

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:     **Deborah Platt Majoras, Chairman**  
                          **Thomas B. Leary**  
                          **Pamela Jones Harbour**  
                          **Jon Leibowitz**

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**In the Matter of** )  
                          ) )  
                          ) )  
                          **THE PROCTER & GAMBLE COMPANY,** )  
**a corporation;** ) )  
                          ) )  
                          **and** ) )  
                          ) )  
                          **THE GILLETTE COMPANY,** )  
**a corporation.** ) )  
                          ) )  
                          ) )

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**Docket No. C-4151**

**DECISION AND ORDER**  
**[Public Record Version]**

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Respondent The Procter & Gamble Company ("P&G") of Respondent The Gillette Company ("Gillette"), hereinafter referred to as "Respondents," and Respondents having been furnished thereafter with a copy of

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Maintain Assets (attached to this Order as Appendix I), and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent P&G is a corporation organized, existing and doing business under and by virtue of the laws of the state of Ohio, with its offices and principal place of business located at One Procter & Gamble Plaza, Cincinnati, Ohio 45202.
2. Respondent Gillette is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its offices and principal place of business located at Prudential Tower, Boston, Massachusetts 02199.
3. The Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

## **ORDER**

### **I.**

**IT IS ORDERED** that, as used in the Order, the following definitions shall apply:

- A. "P&G" means The Procter & Gamble Company, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by P&G, and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns.

- D. "Church & Dwight" means Church & Dwight Co., Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, having its principal place of business located at 469 North Harrison Street, Princeton, NJ 08543.
- E. "Philips" means Philips Oral Healthcare, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its offices and principal place of business located at 35301 Center Street, Snoqualmie, Washington 98065, together with its affiliates.
- F. "Acquisition" means the acquisition contemplated by the "Agreement and Plan of Merger" dated as of January 27, 2005, among The Procter & Gamble Company, Aquarium Acquisition Corp. and The Gillette Company.
- G. "Commission" means the Federal Trade Commission.
- H. "Acquisition Date" means the earlier of the following dates:
1. the date the Respondents close on the Acquisition pursuant to the Acquisition Agreement; or
  2. the date the merger contemplated by the Acquisition Agreement becomes effective by filing the certificate of merger with the Secretary of State of the State of Delaware.
- I. "Agency(ies)" means any governmental regulatory authority or authorities in the world responsible for granting approval(s), clearance(s), qualification(s), license(s), or permit(s) for any aspect of the research, Development, manufacture, marketing, distribution, or sale of the Divestiture Products or the IntelliClean Products, respectively.
- J. "APDO Assets" means all of Respondent Gillette's rights, title and interest in and to all assets related to Respondent Gillette's worldwide business related to the APDO Products to the extent legally transferable, including the research, Development, manufacture, distribution, marketing, and sale of the APDO Products including, without limitation, the following:
1. all Product Intellectual Property related to the APDO Products (which shall also include the following Product Trademarks: Power Stripe<sup>®</sup>)

2. perpetual, fully paid-up and royalty-free license(s) with rights to sublicense to all Product Licensed Intellectual Property to use, make, distribute, offer for sale, promote, advertise, sell, import, export, or have used, made, distributed, offered for sale, promoted, advertised, sold, imported, or exported the APDO Products any

11. at the Commission-approved Acquirer's option, the APDO Manufacturing Equipment.
- K. "APDO Core Employee(s)" means the Product Manufacturing Employees, the Product Marketing Employees, the Product Research and Development Employees and the Product Sales Employees related to the APDO Products.
- L. "APDO Manufacturing Equipment" means all manufacturing and other equipment located at Respondent Gillette's facility located in Andover, Massachusetts, that was used, within the one (1) year period immediately prior to the Acquisition and/or within the one (1) year period immediately prior to the Closing Date, in the research, Development, manufacture, or packaging of the APDO Products.
- M. "APDO Products" means all Products Developed, in Development, manufactured, distributed, marketed or sold by Respondent Gillette prior to the Acquisition that were marketed or sold or to be marketed or sold as Products using the Product Trademark Right Guard

in connection with the Commission's determination to make this Order final; or (2) an entity approved by the Commission to acquire particular assets that the Respondents are required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order.

- Q. "Confidential Business Information" means all information owned by, or in the possession or control of, Respondents that is not in the public domain and that is related to the research, Development, manufacture, marketing, commercialization, importation, exportation, cost, pricing, supply, sales, sales support or use of the Divestiture Product(s) or the IntelliClean Products, respectively; provided however, that "Confidential Business Information" shall not include, the following:
1. information that subsequently falls within the public domain through no violation of this Order or breach of confidentiality or non-disclosure agreement with respect to such information by Respondents;
  2. information related to the SpinBrush Products that Respondent Gillette can demonstrate it obtained without the assistance of Respondent P&G prior to the Acquisition;
  3. information related to the Rembrandt Products that Respondent P&G can demonstrate it obtained without the assistance of Respondent Gillette prior to the Acquisition;
  4. information related to the APDO Products that Respondent P&G can demonstrate it obtained without the assistance of Respondent Gillette prior to the Acquisition;
  5. information related to the IntelliClean Products that Respondent Gillette can demonstrate it obtained without the assistance of Respondent P&G prior to the Acquisition;
  6. information that is required by Law to be publically disclosed; or
  7. information that does not relate to the Divestiture Product(s) or the IntelliClean Products.
- R. "Contract Manufacture" means the manufacture of a Divestiture Product or the IntelliClean Products to be supplied by Respondent or a Designee.
- S. "Designee" means any entity other than Respondents that will manufacture a Divestiture

- U. “Direct Cost” means a cost not to exceed the cost of direct labor and direct material used to provide the relevant assistance or service. “Direct Cost” to the Commission-approved Acquirer’s for its use of any of the Respondents’ employees shall not exceed the average hourly wage rate for such employee.
- V. “Divestiture Product” means a Product that is the subject of a divestiture under this Order, *i.e.*, the APDO Products, the Rembrandt Products, or the SpinBrush Products, individually and collectively.
- W. "Divestiture Trustee" means the trustee appointed by the Commission pursuant to the relevant provisions of this Order.
- X. “Domain Name” means the domain name(s) (universal resource locators) and registration(s) thereof, issued by any entity or authority that issues and maintains the domain name registration. “Domain Name” shall not include any trademark or service mark rights to such domain names other than the rights to the Product Trademarks related to the Divestiture Products.
- Y. “Governmental Entity” means any Federal, state, local or non-U.S. government, or any court, legislature, governmental agency, or governmental commission, or any judicial or regulatory authority of any government.
- Z. “High Volume Retail Account” means any retailer or distributor whose annual and/or projected aggregate annual sales in units or in dollars of a Divestiture Product in the United States on a company-wide level was or is among the top twenty highest of such sales within the United States on any of the following dates: 1) the end of the last quarter that immediately preceded the date of the public announcement of the proposed Acquisition; 2) the end of the last quarter that immediately preceded the Acquisition Date; or 3) the end of the last quarter that immediately preceded the Closing Date for the relevant assets.
- AA. “IntelliClean Products” means all Products Developed, in Development, manufactured, distributed, marketed or sold pursuant to the IntelliClean Agreement. This includes those toothbrushes marketed using the Sonicare<sup>®</sup> trademark and any variations or derivatives of such trademark and the dentifrice Product used in connection with the rechargeable toothbrush(es) that are a part of the IntelliClean Products.
- BB. “IntelliClean Agreement” means the “Commercialization Agreement (ONYX Advanced)” between Philips Oral Healthcare, Inc. and The Procter & Gamble Company dated as of August 1, 2003 including all amendments, exhibits, attachments, agreements, and schedules thereto entered into prior to the public announcement of the Acquisition, including, but not limited to, the “P&G/Philips Joint Evaluation Agreement Project ONYX” dated October 23, 2001. The IntelliClean Agreement is attached to this Order and contained in non-public Appendix III.

- CC. “IntelliClean Amended Agreement” means the “Agreement to Amend Commercialization Agreement (ONYX Advanced)” between Philips Oral Healthcare, Inc. and The Procter & Gamble Company dated September 21, 2005, and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the Product IntelliClean, that have been approved by the Commission to accomplish the requirements of this Order. The IntelliClean Amended Agreement is attached to this Order and contained in non-public Appendix III. Upon amendment of the IntelliClean Agreement in accordance with the above-described agreement to amend, the “IntelliClean Amended Agreement” shall mean the “IntelliClean Agreement” as so amended.
- DD. “Interim Monitor” means any monitor appointed pursuant to Paragraph VI of this Order or Paragraph III of the related Order to Maintain Assets.
- EE. “Law” means all laws, statutes, rules, regulations, ordinances, and other pronouncements by any Governmental Entity having the effect of law.
- FF. “Order to Maintain Assets” means the Order to Maintain Assets incorporated into and made a part of the Agreement Containing Consent Orders. The Order to Maintain Assets is attached to this Order and contained in Appendix I.
- GG. “Patents” means all patents, patent applications, and statutory invention registrations, in each case existing as of the Closing Date (*except* where this Order specifies a different time), and includes all reissues, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, all rights therein provided by international treaties and conventions, and all rights to obtain and file for patents and registrations thereto in the world, related to any Product of or owned by Respondent(s) as of the Closing Date.
- HH. “Person” means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, joint venture, or other business or governmental entity, and any subsidiaries, divisions, groups or affiliates thereof.
- II. “Product” means a retail consumer good Developed, made, distributed, marketed or sold by Respondent(s).
- JJ. “Product Assumed Contracts” means all of the following contracts or agreements:
1. pursuant to which any Third Party purchases the Divestiture Product(s) from the Respondent(s);
  2. pursuant to which the Respondent(s) purchases any materials from any Third Party for use in connection with the manufacture of the Divestiture Product(s);

3. relating to any quality control trials involving the Divestiture Product(s);
4. relating to the marketing of the Divestiture Product(s) or educational matters relating to the Divestiture Product(s) including, but not limited to, the slotting and/or shelf spacing assignments of the Divestiture Product with the High Volume Retail Accounts;
5. relating to the manufacture of the Divestiture Product(s);
6. constituting confidentiality agreements involving the Divestiture Product(s);
7. involving any royalty, licensing, or similar arrangement involving the Divestiture Product(s);
8. pursuant to which any services are provided with respect to the Divestiture Product(s) or the Divestiture Product(s) business, including consultation arrangements; and/or
9. pursuant to which any Third Party collaborates with the Respondent(s) in the performance of research, Development, marketing or selling of the Divestiture Product(s) or the Divestiture Product(s) business;

*provided, however,* that where any such contract or agreement also relates to a Retained Product(s), Respondent(s) shall assign the Commission-approved Acquirer all such rights under the contract or agreement as are related to the Divestiture Product(s), but concurrently may retain similar rights for the purposes of the Retained Product(s).

KK. “Product Copyrights” means rights to all original works of authorship of any kind related to the Divestiture Product(s) or the IntelliClean Products and any registrations and applications for registrations thereof, including, but not limited to, the following: all promotional materials for retailers; all promotional materials for customers; copyrights in Development data and reports relating to the research and Development of the Divestiture Product(s) or the IntelliClean Products or of any materials used in the research, Development, manufacture, marketing or sale of the Divestiture Product(s) or the IntelliClean Products, including all raw data relating to quality trials of the Product(s), customer information, promotional and marketing materials, the Divestiture Product(s) or the IntelliClean Products sales forecasting models, Website content and advertising and display materials; all records relating to employees who accept employment with the Commission-approved Acquirer (excluding any personnel records the transfer of which is prohibited by applicable Law); all records, including customer lists, sales force call activity reports, vendor lists, sales data, slotting allowance data, speaker lists, manufacturing records, manufacturing processes, and supplier lists; all data contained in laboratory notebooks relating to the Divestiture Product(s) or the IntelliClean Products.

LL. "Product Employee Information" means the following, as and to the extent permitted by the Law:

1. a complete and accurate list containing the name of each relevant employee (including former employees who were employed by Respondent(s) within ninety (90) Days of the execution date of any Remedial Agreement);
2. with respect to each such employee, the following information:
  - a. the date of hire and effective service date;
  - b. job title or position held;
  - c. a specific description of the employee's responsibilities related to the relevant Divestiture Product; *provided, however*, in lieu of this description, Respondent(s) may provide the employee's most recent performance appraisal;
  - d.

*provided, however*, “Product Intellectual Property” does not include the names or trade dress of “Procter & Gamble”, “P&G”, “Gillette”, “Oral-B”, “Crest”, “Blend-a-Med”, “Blend-a-Dent”, “Blendi”, “Ipana”, “AZ”, “Series”, or the names or trade dress of any other corporations, companies, or brands owned or sold by Respondents or related logos to the extent used on Respondent P&G’s or Respondent Gillette’s Retained Products.

NN. “Product Licensed Intellectual Property” means the following:

1. Patents that are related to a Divestiture Product or the IntelliClean Products that Respondent(s) can demonstrate have been routinely used, prior to the Acquisition Date, by either Respondent P&G or Respondent Gillette (as applicable) for a Retained Product(s) that: 1) have been marketed or sold on an extensive basis by the relevant Respondent within the two-year period immediately preceding the Acquisition; or 2) for which, prior to the announcement of the Acquisition, there was an approved brand or marketing plan to market or sell such a Retained Product on an extensive basis by the Respondents; and
2. trade secrets, know-how, techniques, data, inventions, practices, methods, and other confidential or proprietary technical, business, research, Development, and other information, and all rights in any jurisdiction to limit the use or disclosure thereof, that are related to a Divestiture Product or the IntelliClean Products and that Respondent(s) can demonstrate have been routinely used, prior to the Acquisition Date, by either Respondent P&G or Respondent Gillette (as applicable) for Retained Product(s) that: 1) have been marketed or sold on an extensive basis by the relevant Respondent within the two-year period immediately preceding the Acquisition; or 2) for which, prior to the announcement of the Acquisition, there was an approved brand or marketing plan to market or sell such a Retained Product on an extensive basis by the Respondents;

*provided however*, that, in cases where the aggregate retail sales in dollars within the two-year period immediately preceding the Acquisition of the Retained Product(s) collectively are less than the aggregate retail sales in dollars within the same period of the Divestiture Product(s) collectively, the above-described intellectual property shall be considered, at

OO. “Product Manufacturing Employees” means all salaried employees of Respondent(s) who directly have participated (irrespective of the portion of working time involved, unless such participation was part of a broad executive management portfolio above the level of value stream manager at Respondent Gillette, or consisted of oversight of legal, accounting, tax or financial compliance) in the manufacture of the Product(s), including, but not limited to,

those involved in the quality assurance and quality control of the Product(s), within the eighteen (18) month period immediately prior to the Closing Date.

- PP. “Product Manufacturing Technology” means all technology, trade secrets, know-how, and proprietary information (whether patented, patentable or otherwise) related to the manufacture (including, at the Commission-approved Acquirer’s option, all equipment used to manufacture) the Divestiture Products or the IntelliClean Products, respectively, including, but not limited to all product specifications, processes, product designs, plans, trade secrets, ideas, concepts, manufacturing, engineering, and other manuals, and drawings, standard operating procedures, flow diagrams, chemical, safety, quality assurance, quality control, research records, clinical data, compositions, annual product reviews, regulatory communications, and labeling and all other information related to the manufacturing process, and supplier lists.
- QQ. “Product Marketing Employees” means salaried management level employees of Respondent(s) who directly have participated (irrespective of the portion of working time involved, unless such participation was a part of a broad executive management portfolio above the brand manager level, or of oversight of legal, accounting, tax or financial compliance) in the marketing, contracting, or promotion of the Divestiture Product(s) in the United States within the eighteen (18) month period immediately prior to the Closing Date. These employees include, without limitation, all management level employees having any responsibilities in the areas of sales management, brand management, sales training, market research, but excluding administrative assistants.
- RR. “Product Marketing Materials” means all marketing materials used anywhere in the world related to the Divestiture Product(s) as of the Closing Date, including, without limitation, all advertising materials, training materials, product data, price lists, mailing lists, sales materials (e.g., detailing reports; vendor lists; sales data), marketing information, (e.g., competitor information; research data; market intelligence reports; statistical programs (if any) used for marketing and sales research; customer information, including customer sales information; sales forecasting models; educational materials; Website content and advertising and display materials; speaker lists), promotional and marketing materials, artwork for the production of packaging components, television masters and other similar materials related to the Divestiture Product(s).
- SS. “Product Research and Development Employees” means all salaried employees of Respondent(s) who directly have participated (irrespective of the portion of working time involved, unless such participation was a part of a broad executive management portfolio above the section head level at Respondent P&G or above the level of associate director at Respondent Gillette (for the APDO Products) or above the level of director at Respondent Gillette (for the Rembrandt Products), or of oversight of legal, accounting, tax or financial

compliance) in the research, Development, or quality control approval process of the Divestiture Product(s) within the eighteen (18) month period immediately prior to the Closing Date.

TT. "Product Sales Employees" means all salaried employees of Respondent(s) who have participated (irrespective of the portion of working

4. all Product Marketing Materials related to the Rembrandt Products;
  5. all Website(s) related to the Rembrandt Products;
  6. at the Commission-approved Acquirer's option, all Product Assumed Contracts related to the Rembrandt Products (copies to be provided to the Commission-approved Acquirer on or before the Closing Date);
  7. all Respondent Gillette's books, records, and files related to the foregoing or to Rembrandt Products; *provided, however*, that in cases in which documents or other materials included in the Rembrandt Assets contain information: (1) that relates both to the Rembrandt Products and to other Products or businesses of Respondent Gillette and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the Rembrandt Products; or (2) for which Respondent Gillette has a legal obligation to retain the original copies, Respondent Gillette shall be required to provide only copies or relevant excerpts of the documents and materials containing this information. In instances where such copies are provided to the Commission-approved Acquirer, Respondent Gillette shall provide the Commission-approved Acquirer access to original documents under circumstances where copies of documents are insufficient for evidentiary or regulatory purposes. The purpose of this proviso is to ensure that Respondent Gillette provides the Commission-approved Acquirer with the above-described information without requiring Respondent Gillette completely to divest itself of information that, in content, also relates to Products and businesses other than the Rembrandt Products;
  8. list of all customers and/or targeted customers for the Rembrandt Products and the pricing and/or planned or proposed pricing of the Rembrandt Products for such customers;
  9. at the Commission-approved Acquirer's option, all inventory in existence as of the Closing Date including, but not limited to, raw materials, packaging materials, work-in-process and finished goods related to the Rembrandt Products; and
  10. all unfilled customer orders for finished goods related to the Rembrandt Products as of the Closing Date (a list of such orders is to be provided to the Commission-approved Acquirer within two (2) days after the Closing Date).
- YY. "Rembrandt Core Employee(s)" means the Product Marketing Employees, the Product Sales Employees, and the Product Research and Development Employees related to the Rembrandt Products.
- ZZ. "Rembrandt Key Employee(s)" means those employees of Respondents specifically identified in Appendix IV of this Order.

- AAA. “Rembrandt IP Protected Products” means all Rembrandt Products *except* any Rembrandt Product that, as of the Closing Date, is in an earlier stage of research or Development than Stage 3 of Respondent Gillette’s SPEED (New Development Process) Program (as such program was applied to Products and in effect within the one (1) year period prior to the Acquisition Date); *provided however*, “Rembrandt IP Protected Products” also includes all Rembrandt Products specifically identified in Appendix V attached to this Order.
- BBB. “Rembrandt Products” means all Products Developed, in Development, manufactured, distributed, marketed or sold by Respondent Gillette prior to the Acquisition that were marketed or sold or to be marketed or sold as teeth whitening agents and/or as Products using such Product Trademarks Rembrandt® or any variation or derivative of such Product Trademarks.
- CCC. “Rembrandt Releasee(s)” means the Commission-approved Acquirer for the Rembrandt Products or any entity controlled by or under common control with such Commission-approved Acquirer, or any licensees, sublicensees, manufacturers, suppliers, distributors, and customers of such Commission-approved Acquirer, or of such Commission-approved Acquirer-affiliated entities.
- DDD. “Remedial Agreement” means the following: (1) any agreement between Respondent(s) and a Commission-approved Acquirer that is specifically referenced and attached to this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and that has been approved by the Commission to accomplish the requirements of the Order in connection with the Commission’s determination to make this Order final; and/or (2) any agreement between the Respondent(s) and a Commission-approved Acquirer (or between a Divestiture Trustee and a Commission-approved Acquirer) that has been approved by the Commission to accomplish the requirements of this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and that has been approved by the Commission to accomplish the requirements of this Order.
- EEE. “Retained Product” means any Product(s) other than a Divestiture Product.
- FFF. “SpinBrush Assets” means all Respondent P&G’s rights, title and interest in and to all assets related to Respondent P&G’s worldwide business related to the SpinBrush Products, to the extent legally transferable, including the research, Development, manufacture, distribution, marketing, and sale of the SpinBrush Products including, without limitation, the following:

1. all Product Intellectual Property related to the SpinBrush Products;
2. perpetual, fully paid-up and royalty-free license(s) with rights to sublicense to all Product Licensed Intellectual Property to use, make, distribute, offer for sale, promote, advertise, sell, import, export, or have used, made, distributed, offered for sale, promoted, advertised, sold, imported, or exported the SpinBrush Products anywhere in the world; *provided however*, such license for the Product Lice

9. at the Commission-approved Acquirer's option, all inventory, including raw materials, packaging materials, work-in-process and finished goods related to the SpinBrush Products; and
10. all unfilled customer orders for finished goods related to the SpinBrush Products as of the Closing Date (a list of such orders is to be provided to the Commission-approved Acquirer within two (2) days after the Closing Date).

GGG. "SpinBrush Asset Purchase Agreement" means the "Asset Sale and Purchase Agreement" among The Procter & Gamble Company, certain of its affiliates and Church & Dwight Co., Inc. dated September 23, 2005, and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the SpinBrush Assets to be divested, that have been approved by the Commission to accomplish the requirements of this Order. The SpinBrush Asset Purchase Agreement is attached to this Order and contained in non-public Appendix II.

HHH. "SpinBrush Core Employee(s)" means the Product Marketing Employees, Product Sales Employees, and Product Research and Development Employees related to the SpinBrush Products.

III. "SpinBrush Products" means all Products Developed, in Development, manufactured, distributed, marketed or sold by Respondent P&G prior to the Acquisition that were marketed or sold or to be marketed or sold as non-rechargeable battery-powered toothbrushes and/or as Products using the Product Trademark SpinBrush® or any variation or derivative on or prior to the Closing Date. "SpinBrush Products" includes, but is not limited to, those rechargeable battery-powered toothbrush Products Developed or in Development under Respondent P&G "Project Franklin" designation.

JJJ. "SpinBrush Releasee(s)" means the Commission-approved Acquirer for the SpinBrush Products or any entity controlled by or under common control with such Commission-approved Acquirer, or any licensees, sublicensees, manufacturers, suppliers, distributors, and customers of such Commission-approved Acquirer, or of such Commission-approved Acquirer-affiliated entities.

KKK. "Supply Cost" means a cost not to exceed the manufacturer's average direct per unit cost of manufacturing the Divestiture Product for the twelve (12) month period immediately preceding the Acquisition Date. "Supply Cost" shall expressly exclude any intracompany

“Website” shall not include the following: (1) content owned by Third Parties and other Product Intellectual Property not owned by Respondent(s) that are incorporated in such Website(s), such as stock photographs used in the Website(s), *except* to the extent that Respondent(s) can convey its rights, if any, therein; or (2) content unrelated to the Divestiture Product(s).

## II.

### **IT IS FURTHER ORDERED** that:

- A. Not later than ninety (90) days after the date this Order becomes final, Respondents shall divest the Rembrandt Assets, absolutely and in good faith, and at no minimum price. Respondents shall divest the Rembrandt Assets to a Commission-approved Acquirer and only in a manner that receives the prior approval of the Commission.
- B. Any Remedial Agreement related to the Rembrandt Assets shall be deemed incorporated into this Order, and any failure by Respondents to comply with any term of such Remedial Agreement related to the Rembrandt Assets shall constitute a failure to comply with this Order.
- C. Respondents shall include in any Remedial Agreement related to the Rembrandt Assets the following provisions:
  1. upon reasonable notice and request from the Commission-approved Acquirer to the Respondents, Respondents shall provide in a timely manner at no greater than Direct Cost the following:
    - a. assistance and advice to enable the Commission-approved Acquirer (or the Designee of the Commission-approved Acquirer) to obtain all necessary permits and approvals from any Agency or Governmental Entity to manufacture and sell the Rembrandt Products;
    - b. assistance to the Commission-approved Acquirer (or the Designee of the Commission-approved Acquirer) to manufacture Rembrandt Products in substantially the same manner and quality employed or achieved by or on behalf of Respondent Gillette; and
    - c. consultation with knowledgeable employees of Respondents and training, at the request of the Commission-approved Acquirer and at a facility chosen by the Commission-approved Acquirer sufficient to satisfy management of the Commission-approved Acquirer that its personnel (or the Designee’s personnel) are adequately trained in the manufacture of the Rembrandt Products;

2. upon reasonable notice and request from the Commission-approved Acquirer to Respondents, Respondents shall provide, in a timely manner, at no greater than Direct Cost, assistance of knowledgeable employees of the Respondents to assist the Commission-approved Acquirer to defend against, respond to, or otherwise participate in any litigation related to the Product Intellectual Property;
3. Respondents shall covenant to the Commission-approved Acquirer that Respondents shall:
  - a. not join, file, prosecute or maintain any suit, in law or equity, against the Commission-approved Acquirer under Patents that are owned or licensed by Respondents as of the Acquisition Date, if such suit would have the potential to interfere with the Commission-approved Acquirer's freedom to practice in the research, Development, manufacture, use, import, export, distribution or sale of the Rembrandt IP Protected Products; *provided however*, that Respondents may receive a covenant from the Commission-approved Acquirer not to assert any Patent related to the Rembrandt Products that is assigned to the Commission-approved Acquirer from the Respondents pursuant to this Order against the Respondents for Respondents' infringement of such Patent in connection with those Products marketed or sold by Respondent P&G as teeth whiten Tds or sotac.73 0 T0(nts as of immediin nerp

circumventing any of the requirements of this Order).

D. Respondents shall:

1. submit to the Commission-approved Acquirer, at Respondents' expense, all Confidential Business Information related to the Rembrandt Products;
2. deliver such Confidential Business Information as follows: (1) in good faith; (2) as soon as practicable, avoiding any delays in transmission of the respective information; and (3) in a manner that ensures its completeness and accuracy and that fully preserves its usefulness;
3. pending complete delivery of all such Confidential Business Information to the Commission-approved Acquirer, provide the Commission-approved Acquirer and the Commission with Confidential Business Information.

Confidential Business Information related to such Product Manufacturing Technology.

F. Not later than ten (10) days after the Closing Date, Respondents shall grant a release to each Third Party that is subject to an agreement as described in Paragraph II.E. that allows the Third Party to provide the relevant Product Manufacturing Technology or related equipment to the Commission-approved Acquirer. Within five (5) days of the execution of each such release, Respondents shall provide a copy of the release to the Commission-approved Acquirer.

G. Respondents shall:

1. for a period of at least six (6) months from the Closing Date, provide the Commission-approved Acquirer with the opportunity to enter into employment contracts with the Rembrandt Core Employees and Rembrandt Key Employees. This period is hereinafter referred to as the “Rembrandt Access Period”; and
2. not later than the earlier of the following dates: (1) ten (10) days after notice by staff of the Commission to the Respondents to provide the Product Employee Information; or (2) ten (10) Days after the Closing Date, Respondents shall provide the Commission-approved Acquirer or the Proposed Acquirer with the Product Employee Information related to the Rembrandt Core Employees and Rembrandt Key Employees. Failure by Respondents to provide the Product Employee Information for any relevant employee within the time provided herein shall extend the Rembrandt Access Period with respect to that employee in an amount equal to the delay.

H. Respondents shall:

1. during the Rembrandt Access Period, not interfere with the hiring or employing by the Commission-approved Acquirer of Rembrandt Core Employees and Rembrandt Key Employees, and remove any impediments within the control of Respondents that may deter these employees from accepting employment with the Commission-approved Acquirer, including, but not limited to, any noncompete or nondisclosure provisions of employment or other contracts with Respondents that would affect the ability or incentive of those individuals to be employed by the Commission-approved Acquirer. In the case of the Rembrandt Key Employees, Respondents shall waive, for the benefit of the Commission-approved Acquirer, any attorney-client privilege as it pertains to the Rembrandt Products. In addition, Respondents shall not make any counteroffer to a Rembrandt Core Employee or Rembrandt Key Employee who receives a written offer of employment from the Commission-approved Acquirer;

*provided, however,* that this Paragraph II.H.1 shall not prohibit the Respondents from making offers of employment to or employing any Rembrandt Core Employee or Rembrandt Key Employee during the Rembrandt Access Period where the



solicitation requirements contained herein;

*provided, however*, Respondents may do the following: (1) advertise for employees in newspapers, trade publications or other media not targeted specifically at the Rembrandt Employees; or (2) hire a Rembrandt Employee who contacts Respondents on his or her own initiative without any direct or indirect solicitation or encouragement from the Respondents;

4. for a period of two (2) years from the Closing Date, use any Rembrandt Key Employee for work specifically related to Products for use as teeth whitening agents.
- I. Prior to the Closing Date, Respondents shall secure all consents and waivers from all Third Parties that are necessary for the divestiture of the Rembrandt Assets to the Commission-approved Acquirer, or for the continued research, Development, manufacture, sale, marketing or distribution of the Rembrandt Products by the Commission-approved Acquirer; *provided, however*, Respondents may satisfy this requirement by certifying that the Commission-approved Acquirer has executed all such agreements directly with each of the relevant Third Parties.
- J. Respondents shall require, as a condition of continued employment post-divestiture of the Rembrandt Assets, that each Rembrandt Core Employee retained by Respondents, the direct supervisor(s) of any such employee, and any other employee retained by Respondents and designated by the Interim Monitor sign a confidentiality agreement pursuant to which such employee shall be required to maintain all Confidential Business Information related to the Rembrandt Products strictly confidential, including the nondisclosure of such information to all other employees, executives or other personnel of Respondents (other than as necessary to comply with the requirements of this Order).
- K. Respondents shall provide written notification of the restrictions on the use of the Confidential Business Information related to the ~~Assets~~, the direct

Acquirer. Respondents shall maintain complete records of all such agreements at Respondents' corporate headquarters and shall provide an officer's certification to the Commission st





1. upon reasonable notice and request from the Commission-approved Acquirer to the Respondents, Respondents shall provide in a timely manner at no greater than Direct Cost the following:
  - a. assistance and advice to enable the Commission-approved Acquirer (or the Designee of the Commission-approved Acquirer) to obtain all necessary permits and approvals from any Agency or Governmental Entity to manufacture and sell the SpinBrush Products;
  - b. assistance to the Commission-approved Acquirer (or the Designee of the Commission-approved Acquirer) to manufacture the SpinBrush Products in substantially the same manner and quality employed or achieved by or on behalf of Respondent P&G; and
  - c. consultation with knowledgeable employees of Respondents and training, at the request of the Commission-approved Acquirer and at a facility chosen by the Commission-approved Acquirer sufficient to satisfy management of the Commission-approved Acquirer that its personnel (or the Designee's personnel) are adequately trained in the manufacture of the SpinBrush Products;
2. upon reasonable notice and request from the Commission-approved Acquirer to Respondents, Respondents shall provide, in a timely manner, at no greater than Direct Cost, assistance of knowledgeable employees of the Respondents to assist the Commission-approved Acquirer to defend against, respond to, or otherwise participate in any litigation related to the Product Intellectual Property;
3. Respondents shall covenant to the Commission-approved Acquirer that Respondents shall not join, file, prosecute or maintain any suit, in law or equity, against the Commission-approved Acquirer under Patents that are owned or licensed by Respondents as of the Acquisition Date, if such suit would have the potential to interfere with the Commission-approved Acquirer's freedom to practice in the research, Development, manufacture, use, import, export, distribution or sale of the SpinBrush Products; *provided however*, that Respondents may receive a covenant from the Commission-approved Acquirer not to assert against the Respondents any Patent related to the SpinBrush Products that is assigned to the Commission-approved Acquirer from the Respondents pursuant to this Order; and
4. Respondents shall covenant to the Commission-approved Acquirer that: (1) as a condition of any assignment, transfer or license to a Third Party of the above-described Patents, the Third Party shall agree to provide a covenant whereby the Third Party covenants not to sue the SpinBrush Releasees under such Patents, if the suit would have the potential to interfere with the Commission-approved Acquirer's freedom to practice in the research, Development, manufacture, use, import, export, distribution or sale of

the SpinBrush Products; and (2) with respect to any Third Party rights licensed to Respondents as of or after the Acquisition Date, and as to which Respondents do not control the right of prosecution of any legal action, Respondents shall not actively induce, assist or participate in any legal action or proceeding relating to the SpinBrush Products against the SpinBrush Releasees, unless required by Law or contract (such contract not to be solicited or entered into for the purpose of circumventing any of the requirements of this Order).

D. Respondents shall:

1. submit to the Commission-approved Acquirer, at Respondents' expense, all Confidential Business Information related to the SpinBrush Products;
2. deliver such Confidential Business Information as follows: (1) in good faith; (2) as soon as practicable, avoiding any delays in transmission of the respective information; and (3) in a manner that ensures its c

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the SpinBrush Access Period where the Com3sess Psion-approvedessquirer has notifiedCom3Respo

on his or her own initiative without any direct or indirect solicitation or encouragement from the Respondents.

- I. Prior to the Closing Date, Respondents shall secure all consents and waivers from all Third Parties that are necessary for the divestiture of the SpinBrush Assets to the Commission-approved Acquirer, or for the continued research, Development, manufacture, sale, marketing or distribution of the SpinBrush Products by the Commission-approved Acquirer;

*provided, however,* Respondents may satisfy this requirement by certifying that the Commission-approved Acquirer has executed all such agreements directly with each of the relevant Third Parties.

- J. Respondents shall require, as a condition of continued employment post-divestiture of the SpinBrush Assets, that each SpinBrush Core Employee retained by Respondents, the direct supervisor(s) of any such employee, and any other employee retained by Respondents and designated by the Interim Monitor sign a confidentiality agreement pursuant to which such employee shall be required to maintain all Confidential Business Information related to the SpinBrush Products strictly confidential, including the nondisclosure of such information to all other employees, executives or other personnel of Respondents (other than as necessary to comply with the requirements of this Order).

- K. Respondents shall provide written notification of the restrictions on the use of the Confidential Business Information related to the SpinBrush Products by Respondents' personnel to all of Respondents' employees who:

1. are or were involved in the research, Development, manufacturing, distribution, sale or marketing of the SpinBrush Products;
2. are involved in the research, Development, manufacturing, distribution, sale or marketing of Products for use as battery operated toothbrushes for Respondent Gillette prior to the Acquisition; and/or
3. may have Confidential Business Information related to the SpinBrush Products.

Respondents shall give such notification by e-mail with return receipt requested or similar transmission, and keep a file of such receipts for one (1) year after the Closing Date.

Respondents shall provide a copy

Respondents shall provide a copy

Respondents shall provide a copy

- L. Upon reasonable notice and request by the Commission-approved Acquirer, Respondents shall make available to the Commission-approved Acquirer, at no greater than Direct Cost (or, if the SpinBrush Asset Purchase Agreement is the Remedial Agreement for the SpinBrush Assets, then at such cost as may be provided therein), such personnel, assistance and training as the Commission-approved Acquirer might reasonably need to transfer the SpinBrush Assets, and shall continue providing such personnel, assistance and training, at the request of the Commission-approved Acquirer, until the SpinBrush Assets are completely transferred to the Commission-approved Acquirer or its Designee in a manner that fully preserves their usefulness.
- M. Pending divestiture of the SpinBrush Assets, Respondents shall take such actions as are necessary to maintain the full economic viability and marketability of the business associated with the SpinBrush Assets, to minimize any risk of loss of competitive potential for such business, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the SpinBrush Assets except for ordinary wear and tear.
- N. Counsel for Respondents (including in-house counsel under appropriate confidentiality arrangements) may retain unredacted copies of all documents or other materials provided to the Commission-approved Acquirer and may have access to original documents (under circumstances where copies of documents are insufficient or otherwise unavailable) provided to the Commission-approved Acquirer only in order to do the followi

1.

1. Respondents shall Contract Manufacture and deliver to the Commission-approved Acquirer, in a timely manner and under reasonable terms and conditions, a supply of finished APDO Product(s) at Responde

Respondents as of the Acquisition Date, if such suit would have the potential to interfere with the Commission-approved Acquirer's freedom to practice in the research, Development, manufacture, use, import, export, distribution or sale of the APDO Products; *provided however*, that Respondents may receive a covenant from the Commission-approved Acquirer not to assert against the Respondents any Patent related to the APDO Products that is assigned to the Commission-approved Acquirer from the Respondents pursuant to this Order; and

6. Respondents shall covenant t

any Remedial Agreement related to the APDO Assets; or (3) applicable Law;

*provided however*, Respondents may use such Confidential Business Information that also relates to those Retained Products that have been marketed and sold as antiperspirants or deodorants under the Gillette Series® trademarks prior to the Acquisition to the extent necessary for Respondents to continue to manufacture, market, and sell such Retained Products; *provided, further*, Respondents shall take such actions, as may be practicable, to prevent the exploitation or use of the most recent brand plan(s) related to the APDO Products by Respondents' employees with responsibilities re

Period”; and

2. not later than the earlier of the following dates: (1) ten (10) Days after notice by staff of the Commission to the Respondents to provide the Product Employee Information; or (2) ten (10) Days after the Closing Date, provide the Commission-approved Acquirer or the Proposed Acquirer with the Product Employee Information related to the APDO Core Employees. Failure by Respondents to provide the Product Employee Information for any relevant employee within the time provided herein shall extend the APDO Access Period with respect to that employee in an amount equal to the delay.

H. Respondents shall:

1. during the APDO Access Period, not interfere with the hiring or employing by the Commission-approved Acquirer of the APDO Core Employees, and remove any impediments within the control of Respondents that may deter these employees from accepting employment with the Commission-approved Acquirer, including, but not limited to, any noncompete or nondisclosure provisions of employment or other contracts with Respondents that would affect them.

permitted by Law);

*provided, however*, that nothing in this Order requires or shall be construed to require the Respondents to terminate the employment of any employee or prevents the Respondents from continuing the employment of the APDO Core Employees (other than those conditions contained in this Order) in connection with the Acquisition; and

3. for a period of one (1) year from the Closing Date, not:

- a. directly or indirectly, solicit or otherwise attempt to induce any employee of the Commission-approved Acquirer with any amount of responsibility related to APDO (“APDO Employee”) to terminate his or her employment relationship with the Commission-approved Acquirer; or
- b. hire any APDO Employee; *provided, however*, Respondents may hire any former APDO Employee whose employment has been terminated by the Commission-approved Acquirer or who independently applies for employment with the Respondents, as long as such employee was not solicited in violation of the nonsolicitation requirements contained herein;

*provided, however*, Respondents may do the following: (1) advertise for employees in newspapers, trade publications or other media not targeted specifically at the APDO Employees; or (2) hire an APDO Employee who contacts Respondents on his or her own initiative without any direct or indirect solicitation or encouragement from the Respondents.

- I. Prior to the Closing Date, Respondents shall secure all consents and waivers from all Third Parties that are necessary for the divestiture of the APDO Assets to the Commission-approved Acquirer, or for the continued research, Development, manufacture, sale, marketing or distribution of the APDO Products by the Commission-approved Acquirer;

*provided, however*, Respondents may satisfy this requirement by certifying that the Commission-approved Acquirer has executed all such agreements directly with each of the relevant Third Parties.

- J. Respondents shall require, as a condition of continued employment post-divestiture of the APDO Assets, that each APDO Core Employ



such business, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the APDO Assets except for ordinary wear and tear.

- N. Counsel for Respondents (including in-house counsel under appropriate confidentiality arrangements) may retain unredacted copies of all documents or other materials provided to the Commission-approved Acquirer and may have access to original documents (under circumstances where copies of documents are insufficient or otherwise unavailable) provided to the Commission-approved Acquirer only in order to do the following:
1. comply with any Remedial Agreement, this Order, any Law (including, without limitation, any requirement to obtain regulatory licenses or approvals), any data retention requirement of any applicable Governmental Entity, or any taxation requirements; or
  2. defend against, respond to, or otherwise participate in any litigation, investigation, audit, process, subpoena or other proceeding relating to the divestiture or any other aspect of the APDO Assets or APDO business; *provided, however*, that Respondents may disclose such information as necessary for the purposes set forth in this Paragraph pursuant to an appropriate confidentiality order, agreement or arrangement;

*provided, however*, that pursuant to this Paragraph IV.N., Respondents shall: (1) require those who view such unredacted documents or other materials to enter into confidentiality agreements with the Commission-approved Acquirer (but shall not be deemed to have violated this requirement if the Commission-approved Acquirer withholds such agreement unreasonably); and (2) use their best efforts to obtain a protective order to protect the confidentiality of such information during any adjudication.

- O. Respondents shall maintain manufacturing facilities for the APDO Products that are fully capable of producing the APDO Products until the earlier of the following: 1) the Commission-approved Acquirer (or the Designee of the Commission-approved Acquirer) is otherwise fully able to manufacture the APDO Products in a facility that is independent of Respondents; or 2) the Respondents have provided to the Commission-approved Acquirer inventory of finished APDO Products sufficient to cover at least all demand anticipated by the Commission-approved Acquirer for the APDO Products during the period of time estimated for the removal, transfer, and reassembly, in a fully ~~To be. 037010 la fully~~

- P. Respondents shall not join, file, prosecute or maintain any suit, in law or equity, against the Commission-approved Acquirer or the APDO Releasee(s) for the research, Development, manufacture, use, import, export, distribution, or sale of the APDO Products under the following:
1. any Patents owned or licensed by Respondents as of the Acquisition Date that claim the use of the APDO Products;
  2. any Patents owned or licensed at any time after the Acquisition Date by Respondents that claim any aspect of the research, Development, manufacture, use, import, export, distribution, or sale of the APDO Products, other than such Patents that claim inventions conceived by and reduced to practice after the Acquisition Date.
- Q. Respondents shall not, in any jurisdiction throughout the world: (1) use the Product Trademarks related to APDO or any mark confusingly similar to the Product Trademarks, as a trademark, tradename, or service mark; (2) attempt to register the Product Trademarks; (3) attempt to register any mark confusingly similar to the Product Trademarks; (4) challenge or interfere with the Commission-approved Acquirer's use and registration of the Product Trademarks; or (5) challenge or interfere with the Commission-approved Acquirer's efforts to enforce its trademark registrations for and trademark rights in the Product Trademarks against Third Parties; *provided however*, that nothing in this Order shall preclude Respondents from continuing to use those trademarks, tradenames, or service marks related to the Retained Products as of the Acquisition Date.
- R. The purpose of the divestiture of the APDO Assets is to ensure the continued use of the APDO Assets in the same business, independent of Respondents, in which the APDO Assets were engaged at the time of the announcement of the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

V.

**IT IS FURTHER ORDERED** that:

- A. Not later than twenty (20) days after the Acquisition Date, Respondents shall amend the IntelliClean Agreement in accordance with the IntelliClean Amended Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of Philips (other than with respect to any noncompete provisions contained in the IntelliClean Agreement) or to reduce any obligations of Respondents (other than with respect to any noncompete provisions contained in the IntelliClean Agreement) under the IntelliClean Amended Agreement).

B. The IntelliClean Agreement as amended in accordance with the IntelliClean Amended Agreement shall be deemed incorporated by reference into this Order and made a part hereof, and any failure by Respondents to comply with any term of the IntelliClean Amended Agreement, if such agreement is approved by the Commission in connection with the Commission's determination to make this Order final shall constitute a failure to comply with this Order. Any other Remedial Agreement related to the IntelliClean Products shall also be deemed incorporated into this Order, and any failure by Respondents to comply with any term of such Remedial Agreement related to the IntelliClean Products shall constitute a failure to comply with this Order.

C. Respondents shall:

1. grant a perpetual, fully paid-up and royalty-free license(s) with rights to sublicense to all Product Intellectual Property, Product Licensed Intellectual Property, and the Product Manufacturing Technology to use, make, distribute, offer for sale, promote, advertise, sell, import, export, or have used, made, distributed, offered for sale, promoted, advertised, sold, imported, or exported the IntelliClean Products anywhere in the world; *provided however*, such license for the Product Intellectual Property shall also include the rights to use Respondent P&G's Crest® trademark in the United States and Canada in connection with the marketing of the IntelliClean Products for a limited period as is approved by the Commission in the Remedial Agreements related to the IntelliClean Products;
2. as reflected in the IntelliClean Amended Agreement, Contract Manufacture and deliver to Philip or its Designee, in a timely manner and under reasonable terms and conditions (such terms and conditions to be in a manner that preserves the full economic viability and competitiveness of the IntelliClean Products) a supply of the finished dentifrice Product used in connection with the rechargeable toothbrush(es) that are a part of the IntelliClean Products;
3. upon reasonable notice and request from Philips to the Respondents, provide in a timely manner at no greater than Direct Cost the following:
  - a. assistance and advice to enable Philips or its Designee to obtain all necessary permits and approvals from any Agency or Governmental Entity to manufacture and sell the dentifrice used in connection with the rechargeable toothbrush(es) that are a part of the IntelliClean Products;
  - b. assistance to Philips or its Designee to manufacture the dentifrice used in connection with the rechargeable toothbrush(es) that are a part of the IntelliClean Products in substantially the same manner and quality employed or achieved by or behalf of Respondent P&G; and

- c. consultation with knowledgeable employees of Respondents and training, at the request of Philips and at a facility chosen by Philips sufficient to satisfy management of Philips that its personnel (or the Designee's personnel) are adequately trained in the manufacture of the dentifrice used in connection with the rechargeable toothbrush(es) that are a part of the IntelliClean Products.

D. Respondents shall:

1. submit to Philips, at Respondents' expense, copies of all Confidential Business Information related to the research, Development, manufacture, distribution, marketing or sale of IntelliClean Products;
2. deliver such Confidential Business Information as follows: (1) in good faith; (2) as soon as practicable, avoiding any delays in transmission of the respective information; and (3) in a manner that ensures its completeness and accuracy and that fully preserves its usefulness; and
3. pending complete delivery of all such Confidential Business Information to Philips, provide Philips and the Interim Monitor (if any has been appointed) with access to all such Confidential Business Information and employees who possess or are able to locate such information for the purposes of identifying the books, records, and files related to the IntelliClean Products that contain such Confidential Business Information and facilitating the delivery in a manner consistent with this Order.

E. Respondents shall not enforce any agreement against a Third Party or Philips to the extent that such agreement may limit or otherwise impair the ability of Philips to acquire the Product Manufacturing Technology related to the IntelliClean Products or related equipment from the Third Party. Such agreements include, but are not limited to, agreements with respect to the disclosure of Confidential Business Information related to such Product Manufacturing Technology.

F. Not later than ten (10) days after the Closing Date, Respondents shall grant a release to each Third Party that is subject to an agreement as described in Paragraph V.E. that allows the Third Party to provide the relevant Product Manufacturing Technology or related equipment to Philips. Within five (5) days of the execution of each such release, Respondents shall provide a copy of the release to Philips.

G. For a period commencing on the date this Order becomes final and continuing for ten (10) years, Respondents shall not, without providing advance written notification to the Commission, terminate the IntelliClean Amended Agreement. Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of

that part, except that no filing fee will be required for any such Notification. Notification shall be filed with the Secretary of the Commission, Notification need not be made to the United States Department of Justice, and Notific

with the purposes of the Order.

D. If an Interim Monitor is appointed, Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Interim Monitor:

1. The Interim Monitor shall have the power and authority to monitor Respondents' compliance with the divestiture and asset maintenance obligations and related requirements of the Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the

may set. The Interim Monitor shall have authority to employ, at the expense of the Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out its duties.

- H. The Interim Monitor appointed pursuant to this Order may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order.

## VII.

**IT IS FURTHER ORDERED** that:

- A. If Respondents have not fully complied with the obligations to assign, grant, license, divest, transfer, deliver or otherwise convey relevant assets as required by this Order, the Commission may appoint a trustee (“Divestiture Trustee”) to assign, grant, license, divest, transfer, deliver or otherwise convey the assets required to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed pursuant to each of the relevant Paragraphs in a manner that satisfies the requirements of each such Paragraph. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to assign, grant, license, divest, transfer, deliver or otherwise convey the relevant assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee

1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver or otherwise convey the assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed.
2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission; *provided, however*, the Commission may extend the divestiture period only two (2) times.
3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall Develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.
4. The Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondent from among those approved by the Commission; and, *provided further, however*, that Respondent shall select such entity within five (5) days after receiving notification of the Commission's approval.
5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the

divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of the Respondents, and the Divestiture Trustee's power shall be terminated. The compensatio

## VIII.

## **IX.**

**IT IS FURTHER ORDERED** that Respondents shall notify the Commission at least thirty (30) days prior to any proposed (1) dissolution of such Respondent, (2) acquisition, merger or consolidation of Respondents, or (3) any other change in the Respondents that may affect compliance obligations arising out of the Order, including, but not limited to, assignment and the creation or dissolution of subsidiaries.

## **X.**

**IT IS FURTHER ORDERED** that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents made to their principal United States offices, Respondents shall permit any duly authorized representative of the Commission:

- A. access, during business office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondent related to compliance with this Order; and

**PUBLIC  
APPENDIX I  
ORDER TO MAINTAIN ASSETS**

**NON-PUBLIC APPENDIX II  
AGREEMENTS RELATED TO  
THE SPINBRUSH ASSETS**

**[Redacted From the Public Record Version But Incorporated By Reference]**

**NON-PUBLIC  
APPENDIX III  
AGREEMENTS RELATED TO  
THE INTELICLEAN PRODUCTS**

**[Redacted From the Public Record Version But Incorporated By Reference]**

**NON-PUBLIC  
APPENDIX IV  
REMBRANDT KEY EMPLOYEES**

**[Redacted From the Public Record Version But Incorporated By Reference]**

**NON-PUBLIC**