

TRUST AGREEMENT

This Trust Agreement ("Trust Agreement") entered into this _____ day of _____ by and among Francis J. Civile, SmithKline Beecham plc ("SB"), and Glaxo Wellcome plc ("GW") (where "Respondents," as used herein, means SB and GW, individually and collectively), provides as follows:

WHEREAS, the United States Federal Trade Commission (the "Commission") has accepted or will shortly accept for Public Comment an *Agreement Containing Consent Orders* incorporating a Decision and Order ("Decision and Order") and an Order to Maintain Assets, with SB and GW (collectively, the "Orders"), which, among other things, require Respondents to divest or transfer certain defined assets and maintain those assets pending such divestiture or transfer, and provide for the appointment of one or more Monitor Trustees to ensure that Respondents comply with their obligations under the Orders;

Monitor Trustee by the Orders.

3. Respondents hereby agree that, no later than three (3) Business Days after the Commission approves this Trust Agreement, Respondents will fully comply with all terms of the Orders requiring them to confer all rights, powers, authority and privileges upon the Monitor Trustee, or to impose upon themselves any duties or obligations with respect to the Monitor Trustee, to enable the Monitor Trustee to perform the duties and responsibilities of the Monitor Trustee thereunder.
4. Respondents further agree that:
 - a. they will use their best efforts to ensure that Roche, Novartis, and Abbott Labs, or any Commission-approved Acquirer that is acquiring assets pursuant to Paragraphs II., III., and VI. of the Decision and Order (or as otherwise specified by the Commission) enters into an agreement in substantially the same form as Attachments 1, 2, and 3 of this Agreement with the Monitor Trustee prior to the Closing Date on the divestiture by Respondents to the Commission-approved Acquirer of the relevant Trust Assets;
 - b. no later than ten (10) Business Days after the Commission approves this Trust Agreement, they will provide the Monitor Trustee with:
 - (1) a complete inventory and description of the Trust Assets, identifying, in particular, those Trust Assets which may require actions to maintain their viability and marketability, and the person(s) responsible for taking those actions;
 - (2) a complete inventory of all existing FDA approvals and pending FDA approvals for the Products included in the Approval Assets identifying actions required to maintain or complete such approvals and identifying the person(s) responsible for taking such actions;
 - (3) a complete inventory of all activities or operations worldwide that relate to the manufacture of the Products relating to the Approval Assets, and which relate to Respondents' compliance with the Orders, including processes and process validations which are under development, identifying the person(s) responsible for

- (5) a complete inventory of all Patents included in the Trust Assets related to the manufacture or sale of the related Products in the United States, identifying actions needed to maintain such Patents and the person(s) responsible for such actions;
- c. they will provide a written list of the principal individuals involved in the transitioning of the Trust Assets to the Commission-approved Acquirers, together with their location, telephone numbers, electronic mail address (if available), and responsibilities, and will provide the Monitor Trustee with written notice of any changes in such personnel occurring thereafter;
- d. they will use their best efforts to provide the Monitor Trustee with prompt notification of significant meetings, including date, time and venue, scheduled after the execution of this Trust Agreement, relating to the development, manufacture, registration, regulatory approvals, marketing, sale and divestiture of the Approval Assets, and such meetings may be attended by the Monitor Trustee or his representative, at the Monitor Trustee's option or at the request of the Commission or staff of the Commission;
- e. they will provide the Monitor Trustee the minutes of the above-referenced meetings as soon as practicable and, in any event, not later than those minutes are available to any employee of the Respondents;
- f. they will provide the Monitor Trustee with all correspondence, meeting minutes, reports, sent to or received from the FDA relating to the Approval Assets;
- g. they will provide the Monitor Trustee with hard copies of all reports submitted to the Commission pursuant to the Consent Agreement and the Orders, simultaneous with the submission of such reports to the Commission;
- h.

the relevant Products that are identified in the Approval Assets, including, without limitation, negotiation and operation of supply agreements, actual supply and inventory;

- (3) all minutes and records of meetings, action plans, and follow-ups to actions plans

to affect the maintenance of the Approval Assets including, but not limited to, any and all meetings or communications with the FDA;

5. Respondents shall promptly notify the Monitor Trustee of any significant written or oral communication that occurs after the date of this Trust Agreement between the Commission and Respondents related to the Orders or this Trust Agreement, together with hard copies

the Monitor Trustee and Respondents.

For the purposes of this Section, information shall not be considered confidential or proprietary to the extent that it is or becomes part of the public domain (other than as the result of any action by the Monitor Trustee or by any employee, agent, affiliate or consultant of the Monitor Trustee), or to the extent that the recipient of such information can demonstrate that such information was already known to the recipient at the time of receipt from a source other than Respondents or any director, officer, employee, agent, consultant or affiliate of Respondents when such source is entitled to make such disclosure to such recipient.

11. Nothing in this Trust Agreement shall require Respondents to disclose any material or information that is subject to a legally recognized privilege or that Respondents are prohibited from disclosing by reason of law or an agreement with a third party.
12. Each party shall be reasonably available to the other to discuss any questions or issues that either party may have concerning compliance with the Orders as it relates to Respondents.
13. **[REDACTED]**
- 14.

opportunity costs).

16. Respondents agree that the Respondents' obligations to indemnify the Monitor Trustee extend to any agreement that is entered between the Monitor Trustee and any Commission-approved Acquirer and relates to the Monitor Trustee's responsibilities under the Trust Agreement and/or the Orders.
17. Upon this Trust Agreement becoming effective, the Monitor Trustee shall be permitted, and Respondents shall be required, to notify all current Commission-approved Acquirers and potential future Acquirers with respect to his appointment as Monitor Trustee.
18. In the event of a disagreement or dispute between Respondents and the Monitor Trustee concerning Respondents' obligations under the Orders and, in the event that such disagreement or dispute cannot be resolved by the parties, either party may seek the assistance of the individual in charge of the Commission's Compliance Division to resolve this issue. In the case of any disagreement or dispute between Respondents and the Monitor Trustee not relating to Respondents' obligations under the Orders, and in the event that such disagreement or dispute cannot be resolved by the parties, the parties shall submit the matter to binding arbitration before the American Arbitration Association under its Commercial Arbitration Rules. Binding arbitration shall not be available, however, to resolve any disagreement or dispute concerning the Respondents' obligations pursuant to the Orders.
19. This agreement shall be subject to the substantive law of the State of New Jersey (regardless of any other jurisdiction's choice of law principles).
20. This Trust Agreement shall terminate when the last obligation under the relevant Divestiture Agreement(s) has been fully performed or the Commission has appointed a substitute trustee pursuant to the Orders, provided however, that the Commission may extend this Trust Agreement as may be necessary or appropriate to accomplish the purposes of the Orders.
21. In the event that, during the term of this Trust Agreement, the Monitor Trustee becomes aware that he has or may have a conflict of interest that may affect or could have the appearance of affecting the performance by the Monitor Trustee of any of his duties under

24. Any notices or other communication required to be given hereunder shall be deemed to have been properly given if sent by mail or fax (with acknowledgment of receipt of such fax having been received), to the applicable party at its address below (or to such other address as to

If Respondents, to:

SmithKline Beecham Corporation
P.O. Box 7929, Mail Code 2360
Philadelphia, Pennsylvania 19101-7929

Attention: Edward J. Buthusiem,
Vice President & Associate General Counsel
Telephone: (215)751-7001
Facsimile: (215) 751-3144

Glaxo Wellcome plc
Glaxo Wellcome House
Berkeley Avenue
Greenford, Middlesex, UB6 ONN, England

Attention: Jeremy Strachan
Executive Director

Telephone: (011) 442-08-966-8750
Facsimile: (011) 442-08-966-8663

If to the Commission, to:

Federal Trade Commission
Attn: David von Nirschl, Esq.
600 Pennsylvania Avenue, N.W.
Washington, DC 20580
Telephone: (202) 326-3213
Facsimile: (202) 326-2655

25. Respondents agree that, upon notification by staff of the Commission, the definition of "Approval Assets" shall immediately include the Zofran Assets and/or the DISC-HSV Prophylactic Assets for all purposes under this Agreement.
26. This Trust Agreement shall not become binding until it has been approved by the Commission and the Orders have been accepted for public comment.

IN WITNESS WHEREOF, the parties hereto have executed this Trust Agreement as of the date first above written.

SMITHKLINE BEECHAM PLC

MONITOR TRUSTEE

By: _____

Its: _____

GLAXO WELLCOME PLC

By: _____

Its: _____