Life Science Assets To Be Transferred include in particular the assets and liabilities items disclosed in the segment balance sheet of the Operating Unit KGaA Life Science derived from the Closing Balance Sheet as of January 1, 2018, 0:00 hours (**Life Science Hive-down Balance Sheet**). The Life Science Hive-down Balance Sheet is attached to the Hive-down Agreement as **Annex 15.3**. However, the recording the Assets And Liabilities Items of the Life Science Assets To Be Transferred in the Life Science Hive-down Balance Sheet is not a prerequisite for their transfer. The Life Science Assets To Be Transferred also include – subject to deviating provisions in this Agreement – all items, rights, and obligations that are not required to be recorded in the balance sheet or cannot be recorded in the balance sheet, respectively, and are not disclosed in the balance sheet (including warranty risks and other liability relationships) that are attributable to the Operating Unit KGaA Life Science from an economic perspective, particularly all assets that are attributable to the fiscal operations in line with Sec. 20 (1) *UmwStG* of the Operating Unit KGaA Life Science that shall be hived down to LS OpCo, each on a "functionally essential operational basis" or as "assets attributable based on economic contexts" in terms of lit. 20.06 s. 1 in conjunction with lit. 15.02 s. 2 2011 *UmwSt-Erlass*.
- 15.4 The Life Science Assets To Be Transferred include in particular the Assets And Liabilities Items that are described in detail in § 16 to § 26. In addition, the Life Science Assets To Be Transferred include the plant-related and environmental law approvals attributable to the Operating Unit KGaA Life Science and specified in § 48.2 as well as drug and product approvals which KGaA holds in favor of LS OpCo in trust for the duration of the business lease; the details are set forth in § 48.

## § 16

### Intangible Assets

16.1 Single Use IP Life Science. Unless stated otherwise in § 16.2, the Life Science Assets To Be Transferred include all Intangible Assets attributable exclusively to the Life Science Business Sector (**Single Use IP Life Science**), in each case to the extent to which KGaA is authorized to use them at the Legal Effective Date. Unless stated otherwise in § 16.2 these also include all rights of use in Intangible Assets of third parties attributable exclusively to the Life Science Business Sector, to the extent that KGaA is authorized to use them at the Legal Effective Date.

16.2 Unless stated otherwise in the last paragraph of this § 16.2 Single Use IP Life Science include in particular

- all Patent Rights of KGaA used exclusively in the Life Science Business Sector, including all rights of compensation for infringements that occurred before the Legal Effective Date and all claims to enforce the priority on the basis of the respective patent rights (for patent rights held jointly with third parties, the respective share);
- all Trademarks and Brands of KGaA attributed exclusively to the Life Science Business Sector, including all rights of compensation for infringements that occurred before the Legal Effective Date (for Trademarks and Brands held jointly with third parties, the respective share);
- all copyrights and ancillary copyrights of KGaA attributed exclusively to the Life Science Business Sector, and all rights of exploitation of KGaA in copyrights attributed exclusively to the Life Science Business Sector, including all rights of compensation for infringements that occurred before the Legal Effective Date (for rights held jointly with third parties, the respective share)

(collectively, the **Transferred Life Science Property Rights**); and

- all rights of use of KGaA in Intangible Assets of third parties used exclusively in the Life Science Business Sector (the **Transferred Life Science Rights Of Use**).

The Transferred Life Science Property Rights include in particular the Intangible Assets listed in **Annex 16.2.a**. The Transferred Life Science Rights Of Use include in particular the in-licensed rights of use on the basis of the license agreements listed in **Annex 22.2**. The Single Use IP Life Science also include the reported Intangible Assets listed in **Annex 16.2.b**.

Contrary to the provisions above, such copyrights or rights of use in software exercised not only by KGaA but also by other companies of the Group (e.g.,



ERP systems and associated software) are not included in the Transferred Life Science Property Rights or the Transferred Life Science Rights Of Use, not even if they are assigned exclusively to the Life Science Business Sector. These copyrights and rights of use shall instead remain with KGaA and shall be licensed to LS OpCo pursuant to the provisions of § 16.4.

16.3 The Transferred Life Science Property Rights shall be transferred as follows:

- a) Insofar as the Transferred Life Science Property Rights are held by third parties (e.g., MPT GmbH) in trust for KGaA, the respective Trust Agreements shall be transferred to LS OpCo by way of partial universal legal succession under Sec. 123 (3) (1) and Sec. 131 (1) (1) *UmwG* and according to § 22 of this Hive-down Agreement.
- b) Insofar as the Transferred Life Science Property Rights are Registered Property Rights the registration of which is requested, or which are registered on behalf of KGaA, they shall be transferred by entering into a trust agreement that is hereby established between KGaA and LS OpCo, according to which KGaA holds these Registered Property Rights in trust for LS OpCo from the Economic Effective Date. The details of this Trust Agreement are set out in **Annex 16.3.b**. The Registered Property Rights of the Transferred Life Science Property Rights include in particular the Trademarks and Brands listed in **Annex 16.2.a**.
- c) All other Transferred Life Science Property Rights shall be transferred by way of partial universal succession pursuant to Sec. 123 (3) (1), Sec. 131 (1) (1) *UmwG*.

The Transferred Life Science Rights Of Use shall be transferred by way of transfer of the relevant agreements, also by way of partial universal legal succession, pursuant to the provisions of § 22 of this Hive-down Agreement, unless § 16.5 of this Hive-down Agreement specifies otherwise for software.

16.4 Shared IP Life Science The hive-down of Intangible Assets of KGaA that are also but not exclusively used in the Life Science Business Sector, as well as software that is used not only by KGaA but also by other companies of the Group (***Shared IP Life Science***), shall not be contributed by transferring these items by way of partial universal legal succession, but rather by granting a right of use that is irrevocable by ordinary termination, permanent, and free of charge ("duplication of beneficial ownership"). For this purpose, KGaA hereby grants LS OpCo, according to the provisions in **Annex 16.4**, an unlimited, irrevocable, non-exclusive, free-of-charge, non-transferrable (sub-)license for any Shared IP Life Science, in each case to the extent to which KGaA is authorized to dispose of these at the Legal Effective Date, in particular relating to



- a) Trademarks and Brands of KGaA that are also but not exclusively used in the Life Science Business Sector, including the Trademarks and Brands listed in **Annex 16.4.a**;
- b) Patent Rights of KGaA that are also but not exclusively used in the Life Science Business Sector, including the patent rights listed in **Annex 16.4.b**; and
- c) copyrights and ancillary copyrights of KGaA as well as rights of exploitation of KGaA of copyrights that (i) are also but not exclusively used in the Life Science Business Sector, or (ii) refer to software that is not used only by KGaA but also by other companies of the Group (e.g., ERP systems and associated software),  
  
(collectively, the ***Licensed Life Science Property Rights***); and
- d) rights of use to which KGaA is entitled to in respect of third-party Intangible Assets that (i) are also but not exclusively used in the Life Science Business Sector, or (ii) refer to software that is not used only by KGaA but also by other companies of the Group (e.g., ERP systems and associated software), including the rights of use listed in **Annex 16.4.d**  
  
(the ***Licensed Life Science Rights Of Use***),

in each case only for use within the Life Science Business Sector. In the event of a CoC Event at LS OpCo or its legal successors, KGaA may terminate for cause the licenses granted. If KGaA exercises its right of termination for cause, all rights and obligations of the license granted under this § 16.4 shall be terminated with immediate effect without compensation, at the earliest at the time of occurrence of the CoC Event. A CoC Event is deemed to have occurred when a third party which is not an "associated company" in terms of Sec. 15 et seq. *AktG*, solely or jointly with other third parties directly or indirectly, acquires more than 50% of the company shares of LS OpCo or its legal successor or otherwise exercises a controlling influence on it, whether such control is obtained by acquiring company shares, by way of a merger, or as a result of other statutory or contractual measures.

#### 16.5 Software-specific transfer provisions.

- a) Transfer of Single Use Software Life Science. Insofar as the Transferred Life Science Property Rights according to § 16.2 include copyrights or rights to exploit software (***Single Use Software Life Science***), KGaA shall transfer to LS OpCo the entire source and object code relating to this software, including the corresponding documentation, in each case to the extent to which KGaA is authorized to dispose of these at the Legal

Effective Date, by way of partial universal legal succession under Sec. 123 (3) (1), Sec. 131 (1) (1) *UmwG*.

b) Transfer of Rights Of Use in Third-Party Software. Insofar as the Transferred Life Science Rights Of Use include rights of use in software products of third parties (**Life Science Third-Party Software**) which are administered centrally by KGaA on the basis of contracts with the third party, the following shall apply:

(i) If the rights of use according to the contract concluded with the third party are transferrable to LS OpCo, they shall be transferred from KGaA to LS OpCo at the Legal Effective Date by way of partial universal legal succession under Sec. 123 (3) (1), Sec. 131 (1) (1) *UmwG*.

(ii) If the consent of the third party is required to transfer the rights of use, § 16.6 shall apply.

(iii) If a transfer of rights of use is permitted under the provisions of this § 16.5 b), KGaA shall provide LS OpCo, in addition to the respective right of use, with a copy of the relevant object code and, to the extent that KGaA can dispose of it, the relevant source code of the third-party software, to the extent that this is permitted under the contract concluded with the third party.

16.6 Insofar as for the Intangible Assets or Rights Of Use to be transferred or licensed according to this § 16 the consent of a third party is required, KGaA shall undertake to obtain the third-party consent for the respective transfer or licensing at the expense of LS OpCo. If the request for a required consent is rejected by the third party and KGaA is authorized under the contract concluded with the third party to grant sub-licenses to LS OpCo, KGaA shall grant to LS OpCo at their request sub-licenses to the extent that LS OpCo would have been authorized to transfer or license of the respective Intangible Asset or Right Of Use pursuant to this § 16. If the third party withholds the necessary consent and if KGaA is not authorized under the contract concluded with the third party to grant sub-licenses to LS OpCo, the Parties shall agree on other suitable measures to enable LS OpCo to access the respective Intangible Assets (e.g., direct in-licensing of the Intangible Assets by LS OpCo from the third party). § 56 shall remain unaffected.

16.7 Insofar as KGaA must pay a fee for the Intangible Assets or Rights Of Use of third parties transferred pursuant to this § 16, LS OpCo shall reimburse KGaA for the fees incurred for use by LS OpCo for time periods starting on the Economic Effective Date; the same shall apply on a prorated basis to the assets or rights of use licensed under this § 16 according to the provisions in **Annex 16.4** if the fee is incurred for use by LS OpCo. Insofar as KGaA incurs costs for the Intangible Assets

or Rights Of Use transferred pursuant to this § 16, KGaA can pass the charges on to LS OpCo for the costs incurred for use by LS OpCo for time periods starting on the Economic Effective Date; the same shall apply on a prorated basis to the assets or Rights Of Use licensed pursuant to this § 16 in accordance with the provisions of **Annex 16.4** insofar as the costs are incurred for use by LS OpCo.

- 16.8 LS OpCo shall recognize that the Intangible Assets and Rights Of Use transferred pursuant to this § 16 are only transferred or licensed with the content and to the extent that corresponds to the powers of KGaA at the Legal Effective Date. The Parties expressly agree that all rights and licenses granted or agreed upon with third parties before the Legal Effective Date shall remain unaffected. Insofar as use of the rights provided on the basis of contracts with third parties pursuant to this § 16 is subject to restrictions, LS OpCo shall be obligated to comply with these restrictions when using the rights provided according to this § 16. § 56 shall remain unaffected.

## **§ 17**

### **Know-how**

- 17.1 The Life Science Assets To Be Transferred also include all know-how of KGaA used in the Life Science Business Sector, in each case to the extent to which KGaA is authorized to dispose of such know-how at the Legal Effective Date. This includes, in particular,
- business or trade secrets relating to the Life Science Business Sector,
  - research and development know-how used in the Life Science Business Sector, for instance, non-patentable or secret inventions, insights into chemical, mechanical or biological products and processes, as well as insights into devices for the Life Science business;
  - know-how used in the Life Science Business Sector on quality requirements, regulatory requirements, trade regulation compliance, chemicals legislation, and other legal requirements;
  - knowledge and experience used in the Life Science Business Sector about suppliers, in particular their abilities as regards product quality, quality standards and processes;
  - media material (photos, videos, graphics, audio material, etc.) used in the Life Science Business Sector which was administered or (co-)produced by the Life Science Business Sector;
  - analytical methods and knowledge used in the Life Science Business Sector for raw materials, intermediate products, and manufactured products as well as

for products in the research and development stage, as well as the resulting study results;

- production and process know-how used in the Life Science Business Sector;
- know-how used in the Life Science Business Sector for the repair, maintenance and servicing, as well as assembly, installation and commissioning of technical equipment and installations;
- know-how used in the Life Science Business Sector for the supply chain, such as requirements planning, capacity planning, production planning, managing goods flows, storage, logistics, and distribution of goods;
- distribution and sales and marketing know-how used in the Life Science Business Sector, including e-commerce know-how;
- the customer base used in the Life Science Business Sector, including the know-how about customers' expectations as regards product quality, regulatory requirements, service levels, and innovation; and
- know-how used in the Life Science Business Sector on international markets and the global competitive situation.

17.2 KGaA hereby transfers to LS OpCo all know-how of KGaA assigned exclusively to the Life Science Business Sector. If know-how is also used in the Life Science Business Sector but not exclusively, KGaA shall grant to LS OpCo, according to the provisions in **Annex 16.4**, an unlimited, irrevocable, non-exclusive, free-of-charge, non-transferrable (sub-)license, in each case to the extent to which KGaA is authorized to dispose of these at the Legal Effective Date ("duplication of beneficial ownership").

17.3 To the extent that know-how attributed to the Life Science Business Sector and transferred or licensed as per this § 17 is contained in records, documents, on data carriers or other embodiments or storage media which are not attributed to the Life Science Business Sector, KGaA shall grant LS OpCo ownership of these embodiments or storage media (or, if the know-how is also used by other Business Sectors, of copies hereof). Insofar as such know-how is stored in databases of KGaA that are not transferred to LS OpCo under this Agreement, KGaA shall grant to LS OpCo a right of access to this know-how in these databases.

17.4 § 16.6 shall apply accordingly to the know-how transferred or licensed according to this § 17.

17.5 Insofar as KGaA must pay third parties a fee for the know-how transferred pursuant to this § 17, LS OpCo shall reimburse KGaA for the fees incurred for use by LS OpCo for time periods starting on the Economic Effective Date; the same

shall apply on a prorated basis to know-how licensed pursuant to this § 17 insofar as the costs are incurred for use by LC OpCo. Insofar as KGaA incurs costs for the know-how transferred pursuant to this § 17, KGaA may pass the costs incurred for use by LS OpCo on to LS OpCo for time periods as of the Economic Effective Date; the same shall apply on a prorated basis to know-how licensed pursuant to this § 17 as far as the costs incurred for use by LS OpCo.

- 17.6 Insofar as use of the know-how transferred or licensed pursuant to this § 17 under contracts with third parties is subject to restrictions, LS OpCo is obligated to comply with these restrictions when using the know-how.

## **§ 18**

### **Tangible assets**

- 18.1 The Life Science Assets To Be Transferred include all tangible assets attributable exclusively or, per their usage, predominantly to the Operating Unit KGaA Life Science, including

- technical equipment and machinery, the assets under construction, and other moveable items of tangible assets;
- plant and office equipment and low-value assets;

with the exception, however, of the land and buildings owned by KGaA (cf. § 39.1 e). The Life Science Assets To Be Transferred include in particular the tangible assets in the internal cost centers of KGaA attributable to the Operating Unit KGaA Life Science, particularly those listed in detail in **Annex 18.1**.

- 18.2 If the items specified under § 18.1 are classified as essential components of land or a building of KGaA within the meaning of Sec. 94 *BGB*, KGaA hereby transfers (only) beneficial ownership with regard to the land and buildings to LS OpCo by granting a right to use these items that shall be irrevocable by ordinary termination, permanent, and free of charge.
- 18.3 Insofar as KGaA is entitled to one of the items specified under § 18.1 solely under co-ownership or joint ownership, the co-ownership share or joint ownership share shall be transferred. Items that are not free of third-party rights (this also includes items to which KGaA has granted third-party beneficial (co-)ownership) shall be transferred with the corresponding rights of these third parties.
- 18.4 Insofar as the items specified under § 18.1 are subject to any reservation of title or assigned as security, instead of the title the corresponding entitlement right, alternatively the claim regarding a transfer or retransfer of ownership under the law of obligations, shall be transferred. Insofar as the items specified above are used by KGaA on the basis of leasing agreements, long-term rental, lease or other

transfer of rights of use agreements, the contracts on which they are based shall be transferred to LS OpCo with all rights and obligations in accordance with § 22 of this Hive-down Agreement.

- 18.5 If the tangible assets transferred to LS OpCo on the Closing Balance Effective Date are also used by other Operating Units, LS OpCo shall conclude an agreement with the respective OpCo and/or KGaA that ensures future use of the specific items to the extent necessary for the respective OpCo or KGaA.

## **§ 19**

### **Receivables**

- 19.1 Furthermore, KGaA shall transfer to LS OpCo KGaA receivables attributable to the Operating Unit KGaA Life Science,

- trade accounts receivable (also those from affiliated companies);
- receivables from the Transitioning Life Science Employees (as defined in § 23.1) and the Former Life Science Employees (as defined in § 23.2);
- other receivables and other assets.

In the event that a receivable is attributable to the Operating Unit KGaA Life Science on a pro rata basis only, such receivable shall be transferred only to the extent that it is attributable to the Operating Unit. Insofar as the transferred receivables are secured by items or rights, such items or rights shall also be transferred to LS OpCo (if applicable, on a pro rata basis).

- 19.2 The Life Science Assets To Be Transferred include in particular the receivables attributable to the Operating Unit KGaA Life Science or the receivables attributable on a pro rata basis using KGaA's accounting system on the basis of document numbers, particularly those listed in detail in **Annex 19.2**.

## **§ 20**

### **Inventories and other current assets**

- 20.1 The Life Science Assets To Be Transferred also include the inventories and other current assets attributable to the Operating Unit KGaA Life Science, in particular raw materials and supplies, unfinished products and finished products and merchandise, irrespective of whether they are at sites, in transit or on consignment, as well as advance payments on inventories.

- 20.2 Insofar as the inventories attributable to the Operating Unit KGaA Life Science are subject to any reservation of title, the Life Science Assets To Be Transferred shall include the entitlement right existing in this respect.
- 20.3 The Life Science Assets To Be Transferred include in particular the inventories and other current assets in the accounting system of KGaA on the basis of item numbers (*Stock Keeping Units – SKUs*) attributable to the Operating Unit KGaA Life Science, particularly those listed in detail in **Annex 20.3**.
- 20.4 Furthermore, the fixed-term deposits disclosed in the Hive-down Balance Sheet Life Science under the item "Other assets" at MFS GmbH shall be transferred.

## **§ 21**

### **Liabilities and provisions**

- 21.1 The Life Science Assets To Be Transferred shall include in particular all provisions and liabilities recorded in the Life Science Hive-down Balance Sheet, as well as all other liabilities, uncertain liabilities, contingent liabilities, and future obligations, and liability relationships of KGaA attributable to the Operating Unit KGaA Life Science the legal basis of which has already been constituted, regardless of whether these liabilities can be reported in the balance sheet or not. In the event that a liability, uncertain liability, or future liability is attributable to the Operating Unit KGaA Life Science on a prorated basis only, such liability shall be transferred only in the amount of this share.
- 21.2 The liabilities of KGaA transferred to LS OpCo (if required, on a pro rata basis) include in particular the following items attributable to Operating Unit KGaA Life Science
- liabilities from advance payments received on orders;
  - trade accounts payable (also those to affiliated companies);
  - liabilities from recourse factoring;
  - other liabilities;
  - employee-related provisions for obligations from bonus payments, jubilee payments, vacation and time account agreements, long-term variable remuneration programs, and provisions for pension obligations towards the Transitioning Life Science Employees (as defined in § 23.1) and the Former Life Science Employees (as defined in § 23.2);
  - liabilities or uncertain liabilities relating to pollutants at plants, remnants of plants, machinery, or machine parts transferred to LS OpCo;

- other provisions, such as, for example, provisions for uncertain liabilities or for impending losses from pending transactions; and
- deferred income.

21.3 In addition, the liabilities of KGaA to be hived down to LS OpCo include in particular all warranty risks, liability relationships (particularly guarantees, suretyships and letters of comfort) attributable to the Operating Unit KGaA Life Science.

21.4 The Life Science Assets To Be Transferred include in particular the liabilities and uncertain liabilities in the accounting system of KGaA on the basis of item numbers attributable to the Operating Unit KGaA Life Science (if required, on a pro rata basis), particularly those listed in detail in **Annex 21.4.a** (liabilities) and **Annex 21.4.b** (uncertain liabilities, taking into account the corresponding provisions). Insofar as "liabilities," "provisions," or "deferred income" are transferred pursuant to this § 21, the transfer shall refer to the legal relationships and risk items on which these items are based. Insofar as and as long as a transfer of liabilities (including uncertain liabilities, irrespective of whether provisions have been recorded for them or not) is not permitted or not feasible by way of the hive-down, LS OpCo shall assume, as the joint debtor, all obligations of KGaA from the corresponding liability or provision and, in accordance with the *BFH* decision dated April 26, 2012 – Case No. IV R 43/09, shall in the internal relationship release KGaA from the (uncertain) liability in question, so that these (uncertain) liabilities are accounted for exclusively by LS OpCo ("assumption of joint liability with discharging effect").

## § 22

### Contractual relationships

22.1 The Life Science Assets To Be Transferred include, to the extent exclusively attributable to the Life Science Business Sector,

- all contractual relationships of KGaA,
- other pre-closing or post-closing legal relationships of KGaA, including legal positions from contract offers, contractual negotiations, orders and legal relationships from contracts already executed that continue to have an effect, in particular rights or obligations on the basis of warranties, and
- legal relationships of KGaA that amend, modify, extend, terminate, or replace the contractual or other legal relationships referred to above,

(collectively, the **Transferred Life Science Contractual Relationships**)



each including all rights and obligations as well as ancillary rights and obligations, whether under private or public law, and in each case only to the extent that the contractual position of KGaA is affected. The transfer of employment relationships and employee-related assets and liabilities items is subject to § 23.

22.2 The Transferred Life Science Contractual Relationships pursuant to § 22.1 include, *inter alia*, all of the following agreements exclusively attributable to the Life Science Business Sector:

- contracts of KGaA on the acquisition of fixed assets (with the exception of land or buildings), or of current assets, purchase and supply contracts;
- rental, lease and leasing contracts of KGaA, including those for services to Transitioning Life Science Employees (as defined in § 23.1);
- service and work contracts, consultancy agreements, and maintenance contracts of KGaA;
- distribution agreements and contracts for logistics services of KGaA;
- research and development contracts, production contracts, cooperation contracts, license agreements (insofar as they involve Transferred Life Science Rights Of Use), supply agreements, marketing contracts, co-existence and prerogative agreements, and trust agreements of KGaA, with the exception of those that were entered into under this Agreement;
- contracts of KGaA regarding reimbursements, grants, and subsidies;
- contracts of KGaA regarding the confidential provision of materials (so-called material transfer agreements);
- confidential disclosure or non-disclosure agreements of KGaA; and
- quality agreements of KGaA with suppliers and customers of Life Science.

The Transferred Life Science Contractual Relationships include in particular the contractual relationships of KGaA attributable exclusively to the Life Science Business Sector in the contracts databases of KGaA using contract numbers, including those listed in detail in **Annex 22.2**.

22.3 Rights and obligations from contractual relationships that are also but not exclusively attributable to the Life Science Business Sector (***Shared Agreements Life Science***) shall remain with KGaA. The Shared Agreements Life Science shall be subject to § 49 of this Hive-down Agreement, to which reference is hereby made. The last paragraph of § 16 (2) shall remain unaffected.

- 22.4 LS OpCo agrees to comply in particular with all contractual obligations to tolerate and cease-and-desist obligations of KGaA, in particular obligations arising from exclusivity agreements to the extent that they are attributable to the Life Science Business Sector.
- 22.5 The trust agreements of KGaA with Metzler Trust e.V. on securing operational time accounts and with MP e.V. to secure retirement benefit rights are not included in the Transferred Life Science Contractual Relationships (cf. on this § 23.8 and § 23.10).
- 22.6 The internal service agreements or relationships that exist between the Operating Unit KGaA Life Science and (i) the functions remaining with KGaA or (ii) the other Operating Units of KGaA, including deliveries of products, services, infrastructure-related services (such as waste removal), shall continue to apply from the Legal Effective Date as at arm's length contractual agreements between the companies involved. The Parties shall conclude corresponding contracts and put themselves in such position internally as if these contracts had been effectively concluded at the Economic Effective Date. This shall not result in any agreements to the contrary by and between the Parties after the Economic Effective Date of the Hive-down.

### § 23

#### **Employment relationships, employee-related assets and liabilities items**

- 23.1 KGaA shall transfer to LS OpCo the employment relationships, including all rights and obligations resulting therefrom, with all employees
- who at the Closing Balance Effective Date were allocated to the "KGaA Life Science Darmstadt" part of the operations according to the "Gauss HR" system (with the exception of the employees who at this time were already in the passive phase of partial retirement) (**Life Science Employees**), provided that they are allocated to the "KGaA Life Science Darmstadt" part of the operations on the Legal Effective Date as well, and
  - who in the time after the Closing Balance Effective Date until (and including) the Legal Effective Date establish or have established an employment relationship with KGaA in the "KGaA Life Science Darmstadt" part of the operations or are allocated or were allocated to this part of the operations according to the "Gauss HR" system, in each case provided that they continue to be allocated to the "KGaA Life Science Darmstadt" part of the operations on the Legal Effective Date (**New Life Science Employees**)

(hereinafter collectively the **Transitioning Life Science Employees**). The Life Science Employees are identified in detail using position keys in **Annex 23.1**.

23.2 Furthermore, KGaA transfers to LS OpCo

- all rights and obligations resulting from terminated employment relationships with Life Science Employees whose employment relationships ended or are ending in the time period after the Closing Balance Effective Date until (and including) the Legal Effective Date;
- rights and obligations arising from terminated employment contracts with employees who establish or established an employment relationship with KGaA during the period after the Closing Balance Effective Date, depart before the Legal Effective Date, and at the time of their departure were attributable to the "KGaA Life Science Darmstadt" part of the operations;
- rights and obligations arising from terminated employment contracts with employees who on the Closing Balance Effective Date were assigned to another area of KGaA than the Operating Units, depart after the Closing Balance Effective Date until (and including) the Legal Effective Date, and at the time of their departure are attributable to the "KGaA Life Science Darmstadt" part of the operations

(hereinafter collectively the **Former Life Science Employees**). Rights and obligations arising from terminated employment relationships with employees of KGaA who departed until (including) the Closing Balance Effective Date shall not be transferred.

23.3 KGaA shall transfer to LS OpCo all other contracts and legal relationships relating to the employment relationships of the Transitioning Life Science Employees and the Former Life Science Employees' (terminated) employment relationships.

23.4 KGaA shall transfer to LS OpCo all rights and obligations arising from reinstatement guarantees that it has granted to Former Life Science Employees and other employees who left until (and including) the Closing Balance Effective Date and who were attributed to the "KGaA Life Science Darmstadt" part of the operations at the time of their departure, on the basis of No. 11 of the GWA On Group-internal Employee Deployment or, independent of the provisions of the GWA On Group-internal Employee Deployment, in the course of their departing under certain prerequisites.

23.5 Rights and obligations arising from the apprenticeships of (active or former) apprentices of KGaA shall in particular not be transferred to LS OpCo. This also shall apply to the apprenticeships of apprentices who were deployed in the "KGaA Life Science Darmstadt" part of the operations on the Closing Balance Effective Date and/or on the Legal Effective Date.

- 23.6 The transfer of rights and obligations arising from employment relationships with the Life Science Employees who, in the time after the Closing Balance Effective Date until (and including) the Legal Effective Date, are or were assigned to a different Operating Unit, is defined in § 11.1, § 35.1.
- 23.7 Upon the transfer of the employment relationships pursuant to § 23.1 and § 23.2, all pension commitments as defined by the German Company Pension Act made to the Transitioning Life Science Employees and the Former Life Science Employees shall be transferred from KGaA to LS OpCo. Immediately thereafter, the pension commitments to Transitioning Life Science Employees, but not, however, the pension commitments to Former Life Science Employees, together with the employment contracts resulting from the Business Lease Agreement between LS OpCo and KGaA as detailed in Sec. 613 a *BGB*, shall be retransferred to KGaA. As for the pension commitments transitioning to KGaA as a result of the Business Lease Agreement, LS OpCo, in § 21 of the Business Lease Agreement, declares assumption of joint liability with the obligation to perform internally towards KGaA (**Life Science Assumption Of Joint Liability**).
- 23.8 KGaA shall secure all direct commitments to the Transitioning Life Science Employees and the Former Life Science Employees in the form of a CTA with MP e.V. (**CTA-Secured Direct Commitments Life Science**). LS OpCo and MP e.V. have in turn concluded a trust agreement in notarized form on February 23, 2018 that is attached to this Hive-down Agreement as **Annex 11.8.a**. This trust agreement secures the CTA-Secured Direct Commitments Life Science that in each case are transferred to LS OpCo. The securing of the CTA-Secured Direct Commitments Life Science shall also remain effective under the CTA concluded by LS OpCo during the term of the Life Science Assumption Of Joint Liability under the business lease. For the establishment of this new CTA security, KGaA, LS OpCo, and MP e.V. have concluded a transfer agreement on February 23, 2018 in notarized form regarding the Transitioning Life Science Employees and the Former Life Science Employees that will become effective as of the Legal Effective Date and that is attached to this Hive-down Agreement as **Annex 11.8.b**. In that agreement, the trust assets for the Transitioning Life Science Employees and the Former Life Science Employees from the CTA of KGaA accumulated on a prorated basis by these employees are assigned to the new CTA of LS OpCo with economic effect as of the Economic Effective Date. Any compensation for Switching Employees (as defined in § 52.1) remains unaffected and is subject to § 52.
- 23.9 Insofar as pension commitments were made to the Transitioning Life Science Employees in the form of direct insurance or as commitment to a pension scheme at the *PKDW*, the legal position of KGaA towards the external pension provider shall be economically transferred to LS OpCo by way of a trust agreement that is hereby concluded on the basis of the provisions in **Annex 23.9**. A transfer of the position as the insured party in the direct insurance policies or of the status as

treasury company at a pension fund shall not take place in the course of the Operational Hive-down for the Transitioning Life Science Employees. As regards the Former Life Science Employees, LS OpCo shall continue the external pension commitment. For this purpose, upon consent of the external pension provider, it shall take the further steps necessary. To the extent that legal positions vis-à-vis external pension providers transition in this context to LS OpCo, KGaA and LS OpCo shall transfer the legal positions to LS OpCo – subject to consent of the respective external pension provider. If such an agreement with the external pension provider is not reached, KGaA shall ensure that LS OpCo is placed in a position as if such an agreement had been concluded, namely by undertaking to provide a position as insured party vis-à-vis the direct insurance companies and a status as treasury entity at PKDW.

23.10 As for time account agreements, the provisions of § 23.7 and of § 23.8 shall apply accordingly. LS OpCo, Metzler Trust e.V., and Höchster Pensions Benefits Services GmbH have in this context concluded a CTA trust agreement on February 26, 2018 in notarized form to continue the bankruptcy protection for time account agreements and together with KGaA an agreement on transfer of trust assets accounted for on a prorated basis for the Former and Transitioning Life Science Employees; these are attached to this Agreement as **Annex 11.10.a** and **Annex 11.10.b**.

23.11 In addition, provision is made that LS OpCo shall agree in the Business Lease Agreement to assumption of joint liability with an internal obligation to perform for other employee-related obligations (in particular, anniversary bonus payments and vacation entitlements). In this respect, § 23.7 shall apply *mutatis mutandis*.

## **§ 24**

### **Litigation and legal proceedings**

24.1 Furthermore, KGaA shall transfer to LS OpCo the Life Science Assets And Liabilities Items transferred in conjunction with this Hive-down Agreement or litigation proceedings otherwise exclusively attributable to the Operating Unit KGaA Life Science and other legal proceedings, in particular civil-law actions, dunning procedures, independent procedures of collecting evidence, proceedings in interim legal proceedings, execution proceedings, as well as fines proceedings, social court proceedings and arbitration proceedings, regardless of whether KGaA is involved as a party or otherwise (e.g., as a summoned party), and including the rights and obligations of KGaA asserted in these litigation and legal proceedings. This shall not apply to litigation and other legal proceedings relating to registered property rights which are subject to the trust agreement under § 4.3 b); such litigation and other proceedings shall be continued by KGaA as per the trust agreement.

- 24.2 Furthermore, KGaA shall transfer to LS OpCo, subject to the provisions of § 48.6 of this Hive-down Agreement, all administrative law proceedings and other proceedings under public law exclusively attributable to the Operating Unit KGaA Life Science (e.g., appeal proceedings), as well as administrative and constitutional disputes.
- 24.3 The Life Science Assets To Be Transferred include in particular the legal proceedings listed in detail in **Annex 24.3**.
- 24.4 Furthermore, the Life Science Assets To Be Transferred include all procedural legal relationships with third parties and all contractual agreements with third parties that involve the recognition and corresponding implementation or results of legal proceedings or the assertion of rights that are reserved to the parties in the proceedings and are attributable to the Life Science Business Sector, in particular those arising from titles and settlements.
- 24.5 Together with the litigation and other procedural legal proceedings specified in § 24.1, the advisory and consulting relationships with third parties attributable to them shall also be transferred to LS OpCo.
- 24.6 To the extent that, according to the provisions of the applicable procedural rules, the transfer of party status in full from KGaA to LS OpCo depends on other circumstances, such as the consent of the other process participant(s), the Parties shall undertake for these steps to be taken and for LS OpCo to replace KGaA as a party in the litigation and other procedural legal relationships subject to this provision.
- 24.7 If no change of party pursuant to § 24.1 or § 24.6 occurs, KGaA shall continue the proceedings as the institution of legal standing. Proceedings shall be conducted for the account of LS OpCo. Internally, the ongoing management of proceedings shall be assumed by LS OpCo. KGaA shall thus not conduct any procedural acts (particularly agree on any settlement, waiver, acknowledgement, confession, withdrawal, or amendment of actions) without the prior consent of LS OpCo. LS OpCo shall indemnify KGaA with regard to any liabilities and costs resulting from any litigation and other procedural legal relationships that are subject to this provision. KGaA shall support LS OpCo in such proceedings with the objective of minimizing the economic damage resulting from the proceedings.
- 24.8 Procedural law relationships and other legal relationships under procedural law that are only partially attributable to the Life Science Business Sector shall be continued by KGaA. § 24.7 shall apply accordingly in respect of the part attributable to the Life Science Business Sector.

## § 25

### Memberships

To the extent that memberships of KGaA in associations, federations, societies, collectives, and associations of persons, including collective bargaining associations and tariff communities, are of relevance to the Operating Unit KGaA Life Science, KGaA and LS OpCo shall decide by the Legal Effective Date on the future classification of these memberships relating to the Operating Unit KGaA Life Science and, in the cases in which LS OpCo is to assume membership from KGaA or retain membership in the future beside KGaA, shall make their best efforts to transfer or split the respective membership. Insofar as the intended transfer or split of a membership is not feasible under the applicable law or in fact, LS OpCo shall, if necessary, re-apply for the membership.

## § 26

### Insurance policies

KGaA shall ensure the inclusion of LS OpCo in the master insurance policies existing at KGaA to ensure that LS OpCo has the insurance coverage (building insurance, operational insurance, etc.) necessary for its business operations at all times; LS OpCo shall reimburse KGaA proportionately for the costs incurred for such insurance coverage. If necessary or appropriate, LS OpCo shall conclude separate insurance contracts.

## III.

### Hive-down of the Operating Unit KGaA Performance Materials

## § 27

### Transfer of the assets and liabilities of the Operating Unit KGaA Performance Materials

- 27.1 KGaA shall transfer to PM OpCo the entire Operating Unit KGaA Performance Materials with all assets and liabilities items of KGaA attributable directly or indirectly, legally or economically to this operating unit (the **Performance Materials Assets To Be Transferred**).
- 27.2 The hive-down of the Operating Unit KGaA Performance Materials includes the transfer of the "KGaA Performance Materials Darmstadt" and "KGaA Performance Materials Gernsheim" parts of operations at the Darmstadt and Gernsheim sites as parts of the joint operation Darmstadt/Gernsheim (Sec. 126 (1) (9) *UmwG*). The transfer of the employment relationships attributable to this operation is regulated separately in § 35.



- 27.3 The Performance Materials Assets To Be Transferred include in particular the assets and liabilities items disclosed in the segment balance sheet of the Operating Unit KGaA Performance Materials derived from the Closing Balance Sheet as of January 1, 2018, 0:00 hours (**Performance Materials Hive-down Balance Sheet**). The Performance Materials Hive-down Balance Sheet is attached to the Hive-down Agreement as **Annex 27.3**. However, recording the Assets And Liabilities Items of the Performance Materials Assets To Be Transferred in the Performance Materials Hive-down Balance Sheet is not a prerequisite for their transfer. The Performance Materials Assets To Be Transferred also include – subject to deviating provisions in this Agreement – all items, rights, and obligations that are not required to be recorded in the balance sheet or cannot be recorded in the balance sheet, respectively, and are not disclosed in the balance sheet (including warranty risks and other liability relationships) that are attributable to the Operating Unit KGaA Performance Materials from an economic perspective, particularly all assets that are attributable to the fiscal operations in line with Sec. 20 (1) *UmwStG* of the Operating Unit KGaA Performance Materials that shall be hived down to PM OpCo, each on a “functionally essential operational basis” or as “assets attributable based on economic contexts” in terms of lit. 20.06 s. 1 in conjunction with lit. 15.02 s. 2 *2011 UmwSt-Erlass*.
- 27.4 The Performance Materials Assets To Be Transferred include in particular the Assets And Liabilities Items that are described in detail in § 28 to § 38. In addition, the Performance Materials Assets To Be Transferred include the plant-related and environmental law approvals attributable to the Operating Unit KGaA Performance Materials and specified in § 48.2 as well as drug and product approvals which KGaA holds in favor of PM OpCo in trust for the duration of the business lease; the details are set forth in § 48.

## § 28

### Intangible Assets

- 28.1 Single Use IP Performance Materials. Unless stated otherwise in § 28.2, the Performance Materials Assets To Be Transferred include all Intangible Assets attributable exclusively to the Performance Materials Business Sector (**Single Use IP Performance Materials**), in each case to the extent to which KGaA is authorized to use them at the Legal Effective Date. Unless stated otherwise in § 28.2 these also include all rights of use in Intangible Assets of third parties attributable exclusively to the Performance Materials Business Sector to the extent that KGaA is authorized to use them at the Legal Effective Date.
- 28.2 Unless stated otherwise in the last paragraph of this § 28.2 Single Use IP Performance Materials includes in particular



- all Patent Rights of KGaA used exclusively in the Performance Materials Business Sector, including all rights of compensation for infringements that occurred before the Legal Effective Date and all claims to enforce the priority on the basis of the respective patent rights (for patent rights held jointly with third parties, the respective share);
- all Trademarks and Brands of KGaA attributed exclusively to the Performance Materials Business Sector, including all rights of compensation for infringements that occurred before the Legal Effective Date (for Trademarks and Brands held jointly with third parties, the respective share);
- all copyrights and ancillary copyrights of KGaA attributed exclusively to the Performance Materials Business Sector, and all rights of exploitation in copyrights attributed exclusively to the Performance Materials Business Sector, including all rights of compensation for infringements that occurred before the Legal Effective Date (for rights held jointly with third parties, the respective share)

(collectively, the **Transferred Performance Materials Property Rights**);  
and

- all rights of use of KGaA in Intangible Assets of third parties used exclusively in the Performance Materials Business Sector (the **Transferred Rights Of Use Performance Materials**).

The Transferred Performance Materials Property Rights include in particular the Intangible Assets listed in **Annex 28.2.a**. The Transferred Healthcare Rights Of Use include in particular the in-licensed rights of use on the basis of the license agreements listed in **Annex 34.2**. The Single Use IP Healthcare also include the reported Intangible Assets listed in **Annex 28.2.b**.

Contrary to the provisions above, such copyrights or rights of use in software exercised not only by KGaA but also by other companies of the Group (e.g., ERP systems and associated software) are not included in the Transferred Performance Materials Property Rights or the Transferred Performance Materials Rights Of Use, not even if they are assigned exclusively to the Performance Materials Business Sector. These copyrights and rights of use shall instead remain with KGaA and shall be licensed to PM OpCo pursuant to the provisions of § 28.4.

28.3 The Transferred Performance Materials Property Rights shall be transferred as follows:

- a) Insofar as the Transferred Performance Materials Property Rights are held by third parties (e.g., MPT GmbH) in trust for KGaA, the respective Trust

Agreements shall be transferred to PM OpCo by way of partial universal legal succession under Sec. 123 (3) (1) and Sec. 131 (1) (1) *UmwG* and according to § 34 of this Hive-down Agreement.

- b) Insofar as the Transferred Performance Materials Property Rights are Registered Property Rights the registration of which is requested, or which are registered on behalf of KGaA, they shall be transferred by entering into a trust agreement that is hereby established between KGaA and PM OpCo, according to which KGaA holds these Registered Property Rights in trust for PM OpCo from the Economic Effective Date. The details of this Trust Agreement are set out in **Annex 28.3.b**. The Registered Property Rights of the Transferred Performance Materials Property Rights include in particular the Trademarks and Brands listed in **Annex 28.2.a**.
- c) All other Transferred Performance Materials Property Rights shall be transferred by way of partial universal succession pursuant to Sec. 123 (3) (1), Sec. 131 (1) (1) *UmwG*.

The Transferred Performance Materials Rights Of Use shall be transferred by way of transfer of the relevant agreements, also by way of partial universal legal succession, pursuant to the provisions of § 34 of this Hive-down Agreement, unless § 28.5 of this Hive-down Agreement specifies otherwise for software.

28.4 **Shared IP Performance Materials**. The hive-down of Intangible Assets of KGaA that are also but not exclusively used in the Performance Materials Business Sector, as well as software that is used not only by KGaA but also by other companies of the Group (***Shared IP Performance Materials***), shall not be contributed by transferring these items by way of partial universal legal succession, but rather by granting a right of use that is irrevocable by ordinary termination, permanent, and free of charge ("duplication of beneficial ownership"). For this purpose, KGaA hereby grants PM OpCo, according to the provisions in **Annex 28.4**, an unlimited, irrevocable, non-exclusive, free-of-charge, non-transferrable (sub-)license for any Shared IP Performance Materials, in each case to the extent to which KGaA is authorized to dispose of these at the Legal Effective Date, in particular relating to

- a) Trademarks and Brands of KGaA that are also but not exclusively used in the Performance Materials Business Sector, including the Trademarks and Brands listed in **Annex 28.4.a**
- b) Patent Rights of KGaA that are also but not exclusively used in the Performance Materials Business Sector, including the patent rights listed in **Annex 28.4.b**; and
- c) copyrights and ancillary copyrights of KGaA as well as rights of exploitation of KGaA of copyrights that (i) are also but not exclusively used in the

Performance Materials Business Sector, or (ii) refer to software that is not used only by KGaA but also by other companies of the Group (e.g., ERP systems and associated software),

(collectively, the **Licensed Performance Materials Property Rights**);  
and

- d) rights of use to which KGaA is entitled to in respect of third-party Intangible Assets that (i) are also but not exclusively attributed to the Performance Materials Business Sector, or (ii) refer to software that is not used only by KGaA but also by other companies of the Group (e.g., ERP systems and associated software), including the rights of use listed in **Annex 28.4.d**

(the **Licensed Performance Materials Rights Of Use**),

in each case only for use within the Performance Materials Business Sector. In the event of a CoC Event at PM OpCo or its legal successors, KGaA may terminate for cause the licenses granted. If KGaA exercises its right of termination for cause, all rights and obligations of the license granted under this § 28.4 shall be terminated with immediate effect without compensation, at the earliest at the time of occurrence of the CoC Event. A CoC Event is deemed to have occurred when a third party, which is not an "associated company" in terms of Sec. 15 et seq. AktG, solely or jointly with other third parties directly or indirectly, acquires more than 50% of the company shares of PM OpCo or its legal successor or otherwise exercises a controlling influence on it, whether such control is obtained by acquiring company shares, by way of a merger, or as a result of other statutory or contractual measures.

#### 28.5 Software-specific transfer provisions.

- a) Transfer of Single Use Software Performance Materials. Insofar as the Transferred Performance Materials Property Rights according to § 28.2 include copyrights or rights to exploit software (**Single Use Software Performance Materials**), KGaA shall transfer to PM OpCo the entire source and object code relating to this software, including the corresponding documentation, in each case to the extent to which KGaA is authorized to dispose of these at the Legal Effective Date, by way of partial universal legal succession under Sec. 123 (3) (1), Sec. 131 (1) (1) UmwG.
- b) Transfer of Rights Of Use in Third-Party Software. Insofar as the Transferred Performance Materials Rights Of Use include rights of use in software products of third parties (**Performance Materials Third-Party Software**) which are administered centrally by KGaA on the basis of contracts with the third party, the following shall apply:

- (i) If the rights of use according to the contract concluded with the third party are transferrable to PM OpCo, they shall be transferred from KGaA to PM OpCo at the Legal Effective Date by way of partial universal legal succession under Sec. 123 (3) (1), Sec. 131 (1) (1) *UmwG*.
  - (ii) If the consent of the third party is required to transfer the rights of use, § 28.6 shall apply.
  - (iii) If a transfer of rights of use is permitted under the provisions of this § 28.5 b), KGaA shall provide PM OpCo, in addition to the respective right of use, with a copy of the relevant object code and, to the extent that KGaA can dispose of it, the relevant source code of the third-party software, to the extent that this is permitted under the contract concluded with the third party.
- 28.6 Insofar as for the Intangible Assets or Rights Of Use to be transferred or licensed according to this § 28 the consent of a third party is required, KGaA shall undertake to obtain the third-party consent for the respective transfer or licensing at the expense of PM OpCo. If the request for a required consent is rejected by the third party and KGaA is authorized under the contract concluded with the third party to grant sub-licenses to PM OpCo, KGaA shall grant to PM OpCo at their request sub-licenses to the extent that PM OpCo would have been authorized to transfer or license the respective Intangible Asset or Right Of Use pursuant to this § 28. If the third party refuses the necessary consent and if KGaA is not authorized under the contract concluded with the third party to grant sub-licenses to PM OpCo, the Parties shall agree on other suitable measures to enable PM OpCo to access the respective Intangible Assets (e.g., direct in-licensing of the Intangible Assets by PM OpCo from the third party). § 56 shall remain unaffected.
- 28.7 Insofar as KGaA must pay a fee for the Intangible Assets or Rights Of Use of third parties transferred pursuant to this § 28, PM OpCo shall reimburse KGaA for the fees incurred for use by PM OpCo for time periods starting on the Economic Effective Date; the same shall apply on a prorated basis to the assets or rights of use licensed under this § 28 according to the provisions in **Annex 28.4** if the fee is incurred for use by PM OpCo. Insofar as KGaA incurs costs for the Intangible Assets or Rights Of Use transferred pursuant to this § 28, KGaA can pass the charges on to HC OpCo for the costs incurred for use by PM OpCo for time periods starting on the Economic Effective Date; the same shall apply on a prorated basis to the assets or Rights Of Use licensed pursuant to this § 28 in accordance with the provisions of **Annex 28.4** insofar as the costs for use are incurred by PM OpCo.
- 28.8 PM OpCo shall recognize that the Intangible Assets and Rights Of Use transferred pursuant to this § 28 are only transferred or licensed with the content and to the

extent that corresponds to the powers of KGaA at the Legal Effective Date. The Parties expressly agree that all rights and licenses granted or agreed upon with third parties before the Legal Effective Date shall remain unaffected. Insofar as use of the rights provided on the basis of contracts with third parties pursuant to this § 28 is subject to restrictions, PM OpCo shall be obligated to comply with these restrictions when using the rights provided according to this § 28. § 56 shall remain unaffected.

## **§ 29**

### **Know-how**

29.1 The Performance Materials Assets To Be Transferred also include all know-how of KGaA used in the Performance Materials Business Sector in each case to the extent to which KGaA is authorized to dispose of such know-how at the Legal Effective Date. This includes, in particular,

- business or trade secrets relating to the Performance Materials Business Sector;
- research and development know-how used in the Performance Materials Business Sector, for example non-patentable inventions or inventions not publicly disclosed, insights into chemical, mechanical or biological products and processes, as well as insights into basic substances for pharmaceutical products, pigments and cosmetic substances;
- know-how used in the Performance Materials Business Sector on quality requirements, regulatory requirements, trade regulation compliance, chemicals and pharmaceuticals law, and other legal requirements;
- knowledge and experience used in the Performance Materials Business Sector about suppliers, in particular their abilities as regards product quality, quality standards and processes;
- media material (photos, videos, graphics, audio material, etc.) used in the Performance Materials Business Sector managed or (co-)produced by the Performance Materials Business Sector;
- analytical methods and knowledge used in the Performance Materials Business Sector for raw materials, intermediate products and manufactured products and for products in the research and development stage, as well as the resulting study results, as well as pharmacological and toxicological findings about materials deployed and produced by Performance Materials;
- production and process know-how used in the Performance Materials Business Sector;

- know-how used in the Performance Materials Business Sector for the repair, maintenance and servicing, as well as assembly, installation, and commissioning of technical equipment and installations;
- know-how used in the Performance Materials Business Sector for the supply chain, such as requirements planning, capacity planning, production planning, managing goods flows, storage, logistics, and distribution of goods;
- distribution and sales and marketing know-how used in the Performance Materials Business Sector, including e-commerce know-how;
- the customer base attributed to the Performance Materials Business Sector, including the know-how about customers' expectations and skills as regards product quality, regulatory requirements, service levels, innovation, and know-how about customers' research and developments; and
- know-how used in the Performance Materials Business Sector on international markets and the global competitive situation.

29.2 KGaA hereby transfers to PM OpCo all know-how of KGaA assigned exclusively to the Performance Materials Business Sector. If know-how is also used in the Performance Materials Business Sector but not exclusively, KGaA shall grant to PM OpCo, according to the provisions in **Annex 28.4**, an unlimited, irrevocable, non-exclusive, free-of-charge, non-transferrable (sub-)license, in each case to the extent to which KGaA is authorized to dispose of these at the Legal Effective Date ("duplication of beneficial ownership").

29.3 To the extent that know-how attributed to the Performance Materials Business Sector and transferred or licensed as per this § 29 is contained in records, documents, on data carriers or other embodiments or storage media which are not attributed to the Performance Materials Business Sector, KGaA shall grant PM OpCo ownership of these embodiments or storage media (or, if the know-how is also used by other Business Sectors, of copies hereof). Insofar as such know-how is stored in databases of KGaA that are not transferred to PM OpCo under this Agreement, KGaA shall grant to PM OpCo a right of access to this know-how in these databases.

29.4 § 28.6 shall apply accordingly to the know-how transferred or licensed according to this § 29.

29.5 Insofar as KGaA must pay third parties a fee for know-how transferred pursuant to this § 29, PM OpCo shall reimburse KGaA for the fees incurred for use by PM OpCo for time periods starting on the Economic Effective Date; the same shall apply on a prorated basis to the know-how licensed pursuant to this § 29 if the fee is incurred for use by PM OpCo. Insofar as KGaA incurs costs for the know-how transferred

pursuant to this § 29, KGaA may pass the costs incurred for use by PM OpCo on to PM OpCo for time periods as of the Economic Effective Date; the same shall apply on a prorated basis to know-how licensed pursuant to this § 29 as far as the costs incurred for use by PM OpCo.

- 29.6 Insofar as the use of the know-how transferred or licensed pursuant to this § 29 under contracts with third parties is subject to restrictions, PM OpCo is obligated to comply with these restrictions when using the know-how.

## § 30

### Tangible assets

- 30.1 The Performance Materials Assets To Be Transferred include all tangible assets attributable exclusively or, per their usage, predominantly to the Operating Unit KGaA Performance Materials, including

- technical equipment and machinery, the assets under construction, and other moveable items of tangible assets;
- plant and office equipment and low-value assets;

with the exception, however, of the land and buildings owned by KGaA (cf. § 39.1 e). The Performance Materials Assets To Be Transferred include in particular the tangible assets in the internal cost centers of KGaA attributable to the Operating Unit KGaA Performance Materials, particularly those listed in detail in **Annex 30.1**.

- 30.2 If the items specified under § 30.1 are classified as essential components of land or a building of KGaA within the meaning of Sec. 94 *BGB*, KGaA hereby transfers (only) beneficial ownership with regard to the land and buildings to PM OpCo by granting a right to use these items that shall be irrevocable by ordinary termination, permanent, and free of charge.

- 30.3 Insofar as KGaA is entitled to one of the items specified under § 30.1 solely under co-ownership or joint ownership, the co-ownership share or joint ownership share shall be transferred. Items that are not free of third-party rights (this also includes items to which KGaA has granted third-party beneficial (co-)ownership) shall be transferred with the corresponding rights of these third parties.

- 30.4 Insofar as the items specified under § 30.1 are subject to any reservation of title or assigned as security, instead of the title the corresponding entitlement right, alternatively the claim regarding a transfer or retransfer of ownership under the law of obligations, shall be transferred. Insofar as the items specified above are used by KGaA on the basis of leasing agreements, long-term rental, lease or other transfer of rights of use agreements, the contracts on which they are based shall

be transferred to PM OpCo with all rights and obligations in accordance with § 34 of this Hive-down Agreement.

- 30.5 If the tangible assets transferred to PM OpCo on the Closing Balance Effective Date are also used by other Operating Units, PM OpCo shall conclude an agreement with the respective OpCo and/or KGaA that ensures future use of the specific items to the extent necessary for the respective OpCo or KGaA.

## **§ 31**

### **Receivables and financial assets**

- 31.1 Furthermore, KGaA shall transfer to PM OpCo KGaA receivables and financial assets attributable to the Operating Unit KGaA Performance Materials, including

- trade accounts receivable (also those from affiliated companies);
- receivables from the Transitioning Performance Materials Employees (as defined in § 35.1) and the Former Performance Materials Employees (as defined in § 35.2);
- other receivables and other assets.

In the event that a receivable is attributable to the Operating Unit KGaA Performance Materials on a pro rata basis only, such receivable shall be transferred only to the extent that it is attributable to the Operating Unit. Insofar as the transferred receivables are secured by items or rights, such items or rights shall also be transferred to PM OpCo (if applicable, on a pro rata basis).

- 31.2 The Performance Materials Assets To Be Transferred include in particular the receivables attributable to the Operating Unit KGaA Performance Materials or the receivables attributable on a pro rata basis using KGaA's accounting system on the basis of document numbers, particularly those listed in detail in **Annex 31.2**. The Performance Materials Assets To Be Transferred also include the investment of KGaA in the entity specified in **Annex 31.2**.

## **§ 32**

### **Inventories and other current assets**

- 32.1 The Performance Materials Assets To Be Transferred also include the inventories and other current assets attributable to the Operating Unit KGaA Performance Materials, in particular raw materials and supplies, unfinished products and finished products and merchandise, irrespective of whether they are at sites, in transit or on consignment, as well as advance payments on inventories.



- 32.2 Insofar as the inventories attributable to the Operating Unit KGaA Performance Materials are subject to any reservation of title, the Performance Materials Assets To Be Transferred shall include the entitlement right existing in this respect.
- 32.3 The Performance Materials Assets To Be Transferred include in particular the inventories and other current assets in the accounting system of KGaA on the basis of item numbers (*Stock Keeping Units – SKUs*) attributable to the Operating Unit KGaA Performance Materials, particularly those listed in detail in **Annex 32.3**.
- 32.4 Furthermore, the fixed-term deposits disclosed in the Hive-down Balance Sheet Performance Materials under the item “Other assets” at MFS GmbH shall be transferred.

### **§ 33**

#### **Liabilities and provisions**

- 33.1 The Performance Materials Assets To Be Transferred shall include in particular all provisions and liabilities recorded in the Performance Materials Hive-down Balance Sheet, as well as all other liabilities, uncertain liabilities, contingent liabilities, and future obligations and liability relationships of KGaA attributable to the Operating Unit KGaA Performance Materials the legal basis of which has already been constituted, regardless of whether these liabilities can be reported in the balance sheet or not. In the event that a liability, uncertain liability, or future liability is attributable to the Operating Unit KGaA Performance Materials on a prorated basis only, such liability shall be transferred only in the amount of this share.
- 33.2 The liabilities of KGaA transferred to PM OpCo (if required, on a pro rata basis) include in particular the following items attributable to the Operating Unit KGaA Performance Materials
- liabilities from advance payments received on orders;
  - trade accounts payable (also those to affiliated companies);
  - liabilities from recourse factoring;
  - other liabilities;
  - employee-related provisions for obligations from bonus payments, jubilee payments, vacation and time account agreements, long-term variable remuneration programs, and provisions for pension obligations towards the Transitioning Performance Materials Employees (as defined in § 35.1) and the Former Performance Materials Employees (as defined in § 35.2);

- liabilities or uncertain liabilities relating to pollutants at plants, remnants of plants, machinery or machine parts transferred to PM OpCo;
- other provisions, such as, for example, provisions for uncertain liabilities or for impending losses from pending transactions; and
- deferred income.

33.3 In addition, the liabilities of KGaA to be hived down to PM OpCo include in particular all warranty risks and liability relationships (particularly guarantees, suretyships and letters of comfort) attributable to the Operating Unit KGaA Performance Materials.

33.4 The Performance Materials Assets To Be Transferred include in particular the liabilities and uncertain liabilities in the accounting system of KGaA on the basis of item numbers attributable to the Operating Unit KGaA Performance Materials (if required, on a pro rata basis), particularly those listed in detail in **Annex 33.4.a** (liabilities) and **Annex 33.4.b** (uncertain liabilities, taking into account the corresponding provisions). Insofar as “liabilities,” “provisions,” or “deferred income” are transferred pursuant to this § 33, the transfer shall refer to the legal relationships and risk items on which these items are based. Insofar as and as long as a transfer of liabilities (including uncertain liabilities, irrespective of whether provisions have been recorded for them or not) is not permitted or not feasible by way of the hive-down, PM OpCo shall assume, as the joint debtor, all obligations of KGaA from the corresponding liability or provision in accordance with the *BFH* decision dated April 26, 2012 – Case No. IV R 43/09, and shall in the internal relationship release KGaA from the (uncertain) liability in question, so that these (uncertain) liabilities are accounted for exclusively by PM OpCo (“assumption of joint liability with discharging effect”).

## **§ 34**

### **Contractual relationships**

34.1 The Performance Materials Assets To Be Transferred include, to the extent exclusively attributable to the Performance Materials Business Sector,

- all contractual relationships of KGaA,
- other pre-closing or post-closing legal relationships of KGaA, including legal positions from contract offers, contractual negotiations, orders and legal relationships from contracts already executed that continue to have an effect, in particular rights or obligations on the basis of warranties, and
- legal relationships of KGaA that amend, modify, extend, terminate, or replace the contractual or other legal relationships referred to above,

(collectively, the **Transferred Performance Materials Contractual Relationships**)

each including all rights and obligations as well as ancillary rights and obligations, whether under private or public law, and in each case only to the extent that the contractual position of KGaA is affected. The transfer of employment relationships and employee-related assets and liabilities is subject to § 35.

34.2 The Transferred Performance Materials Contractual Relationships pursuant to § 34.1 include, *inter alia*, all of the following agreements exclusively attributable to the Performance Materials Business Sector:

- contracts of KGaA on the acquisition of fixed assets (with the exception of land or buildings), or of current assets, purchase and supply contracts;
- rental, lease and leasing contracts of KGaA, including those for services to Transitioning Performance Materials Employees (as defined in § 35.1);
- service and work contracts, consultancy agreements, and maintenance contracts of KGaA;
- distribution agreements and contracts for logistics services of KGaA;
- research and development contracts, production contracts, cooperation contracts, license agreements (insofar as they involve Transferred Performance Materials Rights Of Use), supply agreements, marketing contracts, co-existence and prerogative agreements, and trust agreements of KGaA, with the exception of those that were entered into under this Agreement;
- contracts of KGaA regarding reimbursements, grants, and subsidies;
- contracts of KGaA regarding the confidential provision of materials (so-called material transfer agreements);
- confidential disclosure or non-disclosure agreements of KGaA; and
- quality agreements of KGaA with suppliers and customers of Performance Materials.

The Transferred Performance Materials Contractual Relationships include in particular the contractual relationships of KGaA attributable exclusively to the Performance Materials Business Sector in the contracts databases of KGaA using contract numbers, including those listed in detail in **Annex 34.2**.

34.3 Rights and obligations from contractual relationships that are also but not exclusively attributable to the Performance Materials Business Sector (**Shared**

**Agreements Performance Materials**) shall remain with KGaA. The Shared Agreements Performance Materials shall be subject to § 49 of this Hive-down Agreement, to which reference is hereby made. The last paragraph of § 28.2 shall remain unaffected.

- 34.4 PM OpCo agrees to comply in particular with all contractual obligations to tolerate and cease-and-desist obligations of KGaA, in particular obligations arising from exclusivity agreements to the extent that they are attributable to the Performance Materials Business Sector.
- 34.5 The trust agreements of KGaA with Metzler Trust e.V. on securing operational time accounts and with MP e.V. to secure retirement benefit rights are not included in the Transferred Performance Materials Contractual Relationships (cf. on this § 35.8 and § 35.10).
- 34.6 The internal service agreements or relationships that exist between the Operating Unit KGaA Performance Materials and (i) the functions remaining with KGaA or (ii) the other Operating Units of KGaA, including deliveries of products, services, infrastructure-related services (such as waste removal), shall continue to apply from the Legal Effective Date as at arm's length contractual agreements between the companies involved. The Parties shall conclude corresponding contracts and put themselves in such position internally as if these contracts had been effectively concluded at the Economic Effective Date. This shall not result in any agreements to the contrary by and between the Parties after the Economic Effective Date of the Hive-down.

## § 35

### **Employment relationships, employee-related assets and liabilities items**

- 35.1 KGaA shall transfer to PM OpCo the employment relationships, including all rights and obligations resulting therefrom, with all employees
- who at the Closing Balance Effective Date were allocated to the "KGaA Performance Materials Darmstadt" and/or "KGaA Performance Materials Gernsheim" part of the operations according to the "Gauss HR" system (with the exception of the employees who at this time were already in the passive phase of the partial retirement) (**Performance Materials Employees**), provided that they too are allocated to the "KGaA Performance Materials Darmstadt" and/or "KGaA Performance Materials Gernsheim" part of the operations on the Legal Effective Date, and
  - who in the time after the Closing Balance Effective Date until (and including) the Legal Effective Date establish or have established an employment

relationship with KGaA in the "KGaA Performance Materials Darmstadt" and/or "KGaA Performance Materials Gernsheim" part of the operations or are allocated or were allocated to these parts of the operations according to the "Gauss HR" system, in each case provided that they continue to be allocated to the "KGaA Performance Materials Darmstadt" and/or "KGaA Performance Materials Gernsheim" part of the operations on the Legal Effective Date (***New Performance Materials Employees***)

(hereinafter collectively the ***Transitioning Performance Materials Employees***). The Performance Materials Employees are identified in detail using position keys in **Annex 35.1**.

35.2 Furthermore, KGaA transfers to PM OpCo

- all rights and obligations resulting from terminated employment relationships with Performance Materials Employees whose employment relationships ended or are ending in the time period after the Closing Balance Effective Date until (and including) the Legal Effective Date;
- rights and obligations arising from terminated employment contracts with employees who establish or established an employment relationship with KGaA during the period after the Closing Balance Effective Date, depart before the Legal Effective Date, and at the time of their departure were attributable to the "KGaA Performance Materials Darmstadt" and or "KGaA Performance Materials Gernsheim" part of the operations;
- rights and obligations arising from terminated employment contracts with employees who on the Closing Balance Effective Date were assigned to another area of KGaA than the Operating Units, depart after the Closing Balance Effective Date until (and including) the Legal Effective Date, and at the time of their departure are attributable to the "KGaA Performance Materials Darmstadt" and/or "KGA Performance Materials Gernsheim" part of the operations

(hereinafter collectively the ***Former Performance Materials Employees***). Rights and obligations arising from terminated employment relationships with employees of KGaA who departed until (including) the Closing Balance Effective Date shall not be transferred.

35.3 KGaA shall transfer to PM OpCo all other contracts and legal relationships relating to the employment relationships of the Transitioning Performance Materials Employees and the Former Performance Materials Employees' (terminated) employment relationships.

- 35.4 KGaA shall transfer to PM OpCo all rights and obligations arising from reinstatement guarantees that it has granted to Former Performance Materials Employees and other employees who left until (and including) the Closing Balance Effective Date and who were attributed to the "KGaA Performance Materials Darmstadt" and/or "KGaA Performance Materials Gernsheim" part of the operations at the time of their departure, on the basis of No. 11 of the Group Works Agreement On Group-internal Employee Deployment or, independent of the provisions of the GWA On Group-internal Employee Deployment, in the course of their departing under certain prerequisites.
- 35.5 Rights and obligations arising from the apprenticeships of (active or former) apprentices of KGaA shall in particular not be transferred to PM OpCo. This also shall apply to the apprenticeships of apprentices who were deployed in the "KGaA Performance Materials Darmstadt" and/or "KGaA Performance Materials Gernsheim" part of the operations on the Closing Balance Effective Date and/or on the Legal Effective Date.
- 35.6 The transfer of rights and obligations arising from employment relationships with the Performance Materials Employees who, in the time after the Closing Balance Effective Date until (and including) the Legal Effective Date, are or were assigned to a different Operating Unit is defined in § 11.1, § 23.1.
- 35.7 Upon the transfer of the employment relationships pursuant to § 35.1 and § 35.2, all pension commitments as defined by the German Company Pensions Act (*Betriebsrentengesetz*) made to the Transitioning Performance Materials Employees and the Former Performance Materials Employees shall be transferred from KGaA to PM OpCo. Immediately thereafter, the pension commitments to Transitioning Performance Materials Employees, but not, however, the pension commitments to the Former Performance Materials Employees, together with the employment contracts resulting from the Business Lease Agreement between PM OpCo and KGaA as detailed in Sec. 613 a *BGB*, shall be retransferred to KGaA. As for the pension commitments transitioning to KGaA as a result of the Business Lease Agreement, PM OpCo, in § 21 of the Business Lease Agreement, declares assumption of joint liability with the obligation to perform internally towards KGaA (***Performance Materials Assumption Of Joint Liability***).
- 35.8 KGaA shall secure all direct commitments to the Transitioning Performance Materials Employees and the Former Performance Materials Employees in the form of a CTA with MP e.V. (***CTA-Secured Direct Commitments Performance Materials***). PM OpCo and MP e.V. have in turn concluded a trust agreement in notarized form on February 23, 2018 that is attached to this Hive-down Agreement as **Annex 11.8.a**. This Trust Agreement secures the CTA-Secured Direct Commitments Performance Materials that in each case are transferred to PM OpCo. The securing of the CTA-Secured Direct Commitments Performance Materials shall

also remain effective under the CTA concluded by PM OpCo during the term of the Performance Materials Assumption Of Joint Liability under the business lease. For the establishment of this new CTA security, KGaA, PM OpCo, and MP e.V. have concluded a transfer agreement on February 23, 2018 in notarized form regarding the Transitioning Performance Materials Employees and the Former Performance Materials Employees that will become effective as of the Legal Effective Date and that is attached to this Hive-down Agreement as **Annex 11.8.b**. In that agreement, the trust assets for the Transitioning Performance Materials Employees and the Former Performance Materials Employees from the CTA of KGaA accumulated on a prorated basis by these employees are assigned to the new CTA of PM OpCo with economic effect as of the Economic Effective Date. Any compensation for Switching Employees (as defined in § 52.1) remains unaffected and is subject to § 52.

- 35.9 Insofar as pension commitments were made to the Transitioning Performance Materials Employees in the form of direct insurance or as commitment to a pension scheme at the PKDW, the legal position of KGaA vis-à-vis the external pension provider shall be economically transferred to PM OpCo by way of a trust agreement that is hereby concluded on the basis of the provisions in **Annex 35.9**. A transfer of the position as the insured party in the direct insurance policies or of the status as treasury entity at a pension fund shall not take place in the course of the Operational Hive-down for the Transitioning Performance Materials Employees. As regards the Former Performance Materials Employees, PM OpCo shall continue the external pension commitment. For this purpose, upon consent of the external pension provider, it shall take the further steps necessary. To the extent that legal positions vis-à-vis external pension providers transition in this context to PM OpCo, KGaA and PM OpCo shall transfer the legal positions to PM OpCo – subject to consent of the respective external pension provider. If such an agreement with the external pension provider is not reached, KGaA shall ensure that PM OpCo is placed in a position as if such an agreement had been concluded, namely by undertaking to provide a position as insured party vis-à-vis the direct insurance companies and a status as treasury entity at PKDW.
- 35.10 As for time account agreements, the provisions of § 35.7 and of § 35.8 shall apply accordingly. PM OpCo, Metzler Trust e.V., and Höchster Pensions Benefits Services GmbH have in this context concluded a CTA trust agreement on February 26, 2018 in notarized form to continue the bankruptcy protection for time account agreements and together with KGaA an agreement on transfer of trust assets accounted for on a prorated basis for the Former and Transitioning Performance Materials Employees; these are attached to this Agreement as **Annex 11.10.a** and **Annex 11.10.b**.
- 35.11 In addition, provision is made that PM OpCo shall agree in the Business Lease Agreement to assumption of joint liability with an internal obligation to perform for

other employee-related obligations (in particular, anniversary bonus payments and vacation entitlements). In this respect, § 35.7 shall apply *mutatis mutandis*.

## § 36

### Litigation and legal proceedings

- 36.1 Furthermore, KGaA shall transfer to PM OpCo the Performance Materials Assets And Liabilities Items transferred in conjunction with this Hive-down Agreement or litigation proceedings otherwise exclusively attributable to the Operating Unit KGaA Performance Materials and other legal proceedings, in particular civil-law actions, dunning procedures, independent procedures of collecting evidence, proceedings in interim legal proceedings, execution proceedings, as well as fines proceedings, social court proceedings and arbitration proceedings, regardless of whether KGaA is involved as a party or otherwise (e.g., as a summoned party), and including the rights and obligations of KGaA asserted in these litigation and legal proceedings. This shall not apply to litigation and other legal proceedings relating to registered property rights which are subject to the trust agreement under § 4.3 b); such litigation and other proceedings shall be continued by KGaA as per the trust agreement.
- 36.2 Furthermore, KGaA shall transfer to PM OpCo, subject to the provisions of § 48.6 of this Hive-down Agreement, all administrative law proceedings and other proceedings under public law exclusively attributable to the Operating Unit KGaA Performance Materials (e.g., appeal proceedings), as well as administrative and constitutional disputes.
- 36.3 The Performance Materials Assets To Be Transferred include in particular the legal proceedings listed in detail in **Annex 36.3**.
- 36.4 Furthermore, the Performance Materials Assets To Be Transferred include all procedural legal relationships with third parties and all contractual agreements with third parties that involve the recognition and corresponding implementation or results of legal proceedings or the assertion of rights that are reserved to the parties in the proceedings and are attributable to the Performance Materials Business Sector, in particular those arising from titles and settlements.
- 36.5 Together with the litigation and other procedural legal proceedings specified in § 36.1, the advisory and consulting relationships with third parties attributable to them shall also be transferred to PM OpCo.
- 36.6 To the extent that, according to the provisions of the applicable procedural rules, the transfer of party status in full from KGaA to PM OpCo depends on other circumstances, such as the consent of the other process participant(s), the Parties shall undertake for these steps to be taken and for PM OpCo to replace KGaA as a



party in the litigation and other procedural legal relationships subject to this provision.

- 36.7 If no change of party pursuant to § 36.1 or § 36.6 occurs, KGaA shall continue the proceedings as the institution of legal standing. Proceedings shall be conducted for the account of PM OpCo. Internally, the ongoing management of proceedings shall be assumed by PM OpCo. KGaA shall thus not conduct any procedural acts (particularly agree on any settlement, waiver, acknowledgement, confession, withdrawal, or amendment of actions) without the prior consent of PM OpCo. PM OpCo shall indemnify KGaA with regard to any liabilities and costs resulting from any litigation and other procedural legal relationships that are subject to this provision. KGaA shall support PM OpCo in such proceedings with the objective of minimizing the economic damage resulting from the proceedings.
- 36.8 Procedural law relationships and other legal relationships under procedural law that are only partially attributable to the Performance Materials Business Sector shall be continued by KGaA. § 36.7 shall apply accordingly in respect of the part attributable to the Performance Materials Business Sector.

### **§ 37**

#### **Memberships**

To the extent that memberships of KGaA in associations, federations, societies, collectives, and associations of persons, including collective bargaining associations and tariff communities, are of relevance to the Operating Unit KGaA Performance Materials, KGaA and PM OpCo shall decide by the Legal Effective Date on the future classification of these memberships relating to the Operating Unit KGaA Performance Materials and, in the cases in which PM OpCo is to assume membership from KGaA or retain membership in the future beside KGaA, shall make their best efforts to transfer or split the respective membership. Insofar as the intended transfer or split of a membership is not feasible under the applicable law or in fact, PM OpCo shall, if necessary, re-apply for the membership.

### **§ 38**

#### **Insurance policies**

KGaA shall ensure the inclusion of PM OpCo in the master insurance policies existing at KGaA to ensure that PM OpCo has the insurance coverage (building insurance, operational insurance, etc.) necessary for its business operations at all times; PM OpCo shall reimburse KGaA proportionately for the costs incurred for such insurance coverage. If necessary or appropriate, PM OpCo shall conclude separate insurance contracts.

**C. Assets not subject to the Operational Hive-down**

**§ 39**

**Functions and assets and liabilities not transferred**

39.1 The Parties make clear as a precautionary measure that the following assets and liabilities and functions of KGaA in particular do not belong to the Operating Assets To Be Transferred. Thus, they are not subject to the Operational Hive-down and shall remain with KGaA:

- a) with the exception of the financial assets referred to in § 7.2 and § 31.2, all shares in affiliated companies and other shareholdings owned by KGaA as well as loans to third parties;
- b) the central group and administration functions of KGaA (KGaA Group Functions), in particular the Group's tax department, the Group's legal and compliance department, the Group's human resources department and the Group's procurement department as well as the Innovation Center operated at the Darmstadt location;
- c) the central infrastructure facilities and services of KGaA on the plant premises in Darmstadt and Gernsheim (KGaA Site Operations), including the wastewater treatment plant, power plant, and fire department;
- d) the KGaA Local Functions, which include in particular KGaA Betriebskrankenkasse (*Health Insurance Fund*), KGaA Zeitservice (*Time Service*), and the Ausbildung & Learning (*Training & Learning*) Germany segment;
- e) all land and buildings owned by KGaA (including the items leased to Merck Real Estate GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany (**MRE GmbH**) in accordance with the general lease agreement between KGaA and the MRE GmbH dated December 12, 2017, such as technical building equipment, other structural works such as gates, fences, etc., and accessories), as well as building-related service master agreements;
- f) the general rental agreement existing between KGaA and MRE GmbH, subcontract Group Functions, Service Master Agreement Group Functions, Furniture Procurement Agreement, and Energy and Media Supply Agreement, each dated December 12, 2017, as well as all rental, lease and other usage agreements that KGaA has concluded or is still concluding with third parties for either (i) the lease of buildings or land as a lessee; or (ii) the lease of buildings or land as a lessor;

- g) all liabilities, provisions, and receivables of KGaA in conjunction with (i) the responsibility for the conduct and/or condition of KGaA (including responsibility as universal legal successor as well as former property owner) under private law or public law, or (ii) the liability or claim contractually assumed, in each case vis-à-vis authorities or private parties, for any contaminations of the soil or the groundwater (in particular, harmful soil changes, groundwater contamination, or contaminated sites as defined by the German Soil Protection Act (*Bundes-Bodenschutzgesetz*) and unexploded ordnance), harmful substances in buildings or remains of buildings, and for environmental damages as defined by the German Environmental Impairment Act (*Umweltschadensgesetz*) (collectively **Environmental Damages**), insofar as such Environmental Damages were caused before December 31, 2017; this also applies to liabilities still unknown upon conclusion of this Hive-down Agreement;
- h) the position as a partner in Merck Schuchardt OHG, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany (**MS OHG**), and the Trust Agreement concluded between KGaA and E. Merck Beteiligungen KG, Darmstadt, Germany, a related company of Merck KGaA, Darmstadt, Germany (**EMB KG**), on the investment of EMB KG in MS OHG, and the assets and liabilities of MS OHG recognized at KGaA;
- i) the hybrid bond issued in 2014 to finance the Sigma-Aldrich acquisition for EUR 1.5 billion and the associated deferred items (*Rechnungsabgrenzungsposten*);
- j) receivables and liabilities from internal cash pooling, as well as tax assets, liabilities, and provisions;
- k) bank balances and liabilities as well as cash on hand, unless expressly stated otherwise in this Agreement;
- l) assumption of warranties and guaranties of KGaA in favor of affiliated companies;
- m) the domination and/or profit and loss transfer agreements and Business Lease Agreements concluded between KGaA and the OpCos, as well as the other intercompany agreements concluded between KGaA and its direct and indirect subsidiaries, including the existing Business Lease Agreement concluded between Merck Consumer Health GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany, as the lessor and KGaA as the lessee dated August 31, 2017, including the operations leased from KGaA on the basis of this agreement to the extent that the assets and liabilities subject to the agreement pursuant to § 3 to § 38 and

§ 48 to § 51 of this Hive-down Agreement are not attributable to the Operating Assets To Be Transferred;

- n) the contracts under public law and the other environmentally relevant contracts specified in **Annex 39.1.n**, and the obligations resulting from the governmental decrees referred to there; and
- o) the insurance contracts existing at KGaA applicable group-wide (cf. the provisions in § 14, § 26, and § 38).

39.2 The Parties agree that the existing company shares and those granted by the OpCos as consideration as part of the Operational Hive-down are not part of the Operating Assets To Be Transferred. These shall be transferred to the HoldCos in the course of the Holding Hive-down.

**D. Consideration and capital measures,  
profit participation, contribution to the capital reserves**

**§ 40**

**Consideration for the transfer of the  
Operating Assets To Be Transferred, effective date of profit participation**

- 40.1 As consideration for the transfer of the Healthcare Assets To Be Transferred, the Life Science Assets To Be Transferred, and the Performance Materials Assets To Be Transferred, KGaA shall receive new company shares to be created in each case by a capital increase of the OpCos, subject to the following terms:
- a) for the transfer of the Healthcare Assets To Be Transferred to HC OpCo, a company share in HC OpCo with the consecutive number 2 and a nominal amount of EUR 975,000.00;
  - b) for the transfer of the Life Science Assets To Be Transferred to LS OpCo, a company share in LS OpCo with the consecutive number 2 and a nominal amount of EUR 975,000.00;
  - c) for the transfer of the Performance Materials Assets To Be Transferred to PM OpCo, one company share in PM OpCo with the consecutive number 2 and a nominal amount of EUR 975,000.00.
- 40.2 The company shares to be granted by the OpCos to KGaA shall be entitled to profits for the financial years beginning on (and including) January 1, 2018.

## **§ 41**

### **Capital increases to complete the Operational Hive-down, contribution to the capital reserves**

- 41.1 In order to complete the Operational Hive-down and grant the consideration, the OpCos shall each increase their share capital, namely as follows:
- a) HC OpCo from currently EUR 25,000.00 by EUR 975,000.00 to EUR 1,000,000.00 by issuing a new company share in the nominal amount of EUR 975,000.00 with the number 2;
  - b) LS OpCo from currently EUR 25,000.00 by EUR 975,000.00 to EUR 1,000,000.00 by issuing a new company share in the nominal amount of EUR 975,000.00 with the number 2;
  - c) PM OpCo from currently EUR 25,000.00 by EUR 975,000.00 to EUR 1,000,000.00 by issuing a new company share in the nominal amount of EUR 975,000.00 with the number 2.
- 41.2 The contribution on the company shares granted by the OpCos to KGaA shall each be provided as a contribution in kind by transferring the Healthcare, Life Science or Performance Materials Assets To Be Transferred to the respective OpCo.
- 41.3 If the value at which the contribution in kind provided by KGaA is accepted by the respective OpCo exceeds the amount of the respective increase in capital, the amount shall be contributed to the capital reserves of the respective OpCo pursuant to Sec. 272 (2) (1) *HGB*.

## **E. Granting special rights and benefits**

## **§ 42**

### **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.

## **§ 43**

### **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 hive-down, any managing partner, partner, statutory auditor, or auditor of the hive-down as defined in Sec. 126 (1) (8) *UmwG*.

## **F. Temporary leaseback of the transferred Business Sectors**

### **§ 44**

#### **Business Lease Agreements between the OpCos and KGaA**

- 44.1 For the purpose of implementing the temporary leaseback of the hived-down business operations to KGaA as described in paragraph (8) of the Preamble, HC OpCo shall conclude the draft Business Lease Agreement attached as **Annex 44.1.a**, LS OpCo the draft Business Lease Agreement attached as **Annex 44.1.b**, and PM OpCo the draft Business Lease Agreement attached as **Annex 44.1.c**, in notarized form, each as lessor, with KGaA, in each case, as lessee.
- 44.2 To become effective, the Business Lease Agreements must be registered in the commercial register of the respective OpCo. The Business Lease Agreements shall be recorded in the respective commercial register immediately after the Operational Hive-down comes into effect.

## **G. Consequences for the employees and their representatives and the measures planned thus far**

### **§ 45**

#### **Consequences of the Operational Hive-down and subsequent business lease for employees and their representatives and the measures planned in this respect**

- 45.1 Upon the Operational Hive-down becoming effective, the employment relationships of the Transitioning Healthcare Employees, the Transitioning Life Science Employees, and the Transitioning Performance Materials Employees (collectively, the ***Transitioning Employees***), shall be transferred from KGaA to the respective acquiring entity, including the pension commitments granted to them as defined by the *Betriebsrentengesetz* (Sec. 123 (3) (1) *UmwG*).

Immediately thereafter, the employment contracts of the Transitioning Employees as a consequence of the Business Lease Agreements as detailed in Sec. 613a *BGB* are retransferred from the respective acquiring entity to KGaA with all rights and obligations (collectively, the ***Transitions Contingent On The Lease***).

- 45.2 The years in service performed at KGaA or recognized by KGaA shall not be interrupted by the transfer to KGaA of the employment relationships to the acquiring entities and the Transitions Contingent On The Lease. The Protection Against Dismissal Act (*Kündigungsschutzgesetz*) continues to be applicable. In addition, Sec. 323 (1) *UmwG* provides for the Transitioning Employees' position under German dismissal law due to the Operational Hive-down under this Agreement not deteriorating for the period of two years from the Operational Hive-

down going into effect. According to the details of the position paper concluded with the Works Council Of Joint Works (*Gemeinschaftsbetriebsrat*) (as defined in § 45.4) dated June 26, 2017, in addition, the announcement of terminations for operational reasons and notices of termination for the deterioration of material working conditions shall generally be excluded until December 31, 2021. Furthermore, the Transitioning Employees' employment relationships shall not be terminated due to the Transitions Contingent On The Lease by KGaA or by the respective acquiring entity (Sec. 613a (4) *BGB*).

45.3 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 acquiring entities shall be jointly and severally liable with KGaA for liabilities arising from the Transitioning Employees' employment relationships transferred to them pursuant to Sec. 123 (3) (1) *UmwG* if the liabilities arose before the respective Transition Contingent On The Lease and fall due within one year of the respective Operational Transition Contingent On The Lease. If such liabilities fall due after the date of the respective transition contingent on the lease, the OpCo shall only be liable for them to the extent that corresponds to the assessment period that ended on the date of the transition contingent on the lease (Sec. 613a (2) (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.

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

- 45.5 The Operational Hive-down and the Transitions Contingent On The Lease have no impact on the company agreements concluded with the Works Council Of Joint Works, on the Group company agreements concluded with the Group Works Council of KGaA, and on the agreements concluded with the committee representing the executive 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.
- 45.6 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.
- 45.7 It is planned that, upon the Operational Hive-down and the Transitions Contingent On The Lease becoming effective, the acquiring entities each agree in the respective Business Lease Agreements on an assumption of joint liability for the Direct Commitments that are transferred to the acquiring entities in the course of the Operational Hive-down and then to KGaA in the course of the Transitions Contingent On The Lease (**Secured Direct Commitments**). In addition, there shall be a pro-rata allocation of trust assets from the CTA of KGaA to the CTA of the respective acquiring entity at MP e.V. For the duration of assumption of joint liability, the Secured Direct Commitments shall be secured by way of the CTA between the acquiring entities and MP e.V.
- 45.8 With regard to the company pension scheme which is implemented via direct insurance or 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.

- 45.9 It is planned that, upon the Operational Hive-down and the Transitions Contingent On The Lease becoming effective, the acquiring entities declare in the respective Business Lease Agreements assumption of joint liability for the time account agreements that are transferred to the acquiring entities 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 allocation of trust assets from the CTA of KGaA to the CTA of the acquiring entities at Metzler Trust e.V. For the duration of assumption of joint liability, the Secured Time Accounts shall be secured by way of the CTA between the acquiring entities and Metzler Trust e.V.
- 45.10 It is additionally provided for that, upon the Operational Hive-down and the Transitions Contingent On The Lease becoming effective, the acquiring entities each declare in the respective Business Lease Agreements an assumption of joint liability for the other personnel-related obligations (in particular, jubilee payments and vacation provisions) that are transferred to the acquiring entities in the course of the Operational Hive-down and then to KGaA in the course of the Transitions Contingent On The Lease.
- 45.11 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 § 47.

## § 46

### **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, under the 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 § 45 and § 47.

## **§ 47**

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

- 47.1 Upon termination of the respective Business Lease Agreement, the employment relationships allocated in each case to the parts of the operation of the Operating Unit KGaA Healthcare, the Operating Unit KGaA Life Science, or the Operating Unit KGaA Performance Materials shall be transferred at the respective termination date, including the pension entitlements granted under the German Company Pensions Act as detailed in Sec. 613a *BGB*, including all rights and obligations to the respective acquiring entities. The years of service performed at KGaA or recognized by KGaA shall apply in full as performed at the specific acquiring entity. Furthermore, the employment relationships transferred pursuant to Sec. 613a *BGB* shall not be terminated due to the transfer of undertaking (Sec. 613a (4) *BGB*).
- 47.2 The apprenticeships of the apprentices are not covered by the transfers of undertaking upon termination of the Business Lease Agreements, even if they were deployed in the respective Operating Unit at the respective termination date. The apprenticeships shall continue to apply even after the termination of the Business Lease Agreements with KGaA and shall not be transferred to the acquiring entities. As a result, there will be no adverse effects on the apprenticeships. The existing structure of the apprenticeships will be continued by the Parties.
- 47.3 The respective acquiring entities shall be liable for all obligations arising from the employment relationships transferred in the course of the termination of the Business Lease Agreement according to Sec. 613a *BGB*. In addition to the respective acquiring entities, 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*).
- 47.4 The termination of the Business Lease Agreements shall have no impact on the position and responsibilities of the existing employee representatives.

The acquiring entities shall accede to the Collective Bargaining Agreement On Works Council Structure no later than upon the termination of the respective Business Lease Agreement becoming effective. The Works Council Of Joint Works thus remains in office and shall continue to be responsible for the employees

whose working relationships are transferred to the acquiring entities 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 Works Council and the Euroforum shall continue to be responsible also for those employees whose employment relationships are transferred to the acquiring entities.

The committee representing executive employees of KGaA shall remain in charge and continue to represent the executive employees whose employment relationships are transferred to the acquiring entities even after the termination of the Business Lease Agreements.

- 47.5 The termination of the Business Lease Agreements has no impact on the company agreements concluded with the Works Council Of Joint Works, the group company agreements concluded with the Group Works Council of KGaA, and the agreements concluded with the committee representing the executive employees. These shall apply without any changes under the applicable collective bargaining laws to the employees whose employment contracts are transferred to the respective acquiring entity as a result of the termination of the Business Lease Agreements even after the termination of the Business Lease Agreements.
- 47.6 The acquiring entities 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 contracts are transferred to the respective acquiring entity 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.
- 47.7 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 acquiring entities as a result of the

termination of the Business Lease Agreements shall remain entitled to be voted into the Supervisory Board of KGaA.

- 47.8 Currently, the acquiring entities 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*).
- 47.9 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 acquiring entity are transferred to the respective acquiring entity in the course of the Transitions Contingent On The Lease, assumption of joint liability according to the corresponding provisions by the acquiring entity in the course of the Transitions Contingent On The Lease shall lapse.
- 47.10 KGaA and the respective acquiring entity shall make their best efforts to ensure that the Assets and Liabilities Items to finance the transfer of pension entitlements are provided to the acquiring entity and that the agreements in this regard can be continued with the previous pension providers at the same terms and conditions. The above obligation shall include in particular the transfer of the direct insurances as regards the employment relationships transferred to the acquiring entity and the application for a status as the treasury entity for the acquiring entity with PKDW if such status has not yet been achieved.
- 47.11 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.
- 47.12 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.

## H. Other joint stipulations regarding the Operational Hive-down

### § 48

#### Permits and approvals required under public law, operator responsibility

- 48.1 Excluded from the Operating Assets To Be Transferred are permits (here and also in the following including in particular permits, approvals, authorizations, notifications, registrations, or permissions under public law) referring to the functions permanently remaining with KGaA as set out in § 39.1 b) (*KGaA Group Functions*) and § 39.1 c) (*KGaA Site Operations*) and the associated facilities, land, and equipment. This includes in particular the permits listed in **Annex 48.1**. These permits are excepted from the Operational Hive-down. The unrestricted physical control and power to dispose of the corresponding facilities, areas, and equipment, the position as operator of this equipment, and the responsibility for complying with all provisions under environmental and public law associated with the position as operator shall remain with KGaA permanently.
- 48.2 Permits that each are exclusively or also (but not exclusively) attributable to the Operating Unit KGaA Healthcare, the Operating Unit KGaA Life Science, or the Operating Unit KGaA Performance Materials (hereinafter **Permits To Be Transferred**) are exclusively or else on a pro rata basis a component of the Operating Assets To Be Transferred. As a result of the temporary leaseback that begins immediately after the Operational Hive-down takes effect, the Permits To Be Transferred legally remain temporarily with KGaA. KGaA shall maintain and administer the Permits To Be Transferred until the termination of the business lease as set forth as part of the herewith established Trust Agreement within the meaning of § 1.4 of this Hive-down Agreement as trustee for the OpCo objectively affected by the Permit To Be Transferred in the respective scope.
- 48.3 The Permits To Be Transferred include in particular
- a) all plant-related and environmental law permits, particularly those listed in **Annex 48.3.a** and there attributed to one Operating Unit according to the principle of exclusive or predominant use, and
  - b) all approvals under pharmaceuticals law and product law, including the regulatory approvals or registrations for pharmaceuticals, medical products, food products, biocides and cosmetics, as well as manufacturing and wholesale permits under pharmaceuticals and product law and the corresponding certificates, REACH registrations and approvals, as well as any import licenses, particularly those listed in **Annex 48.3.b** and attributed there to one or more Operating Units according to the principle of exclusive use or joint use.

The attribution to one or several Operating Units made in the Annexes is carried out as regards the later termination of the Trust Agreement pursuant to § 48.2, and leaves unaffected a possibly necessary beneficial co-beneficiary role in these approvals of another Operating Unit and/or an OpCo.

- 48.4 During the term of the respective Business Lease Agreements, KGaA shall be entitled in each case to the trustor's rights and obligations resulting from the Trust Agreement pursuant to § 48.2 regarding the Permits To Be Transferred.
- 48.5 During the term of the Business Lease Agreements, KGaA shall remain the operator and owner of the Permits To Be Transferred for the facilities, land, and equipment of the Leased Operations with all associated rights and obligations and shall exercise in its previous scope unrestricted physical control and right of disposal over all facilities, land, and equipment of the Operating Units at KGaA. If, in an individual case, an Permit To Be Transferred has already been transferred to an OpCo, the respective OpCo shall undertake that KGaA is also put in such position during the term of the Business Lease Agreements as if KGaA were the holder of the permit, granting it, if relevant, sole operator status.
- 48.6 During the term of the respective Business Lease Agreements, KGaA shall be responsible for complying with all environmental and public law provisions and requirements of the respective permits that are associated with its position as operator (including such requirements as are relevant for supplying equipment of the Leased Operation or are relevant for removing waste water and waste and, if relevant, requirements under major incident law). KGaA shall also continue to be the sole contact in this context vis-à-vis the competent authorities and third parties and to conduct proceedings and consultations under environmental and permit-related law with authorities and third parties (including applying for new or changed permits) as the responsible party and in its own name.
- 48.7 During the term of the respective Business Lease Agreements, KGaA shall remain the legal holder of all Permits To Be Transferred under pharmaceuticals law and product law, including the regulatory permits or registrations for pharmaceuticals, medical products, food products, biocides and cosmetics, as well as manufacturing and wholesale permits under pharmaceuticals and product law and related certificates, REACH registrations and approvals, as well as import licenses. In this respect, KGaA shall continue to exercise all obligations under pharmaceutical law as entrepreneur and manufacturer and manufacturer of medical products and other products, and to ensure quality management.
- 48.8 With regard to the termination of a Business Lease Agreement, the following applies:
- a) Upon termination of the Business Lease, unrestricted physical control and right of disposal of all related facilities, land, and equipment, and thus the

corresponding position as operator, including the associated permits pursuant to §§ 48.3 a), 48.5 and the rights and obligations pursuant to § 48.6, shall be transferred to the respective OpCos in accordance with the allocation in **Annex 48.3.a** and taking into account the permits changed or newly issued between the Economic Effective Date and the termination of the respective Business Lease Agreements. The Parties hereby agree to take any and all steps in a timely manner that are necessary to ensure the transition of the position as operator (including all associated official notifications and procedures and requirements required by law) and to mutually coordinate in a timely manner. A possible beneficial co-beneficiary role of another OpCo in these permits in the meaning of § 48.2 remains unaffected and continues in the scope of a trust agreement favoring the respectively other OpCo.

- b) As regards the situation arising in respect of more than one operator at the Darmstadt and Gernsheim sites after the termination of the Business Lease Agreements, the Parties agree to cooperate and each take into account the interests of the entire sites, including the requirements under environmental and major incident law. The specific rights and obligations of the operators at the Darmstadt and Gernsheim sites after termination of the respective Business Lease Agreements shall be governed in site agreements that have yet to be concluded.
- c) Upon termination of the respective Business Lease Agreements, the Permits To Be Transferred pursuant to § 48.3 b) and the rights and obligations pursuant to § 48.7 shall be transferred to the respective OpCos, possibly on a pro rata basis, in accordance with the allocation in **Annex 48.3.b**. A possibly necessary beneficial co-beneficiary role of another OpCo in these permits in the meaning of § 48.2 remains unaffected and continues in the scope of a trust agreement favoring the respectively other OpCo.
- d) To the extent that the transfer of Permits To Be Transferred and the corresponding rights and obligations pursuant to § 48.8 a) and § 48.8 c) does not already occur as a result of the provision in § 48.8 a) or in § 48.8 c), KGaA commits already now to transfer the Permits To Be Transferred attributable to the respective OpCos, and to take any and all steps in a timely manner that are necessary to ensure the transfer at the relevant date. KGaA shall take steps to ensure in a timely manner and, if necessary, involving the competent authorities in such manner that, after the termination of the respective Business Lease Agreements, the transfer (including a division that may be necessary) of the permits and all associated impacts on the permit situation of the OpCos, as well as on other relevant equipment and areas, can be ensured at the relevant sites.



If necessary, authorization and/or notification procedures shall be pursued in coordination with the competent authorities, including any corresponding investigations, that, depending on the requirements, shall be conducted by KGaA in its own name or on behalf of the respective OpCos. KGaA and the respective OpCos shall support each other in doing so. This also applies to permits that are jointly used by several OpCos. KGaA and the OpCos shall work to ensure at an early stage and, if necessary, involving the competent authorities that the corresponding permits for the respective OpCos are re-applied for or are split to the extent that this is necessary for the operations of the respective OpCos. In this context, KGaA and the OpCos shall take all steps that are necessary to ensure a legally binding permit situation as regards the termination of the Business Lease Agreements and taking the site-wide interests into account.

- e) Insofar as the Permits To Be Transferred are not legally transferrable from KGaA to the respective OpCo and thus new applications must be submitted for the period after the termination of the respective Business Lease Agreements, KGaA shall ensure, in close cooperation with the respective OpCo, that all non-transferrable permits are re-applied for to the extent that this is necessary for the operation of the respective OpCo after the termination of the Business Lease. § 48.8 d) shall apply accordingly.
- f) Insofar as KGaA, in respect of a permit assigned to it pursuant to § 48.1, relies on Assets And Liabilities Items that are relevant for permit that are allocated to an OpCo in the course of the Operational Hive-down, and that are transferred to this OpCo, KGaA maintains towards the respective OpCo the permanent right free of charge to use these items to the extent necessary for the purposes of the permit. This shall apply accordingly if an OpCo, in respect of an Permit To Be Transferred allocated to it pursuant to § 48.2 and § 48.3, relies on Asset And Liability Items that are relevant for approval, that (i) are assigned to another OpCo in the course of the Operational Hive-down, and transferred to this OpCo, or (ii) are assigned to KGaA and remain with KGaA. § 56 shall remain unaffected.
- g) KGaA and the OpCos shall, as regards the attribution of the permits and Assets And Liabilities Items under this Agreement, take all steps in a timely manner that are necessary to ensure a legally binding permit situation as regards the termination of the Business Lease Agreements and taking the site-wide interests into account.

48.9 The Trust Agreement regarding the permits pursuant to § 48.2 shall continue to apply after the termination of the respective Business Lease Agreements until the position as operator has been assigned to the facilities or, respectively, until the



transition or transfer of, or re-application for the respective permit to the respective OpCo.

## § 49

### Handling of Shared Agreements

- 49.1 If Shared Agreements Healthcare, Shared Agreements Life Science, or Shared Agreements Performance Materials (hereinafter referred to collectively as **Shared Agreements**) are master agreements of KGaA for the purchase and procurement of goods and services managed by the "Group Procurement" function, KGaA shall ensure the inclusion of the materially affected OpCo in the master agreement. If such inclusion is not possible for legal reasons, the provision in § 49.2 shall apply *mutatis mutandis*.
- 49.2 The remaining Shared Agreements remain with KGaA in full. KGaA shall hold these contracts, in the scope in which the hived-down Operating Unit is respectively affected (**Affected Party**), in trust for the materially affected OpCo (**Affected OpCo**) as set forth in a trust agreement in accordance with § 1.4. The Affected OpCo shall enable KGaA to fulfill the obligations of the Affected Party. Internally, KGaA and the Affected OpCo shall deem themselves to be in a position as if the Affected OpCo had become the counterparty externally for the Affected Party. In this regard, KGaA and the Affected OpCo (or Affected OpCos) shall endeavor where appropriate on a case-by-case basis to obtain consent from the respective counterparty to split the Shared Agreements so that one additional or several additional separate contract(s) is/are established for the Affected Parties.

## § 50

### Effective date for the assignment of assets and scope of use

For the allocation to the Operating Units of the Assets And Liabilities Items existing on the Closing Balance Effective Date, the circumstances on the Closing Balance Effective Date are decisive. Insofar as, according to this Hive-down Agreement, the scope of use of the assets and liabilities by a Business Sector or an Operating Unit is the decisive factor, the scope of use at the Closing Balance Effective Date shall thus be authoritative. If appropriate, the scope of use shall be derived from a period of time appropriate for the respective Assets And Liabilities Item before the Closing Balance Effective Date.

## § 51

### **Asset additions and disposals between the Economic Effective Date and Legal Effective Date**

The additions and disposals of Assets And Liabilities Items during the period between the Economic Effective Date and the Legal Effective Date of the Operational Hive-down (including surrogates, either in rem or under the law of obligations, of an Assets and Liabilities Item) shall be taken into account in the transfer and identification of the Operating Assets To Be Transferred as set forth in the provisions below.

- a) The assets, rights and obligations attributable in the broadest sense to an Operating Unit on the basis of origin and purpose that have been added or have arisen in this Operating Unit in the period between the Economic Effective Date and the Legal Effective Date shall be assigned, ceded, or otherwise materially transferred by KGaA to the respective OpCo in accordance with the stipulations of this Agreement.
- b) Those assets and liabilities that, based on their origin and purpose, are attributable in the broadest sense to an Operating Unit and that were sold or otherwise transferred during the period from the Economic Effective Date and the Legal Effective Date or that no longer exist at the Legal Effective Date shall not be transferred to the OpCos. Instead, they shall be superseded by the surrogates in rem or under the law of obligations existing at the Legal Effective Date.
- c) The provision of § 2.1 according to which the operations of the respective OpCo are to be managed by the OpCo for its own account starting as of the Economic Effective Date shall remain unaffected.

## § 52

### **Economic compensation in case of a change in the assignment of employees**

- 52.1 If and to the extent that Healthcare Employees, Life Science Employees, and Performance Materials Employees are allocated to a different Operating Unit after the Closing Balance Effective Date until (and including) the Legal Effective Date (**Switching Employees**), the OpCo to which the employee was allocated on the Closing Balance Effective Date (**Releasing OpCo**), and the OpCo to which the employee was allocated in the period between the Closing Balance Effective Date and the Legal Effective Date (**Acquiring OpCo**), will reciprocally place themselves in such a position as if the employment relationship or rather the rights and obligations (including the legal positions ensuring these) associated with the employment relationship upon expiry of the Closing Balance Effective Date first

transitioned to the Releasing OpCo and, at the time of the reassignment, transitioned to the Acquiring OpCo.

52.2 The provision in § 52.1 applies if and to the extent to which

- Healthcare Employees, Life Science Employees, and Performance Materials Employees transfer between Operating Units several times after the Closing Balance Effective Date until (and including) the Legal Effective Date, and/or
- Healthcare Employees, Life Science Employees, and Performance Materials Employees are assigned to KGaA outside the Operating Units during the period after the Closing Balance Effective Date until (and including) the Legal Effective Date, and/or
- employees are hired after the Closing Balance Effective Date and are allocated to a different Operating Unit until the Legal Effective Date, and/or
- KGaA employees outside the Operating Units are assigned to an Operating Unit in the time after the Closing Balance Effective Date until (and including) the Legal Effective Date.

### **§ 53**

#### **Doubts in attributing Assets And Liabilities Items**

If, when interpreting this Hive-down Agreement including its annexes, it cannot be determined to which Party an Assets And Liabilities Item is attributable, KGaA shall decide on the attribution pursuant to Sec. 315 *BGB* as specified in lit. 20.06 s. 1 in conjunction with lit. 15.02 2011 *UmwSt-Erlass*.

### **§ 54**

#### **Deeds, books, records, operational data, and other documents**

54.1 KGaA shall transfer (subject to the provision in § 54.4) to the OpCos all Assets And Liabilities Items exclusively or predominantly attributable and exclusively or predominantly in connection with these documents managed by KGaA, in particular, books, records, operational data, contract and authorization documents, operating regulations, operating manuals, personnel files (***Business Documents***).

54.2 The respective OpCo shall retain the Business Documents for the duration of the statutory retention periods and, if this should be necessary, also beyond the statutory retention periods, and ensure that KGaA can inspect these Business Documents at any time, in particular the permit register, and make copies thereof. Trade and operating secrets, as well as any other statutory requirements, in

particular the provisions of the German data protection and privacy law, shall be adhered to.

- 54.3 The OpCos shall grant one another, as regards the Business Documents transferred to them, rights of inspection and use. However, this shall apply only to the extent that the Business Documents relate to their own assets assumed by way of the Operational Hive-down, and inspection and use is necessary for ordinary business operations.
- 54.4 Plant-related and environmental law authorization documents for permits pursuant to § 48.2 shall be retained in trust by KGaA for the respective OpCo (KGaA Site Operations, authorizations department). The respective OpCo may inspect these authorization documents at any time and make copies thereof.

## **§ 55**

### **Transfer of possession**

Possession of the moveable assets attributable to the Operating Assets To Be Transferred shall be transferred to the respective OpCo on the Legal Effective Date. Insofar as individual Assets And Liabilities Items are in the possession of third parties, the transfer of possession shall instead be completed by KGaA transferring its legal surrender claim to the respective OpCo. Should additional measures or declarations be necessary for the transfer of rights or procurement of possession, the Parties shall undertake to provide them.

## **§ 56**

### **Fallback clause; transfer obstacles, ineffectiveness of the transfer, retransfer**

- 56.1 Assets And Liabilities Items not expressly mentioned in this Hive-down Agreement and its annexes but, from an economic perspective, are attributable to the Healthcare Assets To Be Transferred, the Life Science Assets To Be Transferred, or the Performance Materials Assets To Be Transferred shall also be transferred to the respective OpCo in the course of the Operational Hive-down; unless explicitly otherwise governed in this Hive-down Agreement, they in particular have not been explicitly excluded from the transfer (such as the assets not to be transferred pursuant to Sec. 131 (1) (1) *UmwG* by way of partial universal succession, but rather subject to Beneficial Ownership according to this Hive-down Agreement for the purpose of "contribution" for tax purposes pursuant to Sec. 20 *UmwStG*, e.g., by way of a trust agreement).
- 56.2 § 56.1 applies in particular to all other Assets And Liabilities Items of the Operating Assets To Be Transferred that are economically attributable as "functionally

essential operational basis" or as "attributable assets based on economic contexts" within the meaning of lit. 20.06 s. 1 in conjunction with lit. 15.02 s. 2 2011 *UmwSt-Erlass* to a separable part of the operations of the Operating Unit KGaA Healthcare, the Operating Unit KGaA Life Science, or the Operating Unit KGaA Performance Materials hived down to the acquiring entity as per Sec. 20 (1) *UmwStG*, even if

- a) they are not, not explicitly, or not sufficiently specified in this Agreement or its annexes,
- b) the transferring entity did not obtain legal or beneficial ownership until after the Closing Balance Effective Date but before the Legal Effective Date, or
- c) despite extensive efforts to obtain clarification, it was not recognized in time that these were "functionally essential operational bases" or "attributable assets based on economic contexts" within the meaning of lit. 20.06 s. 1 in conjunction with lit. 15.02 s. 2 2011 *UmwSt-Erlass* which, by way of the Operational Hive-down, are attributable for tax purposes to the operation contributed to the acquiring entity.

56.3 Insofar as certain Assets And Liabilities Items that, according to this Agreement, shall be transferred to an OpCo are not transferred or are not transferred to the extent prescribed by the applicable law upon registration of the Operational Hive-down in the commercial register of KGaA to the respective OpCo, KGaA shall transfer these Assets And Liabilities Items by way of singular succession to the respective OpCo. The respective OpCo shall agree to the separate transfer of rights. Until the (subsequent) transfer by way of singular succession, the Parties shall treat each other internally as they would be if the respective Assets And Liabilities Item had also been transferred in the external relationship with effect as of the Economic Effective Date; in particular, risks, rights, and obligations are considered as transferred at the Economic Effective Date (establishing beneficial ownership according to lit. 20.06 s. 1 in conjunction with lit. 15.07 s. 2 2011 *UmwSt-Erlass*). In this case, KGaA shall hold the respective Assets And Liabilities Item in accordance with a trust agreement in its own name for the account of the respective OpCo or, in case of a legal relationship, continue to do so in trust and, if legally admissible, permanently transfer the Assets and Liabilities Item or the benefit from such item to the respective OpCo for its use. In addition, KGaA is obligated, if legally permissible, to grant to the respective OpCo the authorization to exercise rights relating to the respective Assets And Liabilities Item or to assign to it the corresponding rights to be exercised. The respective OpCo agrees to satisfy the associated obligations or, alternatively, to compensate KGaA internally accordingly. To the extent that the respective OpCo cannot exercise a legal right effectively vis-à-vis third parties, KGaA shall act, by way of a trust agreement, as

the agent or trustee for the respective OpCo, so that expenses and income relating to the Assets And Liabilities Item not transferred affect only the respective OpCo internally.

- 56.4 In respect of Assets And Liabilities Items used by more than one OpCo, KGaA shall grant the respective OpCo, if legally admissible, an irrevocable, permanent and free-of-charge right of use in these Assets And Liabilities Items if such right is required functionally with regard to the contributed separable part of the operations ("duplication" of beneficial ownership by way of a "field of use license"); § 4.4, § 16.4, and § 28.4 of this Hive-down Agreement shall apply accordingly.
- 56.5 If the transfer to the respective OpCo pursuant to § 56.3 is not feasible vis-à-vis third parties or only with unreasonably extensive effort or inexpediently, the respective Assets And Liabilities Item shall remain with KGaA. The provision in § 56.3 shall apply in this case accordingly.
- 56.6 Insofar as the transfer of certain Assets And Liabilities Items requires any third-party consent or authorization under public law, KGaA and the respective OpCo shall make their best efforts to obtain such consent or approval. If the consent or approval cannot be obtained, or only with unreasonably extensive effort, in the relationship between KGaA and the respective OpCo the provision in § 56.3 shall apply accordingly.
- 56.7 To the extent that certain Assets And Liabilities Items are not transferred by way of this Agreement, but are transferred for legal reasons, the respective OpCo is obligated to retransfer the Assets And Liabilities Items to KGaA or a third party designated by KGaA; KGaA is obligated to consent to the retransfer or, if necessary, discharge the respective OpCo. The Parties shall in this context initiate all necessary or appropriate measures and work together on all necessary or appropriate legal actions to retransfer the assets to KGaA. The provision in § 56.3 shall apply in this case *mutatis mutandis*.
- 56.8 The provision of § 56.3 shall apply accordingly if Assets and Liabilities Items are transferred under this Hive-down Agreement which were inadvertently attributed to the Healthcare Assets To Be Transferred, the Life Science Assets To Be Transferred, or the Performance Materials Assets To Be Transferred.
- 56.9 The costs and expenses relating to any transfer by way of singular succession pursuant to this § 56 shall be borne by KGaA.

## **§ 57**

### **Obligations to cooperate**

- 57.1 The Parties hereby, as a precautionary measure, again issue all declarations that are necessary for the granting of beneficial ownership, establishment of trust relationships (trust agreement), or for granting rights of use of items that, pursuant to Sec. 131 (1) (1) *UmwG*, are not transferred to the respective OpCo.
- 57.2 The Parties shall make all declarations, execute all deeds, and perform any other acts that may still be necessary or expedient in connection with the transfer of the Operating Assets To Be Transferred to the OpCo to the relevant OpCo pursuant to this Hive-down Agreement.
- 57.3 In case of any administrative proceedings, in particular tax audits, as well as in tax litigation and other litigation that affect the Operating Assets To Be Transferred, or where a Party or its affiliated entities are otherwise specifically able to provide support due to their shared past as operations of KGaA, the Parties shall support each other. In particular, they shall provide each other with any and all information and documents that are necessary or appropriate to meet administrative requirements or to provide evidence to any authorities or courts and shall each work towards their employees providing appropriate support.

## **§ 58**

### **Disclaimer of warranty**

Claims and rights of the OpCos against KGaA due to the condition and existence of the Asset And Liability Items to be transferred by KGaA under this Hive-down Agreement and of the Operating Assets To Be Transferred overall, irrespective of their nature and regardless of the legal basis, shall herewith be expressly excluded to the extent legally admissible.

## **§ 59**

### **Protection of creditors and internal settlement**

- 59.1 If no other distribution of obligations and liabilities results from or in connection with the Operating Assets To Be Transferred under this Hive-down Agreement, the following provisions shall apply.
- 59.2 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 an OpCo under the provisions in Sec. 133 *UmwG* or any other provisions, or if claims are brought forward against KGaA for obligations from future statutory contractual obligations which arise in conjunction with the previous or future business activity of the Healthcare, Life Science, and

Performance Materials Business Sectors, the respective OpCo shall indemnify KGaA upon first request from the individual liability, obligation, or uncertain liability. The same shall apply if KGaA is held liable by such creditors for granting collateral. This includes a release from environmental liabilities triggered by the OpCos after the Economic Effective Date as set forth in § 39.1 g) of this Hive-down Agreement if claims are brought forward against KGaA by third parties (including authorities).

- 59.3 If and to the extent, *vice-versa*, an OpCo is held liable by creditors for liabilities, obligations, or uncertain liabilities which, according to this Hive-down Agreement, shall not be transferred to an OpCo under the provisions in Sec. 133 *UmwG* or any other provisions, or if claims are brought forward against the OpCo for obligations from future statutory contractual obligations which arise in conjunction with the previous or future business activity of the business activity and functions remaining with KGaA, KGaA shall indemnify the respective OpCo upon first request from the individual liability, obligation, or uncertain liability. The same shall apply if an OpCo is held liable by such creditors for granting collateral.
- 59.4 § 59.3 applies to the case accordingly that an OpCo is held liable by creditors for liabilities, obligations, or uncertain liabilities which, according to this Hive-down Agreement, are to be transferred to another OpCo due to the provisions in Sec. 133 *UmwG* or any other provisions, or if claims are brought forward against the OpCo for obligations from future statutory contractual obligations which arise in conjunction with the previous or future business activity of the Business Sectors hived down to the other OpCos.

## **§ 60**

### **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 OpCos.

## **§ 61**

### **Costs and taxes**

- 61.1 Unless agreed upon otherwise in this Hive-down Agreement, KGaA shall bear all costs incurred in conjunction with the preparation and implementation of the Operational 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.
- 61.2 The costs of the capital increases in kind and their implementation at OpCo level shall be borne by HC OpCo, LS OpCo, and PM OpCo, 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 and registering the Operational Hive-down in the respective commercial register.

## **§ 62**

### **Revocation**

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

## **§ 63**

### **Written form requirement**

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

## **§ 64**

### **Severability, preamble, annexes**

- 64.1 In the event that one or more provision/s of this 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 this Hive-down Agreement and 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 Hive-down Agreement.
- 64.2 The preamble and the annexes shall form integral parts of the Agreement.

## **§ 65**

### **Applicable law; jurisdiction**

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

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**Material content of the annexes  
to the Operational Hive-down Agreement**

The annexes referred to in the Operational Hive-down Agreement have the following material content (the terms defined in the Operational Hive-down Agreement are used likewise in the following):

- Annex V.3 contains an overview description of the operational activities of the Operating Units KGaA Healthcare, KGaA Life Science, and KGaA Performance Materials operated within KGaA, as well as the associated assets and liabilities, that shall be transferred to the OpCos. The business activities of the Operating Unit KGaA Healthcare at the Darmstadt site to be hived-down comprise in particular the discovery, development, and manufacturing of prescription drugs for the Biopharma business. The business activities of the KGaA Life Science Operating Unit at the Darmstadt site to be hived-down comprise in particular chemical production processes, specifically focusing on chemicals for research and development as well as quality assurance in the pharmaceutical and biopharma industry, analytical separation systems, reference materials as well as microbiology testing materials, pharmaceutical and biopharmaceutical raw materials. The business activities of the KGaA Performance Materials Operating Unit at the Darmstadt and Gernsheim sites to be hived-down comprise in particular the discovery, development and manufacturing of specialty chemicals, liquid crystals, OLEDs as well as pigments and cosmetic substances.
- Annex 3.3 contains the Hive-down Balance Sheet of the Operating Unit KGaA Healthcare as of January 1, 2018, 0:00 hours. The Hive-down Balance Sheet reflects the assets, liabilities and prepaid expenses/deferred income recognized in the balance sheet, which are part of the Healthcare Assets To Be Transferred.
- Annex 4.2.a contains a list of property rights to be transferred to HC OpCo (in particular trademarks, domains, designs, and patents) that are allocated to the Healthcare Business Sector. The property rights are described in more detail through the specification of the trademark, the application number and the case number based on the information available in the internal database (trademarks), the domain address (domains), the name of the design, the country, the application number, the registration number as well as the case number according to the internal database (designs) or the case number according to the internal database and the application numbers with the respective competent patent authorities (patents).
- Annex 4.2.b contains a list of intangible assets recognized in the balance sheet to be transferred to HC OpCo using the respective asset numbers assigned in KGaA's accounting.

- Annex 4.3.b contains the provisions of the trust agreement agreed in § 4.3 lit. b) of the Operational Hive-down Agreement for registered property rights, which becomes effective between KGaA and HC OpCo on the Legal Effective Date, i.e., at the time of registration of the hive-down in the commercial register of KGaA, with retroactive economic effect as of January 1, 2018, 0:00 hours. KGaA and HC OpCo agree therein that KGaA will hold in trust for HC OpCo the registered property rights used exclusively in the Healthcare Business Sector, which are applied for or registered in KGaA's name. The registered property rights affected by this are specifically the trademarks and brands listed in Annex 4.2.a. HC OpCo will become the sole beneficial owner of the registered property rights through the trust agreement. However, civil-law ownership of the registered property rights remains with KGaA, as the trustee. In the scope of the trust agreement, KGaA commits to manage the registered property rights in its own name but exclusively in the best interests of HC OpCo and to operate in such a manner that the business of HC OpCo is protected in a way that is economically viable. KGaA shall comply with all instructions issued by HC OpCo in connection with the registered property rights. It shall specifically be obligated to register, administer, maintain, and monitor the registered property rights in all of the countries specified by HC OpCo. HC OpCo will have the exclusive right to use and exploit the registered property rights in any way. Moreover, it must bear all costs and expenses incurred by KGaA relating to the fulfillment of the obligations arising from the trust agreement. Both, HC OpCo and KGaA may terminate the trust agreement at any time, giving notice of two months as per the end of the month without being required to provide any reasons. On the effective date of the termination, KGaA shall transfer the civil law-based ownership of the registered property rights to HC OpCo.
- Annex 4.4 contains the stipulations of the License Agreement agreed in § 4.4 of the Operational Hive-down Agreement which becomes effective between KGaA and HC OpCo on the Legal Effective Date, i.e., at the time of the registration of the hive-down in the commercial register of KGaA, with retroactive economic effect as of January 1, 2018, 0:00 hours. In the License Agreement, KGaA grants HC OpCo a license to property rights that, at the Legal Effective Date, are also but not exclusively used in the Healthcare Business Sector. The property rights affected by this are specifically listed in Annexes 4.4.a, 4.4.b, 4.4.d. The license shall apply for the regular business operations of the Healthcare Business Sector. It contains an unlimited, irrevocable, non-exclusive, non-transferable right of use to the property rights that is free of charge. During the term of the License Agreement, KGaA alone shall be obligated to take necessary measures for maintenance and administration of the licensed rights and enforce them against current or potential infringers. HC OpCo shall reimburse KGaA on a pro rata basis for all costs incurred by KGaA in relation to registering, administering, maintaining, defending, and enforcing under the License Agreement. In the event

of a change of control at HC OpCo or its legal successors, KGaA may terminate the issued license for cause, whereby all rights and obligations of the license will lapse with immediate effect and without any compensation.

- Annex 4.4.a lists shared IP trademarks of the Healthcare Business Sector. This annex contains trademarks, domains and designs that are also being used by a different Business Sector. The trademarks are described in detail by the name of the trademark, the application number and the case number according to the internal database; the domains by the domain address and the designs by specification of the country, the identification number, as well as the registration number.
- Annex 4.4.b lists Shared IP Patent Rights of the Healthcare Business Sector, i.e., patent rights that are also used by another Business Sector. The patent rights are described in more detail through the case number according to the internal database and the respective application numbers with the competent patent authorities.
- Annex 4.4.d lists Shared IP Rights Of Use of the Healthcare Business Sector, i.e., rights of use that are also used by another Business Sector. The rights of use are described in more detail through the specification of the asset number of the right of use according to KGaA's accounting.
- Annex 6.1 lists the tangible assets of KGaA that are part of the Healthcare Assets To Be Transferred. The tangible assets are described in detail by specification of the respective asset number according to KGaA's accounting.
- Annex 7.2 lists the accounts receivable and financial assets attributable to the Operating Unit KGaA Healthcare, which are part of the Healthcare Assets To Be Transferred. The description of the accounts receivable is divided into different categories, namely, trade accounts receivable from affiliated companies, trade accounts receivable from third parties, other receivables from affiliated companies, other receivables from third-party companies and other receivables from employees. The designation occurs in each case by document number, posting date and/or date and nominal value of the document item in Euro (pro rata, as the case may be). In addition, a shareholding in a corporation to be transferred is stated.
- Annex 8.3 lists the current assets attributable to the Operating Unit KGaA Healthcare that are part of the Healthcare Assets To Be Transferred, specified by the document number assigned in KGaA's accounting.
- Annex 9.4.a lists liabilities and deferred income that are part of the Healthcare Assets To Be Transferred. These liabilities are divided into different categories, namely, trade accounts payable to third parties, trade accounts payable to

affiliated companies and other liabilities to third parties. The liabilities and deferred income are described in more detail by specification of the document number, the posting date and the nominal value of the document item in Euro (pro rata, as the case may be). In addition, the annex lists obligations to purchase intangible assets, order commitments, obligations to accept delivery, rental and leasing obligations and leasing obligations allocated to the Operating Unit KGaA Healthcare.

- Annex 9.4.b lists uncertain liabilities referring to the respective provision that are allocated to the Operating Unit KGaA Healthcare. These provisions are divided into various categories, namely, provisions for pensions and other post-employment benefits, provisions for personnel expenses, provisions for cost of sales, provisions for outstanding invoices and other provisions. The individual provisions for pensions and other post-employment benefits are specified in more detail by providing the actuarial report as well as the reference, the date and the nominal value of the document item in Euro (pro rata, as the case may be). The items related to all other provisions are described in more detail by the document number, the posting date and the nominal value of the document item in Euro (pro rata, as the case may be).
- Annex 10.2 lists the contractual relationships that are part of the Healthcare Assets To Be Transferred. These are divided into contracts that are recorded in KGaA's Legal Document Management System (LDMS), as well as trademark agreements and patent agreements, which each are stored in KGaA's database "Patricia" with a contract number. The contracts are designated in detail by the LDMS number used in KGaA's internal LDMS database, the trademark agreements and the patent agreements by the contract number assigned in KGaA's internal database "Patricia".
- Annex 11.1 contains an individualization of employees allocated to the operating unit "KGaA Healthcare Darmstadt" at the Closing Balance Effective Date. The allocation occurs through the position key of each employee according to KGaA's personnel administration system.
- Annex 11.8.a contains the notarized trust agreement for securing pension commitments, which HC OpCo, LS OpCo and PM OpCo, represented by KGaA, have entered into with MP e.V. KGaA executed this trust agreement for the individual OpCos as an independent trust agreement between the respective OpCo and MP e.V. – contingent upon the date of the registration of the Operational Hive-down. The background for this trust agreement is that the pension commitments of employees currently employed by KGaA are – in addition to the protection through the Mutual Pension Assurance Association (Pensions-Sicherungs-Verein auf Gegenseitigkeit - PSVaG) – secured by a trust arrangement between KGaA and MP e.V. in the form of a Contractual Trust Arrangement (CTA).

The same shall also apply to pension commitments for employees who have left or will leave KGaA between 1/1/2018 and the Legal Effective Date and that are assigned to the respective Operating Unit. By way of the trust agreement attached as annex 11.8.a the safeguarding of the pension entitlements of the employees transferring to the OpCos in conjunction with the Operational Hive-down (as well as the pension entitlements of the employees who have left or will leave) shall be continued in an equal manner and secured. This safeguarding shall also apply to employees who return to KGaA in the course of the lease-back of the respective Operating Unit while the Business Lease Agreement is in effect.

- Annex 11.8.b contains notarized agreements concerning the transfer of the proportional trust assets, which KGaA and the respective OpCos (each represented by KGaA) have agreed to with MP e.V. – contingent upon the date of registration of the Operational Hive-down. The annex contains an independent agreement respectively between KGaA, the respective OpCo and MP e.V. This agreement stipulates that the trust assets held in the CTA on the Legal Effective Date between KGaA and MP e.V. to secure the Hived-down pension entitlements, shall, as of the Legal Effective Date, no longer be held in trust by MP e.V. on behalf of KGaA, but shall instead be held in trust for the respective OpCo, so that the respective OpCo is the beneficial owner of the trust assets from this time onwards.
- Annex 11.9 contains the provisions of the trust agreement under which the legal position of KGaA is transferred to HC OpCo as far as pension commitments to the Transitioning Healthcare Employees are provided by way of direct insurance coverage or as a pension fund commitment. This includes pension commitments by way of direct insurance and of the pension fund for employees, who are reassigned to KGaA in the course of the lease-back. The subject of the agreement is that KGaA shall hold its legal position vis-à-vis the external pension providers of the direct insurance and of the pension fund (position as policy holder in the framework of the direct insurance contracts and position as member firm of the pension fund (*Kassenfirma*)) in trust for HC OpCo for the duration of the trust agreement. As a result, KGaA is obligated according to the trust agreement, to comply with all instructions given by HC OpCo in connection with the affected legal position arising from the external implementation options and to comply with all obligations in accordance with the trust agreement with the highest level of due diligence. On the other hand, HC OpCo is entitled to commercially use the legal positions covered by the trust agreements vis-à-vis the external pension providers.
- Annex 11.10.a contains the notarized trust agreement for securing time account agreements, which HC OpCo, LS OpCo and PM OpCo, each represented by the KGaA, have entered into with Metzler Trust e.V. as well as the Höchster Pensions Benefits Services GmbH. KGaA executed this trust agreement for the individual

OpCos as an independent trust agreement between the respective OpCo and the Metzler Trust e.V. as well as the Höchster Pensions Benefits Services GmbH – contingent upon the date of the registration of the Operational Hive-down. The background for this trust agreement is that the time account claims of employees currently employed by KGaA are secured by a trust arrangement between KGaA, the Metzler Trust e.V. and the Höchster Pensions Benefits Services GmbH in the form of a CTA. By way of the trust agreement attached as annex 11.10.a the safeguarding of the time account entitlements of the employees transferring to OpCos in conjunction with the Operational Hive-down shall be continued in an equal manner and secured. This safeguarding shall also apply likewise to employees who return to KGaA in the course of the lease back of the respective Operating Unit while the Business Lease Agreement is in effect.

- Annex 11.10.b contains a notarized agreement concerning the transfer of the proportional trust assets, which KGaA and the respective OpCo (each represented by KGaA) have agreed to with the Metzler Trust e.V. and the Höchster Pensions Benefits Services GmbH – contingent on the date of registration of the Operational Hive-down. The annex contains an independent agreement respectively between KGaA, the respective OpCo, the Metzler Trust e.V. and Höchster Pensions Benefits Services GmbH. This agreement stipulates that the trust assets held in the CTA on the Legal Effective Date between KGaA, the Metzler Trust e.V. and Höchster Pensions Benefits Services GmbH to secure the Hived-down time account entitlements shall, as of the Legal Effective Date, no longer be held in trust by Metzler Trust e.V. on behalf of KGaA, but shall instead be held in trust for the respective OpCo, so that the respective OpCo is the beneficial owner of the trust assets from this time onwards.
- Annex 12.3 describes the procedural law relationships belonging to the Healthcare Assets To Be Transferred based on the case number assigned in the KGaA procedural law database and the affected country.
- Annex 15.3 contains the Hive-down Balance Sheet of the Operating Unit KGaA Life Science as of January 1, 2018, 0:00 hours. The Hive-down Balance Sheet reflects the assets, liabilities and prepaid expenses/deferred income recognized in the balance sheet, which are part of the Life Science Assets To Be Transferred.
- Annex 16.2.a contains a list of property rights to be transferred to LS OpCo (in particular trademarks, domains, and patents) that are allocated to the Life Science Business Sector. The property rights are described in more detail through the specification of the trademark, the application number and the case number based on the information available in the internal database (trademarks), the domain address (domains) or case number according to the internal database and the application numbers with the respective competent patent authorities (patents).



- Annex 16.2.b contains a list of intangible assets recognized in the balance sheet to be transferred to LS OpCo using the respective asset numbers assigned in KGaA's accounting.
- Annex 16.3.b contains the provisions of the trust agreement agreed in § 16.3 lit. b) of the Operational Hive-down Agreement for registered property rights, which becomes effective between KGaA and LS OpCo on the Legal Effective Date, i.e., at the time of registration of the hive-down in the commercial register of KGaA, with retroactive economic effect as of January 1, 2018, 0:00 hours. KGaA and LS OpCo agree therein that KGaA will hold in trust for LS OpCo the registered property rights used exclusively in the Life Science Business Sector, which are applied for or registered in KGaA's name. The registered property rights affected by this are specifically the trademarks and brands listed in Annex 16.2.a. LS OpCo will become the sole beneficial owner of the registered property rights through the trust agreement. However, civil-law ownership of the registered property rights remains with KGaA, as the trustee. In the scope of the trust agreement, KGaA commits to manage the registered property rights in its own name but exclusively in the best interests of LS OpCo and to operate in such a manner that the business of LS OpCo is protected in a way that is economically viable. KGaA shall comply with all instructions issued by LS OpCo in connection with the registered property rights. It shall specifically be obligated to register, administer, maintain, and monitor the registered property rights in all of the countries specified by LS OpCo. LS OpCo will have the exclusive right to use and exploit the registered property rights in any way. Moreover, it must bear all costs and expenses incurred by KGaA in relating to the fulfillment of the obligations arising from the trust agreement. Both, LS OpCo and KGaA may terminate the trust agreement at any time, giving notice of two months as per the end of the month without being required to provide any reasons. On the effective date of the termination, KGaA shall transfer the civil law-based ownership of the registered property rights to LS OpCo.
- Annex 16.4 contains the stipulations of the License Agreement agreed in § 16.4 of the Operational Hive-down Agreement which becomes effective between KGaA and LS OpCo on the Legal Effective Date, i.e., at the time of the registration of the hive-down in the commercial register of KGaA, with retroactive economic effect as of January 1, 2018, 0:00 hours. In the License Agreement, KGaA grants LS OpCo a license to property rights that, at the Legal Effective Date, are also but not exclusively used in the Life Science Business Sector. The property rights affected by this are specifically listed in Annexes 16.4.a, 16.4.b, 16.4.d. The license shall apply for the regular business operations of the Life Science Business Sector. It contains an unlimited, irrevocable, non-exclusive, non-transferable right of use to the property rights that is free of charge. During the term of the License Agreement, KGaA alone shall be obligated to take necessary measures for maintenance and administration of the licensed rights and enforce them against



current or potential infringers. LS OpCo shall reimburse KGaA on a pro rata basis for all costs incurred by KGaA in relation to registering, administering, maintaining, defending, and enforcing under the License Agreement. In the event of a change of control at LS OpCo or its legal successors, KGaA may terminate the issued license for cause, whereby all rights and obligations of the license will lapse with immediate effect and without any compensation.

- Annex 16.4.a lists shared IP trademarks of the Life Science Business Sector. This annex contains trademarks, domains and designs that are also being used by a different Business Sector. The trademarks are described in detail by the name of the trademark, the application number and the case number according to the internal database; the domains by the domain address and the designs by specification of the country, the identification number, as well as the registration number.
- Annex 16.4.b lists Shared IP Patent Rights of the Life Science Business Sector, i.e., patent rights that are also used by another Business Sector. The patent rights are described in more detail through the case number according to the internal database and the respective application numbers with the competent patent authorities.
- Annex 16.4.d lists Shared IP Rights Of Use of the Life Science Business Sector, i.e., rights of use that are also used by another Business Sector. The rights of use are described in more detail through the specification of the annex number of the right of use according to KGaA's accounting.
- Annex 18.1 lists the tangible assets of KGaA that are part of the Life Science Assets To Be Transferred. The tangible assets are described in detail by specification of the respective asset number according to KGaA's accounting.
- Annex 19.2 lists the accounts receivable attributable to the Operating Unit KGaA Life Science, which are part of the Life Science Assets To Be Transferred. The description of the accounts receivable is divided into different categories, namely, trade accounts receivable from affiliated companies, trade accounts receivable from third parties, and other accounts receivable from affiliated companies as well as third parties and accounts receivable from employees. The designation occurs in each case by document number, posting date and/or date and nominal value of the document item in Euro (pro rata, as the case may be).
- Annex 20.3 lists the current assets attributable to the Operating Unit KGaA Life Science that are part of the Life Science Assets To Be Transferred, specified by the document number assigned in KGaA's accounting.
- Annex 21.4.a lists liabilities that are part of the Life Science Assets To Be Transferred. These liabilities are divided into different categories, namely, trade

accounts payable to third parties, trade accounts payable to affiliated companies and other liabilities to third parties. The liabilities are described in more detail by specification of the document number, the posting date and the nominal value of the document item in Euro (pro rata, as the case may be). In addition, the annex lists order commitments, obligations to accept delivery, rental and leasing obligations and leasing obligations allocated to the Operating Unit KGaA Life Science.

- Annex 21.4.b lists uncertain liabilities referring to the respective provision that are allocated to the Operating Unit KGaA Life Science. These provisions are divided into various categories, namely, provisions for pensions and other post-employment benefits, provisions for personnel expenses, provisions for cost of sales, provisions for outstanding invoices and other provisions. The individual provisions for pensions and other post-employment benefits are specified in more detail by providing the actuarial report as well as the reference, the date and the nominal value of the document item in Euro (pro rata, as the case may be). The items related to all other provisions are described in more detail by the document number, the posting date and the nominal value of the document item in Euro (pro rata, as the case may be).
- Annex 22.2 lists contractual relationships that are part of the Life Science Assets To Be Transferred. These are divided into contracts that are recorded in KGaA's Legal Document Management System (LDMS), as well as trademark agreements and patent agreements, which are each stored in KGaA's database "Patricia" with a contract number. The contracts are designated in detail by the LDMS number used in KGaA's internal LDMS database, the trademark agreements and the patent agreements by the contract number assigned in KGaA's internal database "Patricia".
- Annex 23.1 contains an individualization of employees allocated to the operating unit "KGaA Life Science Darmstadt" at the Closing Balance Effective Date. The allocation occurs through the position key of each employee according to KGaA's personnel administration system.
- Annex 23.9 contains the provisions of the trust agreement under which the legal position of KGaA is transferred to LS OpCo as far as pension commitments to the Transitioning Life Science Employees are provided by way of direct insurance coverage or as a retirement fund commitment. This includes pension commitments by way of direct insurance and of the pension fund for employees, who are reassigned to KGaA in the course of the lease-back. The subject of the agreement is that KGaA shall hold its legal position vis-à-vis the external pension providers of the direct insurance and of the pension fund (position as insured party in the framework of the direct insurance contracts and position as treasury entity (Kassenfirma) with regard to the pension fund) in trust for LS OpCo for the

duration of the trust agreement. As a result, KGaA is obligated according to the trust agreement, to comply with all instructions given by LS OpCo in connection with the affected legal position arising from the external implementation options and to comply with all obligations in accordance with the trust agreement with the highest level of due diligence. On the other hand, LS OpCo is entitled to commercially use the legal positions covered by the trust agreements vis-à-vis the external pension providers.

- Annex 24.3 describes the procedural law relationships belonging to the Healthcare Assets To Be Transferred based on the case number assigned in the KGaA procedural law database and the affected country.
- Annex 27.3 contains the Hive-down Balance Sheet of the Operating Unit KGaA Performance Materials as of January 1, 2018, 0:00 hours. The Hive-down Balance Sheet reflects the assets, liabilities and prepaid expenses/deferred income recognized in the balance sheet, which are part of the Performance Materials Assets To Be Transferred.
- Annex 28.2.a contains a list of property rights to be transferred to PM OpCo (in particular trademarks, domains, designs, and patents) that are allocated to the Performance Materials Business Sector. The property rights are described in more detail through the specification of the trademark, the application number and the case number based on the information available in the internal database (trademarks), the domain address (domains), the name of the design, the country, the application number, the registration number as well as the case number according to the internal database (designs) or the case number according to the internal database and the application numbers with the respective competent patent authorities (patents).
- Annex 28.2.b contains a list of the intangible assets recognized in the balance sheet to be transferred to PM OpCo using the respective asset numbers assigned in KGaA's accounting.
- Annex 28.3.b contains the provisions of the trust agreement agreed in § 28.3 lit. b) of the Operational Hive-down Agreement for registered property rights, which becomes effective between KGaA and PM OpCo on the Legal Effective Date, i.e., at the time of registration of the hive-down in the commercial register of KGaA, with retroactive economic effect as of January 1, 2018, 0:00 hours. KGaA and PM OpCo agree therein that KGaA will hold in trust for PM OpCo the registered property rights used exclusively in the Performance Materials Business Sector, which are applied for or registered in KGaA's name. The registered property rights affected by this are specifically the trademarks and brands listed in Annex 28.2.a. PM OpCo will become the sole beneficial owner of the registered property rights through the trust agreement. However, civil-law ownership of the registered

property rights remains with KGaA, as the trustee. In the scope of the trust agreement, KGaA commits to manage the registered property rights in its own name but exclusively in the best interests of PM OpCo and to operate in such a manner that the business of PM OpCo is protected in a way that is economically viable. KGaA shall comply with all instructions issued by PM OpCo in connection with the registered property rights. It shall specifically be obligated to register, administer, maintain, and monitor the registered property rights in all of the countries specified by PM OpCo. PM OpCo will have the exclusive right to use and exploit the registered property rights in any way. Moreover, it must bear all costs and expenses incurred by KGaA in relating to the fulfillment of the obligations arising from the trust agreement. Both, PM OpCo and KGaA may terminate the trust agreement at any time, giving notice of two months as per the end of the month without being required to provide any reasons. On the effective date of the termination, KGaA shall transfer the civil law-based ownership to the registered property rights to PM OpCo.

- Annex 28.4 contains the stipulations of the License Agreement agreed in § 28.4 of the Operational Hive-down Agreement which becomes effective between KGaA and PM OpCo on the Legal Effective Date, i.e., at the time of the registration of the hive-down in the commercial register of KGaA, with retroactive economic effect as of January 1, 2018, 0:00 hours. In the License Agreement, KGaA grants PM OpCo a license to property rights that, at the Legal Effective Date, are also but not exclusively used in the Performance Materials Business Sector. The property rights affected by this are specifically listed in Annexes 28.4.a, 28.4.b, 28.4.d. The license shall apply for the regular business operations of the Performance Materials Business Sector. It contains an unlimited, irrevocable, non-exclusive, non-transferable right of use to property rights that is free of charge. During the term of the License Agreement, KGaA alone shall be obligated to take necessary measures for maintenance and administration of the licensed rights and enforce them against current or potential infringers. PM OpCo shall reimburse KGaA on a pro rata basis for all costs incurred by KGaA in relation to registering, administering, maintaining, defending, and enforcing under the License Agreement. In the event of a change of control at PM OpCo or its legal successors, KGaA may terminate the issued license for cause, whereby all rights and obligations of the license will lapse with immediate effect and without any compensation.
- Annex 28.4.a lists the shared IP trademarks of the Performance Materials Business Sector. This annex contains trademarks, domains and designs that are also being used by a different Business Sector. The trademarks are described in detail by the name of the trademark, the application number and the case number according to the internal database; the domains by the domain address and the designs by specification of the country, the identification number, as well as the registration number.

- Annex 28.4.b lists Shared IP Patent Rights of the Performance Materials Business Sector, i.e., patent rights that are also used by another Business Sector. The patent rights are described in more detail through the case number according to the internal database and the respective application numbers with the competent patent authorities.
- Annex 28.4.d lists Shared IP Rights of Use of the Performance Materials Business Sector, i.e., rights of use that are also used by another Business Sector. The rights of use are described in more detail through the specification of the asset number of the right of use according to the KGaA's accounting.
- Annex 30.1 lists the tangible assets of KGaA that are part of the Performance Materials Assets To Be Transferred. The tangible assets are described in detail by specification of the respective asset number according to KGaA's accounting.
- Annex 31.2 lists the accounts receivable and financial assets attributable to the Operating Unit KGaA Performance Materials, which are part of the Performance Materials Assets To Be Transferred. The description of the accounts receivable is divided into different categories, namely, trade accounts receivable from affiliated companies, trade accounts receivable from third parties, and other accounts receivable from affiliated companies as well as third parties and accounts receivable from employees. The designation occurs in each case by document number, posting date and/or date and nominal value of the document item in Euro (pro rata, as the case may be). In addition, a shareholding in a corporation to be transferred and in a partnership to be transferred are stated.
- Annex 32.3 lists the current assets attributable to the Operating Unit KGaA Performance Materials that are part of the Performance Materials Assets To Be Transferred, specified by the document number assigned in KGaA's accounting.
- Annex 33.4.a lists liabilities and deferred income that are part of the Performance Materials Assets To Be Transferred. These liabilities are divided into different categories, namely, trade accounts payable to third parties, trade accounts payable to affiliated companies and other trade accounts payable to third parties. The liabilities and deferred income are described in more detail by specification the document number, the posting date and the nominal value of the document item in Euro (pro rata, as the case may be). In addition, the annex lists order commitments, obligations to accept delivery, rental and leasing obligations and leasing obligations allocated to the KGaA Healthcare Operating Unit.
- Annex 33.4.b lists uncertain liabilities referring to the respective provision that are allocated to the Performance Materials KGaA Operating Unit. These provisions are divided into various categories, namely, provisions for pensions and other post-employment benefits, provisions for personnel expenses, provisions for cost of sales, provisions for outstanding invoices and other provisions. The individual

provisions for pensions and other post-employment benefits are specified in more detail by providing the actuarial report as well as the reference, the date and the nominal value of the document item in Euro (pro rata, as the case may be). The items related to all other provisions are described in more detail by the document number, the posting date and the nominal value of the document item in Euro (pro rata, as the case may be).

- Annex 34.2 lists the contractual relationships that are part of the Performance Materials Assets To Be Transferred. These are divided into contracts that are recorded in KGaA's Legal Document Management System (LDMS), as well as trademark agreements and patent agreements, which are each stored in KGaA's database "Patricia" with a contract number. The contracts are designated in detail by the LDMS number used in KGaA's internal LDMS database, the trademark agreements and the patent agreements by the contract number assigned in KGaA's internal database "Patricia".
- Annex 35.1 contains an individualization of employees allocated to the operating units "KGaA Performance Materials Darmstadt" and "KGaA Performance Materials Gernsheim" at the Closing Balance Effective Date. The allocation occurs through the position key of each employee according to KGaA's personnel administration system.
- Annex 35.9 contains the provisions of the trust agreement under which the legal position of KGaA is transferred to PM OpCo as far as pension commitments to the Transitioning Performance Materials Employees are provided by way of direct insurance coverage or as retirement fund commitment. This includes pension commitments by way of direct insurance and of the pension fund for employees, who are reassigned to KGaA in the course of the lease-back. The subject of the agreement is that KGaA shall hold its legal position vis-à-vis the external pension providers of the direct insurance and of the pension fund (position as insured party under the direct insurance contracts and position as treasury entity (Kassenfirma) with regard to the pension fund) in trust for PM OpCo for the duration of the trust agreement. As a result, KGaA is obligated according to the trust agreement, to comply with all instructions given by PM OpCo in connection with the affected legal position arising from the external implementation options and to comply with all obligations in accordance with the trust agreement with the highest level of due diligence. On the other hand, PM OpCo is entitled to commercially use the legal positions covered by the trust agreements vis-à-vis the external pension providers.
- Annex 36.3 describes the procedural law relationships belonging to the Performance Materials Assets To Be Transferred based on the case number assigned in the KGaA procedural law database and the affected country.

- Annex 39.1.n lists all public-law agreements and agreements on environmental matters, as well as obligations resulting from orders issued by official authorities that are not part of the Operational Assets To Be Transferred. The contracts are described in detail by the LDMS number used in KGaA's internal Legal Document Management System database and the type of contract, the orders issued by official authority by naming the authority and the reference number.
- Annexes 44.1.a, 44.1.b, 44.1.c contain the drafts of the respective Business Lease Agreements between KGaA on the one hand and HC OpCo, LS OpCo, and PM OpCo on the other. The content of these Business Lease Agreements is set out in the separate section D.
- Annex 48.1 lists the permits not included in the Operational Assets To Be Transferred that will permanently remain with KGaA (e.g., in particular, those according to the Hessian Construction Ordinance (Hessische Bauordnung), the Water Protection Act (Wasserrecht), the Federal Pollution Control Act (Bundes-Immissionsschutzgesetz) and the Radiation Protection Act (Strahlenschutzverordnung)) separated according to the Operating Units Healthcare, Life Science, and performance Materials. These permits are described in detail by the legal area, the internal reference number, and the approval date.
- Annex 48.3.a contains a description of the authorizations related to plants and environmental law initially remaining with KGaA (e.g. in particular those according to the Gene Technology Law (Gentechnikgesetz), the Federal Pollution Control Act (Bundes-Immissionsschutzgesetz), Hessian Construction Ordinance (Hessische Bauordnung)) to be transferred to the respective OpCos upon termination of the respective business lease, separated according to the Operating Units Healthcare, Life Science and Performance Materials. These authorizations are described in detail by the legal area, the internal reference number, and the approval date.
- Annex 48.3.b contains a description of the product-related approvals initially remaining with KGaA, which shall be transferred to the respective OpCos upon termination of the respective business lease, separated according to the Operating Units Healthcare, Life Science, and Performance Materials. These approvals are designated, for instance, by the country of registration, a license code and an issue date.

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## Section C.

Hive-down and Transfer Agreement between Merck KGaA, Darmstadt, Germany and Merck Healthcare Holding GmbH, Darmstadt, Germany, Merck Life Science Holding GmbH, Darmstadt, Germany, and Merck Performance Materials Holding GmbH, Darmstadt, Germany, all affiliated companies of Merck KGaA Darmstadt, Germany, dated March 2, 2018 (Holding Hive-down Agreement as Part B. of Deed No. 92/2018 of notary public Dr. Andreas von Werder in Frankfurt am Main, Germany)

The text of the agreement reads as follows:

### **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)**

### **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  
entitlement**

- 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 (*Pensionskasse 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.

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**Material content of the annexes  
to the Holding Hive-down Agreement**

Attached to the Hive-down Holding Agreement are Annexes 6.a, 6.b and 6.c, each comprising a Hive-down Balance Sheet, which reflect the respective shares of HC OpCo, LS OpCo and PM OpCo, which are hived-down to the respective HoldCo.

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## Section D.

Business Lease Agreement of March 2, 2018 between Merck KGaA, Darmstadt, Germany, in each case as the lessee and Merck Healthcare Germany GmbH, Darmstadt, Germany (**HC OpCo**), an affiliated company of Merck KGaA, Darmstadt, Germany, Merck Life Science Germany GmbH, Darmstadt, Germany (**LS OpCo**), an affiliated company of Merck KGaA, Darmstadt, Germany and Merck Performance Materials Germany GmbH, Darmstadt, Germany (**PM OpCo**), an affiliated company of Merck KGaA, Darmstadt, Germany, each as lessors (Parts C., D. and E. of Deed No. 92/2018 of Notary Public Dr. Andreas von Werder in Frankfurt am Main, Germany)

The Business Lease Agreements between HC OpCo, LS OpCo, and PM OpCo, each as lessor, and KGaA as lessee are practically identical in wording. They differ only slightly in the preliminary remarks, as regards the designation of the parties, the designation of the leased operation, and the description of the leased operational assets, referring to the respectively applicable provisions of the Operational Hive-down Agreement. The wording of the Business Lease Agreements is hereinafter, therefore, presented together, with parallel reference of the respective party, provisions and annexes (e.g. HC OpCo / LS OpCo / PM OpCo). A deviation exists with regard to the provision in § 24a of the Business Lease Agreement between PM OpCo and KGaA, which is not included in the other two Business Lease Agreements.

### **Business Lease Agreement**

between

**Merck Healthcare / Life Science / Performance Materials Germany GmbH,  
Darmstadt, Germany,  
an affiliated company of Merck KGaA, Darmstadt, Germany,**

as the lessor

and

**Merck KGaA, Darmstadt, Germany**

as the lessee

### Preamble

- (1) Merck Kommanditgesellschaft auf Aktien, Darmstadt, Germany, headquartered in Darmstadt, Germany, registered in the commercial register of the Darmstadt Local Court under HRB 6164 (**KGaA** or **Merck KGaA, Darmstadt, Germany**) is, together with its German and foreign subsidiaries (**Group**), a globally operating science and technology company and divided into the three group-wide Business Sectors Healthcare, Life Science, and Performance Materials.
- (2) KGaA is the sole shareholder of Merck Healthcare / Life Science / Performance Materials Holding GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany, headquartered in Darmstadt, registered in the commercial register of the Darmstadt Local Court under HRB 97141 / 97051 / 97192, and of Merck Healthcare / Life Science / Performance Materials Germany GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany, headquartered in Darmstadt, registered in the commercial register of the Darmstadt Local Court under HRB 96240 / 93771 / 93768 (**HC OpCo / LS OpCo / PM OpCo**). KGaA as the controlling company and HC OpCo / LS OpCo / PM OpCo as the controlled company have entered into a domination and profit and loss transfer agreement within the meaning of Sec. 291 (1) s. 1 German Stock Corporations Act (*Aktiengesetz - AktG*). KGaA and HC OpCo / LS OpCo / PM OpCo are hereinafter also individually referred to as **Party** and collectively as **Parties**.
- (3) The operational activities of the Healthcare, Life Science, and Performance Materials Business Sectors operated within KGaA in Darmstadt and Gernsheim along with 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, an **Operating Unit** or collectively **Operating Units**), shall be, in accordance with Sec. 20 of the German Reorganization Tax Act (*Umwandlungssteuergesetz - UmwStG*), hived down to three separate subsidiaries via a hive down by absorption pursuant to Sec. 123 (3) (1) German Reorganization Act (*Umwandlungsgesetz - UmwG*) by way of partial universal legal succession, as well as in part by measures transferring or granting beneficial ownership (the **Operational Hive-down**; and the Agreement in Part A of this notarial deed entered into for its implementation, the **Operational Hive-down Agreement**). The Operating Unit KGaA Healthcare / Operating Unit KGaA Life Science / Operating Unit KGaA Performance Materials shall be hived down to HC OpCo / LS OpCo / PM OpCo. Immediately after the completion of the Operational Hive-down, all company shares in HC OpCo / LS OpCo / PM OpCo held by KGaA shall be hived down by way of a hive-down for the purpose of transfer to Merck Healthcare Holding GmbH, Darmstadt, Germany / Merck Life Science Holding GmbH, Darmstadt, Germany / Merck Performance Materials Holding GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany (the

**Holding Hive-down**; the Agreement entered into for its implementation in Part B of this notarial deed, the **Holding Hive-down Agreement**). The Operational Hive-down and the Holding Hive-down shall each take place with economic effect as of January 1, 2018.

- (4) 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. These strengthen the Group's ability to respond quickly and flexibly to available strategic development options as well as 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.
- (5) The remaining German and foreign subsidiaries of KGaA – and thus the majority of its 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.
- (6) Since the technical requirements for introducing the ERP systems at HC OpCo / LS OpCo / PM OpCo currently do not exist, the business operation of the Operating Unit KGaA Healthcare / Operating Unit Life Science / Operating Unit Performance Materials shall be leased back temporarily from HC OpCo / LS OpCo / PM OpCo to KGaA immediately after the legal effective date of the Operational Hive-down until the introduction of the ERP system, planned to take place at the beginning of 2019 / in the course of 2020 / in the course of 2020. This temporary lease(back) of the operation is subject to this Business Lease Agreement pursuant to Sec. 292 (1) (3) German Stock Corporations Act (the **Business Lease Agreement**). Corresponding Business Lease Agreements shall also be concluded by LS OpCo and PM OpCo / HC OpCo and PM OpCo / HC OpCo and LS OpCo (collectively with HC OpCo / LS OpCo / PM OpCo, regardless of the Business Sector, the **OpCos**, and each individually an **OpCo**) with KGaA. The overall management of the Operating Units by KGaA in its own name and for its own account, accompanied by the leaseback of operations by the OpCos, makes the separate operational control as well as mapping of the operational income and expenses for the OpCos in separate

ERP systems temporarily obsolete. Upon introduction of the ERP system at HC OpCo / LS OpCo / PM OpCo, the Business Lease as it relates to the Leased Operation Healthcare / Life Science / Performance Materials shall be terminated. The OpCos shall then conduct their business activity in their own name and for their own account.

- (7) 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. When registering the measures with the commercial register, the Parties will work to ensure that this Business Lease Agreement and the Holding Hive-down will be registered in the commercial register only after the Operational Hive-down has become effective.
- (8) If and to the extent that the Parties refer to the Operational Hive-down Agreement or its annexes (Annex A to this notarial deed) in this Business Lease Agreement, the content of the provisions to which reference is made and the annexes shall become an integral part of this Business Lease Agreement. The terms defined in the Operational Hive-down Agreement are used in the same meaning in this Business Lease Agreement.

NOW THEREFORE, the Parties conclude the following Business Lease Agreement:

## **A. Agreeing on the Business Lease**

### **§ 1**

#### **Leased Operation**

- 1.1 HC OpCo / LS OpCo / PM OpCo shall lease, according to the stipulations of this Agreement, the entire operations of its company to KGaA (**Leased Operation**). KGaA shall manage the Leased Operation during the term of this Agreement in its own name and for its own account. Unless otherwise governed herein, the provisions of Sec. 581 et seq. German Civil Code (**BGB**) shall apply.
- 1.2 The domination and profit and loss transfer agreement existing between HC OpCo / LS OpCo / PM OpCo and KGaA shall remain unaffected by this Business Lease Agreement.

### **§ 2**

#### **Legal Effective Date, Beginning Of The Lease**

The Agreement shall become effective upon registration in the commercial register of HC OpCo / LS OpCo / PM OpCo (**Legal Effective Date**). Notwithstanding the aforesaid, the lease shall become effective with retroactive economic effect as of January 1, 2018, 0:00 hours (**Beginning Of The Lease**). Hence, the Parties shall

deem themselves in such position internally – in particular as regards the payment of the rent and the usufruct from the Leased Operation – as if the lease was already in effect at this time.

## **B. Subject Of The Lease**

### **§ 3**

#### **Description of the Leased Items, general principles, granting possession**

- 3.1 As described in more detail or referenced in § 3 to § 14 / § 15 to § 26 / § 27 to § 38 of the Operational Hive-down Agreement and in § 48 to § 51 of the Operational Hive-down Agreement, the subject of the lease includes all items and legal relationships of the assets and legal relationships of HC OpCo / LS OpCo / PM OpCo required to manage the Leased Operation. Excluded from the Lease shall be the receivables and legal relationships of the assets and liabilities of HC OpCo / LS OpCo / PM OpCo that shall be sold and transferred by HC OpCo / LS OpCo / PM OpCo to KGaA at the Beginning Of The Lease and sold back by KGaA to HC OpCo / LS OpCo / PM OpCo at the Lease End. Receivables from and liabilities to employees assigned to the Leased Operation shall be subject to § 20 and § 21. The items of the lease and legal relationships are referred to as **Leased Items** and the items and legal relationships transferred to KGaA are referred to as **Transferred Items**.
- 3.2 If the Leased Items and the Transferred Items can be recognized in the balance sheet, they are included in the segment balance sheet of the Operating Unit KGaA Healthcare / Life Science / Performance Materials as of January 1, 2018, 0:00 hours, derived from the audited financial statements of KGaA as of December 31, 2017, 24:00 hours, which is attached to the Operational Hive-down Agreement as Annex 3.3 / Annex 15.3 / Annex 27.3 (**Healthcare / Life Science / Performance Materials Hive-down Balance Sheet**). The subject of the lease and transfer also includes – subject to the special provisions of this Agreement, and if not excluded from the lease or the transfer – all items that are not required to be recorded in the balance sheet, that cannot be disclosed in the balance sheet, or that are actually not disclosed in the balance sheet attributable to the Leased Operation.
- 3.3 The additions and disposals of Leased Items and Transferred Items as well as other rights and obligations (including surrogates *in rem* or under the law of obligations of a Leased Item) during the period between the Beginning Of The Lease and the Legal Effective Date shall be taken into account for the lease or transfer according to the provisions below.
- a) HC OpCo / LS OpCo / PM OpCo shall lease or transfer to KGaA the Assets and Liabilities Items in the broadest sense attributable to the Leased

Operation which arise during the period from the Beginning Of The Lease to the Legal Effective Date or were generated during said period and still exist at the Legal Effective Date.

- b) The Assets and Liabilities Items attributable in the broadest sense in terms of origin and intended purpose to the Leased Operation which were terminated, sold, or otherwise transferred during the period from the Beginning Of The Lease to the Legal Effective Date or that no longer exist on the Legal Effective Date shall not be leased or transferred to KGaA. Instead, they shall be substituted by the surrogates in rem or under the law of obligations existing as at the Legal Effective Date.
- 3.4 HC OpCo / LS OpCo / PM OpCo shall grant KGaA, at the Legal Effective Date, possession and/or physical control of the Leased Items and the Transferred Items and ensure that KGaA can obtain the benefits from the Leased Items in its own name and for its own account. Thus, KGaA shall obtain the agency implied in fact (*Schlüsselgewalt*) over the Leased Items.
- 3.5 If for individual Leased Items a lease is not legally permissible or is not feasible for any other reasons, HC OpCo / LS OpCo / PM OpCo shall exercise its rights arising from these Leased Items only as per the instructions of KGaA in its capacity as the lessee, and apart from that treat KGaA internally as a lessee of these Leased Items.

## § 4

### Intangible assets and know-how

- 4.1 HC OpCo / LS OpCo / PM OpCo shall lease to KGaA all Transferred Patent Rights Healthcare / Life Science / Performance Materials and Transferred Rights Of Use Healthcare / Life Science / Performance Materials described in detail in § 4.2 / § 16.2 / § 28.2 of the Operational Hive-down Agreement attributable to the Leased Operation and all know-how attributable only to the Healthcare / Life Science / Performance Materials Business Sector within the meaning of § 5 / § 17 / § 29 of the Operational Hive-down Agreement (collectively, the **Leased IP**), in particular the intangible assets listed in Annex 4.2.a / Annex 16.2.a / Annex 28.2.a and Annex 4.2.b / Annex 16.2.b / Annex 28.2.b to the Operational Hive-down Agreement.
- 4.2 Unless otherwise governed in § 4.3 and § 4.6, the lease of the Leased IP shall be carried out in accordance with the following licensing terms:
- a) HC OpCo / LS OpCo / PM OpCo shall grant KGaA a non-exclusive, worldwide, non-transferrable license restricted to the term of this Business



Lease Agreement to use the Leased IP only within the scope of ordinary business operations of the Leased Operation.

- b) KGaA shall be authorized to grant sub-licenses for the Rights Of Use granted to it pursuant to § 4.2 lit. a) only within the scope of ordinary business operations of the Leased Operation.
  - c) The license granted pursuant to § 4.2 lit. a) shall lapse when the Business Lease Agreement is terminated. It can apart from that only be terminated insofar as the right of termination cannot be waived under the applicable laws.
  - d) The Rights Of Use granted pursuant to § 4.2 lit. a) shall lapse upon termination of the Business Lease Agreement. In this case, KGaA is obligated to immediately cease use of the licensed Leased IP pursuant to § 4.2 lit. a).
  - e) The Rights Of Use granted pursuant to § 4.2 lit. a) shall always apply only to the extent to which HC OpCo / LS OpCo / PM OpCo is authorized to dispose of them at the Legal Effective Date. The Rights Of Use granted pursuant to § 4.2 lit. a) shall have no impact on the licenses granted under the Leased IP to third parties and the rights and obligations of third parties or of HC OpCo / LS OpCo / PM OpCo governed therein.
  - f) § 17 of this Business Lease Agreement shall remain unaffected.
- 4.3 During the term of the business lease, KGaA shall be entitled to the trustor's rights and obligations resulting from the Trust Agreement (including the rights of use governed therein) established in § 4.3 lit. b) / § 16.3 lit. b) / § 28.3 lit. b) of the Operational Hive-down Agreement between KGaA and HC OpCo / LS OpCo / PM OpCo in respect of registered property rights, and shall fulfill these rights and obligations.
- 4.4 The Parties agree that, during the term of the business lease, the obligation of HC OpCo / LS OpCo / PM OpCo to cover the costs and to indemnify KGaA pursuant to § 4.6 / § 16.6 / § 28.6 and § 4.7 / § 16.7 / § 28.7 of the Operational Hive-down Agreement shall not apply.
- 4.5 The Parties agree that the Transferred Rights Of Use Healthcare / Life Science / Performance Materials as well as the Trust Agreements transferred as per § 4.3 lit. a) / § 16.3 lit. a) / § 28.3 lit. a) of the Operational Hive-down Agreement shall be transferred to KGaA for the term of the business lease by transferring the relevant contracts pursuant to § 9.

- 4.6 As far as HC OpCo / LS OpCo / PM OpCo has been granted rights of use in Shared IP Healthcare / Life Science / Performance Materials in accordance with § 4.4 / § 16.4 / § 28.4 of the Hive-down Agreement and know-how attributable not exclusively to the Healthcare / Life Science / Performance Materials Business Sector in accordance with § 5.2 / § 17.2 / § 29.2 of the Hive-down Agreement, KGaA shall exercise such rights for the duration of the business lease in its own right.

## **§ 5**

### **Tangible assets**

- 5.1 HC OpCo / LS OpCo / PM OpCo shall lease to KGaA all tangible assets described in detail in § 6.1 / § 18.1 / § 30.1 to § 6.3 / § 18.3 / § 30.3 of the Operational Hive-down Agreement attributable to the Leased Operation and those tangible assets described in Annex 6.1 / Annex 18.1 / Annex 30.1 to the Operational Hive-down Agreement, including the low-value assets. This shall also apply if third-party title of ownership in the assets is reserved or HC OpCo / LS OpCo / PM OpCo has assigned such title to third parties as collateral.
- 5.2 As regards tangible assets of KGaA for which an intercompany service agreement pursuant to § 6.5 / § 18.5 / § 30.5 of the Operational Hive-down Agreement was concluded between HC OpCo / LS OpCo / PM OpCo and KGaA or another OpCo, KGaA shall be entitled to any and all rights arising from this service agreement during the term of the business lease.

## **§ 6**

### **Receivables**

- 6.1 HC OpCo / LS OpCo / PM OpCo shall sell to KGaA all receivables attributed to the Leased Operation at the Beginning Of The Lease and described in § 7 / § 19 / § 31 of the Operational Hive-down Agreement, specifically those listed in Annex 7.2 / Annex 19.2 / Annex 31.2 to the Operational Hive-down Agreement, and shall assign them to KGaA. KGaA hereby accepts the sale and assignment. The sale of the receivables shall take economic effect at the Beginning Of The Lease at the carrying amounts disclosed in the commercial-law Healthcare / Life Science / Performance Materials Hive-down Balance Sheet for the overall item "Receivables and other assets." The purchase price shall be due within four weeks of the Legal Effective Date of the business lease.
- 6.2 If an assignment of the receivables is not permissible or feasible, HC OpCo / LS OpCo / PM OpCo shall herewith grant KGaA the power to collect the relevant receivables, and the Parties shall be treated internally as if the relevant receivable

had been effectively assigned (Trust Agreement as set out in § 1.4 of the Operational Hive-down Agreement).

- 6.3 After the termination of this Business Lease Agreement, KGaA shall be authorized and, at the request of HC OpCo / LS OpCo / PM OpCo, obligated, with effect from the termination of the agreement (**Lease End**), to sell to HC OpCo / LS OpCo / PM OpCo the receivables existing at the Lease End that are attributable to the Leased Operation in a corresponding application of the above stipulations, at the effective carrying amount at Lease End (to be determined according to the same principles as relate to sale under § 6.1). The purchase price shall be due within four weeks of the Lease End.
- 6.4 Any prepaid expenses existing at the Beginning Of The Lease or at the Lease End shall be settled upon payment of the purchase prices pursuant to § 6.1 and § 6.3 on the basis of the respective carrying amount.
- 6.5 In deviation from § 6.1, the provisions in § 20 and § 21 shall apply to employees' receivables.

## **§ 7**

### **Inventories**

- 7.1 HC OpCo / LS OpCo / PM OpCo shall sell to KGaA all inventories and other current assets attributable in full or on a prorated basis to the Leased Operation, in particular raw materials, consumables and supplies, work in process and finished products and merchandise, irrespective of whether they are at sites, in transit or on consignment, particularly those described in detail in § 8 / § 20 / § 32 of the Operational Hive-down Agreement, and specifically those listed in Annex 8.3 / Annex 20.3 / Annex 32.3 to the Operational Hive-down Agreement. Inventories shall be sold on the Legal Effective Date with retroactive economic effect as of the Beginning Of The Lease at the carrying amounts disclosed in the commercial-law Healthcare / Life Science / Performance Materials Hive-down Balance Sheet for the overall item "Inventories." The purchase price shall be due within four weeks of the Legal Effective Date of the business lease.
- 7.2 The Parties agree that the title, possession, and all other rights to the inventory items sold in accordance with § 7.1 shall be transferred to KGaA at the Legal Effective Date. As far as, at the time of the transfer of the inventory items, third parties have rights reserved in these items or these items are transferred as collateral to third parties, HC OpCo / LS OpCo / PM OpCo shall transfer to KGaA at the Legal Effective Date the entitlement right in these items, its claims for surrender, if such claim exists, and all other claims to which it is entitled in this context.

- 7.3 If certain inventory items are in the possession of third parties at the Legal Effective Date, HC OpCo / LS OpCo / PM OpCo shall assign to KGaA its respective repossession rights.
- 7.4 If additional actions or declarations are required for the transfer of title or for granting possession, the Parties shall immediately arrange for what is necessary or required.
- 7.5 After the termination of this Business Lease Agreement, KGaA shall be authorized and, at the request of HC OpCo / LS OpCo / PM OpCo, obligated, with effect as of the Lease End, to sell to HC OpCo / LS OpCo / PM OpCo the inventories existing at the Lease End that are attributable to the Leased Operation in a corresponding application of the above stipulations, at the carrying amount then applicable (to be determined according to the same principles as relate to sale under § 7.1). The purchase price shall be due within four weeks of the Lease End. HC OpCo / LS OpCo / PM OpCo shall have the right to limit the sale to such quantities as are necessary to continue the Leased Operation. Items from inventories whose resale HC OpCo / LS OpCo / PM OpCo has waived may be used or exploited by KGaA at the Lease End at its own discretion.
- 7.6 Both the inventories to be sold hereunder and the inventories to be sold back upon termination of this Business Lease Agreement shall be sold in each case in the condition in which they are at the time of sale to the respective other Party, without any warranty for defects. Warranty claims, regardless of their nature and regardless of the legal basis, shall herewith be excluded to the extent legally permissible.

## **§ 8**

### **Liabilities and provisions**

- 8.1 KGaA shall take over from HC OpCo / LS OpCo / PM OpCo, with economic effect as of the Beginning Of The Lease, all liabilities and/or contingent and uncertain liabilities that are attributable to the Leased Operation and that are described in detail in § 9 / § 21 / § 33 of the Operational Hive-down Agreement, specifically those listed in detail in Annex 9.4.a / Annex 21.4.a / Annex 33.4.a and Annex 9.4.b / Annex 21.4.b / Annex 33.4.b to the Operational Hive-down Agreement.
- 8.2 Such assignment pursuant to § 8.1 excludes liabilities or contingent and uncertain liabilities that would be subject to prohibitions, restrictions, or assessment restrictions on the disclosure of certain items in the financial statements as set forth in Sec. 4f (1) s. 1 German Income Tax Code (*Einkommensteuergesetz - EStG*). If the legal ground on which such a liability is based is transferred to KGaA on the basis of a provision in this Agreement or by law, HC OpCo / LS OpCo / PM OpCo hereby, with economic effect as of the Beginning Of The Lease, enters into

the liability according to the criteria established by the Federal Fiscal Court (*Bundesfinanzhof*) (decision dated April 25, 2012 - Case No. IV R 43/09, Federal Tax Gazette (*BStBl.*) II 2017, 1228) and the tax administration (German Federal Ministry of Finance (*BMF*) on November 30, 2017 - Case No. IV C 6-S 2133/14/10001, *BStBl.* I 2017, 1619) and takes over the fulfillment thereof in the internal relationship with KGaA (Sec. 329 *BGB*).

- 8.3 For the liabilities to be assigned to and accepted by KGaA pursuant to § 8.1, taking § 8.2 into account, HC OpCo / LS OpCo / PM OpCo shall pay to KGaA a compensation that corresponds to the commercial-law carrying amounts disclosed in the Healthcare / Life Science / Performance Materials Hive-down Balance Sheet for these overall items (*negative purchase price*). The negative purchase price is due within four weeks of the Legal Effective Date of the business lease.
- 8.4 After the termination of this Business Lease Agreement, KGaA shall be authorized and, at the request of HC OpCo / LS OpCo / PM OpCo, obligated, with effect as of the Lease End, to sell to HC OpCo / LS OpCo / PM OpCo the liabilities existing at the Lease End that are attributable to the Leased Operation under § 8.1 and § 8.2, in a corresponding application of the above stipulations (with determination of the effective carrying amount according to the same principles as relate to sale under § 8.3). The negative purchase price falls due within four weeks of the Lease End.
- 8.5 Any deferred income existing at the Beginning Of The Lease or at the Lease End shall be settled upon payment of the purchase prices pursuant to § 8.3 and § 8.4 on the basis of the respective carrying amount.
- 8.6 In deviation from § 8.1, the provisions in § 20 and § 21 shall apply to liabilities due to employees.

## § 9

### Entering into contracts and contract offers

- 9.1 Within the scope of the business lease, KGaA shall assume all Transferred Contractual Relationships Healthcare / Life Science / Performance Materials attributable to the Leased Operation and described in more detail in § 10 / § 22 / § 34 of the Operational Hive-down Agreement, in particular those listed in Annex 10.2 / Annex 22.2 / Annex 34.2 to the Operational Hive-down Agreement, by way of assumption of contract with discharging effect. The assumption of contract takes place with economic effect as of the Beginning Of The Lease, but in each case in the form and with the content of the contractual relationships existing at the Legal Effective Date. The retransfer of the contractual relationships attributable to the Leased Operation at the Lease End shall take place in accordance with § 9.5 of this Agreement.

- 9.2 Contractual relationships that are not attributable to the Leased Operation, particularly partnership agreements, domination and profit and loss transfer agreements, or agreements about silent partnerships shall not be transferred.
- 9.3 To the extent that the transfer of the contractual relationships requires the consent of a third party, in particular the respective contractual partner in the transferred contracts, HC OpCo / LS OpCo / PM OpCo and KGaA shall make their best efforts to obtain such consent immediately.
- 9.4 If and to the extent that a transfer of the contracts, contract offers, entitlements, or similar legal matters with discharging effect is not feasible or is not feasible in such manner that it becomes effective at the Beginning Of The Lease, KGaA shall assume any and all obligations resulting from such contracts, contract offers, entitlements, or similar legal matters. HC OpCo / LS OpCo / PM OpCo shall assign all claims and rights resulting from these contracts, contract offers, entitlements, or similar matters to KGaA. In addition, the Parties shall treat each other internally as if the assumption with discharging effect of the contracts, contract offers, entitlements, and similar legal matters had occurred externally with effect as of the Beginning Of The Lease; in particular, risks, benefits, and obligations are considered transferred as of the Beginning Of The Lease. If and to the extent required, HC OpCo / LS OpCo / PM OpCo shall continue the relevant contractual relationship on a trust basis in its own name for the account of KGaA and, as far as legally possible, assign to KGaA the contractual relationship or the benefit resulting from the contractual relationship during the term of the business lease. In addition, HC OpCo / LS OpCo / PM OpCo is obligated, as far as legally possible, to grant to KGaA the power of attorney to exercise rights as they relate to the respective contractual relationship or to assign the corresponding rights to KGaA for exercise. Insofar as KGaA cannot exert a legal position effectively in external relationships, HC OpCo / LS OpCo / PM OpCo shall act as agent and trustee for KGaA (**Trust Agreement**).
- 9.5 Upon termination of this Business Lease Agreement, HC OpCo / LS OpCo / PM OpCo shall assume from KGaA, with economic effect as of the Lease End, the contractual relationships existing at the Lease End that can be functionally assigned to the Leased Operation, within the scope legally permissible. § 9.3 and § 9.4 shall apply accordingly.
- 9.6 When obtaining consent pursuant to § 9.3, the Parties shall endeavor, to the extent appropriate, to obtain consent for the retransfer of the contract to HC OpCo / LS OpCo / PM OpCo upon termination of the business lease pursuant to § 9.5 at the same time. In addition, KGaA shall, for all contracts newly concluded during the business lease, to the extent appropriate, undertake to obtain consent from the contractual partner for the transfer of the contract to HC OpCo / LS OpCo / PM OpCo upon termination of the business lease pursuant to § 9.5.

- 9.7 During the term of the business lease, KGaA shall be entitled to the trustor's rights and obligations resulting from the Trust Agreement between KGaA and HC OpCo / LS OpCo / PM OpCo in the meaning of § 49.2 of the Operational Hive-down Agreement ("Shared Agreements").

## **§ 10**

### **Litigation and legal proceedings**

- 10.1 To the extent that the Leased Items or Transferred Items under this Agreement relate to litigation and legal proceedings specified in § 12.1 / § 24.1 / § 36.1 to § 12.4 / § 24.4 / § 36.4 of the Operational Hive-down Agreement, listed in particular in Annex 12.3 / Annex 24.3 / Annex 36.3 to the Operational Hive-down Agreement, are transferred to HC OpCo / LS OpCo / PM OpCo in the course of the hive-down, HC OpCo / LS OpCo / PM OpCo shall retransfer such litigation and legal proceedings to KGaA for the duration of the business lease.
- 10.2 With the litigation and other legal proceedings subject to § 10.1, the advisory and contractual relationships with third parties related thereto shall also be transferred to KGaA.
- 10.3 To the extent that, according to the provisions of the applicable procedural rules, the transfer of party status from HC OpCo / LS OpCo / PM OpCo to KGaA in full depends on other circumstances, such as the consent of the other participant(s) in the proceedings, the Parties shall work towards these steps being taken and towards KGaA replacing HC OpCo / LS OpCo / PM OpCo as a party in the litigation and other procedural legal relationships subject to this provision.
- 10.4 If no change of party pursuant to § 10.1 or § 10.3 occurs, HC OpCo / LS OpCo / PM OpCo shall continue the proceedings as the institution of legal standing. Proceedings shall be conducted for the account of KGaA. Internally, the ongoing management of proceedings shall be assumed by KGaA. HC OpCo / LS OpCo / PM OpCo shall thus not conduct any procedural acts (in particular agree on any settlement, waiver, acknowledgement, confession, withdrawal, or amendment of actions) without the prior consent of KGaA. KGaA shall indemnify HC OpCo / LS OpCo / PM OpCo with regard to any liabilities and costs resulting from any litigation and other procedural legal relationships that are subject to this provision. HC OpCo / LS OpCo / PM OpCo shall support KGaA in such proceedings with the objective of minimizing the economic damage resulting from the proceedings.
- 10.5 KGaA hereby undertakes already to transfer the litigation and legal proceedings assigned to the Operating Unit KGaA Healthcare / Operating Unit KGaA Life Science / Operating Unit KGaA Performance Materials pursuant to § 10.1 and such litigation and legal proceedings in the meaning of § 10.1 that are re-established until the Lease End to HC OpCo / LS OpCo / PM OpCo with effect as of the



termination date of this Business Lease Agreement. § 10.2 to 10.4 shall apply *mutatis mutandis* to the rescission of the Lease.

## **§ 11**

### **Memberships**

- 11.1 HC OpCo / LS OpCo / PM OpCo shall transfer to KGaA any memberships that are transferred to HC OpCo / LS OpCo / PM OpCo as part of the Operational Hive-down as set out in § 13 / § 25 / § 37 of the Operational Hive-down Agreement, taking into account any terminations or re-establishments during the period between the Beginning Of The Lease and the Legal Effective Date.
- 11.2 Insofar as a membership to be transferred (in part) to HC OpCo / LS OpCo / PM OpCo under § 13 / § 25 / § 37 of the Operational Hive-down Agreement has not been assigned or transferred to HC OpCo / LS OpCo / PM OpCo in the course of the hive-down, it shall remain with KGaA for the term of the business lease and shall be transferred to HC OpCo / LS OpCo / PM OpCo upon termination of the business lease. If a transfer of such memberships is not possible even after termination of the business lease, KGaA shall support HC OpCo / LS OpCo / PM OpCo in re-applying for these memberships, assuming that such a membership is required and desired.

## **§ 12**

### **Permits and approvals required under public law, operator responsibility**

- 12.1 As part of the Operational Hive-down, KGaA and HC OpCo / LS OpCo / PM OpCo have entered into a Trust Agreement in the meaning of § 1.4 of the Operational Hive-down Agreement with respect to the permits relating to the operations of HC OpCo / LS OpCo / PM OpCo and specified in Annex 48.2 of the Operational Hive-down Agreement, under which KGaA holds the permits as a trustee exclusively for or also for the HC OpCo / LS OpCo / PM OpCo. KGaA shall be entitled to the trustor's rights and obligations resulting from this Trust Agreement during the term of this Business Lease Agreement.
- 12.2 During the term of the business lease, KGaA shall remain the operator and owner of the permits for the facilities, land, and equipment of the Leased Operations with all associated rights and obligations, and shall exercise in its previous scope unrestricted physical control and right of disposal over all facilities, land, and equipment of the Leased Operation. During the term of the business lease, KGaA shall be responsible for complying with all environmental and public law provisions and requirements of the respective approvals that are associated with its position as operator (including such requirements as are relevant for supplying leased



plants or for removing waste water and waste and, if relevant, legal requirements regarding incidents). KGaA shall also continue to be the sole contact in this context for the competent authorities and third parties and to conduct proceedings and consultations under environmental and approval-related law with authorities and third parties as the responsible party and in its own name. KGaA remains during the term of the business lease the legal owner of all permits under product law in the meaning of § 48.7 of the Operational Hive-down Agreement. KGaA shall continue to fulfill all obligations associated with these permits and shall ensure quality management.

- 12.3 The transfer or re-application for approvals after the termination of the business lease shall be based on the provisions in § 48.8 and § 48.9 of the Operational Hive-down Agreement.

### **C. Legal position of KGaA**

#### **§ 13**

#### **General rights and obligations of KGaA**

- 13.1 KGaA shall have the right and obligation to continue to manage and operate the Leased Operation according to the detailed provisions of this Agreement from the Legal Effective Date in its own name and for its own account. KGaA shall be entitled to all products from the Leased Operation and may dispose of them freely. KGaA shall be responsible for procuring all media necessary to operate the Leased Items at its own expense.
- 13.2 KGaA shall be solely responsible for managing and operating the Leased Operation with the due diligence of a responsible and prudent manager. KGaA shall in so doing comply with and take into account in particular the statutory provisions, the official permits, including the requirements and conditions contained therein, as well as codes of practice. As far as impairments of third parties originate from the Leased Operation, KGaA shall indemnify HC OpCo / LS OpCo / PM OpCo from all claims brought forward against it. If other licenses, permits, approvals, or permissions are required under public law, KGaA shall obtain such documents in coordination with HC OpCo / LS OpCo / PM OpCo unless otherwise agreed; HC OpCo / LS OpCo / PM OpCo shall make their best efforts to support KGaA in doing so.
- 13.3 KGaA shall be responsible for all measures necessary to ensure the legal obligation to maintain safety and all other obligations associated with the possession of the Leased Operation as regards public traffic. KGaA shall also indemnify HC OpCo / LS OpCo / PM OpCo in this respect from all claims of third parties. Administrative orders shall be satisfied by KGaA promptly. § 12.2 and § 12.3 of this Agreement shall remain unaffected.

- 13.4 All non-recurring or recurring public law or private law charges, levies, and dues arising from the Leased Operation shall be borne by KGaA for the term of this Agreement.
- 13.5 The shareholder rights arising from financial assets transferred from KGaA to HC OpCo / LS OpCo / PM OpCo pursuant to § 7.1 / § 19.1 / § 31.1 and § 7.2 / § 19.2 / § 31.2 of the Operational Hive-down Agreement will be exercised by HC OpCo / LS OpCo / PM OpCo on instructions from KGaA during the term of the business lease.
- 13.6 The Leased Operation may only be sublet with the prior written consent of HC OpCo / LS OpCo / PM OpCo.

## **§ 14**

### **Maintenance and repair, alterations**

- 14.1 KGaA is obligated to treat the leased items with due care, to service, maintain, and repair them at their own expense.
- 14.2 KGaA may only modify the leased items if such modifications are in compliance with the principles of proper management. In particular, it may take, within the scope of the purpose of this Agreement, all measures necessary for rationalization. Within the scope of proper management, KGaA shall be authorized to decommission or dismantle individual Leased Items.
- 14.3 HC OpCo / LS OpCo / PM OpCo shall authorize KGaA to undertake legal dispositions relating to the leased items for use that are within the scope of proper management, taking into account the purpose of this Agreement.
- 14.4 Measures of material economic significance that are taken in accordance with § 14.2 and § 14.3, such as the demolition or not only temporary decommissioning of plants or major changes in the business structure of the Leased Operation, shall require the consent of HC OpCo / LS OpCo / PM OpCo.
- 14.5 With regard to the other provisions and uncertain liabilities that are transferred from HC OpCo / LS OpCo / PM OpCo to KGaA pursuant to § 8, the Parties agree that, in case of unscheduled and considerable changes in the value of the legal positions or circumstances on which they are based, an equalization should be effected between the Parties. A claim for equalization exists if, (i) according to the applicable provisions set forth in the German Commercial Code (*Handelsgesetzbuch - HGB*), the amount of the other provisions and uncertain liabilities shall be corrected in an individual case by at least EUR 100,000.00 compared to the respective value on which it was based at the Beginning Of The Lease, and, (ii) when netting all value changes as per the preceding clause (i) in a

financial year in favor of one of the contractual parties, a positive balance totaling EUR 2,000,000.00 or more results. The party that is the beneficiary of the other contractual party is obligated to pay a compensation (equalization) in the amount of this positive balance. The settlement for each lease year shall take place by March 31<sup>st</sup> of the following year.

- 14.6 § 17 of this Agreement shall prevail in respect of changes during the term of the lease as regards the Leased IP.

## **§ 15**

### **Investments**

- 15.1 Investments in terms of the provisions below include any and all expenses which, in consideration of the accounting principles of HC OpCo / LS OpCo / PM OpCo, constitute acquisition costs or costs of production to be capitalized as set forth in Sec. 255 (1) or (2) *HGB* with regard to the fixed assets of HC OpCo / LS OpCo / PM OpCo. KGaA shall be authorized, as specified in the provisions below, to make investments (replacement and expansion investments) for HC OpCo / LS OpCo / PM OpCo for the account of HC OpCo / LS OpCo / PM OpCo.
- 15.2 Replacement investments shall be made according to the principles of proper management. The decision on expansion investments shall be made at the reasonable discretion of KGaA subject to the sentence below. Major expansion investments shall require the consent of HC OpCo / LS OpCo / PM OpCo.
- 15.3 The Parties agree that the title of ownership in the items acquired by way of replacement and expansion investments for the account of HC OpCo / LS OpCo / PM OpCo as specified above shall appertain to HC OpCo / LS OpCo / PM OpCo (and they thus, at the same time, become a surrogated or new integral part of the Leased Item as specified in this Business Lease Agreement). If HC OpCo / LS OpCo / PM OpCo does not directly obtain the title of ownership in the investment objects, the Parties agree that ownership passes to HC OpCo / LS OpCo / PM OpCo at the time of acquisition/production (agreeing on anticipated constructive possession and proxy purchase by way of an anticipated in rem agreement). For the purpose of such transfer of title, KGaA shall document the investment and record the acquired items in a list format, taking into account the principle of legal certainty under property law.
- 15.4 The rent shall increase accordingly by the depreciation amounts determined in accordance with the *HGB* calculated on a monthly basis at HC OpCo / LS OpCo / PM OpCo resulting from the capitalization of the newly capitalized and, as scheduled, cumulatively depreciated replacement and expansion investments and the depreciation on low-value items.

- 15.5 If further explanations or actions are required to make the investments described above, the Parties shall undertake to obtain and do what is necessary without any undue delay. As a purely precautionary measure, HC OpCo / LS OpCo / PM OpCo hereby revocably authorizes KGaA to represent it when making replacement or expansion investments, as is necessary or appropriate for any direct transfer of the title of ownership in the acquired items to HC OpCo / LS OpCo / PM OpCo.

## **§ 16**

### **Goodwill**

- 16.1 The Parties make clear that HC OpCo / LS OpCo / PM OpCo shall at all times remain the sole beneficial owner of any goodwill attributable to the Leased Operation (**goodwill**) in its individual form during the entire term of the lease and even after termination of the lease, and is leased for use to KGaA as part of the Leased Item for the term of the lease only for a limited period of time. This shall apply in particular even if the existing goodwill increases in full or in part or is replaced by new goodwill during the term of the lease as a result of activities or outlays by KGaA.
- 16.2 Even if the amount of the goodwill was affected by the activities of KGaA during the term of the lease, the Parties agree – in accordance with the statutory fundamental classification of the lease as a lease of use for a limited period of time – that KGaA, upon termination of the lease, shall not be required to pay any compensation whatsoever for any increases in value of the Leased Items, including goodwill, and HC OpCo / LS OpCo / PM OpCo may utilize the Leased Items including goodwill immediately and without any restrictions, in particular, without any obligation to pay any compensation (cf. also Federal Court of Justice (*BGH*) dated May 12, 1986 – Case No. II ZR 11/86; Federal Fiscal Court (*BFH*) dated January 30, 2002 – Case No. X R 56/99).

## **§ 17**

### **IP rights**

- 17.1 The Parties make clear that HC OpCo / LS OpCo / PM OpCo shall at all times remain the sole beneficial owner of the entire Leased IP during the entire term of the lease and even after its termination and that the Leased IP is leased for use to KGaA as part of the Leased Operation for the term of the lease only for a limited period of time.
- 17.2 KGaA shall be authorized and obligated to maintain, manage, monitor, defend, and enforce against any infringers the Leased IP during the term of the lease at its own expense within the scope of proper management. It may also commission third parties for this purpose (e.g., Merck Patent GmbH, Darmstadt, Germany, an

affiliated company of Merck KGaA, Darmstadt, Germany). A sale or pledging, encumbrance or renunciation of Leased IP shall only be admissible with the prior written consent of HC OpCo / LS OpCo / PM OpCo. KGaA shall be responsible during the term of the lease for the periodic review of the countries in which Leased IP is registered or maintained; KGaA shall manage the Leased IP in such manner that the business is protected in an economically reasonable and appropriate manner. In the event of contradictions between the Trust Agreement HC OpCo / LS OpCo / PM OpCo and KGaA entered into and this Agreement in respect of certain items of the Leased IP, the provisions in this Agreement shall prevail.

- 17.3 All findings, inventions, materials, items, procedures, software codes or programs, data, know-how, or other development results that arise or are created during the term of the lease within the scope of the Leased Operation, including all existing rights therein, particularly all intellectual property (hereinafter **Foreground IP**), are subject to the sole beneficial ownership of HC OpCo / LS OpCo / PM OpCo as of emergence, during the entire term of the lease, and also after termination of the lease, and become part of the Leased IP without KGaA having to pay any compensation during or after the termination of the lease (cf. also *BGH* dated May 12, 1986 – Case No. II ZR 11/86; *BGH* dated March 4, 1964 – Case No. VIII ZR 155/62). For Foreground IP that, at the same time, meet the prerequisites of a replacement or expansion investment as defined in § 15.1 and that require capitalization pursuant to Sec. 246 (1) s. 1 and 2, Sec. 248 (2) s. 1, Sec. 255 *HGB* at HC OpCo / LS OpCo / PM OpCo if the replacement or expansion investment was made by HC OpCo / LS OpCo / PM OpCo itself (particularly, the acquisition of Foreground IP for consideration), § 15 shall apply accordingly. The rent shall increase accordingly by the depreciation amounts determined in accordance with the *HGB* calculated on a monthly basis at HC OpCo / LS OpCo / PM OpCo resulting from the capitalization of the newly capitalized and, as scheduled, cumulatively depreciated replacement and expansion investments.
- 17.4 The Parties agree that sole beneficial ownership of inventions as specified in the German Employee Invention Act (*Gesetz über Arbeitnehmererfindungen - ArbnerfG*) that are used during the term of the lease within the scope of the Leased Operation pursuant to Sec. 6 *ArbnerfG* appertains to HC OpCo / LS OpCo / PM OpCo (and that such inventions thus become part of the Foreground IP as well). The provision in § 17.3 regarding employee inventions shall apply accordingly.
- 17.5 Trademarks and brands that arise or are created during the term of the lease within the scope of the Leased Operation and that are used exclusively within that scope shall also appertain to HC OpCo / LS OpCo / PM OpCo for sole beneficial ownership from its emergence during the entire term of the lease and also after the termination of the lease and become part of the Leased IP, without KGaA

having to pay any compensation during or after the termination of the lease. The provisions in § 17.3 shall apply accordingly.

- 17.6 KGaA shall take all actions necessary in order that HC OpCo / LS OpCo / PM OpCo or a trustee appointed by HC OpCo / LS OpCo / PM OpCo is able to exercise the legal ownership rights in the Foreground IP and the trademarks and brands designated in § 17.5 and, in particular, conduct registration of any industrial property rights. § 17.2 applies accordingly.

## **§ 18**

### **Insurance policies**

- 18.1 During the term of the lease, KGaA shall bear the costs incurred for insurance coverage for HC OpCo / LS OpCo / PM OpCo and the Leased Operation pursuant to § 14 / § 26 / § 38 of the Operational Hive-down Agreement. KGaA is obligated to maintain the insurance coverage during the entire term of the Agreement to the extent economically corresponding to the amount of coverage of the insurance policies at the Beginning Of The Lease. If circumstances arise during the term of the Agreement that result in an increase in the insurance coverage, e.g., due to any changes in risks or increases in value of the Leased Items, the insurance policies shall be modified accordingly.
- 18.2 As for direct insurance policies and obligations to pension schemes, the provisions in § 21 shall apply.

## **§ 19**

### **Warranties and liability**

KGaA is aware of the condition of the Leased Operation and the items attributable to it. It shall assume the Leased Operation, Leased Items, and Transferred Items (§ 3.1) in the condition in which they are at the Legal Effective Date. Warranty claims, regardless of their nature and regardless of the legal basis, shall be excluded, to the extent legally permissible. This shall also apply in particular to any claims under pre-contractual breaches of duty, violations of contractual duties, and/or breaches of contractual, pre-contractual or statutory obligations. Any rights of revocation shall be excluded as well.

## **D. Employment relationships and pension obligations**

### **§ 20**

#### **Transfer of the employment relationships**

- 20.1 With economic effect as of the Beginning Of The Lease, the employment relationship of the employees transferred to HC OpCo / LS OpCo / PM OpCo pursuant to § 11.1 s. 1 / § 23.1 s. 1 / § 35.1 s. 1 of the Operational Hive-down Agreement shall be retransferred to KGaA as set out in Sec. 613a *BGB* with all rights and obligations (**Transitioning Employees**).
- 20.2 KGaA is responsible vis-à-vis HC OpCo / LS OpCo / PM OpCo for indemnifying HC OpCo / LS OpCo / PM OpCo from any obligations entered into before the Beginning Of The Lease or obligations arising during the lease from the employment relationships of the Transitioning Employees, unless expressly governed otherwise in this Agreement. If Transitioning Employees bring forward any claims against HC OpCo / LS OpCo / PM OpCo created before the Beginning Of The Lease and/or during the lease, KGaA shall indemnify HC OpCo / LS OpCo / PM OpCo against such claims.
- 20.3 HC OpCo / LS OpCo / PM OpCo shall reimburse KGaA for any obligations transferred to KGaA resulting from the Transitioning Employees' employment relationships that arose before the Beginning Of The Lease in accordance with § 8, unless otherwise set forth in the provisions below. If the transferred obligations resulting from the Transitioning Employees' employment relationships do not arise until after the Beginning Of The Lease, yet relate to a time period in part before and in part after the Beginning Of The Lease, reimbursement shall relate to the assessment period prior to the Beginning Of The Lease. As regards the financial compensation for assuming the pension commitments, time accounts and HR-related provisions (specifically, for anniversary bonus payments and vacation provisions) due to the Transitioning Employees, the provisions in § 21 shall prevail.
- 20.4 Upon termination of this Business Lease Agreement, the employment relationships of the employees who at the effective date of the termination of the agreement are assigned to the Leased Operations shall transfer with all rights and obligations to HC OpCo / LS OpCo / PM OpCo as detailed in Sec. 613a *BGB*. As regards the compensation for the obligations to be assumed by HC OpCo / LS OpCo / PM OpCo resulting from the employment relationships transferring pursuant to Sec. 613a *BGB*, the reimbursement mechanism set forth in § 20.2 and § 20.3 shall apply accordingly.

### **§ 21**

#### **Pension obligations,**

**time account agreements,  
and Assumption of Joint Liability**

- 21.1 Upon KGaA's assuming the employment contracts of the Transitioning Employees in accordance with § 20.1, all rights and obligations arising from the pension commitments into which HC OpCo / LS OpCo / PM OpCo entered (**Pension Commitments**), as defined in the German Company Pension Act (*Betriebsrentengesetz*), shall be transferred to KGaA. Not included in the transition to KGaA are the pension commitments from terminated employment relationships pursuant to § 11.2 / § 23.2 / § 35.2 of the Operational Hive-down Agreement, which remain with HC OpCo / LS OpCo / PM OpCo even during the existence of the Business Lease Agreement.
- 21.2 For the Pension Commitments assumed from HC OpCo / LS OpCo / PM OpCo which arise from the Transitioning Employees' employment relationships that were agreed upon before the Beginning Of The Lease, KGaA shall receive compensation according to the following provisions.
- 21.3 HC OpCo / LS OpCo / PM OpCo hereby declares an assumption of joint liability (*Schuldbeitritt*) in respect of all direct commitments to the Transitioning Employees (**Secured Direct Commitments**) in accordance with the agreement on the assumption of joint liability in **Annex 21.3** with the full obligation to perform internally (**Assumption Of Joint Liability Healthcare / Life Science / Performance Materials**) with economic effect as of the Beginning Of The Lease according to the criteria established by the *Bundesfinanzhof* (decision dated April 25, 2012 – Case No. IV R 43/09 *BStBl. II* 2017, 1228) and the tax administration (German Federal Ministry of Finance (*BMF*) on November 30, 2017 - Case No. IV C 6-S 2133/14/10001, *BStBl. I* 2017, 1619). The Secured Direct Commitments shall be secured by way of a Contractual Trust Arrangement (**CTA**) of HC OpCo / LS OpCo / PM OpCo. The CTA Trust Agreement is attached as Annex 11.8.a to the Operational Hive-down Agreement. The rights and obligations arising from the Assumption Of Joint Liability Healthcare / Life Science / Performance Materials and the CTA shall be governed exclusively by the assumption of joint liability agreement and the CTA trust agreement.
- 21.4 As a consequence of the Assumption Of Joint Liability Healthcare / Life Science / Performance Materials, the Secured Direct Commitments shall remain the sole financial responsibility of HC OpCo / LS OpCo / PM OpCo even after the Beginning Of The Lease, and shall continue to be recorded there and secured by way of the CTA of HC OpCo / LS OpCo / PM OpCo. Given these facts, no assignment or reclassification of trust assets arising from the CTA of HC OpCo / LS OpCo / PM OpCo to the CTA of KGaA shall be made and no compensation payments shall be due payable to KGaA by HC OpCo / LS OpCo / PM OpCo. As a result of the joint and several liability of HC OpCo / LS OpCo / PM OpCo externally arising from the



Assumption Of Joint Liability Healthcare / Life Science / Performance Materials and the indemnification of KGaA by HC OpCo / LS OpCo / PM OpCo as relates to the obligation to perform internally, the financial compensation between the Parties is deemed settled in full.

- 21.5 As regards the pension commitments that are handled by an external pension provider (**External Pension Entitlements**), no financial resources shall be transferred upon KGaA assuming the Transitioning Employees' employment relationships pursuant to § 20.1. Instead, KGaA and HC OpCo / LS OpCo / PM OpCo entered into a trust agreement within the meaning of § 1 (4) of the Operational Hive-down Agreement regarding the legal positions in respect of the external pension providers in accordance with Annex 11.9 / Annex 23.9 / Annex 35.9 of the Operational Hive-down Agreement, according to which KGaA holds the legal positions vis-à-vis the external pension providers in trust for HC OpCo / LS OpCo / PM OpCo. The Transitioning Employees shall remain beneficiaries or employees entitled to pension benefits by the external pension provider, respectively. During the term of the business lease, KGaA shall be entitled to the trustor's rights and obligations (including the rights of use governed there) resulting from the collective Trust Agreement established in § 11.9 / § 23.9 / § 35.9 of the Operational Hive-down Agreement between KGaA and HC OpCo / LS OpCo / PM OpCo in respect of the External Pension Entitlements, and shall fulfill these rights and obligations. The Parties agree that, during the term of the business lease, the obligation of HC OpCo / LS OpCo / PM OpCo to cover the costs and to indemnify KGaA pursuant to the Trust Agreement shall not apply.
- 21.6 Upon termination of the Business Lease Agreement, HC OpCo / LS OpCo / PM OpCo shall continue the External Pension Entitlement for the employees transferring to HC OpCo / LS OpCo / PM OpCo according to § 20.4. For this purpose, upon consent of the external pension provider, it shall take the further steps necessary. Insofar as legal positions vis-à-vis external pension providers transition to HC OpCo / LS OpCo / PM OpCo in this context that are the subject of the Trust Agreement referred to in § 21.5, KGaA and HC OpCo / LS OpCo / PM OpCo shall terminate the Trust Agreement in accordance with the stipulations in the Trust Agreement and transfer the legal positions to HC OpCo / LS OpCo / PM OpCo - subject to consent of the respective external pension provider. § 5 of the Trust Agreement referred to in § 21.5 shall remain unaffected. As far as such an agreement is not reached with the external pension provider, KGaA shall ensure that HC OpCo / LS OpCo / PM OpCo is placed in a position as if such an agreement had been concluded, namely by providing a position as insured party towards the direct insurance companies and providing a status as treasury entity (*Kassenfirma*) at the Pension Fund for German Business (*Pensionskasse für die Deutsche Wirtschaft VVaG, PKDW*).

- 21.7 Liabilities and funds for financing Pension Commitments relating to active or former employees of HC OpCo / LS OpCo / PM OpCo who are not Transitioning Employees shall remain with HC OpCo / LS OpCo / PM OpCo unless expressly agreed otherwise in this Agreement, and no payment, compensation, or indemnification of any kind shall be made.
- 21.8 The provisions of this § 21 shall apply accordingly to employees who were hired by KGaA after the Legal Effective Date, who are assigned to the Leased Operation, and who have been granted a Pension Commitment, in particular a Direct Commitment within the meaning of § 21.3 of this Business Lease Agreement. If the employees in the meaning of s. 1 receive a Pension Commitment that is performed by an external pension provider, the associated legal positions shall be included in the Trust Agreement in the meaning of § 11.9 / § 23.9 / § 35.9 of the Operational Hive-down Agreement. The instruction in the meaning of § 1.2 of the Trust Agreement is hereby granted by HC OpCo / LS OpCo / PM OpCo.
- 21.9 In respect of the obligations from time accounts, HC OpCo / LS OpCo / PM OpCo also declares an Assumption Of Joint Liability together with an obligation to perform according to the provisions of **Annex 21.3**, which is thus covered by the Assumption Of Joint Liability Healthcare / Life Science / Performance Materials. These obligations from time accounts are also secured against insolvency via a CTA of HC OpCo / LS OpCo / PM OpCo. There shall be no further compensation for the obligations from time accounts. Apart from that, the provisions regarding the Assumption Of Joint Liability Healthcare / Life Science / Performance Materials in this § 21 shall apply *mutatis mutandis* to securing the time accounts.
- 21.10 In addition, HC OpCo / LS OpCo / PM OpCo declares an assumption of joint liability with an obligation to perform for other personnel-related provisions (in particular, anniversary bonus payments and vacation provisions) according to the provisions in **Annex 21.3**, which are thus also covered by the Assumption Of Joint Liability Healthcare / Life Science / Performance Materials. The provisions regarding this Assumption Of Joint Liability Healthcare / Life Science / Performance Materials shall also apply accordingly to safeguard these other personnel-related provisions, however, with the particularity that there is currently no CTA guarantee for these obligations and there is also no obligation to initiate such a CTA guarantee.

## **E. Consideration and term**

### **§ 22**

#### **Rent**

- 22.1 KGaA shall pay HC OpCo / LS OpCo / PM OpCo an annual rent for the lease of the Leased Items; this rent is made up of

- a) the total of the depreciation of the Leased Items for the corresponding year of lease pursuant to the *HGB*;
  - b) plus interest on the average bound equity on the commercial balance sheet of HC OpCo / LS OpCo / PM OpCo (i.e., equity at the beginning of the year plus equity at the end of the year, divided by two) totaling 7% p.a.; and
  - c) as far as legally owed, the value-added tax due on this rent.
- 22.2 The provisions in this Business Lease Agreement regarding the assumptions of joint liability or obligations to perform (e.g., pension provisions) and adjustment of the rent for investments shall remain unaffected by the provision in § 22.1.
- 22.3 KGaA shall pay monthly advance payments on the 15<sup>th</sup> of each following month. The final settlement for each lease year shall be determined by March 31<sup>st</sup> of the following year. The amount of the installments shall be determined *pro rata temporis* based on the amount of the last agreed annual fee. During the period until the advance payments are calculated in accordance with sentence 3 above, the monthly advance payments shall be jointly determined by the Parties using a forecast based on the comparative 2017 values or the prognostic estimate for 2018.

## **§ 23**

### **Effective date of the Agreement**

- 23.1 The Business Lease Agreement shall become effective upon registration in the commercial register of HC OpCo / LS OpCo / PM OpCo. The Parties to this Agreement shall ensure that this Agreement becomes effective in direct time proximity to but only after the Operational Hive-down. The contract is also subject to the condition precedent of the Operational Hive-down becoming effective by way of registration in the commercial register of KGaA.
- 23.2 Each Party may revoke this Agreement effective immediately if the Business Lease Agreement has not come into effect by the end of the day on February 28, 2019 by way of registration in the commercial register of HC OpCo / LS OpCo / PM OpCo.

## **§ 24**

### **Term of contract and termination**

- 24.1 The Business Lease Agreement is concluded indefinitely. The Business Lease Agreement may be terminated by each Party in writing giving two-month notice as per the end of the month.

24.2 This Agreement may be also terminated by each Party without prior notice for cause. A termination without notice must also be in writing. Cause with regard to the termination without prior notice by HC OpCo / LS OpCo / PM OpCo shall be given, in particular, if

- a) KGaA sustainably exceeds its right of use pursuant to § 13,
- b) KGaA is three months in arrears with a payment to be made pursuant to § 22, or
- c) insolvency proceedings are opened in respect to the assets of KGaA.

**[Note: The following § 24a is only included in the Business Lease Agreement between PM OpCo and KGaA.]**

#### **§ 24a**

##### **Premature termination as regards the Performance Materials Distribution And Sales Function**

24a.1 The PM OpCo may partially terminate the Business Lease in respect of the distribution and sales functions for the finished products produced in Darmstadt and Gernsheim in the Operating Unit KGaA Performance Materials (products that are produced by KGaA and are not subject to any further processing step within the Group) and selected merchandise (products intended for resale, purchased from external third parties or from other Group companies) of the three business units "Display Materials," "Pigments & Functional Materials," and "Advanced Technologies" (which, according to current information, will be consolidated in the course of 2018 into the three new business units "Display Solutions," "Semiconductor Solutions," and "Surface Solutions") (the **PM Distribution And Sales Function**) even before termination of this Business Lease Agreement. The possibility of premature partial termination of the Business Lease Agreement is closely related to a project on setting up a central sales company for finished products and merchandise of the Operating Unit KGaA Performance Materials that is hived down to PM OpCo in the scope of the Operational Hive-down and then leased back in the scope of this Lease Agreement. After transferring the PM Distribution And Sales Function to PM OpCo, it shall assume the role of a global distributor for finished products and merchandise of the Operating Unit KGaA Performance Materials with all related processing stages (demand planning, ordering of the products to be distributed, acquisition of title of ownership in the products to be sold, sales, customer service and support).

24a.2 Partial termination pursuant to § 24a.1 shall be declared in writing addressed to KGaA giving one month's notice as per the month end. As of the partial termination becoming effective, the business activities of the PM Distribution And Sales Function shall no longer be part of the Leased Operation (§ 1) and the

finished goods allocated to this function based on article numbers (*Stock Keeping Units – SKUs*) shall no longer be part of the Leased Operation.

- 24a.3 In order to be able to perform the PM Distribution And Sales Function, in the course of the partial termination pursuant to § 24a.1, the employment relationships of executives within the established Operating Unit KGaA Performance Materials functions Supply Chain Surface Solutions, Supply Network Planning Surface Solutions, Performance Materials Logistics, and Performance Materials Customer Service shall be transferred to PM OpCo by way of individual agreements. Apart from that, all other employment relationships between KGaA and employees of the PM Distribution And Sales Function (the **Sales Employees**) shall remain with KGaA even after the partial termination of the business lease pursuant to § 24a.1 until the termination of the business lease at KGaA, unless the employment relationships were transferred from KGaA to PM OpCo as per individual contracts. § 20.4, § 25.1, § 25.2 shall not apply regarding the Sales Employees upon partial termination of the business lease.
- 24a.4 In order to provide further operational support to the PM Distribution And Sales Function, PM OpCo shall make use of services from KGaA after the partial termination and provide services to KGaA. In this context, the Parties shall conclude agreements governing the provision of services between the parties (*service level agreements*).
- 24a.5 The provisions relating to the termination of the business lease pursuant to § 25.1, § 25.2 and § 25.4 shall apply accordingly, unless this § 24a specifies otherwise. The provisions in this § 24a shall not affect any of the remaining provisions of the Business Lease Agreement, including the provision on the assessment of the rent.

## § 25

### Consequences of termination of the Agreement, unwinding

- 25.1 Upon termination of this Business Lease Agreement, KGaA shall transfer to HC OpCo / LS OpCo / PM OpCo the Leased Operation together with the Leased Items attributable to it at the time of the Lease End, including Leased Items acquired or created by way of maintenance, replacement, and expansion investments, in such condition that corresponds to the condition under proper management continued until the Lease End. In addition, KGaA shall transfer the Leased Items to HC OpCo / LS OpCo / PM OpCo in functional condition. HC OpCo / LS OpCo / PM OpCo shall, upon termination of the Business Lease Agreement, assume operational management of the Leased Operation and from then on exercise such power in its own name.
- 25.2 The assumption of the contracts and contract offers by HC OpCo / LS OpCo / PM OpCo upon termination of this agreement shall be subject to § 9.5 and § 9.6; the

transfer or re-application for permits and approvals under public law to or for HC OpCo / LS OpCo / PM OpCo shall be governed by § 12.3. Any resale of the inventories to HC OpCo / LS OpCo / PM OpCo shall be subject to § 7.5 and § 7.6; the resale of the liabilities and assets (including uncertain liabilities, regardless of whether provisions were recorded for them or not) shall be subject to § 6.3 and § 8.4. As for Goodwill and the Foreground IP, the provisions in § 16 and § 17 shall apply. § 10.5 shall apply to litigation and legal proceedings. The transfer of the employment relationships from KGaA to HC OpCo / LS OpCo / PM OpCo associated with the termination of the Business Lease Agreement attributable to the Leased Operation upon termination of the Business Lease Agreement shall be governed by § 20.4.

- 25.3 For the purpose of unwinding the business lease, including settlement of rent in line with the duration of the lease, KGaA and HC OpCo / LS OpCo / PM OpCo shall compile closing accounts of HC OpCo / LS OpCo / PM OpCo and a pro forma balance sheet for the Leased Operation as at the Lease End.
- 25.4 Moreover, the provisions of this agreement regarding the implementation of the lease shall apply *mutatis mutandis* to its unwinding. The Parties shall support each other in implementing the necessary steps for the unwinding of this Agreement.

## **F. Final provisions**

### **§ 26**

#### **Third-party notifications, collaboration, and support**

- 26.1 HC OpCo / LS OpCo / PM OpCo and KGaA shall notify third parties, in particular customers and suppliers of HC OpCo / LS OpCo / PM OpCo, as far as it has not already done so, about the lease of the operation of HC OpCo / LS OpCo / PM OpCo to KGaA and the changed service relationships in an appropriate manner.
- 26.2 HC OpCo / LS OpCo / PM OpCo and KGaA shall collaborate in ensuring transfer of the Leased Items without interrupting operations and, in particular, shall submit any necessary or reasonable notifications to third parties and authorities.
- 26.3 HC OpCo / LS OpCo / PM OpCo shall make available to KGaA any documents, deeds, and evidence necessary for operating the Leased Items in physical or electronic form. Trade and operating secrets, as well as any other statutory requirements, in particular the provisions of the German data protection and privacy law, shall be adhered to.
- 26.4 KGaA shall inform HC OpCo / LS OpCo / PM OpCo promptly about business transactions or events materially affecting the Leased Operation. This includes,

*inter alia*, entering into and ending litigation materially affecting the Leased Operation, or the revocation or imminent revocation of product approvals.

## **§ 27**

### **Severability; scope of contract**

- 27.1 If individual provisions in this Agreement are ineffective or unenforceable, the effectiveness of the remaining provisions shall remain unaffected. The ineffective or unenforceable provision shall be replaced by such provision which the Parties mutually agree on coming closest to the economic purpose pursued with the ineffective or unenforceable provision. The same shall apply in regard to any omissions in this Agreement.
- 27.2 If circumstances arise after concluding this Agreement as a result of which the purpose of the Agreement cannot be achieved to a substantial and sustainable extent, in particular if new statutory provisions render it permanently impossible to execute the Agreement, the Parties shall make all efforts to find another solution which serves to achieve the purpose of the Agreement.
- 27.3 The preamble and the annexes shall be integral parts of this Agreement.

## **§ 28**

### **Loyalty Clause**

- 28.1 Upon conclusion of this Agreement, not all factual and legal aspects that may arise, in particular from future technical and economic developments, from any changes in statutory regulations, or other circumstances essential for the contractual relationship can be predicted and covered exhaustively. The Parties agree that the principles of commercial loyalty shall apply to their collaboration. They mutually represent to fulfill the contractual agreements in this spirit and to take into account accordingly any changes in the situation that may become necessary in the future.
- 28.2 If there are doubts regarding the allocation of the Leased Items as regards their attribution in individual cases, such situation shall be resolved based on the purpose of the Agreement.
- 28.3 In the event that in executing this Agreement under the conditions mentioned above undue hardship occurs for one Party or the other, both Parties shall bring about an amicable understanding that takes into account the economic purpose of this Agreement according to the principles of reason and fairness.

## **§ 29**

### **Obligations to cooperate**

HC OpCo / LS OpCo / PM OpCo and KGaA shall make all declarations, execute all deeds, and perform any other acts that may be necessary or appropriate in connection with the lease of the Leased Operation described in this Agreement.

## **§ 30**

### **Written form requirement**

Any modifications to or amendments of this Business Lease Agreement, including the waiver of this written form requirement, shall be in writing, except where a stricter form is required.

## **§ 31**

### **Costs**

The costs of preparing, notarizing, and implementing this Business Lease Agreement shall be borne by KGaA. The costs of the meeting of shareholders of HC OpCo / LS OpCo / PM OpCo as well as the costs of applying for registration and registration of this Business Lease Agreement in the commercial register shall be borne by HC OpCo / LS OpCo / PM OpCo.

## **§ 32**

### **Applicable law; jurisdiction**

- 32.1 This Business Lease Agreement is governed by German law.
- 32.2 The place of jurisdiction for all disputes arising from this Business Lease Agreement is Darmstadt.

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### **Material Content of the Respective Annex 21.3 to the Business Lease Agreements**

As far as the Business Lease Agreements make reference to the Operational Hive-down Agreement and its annexes, these are printed or presented with its summarized material content under section B of this notice of invitation. Annexes 21.3, which are attached to each Business Lease Agreement, have the following material content (the terms defined in the Operational Hive-down Agreement and the Business Lease Agreements are used below with the same meaning):

Annex 21.3 of the respective Business Lease Agreement contains the agreement on the assumption of joint liability and indemnification between HC OpCo / LS OpCo / PM



OpCo and KGaA as regards the pension commitments provided by way of direct commitment, the time account claims, and a series of other employee-related obligations towards those employees who, by way of the hive-down, are transferred to HC OpCo / LS OpCo / PM OpCo and who temporarily are reassigned to KGaA in the course of the lease-back of the Operating Units. The reason for this is that with the transfer of the employment relationships in the course of the hive-down, *inter alia*, all pension obligations towards the employees affected by the hive-down, obligations resulting from time account agreements, and other employee-related obligations (e.g., bonus entitlements, entitlements to jubilee payments or to vacation provisions) are initially transferred to HC OpCo / LS OpCo / PM OpCo. As a consequence of the Business Lease Agreement, which follows this hive-down to lease back the Operating Unit KGaA Healthcare / Operating Unit KGaA Life Science / Operating Unit KGaA Performance Materials of HC OpCo / LS OpCo / PM OpCo to KGaA, there is be a reassignment of active employees of this Operating Unit and the obligations named above relating to these employees pursuant to Sec. 613a German Civil Code. In order to keep these obligations at HC OpCo / LS OpCo / PM OpCo – though not legally, at least economically – HC OpCo / LS OpCo / PM OpCo declares, in connection with the conclusion of the lease agreement, an assumption of joint liability with an obligation to perform as regards the obligations referred to above. As a result of the assumption of joint liability, the beneficiary employees have an independent and enforceable claim against HC OpCo / LS OpCo / PM OpCo to fulfillment of the aforementioned claims. The as well declared obligation to indemnify results in HC OpCo / LS OpCo / PM OpCo being obligated vis-à-vis KGaA to bear the costs of the obligations referred to above. Also included are claims that are earned only after the beginning of the lease-back. The annex also includes catch-all provisions and provisions regarding the term of the agreement. For instance, in particular, the unilateral termination of the assumption of joint liability is excluded for the term of the lease agreement.

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