

**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 affli-  
ated company of Merck KGaA, Darmstadt, Germany,**

as the acquiring entities

**(Operational Hive-down)**

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## 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 reg-

istered 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, acknowledgment, 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 univer-

sal 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 con-

tinue 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 liability.

ties 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 Em-

ployees 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, acknowledgment, 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, sub-contract 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 (*Gemeinschaftsbeiratsrat*) (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 dura-

tion 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 trans-

fer 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 manufac-

turing 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, a 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 trans-

ferred 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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