

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:		NEW ASSIGNMENT	
NATURE OF CONVEYANCE:		Share Purchase Agreement	
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
RS Biotech Laboratory Equipment Limited		11/14/2003	CORPORATION: UNITED KINGDOM
RECEIVING PARTY DATA			
Name:	New Brunswick Scientific Co., Inc.		
Street Address:	44 Talmadge Road		
City:	Edison		
State/Country:	NEW JERSEY		
Postal Code:	08818-4005		
Entity Type:	CORPORATION: NEW JERSEY		
PROPERTY NUMBERS Total: 1			
Property Type	Number	Word Mark	
Registration Number:	2707110	GALAXY	
CORRESPONDENCE DATA			
Fax Number:	(609)896-1469		
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>			
Phone:	609-896-3600		
Email:	pfonseca@foxrothschild.com		
Correspondent Name:	Perry Fonseca, Esq./Fox Rothschild LLP		
Address Line 1:	P.O. Box 5231		
Address Line 4:	Princeton, NEW JERSEY 08543-5231		
ATTORNEY DOCKET NUMBER:	77404-00017 - 2741-149		
NAME OF SUBMITTER:	Perry M. Fonseca		
Signature:	/Perry M. Fonseca/		
Date:	08/07/2009		

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Total Attachments: 46

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SHARE PURCHASE AGREEMENT

Between

THE VENDORS (AS DEFINED HEREIN)

and

N.B.S. ULT LIMITED

**For the acquisition of the issued share
capital of R.S. BIOTECH LABORATORY
EQUIPMENT LIMITED**

macROBERTS
s o l l i c i t o r s

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SHARE PURCHASE AGREEMENT

among

- (1) THOSE Persons whose names and addresses are set out in Part 1 of the Schedule (collectively "the Vendors" and "Vendor" means any one of them)

and

- (2) **N.B.S. ULT LIMITED**, incorporated in England and Wales under the Companies Acts (No. 03864134) and having its registered office at Shakespeare House, 42 Newmarket Road, Cambridge, Cambridgeshire, CB5 8EP ("the Purchaser")

WHEREAS:

- A. **RS Biotech Laboratory Equipment Limited** ("the Company") is incorporated in Scotland under the Companies Acts (No **SC257740**) as a private company limited by shares;
- B. the Vendors are the beneficial owners and registered holders of the whole of the issued share capital of the Company as shown opposite their respective names in Part 1 of the Schedule; and
- C. the Vendors have agreed to sell and the Purchaser has agreed to purchase the Contract Shares on the terms of this agreement;

It is agreed as follows:-

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this agreement, unless the context otherwise requires:-

Accounts means the audited balance sheet of SCL as at the Accounts Date and the audited profit and loss account of SCL for the financial period then ended together with all notes and the directors' and auditors' reports annexed thereto;

Accounts Date means 31 December 2002;

Activities means any activity, operation or process carried out by the Company or SCL (in relation to the Business) at any property whether or not currently owned, occupied or used by the Company or SCL (in relation to the Business);

Agreed Form means the form agreed by the parties prior to the execution of this agreement and either initialled by the Solicitors for the purpose of identification or executed or delivered contemporaneously with the execution of this agreement;

Associate means (1) in relation to a Vendor who is an individual, SCFL or any spouse, brother, sister or lineal ascendant or descendant, any partnership of which any of the foregoing is a partner or any company which is controlled (within the meaning of TA 1988 section 840) by any one or more of the foregoing, whether alone or in conjunction with any other party and (2) in relation to a Vendor who is a corporate entity:-

- (a) any member of the group of companies of which the Vendor forms part;
- (b) a Controlling Party; and/or
- (c) in relation to a Controlling Party, any spouse, brother, sister or lineal ascendant or descendant, any partnership of which any of the foregoing is a partner or any company which is controlled (within the meaning of TA 1988 section 840) by any one or more of the foregoing, whether alone or in conjunction with any other party; and/or
- (d) SCFL

Base Rate Loan Notes 2004/5 means the £975,000 guaranteed loan notes in the Agreed

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Form to be issued by the Purchaser at Completion in terms of this Agreement and redeemable on the first and second anniversaries of the Completion Date;

Business means the business of the design, manufacture, sale and distribution of carbon dioxide incubators and ancillary products and the provision of related services carried on by SCL as a division thereof under the name "RS Biotech Laboratory Equipment" prior to the Reorganisation and following the Reorganisation carried on by the Company;

Business Day means any day on which the Scottish clearing banks are open for over-the-counter business in Scotland;

Business Profits means the profit (if any) of the Business after tax in respect of the period from 1 January 2003 to 30 September 2003 as set out in the Profit and Loss Account;

CAA 2001 means the Capital Allowances Act 2001;

Companies Act means the Companies Acts 1985 to 1989;

Completion means completion of the sale and purchase of the Contract Shares;

Completion Balance Sheet means the balance sheet of the Company at Completion referred to in clause 4.2;

Completion Date means the date of execution of this agreement;

Compromise Agreement means the Compromise Agreement in the Agreed Form to be entered into at Completion between SCL and Malcolm McNab;

Computer Equipment means all computer hardware used by the Company and the Software;

Confidential Information means all information of a confidential nature including (without limiting the generality) the Intellectual Property Rights, (to the extent they are confidential) trade secrets of the Company, all lists or details of customers and suppliers and information relating to current trading performance and future business strategy and product information and pricing of such products;

Contract Shares means the shares of the Company listed in Part 1 of the Schedule;

Controlling Party means, in relation to any Vendor, any person, firm or company who, whether alone or in conjunction with any other party, controls (within the meaning of TA 1988 section 840) :-

- (a) any member of the group of companies of which the Vendor concerned forms part; and/or
- (b) the Vendor concerned;

Deferred Consideration means the aggregate amount payable on redemption of the Loan Notes and all interest payable thereunder and the Business Profits;

Directors means those persons listed as directors of the Company in Part 2 of the Schedule;

Disclosure Letter means a letter, in the Agreed Form, from the Vendors' Solicitors to the Purchaser's Solicitors, setting out certain matters relating to the Warranties;

Earn Out Loan Notes means the £300,000 nil coupon guaranteed loan notes in the Agreed Form to be issued by the Purchaser at Completion in terms of this Agreement and redeemable dependent upon future sales of products;

Employees means the employees of the Company as at the Completion Date, details of whom are set out in the Disclosure Letter;

Environment means any living organisms (including man), ecosystems, property and the media of air (including air in buildings, natural or man-made structures below or above ground), water (including water within drains and sewers) and land (including any under water and whether above or below surface);

Environmental Consent means any consent, approval, permit, licence, order, filing, authorisation, exemption, registration, permission, reporting or notice requirement and any related agreement required under the Environmental Laws in relation to the Activities;

Environmental Laws means all international, European, national, federal, state or local statutes (which, for the avoidance of doubt, shall include the Environment Act 1995 section 57 and schedule 22 and any guidance and regulations adopted pursuant to those provisions), bye-laws, orders, regulations or other law or subordinate legislation or common law, all orders, ordinances, decrees or regulatory codes of practice, circulars, guidance notes and equivalent controls concerning the protection of human health or which have as a purpose or effect the protection or prevention of harm to the Environment or human health and safety which are binding in relation to the Properties and/or upon the Company in the relevant jurisdiction in which the Company has been or is operating (including by the export of its products, or its waste thereto) prior to Completion;

ERA 1996 means the Employment Rights Act 1996;

Expert means an independent chartered accountant (who shall act as an expert and not as an arbiter) appointed by agreement between the parties or, failing agreement within 5 Business Days of the dispute arising, appointed on the application of either party by the then president of the Institute of Chartered Accountants of Scotland;

FA or FA (No2) followed by a stated year means the Finance Act or Finance (No2) Act of that year;

Finalisation Date means the date upon which:-

- (a) a joint statement is signed pursuant to clause 4.2.4; or
- (b) if applicable, the form and content of the Completion Balance Sheet and Profit and Loss Account is finalised by an Expert pursuant to clause 4.2.5.

Freeman Service Agreement means an agreement to be entered into at Completion between the Company and Mark Freeman;

FSMA means the Financial Services and Markets Act 2000;

General Warranties means the Warranties set out in Part 3A of the Schedule;

Hazardous Substance means any natural or artificial substance (whether solid, liquid, gas, noise, ion, vapour, electromagnetic or radiation, and whether alone or in combination with any other substance) which is capable of causing harm to or having a deleterious effect on the Environment, being a nuisance, or which restricts or makes more costly the use, development, ownership or occupation of any of the Properties;

IHTA 1984 means the Inheritance Tax Act 1984;

Intellectual Property Rights means Know How, any and all patents, patent applications and supplementary certificates, petty patents, rights in inventions, Registered Trade Marks and unregistered trade marks and service marks (including any trade, brand or business names, and any distinctive smells or sounds used to differentiate goods and/or services), trade and business names (including rights in any get-up or trade dress), registered designs, design rights, engineering drawings and schematics, utility models, copyright (including all such rights in computer software and any databases), database rights, moral rights and semiconductor topography rights used in the Business (in each case for the full period thereof), anywhere in the world, applications for any of the foregoing and the right to apply for any of the foregoing in any part of the world and any similar rights situated in any country;

ITEPA means the Income Tax (Earnings and Pensions) Act 2003;

Loan Notes means the Base Rate Loan Notes 2004/5 and the Earn Out Loan Notes;

Know-How means all ideas, concepts, un patented drawings, models, specifications, data, formulae, processes and procedures, inventions, discoveries, techniques and other technical or industrial processes or information or documentation used in the processing or manufacturing of goods or materials or provision of services by or otherwise used in relation to the Business;

Management Accounts means the management accounts in respect of the Business for the period from 1st January 2003 to 30 September 2003, a copy of which is attached and signed by the Solicitors as relative to this agreement;

Profit and Loss Account means the profit and loss account of the Business in respect of the period from 1 January 2003 to 30 September 2003 referred to in clause 4.2;

Property means the leasehold property referred to in Part 5 of the Schedule;

Purchaser Group means the group of companies of which the Purchaser forms part from time to time;

Purchaser's Solicitors means MacRoberts, 152 Bath Street, Glasgow G2 4TB;

Registered Trade Marks means:-

- (a) UK Trade Mark Registration No. 2267494;
- (b) US Trade Mark Registration No. 2,707,110;
- (c) Community Trade Mark Application No. 2256949

Relevant Proportions means those percentages set opposite the names of the Vendors in Part 1 of the Schedule and, in respect of any Vendor, his Relevant Proportion of any sum shall be the percentage set opposite his name in Part 1 of the Schedule;

Reorganisation means the reorganisation of SCL comprising the liquidation of SCL pursuant to a scheme under section 110 of the Insolvency Act 1986 resulting in the transfer of the Business to the Company and the transfer of the other business of SCL to SCFL all as provided for in an agreement among SCL (in members voluntary liquidation), the Vendors (in their capacities as shareholders of SCL), and the Company dated 12 November 2003 and any documents ancillary and/or supplemental thereto and including the transfer of the employment of any of the employees of SCL pursuant to such transfers of business;

Schedule means the schedule attached to this agreement;

SCFL means Stephen Clark Fabrications Limited, a company incorporated in Scotland (registered no. 252823 and having its registered office at Dalmore House, 310 St Vincent Street, Glasgow, G2 5QR;

SCL means Stephen Clark Limited, a company incorporated in Scotland (registered no. SC065173) and having its registered office at 13A Alva Street, Edinburgh, EH2 4PH;

SCFL Debt means the sum of £153,073 being the entire indebtedness of the Company to SCFL at Completion;

Service Agreement means an agreement, in the Agreed Form, to be entered into at Completion between the Company and Malcolm McNab ;

Software means software of any type whatsoever including, without limitation, any firmware, middleware, mediation software, operating system or other software used in the Business;

Solicitors means the Vendors' Solicitors and the Purchaser's Solicitors;

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Stamp Duty means stamp duty, stamp duty reserve tax and all costs, fines, penalties, expenses, charges and interest relating to stamp duty and/or stamp duty reserve tax;

TA 1988 means the Income and Corporation Taxes Act 1988;

Target Net Assets means £297,636;

Tax or Taxation means all forms of taxation (other than Stamp Duty) and all statutory, governmental, state, provincial, local governmental or municipal charges, imposts, duties and levies or withholdings of any nature whatsoever (whether of the United Kingdom or elsewhere in the world, whenever imposed and whether or not such taxation is primarily chargeable against or attributable to any other person, firm or company) and all costs, fines, penalties, expenses, charges and interest relating to the same;

Tax Authority means any taxing or other authority (whether within or outside the United Kingdom) competent to impose any Tax or Stamp Duty liability;

Tax Covenant means a deed of covenant, in the Agreed Form, to be entered into among the Vendors and the Purchaser at Completion in respect of Taxation;

Tax Warranties means the Warranties set out in Part 3B of the Schedule;

TCGA 1992 means the Taxation of Chargeable Gains Act 1992;

Title and Capacity Warranties means those Warranties set out in paragraph 2 of part 3A of the Schedule;

TMA 1970 means the Taxes Management Act 1970;

VAT means value added tax;

VATA 1994 means the Value Added Tax Act 1994;

Vendors' Representative means Edward Elworthy or such other Vendor appointed by notice in writing from Vendors whose aggregate Relevant Proportions exceed 50%;

Vendors' Solicitors means Biggart Baillie, Dalmore House, 310 St. Vincent Street, Glasgow, G2 5QR;

Warranties means the warranties given by the Vendors to the Purchaser pursuant to clause 6.1 and **Warranty** means any one of them;

Warrantors means Edward Elworthy and Malcolm McNab, two of the Vendors;

Waste means waste generally and, without limitation, includes anything which is discarded or which the holder intends or is required to discard and anything which is abandoned, unwanted or surplus irrespective of whether it is capable of being recovered or recycled or has any value.

- 1.2 Reference to any statute or statutory provision shall include a reference to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same (save to the extent that any amendment, extension, consolidation or replacement would impose more onerous obligations than otherwise exist at the Completion Date) and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provision.
- 1.3 The singular includes the plural and vice versa and any gender includes all genders.
- 1.4 Any reference to a "group of companies" is to a company, any holding company or parent undertaking, any subsidiary or subsidiary undertaking and any other subsidiary or subsidiary undertaking of any holding company or parent undertaking.

- 1.5 Save as otherwise provided herein or as the context may otherwise require, expressions in this agreement which are defined in the Companies Act shall have the meanings given to them therein.
- 1.6 Any reference in Part 3 of the Schedule to any warranty being given to the best of knowledge and belief or otherwise relating to the state of knowledge of a Warrantor shall be deemed to include an additional statement that it has been made after due and diligent enquiry of Mark Freeman.
- 1.7 The clause and Schedule headings are inserted for convenience and shall not affect the construction of this agreement.
- 1.8 Any reference in clause 9 to being "involved", "interested" or "concerned" means as a shareholder, director, employee, partner, proprietor, sub-contractor, agent, consultant or in any other capacity whatsoever.
- 1.9 In the event that:-
- 1.9.1 the Company assigns, sells or otherwise transfers all or any of its assets;
 - 1.9.2 a liability of the Company attaches (whether by voluntary act or otherwise); and/or
 - 1.9.3 the employment of an Employee is transferred;
- in each case, to another member of the Purchaser Group, each reference in clause 7.2 to the Company shall be deemed to include an additional reference to that member of the Purchaser Group but that in respect of such asset, liability and/or Employee (as the case may be) only.

2. SALE AND PURCHASE

- 2.1 Each Vendor shall, as beneficial owner, sell the shares set opposite his name in Part 1 of the Schedule and the Purchaser shall purchase them and that, in each case, free from all liens, charges and encumbrances and with the benefit of all rights, privileges and advantages attached or accruing thereto.
- 2.2 The Purchaser shall not be obliged to complete the purchase of any of the Contract Shares unless the purchase of all of the Contract Shares is completed simultaneously.
- 2.3 The Vendors acknowledge that the Purchaser is purchasing the Contract Shares relying, inter alia, upon the Warranties, the Tax Covenant and the terms of this Agreement.

3. PRE-EMPTION

Each of the Vendors waives all rights of pre-emption which may be competent to him (howsoever arising) in respect of the transfers of the Contract Shares.

4. CONSIDERATION

- 4.1 Subject to clause 4.2, the aggregate consideration (to be allocated among the Vendors in the Relevant Proportions) for the Contract Shares shall be satisfied as follows:-
- 4.1.1 the sum of £821,927 shall be paid at Completion;
 - 4.1.2 the Loan Notes shall be issued to the Vendors at Completion; and
 - 4.1.3 an amount equal to the Business Profits shall be paid on the later of the 10th Business Day following the Finalisation Date and the date falling 30 days after the Completion Date.
- 4.2 The aggregate consideration for the Contract Shares shall be subject to adjustment by reference to the value of the Company's net assets at Completion as disclosed by a balance sheet of the Company agreed/finalised pursuant to this clause 4.2 ("Net Assets at

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Completion").

4.2.1 The Profit and Loss Account and the Completion Balance Sheet shall be prepared on a basis consistent with and applying the accounting principles and policies used in the Accounts and, subject thereto, applying generally accepted accounting principles in the United Kingdom provided always that the following shall apply to the Completion Balance Sheet:-

- (i) an amount equal to the aggregate amount of all salary, bonuses, profit sharing, pension contributions, holiday pay and any other emoluments benefits or sums ("**Outstanding Employee Costs**") which are due and payable to any employee or employees of the Company in respect of any period prior to the Completion Date and which remain outstanding as at Completion (and including any PAYE and National Insurance Contributions required to be deducted therefrom), except to the extent that provision therefor was transferred to the Company in terms of the Reorganisation, shall be deducted in arriving at the Net Assets at Completion (and to the extent that any such benefits or sums are payable to any employee in respect of any period after the Completion Date, such benefits or sums shall be apportioned as at the Completion Date on a day-to-day basis)
- (ii) there shall be included as a note to the Completion Balance Sheet an estimated market value in respect of all of the capital items owned by the Company which were acquired as part of the Reorganisation and which bear an estimated market value in excess of £7,500.

4.2.2 At close of business on the day immediately prior to the Completion Date, the Vendors and the Purchaser and their respective accountants or representatives shall carry out a joint physical stocktake for the purpose of determining the value of the stocks of the Company as at the close of business on the Completion Date. In the event that the result of such stocktake are not agreed between the Vendors' Representative and the Purchaser within 10 Business Days immediately after Completion either the Vendors' Representative or the Purchaser shall be entitled to refer the item(s) in dispute to the Expert for determination. The Vendors' Representative shall procure that a draft of the Profit and Loss Account and the Completion Balance Sheet shall be prepared and delivered to the Purchaser as soon as reasonably practicable after Completion but, in any event, within 30 Business Days following the Completion Date. For this purpose, the Purchaser shall procure that such person as is nominated by the Vendors' Representative is afforded such access to the Company's premises, employees and the accounting information as is reasonably necessary for the preparation of the draft Profit and Loss Account and Completion Balance Sheet.

4.2.3 The Purchaser shall have 30 Business Days following its receipt of the draft Profit and Loss Account and the Completion Balance Sheet from the Vendors' Representative in which to review the same. Throughout that period, the Vendors' Representative shall be entitled to make adjustments to the draft Profit and Loss Account and the Completion Balance Sheet and shall make available to the Purchaser (and, where applicable, procure the availability of) all working papers relative to the draft Profit and Loss Account and the Completion Balance Sheet.

4.2.4 Within 10 Business Days after the expiry of the period of 30 Business Days referred to in clause 4.2.3, the Vendors' Representative and the Purchaser shall procure that a joint statement shall be prepared and signed by each of them evidencing their approval of the form and content of the Profit and Loss Account and the Completion Balance Sheet and such statement shall be final and binding on each of the parties hereto.

4.2.5 In the event of the draft Profit and Loss Account and the Completion Balance Sheet not being prepared and sent to the Purchaser in accordance with clause 4.2.2 or in the event of the joint statement referred to in clause 4.2.4 not being prepared and signed by the Vendors' Representative and the Purchaser within the period referred to

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in that clause, each of the Vendors' Representative and the Purchaser shall have the right to request an Expert to resolve any matter in dispute and finalise the form and content of the Profit and Loss Account and the Completion Balance Sheet.

4.2.6 Each Vendor undertakes to the Purchaser that, in the event of the Completion Balance Sheet disclosing, after deducting an amount equal to the Business Profits, the Company has Net Assets at Completion that are less than the Target Net Assets, he shall pay to the Purchaser his Relevant Proportion of an amount equal to the shortfall between the amount of the Net Assets at Completion and the Target Net Assets ("**the Net Asset Shortfall Proportion**") such sum to be satisfied:-

- (a) firstly, by deduction of a sum equal to the Vendor's Net Asset Shortfall Proportion from any sum due to him in respect of the Business Profits pursuant to clause 4.1.3;
- (b) secondly, (to the extent that the full amount of the Vendor's Net Asset Shortfall Proportion is not satisfied by deduction pursuant to (a) above) by deduction from any sum outstanding under any Loan Notes issued to the Vendor; and
- (c) thirdly, (to the extent that the full amount of the Vendor's Net Asset Shortfall Proportion is not capable of being satisfied by deduction pursuant to (a) and (b) above) by the Vendor paying to the Purchaser by cheque within 10 Business Days following the Finalisation Date, a sum equal to the Vendor's Net Asset Shortfall Proportion less the aggregate amounts deducted under (a) and (b) above.

For the avoidance of doubt, if the amount of the Net Assets at Completion is a negative amount (ie the Company has net liabilities as at the Completion Date) then, for the purposes of this clause, the shortfall between the Net Assets at Completion and the Target Net Assets shall be a sum equal to (i) the amount of such net liabilities plus (ii) £297,636.

4.2.7 If any matter is referred to an Expert pursuant hereto, the parties undertake to cooperate fully and timeously with such Expert and to provide the Expert with all information which he may require. The decision of such Expert (including his determination as to liability for costs) shall be final and binding on the parties.

4.3.1 The Purchaser shall procure that the Company uses all reasonable endeavors to collect all book debts of the Company contained in the Completion Balance Sheet within 5 months of Completion provided that the Purchaser and/or the Company shall not be obliged to take such actions that would have a materially adverse effect on the business or goodwill of the Company.

4.3.2 If any of the book debts contained in the Completion Balance Sheet remain unpaid at the end of such 5 month period ("**the Unpaid Book Debts**"), each Vendor undertakes that he shall on request by the Purchaser and provided that the Purchaser has complied with its obligations under Clause 4.3.1 pay to the Purchaser his Relevant Proportion of the Unpaid Book Debts such sum to be satisfied:-

(a) firstly, by deduction from any sum outstanding under any Loan Notes issued to the Vendor; and

(b) secondly, to the extent that the full amount of the unpaid Book Debts as requested by the Purchaser is not capable of being satisfied by deduction pursuant to (a) above by the Vendor paying to the Purchaser by cheque within 10 Business Days of request a sum equal to his Relevant Proportion of the Unpaid Book Debts as requested by the Purchaser less the amount (if any) deducted under (a) above.

For the avoidance of doubt the Vendors shall have no liability in terms of this Clause 4.3.2 for any losses incurred as a result of exchange rate fluctuations following Completion or bank charges incurred by the Company in respect of non-Sterling debts.

- 4.3.3 If full payment has been made by each of the Vendors in respect of the Unpaid Book Debts, in accordance with clause 4.3.2, the Purchaser shall procure (but only to the extent that it is lawful to do so) that the Company assigns such Unpaid Book Debts to the Vendors or their nominee. Following any such assignment, the Vendors or their nominee shall be free to use such means as they consider appropriate to recover such Unpaid Book Debts.
- 4.3.4 Part 6 of the Schedule contains a Worked Completion Example which all parties agree would have been the relevant accounting had the acquisition completed on 30 September 2003.

5. COMPLETION

5.1 Completion shall take place at the offices of the Purchaser's Solicitors on the Completion Date.

5.2 At Completion:-

5.2.1 The Vendors shall deliver or procure the delivery to the Purchaser of:-

- (a) in respect of the Contract Shares, transfers duly executed by the registered holders thereof in favour of the Purchaser and/or its nominee together with any powers of attorney pursuant to which any such transfers have been executed;
- (b) all certificates and other documents necessary to substantiate the right of the transferors of the Contract Shares pursuant to this agreement to transfer the same;
- (c) the statutory books and common seal of the Company (if any) and the lease and all ancillary documentation relating to the Property;
- (d) in respect of any floating charges granted by the Company a discharge, in Agreed Form and a form 419a in respect of such floating charge duly signed by an officer of the holder of the floating charge and on behalf of the Company by a duly authorised officer.
- (e) a letter, in the Agreed Form, from SCL and each of the Vendors addressed to the Company, confirming that neither he nor any of his Associates owes any sum of money or any other obligation to the Company nor does the Company owe any sum of money or any other obligation to him or any of his Associates;
- (f) a release of each guarantee and indemnity given by the Company in respect of the obligations of SCL, a Vendor and/or his Associates including for the avoidance of doubt any bank guarantees given by the Company in respect of the obligations of SCL and SCFL;
- (g) the Compromise Agreement duly signed by Malcolm McNab and SCL and the Service Agreement duly signed by Malcolm McNab;
- (h) a certified copy of all documents relating to the Reorganisation including, without prejudice, to the foregoing generality, consents and releases from any person holding a charge over the assets of SCL.
- (i) an executed letter, in the Agreed Form, to the Office for Harmonization in the Internal Market in respect of the transfer of Community Trade Mark Application No. 2256949.

- (j) an executed Form TM16, in the Agreed Form, in respect of Application 2267494 in respect of Class 09: Incubators for use as laboratory apparatus.

5.2.2 The Vendors shall procure that a meeting of the Directors shall be held and that at such meeting:-

- (a) the transfers in respect of the Contract Shares will be approved by the Directors for registration, without fee, subject only to being duly stamped;
- (b) the secretary of the Company and each of the Directors shall resign from office as such and from all other offices and employments which he may have with the Company (in each case, with effect from the conclusion of the meeting) and shall each deliver a letter of resignation and, where appropriate, compromise agreement (in each case, in the Agreed Form) to the Company;
- (c) such persons as shall be nominated by the Purchaser will be appointed as secretary and additional directors of the Company (in each case, with immediate effect);
- (d) the Service Agreement will be approved for execution by the Company.
- (e) the Freeman Service Contract will be approved for execution by the Company;

5.2.3 The Company and Mark Freeman will execute the Freeman Service Agreement.

5.2.4 The Tax Covenant will be executed by the Warrantors and delivered to the Purchaser.

- 5.2.5
- (a) At Completion, the Vendors shall procure that SCL shall give vacant possession of the Property to the Company;
 - (b) At Completion, the Vendors shall procure that SCL shall deliver a valid assignment (in the Agreed Form) of the Property in favour of the Company ("**the Assignment**") duly executed by SCL;
 - (c) At Completion, the Vendors shall procure that SCL shall deliver a letter of non-crystallisation releasing the Property from the debenture granted by SCL in favour of National Westminster Bank plc and dated 9 June 1986;
 - (d) At or prior to Completion the Vendors shall deliver a certified copy of the Landlord's solicitors' formal letter of consent to the Assignment (in the Agreed Form) and a certified copy of the Vendors' Solicitors' valid formal acceptance letter to the Landlord's solicitors' formal letter of consent on behalf of SCL ("**the Missives for the Landlord's Consent**");
 - (e) The Vendors shall provide the Purchaser's Solicitors with a copy of the Assignment following execution by the Landlord and of details of when the Landlord executed the Assignment within one week of the Vendors' Solicitors receiving the Assignment executed by the Landlord;
 - (f) The Vendors shall register the Assignment in the Books of Council and Session following execution of the Assignment by the Landlord and shall provide the Purchaser's Solicitors with one extract;
 - (g) The Purchaser's Solicitors on behalf of the Company and the Guarantor shall issue a letter accepting the terms of the Landlord's formal letter of consent to the Assignment within three days of receipt of a certified copy of the Missives for the Landlord's Consent;
 - (h) The Company and the Guarantor shall duly execute and return the

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Assignment to the Vendors' Solicitors within three weeks of the Purchaser's Solicitors receiving the Assignment duly executed by SCL.

5.2.6 Subject to the implementation of the foregoing, the Purchaser shall:-

- (a) at Completion pay to the Vendors (by telegraphic transfer to the Vendors' Solicitors account with Royal Bank of Scotland Plc, sort code 83-44-00, account number 00120272) the sum of £821,927, pursuant to clause 4.1.1 (whose receipt thereof shall be a discharge of the Purchaser's obligations in respect thereof and the Purchaser having no concern for any payment thereof to the Vendors);
- (b) procure that at Completion, the Company pays to the Vendors' Solicitors account specified above an amount equal to the SCFL Debt in repayment of the SCFL Debt;
- (c) the Purchaser shall create the Loan Notes, procure the guarantee of New Brunswick Scientific Co, Inc. in respect of the Loan Notes, issue the Loan Notes in the Relevant Proportions to the Vendors and deliver certificates in respect thereof to the Vendors' Solicitors;

5.3 The Vendors shall execute all such other documents and, at the Purchaser's expense, do all such other acts and things as the Purchaser shall reasonably require in order to perfect the right, title and interest of the Purchaser and/or its nominee in and to the Contract Shares and to procure the registration of the Purchaser and/or its nominee as the registered holder of the Contract Shares.

6. POST COMPLETION MATTERS

6.1 Each of the Vendors hereby irrevocably declares and agrees that for as long as he or she remains the registered holder of any of the Contract Shares after Completion he or she will:-

- (a) hold such Contract Shares and the dividends and any other moneys paid or distributed in respect of them after Completion and all rights arising out of or in connection with them in trust for the Purchaser; and
- (b) deal with such Contract Shares and all such dividends, distributions and rights as the Purchaser may direct for the period between Completion and the day on which the Purchaser is entered in the register of members of the Company as the holder of such Contract Shares.

6.2 Each of the Vendors hereby irrevocably appoints the Purchaser as his or her true and lawful attorney with the power in respect of the Contract Shares to attend and vote, in person or by proxy, at any meeting of the Company, to exercise all voting and other rights attached to the Contract Shares and to sign any consent to short notice, form of proxy or written resolution of the shareholders of the Company pending registration of transfers of the Contract Shares in favour of the Purchaser.

6.3 For the purpose of clause 6.2, each of the Vendors hereby authorises:-

- (a) the Company to send any notices in respect of their shareholdings to the Purchaser;
- (b) the Purchaser to complete and return proxy cards, consents to short notice and any other document required to be signed by such Vendor as a member.

7. WARRANTIES

7.1 Each of the Vendors severally represents and warrants to the Purchaser in the terms set out in the Title and Capacity Warranties. The Warrantors jointly and severally represent and warrant (save as fully and fairly disclosed in the Disclosure Letter) to the Purchaser in the terms set out in Parts 3A and 3B of the Schedule.

7.2 In determining the damages arising as a result of any of the Warranties relative to pensions

being untrue and/or misleading, the Company shall be deemed to be under a liability to:-

- 7.2.1 provide any benefits of a kind referred to in those Warranties which were provided prior to Completion or which were proposed prior to Completion;
 - 7.2.2 procure the provision of benefits (without any reduction) which were payable at Completion (whether immediately, prospectively or contingently) under any scheme and/or any other arrangement of a kind described in those Warranties; and
 - 7.2.3 maintain any discretionary practices of a kind referred to in those Warranties which were carried on prior to Completion.
- 7.3 The rights of the Purchaser in respect of a breach of the Warranties shall not be affected by:-
- 7.3.1 Completion;
 - 7.3.2 any investigation made by the Purchaser into the Company prior to Completion; or
 - 7.3.3 other than as contained in the Disclosure Letter, any other information disclosed to, or the actual or constructive knowledge of, the Purchaser prior to Completion.
- 7.4 Each of the Warrantors waives any rights or claims he may have in respect of any misrepresentation, inaccuracy, omission in or from any information or advice supplied or given by the Company or any of the Employees in connection with giving the Warranties and the preparation of the Disclosure Letter.
- 7.5 Without prejudice to the other rights and remedies of the Purchaser under this agreement and notwithstanding that the Warranties are granted by the Warrantors to the Purchaser and the undertakings in the Tax Covenant and clause 10 are undertaken by the Warrantors, all of the Vendors hereby irrevocably undertake and agree with the Purchaser and each of the other Vendors and the Warrantors to the intent of allowing the Purchaser to make recovery from the Vendors pursuant to a breach of the Warranties or in respect of a claim under the Tax Covenant or clause 10 as if the Vendors were Warrantors and had granted the Warranties and the undertakings in the Tax Covenant and clause 10 as follows:-
- 7.5.1 if prior to a date on which any element of the Deferred Consideration is due to be paid the Purchaser shall have notified the Warrantors in writing of any claim or claims under the Warranties or the Tax Covenant or under Clause 10 ("**a Claim**") and such Claim shall have been agreed by the Warrantors or determined by a court of competent jurisdiction and the time limit for appeal having expired or final appellate judgement having been given in respect of the Claim from which there is no right of appeal or in respect of which determination the Warrantors have indicated that they do not intend to appeal then such amount as agreed or determined ("**the Determined Amount**") shall, notwithstanding any contrary provision in the terms of the Loan Notes, be deducted from the Deferred Consideration;
 - 7.5.2 if prior to a date on which any element of the Deferred Consideration is due to be paid the Purchaser shall have notified the Warrantors in writing of a Claim to which the provisions of Clause 7.5.1 do not apply then the following provisions shall apply:-
 - 7.5.2.1 if the Claim is supported by the opinion of a QC with more than 10 years experience of commercial matters stating that he considers the Claim to have a reasonable prospect of succeeding and the amount thereof to be reasonable then the amount thereof ("**the Withheld Amount**") may be withheld from the Deferred Consideration pending resolution of the Claim;
 - 7.5.2.2 unless the Claim (other than a claim under the Tax Covenant) shall have been agreed by the Warrantors or (if the Claim is not in respect of a contingent liability) proceedings in respect thereof shall have been instituted in a competent Court within 9 months of the date of intimation of the Claim, the Withheld Amount shall (if it has otherwise become due in terms of the relevant Loan Notes) forthwith be paid to the Vendors;

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- 7.5.2.3 where the claim is under the Tax Covenant, unless that claim shall have been agreed by the Warrantors or (if the claim under the Tax Covenant is not in respect of a contingent liability) proceedings in respect thereof shall have been instituted in a competent Court within 9 months of the date of the last action taken by the Warrantors pursuant to clause 4 of the Tax Covenant, the Withheld Amount shall (if it has otherwise become due in terms of the relevant Loan Notes) forthwith be paid to the Vendors;
- 7.5.2.4 once the Claim shall have been agreed by the Warrantors or determined by a Court of competent jurisdiction and the time limit for appeal having expired or final appellate judgement having been given in respect of the Claim from which there is no right of appeal or in respect of which determination the Warrantors have indicated that they do not intend to appeal then such amount as agreed or determined ("the **Determined Amount**") shall be deducted from any Deferred Consideration which has not yet been paid to the Vendors provided that, for the avoidance of doubt, if a Withheld Amount remains withheld from the Deferred Consideration in respect of the relevant Claim and such Withheld Amount exceeds the Determined Amount, an amount of the Deferred Consideration equal to such excess shall (if it has otherwise become due in terms of the relevant Loan Notes) be paid to the Vendors.
- 7.6 For the avoidance of doubt, to the extent that a claim by the Purchaser pursuant to the Warranties or under the Tax Covenant or Clause 10 is not satisfied by the deduction from the Deferred Consideration provided for in clause 7.5, the Warrantors shall remain liable to the Purchaser in respect thereof.
- 7.7 Notwithstanding any provision of the Loan Notes to the contrary, the Purchaser shall not be obliged to pay interest on the amount of any Withheld Amount to the extent that such Withheld Amount becomes a Determined Amount but shall otherwise be obliged to pay interest at 2% per annum above the lower of (a) the base lending rate from time to time of the Governor and Company of the Bank of Scotland and (b) 6% per annum, and that from the date on which the Withheld Amount is withheld until the date on which it is released.
- 7.8 Any sum withheld or deducted from the Deferred Consideration pursuant to clause 7.5 shall be withheld or deducted from the Deferred Consideration payable to each Vendor in accordance with his Relevant Proportion.

8. LIMITATION OF LIABILITY

- 8.1 The provisions of Part 4A and Part 4B of the Schedule shall apply, respectively, to the liability of the Warrantors under:-
- 8.1.1 the Warranties (other than the Title and Capacity Warranties) and the Tax Covenant; and
- 8.1.2 the General Warranties (other than the Title and Capacity Warranties).
- 8.2 Without prejudice to clause 8.1, the parties acknowledge that the provisions of the Tax Covenant will regulate the liability of the Warrantors thereunder and that the provisions of the Tax Covenant will regulate their liability under the Tax Warranties.
- 8.3 The provisions of Part 4A and Part 4B of the Schedule shall not apply respectively, to the liability of the Vendors in respect of the Title and Capacity Warranties.

9. UNDERTAKINGS BY THE VENDORS

- 9.1 Each of the Vendors undertakes to the Purchaser:-
- 9.1.1 that neither he nor any Associate shall at any time after the Completion Date, make use of or disclose to any other person (save in compliance with the terms of the Service Agreement or as required by law and then subject to clause 9.3) any Confidential Information which has:-

- (a) not come into the public domain; or
 - (b) come into the public domain as a consequence, whether directly or indirectly, of a breach of this clause 9.1.1;
- 9.1.2 that for 2 years from the Completion Date, neither he nor any other party which he controls (within the meaning of TA 1988 Section 840) shall solicit or be involved in soliciting the employment of any Employee, by any company, firm or person which is in competition with any business of the Company (or, in the event that any part of the business of the Company is transferred to a member of the Purchaser Group, such business of that member);
- 9.1.3 that for 2 years from the Completion Date, neither he nor any other party which he controls (within the meaning of TA 1988 Section 840) shall induce or be involved in attempting to induce any of the suppliers or other persons having dealings with the Company or SCL (in relation to the Business) at any time in the 12 months preceding the Completion Date to cease to be suppliers to the Purchaser Group or to have such dealings with the Purchaser Group;
- 9.1.4 that for 2 years from the Completion Date, neither he nor any other party which he controls (within the meaning of TA 1988 Section 840) shall solicit or be involved in soliciting, in competition with the business of the Company (or, in the event that any part of the business of the Company is transferred to a member of the Purchaser Group, such business of that member), custom from any person who has been a customer of the Company or SCL (in relation to the Business) at any time in the 12 months preceding the Completion Date;
- 9.1.5 that for 2 years from the Completion Date, neither he nor any other party which he controls (within the meaning of TA 1988 Section 840) shall be interested or concerned in any business of the same nature as that carried on by the Company at the Completion Date; or
- 9.1.6 that at any time hereafter, neither he nor any other party which he controls (within the meaning of TA 1988 Section 840) shall use or, insofar as they can reasonably do so, allow to be used any trade or business name used by the Company at the Completion Date or any other name intended to be or likely to be confused therewith.
- 9.2 For the purpose of clause 9.1.5, there shall be disregarded the financial interest of any person in a class of securities which is listed on a recognised investment exchange (as defined in FSMA 2000) if that interest, together with that of his Associates, is less than 5 per cent of that class in aggregate.
- 9.3 If any of the Vendors are required by law to disclose any Confidential Information, they shall not do so until they shall first have notified the Purchaser in writing of such requirement and shall have given the Purchaser the opportunity of taking such action as the Purchaser may deem necessary to procure that the Confidential Information is not disclosed.
- 9.4 It is expressly agreed by the parties hereto that each of the undertakings and covenants contained in clause 9.1 shall be construed as a separate and distinct covenant.
- 9.5 The undertakings given in clause 9.1 are considered by the parties to be fair and reasonable in all the circumstances but, in the event that any one or more of such undertakings is found to be unenforceable but would be enforceable if some part thereof were deleted or the period or area of application reduced, such undertaking shall apply with such modifications as may be necessary to make it valid and effective.
- 10. SPECIFIC INDEMNITIES**
- 10.1 The Warrantors hereby covenant with and undertake to pay to the Purchaser, on demand, an amount equal to any losses, charges, costs, actions, awards, penalties, fines, proceedings, claims, demands, liabilities and expenses (including, without limitation to the foregoing generality, legal expenses on a full indemnity basis) which the Company and/or the Purchaser may suffer, sustain, incur, pay or be put to by reason of or on account of or arising from any

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claim or other legal recourse relating, directly or indirectly, to the following:-

- 10.1.1 in respect of the period ending on the Completion Date, any failure to comply with the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 1981 as amended in respect of any aspect of the Reorganisation or any prior transfer of the employment of any person from or to SCL;
- 10.1.2 any and all claims of infringement of Intellectual Property Rights attaching (or otherwise associated with) the Software which arise directly or indirectly as a result of:-
 - 10.1.2.1 the absence of or inadequacy of a valid licence to use the Software at any time prior to the Completion Date;
 - 10.1.2.2 the absence of a valid licence to use the Software at any time after the Completion Date in circumstances amounting to a breach of paragraph 23.7 of Part 3A of the Schedule; and
 - 10.1.2.3 in circumstances where a licence to use the Software is in place as at the Completion Date, the inadequacy of such a licence.
- 10.1.3 any claims or demands by any employee of the Company or by any employee who should have or is deemed to have transferred to the Company as a result of the Reorganisation whether arising either under statute or at common law or otherwise, including any claim which such employee may bring at an employment tribunal or court, and, without limitation, claims for redundancy pay, unfair dismissal, constructive dismissal, wrongful dismissal, unlawful deductions from wages, breach of contract, sex discrimination, disability discrimination or race discrimination, equal pay, any claim in delict, tort or otherwise (in all cases whether arising under UK law or European law) arising from any act, fault or omission of the Company and/or SCL in relation to such employee on or before the Completion Date.
- 10.2 The Warrantors hereby covenant with and undertake to indemnify and keep indemnified the Purchaser and/or the Company on demand in respect of any losses, charges, costs, actions, awards, penalties, fines, proceedings, claims, demands, liabilities and/or expenses which the Purchaser and/or the Company may suffer, sustain, incur, pay or be put to by reason or on account of or arising from any claim or other legal recourse by any agent or contractor of the Company which arise from any act, fault or omission of the Company prior to the Completion Date.
 - 10.4.1 The Warrantors confirm and warrant to the Purchaser that there has not at any time (other than as effected by the Reorganisation) been a transfer by or on behalf of SCL of the biotechnology business carried on by it prior to the Reorganisation under the name "RS Biotech Laboratory Equipment" and/or the assets used in such business (or any substantial part of such business or assets) to any person whatsoever.
 - 10.4.2 The Warrantors covenant with and undertake to indemnify and keep indemnified the Purchaser, on demand, from and against any losses, charges, costs, actions, awards, penalties, fines, proceedings, claims, demands, liabilities and expenses (including, without limitation to the foregoing generality, legal expenses on a full indemnity basis) which the Company and/or the Purchaser may suffer, sustain, incur, pay or be put to by reason of or on account of or arising from any claim or other legal recourse relating, directly or indirectly, to any breach of the terms of clause 10.4.1.
- 10.5.1 The Warrantors hereby covenant and undertake to pay to the Company, or at the direction of the Company or any other company that is associated (within the meaning of either ITEPA 2003 or TA 1988) with the Company from time to time that employs either of the Warrantors or makes any payment or provides any benefit that is treated as income of the Warrantors (each an "employing company") on demand an amount equal to all taxes and social security contributions (including UK income tax and national insurance contributions) and any related penalties or interest for which an employing company is required to account in connection with the acquisition or

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disposal of any Loan Notes issued to either or both of the Warrantors or the occurrence of any chargeable event (as defined in section 427(3) of the Income Tax (Earnings and Pensions) Act 2003) in relation to such Loan Notes.

10.5.2 If any payment required to be made by either of the Warrantors pursuant to the covenant in Clause 10.5.1 is not made within the period specified in section 222(1)(c) of the Income Tax (Earnings and Pensions) Act 2003, the relevant Warrantor shall, in addition, pay an amount equal to all taxes and social security contributions (including UK income tax and national insurance contributions) and any related penalties or interest for which any employing company is required to account as a result of any amount of tax being treated as earnings from an employment of that Warrantor whether pursuant to section 222 of the Income Tax (Earnings and Pensions) Act 2003 or otherwise.

10.6 For the avoidance of doubt, for the purposes of this clause 10, the Purchaser contracts both for itself and as trustee for the Company.

10.7 In respect of any claim under this clause 10, the Purchaser and/or the Company as appropriate shall have a duty to mitigate its loss.

11. TIME OF THE ESSENCE

Time is of the essence as regards any date or period mentioned in this agreement.

12. EXPENSES

Each of the Vendors and the Purchaser shall meet his own costs, charges and expenses in connection with the negotiation, preparation, execution and completion of this agreement.

13. ANNOUNCEMENTS

13.1 Subject to clause 13.2 and other than as required by law or by any competent regulatory body, no announcement or press or other media release regarding the sale and purchase of the Contract Shares may be made unless the form and content thereof is agreed by all the parties.

13.2 Following Completion, the Purchaser shall be entitled to issue notification, in the Agreed Form, of the sale and purchase of the Contract Shares to all employees, customers, suppliers and other persons having dealings with the Company.

14. ASSIGNATION

14.1 The Purchaser shall be entitled to assign the whole or any part of its right, title and interest in and to this agreement to any member of the Purchaser Group but not otherwise.

14.2 The Vendors shall not be entitled to assign their rights or obligations under this agreement.

15. NOTICES

15.1 Any notice required to be given by any party hereto to any other shall be deemed validly served if served by:-

15.1.1 prepaid registered letter post addressed as set out in clause 15.2 or to such other address in the United Kingdom as may, from time to time, be notified in writing to all the other parties for this purpose or, if the Purchaser so elects in respect of a notice to be served by it, to the offices of the Vendors' Solicitors;

15.1.2 personal delivery by hand to such address; or

15.1.3 by facsimile to the number of the recipient set out in clause 15.2 or such other number as may, from time to time, be notified in writing to all other parties for this purpose [or, if the Purchaser so elects in respect of a notice to be served by it, to the number of the

offices of the Vendors' Solicitors;

and any notice so served shall be deemed to have been served:-

- (a) in the case of 15.1.1, two Business Days after posting the same;
- (b) in the case of 15.1.2, upon delivery; and
- (c) in the case of 15.1.3, two hours after it is sent (if sent before 3.00 p.m. on a Business Day) or 10.00 a.m. on the following Business Day in any other case.

In proving service, it shall be sufficient to prove that the notice was properly addressed and posted or that delivery took place or that the facsimile message was addressed to the recipient's facsimile number and was properly transmitted (as the case may be).

- 15.2 Any notice posted, delivered or sent by facsimile in accordance with clause 15.1 shall be addressed as follows:-

15.2.1 to the Vendors:-

Biggart Baillie
Dalmore House
310 St Vincent Street, Glasgow, G2 5QR
Facsimile no.:00 44 141 228 8310
and marked for the attention of David Allan

15.2.2 to the Purchaser:

New Brunswick Scientific Co Inc
44 Talmadge Road
Edison
New Jersey
USA 08817

Facsimile no.: 001 732 287 5566
and marked for the attention of Jim Orcutt and Sam Eichenbaum.

16. GENERAL

- 16.1 Insofar as not implemented on the Completion Date, this agreement shall remain in full force and effect.
- 16.2 Neither this agreement nor any documents referred to herein shall be capable of variation unless such variation shall be made in writing and be signed by each of the parties.
- 16.3 No waiver by any party of any of the requirements hereof or of any of his rights hereunder shall be effective unless given in writing and signed by or on behalf of that party and no forbearance, delay or indulgence by any party in enforcing the provisions of this agreement shall prejudice or restrict the rights of that party nor shall any waiver by any party of any of the requirements hereof or any of his rights hereunder release the other(s) from full performance of their obligations stated herein.
- 16.4 The Purchaser may release or compromise the liability of any of the Vendors under this agreement or grant to any Vendor time or other indulgence without affecting the liability of any other Vendor hereunder.
- 16.5 The rights and remedies provided in this agreement are cumulative and not exclusive of any rights or remedies otherwise provided by law.
- 16.6 Each provision of this agreement shall be construed separately and (save as otherwise expressly provided herein) none of the provisions hereof shall limit or govern the extent, application or construction of any other of them and, notwithstanding that any provision of this agreement may prove to be unenforceable, the remaining provisions of this agreement shall

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continue in full force and effect.90

16.7 This agreement and any document referred to as being in the Agreed Form constitute the entire agreement among the parties and supersede any previous agreement among the parties.

16.8 In the event of default by any party in paying any monies due under this agreement, the defaulting party shall pay interest thereon at the rate of 3% per annum above the base rate for the time being of The Governor and Company of the Bank of Scotland and that from the date of default until all such monies (and all interest thereon) have been paid in full.

17. GOVERNING LAW AND SUBMISSION TO JURISDICTION

This agreement shall be construed and receive effect in accordance with the law of Scotland and, in so far as not already subject thereto, the parties hereto submit to the non-exclusive jurisdiction of the Scottish courts.

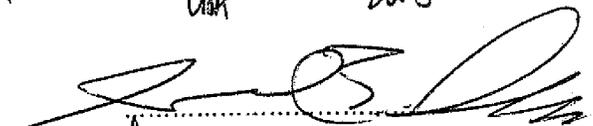
IN WITNESS WHEREOF:

SIGNED on behalf of N.B.S. ULT LIMITED by JAMIE DUNN STAM, at ELIZAVIA, NJ, on 14 November 2003 in the presence of

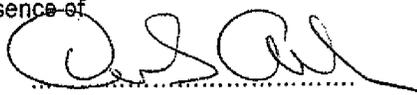
Witness: 

Full Name: Dr. Lee Epstein

Address: 2787 Kennedy Blvd
Tucson City, NJ
07306

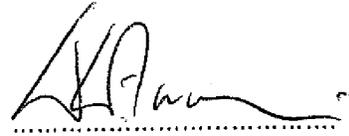

Director

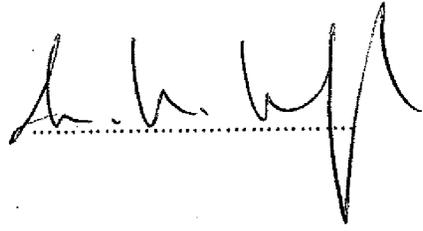
Signed by Edward Elworthy and by Andrew Malcolm McNab for himself and as Attorney for each other Vendor (except Edward Elworthy) all at Glasgow on 14 November 2003 in the presence of

Witness: 

Full Name: Andrew Stewart McNab

Address: 3105 VINEY ST GLASGOW





**This is the schedule referred to in the foregoing Agreement
between the Vendors (as defined herein) Limited and N.B.S. ULT Limited**

SCHEDULE

PART 1

The Vendors

Name & Address	No. of Shares	Class of Shares	Relevant Proportion
Jonathan Joel COHEN AND Eleanor Friedman FRIEDMAN, Baker Bridge Road, Lincoln, United States of America	5106	Ordinary Shares	3.65
EDWARD ELWORTHY, Orchil Den, Braco, Dunblane, Perthshire, FK15 9LF	31906	Ordinary Shares	22.82
HEATHER JEAN ELWORTHY, Orchil Dem, Braco, Dunblane, Perthshire, FK15 9LF	1500	Ordinary Shares	1.07
J James S Samuel B Brown GILLESPIE, 158 Main Street, Stenhousemuir, Larbert, FK5 3JP	6923	Ordinary Shares	4.95
A Alastair B Balfour GOURLAY, 2 Pendley Bridge, Cottages, Tring, Herts	7363	Ordinary Shares	5.27
J Malcolm GOURLAY, 57 Dick Place, Edinburgh, EH9 2JA	7363	Ordinary Shares	5.27
R L GREEN for A Antonia GREEN, Duncrub Park House, Dunning, Perth, PH2 0QR	11053	Ordinary Shares	7.90
R L GREEN for Susannah GREEN, Duncrub Park House, Dunning, Perth, PH2 0QR	11053	Ordinary Shares	7.90

Andrew Malcolm McNab, Kellybank, Dollar, FK14 7PQ	32,941	Ordinary Shares	23.56
Anthony John Rollings, 17 Summerlee Road, Finedon, Northants, NN9 5LJ	5,000	Ordinary Shares	3.57
Eric Strachan Simpson, 6 Briar Road, Alloa, Clackmannanshire, FK10 2HA	7,637	Ordinary Shares	5.46
Andrew Robbie McNab, Kellybank, Dollar, Clackmannanshire, FK14 7PQ	4,000	Ordinary Shares	2.86
Catherine Margaret McNab, Kellybank, Dollar, Clackmannanshire, FK14 7PQ	4,000	Ordinary Shares	2.86
Katrina Frances McNab, Kellybank, Dollar, Clackmannanshire, FK14 7PQ	4,000	Ordinary Shares	2.86

PART 2

The Company

- | | |
|---------------------------------------|---|
| 1. Name: | RS Biotech Laboratory Equipment Limited |
| 2. Date of Incorporation: | 16 October 2003 |
| 3. Former names and dates of Changes: | None |
| 4. Registered Number: | SC257740 |
| 5. Registered Office: | Castle Street, Alloa |
| 6. Authorised Share Capital: | £13,984.50 |
| 7. Issued Share Capital | £13,984.50 |
| 8. Directors: | Edward Elworthy
Andrew Malcolm McNab |
| 9. Secretary: | Edward Elworthy |
| 10. Auditors: | None |
| 11. Charges: | None |

PART 3A

The General Warranties

1. INFORMATION

- 1.1 All information contained in the recitals to this agreement and parts 1,2 and 5 of the Schedule is true, complete and accurate in all material respects.
- 1.2 The print of the memorandum and articles of association of the Company annexed to the Disclosure Letter is accurate and complete in all respects and includes copies of all resolutions and agreements which require to be attached thereto in terms of section 380(2) of the Companies Act.
- 1.3 There is no fact or circumstance relating to the Company known to any of the Warrantors which has not been disclosed in writing to the Purchaser and which, if disclosed, might reasonably have been expected to influence the decision of a purchaser for value to purchase the Contract Shares on the terms contained in the foregoing agreement.

2. THE CONTRACT SHARES

- 2.1 The Contract Shares constitute the whole of the allotted and/or issued share capital of the Company.
- 2.2 There is no subsisting right to acquire nor any security or encumbrance on, over or affecting, any share or loan capital of the Company, there is no commitment to give or create any of the foregoing and no claim has been made by any person to be entitled to any of the foregoing.
- 2.3 The Vendors are entitled to sell and transfer the full legal and beneficial ownership in the Contract Shares to the Purchaser on the terms set out in this agreement.

3. SUBSIDIARIES

- 3.1 The Company has not at any time had any subsidiaries or subsidiary undertakings and the Company has not at any time been a subsidiary or subsidiary undertaking of another body corporate.
- 3.2 The Company does not hold or own any share or other capital (and is not otherwise a member) of any company or corporation and is not a member of any partnership or unincorporated company or association.

4. CONTRACTS AND LIABILITIES

- 4.1 There are contained in the Disclosure Letter, complete and accurate details of the following:-
- (a) every contract to which the Company or SCL (in relation to the Business) is a party falling within any of the following descriptions and which is in force or outstanding in any respect, namely:-
- (i) contracts (other than contracts which are terminable without notice or penalty) of an unexpired duration as at the Completion Date of six months or more (other than usual contracts for the supply of electricity, gas, water, telephone, telex and similar services);
 - (ii) contracts entered into otherwise than in the ordinary course of trading;
 - (iii) service contracts for any officers or Employees;
 - (iv) contracts with agents or distributors;
 - (v) contracts which are unusual having regard to the normal course of business of the Company or the Business;

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- (vi) contracts which are material (being contracts with an unfulfilled liability greater than £5,000) and which ought reasonably to be brought to the notice of the Purchaser in order that it may properly assess the trading and financial prospects of the Company or the Business;
 - (vii) contracts with any of the Vendors and/or an Associate of a Vendor;
 - (viii) hire, hire-purchase, lease and similar agreements;
- (b) every scheme or arrangement to which the Company or SCL (in relation to the Business) is a party providing for pension, death or sickness benefit for any officer or Employee or former officer or employee;
 - (c) every pension or superannuation or like payment (whether gratuitous or otherwise) which the Company or SCL in relation to the Business has made in the 12 months prior to Completion to an Employee or ex-employee or his dependants not being a payment under any scheme or arrangement referred to in (b) above;
 - (d) every contract or arrangement to which the Company or SCL (in relation to the Business) is a party with any trade union or staff association;
 - (e) the position in relation to taxation returns of the Company (including all outstanding disputes with the Inland Revenue);
 - (f) each outstanding guarantee (if any) granted by the Company in respect of the obligations of a third party;
 - (g) each outstanding guarantee (if any) granted by a third party in respect of the obligations of the Company.
- 4.2 The Company or SCL (in relation to the Business) is not in breach of any contract to which it is a party, no claim to that effect has been received by the Company or SCL (in relation to the Business) and the Warrantors are not aware of any subsisting circumstances which may give rise to any such claim.
- 4.3 The Company or SCL (in relation to the Business) is not under any obligation which cannot readily be fulfilled or performed by it on time and without undue or unusual expenditure of money or effort.
- 4.4 The Company or SCL (in relation to the Business) has not given any guarantee or warranty or made any representation in respect of services, articles or trading stock sold, hired or leased or contracted to be sold, hired or leased by it save for any guarantee or warranty implied by law and (save as aforesaid) has not accepted any liability or obligation to service, repair, maintain, take back or otherwise do or not do anything in respect of any services, articles or stock that would apply after such services, articles or stock had been delivered by it.
- 4.5 So far as the Warrantors are aware, none of the activities, contracts or acts of the Company or SCL (in relation to the Business) is or has been in breach of any contract or obligation and all documents in the enforcement of which the Company or SCL (in relation to the Business) may be interested are valid.
- 4.6 The Company is not a party to any arrangement or agreement which is, by reason of any change in the ownership or beneficial ownership of the Contract Shares (or any of them), either to be:-
- (a) terminated or to become terminable by any party on a date earlier or later than it would, but for such change, be liable to be terminated; or
 - (b) subject to any change in the applicable terms thereof.
- 4.7 The Company has not given any power of attorney or any other authority (express, implied or ostensible) which is still effective to any person to enter into any contract or commitment or do

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anything on its behalf (other than any authority of Employees to enter into routine trading contracts in the normal course of their duties).

4.8 So far as the Warrantors are aware, no event has occurred which would entitle a third party to:-

- (a) terminate an outstanding contract with the Company or SCL (in relation to the Business); or
- (b) enforce a change in the terms applicable to such a contract.

5. ACCOUNTS

5.1 The Accounts –

- (a) have been prepared in accordance with the requirements of the relevant statutes and in accordance with all statements of standard accounting practice, financial reporting standards and generally accepted accounting principles in the United Kingdom;
- (b) show a true and fair view of the financial position and of the assets, liabilities and of the state of affairs of SCL as at the Accounts Date and of its profits and losses for the financial period ended on such date; and
- (c) are not affected by any material unusual or non-recurring items.

5.2 Proper and consistent records of SCL (in relation to the Business) and the Company have been kept in accordance with law and all such records are up to date in all material respects and in the possession of the Company.

5.3 No changes in SCL's accounting policies or in the method of application of those policies or in the bases of accounting have been made during the 3 financial periods ended on the Accounts Date and no changes in SCL's accounting policies or in the method of application of those policies or in the bases of accounting have been made since the Accounts Date.

6. PERIOD SINCE THE ACCOUNTS DATE

During the period from and including the Accounts Date until Completion:-

- (a) no distribution by way of dividend, bonus or otherwise on the issued share capital of the Company has been made;
- (b) no loan capital has been created or issued by the Company;
- (c) the Business has been carried on in the ordinary and usual course without any material change;
- (d) there has been no adverse change in the financial or trading position of the Business;
- (e) no remuneration (including bonuses, contributions to a pension scheme and/or other benefits) has been paid or has become payable by the Company or SCL (in relation to the Business) to the Directors or Employees or former employees in respect of such period at a rate in excess of the rates reflected in the Accounts;
- (f) neither SCL (in relation to the Business) nor the Company has incurred capital expenditure in excess of £5,000 in aggregate;
- (g) neither SCL (in relation to the Business) nor the Company has terminated any distributorship or agency agreement;
- (h) no litigation, arbitration or employee-related claim involving the Company or the Business has been settled;
- (i) SCL (in relation to the Business) and the Company has paid its creditors within the

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terms agreed with them;

- (j) no pension scheme refunds have been paid or become payable to the Company and no assets have been transferred from a pension scheme to the Company;
- (k) SCL (in relation to the Business) and the Company have not made any offer of employment to any third party which is outstanding;
- (l) save in so far as specific provision was made in the Accounts, the book debts and stock and work-in-progress of SCL (in relation to the Business) as at the Accounts Date have realised their full value;
- (m) the Company has not entered into a contract with any of the Vendors and/or an Associate of a Vendor.

7. MANAGEMENT ACCOUNTS

The Management Accounts have been prepared with due diligence and on a basis consistent with the Accounts and accurately take into account all assets and liabilities of the Business as at the date thereof.

8. ASSETS

- 8.1 The list of assets set out in the Disclosure Letter discloses all the fixed and loose plant, machinery, equipment, furniture and other tangible assets owned or (in respect of those assets detailed in the Disclosure Letter as being subject to hire, hire-purchase, lease or similar arrangement) used by the Company in connection with its business. Other than as so disclosed, the Company owns all the tangible assets employed in its business there is no security (or agreement to create the same) on the undertaking, property or assets of the Company or any part thereof.
- 8.2 So far as the Warrantors are aware, all fixed and loose plant, machinery and equipment used by the Company or on its premises is in full working order, conforms to all applicable government safety regulations and requirements and is, having due regard to its age and use, in good condition.
- 8.3 The assets listed in the Disclosure Letter comprise all the tangible assets which are required for the continuation of the Company's business in its present form.
- 8.4 The transfer to the Company of the biotechnology business carried on by SCL prior to the Reorganisation under the name "RS Biotech Laboratory Equipment" and the assets used in such business has been validly effected by the Reorganisation and the Company continues to carry on such business as at Completion.

9. INSURANCES

- 9.1 The schedule of insurances appended to the Disclosure Letter discloses all insurances effected by the Company and in force at the Completion Date.
- 9.2 All insurances effected by the Company are in full force and effect.
- 9.3 All assets of the Company normally insured by prudent companies carrying on similar business are covered by such insurance for full reinstatement value.
- 9.4 There is no insurance claim pending or outstanding and there are no subsisting circumstances which may give rise to any such claim.
- 9.5 So far as the Warrantors are aware, there is no fact or matter which may result in the premiums being increased other than in accordance with their normal review.
- 9.6 There has been no fact or matter omitted from any proposal form which may result in any of the insurances being void or voidable.

9.7 The Company maintains full product liability insurance and insures for all contingencies normally covered by prudent companies carrying on similar businesses.

10. STOCKS

10.1 On the assumption that the business of the Company is carried on after Completion on the same basis as immediately prior to Completion by SCL, the Vendors believe that the level of stocks maintained by the Company is adequate and not excessive, having regard, particularly, to any seasonal stocks.

10.2 A print out disclosing the stock held by the Company as at the close of business on the last Business Day prior to the Completion Date is appended to the Disclosure Letter.

11. INVESTIGATIONS

To the best of the Warrantors' knowledge and belief, the affairs of the Company or SCL (in relation to the Business) have not at any time been the subject of an investigation by the Inland Revenue or the Department of Trade (or its predecessors) under the taxing statutes or the Companies Act.

12. EMPLOYEES

12.1 The Company has no employees other than the Employees.

12.2 The employment agreements with the Employees can all be determined without compensation (except any sums which may be payable by virtue of law including, without prejudice to such generality, ERA 1996) by such notice as is required under the terms of ERA 1996.

12.3 No Employee of the Company has given notice, or is under notice, of dismissal.

12.4 The Company has not incurred any liability for breach of any contract of service, for redundancy payment or for compensation for wrongful or unfair dismissal or in respect of any discrimination (howsoever arising) in respect of which any claim is outstanding at the date hereof and so far as the Warrantors are aware there are no subsisting circumstances which may give rise to any such claim.

12.5 The Company is not involved in any industrial or trade dispute with the Employees (or a material number or category of them) or any trade union or other organisation and so far as the Warrantors are aware there are no subsisting circumstances which may give rise to any such dispute.

12.6 No Director or Employee is remunerated on a profit sharing or bonus or commission basis.

12.7 The Employees are not entitled to (and do not) participate in any share option or share incentive schemes.

12.8 There are no Employees the length of whose employment for the purposes of redundancy payments would include any employment by any other person, firm or company prior to their employment with the Company.

12.9 The details of the Employees set out in the Disclosure Letter are true, complete and accurate in all material respects and, without prejudice to the foregoing, disclose all material benefits payable to and/or in respect of the Employees by the Company.

13. LITIGATION AND OTHER CLAIMS

13.1 So far as the Warrantors are aware, there has been no breach of contract or any delictual act which could lead to a claim for damages, restitution, interdict or otherwise being made against the Company.

13.2 Neither the Company nor SCL (in relation to the Business) is engaged in litigation or arbitration, no such proceedings are threatened by or against the Company or SCL (in relation to the Business) or any of the Directors and so far as the Warrantors are aware there are no

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subsisting circumstances which may give rise to any such proceedings.

- 13.3 The Company and so far as the Warrantors are aware SCL (in relation to the Business) has, at all times, complied with law (both statutory and common law) and no officer of the Company nor SCL has been convicted of any crime (other than road traffic offences).

14. **RETURNS TO COMPANIES HOUSE**

All returns, resolutions and other documents required to be delivered to the registrar of companies by the Company have been duly and timeously delivered.

15. **BORROWINGS AND BANK FACILITIES**

- 15.1 The Company has no outstanding loan capital and (other than in respect of the bank facilities detailed in the Disclosure Letter) has not borrowed any money which it has not repaid.

15.2 The Company is not in default under the terms of any borrowing made by it.

- 15.3 The Company does not operate any bank accounts, building society or other deposit accounts.

16. **DEBTS**

The Company is not owed any moneys other than trade debts incurred in the ordinary course of business.

17. **LOANS**

Save for trade credit afforded to its customers in the ordinary course of business, the Company has not lent any money that has not been repaid to it.

18. **LICENCES AND CONSENTS AND LEGAL REQUIREMENTS**

- 18.1 So far as the Warrantors are aware, all necessary licences, consents, permits and authorities (public and private) have been obtained by the Company to enable it to carry on its business effectively in the places and in the manner in which such business is now carried on and all such licences, consents, permits and authorities are valid and subsisting and there are no subsisting circumstances as a result of which any of them may be suspended, cancelled or revoked.

18.2 So far as the Warrantors are aware, no membership, licence, facility, appointment, agency or otherwise required and used by the Company or SCL (in relation to the Business) during the course of its business in the 3 years prior to the Completion Date will, according to its terms, lapse or be withdrawn as a result of the purchase of the Contract Shares by the Purchaser.

18.3 So far as the Warrantors are aware, the Company and SCL (in relation to the Business) have at all times performed and observed all requirements of all applicable laws, statutes, statutory instruments, regulations, orders, contracts, agreements, licences or obligations of whatsoever nature which affect the Company, SCL (in relation to the Business) or the Business. Without prejudice to the generality of the foregoing, so far as the Warrantors are aware, the Company or SCL (in relation to the Business) has complied with all of the foregoing in relation to the export of goods or products and has not exported any goods or products to any country proscribed under United Kingdom legislation.

19. **NAME**

Neither SCL (in relation to the Business) nor the Company has used on its letterheads, circulars, advertisements, vehicles or otherwise any name other than its corporate name or otherwise carried on business under any name other than its corporate name.

20. **ANTI-TRUST**

- 20.1 So far as the Warrantors are aware there are no agreements, decisions or concerted practices

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to which the Company is a party which: -

- 20.1.1 may affect trade within the United Kingdom and which have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom; or
 - 20.1.2 which may infringe the Chapter I prohibition under the Competition Act 1998; or
 - 20.1.3 which may infringe the Chapter II prohibition under the Competition Act 1998; or
 - 20.1.4 which should have been notified to the European Commission under Articles 81 or 82 of the Treaty of Rome or any Regulations made thereunder.
- 20.2 Neither the Company nor SCL (in relation to the Business) is the beneficiary of a parallel exemption under section 9 of the Competition Act 1998.
- 20.3 Neither the Company nor SCL (in relation to the Business) has received any process, notice or communication, formal or informal, by or on behalf of the Office of Fair Trading or the European Commission or any other authority of any country, or any political or administrative sub-division thereof, having jurisdiction in anti-trust matters in relation to any aspect of the business of the Company or SCL (in relation to the Business) (which may include its dealings on a market or in relation to a third party, which market or whose activities are being investigated by any such authority) or any agreement, decision or concerted practice to which the Company is, or is alleged to be, a party, and so far as the Warrantors are aware there are no subsisting circumstances that may give rise to any such process, notice or communication being received by the Company or SCL (in relation to the Business).
- 20.4 Neither the Company nor SCL (in relation to the Business) has engaged in any "consumer trade practice" within the meaning of the Fair Trading Act 1973 which may be, or is capable of being, referred to, or is under reference to, the Consumer Protection Advisory Committee or the subject matter of a report to, or order by, the Secretary of State.
- 20.5 There are no agreements to which the Company or SCL (in relation to the Business) is a party in force restricting the freedom of the Company to manufacture, process, purchase or supply or sell its materials and services or products by such means and to such persons as it may, from time to time, think fit.
- 20.6 No officer or employee of the Company or SCL (in relation to the Business) has been engaged in any activity which could be classified as a Cartel offence under Part 6 of the Enterprise Act 2002
- 20.7 Neither the Company nor SCL (in relation to the Business) has received any process, notice or communication, formal or informal, by or on behalf of the Office of Fair Trading to the effect that an investigation under section 188 of the Enterprise Act was being instigated in respect of the affairs of the Company or SCL or any person as defined in Section 192 thereof.
- 20.8 Neither the Company nor SCL (in relation to the Business) has received or requested any notice of leniency under section 38 of the Competition Act 1998.
- 20.9 The Company and SCL (in relation to the Business) has complied with the provisions of section 22 of the Enterprise Act in relation to merger references.
- 20.10 Neither the Company nor SCL (in relation to the Business) has granted or offered any undertakings (interim or final) (including enforcement undertakings and orders) to any person or authority as to future conduct or activities whether under the Competition Act 1998 or the Enterprise Act 2002, nor is it subject to any order (including an enforcement undertaking or order) made by any person, court or authority imposing same on an interim or final basis.
- 20.11 No business activity of the Company or SCL (in relation to the Business) is or has been the subject of a market investigation under Part 4 of the Enterprise Act 2002, nor has any undertaking (interim or final) been offered or accepted in lieu thereof.
- 20.12 The affairs of the Company or SCL (in relation to the Business) in the United Kingdom are not subject to regulation or control by any person concurrently with the Office of Fair Trading

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- 20.13 No consumer claim has been made or intimated against the Company or SCL (in relation to the Business) pursuant to section 47B of the Competition Act 1998 and the Warrantors have no reason to believe that any such claim will be made.
- 20.14 No market in which the Company or SCL (in relation to the Business) is active is the subject of a super complaint under section 11 of the Enterprise Act 2002.
- 20.15 Neither the Company nor SCL (in relation to the Business) is a party to a consumer code within the meaning of section 8 of the Enterprise Act.
- 20.16 No penalty has been imposed on the Company or SCL (in relation to the Business) in respect of any matter under the Competition Act 1998, the Enterprise Act 2002 or the Treaty of Rome.

21. SUBSTANTIAL CUSTOMERS AND SUPPLIERS

Details of all substantial customers and suppliers of the Business are set out in the Disclosure Letter and no such substantial customer or supplier of the Business has ceased or has indicated an intention to cease trading or dealing with or supplying the Business or, after the date of this agreement, to make any substantial reduction in trading with or making supplies to the Business or, so far as the Warrantors are aware (no enquiry having been made), can be expected to go into liquidation or to have a receiver or administrator appointed or to become bankrupt (for which purposes, a customer shall be deemed substantial if, in any year in the 3 years prior to the Completion Date, it has utilised 5 per cent or more in value of the goods or services provided by SCL (in relation to the Business) in that year and a supplier shall be deemed substantial if, in any year in the 3 years prior to the Completion Date, it has supplied 5 per cent or more of the materials or services purchased by SCL (in relation to the Business) in that year).

22. INTELLECTUAL PROPERTY

- 22.1 Details of all registered and unregistered Intellectual Property Rights owned and/or used by SCL in relation to the Business and/or the Company are set out in the Disclosure Letter. In respect of registered Intellectual Property Rights, all registrations are current and up-to-date and all renewal fees in respect thereof have been paid.
- 22.2 The operation of the business of the Company or SCL (in relation to the Business) does not infringe any right of any kind vested in any other party nor will the operation of such business give rise to payment of any royalty or of any sum in the nature of royalty or to liability to pay compensation pursuant to sections 40 and 41 of the Patents Act 1977.
- 22.3 Details of all licences granted to or by the Company in relation to the Intellectual Property Rights are set out in the Disclosure Letter. Neither the Company nor so far as the Warrantors are aware, no enquiry having been made any other party thereto is in breach of the terms of any such licence and there are no subsisting circumstances which may give rise to any such breach.
- 22.4 There are no disputes or competing claims or entitlement relating to any of the Company's Intellectual Property Rights nor so far as the Warrantors are aware, no enquiry having been made is any third party infringing any of such Intellectual Property Rights.
- 22.5 The Company is entitled to use, without restriction, all information in its possession for the purposes of its business.
- 22.6 The Company has not disclosed any Confidential Information to any third party save under the terms of confidentiality undertakings details of which are set out in the Disclosure Letter.

23. COMPUTER EQUIPMENT

- 23.1 The functions of the Company's business in connection with which the Computer Equipment is used are set out in the Disclosure Letter.
- 23.2 The Employees include persons familiar with the Computer Equipment and competent in using

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them and those persons are identified in the Disclosure Letter.

- 23.3 The Company is adequately equipped with user manuals and other documentation relating to, and which give a complete and accurate description of the facilities provided by, the Computer Equipment and the manner of using it.
- 23.4 There are no restrictions relating to the use of the Computer Equipment which may prevent the Company from using the Computer Equipment to the fullest extent for the purposes of its business.
- 23.5 The terms on which the Company derives its right in, is entitled to use and to have maintained the Computer Equipment are fully recorded in the relevant documents attached to the Disclosure Letter.
- 23.6 There is no Software comprised in the Computer Equipment which has been written for the Company or particularly for any other party and to which the Company has subsequently obtained rights thereto.
- 23.7 Without prejudice to paragraph 18 of Part 3A of the Schedule, all of the Software is (at Completion) the subject of a valid licence for the use of that Software in the manner that it requires to be used for the effective operation of the Business and, without prejudice to that generality, is licensed to be used on the CPU, network or server upon which the Software is located or used, at the geographical location at which it is (for the purposes of the licence) located and for the volume and type of use that is required for the effective operation of the Business.
- 23.8 So far as the Warrantors are aware none of the software comprised within the Computer Equipment contains intentional date or other disabling codes and the Company has run commercially available virus protection programs against such software prior to the Completion Date.

24. GRANTS

- 24.1 Neither the Company nor SCL (in relation to the Business) has done or agreed to do anything (including, without prejudice thereto, the implementation of this agreement) as a result of which any investment or other grant paid to the Company or SCL (in relation to the Business) is or may be liable to be refunded in whole or in part.
- 24.2 Complete and accurate details of all investment and other grants paid to or claimed by the Company and SCL (in relation to the Business) within the period of 5 years preceding the Completion Date are set out in the Disclosure Letter.

25. PENSIONS

- 25.1 The Company does not operate or participate in nor has it ever operated or participated in or made any arrangement (of whatsoever nature and whether legally enforceable or not) for the payment of, or contributing to the payment of, any benefits on retirement, death, leaving service, sickness, disablement or accident for or in respect of any of the Directors or Employees or former directors or employees of the Company or any of their dependants (including ex-gratia payment in relation thereto). No proposal to establish any such arrangement (or make any such ex-gratia payment) exists or has been announced.
- 25.2 Other than in accordance with Part I of the Welfare Reform and Pensions Act 1999, the Company is under no obligation to provide or contribute towards the provision of benefits of the type referred to in 25.1 above.
- 25.3 To the extent that any information is provided in relation to 25.1 and 25.2 above:-
- (a) sufficient information is provided to allow the benefits provided or the Company's obligation to provide such benefits, together with the cost to the Company of providing such benefits and any conditions applicable thereto, to be accurately and fully assessed, and
 - (b) all such information is complete, accurate and up-to-date.

25.4 The Company is not engaged or involved in any proceedings or disputes which relate to or are in connection with the Company's provision of or failure to provide benefits of the type referred to in 25.1 above. No such proceedings are pending or threatened nor are there any facts likely to give rise to any such proceedings. There are no orders previously made by a court or other body relating to the Company's provision of or failure to provide benefits of the type referred to in 25.1 above that are still capable of being enforced against the Company. In this sub-paragraph "proceedings" include any litigation or arbitration and any complaint being considered and any investigation or determination by the Occupational Pensions Regulatory Authority ("OPRA"), the Pensions Advisory Service ("OPAS"), the Pensions Ombudsman or the Financial Services Authority ("FSA").

26. **INSOLVENCY**

26.1 No order has been made, petition presented or resolution passed for winding-up the Company.

26.2 The Company has not stopped payment and is not insolvent or unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.

26.3 No diligence or other process has been used upon or against the Company or any of the property of the Company.

26.4 There is no unfulfilled or unsatisfied judgement or court order outstanding against the Company.

26.5 There has been no delay by the Company in the payment of any obligation due for payment.

26.6 No receiver, receiver and manager, administrative receiver or administrator has been appointed to or over the business or assets of the Company or any part thereof.

26.7 In relation to the Company, no petition has been presented for the appointment of an administrator.

27. **PURCHASE OF OWN SHARES AND DISTRIBUTABLE PROFITS**

27.1 The Company has not at any time: -

- (a) repaid or agreed to repay or redeem any shares or any class of its share capital or otherwise reduced or agreed to reduce its share capital or any class thereof;
- (b) capitalised or agreed to capitalise in the form of shares or debentures or other securities or in paying up any amounts unpaid on any shares, debentures or other securities, any profits or reserves of any class or description or passed or agreed to pass any resolution to do so; or
- (c) purchased any of its own shares.

27.2 No balance (if any) shown credited to any reserve or profit and loss account in the Accounts or the Management Accounts includes any sum which is not legally available for distribution for the purpose of the Companies Act.

28. **THE PROPERTY**

- 28.1 (a) The Property constitutes the only property owned, occupied or leased by SCL in relation to the Business.
- (b) Other than in respect of the charges detailed in Part 2 of the Schedule, the Property is free from all fixed and floating charges or encumbrances or other adverse interests and SCL has not granted or agreed to grant any right or interest therein to any third party.
- (c) SCL has a valid and marketable title to the leasehold interest of those subjects

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comprising the Property.

- (d) SCL has not been inhibited.
- (e) SCL is the beneficial owner of the leasehold interest of the Property.
- (f) SCL enjoys full vacant possession of the Property unaffected by any leases, franchises, licences or other rights of occupation.
- (g) SCL have not received notice of any breach or contravention of or non-compliance with any obligations, restrictions, exceptions, reservations, conditions, agreements, statutory and/or common law requirements, bye-laws, orders and other stipulations or regulations affecting the Property and so far as the Warrantors are aware, no specific enquiry having been made. SCL is not in breach or contravention of or non-compliance with any such obligations, restrictions, exceptions, reservations, conditions, agreements, statutory and/or common law requirements, bye-laws, orders and other stipulations or regulations affecting the Property.
- (h) To the best of the Warrantors information and belief, no specific enquiry having been made, there are no major repairs contracted for or proposed in respect of the Property.
- (i) There are no claims or disputes outstanding in relation to the maintenance or otherwise of the common parts or the provision of common services in relation to the Property.
- (j) So far as the Warrantors are aware, no specific enquiry having been made, all buildings and erections on the Property have been erected or where appropriate altered or extended in accordance with all necessary permissions, licences, consents and warrants.
- (k) SCL has not received notice of any contravention by SCL of the Town and Country Planning Acts (hereinafter called "the Planning Acts") or any of them or any order or regulation made under or by virtue of the Planning Acts or any of them in relation to the Property and so far as the Warrantors are aware, no specific enquiry having been made, the present use of the Property is either its permitted use (free from conditions) or its established use for the purposes of the Planning Acts .
- (l) So far as the Warrantors are aware, no specific enquiry having been made, no planning permissions in respect of the Property remain unimplemented (whether in whole or in part) nor has any planning application been submitted which awaits determination.
- (m) So far as the Warrantors are aware, no specific enquiry having been made, there are no agreements under section 75 of the Town and Country Planning (Scotland) Act 1997 in force in respect of the Property or any part thereof.
- (n) Valid Fire Certificates are in force in respect of the Property.
- (o) SCL has not received notice of any breach by it of the provisions of the Offices, Shops and Railways Premises Act 1963 and the Health and Safety at Work etc. Act 1974.
- (p) The Property is served by drainage, water and electricity and so far as the Warrantors are aware, no specific enquiry having been made, the Property has a permanent legal servitude or easement free from onerous or unusual conditions and the passage and provision of such services is uninterrupted
- (q) There are no rates appeals in progress in respect of the Property.
- (r) SCL has not received notice of any breach of its obligations under its lease relative to the Property ("the Lease") (including payment of rent and service and other charges), there are no disputes with the landlords and, to the best of the Warrantors' knowledge and belief, there are no circumstances which may give rise to an entitlement on the part of the landlords to terminate the lease.

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- (s) SCL has not received any adverse structural surveys, site surveys or engineers reports in relation to the Property during the last three years.
- 28.2 SCL has not contracted or agreed to purchase, sell, encumber or in any way or for any other purpose deal with its interest in the Property or any other property.
- 28.3 In respect of any property formerly owned or occupied by SCL in relation to the Business, there are no contingent liabilities in respect thereof.
- 28.4 The information in part 5 of the Schedule ("the Property") is true, complete and accurate.
- 28.5 The Lease has not been the subject of any amendment or alteration or variation formal or informal between the landlords and the Company or SCL.
- 28.6 SCL has not complained of any breach of the landlords' obligations under the Lease and there is no outstanding claim by SCL against its landlords.
- 28.7 No Notice of Irritancy or Schedule of Dllapidations in relation to the Lease has been served on SCL.
- 28.8 All monies due under the Lease have been paid when due and none have been commuted, waived or paid in advance of the due date.
- 28.9 The Lease is subsisting.
- 28.10 Since the Lease was granted, so far as the Warrantors are aware, no specific enquiry having been made, the Property has not been affected by flooding subsidence or material structural building or drainage defects.

29. THE ENVIRONMENT

- 29.1 The Company and SCL (in relation to the Business) has obtained and complied with the terms and conditions of all necessary Environmental Consents and they remain in full force and effect. Copies of all such Environmental Consents are appended to as the Disclosure Letter.
- 29.2 Neither the Company nor SCL (in relation to the Business) has received any notice of the relocation, modification or suspension of any Environmental Consent and, so far as the Vendors are aware, there are no circumstances which may lead to any such notice being received nor are there any circumstances which may prejudice or require material expenditure for the renewal, extension, grant or transfer of any Environmental Consent.
- 29.3 So far as the Warrantors are aware, no enquiry having been made, the Company and SCL (in relation to the Business) comply and have at all times complied with all Environmental Laws and there are no facts or circumstances which interfere or prevent compliance with any Environmental Laws.
- 29.4 So far as the Warrantors are aware, no enquiry having been made, there are no civil, criminal, arbitration or administrative actions, claims, proceedings or suits pending or threatened against the Company or SCL (in relation to the Business) arising from or in relation to Environmental Laws or any consents required under Environmental Laws and, so far as the Vendors are aware, there are no circumstances which may lead to any such action, claim, proceeding or suit.
- 29.5 Neither the Company nor SCL (in relation to the Business) has received any notice of enforcement, prohibition, improvement, remediation or other notice of equivalent nature, or any judgement, order, decree, award, demand or decision in respect of the Environment from any court, tribunal, arbitrator or governmental or regulatory authority and so far as the Warrantors are aware, no enquiry having been made, there have been no complaints, investigations, enquiries, requests for information or other formal or informal indications of any possible claims or legal actions in respect of the Environment from any person including any neighbour, governmental or regulatory authority, current or former employee or third party.

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29.6 Prior to Completion:-

- (a) any Hazardous Substances kept on the Properties or used in connection with or produced by any Activities have been kept in tanks, containers (in each case, surrounded by suitable bund) or proper storage buildings, as the case may be, appropriate for the Hazardous Substance stored and fit for the designated purpose.
- (b) the Company or SCL in relation to the Business did not receive, generate, handle, use, store, treat, transport, keep, deposit or dispose of Waste at, on or under the Properties nor did it permit any third party to do so nor do the Warrantors have any reasonable cause to believe that any third party has done so.

PART 3B

The Tax Warranties

TAXATION RETURNS

- 1.1 The Company is resident in the United Kingdom and only in the United Kingdom for Tax purposes.
- 1.2 Prior to the acquisition of the Business, the Company had not commenced any trade, or acquired any source of income, or otherwise become liable to corporation tax under Section 8 TA 1988 such that it was required to notify the Inland Revenue of its chargeability to corporation tax in accordance with paragraph 2 of Schedule 18 FA 1988.
- 1.3 The Company has not been notified of any intention of any Tax Authority to carry out any investigation, audit or visit within the twelve months following the Completion Date.

CLOSE COMPANIES

- 1.4 The Company is a close company for the purposes of ICTA 1988 Part XI and is not and never has been a close investment holding company within the meaning of ICTA 1988 section 13A.
- 1.5 No expense has been incurred by the Company which could be treated as a distribution pursuant to ICTA 1988 section 418.
- 1.6 The Company has not, at any time, made any loan to a participator.

GROUPS OF COMPANIES

- 1.7 The Company is not and never has been part of a group or consortium, for the purposes of any Tax.

ASSETS

- 1.8 All of the assets owned by the Company were acquired at the time of the acquisition of the Business.
- 1.9 The Company has not acquired any assets from a connected person, other than under the Reorganisation.
- 1.10 The Company does not own any asset which would qualify for industrial buildings allowances under Part 3 CAA 2001.
- 1.11 The Company has not disposed of any asset since incorporation otherwise than in the ordinary course of business and the Disclosure Letter contains full details of any such disposals.
- 1.12 The Company has not been a party to any election under CAA 2001 section 198.
- 1.13 None of the Company's assets are long life assets to which the provisions of CAA 2001 Part 2 Chapter 10 apply.

LOSSES

- 1.14 No losses will transfer to the Company under Section 343 TA 1988 as a result of the acquisition of the Business, and the Company has no other trading losses.

OVERSEAS ISSUES

- 1.15 The Company has no branch, agency, place of business or permanent establishment outside the United Kingdom.

EMPLOYMENT TAXES

- 1.16 All remuneration and other sums paid or payable to employees or officers or former employees or officers of the Company is or are or will be deductible for corporation tax purposes, either in computing the profits of the Company or in computing the corporation tax chargeable on the Company.
- 1.17 The Company has correctly operated the PAYE system and has accounted in full within the appropriate time limit to the appropriate Tax Authority for all amounts so deducted and for all tax chargeable on benefits provided to its employees or former employees.
- 1.18 No payment made to any employee or former employee has been treated as taxable under Section 401 ITEPA 2003.
- 1.19 The Company has received, in accordance with the provisions of Regulation 23 and 80 of the PAYE Regulations (1993/744), a duly completed P45 in respect of each employee transferred to it at the time of the acquisition of the Business under the Transfer of Undertakings (Protection of Employee Rights) Regulations (1981/1794).

SHARES

- 1.20 The Company has not purchased any of its own shares in circumstances where the payment would be treated as a distribution, and in respect of all such purchases advance clearances were obtained pursuant to ICTA 1988 section 225.
- 1.21 No distribution has been made by the Company within the meaning of ICTA 1988 sections 209, 210 (bonus issue following repayment of share capital) or 211 (repayment of share capital); no exempt distribution has been made within the meaning of ICTA 1988 sections 213 to 218 (demergers) and the Company has not made or received a chargeable payment as defined in ICTA 1988 section 214.
- 1.22 The Company has not issued or agreed to issue any share capital to which the provisions of ICTA 1988 section 249 (stock dividends treated as income) or TCGA 1992 section 141 (consideration for new holding of stock dividends) could apply nor does the Company own any such share capital.
- 1.23 The Company has not since incorporation repaid or issued any share capital otherwise than by the receipt of new consideration (as defined in ICTA 1988 section 254).
- 1.24 Full details of all applications for clearances by the Company within the seven financial years preceding the date of Completion made pursuant to TCGA 1992 section 138 and ICTA 1988 sections 215 or 225 or otherwise in terms of Tax statutes are contained in the Disclosure Letter.

TAX AVOIDANCE

- 1.25 The Company has not engaged or been concerned in or been the subject of any artificial or fictitious transaction scheme or arrangement, or any preordained series of transactions for the purpose of or connected with the avoidance or intended avoidance of any liability to Tax or Stamp Duty.

VAT

- 1.26 The Company is duly registered and is a taxable person for the purposes of VAT and all supplies of goods and services made by the Company are fully taxable supplies for the purposes of VATA.
- 1.27 The Company has complied in all material respects with all statutory requirements, orders, provisions, directions or conditions relating to VAT.
- 1.28 The Company does not own any capital item within the meaning of Part XV of the VAT Regulation 1995
- 1.29 The Company has not exercised an election to waive the exemption from VAT under

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paragraph 2 of Schedule 10 of the VATA 1994 in respect of any lands or buildings in which the Company has or may acquire an interest.

- 1.30 The Company has not at any time claimed for the purposes of VAT as input tax any VAT charged on a transaction which could be construed as a transfer of a business or part of a business as a going concern as defined in article 5(1) of the VATA (Special Provisions) Order 1995.
- 1.31 The Company has not since incorporation made any exempt supply.
- 1.32 The Company has not received any supplies from or made any other supplies to other members of states of the European Union.

STAMP DUTY

- 1.33 Save as set out in the Disclosure Letter, since incorporation the Company has not incurred any liability to Stamp Duty or been accountable for any Stamp Duty Reserve Tax and there has been no agreement within FA 1986 section 87(1) which could lead to the Company incurring a liability to Stamp Duty Reserve Tax.
- 1.34 The Disclosure Letter contains full details of any relief from Stamp Duty claimed by the Company.
- 1.35 All documents in the enforcement of which the Company may be interested have been duly stamped.

INHERITANCE TAX

- 1.36 There is no unsatisfied liability to inheritance tax attached or attributable to the Shares or any of them or any of the assets of the Company and none of the Shares nor any of the assets of the Company are subject to an Inland Revenue charge as mentioned in IHTA 1984 section 237
- 1.37 There have been no transfers by the Company which could give rise to a charge to Tax for which the Company could be liable under IHTA 1984 Section 202

SECONDARY LIABILITIES

- 1.38 The Company is not and will not become liable by virtue of ICTA 1988 section 767A, TCGA 1992 section 189, 190 or otherwise to pay or make reimbursement or indemnity in respect of any Tax or interest in consequence of the failure by any other person to discharge the same.

PART 4A

Limitation of Liability – General Provisions

1. In the absence of dishonesty on the part of the Warrantors and/or their agents, the aggregate liability of the Warrantors in terms of the Warranties (other than the Capacity and Title Warranties), and the Tax Covenant shall be limited as follows:-

1.1 The liability of each of the Warrantors shall not exceed:-

1.1.1 in respect of Malcolm McNab, the total aggregate of:-

- (a) £313,365; and
- (b) an amount equal to his Relevant Proportion of the Deferred Consideration which is paid or payable; and
- (c) an amount equal to the aggregate of the Relevant Proportions of the Deferred Consideration which are paid or payable to Andrew Robbie McNab, Catherine Margaret McNab and Katrina Frances McNab each of whom are Vendors.

1.1.2 in respect of Edward Elsworthy, the total aggregate of:-

- (a) £232,927.50; and
- (b) an amount equal to his Relevant Proportion of the Deferred Consideration which is paid or payable; and
- (c) an amount equal to the Relevant Proportion of the Deferred Consideration which is paid or payable to Heather Jean Elworthy one of the Vendors.

For the avoidance of doubt any sums deducted in terms of Clause 7.5 from the Deferred Consideration due to each Warrantor shall count towards each respective Warrantor's maximum liability in terms of this Paragraph 1.1.

1.2 no liability shall arise unless and until the amount of a claim, when aggregated with the amount of all other claims:-

1.2.1 made against the Warrantors under the Warranties, and/or the Tax Covenant ;
and

1.2.2 which would have been made thereunder but for the operation of this clause;

exceeds £15,000, in which event, the whole of such aggregate amount and not merely the excess shall be recoverable.

2. The Purchaser acknowledges and agrees that:-

2.1 the Warranties are the only representations given by or on behalf of the Warrantors on which the Purchaser may rely in entering into this agreement;

2.2 without prejudice to the Purchaser's contractual rights pursuant to the Tax Covenant, no other representation made by or on behalf of the Vendors or any of their agents may form the basis of (or be pleaded in connection with) any claim by the Purchaser under or in connection with this agreement and/or the Tax Covenant; and

2.3 it shall not be entitled to recover damages or otherwise obtain restitution more than once in respect of the same loss, damage, deficiency, breach, cause of action or other set of circumstances, whether under the Warranties, and/or the Tax Covenant.

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2.4 it shall not be entitled to claim under the Warranties in respect of any matter of which it is aware it shall be entitled to make a claim under the Warranties as at the Completion Date.

PART 4B

Limitation of Liability – The General Warranties

1. The Purchaser acknowledges and agrees that any claim by it in connection with the General Warranties ("a Claim") shall be subject to the following provisions of this part of the Schedule and if any other provision of this agreement appears to be inconsistent with the provisions of this part of the Schedule, the provisions of this part of the Schedule shall prevail.
2. The Purchaser shall not be entitled to make a Claim:-
 - 2.1 to the extent that the Claim in question would not have arisen but for a change in legislation or common law taking effect after the Completion Date or the withdrawal of any extra-statutory concession previously made by the Inland Revenue (whether or not the change purports to be effective retrospectively, in whole or in part);
 - 2.2 to the extent that the Claim in question arises by reason of a voluntary act, omission or transaction carried out (other than pursuant to a legally binding commitment of the Company entered into prior to the date of this agreement) by the Company after Completion or, at the written request of the Purchaser, by the Company prior to Completion;
 - 2.3 In the absence of wilful dishonesty on the part of the Vendors and their agents, unless the Purchaser has given written notice of the circumstances giving rise to the Claim in question to the Warrantors prior to the second anniversary of the Completion Date (it being agreed that the liability of the Warrantors in respect of any Claim shall absolutely determine if proceedings in respect of it have not been commenced and served within 9 months of service of such written notice or, if later, within 9 months of the last action taken by the Company and/or the Purchaser pursuant to clause 4 of this part of the Schedule); or
 - 2.4 to the extent that specific provision in respect of the matter or thing giving rise to the Claim in question has been made in the Completion Balance Sheet.
3. If a Claim arises in connection with a liability or alleged liability to a third party:-
 - 3.1 the Purchaser shall take (and shall procure that the Company takes) such action to avoid, dispute, resist, appeal, compromise or contest the liability as may reasonably be requested by the Warrantors who shall, at their own expense, be entitled to have the conduct of any appeal, dispute, compromise or defence of the dispute and of any incidental negotiations; and
 - 3.2 the Purchaser will (and shall procure that the Company and their respective professional advisers will) make available to the Warrantors such persons and all such information as the Warrantors may reasonably require for avoiding, disputing, resisting, appealing, compromising or contesting any such liability.
4. The parties agree that the Purchaser shall have a duty to mitigate its loss in respect of any matter giving rise to a Claim notwithstanding any of the terms of the Agreement .
5. Where the Purchaser or the Company has a right of recovery/reimbursement (in whole or in part) against some person other than the Warrantors in respect of any matter giving rise to a Claim:-
 - 5.1 the liability of the Warrantors shall be reduced by the amount received by the Purchaser and/or the Company pursuant to such right; and
 - 5.2 the Purchaser shall:-
 - 5.2.1 take (and shall procure that the Company shall take) such action as is reasonably necessary to enforce such a right, subject always to the Warrantors indemnifying the Company and the Purchaser, on demand,

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against all reasonable costs incurred in enforcing such right;

5.2.2 keep the Warrantors informed of progress made in enforcing such right; and

5.2.3 as soon as reasonably practicable after the date on which recovery is made/reimbursement received, make repayment to the Warrantors to the extent of the sums so recovered (up to a maximum of the amount actually paid by the Warrantors in respect of the relevant Claim).

6. Any payment made by the Warrantors or by a reduction of the Deferred Consideration pursuant to clause 6.6 in respect of a Claim shall be deemed to be a reduction in the consideration for the sale of the Contract Shares.

PART 5

The Property

ALL and WHOLE that plot or area of ground shown outlined in red on the plan annexed and executed as relative to the lease between Ashtenne Caledonia Limited and Stephen Clark Limited, registered in the Books of Council and Session on 15 October 2002 which plan is demonstrative only and not taxative; together with (One) the whole buildings and erections thereon known as and forming Four Mackintosh Place, part of South Newmoor Industrial Estate, Irvine ("the estate"); (Two) all boundary walls or fences erected exclusively on the premises; (Three) the inner half severed medially of the mutual wall(s) or structure(s) dividing the premises or any building comprised therein from any other building on the estate; and (Four) in so far as required for access to and from the said plot, right of pedestrian and vehicular access by and over the roadways and footpaths within the estate.

Part 6

SALE OF R S BIOTECH LABORATORY EQUIPMENT LIMITED

WORKED COMPLETION EXAMPLE

This example compares completion consideration on the basis of the balance sheet for the R S Biotech division of Stephen Clark Limited as at 30 September 2003. The comparison is to ensure that the introduction of the loan account with Stephen Clark Fabrications Limited does not affect the substance of the NBS purchase.

Assumptions

NAV at 30.09.03	£396k
Profits to 30.09.03	£ 85k
SCFL loan	£153k

Basis 1 – no loan account

NAV	£396k
Profits	(£ 85k)
Adjusted NAV	£311k
Target NAV	£451k
NAV shortfall	£140k
Initial Consideration	£975k
Business Profits £ 85k	
NAV shortfall	(£140k)
TOTAL	£920k

Basis 2 – with loan account

NAV	£396k
Profits	(£ 85k)
Loan account	(£153k)
Adjusted NAV	£158k
Target NAV	£298k
Shortfall	£140k
Initial consideration	£822k
Business profits £ 85k	
NAV shortfall	(£140k)
Payment of loan	£153k
TOTAL	£920k

The trade creditor balance of £153,175 set out in the September management accounts does not include any amounts payable to SCL, SCFL or any of their associates.