

**WGM/HB DRAFT 15 SEPTEMBER 2010**

**SEPTEMBER 2010**

**INVESTMENT AGREEMENT**

**relating to**

**DIC ALMATIS 1 B.V.**

***Weil, Gotschal & Manges***

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## TABLE OF CONTENTS

	Page
1 INTERPRETATION.....	3
2 INVESTMENT STRUCTURE, COMPLETION, SUBSCRIPTION .....	4
3 ANTI-DILUTION OF ORDINARY SHARES S AND SENIOR PREFERENCE SHARES .....	11
4 PERMITTED CAPEX INSTRUMENT .....	12
5 INVESTMENT APPRAISAL .....	12
6 FEES AND COSTS .....	13
7 DIRECTORS AND CORPORATE GOVERNANCE .....	17
8 STAK 1 AND STAK 2 .....	28
9 GENERAL MEETING .....	33
10 PROVISION OF INFORMATION .....	34
11 CONDUCT OF THE GROUP .....	36
12 CONFIDENTIALITY .....	37
13 GSO REQUEST RIGHT .....	38
14 EXIT .....	38
15 ISSUE OF NEW SHARES .....	42
16 TRANSFER OF SHARES .....	46
17 REPRESENTATIONS AND WARRANTIES .....	56
18 DEED OF ADHERENCE .....	57
19 PUBLICITY .....	57
20 NOTICES .....	57
21 ENTIRE AGREEMENT, AMENDMENT AND TERMINATION .....	59
22 MEZZANINE STEERING COMMITTEE .....	59
22 MISCELLANEOUS .....	60
23 THIRD PARTY RIGHTS .....	63
24 GOVERNING LAW AND JURISDICTION .....	63
SCHEDULE 1 THE MANAGEMENT INVESTORS .....	64
SCHEDULE 2 THE INVESTORS .....	65
SCHEDULE 3 PROVISION OF INFORMATION .....	66
SCHEDULE 4 PART 1 – BOARD RULES ALMATIS TOPCO 1 B.V. ....	69
PART 2 – AUDIT COMMITTEE .....	76
PART 3 – REMUNERATION COMMITTEE .....	80

## TABLE OF CONTENTS

(continued)

	<b>Page</b>
SCHEDULE 5 CONDUCT OF THE GROUP PART 1: POSITIVE OBLIGATIONS .....	84
PART 2: ACTIONS REQUIRING CONSENT .....	86
SCHEDULE 6 NON DEBTOR PROFESSIONAL FEES .....	89
SCHEDULE 7 DEED OF ADHERENCE.....	90
SCHEDULE 8 DEFINITIONS.....	92
SCHEDULE 9 TRUST CONDITIONS STAK 1 .....	93
SCHEDULE 10 TRUST CONDITIONS STAK 2 .....	94
SCHEDULE 11 PIK NOTES INSTRUMENT AND PIK PREFERENCE WARRANT .....	95
SCHEDULE 12 FORM OF CONFIDENTIALITY AGREEMENT.....	96
SCHEDULE 13 DRAFT POWER OF ATTORNEY .....	97
SCHEDULE 14 INCENTIVE PLANS.....	98

**THIS AGREEMENT** is made by Deed on 30 September 2010 between the following Parties:

- (1) **THE PERSONS** whose names, addresses and authorised email addresses are set out in Schedule 1 (the “**Management Investors**”);
- (2) **THE MEZZANINE INVESTORS**, whose names, addresses and authorised email addresses are set out in Schedule 2 (the “**Mezzanine Investors**”);
- (3) **THE SECOND LIEN LENDERS**, whose names, addresses and authorised email addresses are set out in Schedule 2 (the “**Second Lien Lenders**”);
- (4) **DIC ALMATIS 1 B.V.**, a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) incorporated under the laws of the Netherlands, having its corporate seat in Amsterdam, the Netherlands and its registered address is at Theemsweg 30, 3197 KM Botlek, Rotterdam, The Netherlands (“**Almatiss Topco 1**”);
- (5) **DIC ALMATIS 2 B.V.**, a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) incorporated under the laws of the Netherlands, having its corporate seat in Amsterdam, the Netherlands and its registered address is at [Theemsweg 30, 3197 KM Botlek, Rotterdam, The Netherlands (“**Almatiss Topco 2**”);
- (6) **STICHTING ADMINISTRATIE KANTOOR ALMATIS SPS**, a Dutch trust foundation (*stichting administratiekantoor*) incorporated under the laws of the Netherlands, having its corporate seat in Amsterdam, the Netherlands and its registered address is at Theemsweg 30, 3197 KM Botlek, Rotterdam, The Netherlands (“**STAK 1**”);
- (7) **STICHTING ADMINISTRATIE KANTOOR ALMATIS JPS**, a Dutch trust foundation (*stichting administratiekantoor*) incorporated under the laws of the Netherlands, having its corporate seat in Amsterdam, the Netherlands and its registered address is at Theemsweg 30, 3197 KM Botlek, Rotterdam, The Netherlands (“**STAK 2**”);
- (8) **THE SENIOR SECURED NOTEHOLDERS** whose names, addresses and authorized email addresses are set out in Schedule 2 (the “**SSN Investors**”);
- (9) **[THE SSN TRUSTEE]**,[ a Dutch trust foundation (*stichting administratiekantoor*) incorporated under the laws of the Netherlands, having its corporate seat in Amsterdam, the Netherlands and its registered address is [●]] (“**SSN Trustee**”)<sup>1</sup>;
- (10) **DIC SHINE COOPERATIEF U.A.**, a cooperative entity incorporated under the laws of the Netherlands, with registered number [●] and whose registered office is at [●], registered with the register of Companies (the “**DIC Investor**”, who, together with the Mezzanine Investors and the SSN Investors, and any person who becomes a party

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<sup>1</sup> Details TBD.

to this Agreement through the execution of a Deed of Adherence and is designated as an Investor in such a Deed of Adherence, shall be known as the “**Investors**”); and

- (11) **DUBAI INTERNATIONAL CAPITAL LLC**, a company incorporated in Dubai with registered number 69184 and whose registered office is at The Gate, East Wing, 13th Floor, DIFC, Sheikh Zayed Road, Dubai (United Arab Emirates) (“**DIC**”).

## **RECITALS**

- (A) On 30 April 2010 the Debtors commenced a voluntary case under chapter 11 of title 11 of the United States Code with the United States Bankruptcy Court for the Southern District of New York.
- (B) The Parties wish to implement a financial restructuring (the “**Restructuring**”) of the Almatris Group under the terms and conditions provided for in the Plan Support Agreement.
- (C) On [●] 2010, Stichting Almatris Restructuring, a foundation (*stichting*) incorporated under the laws of the Netherlands, having its corporate seat in Rotterdam, the Netherlands and its registered address at Theemsweg 30, 3197 KM Botlek, Rotterdam, The Netherlands (the “**Dutch Foundation**”) was incorporated.
- (D) The Dutch Foundation was incorporated among other things for the purpose of holding shares in the capital of Almatris Topco 1 and at the date hereof holds the entire issued share capital of Almatris Topco 1, consisting of 1,800,000 shares with a nominal value of EUR 0.01 each.
- (E) On [●] 2010, a disbursing agent agreement (the “**Disbursing Agent Agreement**”) was entered into by and among The Bank of New York Mellon as the disbursing agent (the “**Disbursing Agent**”), Almatris Topco 1, Almatris Topco 2, STAK 2, the Dutch Foundation and Almatris B.V., Almatris Inc., and Almatris GmbH for the purpose of effecting certain transactions and making certain Distributions required by the Plan.
- (F) On the Effective Date, the Disbursing Agent, Almatris Topco 1, Almatris Topco 2 and STAK 2 entered into a Call Option Agreement (the “**Call Option Agreement**”), which shall be effective until the Forfeiture Date and, upon exercise of the relevant call options by the Disbursing Agent set forth therein, shall require Almatris Topco 1 to issue Almatris Topco Shares in accordance with Clauses [2.5] and [2.6].
- (G) In accordance with the Call Option Agreement, upon satisfaction of the relevant Distribution Procedures and terms of the Disbursing Agent Agreement by a Mezzanine Lender or Junior Mezzanine Lender that is entitled to receive the relevant Distribution, and in accordance with the Plan, which shall be evidenced by a written notice from the Debtors to the Disbursing Agent that such Mezzanine Lender or Junior Mezzanine Lender is a Complying Holder, the Disbursing Agent shall promptly exercise the Call Options 1 (as defined in the Call Option Agreement) with respect to the number of Mezzanine Shares that such Mezzanine Lender or Junior Mezzanine Lender is entitled to receive, and Mezzanine Junior Preference Shares that STAK 2 is entitled to receive and for which STAK 2 will issue Mezzanine Creditor Group STAK Depositary Receipts to such Mezzanine Lender or Junior Mezzanine

Lender that is entitled to receive such Mezzanine Creditor Group STAK Depositary Receipts.

- (H) On [●] 2010, a direction agreement (the “**Direction Agreement**”) was entered into among the Dutch Foundation, Almatris B.V., Almatris Topco 1, Almatris Topco 2 and Remco de Jong in which the Disbursing Agent, the Debtors, Almatris Topco 1, Almatris Topco 2 and the Dutch Foundation have set forth the terms and conditions of their relationship with respect to, among others, Almatris Topco 1 and Almatris Topco 2, in conformity with the terms of this Agreement, the Plan, the Disbursing Agent Agreement and the Implementation Memorandum.
- (I) This Agreement sets out the terms on which the Investors and the Management Investors are willing to invest in Almatris Topco 1, either as a direct or indirect shareholder, or as a provider of certain equity-linked debt instruments.

**IT IS AGREED** as follows:

## **1 INTERPRETATION**

### **1.1 In this Agreement:**

- 1.1.1** except where the context requires, capitalized words, including those used in the preamble of this Agreement, shall have the meaning as defined in SCHEDULE 8;
- 1.1.2** references to a “person” include, without limitation, any individual, entity, corporation, limited liability company, limited liability partnership, joint venture, association, joint stock company, estate, trust, unincorporated association or organization, official committee, *ad hoc* committee or group, governmental agency or political subdivision thereof, the U.S. Trustee, and any successors or assigns of any of the foregoing;
- 1.1.3** references to a document in the “agreed form” are to that document in the form agreed to and initialled for the purposes of identification by or on behalf of the Parties;
- 1.1.4** references to a clause, schedule, or appendix are to a clause, schedule or appendix of this Agreement, and references to this Agreement include the schedules and the appendices;
- 1.1.5** the headings in this Agreement do not affect its construction or interpretation;
- 1.1.6** references to a statute or a statutory provision include references to such statute or statutory provision as amended or re-enacted whether before or after the date of this Agreement and include all subordinate legislation made under the relevant statute whether before or after the date of this Agreement save where that amendment, re-enactment or subordinate legislation would extend or increase the liability of any Party under this Agreement;

- 1.1.7 a reference to a document is a reference to that document as amended or modified from time to time in writing by the mutual consent of the Parties;
- 1.1.8 references to writing will be deemed to include any modes of reproducing words in a legible or non-transitory form (for the avoidance of doubt including e-mail);
- 1.1.9 the singular includes the plural and vice versa and any gender includes any other gender; and
- 1.1.10 the words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation".

## 2 INVESTMENT STRUCTURE, COMPLETION, SUBSCRIPTION

### Share Capital and Voting Rights

- 2.1 As of the Effective Date, the authorized share capital of Almatris Topco 1 is divided into:
  - 2.1.1 Two billion seven hundred fifty million (2,750,000,000) Ordinary Shares (*gewone aandelen*), to be divided into:<sup>2</sup>
    - (a) One billion (1,000,000,000) Ordinary Shares Series D (“**Ordinary Shares D**”);
    - (b) One billion (1,000,000,000) Ordinary Shares Series E (“**Ordinary Shares E**”);
    - (c) One hundred and fifty million (1,50,000,000) Ordinary Shares Series M-I (“**Ordinary Shares M-I**”);
    - (d) One hundred and fifty million (1,50,000,000) Ordinary Shares Series M-II (“**Ordinary Shares M-II**”);
    - (e) One hundred and fifty million (1,50,000,000) Ordinary Shares Series P (“**Ordinary Shares P**”);
    - (f) One hundred and fifty million (1,50,000,000) Ordinary Shares Series S (“**Ordinary Shares S**”); and
    - (g) One hundred and fifty million (1,50,000,000) Ordinary Shares Series X (“**Ordinary Shares X**”);
  - 2.1.2 Two hundred million (200,000,000) Senior Preference Shares (*senior preferente aandelen*), to be divided into:
    - (a) One hundred and fifty million (1,50,000,000) Senior Preference Shares Series D (“**DIC Senior Preference Shares**”);

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<sup>2</sup> D = DIC; E= Equity Cure; M-I = Mezz; M-II = Junior Mezz; P = PIK; S = SSN; X = Management .

(b) fifty million (50,000,000) Senior Preference Shares Series S ("**SSN Senior Preference Shares**"); and

2.1.3 two hundred and fifty million (250,000,000) Junior Preference Shares (*junior preferente aandelen*), to be divided into:

(a) One hundred and fifty million (1,50,000,000) Junior Preference Shares Series M-I ("**Mezzanine Junior Preference Shares**");

(b) fifty million (50,000,000) Junior Preference Shares Series M-II ("**Junior Mezzanine Junior Preference Shares**");

(c) fifty million (50,000,000) Junior Preference Shares Series S, ("**SSN Junior Preference Shares**"),

each having a nominal value of one eurocent (€0.01). Subject to the voting restrictions in relation to STAK 1 and STAK 2 set out in clause **Error! Reference source not found.**, each Almatris Topco Share gives the holder thereof the right to cast one vote in the General Meeting. Each Almatris Topco Share shall be fully paid as at the date of issue.

#### **Investment structure**

2.2 On the Effective Date, Almatris Topco 1 will take the actions set out in clause 2.4 to effect the investment of the DIC Investor, the Mezzanine Investors that have complied with the relevant Distribution Procedures and the SSN Investors in the Group as contemplated under this Agreement ("**Completion**"). On each Distribution Date, Almatris Topco 1 will take the actions set out in clause 2.5 to effect the investment of the Mezzanine Investors that have complied with the relevant Distribution Procedures after the Effective Date as contemplated under this Agreement. Following the Effective Date, Almatris Topco 1 will take the actions set out in clause 2.6 to effect the investment of the other Investors and the Management Investors as contemplated under this Agreement.

#### **Completion**

2.3 Completion shall take place at the offices of De Brauw Blackstone Westbroek N.V. on the Effective Date forthwith following the execution of this Agreement.

#### **Completion actions on Effective Date**

2.4 On the Effective Date:

2.4.1 The Dutch Foundation, in its capacity as sole shareholder of Almatris Topco 1, shall execute a written shareholder's resolution in which it is resolved to issue such Almatris Topco Shares as set out in this clause 2.4, in accordance with and subject to this Agreement.

2.4.2 The DIC Investment Escrow Agent shall have confirmed receipt of an amount of EUR 77,657,236.47 in the DIC Investment Escrow Account, which has been held on behalf of Almatris Topco 1 pursuant to the terms of the DIC Investment Escrow Agreement.



- 2.4.3** Almatris Topco 1 and the DIC Investor shall execute before the Notary the DIC Share Issue Notarial Deed. Through execution of such deed, Almatris Topco 1 shall issue and deliver such number of Ordinary Shares D to the DIC Investor as is set out against its name in SCHEDULE 2 at an aggregate price of EUR [●] and otherwise in accordance with and subject to the terms of this Agreement.
- 2.4.4** Almatris Topco 1, STAK 1 and the DIC Investor shall execute before the Notary the DIC Preference Share Issue Notarial Deed. Through execution of such deed (i) Almatris Topco 1 shall issue and deliver to STAK 1 a number of DIC Senior Preference Shares equal to the number of DIC Senior Preference STAK 1 Depositary Receipts as is set out against the DIC Investor's name in SCHEDULE 2 at an aggregate price of EUR [●] and otherwise in accordance with and subject to the terms of this Agreement, and (ii) STAK 1 shall issue to the DIC Investor the number of DIC Senior Preference STAK 1 Depositary Receipts as set out against the DIC Investor's name in SCHEDULE 2, representing the beneficial ownership in all DIC Senior Preference Shares held by STAK 1, and otherwise in accordance with and subject to the terms of this Agreement and the STAK 1 Trust Conditions (*administratievoorwaarden*) attached hereto as SCHEDULE 9.
- 2.4.5** The Dutch Foundation and the DIC Investor shall execute before a Dutch civil law notary a notarial deed of sale and transfer. Through the execution of such deed the DIC Investor shall acquire the Ordinary Shares D numbered 1 through 1,800,000 issued by Almatris Topco 1 to the Dutch Foundation on its incorporation as repayment of the €18.000 loan received by the Dutch Foundation for the purposes of incorporating Almatris Topco 1.
- 2.4.6** In accordance with the Disbursing Agent Agreement and following the satisfaction of the applicable Distribution Procedures by a Mezzanine Lender (a “**Complying Mezzanine Lender**”) and the exercise by the Disbursing Agent of the relevant Call Options under the Call Option Agreement:
- (a)** by means of the execution of a Mezzanine Lenders Share Issue Notarial Deed, Almatris Topco 1 shall issue and deliver to such Complying Mezzanine Lender, or a nominee designated by it, who has entered into a Deed of Adherence, such number of Ordinary Shares M-I as set out against the name of the Complying Mezzanine Lender in SCHEDULE 2 in accordance with and subject to the terms of this Agreement;
  - (b)** by means of the execution of a Junior Preference Shares M-I Issue Notarial Deed, (i) Almatris Topco 1 shall issue and deliver to STAK 2 a number of Mezzanine Junior Preference Shares M-I equal to the number of Mezzanine Lender Junior Preference STAK 2 Depositary Receipts as set out against the name of the Complying Mezzanine Lender in SCHEDULE 2, and (ii) for which Mezzanine Junior Preference Shares M-I, STAK 2 shall issue to the Complying

Mezzanine Lender or a nominee designated by it, who has entered into a Deed of Adherence the number of Mezzanine Lender Junior Preference STAK 2 Depositary Receipts as set out against the name of the Complying Mezzanine Lender in SCHEDULE 2, in accordance with and subject to the terms of this Agreement and the STAK 2 Trust Conditions (*administratievoorwaarden*) attached hereto as SCHEDULE 10.

**2.4.7** In accordance with the Disbursing Agent Agreement and following the satisfaction of the applicable Distribution Procedures by a Junior Mezzanine Lender (a “**Complying Junior Mezzanine Lender**”) and the exercise by the Disbursing Agent of the relevant Call Options under the Call Option Agreement:

- (a) by means of the execution of a Junior Mezzanine Lender Share Issue Notarial Deed, Almatris Topco 1 shall issue and deliver to such Complying Junior Mezzanine Lender, or a nominee designated by it, who has entered into a Deed of Adherence, such number of Ordinary Shares M-II as set out against the name of the Complying Junior Mezzanine Lender in SCHEDULE 2, in accordance with and subject to the terms of this Agreement;
- (b) by means of the execution of a Junior Preference Share M-II Issue Notarial Deed, (i) Almatris Topco 1 shall issue and deliver to STAK 2 a number of Junior Preference Shares M-II equal to the number of Junior Mezzanine Lender Junior Preference STAK 2 Depositary Receipts as set out against the name of the Complying Junior Mezzanine Lender in SCHEDULE 2, and (ii) for which Junior Preference Shares M-II, STAK 2 shall issue to the Complying Junior Mezzanine Lender or a nominee designated by it, who has entered into a Deed of Adherence, the number of Junior Mezzanine Lender Junior Preference STAK 2 Depositary Receipts as set out against the name of the Complying Junior Mezzanine Lender in SCHEDULE 2, in accordance with and subject to the terms of this Agreement and the STAK 2 Trust Conditions (*administratievoorwaarden*) attached hereto as SCHEDULE 10.

**2.4.8** Almatris Topco 1 and the SSN Investors shall execute before the Notary the SSN Share Issue Notarial Deed. Through execution of such deed, Almatris Topco 1 shall issue and deliver such number of Ordinary Shares S to the SSN Investors as is set out against their respective names in SCHEDULE 2 at an aggregate price of EUR [●], which amount shall be charged against the share premium reserve of Ordinary Shares D and otherwise in accordance with and subject to the terms of this Agreement. The Ordinary Shares S will be divided between the SSN Investors pro rata based on the relative sizes<sup>3</sup> of the Dollar Notes and Euro Notes tranches on the Effective Date using the SPOT rate of exchange as quoted in the Wall Street Journal as at day immediately preceding the Effective Date.

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<sup>3</sup> Please could this split be confirmed?

- 2.4.9** Almatris Topco 1, STAK 1 and the SSN Investor shall execute before the Notary the SSN Senior Preference Share Issue Notarial Deed. Through execution of such deed, Almatris Topco 1 shall issue and deliver a number of SSN Senior Preference Shares to STAK 1 equal to the number of SSN Senior Preference STAK 1 Depositary Receipts as is set out against the names of SSN Investors in SCHEDULE 2 at an aggregate price of EUR [●], which amount shall be charged against the share premium reserve of Ordinary Shares D and otherwise in accordance with and subject to the terms of this Agreement, and STAK 1 shall issue to the SSN Investors such number of SSN Senior Preference STAK 1 Depositary Receipts as is set out against the names of SSN Investors in SCHEDULE 2, representing the beneficial ownership in all SSN Senior Preference Shares held by it, and otherwise in accordance with and subject to the terms of this Agreement and the STAK 1 Trust Conditions (*administratievoorwaarden*) attached hereto as SCHEDULE 9.
- 2.4.10** Almatris Topco 1, STAK 2 and the SSN Investor shall execute before the Notary the SSN Junior Preference Share Issue Notarial Deed. Through execution of such deed, Almatris Topco 1 shall issue and deliver a number of SSN Junior Preference Shares to STAK 2 equal to the number of SSN Junior Preference STAK 2 Depositary Receipts as is set out against the names of the SSN Investors in SCHEDULE 2 at an aggregate price of EUR [●], which amount shall be charged against the share premium reserve of Ordinary Shares D and otherwise in accordance with and subject to the terms of this Agreement, and STAK 2 shall issue to the SSN Investors such number of SSN Junior Preference STAK 2 Depositary Receipts as is set out against the names of the SSN Investors in SCHEDULE 2, representing the beneficial ownership in all SSN Junior Preference Shares held by it, and otherwise in accordance with and subject to the terms of this Agreement and the STAK 2 Trust Conditions (*administratievoorwaarden*) attached hereto as SCHEDULE 9.
- 2.4.11** Almatris Topco 2 shall issue the PIK Notes in accordance with the PIK Note Indenture attached hereto as SCHEDULE 11, and Almatris Topco 1 shall enter into the PIK Warrant Instrument attached hereto as SCHEDULE 11 with the PIK Note holders.

#### **Further issuances after the Effective Date**

**2.5** On each Distribution Date:

- 2.5.1** In accordance with the Disbursing Agent Agreement and following the satisfaction of the applicable Distribution Procedures by a Complying Mezzanine Lender and the exercise by the Disbursing Agent of the relevant Call Options under the Call Option Agreement:
- (a) by means of the execution of a Mezzanine Lender Share Issue Notarial Deed, Almatris Topco 1 shall issue and deliver to such Complying Mezzanine Lender, or a nominee designated by it who has entered into a Deed of Adherence, such number of Ordinary Shares M-I as set out against the name of the Complying Mezzanine

Lender in SCHEDULE 2 in accordance with and subject to the terms of this Agreement;

- (b) by means of the execution of a Junior Preference Share M-I Issue Notarial Deed, (i) Almatris Topco 1 shall issue and deliver to STAK 2 a number of Junior Preference Shares M-I equal to the number of Mezzanine Lender Junior Preference STAK 2 Depositary Receipts as set out against the name of the Complying Mezzanine Lender in SCHEDULE 2, and (ii) for which Junior Preference Shares M-I STAK 2 shall issue to the Complying Mezzanine Lender, or a nominee designated by it who has entered into a Deed of Adherence, the number of Mezzanine Lender Junior Preference STAK 2 Depositary Receipts as set out against the name of the Complying Mezzanine Lender in SCHEDULE 2, in accordance with and subject to the terms of this Agreement and the STAK 2 Trust Conditions (*administratievoorwaarden*) attached hereto as SCHEDULE 10.

**2.5.2** In accordance with the Disbursing Agent Agreement and following the satisfaction of the applicable Distribution Procedures by a Complying Junior Mezzanine Lender and the exercise by the Disbursing Agent of the relevant Call Options under the Call Option Agreement:

- (a) by means of the execution of a Junior Mezzanine Lender Share Issue Notarial Deed, Almatris Topco 1 shall issue and deliver to such Complying Junior Mezzanine Lender, or a nominee designated by it who has entered into a Deed of Adherence, such number of Ordinary Shares M-II as set out against the name of the Complying Junior Mezzanine Lender in SCHEDULE 2, in accordance with and subject to the terms of this Agreement;
- (b) by means of the execution of a Junior Preference Share M-II Issue Notarial Deed, (i) Almatris Topco 1 shall issue and deliver to STAK 2 a number of Junior Preference Shares M-II equal to the number of Junior Mezzanine Lender Junior Preference STAK 2 Depositary Receipts as set out against the name of the Complying Junior Mezzanine Lender in SCHEDULE 2, and (ii) for which Junior Preference Shares M-II STAK 2 shall issue to the Complying Junior Mezzanine Lender, or a nominee designated by it who has entered into a Deed of Adherence, the number of Junior Mezzanine Lender Junior Preference STAK 2 Depositary Receipts as set out against the name of the Complying Junior Mezzanine Lender in SCHEDULE 2, in accordance with and subject to the terms of this Agreement and the STAK 2 Trust Conditions (*administratievoorwaarden*) attached hereto as SCHEDULE 10.

**2.6** After the Effective Date:

**2.6.1** Almatris Topco 1 shall issue such shares and warrants as set out in clauses 2.6.3 and 2.6.4 hereof, in accordance with and subject to this Agreement,

and where applicable, the Call Option Agreement and the Disbursing Agent Agreement.

- 2.6.2** Each intended recipient of Almatris Topco Shares or, following an issue by STAK 2 of Junior Preference STAK 2 Depositary Receipts or an issue by STAK 1 of SSN Senior Preference STAK 1 Depositary Receipts, intended recipient of any such Junior Preference STAK 2 Depositary Receipts or SSN Senior Preference STAK 1 Depositary Receipts, shall, as a condition of such receipt and to the extent that it is not already a Party to this Agreement execute a Deed of Adherence substantially in the form attached as SCHEDULE [7].
- 2.6.3** If the PIK Notes have not been redeemed in full by the later of 30 September 2015 or the fifth anniversary of the Effective Date, Almatris Topco 1 shall grant such number of PIK Preference Warrants to the PIK Note holders as required by the PIK Preference Warrant Instrument set out in SCHEDULE 11.
- 2.6.4** Almatris Topco 1 shall issue the Almatris Topco Shares to the intended recipients as set out below, and the intended recipients of the Almatris Topco Shares to be issued shall execute before the Notary the relevant Share Issue Notarial Deed. Through execution of such deed, Almatris Topco 1 shall issue:
- (a)** such number of Management Options to the Management Investors as is set out against their respective names in Schedule 1 and otherwise in accordance with and subject to the terms of this Agreement;
  - (b)** such number of Ordinary Shares S to the SSN Investors pursuant to clauses **Error! Reference source not found.** and **Error! Reference source not found.** and otherwise in accordance with and subject to the terms of this Agreement; and
  - (c)** if the PIK Notes have not been redeemed by the earlier of 30 September 2015 or the fifth anniversary of the Effective Date such number of Ordinary Shares P to any PIK Preference Warrant holder as required pursuant to the exercise of its PIK Preference Warrants and otherwise in accordance with and subject to the terms of this Agreement and the PIK Warrant Instrument. The Parties agree to amend the Articles to increase the authorised share capital and number of Ordinary Preference Shares if and to the extent required for Almatris Topco 1 to comply with its obligations under the PIK Warrant Instrument. The Shareholders agree to exercise their Shareholder and voting rights in such manner as to allow Almatris Topco 1 to comply with its obligations under the PIK Warrant Instrument.

### **Shareholders' consent**

- 2.7** Each of the proposed holders of Almatris Topco Shares (which, for the avoidance of doubt, shall be STAK 1 in respect of the Senior Preference Shares and STAK 2 in respect of the Junior Preference Shares) agrees to accept the Almatris Topco Shares which are issued to it under this clause 2 and, subject to the terms of the Articles, consents to the entry of their respective names in the shareholders' register of Almatris Topco 1 as the holder thereof.

### **Shareholdings post Completion**

- 2.8** As of the Effective Date, the share capital of Almatris Topco 1 and the Depositary Receipts shall be held as set out in SCHEDULE 2. The Shareholders' register of Almatris Topco 1 and the registers for the Depositary Receipts maintained by STAK 1 and STAK 2 shall be updated from time to time to account for changes in share capital resulting from additional issuances.

### **Corporate Action**

- 2.9** Notwithstanding any of the provisions herein, each Party hereby undertakes to take all such corporate actions as may be necessary from time to time to give full effect to this Agreement.

### **Registration**

- 2.10** Upon issue of the Almatris Topco Shares referred to in this clause 2 Almatris Topco 1 will immediately register each of the Investors (or their nominee) and, on the exercise of the Management Options, each respective Management Investor as the fully paid holder of the Ordinary Shares and PIK Preference Warrants (as applicable), and STAK 1 and STAK 2 as the fully paid up holders of the Senior Preference Shares and Junior Preference Shares, respectively, to be issued under this clause 2 in Almatris Topco 1's shareholder register and the PIK Preference Warrant register respectively.

## **3 ANTI-DILUTION OF ORDINARY SHARES S AND SENIOR PREFERENCE SHARES**

- 3.1** In the event of any issuance by Almatris Topco 1 of any and all Management Shares pursuant to the Management Incentive Plan, Almatris Topco 1 shall issue to the holders of the Ordinary Shares S, for nominal consideration, such number of Ordinary Shares S to ensure the SSN Investors' holding of Ordinary Shares S is not diluted. No fractions of Ordinary Shares S shall be granted. To the extent that the number of Ordinary Shares S to be granted pursuant to this clause 3.1 would require fractions of shares to be granted, the number of Ordinary Shares S to be granted shall be rounded down to the nearest whole number.
- 3.2** In the event of any issuance by Almatris Topco 1 of any and all Senior Preference Shares pursuant to the Fee Equitization Option, Almatris Topco 1 shall issue to the holders of the SSN Senior Preference Shares, for nominal consideration, such number of SSN Senior Preference Shares to ensure the SSN Investors' holding of SSN Senior Preference Shares is not diluted. No fractions of SSN Senior Preference Shares shall be granted. To the extent that the number of SSN Senior Preference Shares to be granted pursuant to this clause 3.2 would require fractions of shares to be granted, the

number of SSN Senior Preference Shares to be granted shall be rounded down to the nearest whole number.

#### **4 PERMITTED CAPEX INSTRUMENT<sup>4</sup>**

##### **4.1** In the event that:

**4.1.1** Almatris Topco 1 decides, having obtained Investor Consent pursuant to paragraph [15] of Part 2 of SCHEDULE [5], to approve the raising of capital to finance any growth capital projects of the Group which would require a capital expenditure of over USD [●], and

**4.1.2** Almatris Topco 1 further obtains Investor Consent pursuant to paragraph 13 of Part 2 of SCHEDULE [5] that the financing for such growth capital projects shall be made available through the issue by [Almatris Topco 1] of loan notes which shall have a coupon of 15 per cent ("**Permitted Capex Instruments**"),

then Permitted Capex Instruments shall be offered to each Investor pursuant to the provisions of clauses 15.1 to 15.8.

**4.2** [The Parties agree that subject to the terms of the Senior Secured Note Instrument, the PIK Notes Instrument, and the Revolving Credit Facility, any issued Permitted Capex Instruments shall be repaid as soon Almatris Topco 1 has sufficient cash flow to make any such repayment].

#### **5 INVESTMENT APPRAISAL**

##### **Independent assessment and no duty of care**

##### **5.1** Each Party agrees with each other Party that:

**5.1.1** it or he has not relied, and is not relying, on any appraisal, recommendation, advice or information in relation to the Group or the directors of a Group Member given by, carried out or effected by, or on behalf of, an Investor or an Affiliate of an Investor, a Debtor or a director of a Debtor in connection with it or his decision to enter into this Agreement and the transactions contemplated by this Agreement;

**5.1.2** it or he has made its or his own investigations and appraisals into and assessment of the Group and no Investor, or Affiliate of an Investor, a Debtor or a director of a Debtor has any liability to the other Party in connection with its or his decision to enter into this Agreement and the transactions contemplated by this Agreement other than as expressly set out in this Agreement; and

**5.1.3** it or he is owed no duty of care or other obligation by any Investor or any Affiliate of an Investor, a Debtor or a director of a Debtor in connection

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<sup>4</sup> Full terms still being discussed between DIC, Mezz and SSN.

with its or his decision to enter into this Agreement and the transactions contemplated by this Agreement.

**Not a client of an Investor**

**5.2** Each of the Parties acknowledges and confirms that:

**5.2.1** it or he is not being treated as a client of an Investor (or an Affiliate of an Investor); and

**5.2.2** no Investor, or Affiliate of an Investor is responsible to it or him for providing the protections afforded to such person's clients or advising it or him in relation to this Agreement and the transactions contemplated by this Agreement.

**No regulated activity**

**5.3** Each of the Parties agrees that neither the appointment of an Investor Director or other director nor the giving of advice by any such person in his capacity as a director of a Group Member is to be taken as constituting the regulated activity of providing investment advice either by such person or by the appointing Investor (or a person connected with such Investor), nor is the appointment or the giving of such advice to be treated as causing a Group Member or a Manager to be a client of the appointing Investor (or an Affiliate of an Investor).

**6 FEES AND COSTS<sup>5</sup>**

**Own costs**

**6.1** Except as otherwise set out in this clause 6, each Party will bear its own costs and expenses in connection with this Agreement.

**Non Debtor Professional Fees**

**6.2** The Debtors shall pay up to the pre-agreed limits of the reasonable, actual and documented fees and expenses incurred by the specified financial and legal advisors appointed by the Second Lien Lenders, the Mezzanine Steering Committee, the Mezzanine Investors, DIC, GSO, GoldenTree, Sankaty, JP Morgan and Bank of America Merrill Lynch, on the terms and conditions set forth below and in the amounts as set out in SCHEDULE [6] (the "**Maximum Additional Fees**"). Except for the Maximum Additional Fees, no financial or legal advisor for the Second Lien Lenders, the Mezzanine Steering Committee, the Mezzanine Investors, DIC, GSO, GoldenTree, Sankaty, JP Morgan or Bank of America Merrill Lynch shall receive any payment from the Debtors.

**6.3** The Maximum Additional Fees are inclusive of all applicable taxes.

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<sup>5</sup> Mechanics of payment of fees TBD. Are fees paid by AT1 (if so how is the cash upstreamed), or another Group Member? E&Y to advise on tax implications.



- 6.4** The fees of Wilmington Trust (London) Limited incurred in relation to work carried out both before and after the Effective Date will be paid by Almatris Topco 1 on or after the Effective Date, as may be agreed between Wilmington Trust (London) Limited and Almatris Topco 1 and as and to the extent permitted by the Bankruptcy Code. All fees and expenses incurred in relation to any advisor set out in Schedule [6] relating to work undertaken by the advisor prior to the Effective Date shall be referred to as “**Pre-Effective Date Work Fees**”.
- 6.5** All Pre-Effective Date Work Fees of DIC’s legal advisors (including Weil, Gotshal & Manges and Houthoff Buruma Cooperatief U.A.) are the exclusive responsibility of DIC, provided, however, that following the Effective Date, DIC may seek reimbursement from Almatris Topco 1 for reasonable, actual and documented Pre-Effective Date Work Fees of DIC’s legal advisors (including Weil, Gotshal & Manges and Houthoff Buruma Cooperatief U.A.) in an amount up to USD 6.0 million, by sending an invoice for such fees to Almatris Topco 1 at the address stated in clause [20]. If reimbursement is sought by DIC, Almatris Topco 1 shall repay DIC within thirty (30) days of receiving an invoice from DIC, and no invoice in respect of these fees and expenses will be issued earlier than three months after the Effective Date.
- 6.6** All Pre-Effective Date Work Fees of DIC’s financial advisors (including JP Morgan and Bank of America/Merrill under the capital structuring engagement letters between DIC and each of JP Morgan and Bank of America/Merrill dated July 22, 2010) (the “**DIC Financial Advisors**”) are the exclusive responsibility of DIC, provided, however, that, following the Effective Date, the DIC Financial Advisors (or DIC, to the extent it has already paid the invoices of the DIC Financial Advisors) may seek reimbursement from Almatris Topco 1 for reasonable, actual and documented Pre-Effective Date Work Fees of the DIC Financial Advisors to the DIC Financial Advisors (or DIC, to the extent it has already paid the invoices of the DIC Financial Advisors) in an amount up to USD 3.8 million, by sending an invoice for such fees to Almatris Topco 1 at the address stated in clause [20]. If reimbursement is sought, Almatris Topco 1 shall repay the DIC Financial Advisors (or DIC, to the extent it has already paid the invoices of the DIC Financial Advisors and provides proof of payment thereof) within ten (10) Business Days after the later of the Effective Date or the receipt of an invoice, without any requirement for additional documentation or further evidence of reasonableness.
- 6.7** All Pre-Effective Date Work Fees of the Junior Advisors are the exclusive responsibility of the clients engaging the Junior Advisors (the “**Junior Clients**”) (and DIC, to the extent that DIC has entered into a separate agreement with a Junior Advisor), provided, however, that, on or following the Effective Date, Almatris Topco 1 shall make reimbursement payments with respect to the reasonable, actual and documented fees and expenses of the Junior Advisors incurred in relation to Pre-Effective Date Work, in the amounts and on the terms set forth below:
- 6.7.1** to DIC in an amount up to USD 5.0 million which shall be paid to DIC, as reimbursement to it upon proof of payment by DIC of such fees and expenses to the Junior Advisors, which amount Almatris Topco 1 will pay within thirty (30) days of receiving an invoice from DIC, it being understood that no invoice in respect of these fees and expenses will be issued earlier than three months after the Effective Date;

**6.7.2** to the Junior Advisors (or the Junior Clients, to the extent that they have already paid the invoices of the Junior Advisors) in an amount up to the sum of USD 0.469 million plus £1.221 million, which shall be paid on the later to occur of (i) the Effective Date and (ii) ten (10) Business Days after receipt by the Debtors of (A) copies of all relevant invoices from the Junior Advisors or the Junior Clients, as relevant, documenting the actual fees and expenses requested, and (B) confirmation from each Junior Advisor or Junior Client that the invoices they have submitted have not been previously paid by DIC. No Junior Advisor or Junior Client shall be entitled to payment under this subparagraph [6.7.2] unless it submits invoices within thirty (30) days after the Effective Date. If the Debtors receive invoices pursuant to this subparagraph [6.7.2] which in aggregate exceed the sum of USD 0.469 million plus £1.221 million, the Debtors shall only be required to pay the sum of USD 0.469 million plus £1.221 million in aggregate to the Junior Advisors or Junior Clients, as relevant, and the allocation between the Junior Advisors or Junior Clients shall be as set out in the funds flow memorandum that has been agreed upon by DIC, the Junior Clients and Versatus Advisers LLP (the “**Funds Flow**”)<sup>6</sup> as attached hereto at Schedule [●]. A summary of such invoices and estimates shall be made available to DIC and Almatris Topco 1 on request. [Invoices issued in USD shall be paid in USD, subject to the dollar cap described in this subparagraph [6.7.2]; invoices issued in GBP shall be paid in GBP, subject to the pound sterling cap described in this subparagraph [6.7.2]. ]

**6.7.3** to the Junior Advisors (or the Junior Clients, to the extent that they have already paid the invoices of the Junior Advisors) in an amount up to the sum of USD 1.026 million plus £0.663 million, which amount shall be paid on the later to occur of (i) thirty (30) days after the Effective Date (provided that the Debtors are in receipt of all relevant invoices referred to in (ii) below) and (ii) ten (10) Business Days after receipt by the Debtors of copies of all relevant invoices from the Junior Advisors or the Junior Clients, as relevant, documenting the actual fees and expenses requested and confirmation from each Junior Advisor or Junior Client that the invoices they have submitted have not been previously paid by DIC. No Junior Advisor or Junior Client shall be entitled to payment under this subparagraph [6.7.3] unless it submits invoices within one hundred and twenty (120) days after the Effective Date. If the Debtors receive invoices pursuant to this subparagraph [6.7.3] which in aggregate exceed the sum of USD 1.026 million plus £0.663 million, the Debtors shall only be required to pay the sum of USD 1.026 million plus £0.663 million in aggregate to the Junior Advisors or Junior Clients, as relevant and the allocation between the Junior Advisors and the Junior Clients shall be as set out in the Funds Flow. [Invoices issued in USD shall be paid in USD, subject to the dollar cap described in this subparagraph [6.7.3]; invoices issued in GBP shall be paid in GBP, subject to the pound sterling cap described in this subparagraph [6.7.3].

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<sup>6</sup> FF have noted that this may not be ready by 15/09/2010 but should be by 20/09/2010.

- 6.8** The Pre-Effective Date Work Fees of legal advisors to GSO, including those of White & Case LLP, shall not be the obligation of the Debtors unless and until such time as the Debtors are authorized by the Bankruptcy Court to reimburse GSO for such fees and expenses, in which case the Debtors shall do so up to the maximum amount of USD 1 million set forth in SCHEDULE [6], in accordance with the provisions of the GSO Commitment Letter.
- 6.9** The Pre-Effective Date Work Fees of legal advisors to JP Morgan and Bank of America/Merrill, including those of Latham & Watkins LLP, shall not be the obligation of the Debtors unless and until such time as the Debtors are authorized by the Bankruptcy Court to reimburse JP Morgan and Bank of America/Merrill for such fees and expenses, in which case the Debtors shall do so up to the maximum amount of USD 1.5 million in accordance with the provisions of the various JP Morgan and Bank of America/Merrill engagement and commitment letters. The aggregate reimbursable fees and expenses of JP Morgan and Bank of America/Merrill under all such engagement and commitment letters shall not exceed USD 1.5 million.
- 6.10** The Pre-Effective Date Fees of legal advisors to GoldenTree and Sankaty, collectively, including those of Ropes & Gray, shall not be the obligation of the Debtors unless and until such time as the Debtors are authorized by the Bankruptcy Court to reimburse GoldenTree and Sankaty for such fees and expenses, in which case the Debtors shall do so up to the maximum amount of USD 415,000 set forth in SCHEDULE [7], in accordance with the provisions of the Sankaty and GoldenTree Commitment Letter.
- 6.11** In the event of any conflict between the fee and expense reimbursement provisions set out in this Agreement and the fee and expense reimbursement provisions contained in the Equity Commitment Letter, the [Revolving Credit Facility, the SSN Note Instrument, the PIK Note Indenture or any similar document or agreement that sets forth the terms of the transactions contemplated by this Agreement and the rights and obligations of the Second Lien Lenders, the Mezzanine Steering Committee, the Mezzanine Investors, DIC, GSO, GoldenTree, Sankaty, JP Morgan or Bank of America Merrill Lynch], then the fee and expense reimbursement provisions of this Agreement shall control. In the event of any conflict between the fee and expense reimbursement provisions contained in this Agreement and the provisions of any order entered by the Bankruptcy Court, then, the provisions of the order of the Bankruptcy Court shall control except to the extent that the Party seeking to rely on such order has agreed in this Agreement to accept fee and expense reimbursement amounts or repayment terms that are more favourable to the Debtors than such order provides.

#### **Fee Equitization Option**

- 6.12** [Pursuant to the SSN Note Instrument, Almatix Holdings 9 B.V. shall have an option , [on the Effective Date], to issue and sell to GSO USD 20,000,000 Dollar Secured Notes, in addition to the Senior Secured Notes already issued to GSO under the SSN Note Instrument (the “**Senior Secured Notes Facility Upsize Option**”).
- 6.13** Following the Effective Date, in the event that:

**6.13.1** Almatris Holdings 9 B.V. exercises the Senior Secured Notes Facility Upsize Option for an aggregate principal amount of Senior Secured Notes equal to or in excess of USD 10,000,000; and

**6.13.2** within ninety (90) days of [the Effective Date] the DIC Investor, the [Parent Guarantor] and the applicable Group Members agree that the DIC Investor may elect by notice in writing to the Parties that the full amount or part of the full amount of the USD 11,000,000 non-debtor professional fees owed to DIC following the Effective Date (as set out in SCHEDULE 6) will be equitized and the appropriate number of DIC Senior Preference Shares shall be issued<sup>7</sup> to STAK 1 with a corresponding number of DIC Senior Preference STAK 1 Depositary Receipts (the “**Fee Equitization Option**”) representing the amount equitized by DIC<sup>8</sup>,

then the DIC Investor shall promptly notify the Senior Secured Noteholders that the Fee Equitization Option has been exercised.]<sup>9</sup>

**6.14** For the avoidance of doubt, the issue of Ordinary Shares pursuant to the Fee Equitization will be subject to the provisions of clauses 15.1 to 15.8. The Shareholders hereby agree to exercise all voting rights and other rights and powers available to them to give effect to exercise the Fee Equitization Option, if exercised by the DIC Investor.

## **7 DIRECTORS AND CORPORATE GOVERNANCE**

### **Board Composition**

**7.1** Almatris Topco 1 shall be managed by a board of directors (“**Board**”). The Board shall consist of up to eleven (11) directors.

**7.2** The initial Board shall be constituted as follows:

**7.2.1** [●],[●] and [●], who shall be the initial DIC Directors;

**7.2.2** [Graeme Delaney-Smith] and [James Greenwood], who shall be the initial Mezzanine Directors];

**7.2.3** [●] and [●], who shall be the initial SSN Directors;

**7.2.4** [Remco de Jong], who shall be the initial CEO; and

**7.2.5** [Charles Herlinger], who shall be the initial CFO.

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<sup>7</sup> Mechanism of how these shares will be paid up to be confirmed. Need some sort of settlement mechanism, could be for the fees to be paid by the Group and the money then to be used to subscribe for new shares.

<sup>8</sup> Pricing mechanism re number/value of shares to be issued to DIC (or the other Investors) pursuant to the FEO being discussed between DIC, Mezz and SSN.

<sup>9</sup> SSN is considering DICs proposal that rather than equitise the whole of its fees, DIC to be able to elect to equitise an amount of fees at least equal to the difference between USD 410 million and the amount of USD SSNs actually drawdown.

- 7.3 In addition to the initial Directors, Almatris Topco 1 shall, within three (3) months of the Effective Date [or at such other date as agreed by the Board]<sup>10</sup>, appoint two (2) Independent Directors to the Board, pursuant to the provisions of clause 7.10.
- 7.4 The Board shall not at any time comprise a majority of directors resident in the United Kingdom.
- 7.5 The directors appointed to the Board shall not be directors or officers of or consultants to Competitors of the Group.

#### **Nomination rights for the appointment of Board members**

- 7.6 For as long as the DIC Investor directly or indirectly holds (including Ordinary Shares held by Agreed Co-Investors (as defined below)): (A) in excess of 35% of the Ordinary Shares in issue, it shall have the right to and shall make a binding nomination for the appointment and/or removal of three (3) Board members as currently set out in clause 13.2 a of the Articles; (B) in excess of 20% but not more than 35% of the Ordinary Shares in issue, it shall have the right to make and shall make a binding nomination for the appointment and/or removal of two (2) Board members; (C) in excess of 10% but not more than 20% of the Ordinary Shares in issue, it shall have the right to make a binding nomination for the appointment and/or removal of one Board member (in each case, the “**DIC Directors**”). For purpose of calculating the Ordinary Shares held by the DIC Investor, any Ordinary Shares held by Agreed Co-Investors and any DIC Designee of the DIC Investor shall be attributed to the DIC Investor.
- 7.7 In the event that the DIC Investor, due to a change in its holdings of Ordinary Shares, is no longer is entitled to make binding nominations for the appointment of the number of DIC Directors in office at such time, the DIC Investor shall request that a General Meeting is convened in accordance with clause [9.2.1] for the purposes of (i) amending the Articles in order to reflect the number of Directors for which the DIC Investor is entitled to make and shall make a binding nomination in accordance with clause [7.6] at such time, and (ii) request the dismissal of such number of DIC Directors as required for the number of DIC Directors in office to be equal to the number of Directors for which the DIC Investor has binding nomination rights.
- 7.8 The Mezzanine Steering Committee, for as long as such committee is in existence, or after the dissolution of the Mezzanine Steering Committee, the Mezzanine Investors holding a majority of the aggregate number of Ordinary Shares held by all Mezzanine Investors shall have the right to provide the list of nominees to the meeting of holders of Ordinary Shares M, that shall be entitled to and shall make a binding nomination for the appointment and/or removal of two Board members as set out in clause 13.2. b of the Articles (the “**Mezzanine Directors**”). The Mezzanine Investors and to the extent applicable any holders of Ordinary Shares M who are not Mezzanine Investors agree to include only the nominees provided by the Mezzanine Steering Committee, for as long as such committee is in existence, or after the dissolution of the Mezzanine Steering Committee, the Mezzanine Investors holding a majority of the aggregate

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<sup>10</sup> TBD

number of Ordinary Shares M-I and the Ordinary Shares M-II held by all Mezzanine Investors, when making their binding nomination for the appointment and/or removal of two Board members as set out in clause 13.2. b of the Articles. [The Mezzanine Steering Committee shall be dissolved upon the date falling sixty (60) calendar days after the date of this Agreement such that, after such date all nominations or appointments to be made by the Mezzanine Steering Committee shall be made by the Mezzanine Investors holding a majority of the aggregate number of Ordinary Shares M-I and the Ordinary Shares M-II held by all Mezzanine Investors].

**7.9** The holder(s) of Senior Secured Notes holding a majority of the aggregate principal amount of the Senior Secured Notes shall have the right to provide the list of nominees to the SSN Trustee who shall be entitled to make and shall make binding nominations for the appointment and/or removal of two Board members as set out in clause 13.2.c of the Articles (the “**SSN Directors**” and together with the DIC Directors and the Mezzanine Directors, the “**Investor Directors**”). In the event that the SSN Investors wish to engage another trustee as the SSN Trustee, the SSN Investors shall request that a General Meeting is convened in accordance with clause [9.2.1] for the purposes of amending the Articles in order to reflect the identity of the new SSN Trustee. The new SSN Trustee shall sign a Deed of Adherence to this Agreement. The Parties agree to exercise all their Shareholders’ and voting rights in such a manner as to allow for such amendment of the Articles.

**7.10** The Board shall have the right to make binding nominations for the appointment and/or removal of two independent directors as set out in clause 13.4 of the Articles (the “**Independent Directors**”), who shall each be a natural person. The Board shall determine, at its discretion, whether the person nominated is independent in character and judgement. In making its determination the Board shall take into account all appropriate factors including, without limitation, the following factors:

**7.10.1** whether the person to be nominated is or was at any time during the past three years an officer, employee, director of or in any other way connected to or affiliated with, or otherwise receives or received any compensation from:

- (a) any member of the Almatris Group (including Almatris Topco 1 and Almatris Topco 2);
- (b) any person (natural or corporate) that holds a capital or debt instrument in any member of the Almatris Group;
- (c) any person (natural or corporate) that otherwise has a material business relationship with any member of the Almatris Group;
- (d) any Transferee of any capital or debt instrument in any member of the Almatris Group;
- (e) DIC or any company affiliated with DIC;
- (f) any Mezzanine Investor or any company affiliated with a Mezzanine Investor; or

(g) any SSN Investor or any company affiliated with an SSN Investor;

**7.10.2** whether the person to be nominated is or was at any time during the past three (3) years, a DIC Director, a Mezzanine Director or an Investor Director; and

**7.10.3** whether the person to be nominated is married to, a registered partner of, other life companion to, foster child or relative by blood or marriage up to the second degree as defined under Dutch law of, a person referred to under clauses [7.10.1] or [7.10.2] above.

**7.11** In addition, the Board shall be entitled to make nominations for the appointment and/or removal of the CEO and the CFO as set out in clause 13.3 of the Articles, who shall each be a natural person.

**7.12** The nominations referred to in clauses 7.6 to 7.11 above, shall be submitted by the persons entitled to make the nominations in accordance with clause 13 of the Articles. The Investors and the Board shall have regard to clause 7.4 when submitting their binding nominations.

**7.13** In the event that the DIC Investor loses the right to make a binding nomination for the appointment of a DIC Director according to clause 7.7 above, the Board, by resolution adopted by a simple majority of the remaining directors shall be entitled to make a binding nomination for the appointment of a director to serve in place of such DIC Director.

#### **Appointment of the Board members**

**7.14** The members of the Board shall be appointed by the General Meeting of Shareholders.

**7.15** Each of the Shareholders agrees, and shall exercise all voting rights, to vote in favour of the appointment to the Board of the first person or entity included as nominee on the relevant nomination list provided pursuant to clauses 7.6 to 7.11.

**7.16** Each of the Shareholders shall exercise all voting and other rights and powers available to them to give effect to the appointment suspension, removal and replacement of directors nominated by the Investors if required by the appointing Investor, and the Investors shall exercise all voting and other rights available to them in order to cause the Investor Directors to nominate and keep in office two Independent Directors in accordance with the above provisions and the Articles, including without limitation the exercise of voting rights as a Shareholder.

#### **Suspension and dismissal of Board members**

**7.17** The General Meeting of Shareholders shall be entitled to suspend or dismiss a Board member at all times.

**7.18** Each of the Investors and Almatis Topco 1 shall at all times be entitled to request the suspension or dismissal by the General Meeting of Shareholders of any Board member nominated by it pursuant to clauses 7.6 to 7.11.

- 7.19** The Shareholders hereby agree to adopt and to vote in favour of a resolution to suspend or dismiss a Board member at the request of the Investor or corporate body who nominated such Board member. To the extent that the General Meeting wishes to suspend or dismiss a director without a request relating thereto by the Investor or corporate body who nominated such Board member, such decision shall require a 2/3 majority of the votes cast in the General Meeting representing at least ½ of the issued capital. The Shareholders hereby agree not to vote in favour of any resolution for the suspension or dismissal of an Investor Director unless such proposal has been made by the person who nominated such Investor Director for appointment.
- 7.20** [If a seat on the Board becomes vacant (by way of resignation, dismissal, death or otherwise of a Director), the Investor who or corporate body that nominated the Board member who previously occupied such seat shall be entitled to make another binding nomination unless otherwise provided in clauses 7.6 to 7.11.]

#### **Personal rights to Observers**

- 7.21** For as long as it holds Ordinary Shares, each of (i) Northwestern and (ii) subject to clause 22.9, whichever member of the Mezzanine Steering Committee (other than Northwestern) has not, at the relevant time, nominated one of the Mezzanine Directors, is entitled to appoint and/or remove one observer to attend on its behalf all meetings of the Board and the board of any of its subsidiaries, and any committees of such boards (an “**Observer**”).
- 7.22** In addition, the holders of PIK Notes, for as long as they hold PIK Notes, are entitled to appoint and/or remove one Observer to attend on their behalf all meetings of the Board and the board of any of its subsidiaries, and any committees of such boards in accordance with the terms of the PIK Notes Instrument.
- 7.23** The Board shall be informed of the name, address and other contact details of any Observer within five (5) Business Days of that Observer’s appointment.
- 7.24** Once the Board has been notified of the appointment and details of the Observer, such Observer shall have the same rights as the members of the respective managing boards or members of the relevant committee, as applicable, to receive notice of meetings and to receive information in relation to the Group. For the avoidance of doubt, the appointing of Observers shall not impact the operating of the Board. Almatris Topco 1 shall convene and hold its Board meetings and adopt resolutions in or outside of a meeting as set out in the Board Rules. An Observer shall not be a managing director or otherwise a member of the board of directors of any of the companies in the Group and shall not be entitled to vote.
- 7.25** An Observer shall immediately report any conflict of interest that is of material significance to Almatris Topco 1 (or any Group Member), or any potential conflict of interest that is of material significance to Almatris Topco 1 (or any Group Member), to the Chairman and to the other members of the Board (or of the board of directors of any other relevant Group Member). In the event of such conflict of interest the Board shall be entitled to deny the conflicted Observer access to (i) the Board meeting during which the matter relating to the conflict of interest will be discussed and voted on, and (ii) all confidential information in respect of the matter to which the conflict relates.



- 7.26** Northwestern and the other members of the Mezzanine Steering Committee (other than Northwestern) and the holders of the PIK Notes entitled to appoint an Observer shall procure that any Observers so appointed shall adhere to the Board Rules and enter into a confidentiality agreement in the form set out in SCHEDULE 12 in respect of the information to be received in their capacity as Observer.
- 7.27** The rights of Northwestern, the holders of the PIK Notes, and, subject to clause 22.9, whichever member of the Mezzanine Steering Committee (other than Northwestern) has not, at the relevant time, nominated one of the Mezzanine Directors, pursuant to clause 7.21 are of a personal nature and can not be Transferred or assigned to any other person.
- 7.28** Each appointment and removal of Observers as contemplated by clause 7.21 shall be made by notice in writing served on the relevant Group Member and shall take effect at the time it is served on the relevant Group Member.

#### **Duties of the Board**

- 7.29** The Board shall be entrusted with the management of Almatris Topco 1 and shall also have the overall responsibility for the management of the Group. The Board may exercise all the powers of Almatris Topco 1, with due observance of Dutch law, this Agreement and the Articles.
- 7.30** Nothing in this Agreement shall preclude any director of Almatris Topco 1 or its subsidiaries from exercising his or her fiduciary duties pursuant to mandatory Dutch law or, in the case of the non-Dutch Group Members, in accordance with the laws of their relevant jurisdiction.

#### **Representation of Almatris Topco 1**

- 7.31** The authority to represent Almatris Topco 1 shall vest in:
- 7.31.1** the Board; and
- 7.31.2** the CEO or the CFO acting individually.
- 7.32** In addition, Almatris Topco 1 shall grant a power of attorney to [●]<sup>11</sup> (the "**Proxyholder**"), authorising the Proxyholder to on behalf of Almatris Topco 1 sign and execute any documents and take such action as it deems to be required, including the exercise of any shareholder's right of Almatris Topco 1 in respect of Almatris Topco 2 such as the convening of a general meeting of Almatris Topco 2 and exercising Almatris Topco 1's voting rights on Almatris Topco 1's shares in Almatris Topco 2 to ensure the execution and implementation of any resolution of the Board, substantially in the form of the draft power of attorney attached in Schedule [●]. The Proxyholder shall immediately upon exercising its powers under the above mentioned power of attorney inform the Board of any actions taken by it thereunder. The Board shall be entitled to revoke the power of attorney in writing pursuant to a unanimous resolution to do so.

#### **Meetings of the Board**

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<sup>11</sup> TBD.

- 7.33** The Board shall meet no less frequently than four (4) times per year.
- 7.34** A meeting of the Board shall be quorate provided that both a DIC Director and a Mezzanine Director are present and capable of voting at the relevant meeting. In the event that the Board is not quorate by reason of a failure of a DIC Director or a Mezzanine Director to be present at the meeting in accordance with the preceding sentence, then notice shall be given for a subsequent meeting to occur between three (3) and five (5) Business Days from the date of the original meeting. If such subsequent Board meeting is still not quorate, at that time notice shall be given for a subsequent meeting (a “**Deemed Quorate Meeting**”) to occur between two (2) and four (4) Business Days from the date of the second meeting, with respect to which Deemed Quorate Meeting a quorum shall be deemed to exist so long as any Director is present.
- 7.35** A meeting of the Board can be convened by the Chairman acting alone or upon the request of two (2) Board members acting jointly or any Investor Director. In the event that the Chairman has not complied with such request within [●] Business Days after receipt of the request, the requesting Board members or an Investor Director shall have the right to convene a meeting of the Board in conformity with the request made. Except in the case of a Deemed Quorate Meeting, at least five (5) Business Days’ notice of each meeting of the Board shall be given to the Board members and all Observers unless shorter notice is otherwise agreed upon by a majority of the Directors. An agenda and copies of any appropriate supporting papers shall be sent to each member of the Board and the Observers not later than three (3) Business Days prior to the date of each Board meeting. A breach of the requirements of this clause 7.35 shall not affect the validity of a meeting of the Board which has otherwise been validly convened and is quorate.
- 7.36** Meetings of the Board will be (i) held in the Netherlands or elsewhere as otherwise agreed provided that a majority of meetings held in the statutory and fiscal year of Almatris Topco 1 will be held in the Netherlands, and (ii) conducted in English.
- 7.37** Board members shall be entitled to attend Board meetings by telephone.
- 7.38** Minutes of each Board meeting written in English shall be circulated to each member of the Board no later than ten (10) Business Days after the relevant meeting.

### **Chairman**

- 7.39** The Board shall appoint a chairman (the “**Chairman**”), who shall be an Independent Director. If no Independent Directors are in office, the Board shall appoint the Chairman from the DIC Directors, which Chairman shall be dismissed from such capacity if and when one or more Independent Directors are appointed.

### **Voting and decision making**

- 7.40** Each member of the Board shall have one vote in a Board meeting.
- 7.41** Decisions of the Board can only be validly taken in a quorate Board meeting as set out in clause 7.34. The Board shall make decisions by majority vote, except for any of the acts set out in Part 2 of SCHEDULE [5] listed as investor reserved matters (“**Investor**

**Reserved Matters**”) which shall also require the approval of a majority of the Investor Directors.

- 7.42** If there is an even number of Investor Directors and there is a deadlock with respect to an Investor Reserved Matter, then (i) if the DIC Investor holds (including Ordinary Shares held by Agreed Co-Investors) a higher percentage of the Ordinary Shares than the Mezzanine Investors, the DIC Directors shall have the casting vote; or (ii) if the Mezzanine Investors collectively hold a higher percentage of the Ordinary Shares than the DIC Investor (including Ordinary Shares held by Agreed Co-Investors), the Mezzanine Directors shall have the casting vote; or (iii) if the DIC Investor (including Ordinary Shares held by Agreed Co-Investors) and the Mezzanine Investors collectively hold the same percentage of Ordinary Shares, neither shall have a casting vote. In the event of a deadlock between the Investor Directors, the approval by the majority of the Investor Directors shall not have been granted and such resolution may not be adopted by the Board.
- 7.43** The Board shall require the prior approval of the General Meeting for matters listed in Part 2 of SCHEDULE [5] under Shareholder Reserved Matters (a "**Shareholder Reserved Matter**"), and any other subject matters as determined by a 75 per cent majority of the Ordinary Shareholders.
- 7.44** The Chairman shall not be entitled in any circumstances to a second or casting vote in addition to any other vote he may have.

#### **Powers of attorney of members of the Board**

- 7.45** A member of the Board may grant another member of the Board the power to represent him and to cast votes on his behalf at a meeting of the Board, provided that:
- 7.45.1** the Chairman will have been notified thereof in writing by the grantor; and
- 7.45.2** the power shall be made with respect to a specific meeting or meetings as stated in the notification of appointment.

#### **Conflict of Interest**

- 7.46** Provided that a member of the Board has disclosed the nature and extent of any conflict of interest, that member may vote on any resolution concerning any matter in which he/she has a conflict of interest and, if he/she votes, his/her vote shall be counted in the quorum, subject to Dutch law. If pursuant to a change in Dutch mandatory law, a Board member becomes prohibited from exercising his/her voting rights in the event of a conflict of interest, and two or more Board members have a conflict of interest that prohibits the exercise of their voting rights on a matter to be resolved by the Board, such matter shall be referred to the decision of the General Meeting of Shareholders.<sup>12</sup>

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<sup>12</sup> Current pending legislation provides that a director shall not be entitled to vote on matters if he/she has a direct or indirect personal interest in the matter and that if as a result thereof the board can no longer take any decision, it should be referred to the supervisory board or the general meeting of shareholders unless provided otherwise in the articles. The articles will contain a similar provision.

- 7.47** The relevant member of the Board shall immediately report any conflict of interest that is of material significance to Almatris Topco 1 (or any Group Member), or any potential conflict of interest that is of material significance to Almatris Topco 1 (or any Group Member), to the Chairman and to the other members of the Board (or of the board of directors of any other relevant Group Member).
- 7.48** The Board shall immediately inform the General Meeting of any conflict of interest. The General Meeting shall be entitled to appoint a special delegate to represent Almatris Topco 1 in the event of a conflict of interest.

#### **Board Rules**

- 7.49** The Board shall adopt the Board Rules attached hereto as Schedule [4] PART 1.

#### **Board Committees**

- 7.50** The Board shall establish and maintain the following committees:
- 7.50.1** a remuneration committee (the “**Remuneration Committee**”);
  - 7.50.2** an audit committee (“**Audit Committee**”); and
  - 7.50.3** such other committees as the Board considers appropriate.
- 7.51** The Remuneration Committee shall deal with all questions concerning the terms of employment of any senior employee of the Group (including the terms of their bonus or other remuneration, termination or dismissal). The Remuneration Committee shall initially be comprised of the Chairman, two DIC Directors, and one Mezzanine Director and shall have the terms of reference and powers and authorities as set out in Part 3 of SCHEDULE [4].
- 7.52** The Audit Committee shall deal with all material questions concerning auditing and accounting policy of the Group and its financial controls and systems. The Audit Committee shall be initially comprised of [the CFO, two DIC Directors, and one Mezzanine Director] and shall have the terms of reference and powers and authorities as set out in Part 2 of SCHEDULE [4] as amended from time to time.

#### **Remuneration**

- 7.53** The remuneration of individual members of the Board shall on the basis of a proposal by the Remuneration Committee be determined by the General Meeting pursuant to a resolution adopted by a majority of 75% of the votes.
- 7.54** [The remuneration relating to all senior employees of the Group shall be determined by the Remuneration Committee and the Board, in accordance with Part 3, Schedule 4. Almatris Topco 1 and Almatris Topco 2 shall procure that any formal corporate resolutions required for the implementation thereof shall be adopted.]

#### **Subsidiary Boards**

- 7.55** The Board members shall be entitled to be appointed to the boards or sit as observers, and to any committees of such boards, of such subsidiaries of Almatris Topco 1 as determined by the Board.
- 7.56** On the Effective Date the articles of association or comparable documents of each subsidiary of Almatris Topco 1 shall be amended to ensure that:
- 7.56.1** they shall provide that the board of such subsidiary shall observe the directions of its general meeting of shareholders relating to the general policy to be pursued by that company with respect to its business, the financing of the Group or investments by the Group; and
- 7.56.2** every action or resolution of such subsidiary's board or similar body with executive powers or general meeting of shareholders shall require the prior written approval of its general meeting of shareholders for any resolution for any matter that relates to:
- (a)** an Investor Reserved Matter;
  - (b)** a Shareholder Reserved Matter;
  - (c)** the exercise of voting rights in relation to Investor Reserved Matters or Shareholder Reserved Matters in its capacity as shareholder, member, board member or in any other capacity with respect to any other Group Member; or
  - (d)** the issuing of directions relating to the general policy to be pursued by that company with respect to its business, the financing of the group or investments by the group in its capacity as shareholder, member, board member or in any other capacity with respect to any other Group Member.
- 7.57** Each subsidiary of Almatris Topco 1 must request the prior approval of its general meeting of shareholders for any resolution for any matter that is an Investor Reserved Matter or a Shareholder Reserved Matter, which in turn shall require the prior written approval of its shareholder to exercise its voting rights to grant such approval, until ultimately the prior written approval of Almatris Topco 1, shall be required. Almatris Topco 1, in turn shall resolve on granting such approval in accordance with this Agreement and the Articles. If Almatris Topco 1, acting in its capacity of sole shareholder of Almatris Topco 2 has approved a matter, to the extent permissible, each subsidiary and/or the board of any subsidiary of Almatris Topco 1 shall be required to approve such matter.
- 7.58** If Almatris Topco 1, acting in its capacity as sole shareholder of Almatris Topco 2 issues to Almatris Topco 2 any directions relating to the general policy to be pursued by that company with respect to its business, the financing of the Group or investments by the Group, Almatris Topco 2 shall procure either in its capacity as shareholder of a subsidiary or board member of a shareholder of any subsidiary that such directions are issued to all of Almatris Topco 1's indirect subsidiaries.

- 7.59** If Almatris Topco 1, acting in its capacity as sole shareholder of Almatris Topco 2 adds any matter to the list of matters requiring the prior approval of the shareholders meeting of Almatris Topco 2 set out in clause [14.7] of the articles of association of Almatris Topco 2 in accordance with clause [14.7 (x)] of the articles of association of Almatris Topco 2, Almatris Topco 2 shall procure either in its capacity as shareholder of a subsidiary or board member of a shareholder of any subsidiary that such matters are also added to the list of matters requiring prior approval of the shareholders meeting of all Almatris Topco 1's indirect subsidiaries.
- 7.60** Almatris Topco 1, acting in its capacity of sole shareholder of Almatris Topco 2 shall determine the number of board members to be appointed to the board of Almatris Topco 2. The initial board of Almatris Topco 2 shall consist of:
- 7.60.1** Remco de Jong;
- 7.60.2** Charles Herlinger; and
- 7.60.3** Pieter Post.
- 7.61** The Parties shall procure that Almatris Topco 2 is appointed as a Board member on each of the boards of the subsidiaries of Almatris Topco 2.<sup>13</sup>
- 7.62** Almatris Topco 1 and Almatris Topco 2 shall to the extent possible and permitted by Dutch law procure that the Board members to be appointed to the boards or sit as observers, and to any committees of such boards, of such indirect subsidiaries of Almatris Topco 1 as determined by the Board or such Observers as appointed in accordance with clause 7.22 are provided with the information and access to meetings as they are entitled to pursuant to this Agreement.

#### **D&O Insurances**

- 7.63** Almatris Topco 1 shall obtain and maintain appropriate level and terms of directors' and officers' insurance coverage for members of the Board and for members of the boards of all other Group companies ("**D&O Insurance**").

#### **Fees and Expenses**

- 7.64** All members of the Board shall be entitled to fees and reimbursement of expenses by Almatris Topco 1, all as set out in this clause 7.64.
- 7.64.1** The Directors shall be entitled to a annual fixed fee in an amount to be determined by the Board. For the avoidance of doubt, no monitoring fees will be paid to Directors.
- 7.64.2** In addition, members of the Board shall be reimbursed for expenses. All expenses must be reasonably and properly incurred.

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<sup>13</sup> TBD whether there are German/US law constraints re this (if so need to get commercially similar solution to what we have here).

**7.64.3** Fees payable to members of the Board, other than those specified in this Agreement shall be approved by 75% of the Shareholders in accordance with the requirements of Dutch law.

**7.64.4** No fees will be payable to any Observers but Observers shall be entitled to reimbursement of all travel and out-of-pocket expenses reasonably incurred.

### **Management Incentives**

**7.65** Almatis Topco 1 shall enter into incentive plans for the benefit of current and future managers, key senior employees and key employees of the Group, the terms and conditions of which are set out in Schedule [●] (the “**Incentive Plans**”).

### **No claim against Investor Directors and Investors**

**7.66** Each Party, including the Investors and each Manager (by its or his execution of this Agreement or a Deed of Adherence) waives, except in the case of fraud or deliberate or wilful default, any claim it may have now or in the future against:

**7.66.1** each Investor Director relating to or otherwise connected with any act or exercise of any right or discretion by that Investor Director under a provision of this Agreement; and

**7.66.2** each Investor arising out of the valid exercise of any right or discretion by that Investor under a provision of this Agreement.

### **Approvals, consents and directions**

**7.67** The consent, approval or direction of an Investor Director may only be validly given (whether under this Agreement, the Articles or otherwise) if that person:

**7.67.1** gives that consent, approval or direction in writing to the Board or other recipient; or

**7.67.2** (in the case of a consent or approval, as opposed to a direction, required from an Investor Director) signs a written resolution of the Board or signs the minutes of the Board meeting approving the relevant transaction or matter or votes in favour of the relevant transaction or matter at a Board meeting.

## **8 STAK 1 AND STAK 2**

### **Management of STAK 1 and STAK 2**

**8.1** The board of STAK 1 shall consist of the CEO (as in office from time to time) and one director appointed by the DIC Investor who shall have joint authority to represent STAK 1. The board of STAK 1 as of the Effective Date shall consist of Remco de Jong and [●].

**8.2** The board of STAK 2 shall consist of the CEO (as in office from time to time) and one director appointed by the Mezzanine Investors who shall have joint authority to

represent STAK 2. The board of STAK 2 as of the Effective Date shall consist of Remco de Jong and [●].

- 8.3** The directors appointed by the DIC Investor and the Mezzanine Investors under clauses 8.1 and 8.2 may be legal entities. Such legal entities shall be represented in the Board meetings of STAK 1 and STAK 2 by any person authorised by them to do so.

#### **Purpose, role**

- 8.4** The purposes and objects of STAK 1 shall be to administer the DIC Senior Preference Shares held by it on behalf of the DIC Investor and the SSN Senior Preference Shares held by it, on behalf of the relevant SSN Investors, and to issue DIC Senior Preference STAK 1 Depositary Receipts to the DIC Investor and to issue SSN Senior Preference STAK 1 Depositary Receipts, to the relevant SSN Investors, both in accordance with the STAK 1 Trust Conditions.
- 8.5** The purposes and objects of STAK 2 shall be to administer the Mezzanine Junior Preference Shares held by it on behalf of the Mezzanine Lenders, the Junior Mezzanine Junior Preference Shares held by it on behalf of the Junior Mezzanine Lenders and the SSN Junior Preference Shares held by it on behalf of the relevant SSN Investors, and to issue Mezzanine Lender Junior Preference STAK 2 Depositary Receipts to the Mezzanine Lenders, Junior Mezzanine Lender Junior Preference STAK 2 Depositary Receipts to the Junior Mezzanine Lenders and the SSN Junior Preference STAK 2 Depositary Receipts, to the relevant SSN Investors, all in accordance with the STAK 2 Trust Conditions.

#### **Voting rights of STAK 1 and STAK 2**

- 8.6** Other than for the purpose of implementing the provisions of this Agreement, each of STAK 1 and STAK 2 hereby agree not to exercise any voting rights that are attached to any Preference Shares held by it. Each of STAK 1 and STAK 2 hereby agree to only exercise their voting rights in the event that a request for a written resolution of the shareholders meeting of Almatris Topco 1 is made. In such case each of STAK 1 and STAK 2 hereby agree to vote or give their consent in accordance with the vote/consent of the holders of the Ordinary Shares, as and when they are required to exercise their voting/consent rights attaching to any Preference Shares they hold.

#### **Issue of Depositary Receipts**

- 8.7** STAK 1 shall issue:
- 8.7.1** the DIC Senior Preference STAK 1 Depositary Receipts to the DIC Investor as set out in clause 2.4.4; and
  - 8.7.2** the SSN Senior Preference STAK 1 Depositary Receipts to the relevant SSN Investors as set out in clause 2.4.9.
- 8.8** The DIC Senior Preference STAK 1 Depositary Receipts shall be stapled to Ordinary Shares D held by DIC. As a result the DIC Investor shall not be entitled to Transfer its DIC Senior Preference STAK 1 Depositary Receipts other than together with the corresponding portion of its Ordinary Shares D, and vice versa.



- 8.9** The SSN Senior Preference STAK 1 Depositary Receipts shall be stapled to Ordinary Shares S and the SSN Junior Preference STAK 2 Depositary Receipts held by the SSN Investors. As a result an SSN Investor shall not be entitled to Transfer its SSN Senior Preference STAK 1 Depositary Receipts other than together with the corresponding portion of its Ordinary Shares S and SSN Junior Preference STAK 1 Depositary Receipts, and vice versa.
- 8.10** STAK 2 shall issue:
- 8.10.1** the Mezzanine Junior Preference STAK 2 Depositary Receipts and the Junior Mezzanine Junior Preference STAK 2 Depositary Receipts as set out in clause 2.4.6 and 2.4.7; and
  - 8.10.2** the SSN Junior Preference STAK 2 Depositary Receipts to the relevant SSN Investors as set out in clause 2.4.10.
- 8.11** The Mezzanine Junior Preference STAK 2 Depositary Receipts shall be stapled to the Ordinary Shares M-I held by the Mezzanine Lenders. The Junior Mezzanine Junior Preference STAK 2 Depositary Receipts shall be stapled to Ordinary Shares M-II held by the Junior Mezzanine Lenders. As a result, no Mezzanine Lender shall be entitled to Transfer Mezzanine Junior Preference STAK 2 Depositary Receipts other than together with the corresponding portion of its Ordinary Shares M-I and no Junior Mezzanine Lender shall be entitled to Transfer its Junior Mezzanine Junior Preference STAK 2 Depositary Receipts, other than together with the corresponding portion of its Ordinary Shares M-II, and vice versa.
- 8.12** The SSN Junior Preference STAK 2 Depositary Receipts shall be stapled to SSN Senior Preference Shares STAK 1 Depositary Receipts and the Ordinary Shares S held by the SSN Investors. As a result an SSN Investor shall not be entitled to Transfer its SSN Junior Preference STAK 2 Depositary Receipts other than together with the corresponding portion of its Ordinary Shares S and its SSN Senior Preference Shares STAK 1 Depositary Receipts, and vice versa.

#### **Transfer of Depositary Receipts**

- 8.13** The restrictions on Transfers of Almatris Topco Shares and rights and obligations as set out in clause 16.1, 16.2, 16.3 and 16.5 shall apply mutatis mutandis to any Transfer of Depositary Receipts.
- 8.14** It shall be a condition precedent to any Transfer, including any Permitted Transfer, of any Depositary Receipt that the Transferee (i) signs a statement acknowledging that it will not have the rights conferred by the Dutch Civil Code to holders of depositary receipts issued for shares with the co-operation of a company, and (ii) undertakes that it will not Transfer its Depositary Receipts without having obtained a statement as set out in this clause 8.14 (i) and an undertaking as set out in this clause 8.14 (ii) from any future Transferee.
- 8.15** The limitations on the Transfer of the DIC Senior Preference STAK 1 Depositary Receipts, the Mezzanine Junior Preference STAK 2 Depositary Receipts, the Junior Mezzanine Junior Preference Shares STAK 2 Depositary Receipts, the SSN Senior Preference STAK 1 Depositary Receipts, and the SSN Junior Preference STAK 2

Depository Receipts, set out in Clause 8.13 and the limitations due to the stapling as set out in clause [8.11 and 8.12] shall be referred to in the STAK 1 and STAK 2 Trust Conditions respectively and therefore shall be binding on any holder of any such instrument.

- 8.16** A Depository Receipt holder who intends to sell, Transfer or otherwise dispose of all or part of its Depository Receipts shall request the Board for approval in writing in accordance with clause [5] of the Trust Conditions. Such notice shall include the number of Depository Receipts for which the approval is being sought and, if applicable, the number and class of Ordinary Shares stapled to such Depository Receipts, for which approval is being sought simultaneously, and the name of the intended Transferee, with a copy of a Deed of Adherence. In addition, the notarial deed of transfer for the Depository Receipts shall contain (i) a statement of the intended Transferee that it acknowledges the fact that no rights conferred by the Dutch Civil Code to holders of depository receipts issued for shares with the co-operation of a company accrue to the Depository Receipts and (ii) an undertaking to impose the provisions stated in this clause 8.16 under (i) and (ii) as perpetual clauses on his or its successor(s) in law by making mention thereof in the relevant notarial deed in such a manner that each newly entitled party stipulate and accept these for the benefit of STAK 1 or STAK 2 as the case may be and Almatris Topco 1. If the perpetual clauses set out above in this clause 8.16 are not complied with or not timely complied with, the party transferring one or more of the Depository Receipts shall forfeit an immediately payable penalty of EUR [●] to Almatris Topco 1 and the STAK 1 or STAK 2 as the case may, with the power for the latter to claim compliance and/or any additional damage suffered by it in addition to such penalty.
- 8.17** Almatris Topco 1 shall approve a request for approval to Transfer if the request relates to any of the matters listed in clause 16.9 or a Transfer pursuant to or in accordance with clause [16.15].
- 8.18** The STAK 1 and STAK 2 Trust Conditions shall also include, amongst other things, the obligation of a holder of Depository Receipts to co-operate with the cancellation of Depository Receipts in the event that the principal and the accrued interest on the relevant Preference Shares have been paid in full.
- 8.19** In the event of a sale and/or Transfer of any Almatris Topco Shares by STAK 1 or STAK 2, STAK 1 or, as the case may be, STAK 2 shall immediately pay the purchase price it has received for the sale and/or Transfer of the Almatris Topco Shares held by it to the holders of the relevant Depository Receipts upon Transfer, cancellation and redemption of the relevant Depository Receipts.

#### **Use of rights in connection with issuance or Transfer**

- 8.20** Notwithstanding anything to the contrary in this Agreement, any issuances and Transfers of Depository Receipts which are expressly permitted under this Agreement (pursuant to clauses 8.12, 8.16, 8.17 and 16), and the STAK 1 Trust Conditions or STAK 2 Trust Conditions are herewith approved by all Parties to this Agreement, and all such Parties herewith undertake to do all such things as may be required (including, the exercise of their rights as Depository Receipt Holders, or rights as issuer of such Depository Receipts, if any), in order to allow such issuances and Transfers to be completed on the dates contemplated by the Parties herein and hereby

waive, to the fullest extent permitted under the applicable laws, any and all rights which they might otherwise have in respect of such issuances or Transfers.

### **No additional rights of Depositary Receipt holders**

- 8.21** The Parties hereby acknowledge and agree that the Depositary Receipts to be issued by STAK 1 and STAK 2 will not be regarded as having been issued with the co-operation of Almatris Topco 1 (*met medewerking van de vennootschap*) as a consequence whereof the holders of Depositary Receipts will not have the rights conferred by the Dutch Civil Code to holders of depositary receipts issued for shares with the co-operation of a company. The Trust Conditions shall explicitly state that the holders of Depositary Receipts shall not have the rights conferred by the Dutch Civil Code to holders of depositary receipts issued for shares with the co-operation of a company.

### **Covenants of STAK 1 and STAK 2**

- 8.22** Each of STAK 1 and STAK 2 shall ensure that:

- 8.22.1** the provisions of their respective articles of association and administration conditions are not amended without the prior written consent of Almatris Topco 1 and are strictly complied with at all times;
- 8.22.2** no dispensation shall be granted by STAK 1 or STAK 2 with respect to compliance with those provisions, without the prior consent of Almatris Topco 1;
- 8.22.3** appropriate action (including injunctive or other court proceedings) will be taken against those who fail to comply with those provisions;
- 8.22.4** the principle mentioned at clause 8.21 will be reflected in each deed of issuance of Depositary Receipts (which will include a waiver of any consensual rights given by law to holders of depositary receipts issued with the co-operation of a company);
- 8.22.5** they shall not Transfer their Senior Preference Shares or their Junior Preference Shares except with approval of Almatris Topco 1 and in the event of an Exit or a Sale or as otherwise required in connection with this Agreement; and
- 8.22.6** the relevant Depositary Receipts for any type of Preference Share shall be withdrawn and cancelled as soon as possible after the principal and the interest on a class of Preference Share has been paid in full and the corresponding Preference Shares shall be withdrawn and cancelled.

### **Repurchase of Preference Shares**

- 8.23** If, after the earlier to occur of [1 January] 2070 or an Exit pursuant to clause 14<sup>14</sup> the principal and the accrued interest on the Senior Preference Shares have been paid in

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<sup>14</sup> TBD If there are other foreseeable situations in which preference shares would need to be repurchased.

full to STAK 1, Almatris Topco 1 shall repurchase the Senior Preference Shares for no consideration. STAK 1 shall cooperate with such repurchase and withdraw and cancel the Senior Preference Shares STAK 1 Depositary Receipts in respect of the Senior Preference Shares after payment of the principal and accrued interest to holders of the Senior Preference Shares STAK 1 Depositary Receipts. If, after the earlier to occur of [1 January] 2070 or an Exit pursuant to clause 14 the principal and accrued interest on the Junior Preference Shares have been paid in full to STAK 2, Almatris Topco 1 shall repurchase the Junior Preference Shares for no consideration. STAK 2 shall cooperate with such repurchase and withdraw and cancel the Junior Preference Shares STAK 2 Depositary Receipts in respect of the Junior Preference Shares after payment of the principle and accrued interest to holders of the Junior Preference Shares STAK 2 Depositary Receipts.

### **Costs**

- 8.24** Almatris Topco 1 shall pay all relevant costs associated with the administration of STAK 1 and STAK 2.

## **9 GENERAL MEETING**

### **Voting Agreement**

- 9.1** The Shareholders agree and commit themselves to cast their votes in the General Meeting and to apply their voting power and shareholders' rights in Almatris Topco 1 in accordance with the provisions of this Agreement.

### **General Meetings of Shareholders**

- 9.2** All general or extraordinary meetings of the Shareholders ("**General Meetings**") will take place in accordance with the following:
- 9.2.1** a General Meeting can be convened by the Chairman acting alone or upon the request of two (2) Board members acting jointly or any Investor Director or a Shareholder holding at least 5% or such lower percentage as prescribed by law<sup>15</sup> of the Almatris Topco Shares. In the event that the Chairman has not sent out a convening notice within five (5) days so that a General Meeting can be held within [twenty (20)] days after receipt of the request, the requesting Board members or an Investor Director or Shareholder holding at least 5% or such lower percentage as prescribed by law of the Almatris Topco Shares shall have the right to convene a General Meeting in conformity with its request;
  - 9.2.2** there must be at least fourteen (14) days between the date on which notice of the General Meeting is given and the date on which it is held, unless shorter notice is unanimously agreed by the Shareholders;
  - 9.2.3** the notice of the General Meeting must (unless otherwise unanimously agreed by the Shareholders) contain an agenda identifying in reasonable

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<sup>15</sup> Note current pending legislation will lower the percentage threshold to 1%. It is not yet clear when this will come into force.

detail the matters to be discussed and must be accompanied by copies of any relevant documents to be discussed at the General Meeting;

- 9.2.4 the quorum for a General Meeting requires the attendance of [●]% of the Shareholders;
- 9.2.5 General Meetings shall be held in [Amsterdam, Rotterdam or Haarlemmermeer (Schiphol)], The Netherlands;
- 9.2.6 a Shareholders' resolution can, after the Board has been given the opportunity to render advice on the subject resolution, be passed outside of a General Meeting, provided the resolution is approved by all Shareholders and adopted in writing, duly signed by all Shareholders.

### **Decision Making**

- 9.3 Each Shareholder has one (1) vote for each Almatris Topco Share held by it.
- 9.4 Resolutions to approve any matter shall be adopted by simple majority of the votes cast, unless this Agreement or the Articles require a qualified majority for any specific resolution.
- 9.5 Resolutions in respect of Shareholder Reserved Matters shall be adopted with the affirmative votes cast by the holders of Ordinary Shares who individually or together represent at least 75% of the Ordinary Shares in issue.

### **Distribution Policy**

- 9.6 Distributions shall be made in accordance with clause [19, 20, and 21] of the Articles.
- 9.7 Each Shareholder agrees and commits himself to exercise his voting and Shareholders' rights in such a manner as to vote in favour of distributions pursuant to the Plan and as may be required by the Credit Facilities and to exercise his voting and shareholders rights in such a manner that:
  - 9.7.1 any cash available for distribution after the Effective Date shall be applied in accordance with the waterfall set out in clause 14.1; and
  - 9.7.2 no distributions shall be paid on the Ordinary Shares until all of the PIK Notes, Senior Preference Shares and Junior Preference Shares have been redeemed in full; and
  - 9.7.3 distributions paid on the Management Shares shall be subject to the provisions in the Management Incentive Plan.

## **10 PROVISION OF INFORMATION**

### **Investors to be kept informed generally**

- 10.1 With effect from the Effective Date and subject to the Investor Directors first entering into a confidentiality agreement in the form set out in SCHEDULE 12, each Manager and Almatris Topco 1 agrees with each Investor that he and it will notify the Investor

Directors promptly of all matters materially affecting the business, assets, financial position and prospects of the Group.

**Specific information to be provided**

- 10.2** Almatis Topco 1 agrees to comply (and to procure that each other Group Member complies) with the provision of information requirements set out in Schedule [3].

**Approach from prospective purchasers**

- 10.3** Almatis Topco 1 and each Manager agrees to notify each Investor and each Investor Director promptly of any indication of interest (whether or not in writing) in respect of any offer for any shares in a Group Member or any business or substantial part of the business or assets of the Group.

**Disclosure of information by Investor Directors**

- 10.4** Each Investor Director may disclose any information received from a Group Member to each Investor, subject to each Investor first entering into a confidentiality agreement in the form set out in Schedule [●].

**Disclosure of information to Second Lien Lenders**

- 10.5** Subject to first entering into a confidentiality agreement in the form set out in Schedule [●], the Second Lien Lenders shall be entitled to receive copies of the audited annual accounts and quarterly, monthly and other periodic management accounts.

**Disclosure of information by Investors**

- 10.6** Each Investor may disclose any information received from a Group Member or an Investor Director (or any information, whether confidential or not, of or relating to, a Group Member) to:

- 10.6.1** an Affiliate of that Investor;
- 10.6.2** any general partner, limited partner, manager, trustee or nominee of, or investor or prospective investor in, that Investor;
- 10.6.3** a body corporate or other person, partnership or fund (including any unit trust):
  - (a)** which is advised, or the assets of which are managed (whether solely or jointly with others), from time to time by that Investor or by an Affiliate of that Investor or by the general partner, trustee, nominee, manager of or advisor to that Investor; or
  - (b)** in respect of which that Investor or any of its Affiliates is a general partner;
- 10.6.4** any director, employee, officer or agent of an Investor or any other person falling within this clause 10.6;

- 10.6.5** any other Investor and any person to whom that other Investor may provide information under this clause 10.6;
- 10.6.6** any sponsor, underwriter or broker for the purposes of facilitating an Exit (subject to such person first having executed a confidentiality agreement in the form set out in Schedule [12] in favour of Almatris Topco 1 (on behalf of itself and as trustee for each Group Member) in a form reasonably acceptable to the Board);
- 10.6.7** any of the Group's current or proposed bankers or financiers from time to time (subject to such person first having executed a confidentiality agreement in the form set out in Schedule [12] in favour of Almatris Topco 1 (on behalf of itself and as trustee for each Group Member) in a form reasonably acceptable to the Board);
- 10.6.8** a potential purchaser of shares or other securities in a Group Member or of assets (or the whole or part of the undertaking) of a Group Member (subject to such person first having executed a confidentiality agreement in the form set out in Schedule [12] in favour of Almatris Topco 1 (on behalf of itself and as trustee for each Group Member) in a form reasonably acceptable to the Board);
- 10.6.9** a professional advisor or auditor to a person falling within this clause 10.6;
- 10.6.10** [any rating agency]; and
- 10.6.11** a person on a "need to know" basis (such that only those disclosures will be made that are required by the recipient), to whom it is required to pass the information by law or by any rule of, or by, any regulatory body or authority or any taxation authority.

#### **Information to be held confidential**

- 10.7** Any information passed on under clauses 10.4, 10.5 or 10.6 shall be delivered on the basis that it is to be held confidential by the recipient.

#### **Information to be included in prospectus**

- 10.8** Each Party consents to the disclosure of information concerning the Group and its assets in any document which must be published to effect an Exit and in any other document which the Board approves.

### **11 CONDUCT OF THE GROUP**

#### **Positive undertakings**

- 11.1** Subject to the absolute authority and overall responsibility of the Board for management of the Group, the day to day management of the business of each Group Member will be carried out by the Managers and:
  - 11.1.1** each Manager agrees with the Investors that, except as provided in this Agreement or to the extent such would be a breach of his duties as a

director, he will procure, to the extent of his rights from time to time to vote as a shareholder and/or director (as the case may be) of each Group Member;

**11.1.2** Almatris Topco 1 agrees with the Investors as a separate and independent covenant (to the extent it is legally able to do so) that it will act, and will procure (save as otherwise provided in this Agreement or consented to by all of the Investor Directors); and

**11.1.3** Almatris Topco 2 agrees with the Investors as a separate and independent covenant (to the extent it is legally able to do so) that it will act, and will procure (save as otherwise provided in this Agreement or consented to by all of the Investor Directors),

that each Group Member acts, in accordance with Part 1 of SCHEDULE [5].

#### **Negative undertakings**

**11.2** Each Manager, so far as he is legally able, and, to the extent it is legally able to do so, Almatris Topco 1 and Almatris Topco 2 agrees with the Investors that, except as provided in this Agreement:

**11.2.1** in the case of a Manager, he will procure that no Group Member will do, or agree to do;

**11.2.2** in the case of Almatris Topco 1, it will not and will procure that no Group Member will do, or agree to do; and

**11.2.3** in the case of Almatris Topco 2, it will not and will procure that no Group Member will do, or agree to do,

any of the acts set out in Part 2 of Schedule [5] without the consent specified in that Schedule.

**11.3** The Parties shall ensure, so far as they are legally able, that neither Almatris Topco 1 nor any Group Member shall pass any resolution or take any action or decision:

**11.3.1** with respect to a Shareholder Reserved Matter unless the affirmative vote/consent of holders of Ordinary Shares who individually or together represent at least 75% of the Ordinary Shares in issue (“**Investor Consent**”) has been obtained; and

**11.3.2** with respect to an Investor Reserved Matter, unless the affirmative vote/consent of a majority of the Board, including a majority of the Investor Directors, has been obtained.

#### **Finance Documents**

**11.4** For so long as any sum remains outstanding under a Finance Document, each Manager agrees to use all reasonable endeavours to procure (to the extent of his rights from time to time to vote as a member and/or director, as the case may be, of each Group Member) that each Group Member observes all the provisions of each Finance



Document and any agreement, debenture, guarantee or security made pursuant to a Finance Document (but no Manager is obliged to incur any personal liability for the repayment of any amount due under a Finance Document).

## **12 CONFIDENTIALITY**

**12.1** For as long as a Party is an Investor each Party will, and will procure that each of the parties to which it may disclose information pursuant to clause 10.6 will, during such time as such Party is an Investor and for a period of three (3) years following the date it ceases to be an Investor, only use any information relating to another Party or to a Group Member which was acquired by that Party as an Investor in connection with the transaction and its investment, and will cause all information so obtained by it or its Affiliates which is not publicly available to be treated as confidential, provided that nothing in this clause 12.1 will prevent an Investor disclosing such information in connection with an Exit or a proposed Exit pursuant to clause 10.6, so long as the recipient of any such information is subjected to such confidentiality obligations which the Investor Majority acting reasonably may require.

**12.2** The obligations of confidentiality in clause [12.1] do not apply to information which, after the Effective Date:

**12.2.1** is or becomes generally available to the public;

**12.2.2** is required to be disclosed to a competent tribunal or government agency or other regulatory body (including pursuant to a subpoena, civil investigative demand or similar process);

**12.2.3** is required to be disclosed pursuant to an order, statute, rule or other legal requirement promulgated or imposed by a court or by a judicial, regulatory, self-regulatory or legislative body, organisation, agency or committee (including as required by the Bankruptcy Court); or

**12.2.4** is required to be otherwise disclosed in connection with any judicial or administrative proceeding (including, in response to oral questions, interrogatories or requests for information or other documents).

## **13 GSO REQUEST RIGHT**

**13.1.1** Almatris Topco 1 hereby grants, and shall procure that each Group Member shall grant, each Senior Secured Noteholder or several Senior Secured Noteholders acting jointly, which (together) hold(s) at least 50% of all Senior Secured Notes, the right to file a request for an investigation with the Amsterdam Court of Appeal pursuant to Section 2:345 of the Dutch Civil Code, including the right to grant immediate relief pursuant to Section 2:349 subsection a of the Dutch Civil Code and the other rights that those other parties that have a right to file requests also have

**13.1.2** Whether the Senior Secured Noteholder(s) hold at least 50% of all Senior Secured Notes will be determined based on the relative sizes of the Dollar Notes and Euro Notes tranches on the date such request is filed with the

Amsterdam Court of Appeal using the SPOT rate of exchange quoted as quoted in the Wall Street Journal as at the date before such request is filed..

- 13.1.3** Such Senior Secured Noteholder(s) shall be granted the request right set out in this clause 13 for the duration that those Noteholders are a Party to this Agreement.

## **14 EXIT**

- 14.1** Almatis Topco 1 shall procure that, on a return of capital on an Exit, and following all mandatory payments of indebtedness, the surplus assets of Almatis Topco 1, or any other relevant Group Member, remaining and available for distribution shall be applied in accordance with the following terms:<sup>16</sup>

- 14.1.1** first, to the holders of the PIK Notes in respect of any principal and accrued interest thereunder;
- 14.1.2** second, to the holders of the Senior Preference Shares in respect of any principal and accrued interest thereunder;
- 14.1.3** third, to the holders of the Junior Preference Shares in respect of any principal and accrued interest thereunder; and
- 14.1.4** fourth, to the holders of Ordinary Shares (subject in respect of the Mezzanine Shares, to the Mezzanine Investor Ratchet).

- 14.2** Pursuant to the Disbursing Agent Agreement and this Agreement, if an Exit or partial Exit occurs within the first year after the Effective Date, the interests of those Second Lien Lenders, Mezzanine Investors, [and holders of Management Shares,] if any, who have not perfected their rights to the distributions to which they are otherwise entitled, shall be protected and preserved.<sup>17</sup>

- 14.3** The Investors and the Management Investors agree that no Investor or Management Investor shall sell any of its Ordinary Shares within three (3) years of the Effective Date (the “**Lock-Up Period**”) unless: (i) the prior written consent of all the other Investors has been obtained; (ii) such sale is made pursuant to the exercise of the Drag Along Right; (iii) such sale is made pursuant to the exercise of the Tag Along Right; (iv) such sale is a Permitted Transfer; (v) such sale is to another Investor; (vi) in the case of a Mezzanine Lender, such sale is to a bona fide third party (excluding (A) financial investors predominantly in the business of investing directly or indirectly in distressed assets, or (B) Competitors of the Group unless, in each case, as otherwise agreed by the DIC Investor); (vii) in the case of the DIC Investor, such sale is a DIC Co-Investor Sale, or (viii) such sale is pursuant to clause 15.9. For the avoidance of doubt, the provisions of clause 16 shall apply to any transfer of Ordinary Shares under this clause 14.3.

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<sup>16</sup> Further technical discussions to be held to confirm valuation of retained shares on a partial IPO/Exit.

<sup>17</sup> Details to be included specifying delivery of proceeds to such holders who have not perfected their rights under this clause.

- 14.4** After three (3) years and on or before five (5) years from the Effective Date, any Investor who holds, or group of Investors who collectively hold, in excess of 10% of the Ordinary Shares in issue at the relevant time shall be free to require from the other Investors that there be an Exit of Almatris Topco 1 and provided that the proposed Exit represents an Enterprise Value of not less than USD 1.2 billion, all Parties shall be obliged to take all reasonably necessary steps and actions to cause the Exit to take place.
- 14.5** After the fifth (5th) anniversary of the Effective Date, any Investor who holds, or group of Investors who collectively hold, in excess of 10% of the Ordinary Shares in issue at the relevant time shall be free to require from the other Investors that there be an Exit of Almatris Topco 1 and all Parties shall be obliged to take all reasonably necessary steps and actions to cause the Exit to take place, provided that the relevant value is not less than the Fair Valuation (as defined below) at the relevant time.
- 14.6** “**Fair Valuation**” means, on the relevant date of determination, a value within 10% of the average of two fair market valuations of Almatris Topco 1, as appraised by two internationally recognised investment banks from among Credit Suisse, Deutsche Bank, Goldman Sachs & Co, Bank of America/Merrill and Morgan Stanley International (the “**Appraising Banks**”), one of which shall be appointed by the DIC Investor and one of which shall be appointed by the Majority Mezzanine Investors. The Appraising Banks shall conduct an appraisal of the fair market value of Almatris Topco 1 on a going concern basis taking into account public market and acquisition comparables and discounted cash flow analyses. Any costs relating to carrying out a Fair Valuation shall be borne by Almatris Topco 1.
- 14.7** If an Exit structure that is approved as a Shareholder Reserved Matter requires the insertion of a new parent company between Almatris Topco 1 and its shareholders (“**Listco**”), then provided that the creation of Listco does not have a materially adverse effect on any of the rights or obligations of the holders of shares or warrants issued by Almatris Topco 1 or Almatris Topco 2, such holders of shares and warrants, may be dragged into the new Listco and will be issued equivalent instruments in Listco.
- 14.8** The Parties agree that any Exit structure that is approved as a Shareholder Reserved Matter shall not materially adversely alter the rights and benefits of the holders of the Ordinary Shares, Junior Preference Shares, Senior Preference Shares, PIK Notes, or PIK Preference Warrants as between themselves and shall treat holders of the same class of such securities, to the extent practicable, identically.

#### **Appointing advisors on an Exit**

- 14.9** The Parties agree that:
- 14.9.1** the Investor Majority may appoint advisors (including, without limitation, financial, accounting and legal advisors) to act on behalf of all the Shareholders in connection with an Exit;
- 14.9.2** the Investor Majority may in their absolute discretion negotiate and agree the terms of appointment of any such advisors on behalf of all Shareholders

(but shall, to the extent practical, consult with the Managers before such appointment); and

- 14.9.3** such advisors' fees will be borne by the Shareholders in proportion to their Shareholdings on Exit.

**No Investor warranties**

- 14.10** On an Exit, no Investor shall be required to give any representations, warranties, indemnities or similar assurances in connection with the sale of its Almatris Topco Shares, other than giving warranties concerning title to its Almatris Topco Shares and its capacity to sell.

**Management assistance on Exit**

- 14.11** Each Manager will use his reasonable efforts to assist the Investors in preparing the Group for an Exit, including but not limited to:

- 14.11.1** making presentations to potential investors in, or purchasers of, the Group;

- 14.11.2** for the purposes of an Exit by way of an Initial Public Offering:

- (a)** taking all actions necessary (or which are determined by a majority of the Investors (acting reasonably) to be appropriate) to implement the conversion of Almatris Topco 1 into a public company and/or restructure one or more Group Members prior to an Exit; and
- (b)** negotiating customary lock-up agreements as required by relevant securities laws, rules or regulations.

**Mezzanine Investor Ratchet**

- 14.12** The Ordinary Shares M-I and Ordinary Shares M-II issued to the Mezzanine Investors on the Effective Date will be subject to a ratchet mechanism (the “**Mezzanine Investor Ratchet**”) which will achieve the following:

- 14.12.1** If the total proceeds received on the Ordinary Shares on an Exit imply:

- (a)** an Enterprise Value of USD 1,125 million or less all Ordinary Shares M-I and Ordinary Shares M-II shall rank pari passu with each other in the distribution;
- (b)** an Enterprise Value of more than USD 1,125 million but less than USD 1,330 million:
  - (1)** proceeds due on the Ordinary Shares M-I and Ordinary Shares M-II (the “**Exit Proceeds**”) which relate to the Enterprise Value of USD 1,125 million or less, shall be distributed among the Ordinary Shares M-I and Ordinary Shares M-II in accordance with paragraph (a) above; and

- (2) (A) 50% of the Exit Proceeds which relate to the Enterprise Value exceeding USD 1,125 million will be paid to the holders of the Ordinary Shares M-I (pro rata to their respective holdings as at the date of the Exit), and (B) the remaining 50% of the Exit Proceeds which relate to the Enterprise Value exceeding USD 1,125 million will be paid to the holders of the Ordinary Shares M-II (pro rata to their respective holdings as at the date of the Exit); and
- (c) an Enterprise Value equal to or higher than USD 1,330 million,
  - (1) the Exit Proceeds which relate to an Enterprise Value of USD 1,125 million or less will be distributed in accordance with paragraph (a) above;
  - (2) the Exit Proceeds which relate to an Enterprise Value of more than USD 1,125 million but less than USD 1,330 million will be distributed in accordance with paragraph (b) above; and
  - (3) 75% of the Exit Proceeds that relate to the Enterprise Value exceeding USD 1,330 million will be paid to the holders of the Ordinary Shares M-I (pro rata to their respective holdings as at the date of Exit) and the remaining 25% of the Exit Proceeds that relate to the Enterprise Value exceeding USD 1,330 million will be paid to the holders of the Ordinary Shares M-II (pro rata to their respective holdings as at the date of Exit).

**14.13** The provisions of clause [14.12] shall apply only as between the Mezzanine Investors.<sup>18</sup>

## **15 ISSUE OF NEW SHARES**

### **Investor Pre-emption Rights**

**15.1** Subject to clauses [15.5 to 15.13], if at any time after the date hereof Almatix Topco 1 proposes to issue any Ordinary Shares, or any options or warrants relating to Ordinary Shares or converting any equity into Ordinary Shares, other than the Almatix Topco Shares referred to in clause 15.7, (the “**New Shares**”), the Shareholders hereby agree to exercise their shareholder rights including their voting rights in the General Meeting in such a manner that the Shareholders shall first resolve (i) to issue the New

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<sup>18</sup> The Plan and Disbursing Agent Agreement will provide that if an Exit occurs prior to the Forfeiture Date (as defined in the Plan), the Exit Proceeds, if any, that would be owing to any Mezzanine Creditor or Junior Mezzanine Creditor who has not then complied with the Class 4 and 5 Distribution Procedures (as defined in the Plan) will be paid into an escrow account maintained by the Disbursing Agent and will be paid to such Creditor provided that they comply with the Class 4 and Class 5 Distribution Procedures on or before the Forfeiture Date and any amounts remaining in the escrow account on the Forfeiture Date will be paid by the Disbursing Agent pro rata to those Mezzanine Creditors and Junior Mezzanine Creditors who complied with the Class 4 and Class 5 Distribution Procedures and received Exit Proceeds prior to the Forfeiture Date. To be confirmed with E&Y that they have considered this as part of the steps plan and that no negative tax consequences arise as a result.

Shares in accordance with the Shareholder Reserved Matter set forth in paragraph [13] of Part 2 of Schedule [5], to (ii) preclude any pre-emption rights the Management Investors, or the holders of Ordinary Shares S, who are not SSN Investors on the Effective Date may have and (iii) offer the New Shares to the Investors on the following basis (the “**Equity Offer**”):

- 15.1.1** the New Shares shall be offered to the Investors on terms no less favourable than the terms upon which Almatris Topco 1 proposes to issue the New Shares;
- 15.1.2** the offer shall limit the time, not being less than [ten (10)] Business Days nor more than [twenty (20)] Business Days, within which the offer may be accepted by the Investors (the “**Acceptance Period**”);
- 15.1.3** the New Shares shall be offered to each Investor in proportion, as near as possible, to the nominal value of the Ordinary Shares held by such Investor, and the Board’s decision as to the number of Ordinary Shares which shall be “in proportion” shall be conclusive save in the case of manifest error;
- 15.1.4** each Investor to whom the offer is made shall be invited to indicate whether, if it accepts some or all of the number of New Shares offered to it pursuant to this clause 15.1, it wishes to subscribe for any New Shares offered to the other Investors if they were to decline to subscribe for all or some of them (such New Shares being referred to as “**Excess Shares**”) and if so the maximum number which it would wish to purchase;
- 15.1.5** if there are any Excess Shares, they shall be allocated among the Investors who indicated that they wish to purchase Excess Shares in the following manner:
  - (a)** any Investor who has sought to subscribe for no more than its proportionate entitlement of Excess Shares (calculated by reference to the proportion of the total nominal value of the relevant Investor’s holdings of Ordinary Shares against that of the total nominal value of the Ordinary Shares of all Investors seeking to purchase Excess Shares) shall be allocated all the Excess Shares it sought to subscribe; and
  - (b)** any Investor who sought to purchase more than its proportionate entitlement shall have the number of Excess Shares for which it applied scaled down (if more than one) in proportion to the nominal value of their respective holding of Ordinary Shares; and
- 15.1.6** any Investor to whom New Shares are offered may accept all or some of the New Shares offered to it.

The Management Investors, or the holders of Ordinary Shares S, who are not SSN Investors on the Effective Date, agree to waive any pre-emption rights they may have and to exercise their shareholders rights in such a manner and to provide the necessary approvals or waivers as required to allow the issuance of New Shares in accordance with this Clause 15.

- 15.2** Not later than three Business Days following the end of the Acceptance Period, Almatris Topco 1 shall give written notice (the “**Allocation Notice**”) to each Investor who offered to subscribe for New Shares (each an “**Accepting Investor**”) stating (i) the number of New Shares to which the Investors have subscribed, (ii) the name and address of each such Accepting Investor and (iii) the number of remaining New Shares, if any, to be subscribed.
- 15.3** If any New Shares are not subscribed pursuant to clauses 15.1 and 15.2, Almatris Topco 1 may issue such New Shares on terms no more favourable to such person or persons as the Board may so resolve, provided that any such subscriber of New Shares must, if it is not already a party to this Agreement, enter into a Deed of Adherence prior to the issue of such New Shares to such subscriber.
- 15.4** If an Investor (a “**Defaulting Investor**”) who has offered to subscribe for New Shares pursuant to clause 15.1 fails to complete the subscription of the New Shares for which it offered to subscribe (the “**Relevant New Shares**”) in accordance with the terms of an Allocation Notice, then such Investor’s offer to subscribe for New Shares shall be deemed revoked and the provisions of clause [15.1.5] failing which, clause [15.3] shall apply to such Relevant New Shares as if they were Excess Shares.
- 15.5** Notwithstanding clauses [15.1] to [15.4], prior to the issue of any New Shares by Almatris Topco 1, or the exercise of the Fee Equitization Option, the consent of shareholders holding not less than 75% of the Ordinary Shares in issue shall have been obtained, except as provided for in clauses [15.7 and 15.9].
- 15.6** In the event of an Equity Offer, the DIC Investor shall be entitled to designate a third party purchaser (who, unless otherwise agreed by Mezzanine Investors representing 75% of the total number of Ordinary Shares held by all Mezzanine Investors, may not be (i) predominantly in the business of investing directly or indirectly in distressed assets, or (ii) a Competitor of the Group, and must become a party to this Agreement (a “**DIC Designee**”) to subscribe for the shares or rights to subscribe for or convert any equity into shares, that the DIC Investor would otherwise be able to subscribe to pursuant to the Equity Offer (“**DIC Equity Shares**”) in its place. Any such issuance or subscription, if consummated, must be in compliance with all applicable laws. For the avoidance of doubt the DIC Investor shall always be entitled to subscribe to any part of the DIC Equity Shares which are not subscribed to by the DIC Designee. Each Shareholder hereby agrees to exercise its shareholders rights in such a manner and to provide the necessary approvals or waivers as required to allow the issuance to or subscription for the DIC Equity Shares to the DIC Designee.
- 15.7** The pre-emption right provisions set out in clauses 15.1 to 15.4 shall not apply with respect to, and the Board is authorised pursuant to this Agreement and the Articles to issue:
- 15.7.1** any Ordinary Shares E;
- 15.7.2** such number of warrants to or such number of Ordinary Shares P; and
- 15.7.3** such number of Ordinary Shares S,

as required pursuant to an Equity Cure Issue, the PIK Preference Warrant Instrument and clause 3, as applicable.

- 15.8** Except as otherwise contemplated by this Agreement, no preferred shares or other prior ranking equity or quasi-equity instruments may be issued in priority to the Ordinary Shares (if the issue of such shares would potentially result in a decrease in the amount of any distribution to the Investors on occurrence of an Exit), except for the issue of a Permitted Capex Instrument in accordance with the Shareholder Reserved Matter set forth in paragraph [13] of Part 2 of SCHEDULE 5.

**Equity Cure Issue<sup>19</sup>**

- 15.9** In the event that, in the judgement of the Board, (i) there is a material risk that the Group will cease to remain compliant with its payment obligations under any credit facility to which a Group Member is a party, or (ii) one or more Group Members is or will become unable to pay its debts as they fall due, Almatris Topco 1 may issue new Ordinary Shares as soon as reasonably possible in order to fund an equity cure (an “**Equity Cure**” and an “**Equity Cure Issue**”).
- 15.10** In the circumstances as set out in clause [15.9] Almatris Topco 1 shall immediately inform the Shareholders of its intention to make an Equity Cure Issue, and may resolve to issue such number of Ordinary Shares E to the DIC Investor immediately or, if the DIC Investor is not willing or not able to subscribe for any or all such Ordinary Shares E, to one or more other Investors (in addition to the DIC Investor if applicable) as are reasonably necessary for the purposes of such Equity Cure (the “**Equity Cure Shares**”).<sup>20</sup>
- 15.11** The DIC Investor and other Investors, as the case may be, shall inform Almatris Topco 1 whether and to what extent it shall subscribe to the Equity Cure Shares within [seven (7)] Business Days of the offer to subscribe to the Equity Cure Shares.
- 15.12** After having been informed that the DIC Investor and other Investors, as the case may be, shall subscribe to the Equity Cure Shares, Almatris Topco 1 shall immediately issue the Equity Cure Shares and preclude any pre-emption rights other Shareholders may have and the Almatris Topco 1 and the DIC Investor and other Investors, as the case may be shall execute the notarial deed of issuance in respect of the Equity Cure Shares to be issued.
- 15.13** After an Equity Cure Issue has occurred, the DIC Investor and/or any other Investors having subscribed to the Equity Cure Shares shall offer the other Shareholders the possibility to purchase the portion of the Equity Cure Shares to which they would have been entitled if the Equity Cure Shares had been issued in accordance with clauses [15.1 to 15.4] against the terms on which the Equity Cure Shares were issued. Any part of such offered Equity Cure Shares not fully taken up by the Shareholders will be offered to those Shareholders taking up their full entitlement (including, if applicable the DIC Investor and/or any other Investors to whom the Equity Cure

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<sup>19</sup> Note: An equity cure may be funded out of an issue of shares or loan note instrument.

<sup>20</sup> The return/interest to be issued to DIC for the period between issue and claw-back shall be the applicable interest rate of the instruments pro-rata, which shall be paid by Almatris Topco 1 or the Investor who acquires the relevant instrument. Return on Ordinary Shares issued in an Equity Cure to be discussed and agreed.



Shares had been issued) on the same terms as originally offered pro rata to the holders of Ordinary Shares of those accepting Shareholders.

- 15.14** In the event that any Equity Cure Shares are not subscribed pursuant to clause [15.11], Almatris Topco 1 may issue such Equity Cure Shares on terms no more favourable to such person or persons as the Board may so resolve, provided that any such subscriber of Equity Cure Shares must, if it is not already a party to this Agreement, enter into a Deed of Adherence prior to the issue of such Equity Cure Shares to such subscriber.
- 15.15** In the event that the Board does not resolve for Almatris Topco 1 to issue Equity Cure Shares under clause 15.9, but where the Investors consider it necessary to do so pursuant to clause 15.9, Almatris Topco 1 shall, upon a resolution to that effect by the General Meeting of Shareholders and subject to Investor Consent having been obtained, issue such number of shares of the class and series as stipulated in such resolution, subject to the provisions of clauses 15.9 to 15.14.
- 15.16** Notwithstanding anything to the contrary in this Agreement, any issuances of Almatris Topco Shares which are expressly permitted under this Agreement (pursuant to clauses [15]), the [Disbursing Agent Agreement, the SSN Notes Instrument and the PIK Notes Instrument] are herewith approved by all Parties to this Agreement, and all such Parties herewith undertake to do all such things as may be required (including, the exercise of their Shareholders' and voting rights, the adoption of Shareholders' resolutions approving (i) any issuances, or (ii) any limitation or preclusion of any pre-emption rights the Shareholders may have, in order to allow such issuances and to be completed on the dates contemplated by the Parties herein and hereby waive, to the fullest extent permitted under the applicable laws, any and all rights which they might otherwise have in respect of such issuances.

## **16 TRANSFER OF SHARES**

### **Conditions for Transfer**

- 16.1** It shall be a condition precedent to any Transfer, including any Permitted Transfer, of Ordinary Shares that the Transferor and Transferee provide a signed Deed of Adherence in accordance with this Agreement.

### **Restrictions on Transfer or encumbrance**

- 16.2** No Almatris Topco Shares may be Transferred without the prior approval of the Board as set out in clause [11] of the Articles.
- 16.3** Ordinary Shares to which Depositary Receipts have been stapled, may only be Transferred together with the Depositary Receipts stapled thereto.
- 16.4** No Encumbrances may be created over the Management Shares.
- 16.5** Notwithstanding the provisions below, no Ordinary Shares may be Transferred by any Shareholder during the Lock-Up Period other than in accordance with any of the exceptions to the Lock-Up Period listed under clause 14.3.

## Notice of Transfer

- 16.6** A Shareholder who intends to Transfer all or part of its Almatris Topco Shares and any Depositary Receipts stapled thereto shall request the approval of the Board for such Transfer in writing ("**Transfer Notice**"). Such Transfer Notice shall include the number and type of shares and Depositary Receipts proposed to be Transferred, the conditions thereto, the name and details of the intended Transferee and a (copy of a) Deed of Adherence executed by the intended Transferee in accordance with clause [11.2] of the Articles.
- 16.7** A Shareholder shall provide notice to Almatris Topco 1 of any Transfer of the beneficial ownership of any Ordinary Shares.
- 16.8** A Shareholder shall provide notice to the Board of the beneficial owner of the Ordinary Shares with respect to which it is the record holder at any time if requested to do so by the Board. If a Shareholder fails to respond to such request within a reasonable time, that Shareholder's rights to vote or otherwise participate in any distribution on the Ordinary Shares shall be suspended until such time as notice is provided.

## Board Approval of Transfer

- 16.9** Almatris Topco 1 shall only approve a request for approval to Transfer Almatris Topco Shares and any Depositary Receipts stapled thereto within [●] Business Days of receipt of the Transfer Notice if the request relates to:
- 16.9.1** A Permitted Transfer (as defined in clause 16.14) of Ordinary Shares and any Depositary Receipts stapled thereto, provided that it has received a Deed of Adherence executed by the Transferee;
- 16.9.2** The exercise of a Drag Along Right pursuant to clauses **Error! Reference source not found.** to [16.29], provided that it has received a Deed of Adherence executed by the Transferee, unless the Transferee shall become the sole shareholder of Almatris Topco 1 in which case no Deed of Adherence shall be required;
- 16.9.3** The exercise of a Tag Along Right pursuant to clause 16.31, provided that it has received a Deed of Adherence executed by the Transferee, unless the Transferee shall become the sole shareholder of Almatris Topco 1 in which case no Deed of Adherence shall be required;
- 16.9.4** A sale and Transfer to a DIC Designee pursuant to clause 16.20, provided that it has received a Deed of Adherence executed by the Transferee, unless the Transferee shall become the sole shareholder of Almatris Topco 1 in which case no Deed of Adherence shall be required;
- 16.9.5** The request for the Transfer by an Investor of its Ordinary Shares and any Depositary Receipts stapled thereto to a third party, if, after the Board having made an Offer in accordance with clause 16.17, such Offer has not been accepted in full, and the Board has received an executed Deed of Adherence from the Transferee;

- 16.9.6** An Exit; or
- 16.9.7** Any other Transfer carried out in accordance with the provisions of this Agreement.
- 16.10** A resolution of the Board to grant any approval of a Transfer shall require the approval of a simple majority of the Board. The Board shall inform the Shareholder who requested approval for a Transfer as soon as possible but in any event within the term set out in clause [11.3] of the Articles as to whether approval has been granted in accordance with the provisions of clause 16.9.
- 16.11** Once the requesting Shareholder has received the Board's approval for the intended Transfer, the relevant Shareholder shall be entitled to sell or dispose of its shares on the conditions and terms set out in the approval request within a period of three (3) months following such approval. To the extent that the requesting Shareholder's Almatris Topco 1 Shares are stapled to any Depositary Receipts, such Shareholder shall be required to Transfer a corresponding number of the stapled Depositary Receipts held by it together with the Transferred Almatris Topco 1 Shares.

#### **Permitted Transfers<sup>21</sup>**

- 16.12** The Investors holding Ordinary Shares may freely Transfer (all or part of) their Ordinary Shares (together with any Depositary Receipts stapled thereto) to:
- 16.12.1** their respective Affiliates (each, a “**Permitted Transferee**”); and
- 16.12.2** in the case of the DIC Investor, up to 20% of its Ordinary Shares shall be freely transferable to certain co-investors (excluding, unless otherwise agreed by Mezzanine Investors representing 75% of the total number of Ordinary Shares held by all Mezzanine Investors, (i) financial investors predominantly in the business of investing directly or indirectly in distressed assets, or (ii) Competitors of the Group); at any time within the three (3) months following the Effective Date, provided always that such co-investors are approved by the Majority Mezzanine Investors (the “**Agreed Co-Investors**”); provided, that arrangements are made for any votes attaching to the Ordinary Shares Transferred to the Agreed Co-Investors to be cast by the DIC Investor (a “**DIC Co-Investor Sale**”).<sup>22</sup>
- 16.13** The Management Investors shall be entitled to freely Transfer their Management Shares for *bona fide* tax planning purposes (such *bona fide* purposes to be determined by the Remuneration Committee in its absolute discretion) provided that the restrictions attached to such Management Shares shall remain binding as if the Management Investor in question still held such shares following the Transfer of his

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<sup>21</sup> Note - SSN have 12 months from the Effective Date to syndicate their shares, subject to a prohibition on syndication of such shares to Competitors, or to certain prohibited investors (to be in line with the provisions of the Sponsor Letter).

<sup>22</sup> Note – it is intended that this co-investment can also take place by way of an investment into the DIC Investor vehicle, as well as a direct investment for the Ordinary Shares.

or her Management Shares, and that any the relevant Transferee enters into a Deed of Adherence.<sup>23</sup>

**16.14** The Transfers pursuant to clauses 16.12 and 15.13 a “**Permitted Transfer**”.

**Right of First Offer**

**16.15** Before any Investor or Management Investor Transfers any Ordinary Shares and any Depositary Receipts attached thereto, (including any Transfer any of Management Shares to pay the tax and social security due in connection with its exercise of the Management Option, which for the avoidance of doubt does not constitute a Permitted Transfer) (such Investor or Management Investors referred to as the “**Selling Investor**”), the Selling Investor shall send a Transfer Notice to Almatris Topco 1 in accordance with clause 16.6. If the Transfer Notice contains a request for the approval of a Permitted Transfer, a Transfer pursuant to a Drag-Along Right, or a Transfer pursuant to a Tag-Along Right, Almatris Topco 1 shall approve the request in accordance with clause 16.9. If the Transfer Notice contains a request for a Transfer that is not a Permitted Transfer, a Transfer pursuant to a Drag-Along Right, or a Transfer pursuant to a Tag-Along Right, Almatris Topco 1 shall observe the following procedures of these clauses [16.15 to 16.21] prior to resolving on the approval of the request for Transfer and the Selling Investor shall not Transfer any Ordinary Shares or any Depositary Receipts stapled thereto unless these clauses [16.15 to 16.21] have been observed.

**16.16** The Transfer Notice:

**16.16.1** shall specify the number of Ordinary Shares and the Depositary Receipts stapled thereto proposed to be transferred (“**Offered Shares**”);

**16.16.2** shall specify the price per Ordinary Share and per Depositary Receipt stapled thereto at which the Selling Investor proposes to Transfer the Offered Shares (the “**Prescribed Price**”);

**16.16.3** shall specify the name of the proposed Transferee (the “**Proposed Transferee**”) and its business and any other material terms pertaining to a Transfer to the Proposed Transferee; and

**16.16.4** shall request that the Board, on behalf of the Selling Investor, offers to sell to the other Investors (the “**Offerees**”) the Offered Shares in accordance with clause 16.17.

**16.17** Within [five (5)] Business Days following receipt of the Transfer Notice, Almatris Topco 1 shall offer the Offered Shares to the Offerees on the following basis (the “**Offer**”):

**16.17.1** the Offered Shares shall be offered at the Prescribed Price per Ordinary Share and Depositary Receipt specified in the Transfer Notice;

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<sup>23</sup> Note – in line with the Management Share Option Plan, Management are able to sell Management Shares to pay applicable tax and social security, subject to their being a right of first offer to Almatris Topco 1.

- 16.17.2** the Offer shall limit the time, not being less than [three (3)] or more than [thirty (30)] Business Days, within which the Offer may be accepted by Offerees (the “**Acceptance Period**”);
- 16.17.3** the Offered Shares shall be offered to the Offerees pro rata, in proportion to their respective holdings of Ordinary Shares (excluding Ordinary Shares held by the Selling Investor);
- 16.17.4** each Offeree to whom the Offer is made shall be invited to indicate whether, if it accepts some or all of the Offered Shares offered to it pursuant to clause [16.17], and whether it wishes to purchase any Offered Shares offered to other Offerees which they decline to accept (such Offered Shares being referred to as “**Excess Shares**”) and if so the maximum number which it would wish to purchase;
- 16.17.5** if there are any Excess Shares they shall be allocated between the Offerees who have indicated that they wished to purchase Excess Shares pro rata, in proportion to their respective holdings of Ordinary Shares (excluding Ordinary Shares held by the Selling Investor);
- 16.17.6** any remaining balance of Excess Shares after such pro rata allocation shall be allocated to any Offerees who have sought to purchase more than its proportionate entitlement of Excess Shares pro rata, in proportion to their respective holdings of Ordinary Shares.
- 16.18** Not later than [five (5)] Business Days following the end of the Acceptance Period Almatris Topco 1 shall give written notice (an “**Allocation Notice**”) to the Selling Investor stating one of the following:
- 16.18.1** that (i) the Offerees have not sought to purchase all of the Offered Shares (“**insufficient take-up**”), (ii) the Board has therefore resolved to approve the Transfer to the Proposed Transferee, and (iii) that the Selling Investor may, within [ten (10)] Business Days of service on it of the relevant Allocation Notice proceed with the Transfer to the Proposed Transferee at a price not lower than the Prescribed Price and on no more favourable terms than the terms set out in the Transfer Notice and further subject to the condition that any Proposed Transferee must enter into a Deed of Adherence prior to the Transfer of such Ordinary Shares to the Proposed Transferee; or
- 16.18.2** that (i) the Offerees have sought to purchase all of the Offered Shares (“**a full take-up**”), giving the name and address of each Offeree and the number of Offered Shares to be purchased by each of them, (ii) the Board has therefore resolved to approve the Transfer to the Offerees, and (iii) the Selling Investor shall be bound on payment of the Prescribed Price to Transfer the Ordinary Shares in question to the accepting Investors, each sale and purchase to be completed on the first Business Day after the expiry of [ten (10)] Business Days from the date of service of the Allocation Notice.

**16.19** If one or more Offerees fail to complete the purchase of the Offered Shares which are to be Transferred to it under clause 16.18 (the “**Defaulted Offered Shares**”) in accordance with the terms of an Allocation Notice then the following provisions shall apply:

**16.19.1** Almatris Topco 1 shall notify the fact to the Selling Investor; and

**16.19.2** the Selling Investor may:

- (a)** cancel the authority of Almatris Topco to sell the Defaulted Offered Shares to such Offeree(s) by delivering to Almatris Topco a written notice of withdrawal; and
- (b)** before the expiration of forty (40) Business Days after the end of the Acceptance Period, select by notice in writing to Almatris Topco 1 to Transfer the Defaulted Offered Shares to any person at a price not lower than the Prescribed Price and on terms not more favourable than those offered to the Offerees, (provided that if such person is in the sole opinion of the Board a Competitor of Almatris Topco 1 then prior to any such Transfer to any such person the prior written approval of the Board shall be required) and further subject to the condition that any proposed purchaser of the Offered Shares enter into a Deed of Adherence prior to the transfer of such Offered Shares.

**16.20** If an Offer is made by an Investor or Management Investor other than the DIC Investor, the DIC Investor shall be entitled to designate a DIC Designee to purchase all or part of the Ordinary Shares that the DIC Investor would otherwise be able to purchase pursuant to the Offer (“**DIC Offer Shares**”) in its place and further any such Transfer, if consummated, must be in compliance with all applicable laws. For the avoidance of doubt the DIC Investor shall always be entitled to purchase any part of the DIC Offer Shares which are not purchased by the DIC Designee. The Shareholder making the Offer shall offer the DIC Offer Shares (to the extent not purchased by DIC) to the DIC Designee and the other Shareholders agree not to purchase such DIC Offer Shares if the DIC Designee elects to purchase them. Each Shareholder hereby agrees to exercise its shareholders rights in such a manner and to provide the necessary approvals or waivers as required to allow the sale and Transfer of the DIC Offer Shares to the DIC Designee and the Board must approve a Transfer to a DIC Designee pursuant to an Offer.

**16.21** Notwithstanding anything to the contrary in this Agreement, any Transfers of Almatris Topco Shares which are expressly permitted under this Agreement or the Disbursing Agent Agreement, are herewith approved by all Parties to this Agreement, and all such Parties herewith undertake to do all such things as may be required (including, the exercise of their shareholders and voting rights, the adoption of shareholders resolutions approving any Transfers, or providing waivers in respect of pre-emption rights), in order to allow such Transfers to be completed on the dates contemplated by the Parties herein and hereby waive, to the fullest extent permitted under the applicable laws, any and all rights which they might otherwise have in respect of such Transfers.

## **Drag-Along Rights**

- 16.22** The Investors and the Management Investors shall have drag along rights (the “**Drag-Along Right**”) in respect of all of the Ordinary Shares, including any Depositary Receipts stapled thereto or at the discretion of the prospective purchaser the Senior Preference Shares and Junior Preference Shares held by STAK 1 and STAK 2, and any unexercised warrants, including the PIK Preference Warrants, in respect of Ordinary Shares, and each other class of equity instruments or any other instruments convertible into equity instruments (“**Drag-Along Securities**” the holders of which being the “**Drag-Along Securities Holders**”), in the event a bona fide third party offer is received for all, but not less than all, the Ordinary Shares (including any Depositary Receipts stapled thereto) [and all outstanding PIK Preference Warrants] from a prospective purchaser (the “**Drag-Along Purchaser**”), and either:
- 16.22.1** such third party offer represents an Enterprise Value of not less than USD 1.2 billion and is accepted by the holders of not less than 75 per cent of the Ordinary Shares in issue; or
  - 16.22.2** such third party offer is accepted by Shareholders holding not less than 75 per cent of the Ordinary Shares in issue, including Mezzanine Investors representing not less than 75 per cent of the total number of Ordinary Shares held by all Mezzanine Investors (in each case, a “**Drag-Along Sale**”).
- 16.23** Any Drag-Along Securities Transferred pursuant to a Drag-Along Sale shall be purchased for an amount equal to the consideration payable in respect of each of those corresponding Drag-Along Securities in the Drag-Along Sale.
- 16.24** The Investors and the Management Investors exercising their Drag-Along Rights (the “**Drag-Along Sellers**”) shall deliver to each other Drag-Along Security Holder written notice (the “**Drag-Along Notice**”) of any Transfer proposed to be made pursuant to clause **Error! Reference source not found.** not later than [twenty (20)] Business Days prior to the proposed Drag-Along Sale, which notice shall set out:
- 16.24.1** the type and amount of consideration to be paid by the Drag-Along Purchaser for the Drag-Along Securities;
  - 16.24.2** the name and details of the Drag-Along Purchaser;
  - 16.24.3** the number of Drag-Along Securities that each such Drag-Along Security Holder may be required to Transfer (as determined pursuant to clause **Error! Reference source not found.**); and
  - 16.24.4** all other material terms and conditions, if any, of such transaction.
- 16.25** If, within [sixty (60)] days after the date of the Drag-Along Notice (unless such period is extended pursuant to clause 16.28), the Drag-Along Sellers complete the Drag-Along Sale in accordance with the terms and conditions set out in the Drag-Along Notice, the Drag-Along Sellers, on behalf of each Drag-Along Securities holder, shall obtain the required approval of the Board in accordance with clause 16.9 and each Drag-Along Securities Holder will sell its Drag-Along Securities to the Drag-Along

Purchaser at the same time and on the same terms and conditions upon which the Drag-Along Sellers sell their Drag-Along Securities pursuant to the Drag-Along Sale.

- 16.26** Within [five (5)] Business Days after the earlier of the date of the Drag-Along Notice or the date the requisite Board approval is obtained, the Drag-Along Securities Holders shall promptly deliver to the Drag-Along Sellers all documents in their possession reasonably requested in writing by the Drag-Along Sellers and/or the Company and reasonably required to be executed in connection with such Drag-Along Sale. In the event that any of such Drag-Along Securities Holders shall fail to deliver such documents to the Drag-Along Sellers, Almatris Topco 1 shall cause the books and records of Almatris Topco 1 to show that such Drag-Along Securities are bound by the provisions of this clause 16.26. The Parties agree to sign and execute all such documents and take all such actions as required to implement the exercise of the Drag Along Rights of an Investor.
- 16.27** If no Transfer of the Drag-Along Securities in accordance with the provisions of clauses **Error! Reference source not found.** to 16.28 shall have been completed within sixty (60) days after the date of the Drag-Along Notice (unless such period is extended pursuant to clause 16.28), the Drag-Along Sellers shall return to the Drag-Along Shareholders all documents (if any) previously delivered to the Drag-Along Sellers, and all the restrictions on Transfer contained in this Agreement with respect to Shares owned or held by such Drag-Along Securities Holders shall again be in effect.
- 16.28** If the Transfer of Shares pursuant to a Drag-Along Sale is subject to any prior regulatory approval, the time period during which such Transfer may be consummated shall be extended until the expiration of five (5) Business Days after all such approvals shall have been received.

### **Squeeze-Out Rights**

- 16.29** If an Investor, who was an Investor on the Effective Date, acquires 90% or more of the Ordinary Shares (the “**Squeeze-Out Investor**”), that Investor shall have the right (a “**Squeeze-Out Right**”) to acquire all other Ordinary Shares (including any Depositary Receipts stapled thereto) and any unexercised warrants in respect of Ordinary Shares, including any PIK Warrants, and the holders (the “**Minority Holders**”) of such other Ordinary Shares, (including any Depositary Receipts stapled thereto) and any unexercised warrants in respect of Ordinary Shares, including any PIK Warrants shall be required to Transfer such other Ordinary Shares, (including any Depositary Receipts stapled thereto) and any unexercised warrants in respect of Ordinary Shares, including any PIK Warrants to such Investor, at the higher of (i) the Fair Valuation and (ii) the highest per share price at which the Ordinary Shares comprising the relevant 90% were acquired during the immediately preceding two year period (the “**Squeeze-Out Price**”).<sup>24</sup>
- 16.30** In the event that an Investor obtains a Squeeze-Out Right pursuant to clause 16.29, a Minority Holder shall also have the right to require the Squeeze-Out Investor to purchase all of its Ordinary Shares (including any Depositary Receipts stapled

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<sup>24</sup> Pricing of prefs/warrants on a squeeze-out – this shall be exercise/redemption price plus any accrued interest.



thereto) and all unexercised warrants in respect of Ordinary Shares, including all PIK Warrants at the Squeeze-Out Price.

### **Tag-Along Rights**

- 16.31** If a third party or an Investor (the “**Tag Along Purchaser**”) proposes to acquire any Ordinary Shares and any Depositary Receipts stapled thereto from any Investor or Investors, or Management Investor (the “**Tag-Along Seller**”) by way of a sale of an amount of Ordinary Shares such that, following such acquisition, it would hold more than 50% of the Ordinary Shares (a “**Tag-Along Sale**”), the remaining Investors other than the Tag-Along Seller shall have the right (“**Tag Along Right**”) to sell (subject to clause [16.38]) on the same terms, to the Tag-Along Purchaser, all of their Ordinary Shares and the Depositary Receipts stapled thereto (the “**Tag-Along Securities**”).
- 16.32** If a Tag-Along Purchaser proposes to acquire any Ordinary Shares and the Depositary Receipts stapled thereto from the DIC Investor by way of a Tag-Along Sale such that the DIC Investor (together with any Permitted Transferees of the DIC Investor, any DIC Co-Investor, and/or the DIC Designee) would hold:
- 16.32.1** 50 per cent or less of the Ordinary Shares in issue, the remaining Investors other than the DIC Investor shall have the right to sell (subject to clause [16.38]) a pro-rata proportion of the Tag-Along Securities simultaneously with such Tag-Along Sale, or
- 16.32.2** 35 per cent or less of the Ordinary Shares in issue, the remaining Investors other than the DIC Investor shall have the right to sell (subject to clause [16.38]) all of their Tag-Along Shares simultaneously with such Tag-Along Sale, provided in each case that the DIC Investor may reduce the number of Ordinary Shares it wishes to sell in the transaction giving rise to the Tag-Along Right.
- 16.33** [Subject to clause 16.39, any Tag-Along Securities Transferred pursuant to a Tag Along Right shall be purchased for an amount equal to the consideration payable in respect of those corresponding Tag-Along Securities in the Tag-Along Sale.]<sup>25</sup>
- 16.34** Not less than [twenty(20) ] Business Days prior to any proposed Tag Along Sale pursuant to clauses 16.31 to 16.39, the Tag Along Seller shall deliver to the Investors and Management Investors other than the Tag-Along Purchaser (if it is an Investor), a notice (a “**Tag Along Notice**”) thereof, which notice shall set out:
- 16.34.1** the type and amount of consideration to be paid by the Tag-Along Purchaser for each Ordinary Share and Depositary Receipt stapled thereto;
- 16.34.2** the total number of Ordinary Shares and Depositary Receipts stapled thereto proposed to be sold to the Tag-Along Purchaser and the number of Tag-Along Securities which the Investors and the Management Investors, other than the Tag-Along Seller, are entitled to sell pursuant to the Tag-Along Right; and

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<sup>25</sup> Pricing of prefs/warrants on a drag – this shall be exercise/redemption price plus any accrued interest.

- 16.34.3** all other material terms and conditions, if any, of such proposed transaction.
- 16.35** If the Investors or the Management Investors, other than the Tag-Along Seller, together elect (in such event, each Investor or Management Investor being a “**Participating Investor**”) to exercise their Tag Along Right and sell some or all of the Tag Along Securities pursuant to clauses 16.31 to 16.39, then they shall so notify the Tag Along Seller by notice in writing within [fifteen] Business Days after the date of the Tag Along Notice and, at the Tag-Along Seller’s request, not less than two (2) Business Days prior to the proposed Transfer, the Participating Investor shall deliver to the Tag-Along Seller all documents (if any) required to be executed in connection with such transaction.
- 16.36** If the Tag-Along Sale shall not have been completed within [sixty (60)] days after the date of the Tag-Along Notice (subject to clause 16.38), the Tag-Along Seller shall promptly return to the Participating Investor all documents (if any) previously delivered by the Participating Investor to the Tag Along Seller.
- 16.37** If a Participating Investor properly exercises its Tag-Along Right:
- 16.37.1** it shall obtain the approval of Almatris Topco 1 for such Transfer pursuant to clause 16.9;
  - 16.37.2** the sale and Transfer of its Tag-Along Securities shall occur concurrently with the sale and Transfer by the Tag-Along Seller of its Ordinary Shares and any Depositary Receipts stapled thereto;
  - 16.37.3** such Participating Investor shall receive for its Tag-Along Securities the same consideration per Ordinary Share and Depositary Receipt stapled thereto that the Tag-Along Seller receives for its Ordinary Shares and Depositary Receipts stapled thereto, if any, from the Tag-Along Purchaser as set out in the Tag-Along Notice; and
  - 16.37.4** the sale by the Participating Investor shall otherwise be on the same terms and conditions upon which the Tag-Along Seller is selling its Ordinary Shares and Depositary Receipts stapled thereto, if any.
- 16.38** If the Tag-Along Sale is subject to any prior regulatory approval, the [sixty (60)] day period during which the Tag-Along Sale may be completed as set out in clauses 16.31 to 16.39 shall be extended until the expiration of five (5) Business Days after all such approvals shall have been received.
- 16.39** The Tag-Along Right shall be exercisable on the same terms as the best offer for any Ordinary Shares made by the Tag-Along Purchaser within the previous six (6) months (if applicable), and otherwise on no less favourable terms than those being offered to the Tag-Along Seller.

#### **Compulsory Transfers – Leavers**

- 16.40** [A Management Investor shall be obliged to Transfer all of his Ordinary Shares obtained pursuant to the exercise of Management Options (“**Plan Shares**”) to Almatris Topco 1, or such person as Almatris Topco 1 shall direct, subject to the provisions of

this clause 16, against payment of the Good Leaver Price, if such Management Investor becomes a Good Leaver.

**16.41** A Management Investor shall be obliged to Transfer all of his Plan Shares to Almatris Topco 1, or such person as Almatris Topco 1 shall direct, subject to the provisions of this clause 16, against payment of the lower of the Exercise Price or the Fair Market Value (the “**Bad Leaver Price**”):

**16.41.1** if such Management Investor becomes a Bad Leaver;

**16.41.2** if such Management Investor is a Good Leaver and after termination breaches any of the covenants in his employment or service contract, or this Agreement, relating to non-compete, confidentiality, non-solicitation or any other of the surviving provisions of his employment or service contract. In the event that a Management Investor has received a Good Leaver Price for a transfer of Plan Shares and subsequently breaches such covenants, he shall repay, on demand, to Almatris Topco 1 the difference between the Good Leaver Price and the Bad Leaver Price (assessed at the date of breach of the relevant covenants).]<sup>26</sup>

#### **Transfers of PIK Preference Warrants**

**16.42** For the avoidance of doubt, the restrictions on Transfers of Almatris Topco Shares and rights and obligations as set out in this clause [16] shall apply mutatis mutandis to any Transfers of PIK Preference Warrants.

### **17 REPRESENTATIONS AND WARRANTIES**

**17.1** Each Party hereby represents and warrants to the other Parties the following:

**17.1.1** except in the case of the Management Investors, each Party is a corporation duly incorporated or an entity legally formed and in each case validly existing under the applicable law of its jurisdiction of incorporation or formation;

**17.1.2** each of the Parties has full power and authority to carry on its business as presently conducted and to own its assets, properties and business as presently owned;

**17.1.3** each Party has full power and authority and has obtained all necessary consents and all corporate and other proceedings required to be taken by or on behalf of each Party to authorise such Party to enter into and perform the obligations expressed to be assumed by it under this Agreement (and any other agreement or arrangement to be entered into by it in connection with this Agreement) have been duly and properly taken,

**17.1.4** the obligations expressed to be assumed by it under this Agreement and each such other agreement are legal, valid and binding and enforceable

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<sup>26</sup> TBD - Drafted to reflect provision in Share Option Plan.

against it in accordance with their terms and this Agreement has been duly executed by each Party and constitutes the valid and binding obligation of such Party in accordance with its terms;

- 17.1.5** the execution of this Agreement will not conflict with, or result in a breach of, or constitute a default under, the articles of association or by-law or other organisation or formation instruments of such Party or any agreement or instrument by which such Party is bound or violate any judgment, order, injunction, award, decree, applicable law or regulation applicable to such Party;
- 17.1.6** to the knowledge of such Party, no representation, statement or information made or furnished by such Party pursuant to this Agreement contains any untrue statement of a material fact or omits any material fact necessary to make the information contained herein or therein not misleading;
- 17.1.7** it is solvent; and
- 17.1.8** no broker has acted on behalf of it in connection with this Agreement or the transactions contemplated hereby, and there are no brokerage commissions, finders' fees or similar fees or commissions payable in connection herewith or therewith based on any agreement, arrangement or understanding between such Party or its Affiliates, on the one hand, and any other person, on the other hand, or any action taken by such Party or its representatives.

## **18 DEED OF ADHERENCE**

### **No allotment or Transfer without a Deed of Adherence**

- 18.1** No person (who is not already a Party) acquiring any Equity Instruments (whether by allotment, issue, Transfer or transmission) shall be issued or allotted any Equity Instruments unless and until that person has entered into and delivered to the Board a Deed of Adherence in a legally binding manner, and Parties transferring any Equity Instruments shall procure that the Transferee (if not already a Party), prior to the Transfer or transmission, enters into and delivers a Deed of Adherence.

### **Designation as Manager or Investor**

- 18.2** A person (other than a Manager) who enters into a Deed of Adherence because that person acquires Equity Instruments from an Investor (or an Investor's nominee) must be designated by the Deed of Adherence as an Investor. A person (other than an Investor) who enters into a Deed of Adherence because that person acquires Equity Instruments from a Manager or a person to whom Equity Instruments have been Transferred pursuant to [Article 16 (Transfer of Shares)], must be designated in the Deed of Adherence as a Manager. A subscriber for new Equity Instruments shall be designated in the manner determined by the Investor Majority. [In the event that any Ordinary Shares P are issued to any holder of PIK Preference Warrants pursuant to clause 2.6.4 (c), such holder of PIK Preference Warrants shall be designated in the applicable Deed of Adherence as an Investor.]

## **Benefit and burden of Agreement**

- 18.3** A person who has entered into a Deed of Adherence pursuant to this Agreement has the benefit of, and is subject to the burden of, all the provisions of this Agreement as if that person is a party in the capacity designated in the Deed of Adherence (except that if that person is designated as a Manager that person is not liable under the Warranties), and this Agreement shall be interpreted accordingly.
- 18.4** Without limiting the general nature of clause 18.3, a person designated as an Investor in a Deed of Adherence is entitled to the benefit of all representations, warranties and undertakings given to Investors in or pursuant to this Agreement provided that nothing in this clause 18.4 shall be construed as requiring a party to perform again an obligation or discharge again a liability already performed or discharged or entitling a party to receive again a benefit already enjoyed.

## **19 PUBLICITY**

A press release or other external media communication to be made by a party relating to the Restructuring, may only be made with the prior written approval of all of the Investors.

## **20 NOTICES**

- 20.1** Any notice or other communication given under this Agreement shall be in writing and shall be served by delivering it to the Party due to receive it at the address or fax numbers set out in Schedules 1 and 2 or such other address or fax number as the relevant Party notifies to the other Parties, which change of address shall only take effect if delivered and received in accordance clause 20.2, and shall be deemed to have been delivered in accordance with clause 20.2.<sup>27</sup>
- 20.2** A notice so addressed shall be deemed to have been received:
- 20.2.1** if personally delivered, at the time of delivery;
  - 20.2.2** if sent by pre-paid, recorded delivery or registered post, two (2) Business Days after the date of posting to the relevant address;
  - 20.2.3** if sent by registered air-mail, five (5) Business Days after the date of posting to the relevant address; or
  - 20.2.4** if sent by fax, on successful completion of its transmission as per a transmission report from the machine from which the fax was sent, save that if such notice or communication is received after the end of normal working hours (and “**normal working hours**” shall be deemed to be between 8.30 am and 5.30 pm on any Business Day in the country of the recipient), such notice or communication shall be deemed to have been received on the next Business Day.

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<sup>27</sup> These need to include Dutch address for serving judicial documents for civil proceedings in the Netherlands

## **21 ENTIRE AGREEMENT, AMENDMENT AND TERMINATION**

### **Entire agreement**

- 21.1** Each Party acknowledges that this Agreement and the documents referred to in it, including without limitation the Articles, the Disbursing Agent Agreement, the Call Option Agreement and the Direction Agreement, constitute the entire contract between the parties and supersede all prior agreements, understandings or arrangements (both oral and written) relating to the subject matter of this Agreement and any such document. Each of the other Parties acknowledges that it or he is entering into this Agreement without reliance on any undertaking or representation given by or on behalf of any Investor other than as expressly contained in this Agreement, provided that nothing in this clause shall exclude any Investor from liability for fraudulent misrepresentation.

### **Amendment**

- 21.2** No amendment, change or addition to this Agreement is effective or binding on a Party unless in writing and executed by all of the Parties, except that amendments to this Agreement may be made with Investor Consent without the involvement or agreement of the other Parties to this Agreement provided that the effect or application of such amendment does not and could not:
- 21.2.1** increase the liability or potential liability or adversely affect the rights or entitlements of any Party to this Agreement whose consent or agreement to such amendment is not obtained; or
  - 21.2.2** increase the rights of any Party unless the consent of all other Parties is obtained.
- 21.3** If an amendment to the Articles is passed by a Shareholder resolution then this Agreement shall be amended if there is then an inconsistency between the Articles and this Agreement to reflect that amendment to the Articles in which case such amendment may be made by the written agreement of the Investor Majority.

### **Termination**

- 21.4** On an Exit the provisions of this Agreement shall cease to have effect except that each Party's accrued rights and obligations shall not be affected.
- 21.5** In the event that the Exit is a Listing the Parties agree to work towards entry into a new investment agreement with as many of the provisions of this Agreement as are consistent with a listed company remaining in place, modified appropriately (without increasing the obligations or decreasing the rights of any Party or otherwise having a material adverse effect on any Party) to reflect the Listing.
- 21.6** When a Manager ceases to be an employee of a Group Member and ceases to hold Ordinary Shares that Manager ceases to be a Party to this Agreement (and the definition of "**Manager**" no longer includes that person) except that:
- 21.6.1** clause [12] (*Confidentiality*) continues to bind that Manager; and

- 21.6.2** that Manager's accrued rights and obligations are not affected, except as provided for in the Management Incentive Plans set out in SCHEDULE 14.
- 21.7** When a Party ceases (or the person holding those shares or securities in the capital of a Group Member for that Party ceases) to hold shares or other securities in the capital of a Group Member, that Party ceases to be Party to this Agreement except that its accrued rights and obligations are not affected. For the avoidance of doubt, in the event that an Investor ceases to hold any Equity Instruments or Depositary receipts, such Investor shall cease to be an Investor for the purposes of this Agreement.

## **22 MEZZANINE STEERING COMMITTEE**

- 22.1** The Mezzanine Steering Committee exists for the sole purpose of exercising the MSC Rights. Without prejudice to the ability of each member of the Mezzanine Steering Committee to exercise the MSC Rights, on and after the date of this Agreement:

**22.1.1** any appointment of the Mezzanine Steering Committee and any rights or obligations that arose in connection therewith to any Mezzanine Investor, any member of the Group or DIC (whether pursuant to an appointment letter or a course of dealing and whether in force or expired) (a "**Mezz SC Appointment**") is terminated;

**22.1.2** each Mezzanine Investor, DIC, each Management Investor and Almatris Topco 1 for itself and on behalf of each member of the Group (each a "**Relevant Party**") releases each member of the Mezzanine Steering Committee (in its capacity as such) from any claim, cause of action, or liability to that Relevant Party, for any act or omission of any member of the Mezzanine Steering Committee (in its capacity as such) arising under or in connection with any Mezz SC Appointment;

**22.1.3** any rights that any Mezzanine Investor or any member of the Group may have against any member of the Mezzanine Steering Committee under or in connection with any Mezz SC Appointment are released and cancelled; and

**22.1.4** no member of the Mezzanine Steering Committee in its capacity as such or any of its appointees or nominees (including without limitation any Mezzanine Director or any Observer that has been appointed by a member of the Mezzanine Steering Committee in accordance with this Agreement) (each a "**Mezzanine SC Party**"):

- (a)** (with the exception of the duties of the Mezzanine Director in its capacity as a Director under this Agreement and at law) has any obligations of any kind to any other Party under or in connection with the Restructuring or this Agreement;
- (b)** shall (nor shall be taken to) have any authority to act on behalf of or commit any of the Mezzanine Investors;
- (c)** is responsible for the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by an Mezzanine Investor, any Party or any other person given in connection with

Restructuring or this Agreement or the transactions contemplated thereby;

- (d) is responsible for the legality, validity, effectiveness, adequacy or enforceability of this Agreement or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with this Agreement; or
- (e) is (nor shall be taken to be) a fiduciary or agent for any member of the Group or for any of the Mezzanine Investors or for any other person whatsoever and (with the exception of the duties of the Mezzanine Director in its capacity as a Director under this Agreement and at law) shall have no general duties or duty of care to any member of the Group, the Parties, or any other person whatsoever.

**22.2** Each Mezzanine Investor severally warrants to the Mezzanine Steering Committee that it has independently and without reliance on the Mezzanine Steering Committee, and based on such documents and information as it deemed appropriate, made its own independent investigation and assessment of the financial condition and affairs of the Company and the Group in connection with the entry of that Mezzanine Investor into this Agreement and the Restructuring.

**22.3** The Mezzanine Steering Committee shall be dissolved upon the date falling 60 calendar days after the date of this Agreement (“**MSC Dissolution Date**”) such that all of the MSC Rights that were able to be exercised by the Mezzanine Steering Committee before the MSC Dissolution Date (with the exception of (i) the rights of each member of the Mezzanine Steering Committee and its advisors under clause [5] (Fees and costs) and, for the avoidance of doubt, (ii) Northwestern’s right to appoint an Observer for so long as it holds Ordinary Shares pursuant to clause [7.22] (Personal rights to Observers) and without prejudice to clauses [22.4 to 22.11] below) shall, upon and following the MSC Dissolution Date, be exercisable by the Majority Mezzanine Investors.

**22.4** For the purposes of clause [7.8] (Nomination rights for the appointment of Board Members) no person that holds the role as a Mezzanine Director (“**Incumbent Mezzanine Director**”) immediately before the occurrence of the MSC Dissolution Date shall be replaced unless and until either:

**22.4.1** an Incumbent Mezzanine Director gives a minimum of forty five (45) Business Days’ written notice to the Mezzanine Investors that it wishes to resign as Mezzanine; or

**22.4.2** the Majority Mezzanine Investors give a minimum of forty five (45) Business Days’ written notice to an Incumbent Mezzanine Director that they wish to replace that person as Mezzanine Director,

and, in each case, the procedure set out in [clauses 22.5 and 22.7] has been followed.

**22.5** As soon as practicable after the date on which a notice is delivered to the Mezzanine Investors in accordance with [clause 22.4] (“**22.4 Notice Date**”) and in any event, no later than ten (10) Business Days after the Notice Date the Majority Mezzanine



Investors shall convene a meeting of the holders of Ordinary Shares M (“**Mezzanine Investor Meeting**”) to be held on a date no earlier than the date falling fifteen (15) calendar days after the Notice Date and no later than the date falling twenty (20) Business Days after the 1.4 Notice Date.

**22.6** The Majority Mezzanine Investors shall:

**22.6.1** at the Mezzanine Investor Meeting make a binding nomination for the appointment and/or removal of the relevant Incumbent Mezzanine Director; and

**22.6.2** promptly after the Mezzanine Investor Meeting present to the Board a list of nominees for the appointment of a Mezzanine Director to replace the Incumbent Mezzanine Director.

**22.7** Upon receipt of the list of nominees set out in [clause 22.6.2] the Board shall procure that the nominees specified therein are appointed and/or removed in accordance with the Articles.

**22.8** For as long as it holds Ordinary Shares, Northwestern is entitled to appoint and/or remove one observer to attend on its behalf all meetings of the Board and the board of any of its subsidiaries, and any committees of such boards (“**NWM Observer**”).

**22.9** The Observer appointed by a member of the Mezzanine Steering Committee in accordance with clause [7.21] shall be known as the “**Mezzanine Observer**”. The person that holds the role as Mezzanine Observer (“**Incumbent Mezzanine Observer**”) immediately before the occurrence of the MSC Dissolution Date may be replaced if either:

**22.9.1** the Incumbent Mezzanine Observer gives a minimum of twenty (20) Business Days’ written notice to the Mezzanine Investors that it wishes to resign as Mezzanine Observer; or

**22.9.2** the Majority Mezzanine Investors give a minimum of twenty (20) Business Days’ written notice to the Incumbent Mezzanine Observer that they wish to replace that person as Mezzanine Observer,

and, in each case, the procedure set out in [clauses 22.10 and 22.11] has been followed.

**22.10** As soon as practicable after the date on which a notice is delivered to the Mezzanine Investors in accordance with [clause 22.9] (“**22.9 Notice Date**”) and in any event, no later than ten (10) Business Days after the 1.9 Notice Date the Majority Mezzanine Investors shall convene a meeting of the holders of Ordinary Shares M (“**Mezzanine Investor Meeting**”) to be held on a date no earlier than the date falling fifteen (15) calendar days after the Notice Date and no later than the date falling twenty (20) Business Days after the 22.9 Notice Date.

**22.11** The Majority Mezzanine Investors shall at the Mezzanine Investor Meeting resolve upon the appointment and/or removal of the Incumbent Mezzanine Observer and notify the Board of the appointment and/or removal and [the Board shall procure that

such appointment and/or removal is made promptly following such notice at which time the Incumbent Mezzanine Observer will be replaced or removed.]

## **23 MISCELLANEOUS**

### **No obligation to finance**

- 23.1** No Investor and no Shareholder has any obligation to provide any financing to, or guarantee, security or comfort of whatever nature for the benefit of, Almatris Topco 1 or any Group Member, except as expressly provided for in this Agreement or in any other agreed debt agreement.

### **Further assurance**

- 23.2** Each Party must, and must use all reasonable efforts to procure that any of their related parties or Affiliates will:

**23.2.1** use all powers, including exercising its rights as Shareholder and instructing Directors, or other directors of a Group Member, as applicable, and do all such further acts and things;

**23.2.2** execute and perform such further deeds and documents; and

**23.2.3** give such further assurances,

in each case as may reasonably be required to give effect to the provisions of this Agreement.

### **Vote to achieve effect of Agreement**

- 23.3** Each Party other than Almatris Topco 1 and Topco 2 (and Almatris Topco 1 and Almatris Topco 2 in relation to votes they control at general meetings of other Group Members only) undertakes to each other Party at all times to exercise the votes that it or he controls at general meetings of a Group Member to give effect to this Agreement and to procure that Almatris Topco 1 and Almatris Topco 2 comply with this Agreement and the Articles. In particular, but without limitation, each Party agrees to procure that no person shall become or be registered as the legal holder of Almatris Topco Shares except according to this Agreement and the Articles.

### **Compliance with Articles**

- 23.4** Each Party undertakes to each other Party that it or he will comply with the obligations imposed upon it or him by the Articles.

### **Conflict with articles**

- 23.5** Where the provisions of the Articles or the articles of another Group Member conflict with a provision of this Agreement:

**23.5.1** the conflicting provisions of this Agreement shall prevail to the extent permitted by applicable law;

**23.5.2** the Shareholders shall take any action in their capacity as Shareholders of Almatris Topco 1 which may be necessary or appropriate in order to amend the Articles to be in accordance with such other provisions of this Agreement, to the extent permitted by applicable law;

**23.5.3** each Party to the extent they are able to do so shall procure the amendment of the articles of association of the relevant Group Member to the extent required to enable the Group to be administered as provided in this Agreement.

#### **Invalidity**

**23.6** If any provision in this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, under any applicable law:

**23.6.1** such provision or part shall to that extent be deemed not to form part of this Agreement but the legality, validity or enforceability of the remainder of this Agreement shall not be affected;

**23.6.2** the Parties shall use reasonable efforts to agree a replacement provision that is legal, valid and enforceable to achieve so far as possible the intended effect of the illegal, invalid or unenforceable provision.

#### **Survival**

**23.7** Clauses [●] shall survive in the event of the termination or non-renewal of this Agreement.

#### **No assignment**

**23.8** Except as otherwise expressly provided in this Agreement, no Party may, unless with the prior written consent of the other Parties assign, grant any security interest over or otherwise Transfer, in whole or in part, any of its rights and obligations under this Agreement.

**23.9** Notwithstanding clause [23.8], any Party may assign any rights and obligations under this Agreement to Affiliates, subject to the requirement that any such Affiliate first enters into a Deed of Adherence.

#### **Successors and assigns bound**

**23.10** This Agreement is binding on each Party's successors in title or assigns or (in the case of a Party who is an individual) his personal representatives, but such a person is not entitled to the benefit of its provisions unless that person has entered into a Deed of Adherence and provided that such assigning Party remains subject to the provisions of this Agreement.

#### **No partnership or agency**

**23.11** This Agreement is not to be construed as creating a partnership or an agency relationship between any of the Parties.

### **Rescission**

- 23.12** Each Party waives its rights to rescind (*‘ontbinden’*) this Agreement on the basis of section 6:265 Dutch Civil Code. The mistaken Party shall bear the risk of any mistake (*‘dwaling’*) in making this Agreement.

### **Counterparts**

- 23.13** This Agreement may be executed in any number of counterparts, each of which when executed and delivered is an original, but all of which when taken together constitute a single instrument.

### **Indulgence**

- 23.14** No relaxation, forbearance, indulgence or delay (together “**Indulgence**”) of a Party in exercising a right under this Agreement is to be construed as a waiver of that right and does not affect the ability of that Party subsequently to exercise that right or to pursue a remedy in respect of it, nor does any Indulgence constitute a waiver of any other right.

### **Waiver for permitted Share issues**

- 23.15** Each Party waives any rights conferred or to be conferred on it or him under the Articles in connection with the allotment and issue of any Almatris Topco Shares pursuant to this Agreement and undertakes to take such steps as are from time to time within his power to enable such allotments and issues to be made.

### **Compromise**

- 23.16** Except where a clause makes a contrary express provision:
- 23.16.1** a liability to an Investor may be released or compromised, wholly or partially, and any time or Indulgence may be given, by that Investor to any person (a “**Recipient**”) in writing in that Investor’s absolute discretion without prejudicing or otherwise affecting its rights and remedies against any other person, whether that other person is under the same or similar liability, including a liability held with the Recipient; and
  - 23.16.2** each Investor is responsible only for its own acts and defaults, and has no liability for the act or default of any other Investor.

### **Nominee holdings**

- 23.17** Almatris Topco Shares belonging to a Party may be held by a nominee, trustee or custodian provided that such nominee, trustee or custodian enters into a Deed of Adherence and that the Party to whom such Almatris Topco Shares belong continues to be bound by the provisions of this Agreement. In addition, such Party to the extent that it is not a member of a corporate body of Almatris Topco 1 undertakes to adhere to the provisions of the Articles

### **Approval of Implementation Memorandum and Restructuring Funds Flow**

**23.18** Each of the Parties hereby approve the Implementation Memorandum and the Restructuring Funds Flow<sup>28</sup>, attached hereto at Schedules [●] and [●] respectively.

## **24 THIRD PARTY RIGHTS**

**24.1** Save as expressly provided in this Agreement, a person who is not a Party has no right under section 6:253 of the Dutch Civil Code to exercise or enforce any term or condition of this Agreement.

**24.2** Notwithstanding the provisions of clauses [23.8] and [24], the general partner, operator, manager or advisor of any Investor, or any other person nominated by the Investor to act on its behalf shall, at the discretion of the Investor, be entitled to enforce all rights and benefits of such Investor under this Agreement at all times as if a party to this Agreement.

## **25 GOVERNING LAW AND JURISDICTION**

**25.1** This Agreement shall be governed by and construed in accordance with the law of the Netherlands.

**25.2** Any dispute arising out of or in connection with this Agreement or any Agreement arising out of this Agreement shall be exclusively submitted to the courts in Amsterdam.

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<sup>28</sup> This shall be the funds flow representing the Closing payment mechanics for this Restructuring.

## **SCHEDULE 1**

### **THE MANAGEMENT INVESTORS**

<b>(1) Name of Manager</b>	<b>(2) Address</b>	<b>(3) Fax Number</b>	<b>(4) Authorised Recipient</b>	<b>(5) Number of Management Options to be granted pursuant to the Management Incentive Plan</b>
Remco De Jong				
Charles Herlinger				
[Others]				

**SCHEDULE 2**  
**THE INVESTORS**

<b>(1)</b> <b>Name and Address of Investor</b>	<b>(2)</b> <b>Number of shares to be issued on [Completion/the Effective Date]</b>		
	<b>Ordinary Shares</b>	<b>Senior Preference Shares</b>	<b>Junior Preference Shares</b>

## SCHEDULE 3

### PROVISION OF INFORMATION<sup>29</sup>

#### Annual Audited Accounts

- 26 Audited consolidated accounts for Almatris Topco 1) shall be delivered to the Investors within four (4) months from the end of the relevant financial year.

#### Annual Business Plan

- 27 At least fifteen (15) (but not more than ninety (90)) days before the beginning of each financial year of Almatris Topco 1, commencing with the financial year beginning 2012 (the “**First Financial Year**”), Almatris Topco 1 shall prepare and submit to the Investors a business plan for the Group for that forthcoming financial year (the “**Annual Business Plan**”). The Annual Business Plan for the financial year 2011 shall be delivered by 31 March 2011. The Annual Business Plan shall contain such information and be in such form, as the Investor Majority reasonably requires from time to time and, unless the Investor Majority direct otherwise, it shall contain:
- 27.1 a statement of business objectives and the proposed method of achieving them; and
- 27.2 consolidated revenue, expense, cash flow and capital budgets each of which shall:
- 27.2.1 be broken down according to the principal divisions of the Group, each division being analysed by sector and service area;
- 27.2.2 show proposed trading and cash flow figures and all material proposed acquisitions, disposals and other commitments for the financial year;
- 27.2.3 be broken down into quarterly statements; and
- 27.2.4 include like-for-like comparisons to the financial performance in the prior financial year.

#### Six-Monthly Reporting

- 28 A presentation shall be made by the executive Directors of Almatris Topco 1 to the Investors at a meeting to be convened by the Investors once every six (6) months to explain the significant developments and trends in relation to, and the prospects of, the business of the Group during the preceding six (6) months and its prospects for the following six (6) months.

#### Quarterly Reporting

- 29 A quarterly report by the CEO and the CFO indicating:
- 29.1 the quarterly accounts and significant developments and trends in relation to the business of the Group during the last quarter; and

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<sup>29</sup> TBD



- 29.2** trading prospects for the next three (3) months, including an explanation of the Group's performance compared to milestones contained in the Annual Business Plan,
- shall be prepared and circulated to the Investors in such form and covering such issues and facts as the Investors may from time to time reasonably require, within forty-five (45) days of the end of each calendar quarter. The first report will be for the quarter ending 31 March 2011.

### **Monthly Reporting**

- 30** Within twenty one (21) days from the end of each month, commencing with the first calendar month ending after the date of Completion, Almatris Topco 1 shall prepare and submit to the Investors monthly management accounts for the Group which shall contain such information and be in such form as the Investors reasonably require from time to time consistent with current management reporting. They shall include the following:
- 30.1** a report from the CEO; (which if not included in the management accounts themselves, shall be submitted to the Investors within the earlier of, seven days of submission of the management accounts, or forty eight (48) hours before a relevant scheduled board meeting);
- 30.2** a report from the CFO; (which if not included in the management accounts themselves, shall be submitted to the Investors within the earlier of, seven (7) days of submission of the management accounts, or forty eight (48) hours before a relevant scheduled board meeting);
- 30.3** a consolidated profit and loss account, balance sheet and cash flow statement;
- 30.4** a consolidated monthly statement for the Group of:
- 30.4.1** capital expenditure;
- 30.4.2** working capital; and
- 30.4.3** operating cash flow,
- in each case with comparisons to the then current Annual Business Plan and the numbers in the same month in the previous calendar year;
- 30.5** a [quarterly] statement contrasting the actual financial ratios of Almatris Topco 1 with those required by the [Credit Facilities];
- 30.6** an explanation of any material matter occurring in or relating to the period in question, including:
- 30.6.1** a statement of any variation from the revenue budget in the Annual Business Plan;

**30.6.2** [details of all transactions referred to in the capital budget in the Annual Business Plan which were entered into by a Group Member during that period; and ]<sup>30</sup>

**30.6.3** comments on any variation from the forecast or budget projections shown by such management accounts.

### **Other Information**

- 31** Financial and other information rights as provided for under the finance documents to which the Group Members are party, including copies of all correspondence with lenders in respect of the Group's debt facilities.
- 32** Twice during any twelve (12)-month period access to the premises of Almatris Topco 1 or the Group during reasonable business hours and upon reasonable notice.
- 33** Written notice of litigation that is reasonably likely to have a material affect on the Group or any Group Member.
- 34** Copies of all board and committee papers of any Group Member.
- 35** The right to examine books, records and accounts of any Group Member.
- 36** Almatris Topco 1 shall provide to the Investors minutes of each:
  - 36.1** board meeting of each Group Member; and
  - 36.2** meeting of a committee of the board of each Group Member as soon as reasonable practicable following such meeting.
- 37** The Investors shall be provided with such other information relating to the Group as the Investor Majority, a Mezzanine Director or an SSN Director may reasonably request from time to time. If Almatris Topco 1 fails to provide any such information, the Investors shall be entitled to appoint a firm of accountants to prepare such information at Almatris Topco 1's expense and Almatris Topco 1 and its key managers shall agree to provide (or to procure the provision of) all information required by such accountants for such purpose.

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<sup>30</sup> TBD

## SCHEDULE 4

### PART 1 – BOARD RULES

#### ALMATIS TOPCO 1 B.V.<sup>31</sup>

##### 1 INTERPRETATION

- 1.1** Defined terms in these Board Rules shall have the same meaning as attributed to them in the articles of association of Almatris Topco 1 B.V. (the “**Articles**” and “**Almatris Topco 1**” respectively), unless expressly stated otherwise.

##### 2 COMPOSITION

- 2.1** The Board shall consist of up to eleven (11) Directors as appointed by the General Meeting in accordance with the Articles and the investment agreement relating to Almatris Topco 1 dated [30] September 2010 (the “**Investment Agreement**”).
- 2.2** The Board shall not at any time comprise a majority of Directors resident in the United Kingdom.
- 2.3** No directors appointed to the Board shall be a director or officer of or consultant to Competitors of the Group
- 2.4** The Board shall have the right and obligation to make binding nominations for the appointment and/or removal of two (2) independent directors (the “**Independent Directors**”), who shall each be a natural person. The Board shall determine, at its discretion, whether the person nominated is independent in character and judgement. In making its determination the Board shall take into account all appropriate factors including, without limitation, the following factors:
- (a) whether the person to be nominated is or was at any time during the past three (3) years an officer, employee, director of or in any other way connected to or affiliated with, or otherwise receives or received any compensation from:
    - (1) any member of the Group;
    - (2) any person (natural or corporate) that holds a capital or debt instrument in any member of the Group;

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<sup>31</sup> The Board Rules set out the provisions for the meetings etc. for the Board, which are also partially set out in the Investment Agreement and the Articles. The reason for not only implementing these provisions in the IA are that not all individual Board members will be a Party to the IA. By setting out the provisions in the Articles and the Board Rules, the provisions will become binding upon the Board members as a matter of Dutch corporate law, which will make it easier to enforce them. It should be noted that the Board Rules are easier to amend than the Articles. An amendment of the Articles requires a notarial deed of amendment and an approval of the Ministry of Justice whereas the amendment of the Board Rules is an internal company matter. TBC whether an amendment of the Board Rules should require shareholder approval. The Board Rules may not conflict with the Articles.

- (3) any person (natural or corporate) that otherwise has a material business relationship with any member of the Group;
  - (4) any transferee of any capital or debt instrument in any member of the Group;
  - (5) DIC or any company affiliated with DIC;
  - (6) any Mezzanine Investor or any company affiliated with a Mezzanine Investor; or
  - (7) any SSN Investor or any company affiliated with a SSN Investor;
- (b) whether the person to be nominated is or was at any time during the past three years, a Director D, a Director M or an Investor Director; and
  - (c) whether the person to be nominated is married to, a registered partner of, other life companion to, foster child or relative by blood or marriage up to the second degree as defined under Dutch law of, a person referred to under clauses (a) or (b) above.

**2.5** In addition, the Board shall be entitled to make binding nominations for the appointment and/or removal of the CEO and the CFO, who shall each be a natural person.

**2.6** The Board shall appoint a chairman, who shall be an Independent Director (“**Chairman**”). If there are no Independent Directors in office, the Board shall appoint a Chairman from the Board members in office.

### **3 BOARD, DUTIES AND RESPONSIBILITIES**

**3.1** The Board shall be entrusted with the management of Almatris Topco 1 and shall have the overall responsibility for the management of the Group. The Board may exercise all the powers of Almatris Topco 1, with due observance of Dutch law, the Articles, the Investment Agreement and these Board Rules.

**3.2** The Board may determine the duties with which each of the Board members will be charged in particular, subject to the approval of the General Meeting.

**3.3** Nothing in these Board Rules shall preclude any director of Almatris Topco 1 or its subsidiaries from exercising his or her fiduciary duties pursuant to mandatory Dutch law.

### **4 REPRESENTATION OF ALMATIS TOPCO 1**

**4.1** The authority to represent Almatris Topco 1 shall vest in:

- (a) the Board; and

(b) the CEO or the CFO acting individually.

- 4.2 In addition, Almatris Topco 1 shall grant a power of attorney to [●] (the "**Proxyholder**"), authorising the Proxyholder to on behalf of Almatris Topco 1 sign and execute any documents and take such action as it deems to be required, including the exercise of any shareholder's right of Almatris Topco 1 in respect of Almatris Topco 2 such as the convening of a general meeting of Almatris Topco 2 and exercising Almatris Topco 1's voting rights on Almatris Topco 1's shares in Almatris Topco 2 to ensure the execution and implementation of any resolution of the Board, substantially in the form of the draft power of attorney attached in Schedule [●]. The Proxyholder shall immediately upon exercising its powers under the above mentioned power of attorney inform the Board of any actions taken by it thereunder. The Board shall be entitled to revoke the power of attorney in writing pursuant to a unanimous resolution to do so.

## 5 COMMITTEES

- 5.1 The Board shall establish and maintain the following committees:

- (a) a remuneration committee (the "**Remuneration Committee**");
- (b) an audit committee ("**Audit Committee**"); and
- (c) such other committees as it considers appropriate.

- 5.2 The Remuneration Committee and the Audit Committee shall have the terms of reference and powers and authorities as set out in their terms of reference, which have been annexed to these Board Rules as Part 2 and Part 3 respectively.

## 6 MEETINGS OF THE BOARD

- 6.1 The Board shall meet no less frequently than four (4) times per year.

- 6.2 A meeting of the Board shall be quorate provided that both a Director D and a Director M are present and capable of voting at the relevant meeting. In the event that the Board is not quorate by reason of a failure of a Director D or a Director M to be present at the meeting in accordance with the preceding sentence, then notice shall be given for a subsequent meeting to occur between three (3) and five (5) Business Days from the date of the original meeting. If such subsequent Board meeting is still not quorate, at that time notice shall be given for a subsequent meeting (a "**Deemed Quorate Meeting**") to occur between two (2) and four (4) Business Days from the date of the second meeting, with respect to which Deemed Quorate Meeting a quorum shall be deemed to exist so long as any Director is present.

- 6.3 A meeting of the Board can be convened by the Chairman of the Board, upon the request of two (2) Board members acting jointly or any Investor Director. In the event that the Chairman has not complied with such request within [●] Business Days after receipt of the request, the requesting Board members or an Investor Director shall have the right to convene a meeting of the Board in conformity with the request made. Except in the case of a Deemed Quorate Meeting, at least five (5) Business Days' notice of each meeting of the Board shall be given to the Board members and all Observers unless shorter notice is otherwise agreed upon by a majority of the

Directors. An agenda and copies of any appropriate supporting papers shall be sent to each member of the Board and the Observers not later than three (3) Business Days prior to the date of each Board meeting. A breach of the requirements of this clause 6.3 shall not affect the validity of a meeting of the Board which has otherwise been validly convened and is quorate.

- 6.4 Meetings of the Board will be (i) held in the Netherlands or elsewhere as otherwise agreed, and (ii) conducted in English.
- 6.5 Board members shall be entitled to attend Board meetings by telephone
- 6.6 The Board may also adopt written resolutions without convening a meeting, provided that all Directors have been consulted and none of them have raised an objection to adopt resolutions in this manner. Such written resolution shall be signed by all Board Members.
- 6.7 Minutes of each Board meeting written in English shall be circulated to each Director no later than ten (10) Business Days after the relevant meeting.

## **7 OBSERVERS**

- 7.1 To the extent that any observers have been appointed in accordance with the Investment Agreement and the Board has been notified of the name and contact details of such observer, and subject to the observer having signed confidentiality agreement in the form set out in Schedule [●] and adhering to the Board Rules, the Board shall send such observer the convening notices for any Board meetings as set out in clause 6.3 of Part 1, or any convening notices for the Audit Committee and the Remuneration Committee meetings and provide such observer with the same information as the information provided to the Board members. If the Board intends to adopt any resolution outside a meeting the observers shall at the same time as the Board Members be provided with a copy of the written resolution circulated to the Board Members for signature and adoption.
- 7.2 For the avoidance of doubt, no observer shall be entitled to vote in any meeting.
- 7.3 An Observer shall immediately report any conflict of interest that is of material significance to Almatris Topco 1 (or any Group Member), or any potential conflict of interest that is of material significance to Almatris Topco 1 (or any Group Member), to the Chairman and to the other members of the Board (or of the board of directors of any other relevant Group Member). In the event of such conflict of interest the Board shall be entitled to deny the conflicted Observer access to the Board meeting during which the matter relating to the conflict of interest will be discussed and voted on and all confidential information in respect of the matter to which the conflict relates.

## **8 VOTING AND DECISION MAKING**

- 8.1 Each member of the Board shall have one vote in a Board meeting.
- 8.2 Decisions of the Board can only be validly taken in a quorate Board meeting as set out in clause 6.2 of Part 1. The Board shall make decisions by majority vote, except for any of the acts set out in Schedule [\*] to these Board Rules (an “**Investor Reserved Matter**”) which shall also require the approval of a majority of the Investor Directors.

**8.3** If there is an even number of Investor Directors and there is a deadlock with respect to an Investor Reserved Matter, then:

- (1) if the DIC Investor holds (including ordinary shares in the capital of Almatris Topco 1 ("**Ordinary Shares**") held by Agreed Co-Investors) a higher percentage of the Ordinary Shares than the Mezzanine Investors, the Directors D shall have the casting vote; or
- (2) if the Mezzanine Investors collectively hold a higher percentage of the Ordinary Shares than the DIC Investor (including Ordinary Shares held by Agreed Co-Investors), the Directors M shall have the casting vote; or
- (3) if the DIC Investor (including Ordinary Shares held by Agreed Co-Investors) and the Mezzanine Investors collectively hold the same percentage of Ordinary Shares, neither shall have a casting vote.

**8.4** In the event of a deadlock between the Investor Directors, the approval by the majority of the Investor Directors shall not have been granted and such resolution may not be adopted by the Board.

**8.5** The Board shall require the prior approval of the General Meeting for (i) matters listed in Schedule [●] to these Board Rules (a "**Shareholder Reserved Matter**") and (ii) any other subject matters as determined by a 75 per cent majority of the holders of Ordinary Shares.

**8.6** The Chairman shall not be entitled in any circumstances to a second or casting vote in addition to any other vote he may have.

## **9 CONFLICT OF INTEREST**

**9.1** Provided that a member of the Board has disclosed the nature and extent of any conflict of interest, that member may vote on any resolution concerning any matter in which he/she has a conflict of interest and, if he/she votes, his/her vote shall be counted in the quorum, subject to Dutch law. If pursuant to a change in Dutch mandatory law, a Board member becomes prohibited from exercising his/her voting rights in the event of a conflict of interest, and two or more Board members have a conflict of interest that prohibits the exercise of their voting rights on a matter to be resolved by the Board, such matter shall be referred to decision of the General Meeting.<sup>32</sup>

**9.2** The relevant member of the Board shall immediately report any conflict of interest that is of material significance to Almatris Topco 1 (or any Group Member), or any

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<sup>32</sup> Current pending legislation provides that a director shall not be entitled to vote on matters if he/she has a direct or indirect personal interest in the matter and that if as a result thereof the board can no longer take any decision, it should be referred to the supervisory board or the general meeting of shareholders, unless provided otherwise in the articles. The articles will contain a similar provision.

potential conflict of interest that is of material significance to Almatris Topco 1 (or any Group Member)), to the Chairman and to the other members of the Board and of the board of directors of any other relevant Group Member.

- 9.3** The Board shall immediately inform the General Meeting of the conflict of interest. The General Meeting shall be entitled to appoint a special delegate to represent Almatris Topco 1 in the event of a conflict of interest.

## **10 POWERS OF ATTORNEY OF MEMBERS OF THE BOARD**

- 10.1** A member of the Board may grant another member of the Board the power to represent him and to cast votes on his behalf at a meeting of the Board, provided that:

- (a) the Chairman will have been notified thereof in writing by the grantor; and
- (b) the power shall be made with respect to a specific meeting or meetings as stated in the notification of appointment.

## **11 APPROVALS, CONSENTS AND DIRECTIONS**

- 11.1** The consent, approval or direction of an Investor Director may only be validly given if that person:

- (a) gives that consent, approval or direction in writing to the Board or other recipient; or
- (b) (in the case of a consent or approval, as opposed to a direction, required from an Investor Director) signs a written resolution of the Board or signs the minutes of the Board meeting approving the relevant transaction or matter or votes in favour of the relevant transaction or matter at a Board meeting.

## **12 INVESTMENT AGREEMENT**

Any person becoming a Director shall sign a statement in which he/she declares (i) that he/she acknowledges the relevant provisions of the Investment Agreement and (ii) that he/she will faithfully observe the provisions applicable to or requiring action by the Board and the Directors as set out in the Investment Agreement.

## **13 STATUS, GOVERNING LAW, ADOPTION, AMENDMENT**

- 13.1** These Board Rules are complementary to the rules and regulations (from time to time) applicable to the Board under Dutch law, the Articles or the Investment Agreement. Where these Board Rules are inconsistent with Dutch law, the Articles, or the Investment Agreement, the Investment Agreement, the law, or, as the case may be, the Articles shall prevail.

- 13.2** A copy of these Board Rules shall be provided to each Director and observer upon his/her appointment to sign to indicate their adherence to these Board Rules.



- 13.3** These Board Rules are governed by the laws of the Netherlands. The courts of Amsterdam, the Netherlands, shall have exclusive jurisdiction to settle any dispute arising from or in connection with these Board Rules.
- 13.4** [These Board Rules have been approved by the General Meeting on [•]. These Board Rules will be effective as from [•] and can be supplemented and modified at any time in accordance with clause [14.3] of the Articles.]

## **PART 2 – AUDIT COMMITTEE**

### **1 CONSTITUTION**

- 1.1** The provisions of this Part 2 shall apply to determine the constitution and duties of the Audit Committee.
- 1.2** The Board shall establish an Audit Committee, that will consist of at least [four (4)] members.
- 1.3** For as long as the DIC Investor is entitled to make binding nominations for the appointment of three (3) Directors, the members of the Audit Committee shall include two (2) Directors D. If the DIC Investor is entitled to make binding nominations for the appointment of two (2) Directors, the Audit Committee shall include one (1) Director D. If the DIC Investor is entitled to make a binding nomination for the appointment of one (1) Director, the Audit Committee shall include such Director D and two (2) Directors M provided that the Mezzanine Investors retain more than 35% of the Ordinary Shares in issue. If the DIC Investor is no longer entitled to make a binding nomination for the appointment of one (1) Director, the Remuneration Committee shall include two (2) Directors M provided that the Mezzanine Investors retain more than 35% of the Ordinary Shares in issue.
- 1.4** The CFO if not a Director shall in event be entitled to attend and express his views at any meeting of the Audit Committee. However, in such case the CFO will not be entitled to vote on any resolution.
- 1.5** If any member of the Audit Committee is no longer a Board member a replacement will be appointed by the Board as soon as possible taking the requirements set out in clause 1.2 and 1.3 of Part 2 into account.
- 1.6** The Audit Committee is entitled to make proposals for the approval of the General Meeting for changes or additions to the constitution of the Audit Committee with the approval of an Investor Director.
- 1.7** [●] shall be the chairman of the Audit Committee.
- 1.8** The chairman of the Audit Committee is not entitled to a second or casting vote in the case of an equality of votes on any matter before the Audit Committee.
- 1.9** The Audit Committee will act by majority decision, provided that such majority includes at least one (1) Director D. In the event that the DIC Investor is no longer entitled to appoint at least two (2) directors under clause 1.3 of Part 2, the quorum referred to under this clause 1.9 shall require at least one (1) Investor Director.
- 1.10** The quorum necessary for the transaction of business by the Audit Committee is two (2) members, one of whom must be a Director D. In the event that the DIC Investor is no longer entitled to appoint at least two (2) directors under clause 1.3 of Part 2, the quorum referred to under this clause 1.10 shall require at least one (1) Investor Director.
- 1.11** The minutes of the meetings of the Audit Committee will be made available to all members of the Board.

## **2      ROLE**

### **2.1    The role of the Audit Committee is to:**

- 2.1.1**      monitor the integrity of the annual financial statements of the Group, focusing specifically on:
- (a)**      significant financial reporting issues;
  - (b)**      significant judgmental areas;
  - (c)**      accounting policies, and the consistent application of such policies not only across the Group but also on a year-on-year basis;
  - (d)**      the clarity and completeness of any disclosures in the financial statements; and
  - (e)**      compliance with accounting standards and best practice;
- 2.1.2**      review the Group's internal financial controls (the systems established to identify, assess, manage and monitor financial risk) and the Group's internal control and risk management systems;
- 2.1.3**      monitor and review the effectiveness of the Group's internal audit function (or, where there is no internal audit function, to consider whether there is a need for an internal audit function) and ensure co-ordination between the internal and external audit functions, and to consider the findings of any internal investigations;
- 2.1.4**      make recommendations to the Board in relation to the appointment, reappointment and removal of the auditors and to approve the remuneration and terms of engagement of the auditors and the scope of the external audit (and, where more than one audit firm is involved, to ensure co-ordination between them);
- 2.1.5**      develop and implement policy on the engagement of the auditors for the supply of non-audit services and to review and monitor the auditors' independence, objectivity and compliance with relevant UK professional and regulatory requirements;
- 2.1.6**      meet the auditors at least once annually as part of one of the meetings without any of the senior management being present;
- 2.1.7**      review the auditors' management letter (or equivalent) and the management response to it;
- 2.1.8**      assess, at the end of the annual audit cycle, the effectiveness of the audit process, discuss with the auditors the findings of their work and any major issues that arose during the course of the audit or any other matters which the auditors may wish to discuss;

- 2.1.9** report to the Board on any matters within its terms of reference where it considers that action or improvement is needed, and to make recommendations as to the steps to be taken;
- 2.1.10** consider such other topics relating to the financial systems, processes and procedures of the Group as it (or any member of the Audit Committee) may think fit; and
- 2.1.11** review its own terms of reference and effectiveness, on an annual basis.

### **3 INFORMATION**

- 3.1** The Managers shall procure, and the Audit Committee shall take such reasonable steps as may be necessary to ensure, that:
  - 3.1.1** the Audit Committee is kept properly and regularly informed and receives all relevant information in a timely manner, to enable proper and timely consideration of all matters within its remit; and
  - 3.1.2** all officers, employees, advisors, agents and representatives of any Group Member will co operate with the Remuneration Committee and provide it with any information it may reasonably require for the purposes set out in clause 2.

### **4 MEETINGS**

- 4.1** The chairman of the Audit Committee shall decide the frequency and timing of the meetings of the Audit Committee provided that each member of the Audit Committee shall be given not less than five (5) Business Days' notice of a proposed meeting.
- 4.2** The Audit Committee shall meet as often as its role and responsibilities reasonably require but should meet not less than twice during the Group's financial year (which meetings should coincide with key dates within the Group's financial reporting and audit cycle).
- 4.3** The Audit Committee may (as it may determine):
  - 4.3.1** invite or require the auditors or of any officer, employee, advisor, agent or representative of any Group Member to attend any meeting of the Audit Committee (or any part of it);
  - 4.3.2** require the disclosure of any information relating to the Group from the Group's financiers or auditors (whom it may approach directly); and/or
  - 4.3.3** obtain independent accounting or other professional advice on any matter within its terms of reference. The Group will make such reasonable funds available to enable the Audit Committee to take such accounting or other advice which the Audit Committee reasonably believes it necessary to obtain.

- 5** The Audit Committee shall consult with the CFO in relation to those items within its remit as the Audit Committee thinks fit. Where senior management are involved in

advising or supporting the Audit Committee, care should be taken to recognise and avoid actual or potential conflicts of interest.

## **PART 3 – REMUNERATION COMMITTEE**

### **1 CONSTITUTION**

- 1.1** The provisions of these rules apply to determine the constitution and duties of the Remuneration Committee.
- 1.2** The Board shall establish a Remuneration Committee, that will consist of at least [four (4)] members, one which shall be the chairman of the Board.
- 1.3** For as long as the DIC Investor is entitled to make binding nominations for the appointment of three (3) Directors, the members of the Remuneration Committee shall include two (2) Directors D. If the DIC Investor is entitled to make binding nominations for the appointment of two (2) Directors, the Remuneration Committee shall include one (1) Director D. If the DIC Investor is entitled to make a binding nomination for the appointment of one (1) Director, the Remuneration Committee shall include such Director D and two (2) Directors M provided that the Mezzanine Investors retain more than 35% of the Ordinary Shares in issue. If the DIC Investor is no longer entitled to make a binding nomination for the appointment of one (1) Director, the Remuneration Committee shall include two (2) Directors M provided that the Mezzanine Investors retain more than 35% of the Ordinary Shares in issue.
- 1.4** If any member of the Remuneration Committee is no longer a Board member a replacement will be appointed by the Board as soon as possible taking the requirements set out in clause 1.2 and 1.3 of Part 3 into account.
- 1.5** The Remuneration Committee is entitled to make proposals for the approval of the General Meeting for changes or additions to the constitution of the Remuneration Committee with the approval of an Investor Director.
- 1.6** [●] shall be the chairman of the Remuneration Committee.
- 1.7** The chairman of the Remuneration Committee is not entitled to a second or casting vote in the case of an equality of votes on any matter before the Remuneration Committee.
- 1.8** The Remuneration Committee will act by majority decision, provided that such majority includes at least one (1) Director D. In the event that the DIC Investor is no longer entitled to appoint at least two (2) directors under clause 1.3 of Part 3, the quorum referred under this clause 1.8 shall require at least one (1) Investor Director.
- 1.9** The quorum necessary for the transaction of business by the Remuneration Committee is two (2) members, one of whom shall be a Director D. The Chairman shall not partake in any discussions or decisions of the Remuneration Committee in respect of his own salary, remuneration or other benefits and for such purposes the quorum shall be two (2) Investor Directors. In the event that the DIC Investor is no longer entitled to appoint at least two (2) Directors under clause 1.3 of Part 3, the quorum referred under this clause 1.9 shall require at least one (1) Investor Director.
- 1.10** The minutes of the meetings of the Remuneration Committee will be made available to all members of the Board.

## 2 ROLE

- 2.1** Generally, the role of the Remuneration Committee is to monitor, review and make recommendations to the full Board on the Group's broad policy for the remuneration of its executive directors and, as appropriate, other senior executives (including executive directors and senior executives of Almatris Topco 1 and any other Group Member) (together, the “**Senior Executives**”) and to determine and thereafter to review (at least annually) the entire individual remuneration packages (including, but not limited to, pension rights and any compensation payments and share option entitlements) for each Senior Executive (“**Remuneration Policy**”).
- 2.2** More specifically (but without prejudice to clause 2.1 of Part 3), the Remuneration Committee shall:
- 2.2.1** Draw up the Remuneration Policy to be submitted to the [General Meeting of Almatris Topco 1];
  - 2.2.2** Make proposals for the remuneration of individual directors of Almatris Topco 1 on the basis of the Remuneration Policy;
  - 2.2.3** set up a transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of the Senior Executives;
  - 2.2.4** recommend the framework for the remuneration of each senior manager of Almatris Topco 1 (a “**Senior Manager**”);
  - 2.2.5** consider and approve the targets for any performance related pay schemes operated by the Group;
  - 2.2.6** consider and approve the policy for and scope of pension arrangements operated by the Group;
  - 2.2.7** determine, within the terms of such framework, the total remuneration package of each Senior Manager having regard to (without limitation) the size of the Group and comparable market notes in the sector. The total remuneration package for the purposes of this clause 2.2.7 includes (without limitation) salary increases, eligibility for, and the setting of, bonus levels and other performance targets, incentive payments, share options, pension rights and any compensation payments;
  - 2.2.8** encourage the Senior Executives to enhance the Group's performance and ensure that they are fairly rewarded for their individual contributions;
  - 2.2.9** discuss and report to the Board on the appointment or dismissal (and the terms of appointment or dismissal) of any executive director of the Group;
  - 2.2.10** oversee the implementation of any pension, retirement, death or disability or life assurance scheme, any employees' share scheme or employee trust or share ownership plan, any share option, shadow share option, or other employee benefit, profit sharing, bonus or incentive schemes of the Group, approve the variation of the terms or rules of any such new or any existing

scheme and the appointment and removal of any trustee or manager of such a scheme, and oversee the allocation of options or other entitlements under any such scheme;

**2.2.11** determine all matters concerning the allotment of shares in Almatris Topco 1 to any employees of the Group, including, without limitation, to whom any authorised but unissued Shares shall be allotted; and

**2.2.12** review its own terms of reference and effectiveness, on an annual basis.

### **3 INFORMATION**

**3.1** The Managers shall procure, and the Remuneration Committee shall take such reasonable steps as may be necessary to ensure, that:

**3.1.1** the Remuneration Committee is kept properly and regularly informed and receives all relevant information in a timely manner, to enable proper and timely consideration of all matters within its remit; and

**3.1.2** all officers, employees, advisors, agents and representatives of any Group Member will co operate with the Remuneration Committee and provide it with any information it may reasonably require for the purposes set out in clause 2.

**3.2** The Remuneration Committee shall ensure that it has access to reliable and up-to-date information about remuneration in other companies and shall judge the implications of this information carefully.

### **4 MEETINGS**

**4.1** The chairman of the Remuneration Committee shall decide the frequency and timing of the meetings of the Remuneration Committee provided that each member of the Remuneration Committee shall be given not less than five Business Days' notice of a proposed meeting.

**4.2** The Remuneration Committee shall meet as often as its role and responsibilities reasonably require and at least once per annum to correspond with the Group's annual salary review programme.

**4.3** The Remuneration Committee may (as it may determine):

**4.3.1** invite or require any officer, employee, advisor, agent and representative of any Group Member to attend any meeting of the Remuneration Committee (or any part of it); and/or

**4.3.2** obtain independent legal or other professional advice on any matter within its terms of reference. The Group will make such reasonable funds available to enable the Remuneration Committee to take such legal or other advice which the Remuneration Committee reasonably believes it necessary to obtain.



Where Senior Executives are involved in advising or supporting the Remuneration Committee, care should be taken to recognise and avoid actual or potential conflicts of interest. No member of the Remuneration Committee shall be entitled to attend any part of a meeting of the Remuneration Committee which relates to, or to vote at a meeting of the Remuneration Committee in relation to, himself or his own emoluments and benefits.

## **SCHEDULE 5**

### **CONDUCT OF THE GROUP**

#### **PART 1: POSITIVE OBLIGATIONS**

##### **Corporate Matters**

- 1 No resolution is made to place a Group Member in voluntary liquidation or any analogous procedure. For the avoidance of doubt, a suspension of payments is not considered a voluntary liquidation.

##### **Financial And Accounting Matters**

- 2 Almatris Topco 1 shall, and shall procure that each other Group Member does, keep proper accounting records and, so far as they are able and is reasonable, in them make true and complete entries of all material dealings and transactions in relation to its business.

##### **Business Matters**

- 3 The business of Almatris Topco 1 and each other Group Member shall be properly managed and comply, in all material respects, with all applicable laws and each Group Member shall maintain all licences, consents and authorisations of any nature whatsoever (public or private) which the Board or the Managers are aware are necessary to carry on the businesses of the Group from time to time.
- 4 Each Group Member shall procure, according to prudent management practice, that to the extent can reasonably be expected, the properties which are leasehold and leased or occupied by it from time to time are maintained during their respective terms in a state of repair and condition consistent with the provisions of the leases relating to them.

##### **Insurance Matters**

- 5 Insurance cover for Group Members shall be maintained at all times with a reputable insurance company against all such material risks and liabilities in such manner and amounts, and on such terms and conditions, as accord with good commercial practice having regard to the businesses and assets of the Group, and in any event as reasonably required from time to time by an Investor Director (such insurance to include, without limiting the generality of the foregoing, cover against any liability of an Investor Director or the Chairman or any Non-Executive Director appointed pursuant to clause 10.2 in the lawful performance of his respective duties and shall note the interests (if any) of the Investors on the relevant policy or policies).
- 6 The D&O Insurance policies shall be maintained in full force and effect.
- 7 Except as required pursuant to the [Credit Facilities], no Group Member may at any time assign, charge or otherwise dispose of any interest in any insurance policy maintained pursuant to the preceding two subparagraphs, or do or omit to do anything by which any such policy may be rendered void or unenforceable.

### **Other Matters**

- 8** Almatris Topco 1 shall comply with its obligations under this Agreement and shall procure that each other Group Member acts in the manner contemplated by this Agreement and observes and performs the provisions of this Agreement which are to be observed and performed by that other Group Member.
- 9** To the extent required, Almatris Topco 1 shall and shall procure that each Group Member implements a policy in a form acceptable to the Investors requiring the compliance by each Group Member and each of their respective officers, directors, employees, agents and advisors with:
  - 9.1** the US Foreign and Corrupt Practices Act and ancillary legislation and anti-corruption legislation in each country and/or jurisdiction in which the Group operates or intends to operate; and
  - 9.2** (subject to clause [●]) any applicable requirements of any sanctions regime imposed by the USA, whether such sanctions regime is implemented under the Trading with the Economy Act, the International Emergency Economic Powers Act or any presidential or executive order or otherwise.]

## PART 2: ACTIONS REQUIRING CONSENT

### Shareholder Reserved Matters

The following matters are Shareholder Reserved Matters in accordance with clause 11 of this Agreement:

- 1 An Exit (including the structure of such Exit, subject to clauses [14.7] and [14.8] under clause [14] (*Exit*) of this Agreement);
- 2 A merger, consolidation or liquidation;
- 3 Any issuance of equity or any variation in the authorised share capital of Almatris Topco 1, except in accordance with the Articles and this Agreement (but excluding for the avoidance of doubt any equity issued on an equitization of the DIC Investor's fees in accordance with the Fee Equitization Option);
- 4 Changes to rights of the [Equity Instruments];
- 5 Changes to this Agreement and other equity documents (provided however that the consent of the relevant Parties will be required for any change which materially adversely effects the rights of such Parties and this paragraph is in addition to and not in replacement of any amendment provisions in this Agreement and other equity documents;<sup>33</sup>
- 6 Changes to agreed dividend policy;
- 7 Non-arm's length dealing between Almatris Topco 1 and any of the Shareholders or other related persons;
- 8 A material change of business of the Group;
- 9 Changes to/imposition of any cap on management/advisory fees of the majority Shareholder;
- 10 The winding up or restructuring of any Group Member;
- 11 The granting of any additional security by any Group Member, other than that expressly permitted under any of the credit facilities contemplated by the [SSN Note Instrument, and the credit facilities contemplated by the Revolving Credit Facility] (together, the "**Credit Facilities**");
- 12 Refinancing or incurrence of new debt or the encumbering of the assets of Almatris Topco 1 or any Group Member in connection therewith, except in connection with the Credit Facilities;

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<sup>33</sup> This will include the warrant instruments, PIK Instrument, and constitutional documents of Almatris Topco 1 and Almatris Topco 2 and other applicable Governance Documents as defined in the Plan.

- 13 Issuance of Permitted Capex Instruments;<sup>34</sup>
- 14 Hiring or dismissal of (A) the CEO, the CFO and the COO (if any), or (B) directors of a Group Member, other than the Investor Directors;
- 15 Any capital expenditure in excess of 120% of budgeted capital expenditures, any growth capital expenditure above USD 2.5m in any fiscal year, or any capital expenditures financed by Permitted Capex Instruments;
- 16 Any shift in the Centre of Main Interests (COMI) of any Group Member;
- 17 Voluntary prepayments of indebtedness (other than payments of immaterial indebtedness);
- 18 Issuing Management Shares or any Management Options to Management if the total number of Ordinary Shares held by Management or their affiliates, is or will as a result of that issue, exceed that percentage of the Ordinary Shares in issue on the Effective Date as set out in the Management Incentive Plan;
- 19 Entering into a joint venture or partnership agreement;
- 20 The amendment, modification, replacement or suspension of the Board Rules, or the governance provisions relating to the Audit Committee and the Remuneration Committee;
- 21 The adoption or amendment of the Remuneration Policy; and
- 22 The exercise of voting rights in relation to matters set out in article 24 of the Articles by Almatris Topco 1 in its capacity as a shareholder, member, board member or in any other capacity with respect to any other Group Member.
- 23 Any amendment, addition or deletion to these Shareholder Reserved Matters.

#### **Investor Reserved Matters**

The following matters are Investors Reserved Matters in accordance with clause 11 of this Agreement:

- 24 Approving or modifying the annual budget or business plan (which approval shall require the consent of at least one director appointed by the Mezzanine Investors); provided that if the Board is unable to approve an annual budget or business plan, the budget or business plan for the prior year shall continue to be in effect;
- 25 Approving any material acquisition or disposal of assets of any Group Member;
- 26 Declaring and distributing dividends or other payments out of distributable reserves, except as contemplated by this Agreement;

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<sup>34</sup> To the extent money raised by Permitted Capex will be loaned down to subsidiaries, may need express carve-outs from negative covenants in finance documents. Payments in respect of principal or interest on any Permitted Capex Instrument shall not occur prior to distributions in respect of PIK Notes. Please could this point be confirmed?

- 27 Entering into, modifying, renewing or terminating any material contracts to which a Group Member is a party;
- 28 Refinancing, restructuring or rescheduling of the Credit Facilities;
- 29 Any transaction related to a Director in respect of which Director has an actual or potential conflict of interest (and for the avoidance of doubt this provision is without prejudice to the obligations set out in clauses [7.45 to 7.47] (“**Board Meetings**”) under this Agreement);
- 30 The grant by any Group Member to any Directors of any personal loan, guarantee or other like undertaking;
- 31 Commencing or settling any material litigation or claim on behalf of Almatris Topco 1 or the Group;
- 32 The grant by Almatris Topco 1 of any approval, confirmation or statement required under the articles of association or administrative conditions of Stichting Administratiekantoor Almatris SPS or Stichting Administratiekantoor Almatris JPS;
- 33 The exercise of voting rights by Almatris Topco 1 in relation to matters set out in article 15 paragraph 7 or in its capacity as a shareholder, member, board member or in any other capacity with respect to any other Group Member; and
- 34 Any amendment, additions or deletions to these Investor Reserved Matters.

## SCHEDULE 6

### NON DEBTOR PROFESSIONAL FEES

Maximum Additional Fees	Payable on the Effective Date	Payable to DIC after the Effective Date	Payable to the Junior Advisors after the Effective Date
	USD m	USD m	USD m
DIC Legal Advisors (including Weil, Gotshal & Manges and Houthoff Buruma Coöperatief U.A.)	-	6.0	-
DIC Financial Advisors (as defined below)	3.8		
Junior Advisors (as defined below)	USD 0.469 plus £1.221	5.0	USD 1.026 plus £0.663
GSO (including White & Case LLP)	1.0	-	-
JP Morgan/Bank of America Merrill (including Latham & Watkins LLP)	1.5	-	-
GoldenTree/Sankaty (including Ropes & Gray)	.415	-	-

## SCHEDULE 7

### DEED OF ADHERENCE

**THIS DEED** is made on [λ] by the person whose contact details appear in the schedule (the “**New Equity Holder**”);

#### WHEREAS:

- (A) By an Agreement dated [λ] September 2010 (the “**Investment Agreement**”) concerning Almatris Topco 1 B.V., made between the Management Investors, the Investors, Stichting Almatris Restructuring, Almatris Topco 2 B.V., the Mezzanine Investors, the SSN Investors, STAK 1, STAK 2 and Almatris Topco 1 (as those expressions are defined in the Investment Agreement)

**Option A** [to be used where Equity Instruments are to be transferred]

and to which [λ] (the “**Transferor**”) is a party [by virtue of a Deed of Adherence dated [λ] ], the Transferor has agreed to sell and Transfer to the New Equity Holder [*Insert number and class of Equity Instruments*] conditional upon the New Equity Holder entering into this Deed of Adherence.

**Option B** [to be used when Equity Instruments are to be subscribed]

Almatris Topco 1 will issue to the New Equity Holder [*Insert number and class of Equity Instruments*] conditional upon the New Equity Holder entering into this Deed of Adherence.

- (B) The New Equity Holder wishes to acquire those Equity Instruments, subject to such condition and to enter into this Deed of Adherence pursuant to the Investment Agreement.

#### THIS DEED WITNESSES:

1. The New Equity Holder undertakes to and covenants with all the parties to the Investment Agreement from time to time (including any person who enters into a Deed of Adherence pursuant to the Investment Agreement, whether before or after this Deed is entered into) to comply with the provisions of and to perform all the obligations in the Investment Agreement in so far as they remain to be observed and performed, as if the New Equity Holder had been an original party to the Investment Agreement [in place of the Transferor] as [an Investor/a Manager].
2. [The Transferor assigns to the New Equity Holder its share of its rights under the Investment Agreement in proportion to the number of Equity Instruments Transferred as against the number of Equity Instruments retained by the Transferor (if any).]  
[*Only relevant for Option A and Transferor will need to be a party for that purpose if not dealt with elsewhere*]
3. Notices to the New Equity Holder under the Investment Agreement shall be sent to:

[●];



[address to be added here]

with a copy to:

[address of legal advisor to be added here]

4. Except as expressly varied by this Deed, the Investment Agreement will continue in full force and effect, and the Investment Agreement be interpreted accordingly.
5. The interpretation provisions and the provisions of clause 6 (*Costs*), 20 (*Notices*), 21 (*Entire agreement, amendment and termination*), 23.2 (*Further assurance*), 21.11 (*No partnership or agency*), 21.12 (*Counterparts*), and 25 (*Governing law and jurisdiction*) of the Investment Agreement apply to this Deed as if those provisions had been set out expressly in this Deed, which will take effect from the date set out above.

## **THE SCHEDULE**

### **DETAILS OF NEW EQUITY HOLDER**

Name :

Registered number (if a company) :

Country of Incorporation (if a company) :

Address :

**EXECUTED** by the parties as a deed

[insert signature blocks]

## SCHEDULE 8

### DEFINITIONS<sup>35</sup>

In this Agreement the expressions set out below have the meanings set out after them:

“**Accepting Investor**” is defined in clause 15.2;

“**Acceptance Period**” is defined in clause 15.1.2;

[“**Affiliate**” means, with respect to a person (the “**First Person**”):

- (i) another person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the First Person;
- (ii) a pooled investment vehicle organised by the First Person (or an Affiliate thereof) the investments of which are directed by the First Person;
- (iii) a partner or an officer or employee of the First Person (or an Affiliate thereof);
- (iv) an investment fund organised by the First Person for the benefit of the First Person’s (or its Affiliates’) partners, officers or employees or their dependents; or
- (v) a successor trustee or nominee for, or a successor by re-organisation of, a qualified trust;]<sup>36</sup>

“**Aggregate Mezzanine Almatris Topco 1 Shares**” means 40 percent of the Almatris Topco 1 Shares, subject to dilution by the SSN Share Warrants, the PIK Preference Warrants, and the Management Options. The holders of the Almatris Topco 1 Shares issued as part of the Aggregate Mezzanine Almatris Topco 1 Shares may receive Cash distributions as a result of operation of the Mezzanine Investor Ratchet at Exit;

“**Agreed Co-Investor**” has the meaning ascribed to it in clause 16.12.2;

“**Alcentra**” means Alcentra Limited and any of its Permitted Transferees;

“**Allocation Notice**” is defined in clause 15.2;

“**Allowed**” means with respect to any Claim or Interest, except as otherwise provided herein:

- (i) a Claim or Interest that is scheduled by the Debtors on their Schedules as neither disputed, contingent, nor unliquidated, and as to which the Debtors or other party in interest have not Filed an objection by the Claims Objection Bar Date; (ii) a Claim or Interest that is not Disputed by the Debtors or the Reorganized Debtors, as applicable, or that has been Allowed by a Final Order; (iii) a Claim or Interest that is Allowed (a) pursuant to the Plan, (b) in any stipulation that is approved by the Bankruptcy Court, or (c) pursuant to any contract, instrument, indenture, or other agreement entered into or assumed in connection with the Plan; (iv) a Claim relating to a rejected Executory Contract or Unexpired Lease that either (a)

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<sup>35</sup> All definitions are identical to the Uniform Glossary, except for new defined terms required in this Investment Agreement.

<sup>36</sup> Standard definition included for discussion purposes.

is not Disputed by the Debtors or the Reorganized Debtors, as applicable, or (b) has been Allowed by Final Order; or (v) a Claim or Interest as to which a Proof of Claim or a proof of Interest, as the case may be, has been timely Filed and as to which no objection has been filed by the Claims Objection Bar Date;

“**Almatis Group**” means the Debtors and their Affiliates;

“**Almatis Topco 1**” means a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) incorporated under the laws of the Netherlands, having its corporate seat in Amsterdam, the Netherlands and its registered address is [Theemsweg 30, 3197 KM Botlek, Rotterdam, The Netherlands];

“**Almatis Topco 2**” means a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) incorporated under the laws of the Netherlands, having its corporate seat in Amsterdam, the Netherlands and its registered address is [Theemsweg 30, 3197 KM Botlek, Rotterdam, The Netherlands];

“**Almatis Topco Shares**” means, collectively, the Ordinary Shares, the Senior Preference Shares, and the Junior Preference Shares;

“**Annual Business Plan**” is defined in paragraph 2 of Schedule [●];

“**Appraising Banks**” is defined in clause 14.6;

“**Articles**” means the articles of association (*statuten*) of Almatis Topco 1 as set out in Schedule [●];

“**Audit Committee**” is defined in clause 7.50.2;

“**Babson**” means Babson Capital Europe Limited and any of its Permitted Transferees;

“**Bad Leaver**” means a Management Investor whose employment is terminated or is under notice or has given notice that his employment will terminate and who is not a Good Leaver;

“**Bankruptcy Code**” means title 11 of the United States Code, 11 U.S.C. sections 101-1532, as in effect on the Petition Date, together with all amendments and modifications thereto subsequently made, to the extent applicable to the Chapter 11 Cases;

“**Board**” means the managing board of Almatis Topco 1;

“**Board Rules**” means the board rules of the Board attached in Part 1 of Schedule [5];

“**Business**” means the business(es) currently carried on by each Group Company;

“**Business Day**” means any day other than a Saturday, Sunday, or legal holiday (as such term is defined in Bankruptcy Rule 9006(a)) or legal holiday in New York, London or Amsterdam;

“**Call Option Agreement**” means that certain agreement, dated as of [\_\_\_\_\_], by and between Almatis Topco 1 B.V., STAK 2 and The Bank of New York Mellon;

“**Cash**” means the legal tender of the United States of America, or the Euro, as applicable;

**“CEO” or “Chief Executive Officer”** means the person employed as the chief executive officer (or equivalent) of Almatris Topco 1, the first such person being Remco de Jong;

**“CFO” or “Chief Financial Officer”** means the person employed as the chief financial officer (or equivalent) of Almatris Topco 1, the first such person being Charles Herlinger;

**“Chairman”** means the chairman of Almatris Topco 1 and the Board from time to time appointed pursuant to clause 7.39;

**“Chapter 11 Cases”** means (i) when used with reference to a particular Debtor, the chapter 11 case pending for that Debtor under chapter 11 of the Bankruptcy Code in the Bankruptcy Court, and (ii) when used with reference to all Debtors, the procedurally consolidated chapter 11 cases pending for the Debtors in the Bankruptcy Court;

**“Class”** means a category of Holders of Claims or Interests, as set forth in Article III of the Plan, pursuant to section 1122 of the Bankruptcy Code;

**“Class 3 Distribution Procedures”** means, as to any Claimant in Class 3, execution by such Claimant of the following documents:

- (i) a Ratification Letter, ratifying all acts performed by the Disbursing Agent on behalf of such Claimant, substantially in the form attached as Exhibit D to the Disbursing Agent Agreement;
- (ii) such information and documentation as the Debtors and the Disbursing Agent may reasonably require to ensure compliance with applicable withholding and reporting requirements, including delivery of the applicable Internal Revenue Service Form W-8 or Internal Revenue Service Form W-9; and
- (iii) any other item reasonably required under the Disbursing Agent Agreement;

**“Class 3 PIK Notes”** means the €52,100,000 of senior paid-in-kind unsecured notes issued by Almatris Topco 2 pursuant to the PIK Notes Instrument. The Class 3 PIK Notes shall be issued on terms and conditions consistent with the provisions of the [PIK Notes Instrument];

**“Class 4 Distribution”** means the Mezzanine Lender Almatris Topco 1 Shares and the Mezzanine Lender Junior Preference STAK 2 Depositary Receipts;

**“Class 5 Distribution”** means the Junior Mezzanine Lender Almatris Topco 1 Shares and the Junior Mezzanine Lender Junior Preference STAK 2 Depositary Receipts;

**“Classes 4 and 5 Distribution Procedures”** means, as to any Claimant in Classes 4 and 5, execution by such Claimant of the following documents:

- (i) a Ratification Letter, ratifying all acts performed by the Disbursing Agent on behalf of such Claimant, substantially in the form attached as Exhibit D to the Disbursing Agent Agreement;
- (ii) a power of attorney, substantially in the form attached as Exhibit E to the Disbursing Agent Agreement, authorizing the Dutch Representative to execute on behalf of such Claimant a Dutch law notarial deed of issue of shares and depositary receipts for shares, substantially in the form attached as Exhibit [ ] to the Call

Option Agreement, between the Claimant and Almatris Topco 1 placing with the Claimant the Mezzanine Shares and Mezzanine Creditor Group STAK Depositary Receipts to be distributed to such Claimant under the Plan;

(iii) a confirmation statement issued by a lawyer admitted to practice under the laws of the jurisdiction governing the Claimant, which may include in-house counsel, confirming the existence and authority of the Claimant, substantially in the form attached as Exhibit F to the Disbursing Agent Agreement;

(iv) a deed of adherence binding such Claimant to the provisions of the Shareholders Agreement, which deed shall be substantially in the form attached as Exhibit H to the Disbursing Agent Agreement;

(v) such information and documentation as the Debtors and the Disbursing Agent may reasonably require to ensure compliance with applicable withholding and reporting requirements, including delivery of the applicable Internal Revenue Service Form W-8 or Internal Revenue Service Form W-9; and

(vi) any other item reasonably required under the Disbursing Agent Agreement;

**“Collateral”** means any property or interest in property of an Estate that is subject to a Lien to secure the payment or performance of a Claim, which Lien is not subject to avoidance or otherwise invalid under the Bankruptcy Code or applicable state law;

**“Commitment Letters”** means, collectively, the GSO Commitment Letter, the DIC Equity Commitment Letter, the Revolving Credit Facility Commitment Letter, the Sankaty and GoldenTree Commitment Letter, and the JPM and MLI Engagement Letter;

**“Committee”** means the official committee of unsecured creditors for the Debtors, if any, appointed by the U.S. Trustee;

**“Competitor”** means [●];

**“Completion”** means is defined in clause 2.2;

**“Complying Junior Mezzanine Lender”** shall have the meaning ascribed to it in clause 2.4.7;

**“Complying Mezzanine Lender”** has the meaning ascribed to it in clause 2.5.1;

**“connected person”** has the meaning given to that expression in section 839 of the Income and Corporation Taxes Act 1988 and a **“person connected”** with a party shall have a corresponding meaning;

**“consent”** means the affirmative consent in writing of the relevant person or persons, unless otherwise provided;

**“Conversion Date”** means July 21, 2010, being the date that the DIC Investment Escrow Agent completed the conversion of the DIC Equity Contribution from USD into Euros;

**“COO”** means the person employed as the chief operating officer (or equivalent) of Almatris Topco 1;

“**Credit Facilities**” has the meaning given thereto in Schedule 5 Part 2;

“**Creditor**” means any Person holding a Claim against a Debtor’s Estate or pursuant to section 102(5) of the Bankruptcy Code against property of the Debtor that arose or is deemed to have arisen on or prior to the Petition Date;

“**D&O Insurance**” is defined in clause 7.63;

“**Debtor**” means any of the Debtors;

“**Debtors**” means DIC Almatris Holdco B.V., DIC Almatris Midco B.V., Almatris Bidco B.V., Almatris Holdings 3 B.V., Almatris Holdings 9 B.V., Almatris B.V., Almatris Holdings 7 B.V., Almatris US Holding, Inc., Almatris, Inc., Almatris Asset Holdings LLC, Blitz F07-neunhundert-sechzig-drei GmbH, Almatris Holdings GmbH, and Almatris GmbH;

“**Deed of Adherence**” means a deed substantially in the form set out in Schedule [●] with such amendments as the Investor Majority may approve in writing;

“**Deemed Quorate Meeting**” has the meaning as set out in clause 7.34;

“**Defaulting Investor**” is defined in clause 15.4;

“**Depository Receipts**” means the STAK 1 Depository Receipts and the STAK 2 Depository Receipts;

“**DIC**” means Dubai International Capital LLC;

“**DIC Almatris Topco 1 Shares**” means 60 percent of the Almatris Topco 1 Shares issued on the Effective Date, subject to dilution by the SSN Share Warrants, the PIK Preference Warrants, and the Management Options, which Almatris Topco 1 Shares shall be issued to the DIC Investor on the Effective Date in exchange for a payment equal to €38,828,618.23 (the Euro equivalent of USD 50 million as of the Conversion Date);

“**DIC Co-Investor Sale**” shall have the meaning ascribed to it in clause 16.12.2;

“**DIC Designee**” is defined in clause 15.6;

“**DIC Director**” means a director on the Board nominated for appointment by the DIC Investor;

“**DIC Equity Commitment Letter**” means that certain letter, dated July 23, 2010, by and between DIC and the Debtors providing, among other things, for payment of the DIC Equity Contribution. A copy of the DIC Equity Commitment Letter is annexed as Exhibit M to the Disclosure Statement;

“**DIC Equity Contribution**” means €77,657,236.47 (the Euro equivalent of USD 100 million as of the Conversion Date) deposited by DIC with the DIC Investment Escrow Agent pursuant to the DIC Investment Escrow Agreement, which will be disbursed, in accordance

with the provisions of the DIC Investment Escrow Agreement<sup>37</sup>, in exchange for, on the Effective Date, the DIC Investment Consideration;

“**DIC Equity Shares**” is defined in clause 15.6;

“**DIC Financial Advisors**” means all the DIC Investor's financial advisors (including JP Morgan and Bank of America/Merrill under the capital structuring engagement letters between DIC and each of JP Morgan and Bank of America/Merrill dated July 22, 2010);

“**DIC Investment Consideration**” means the DIC Almatris Topco 1 Shares and the DIC Senior Preference STAK 1 Depositary Receipts;

“**DIC Investment Escrow Account**” means the escrow account or accounts established pursuant to the DIC Investment Escrow Agreement;

“**DIC Investment Escrow Agent**” means JPMorgan Chase Bank, N.A;

“**DIC Investment Escrow Agreement**” means that certain escrow agreement, annexed as Exhibit N to the Disclosure Statement, setting forth the terms and conditions applicable to the escrow relative to the DIC Equity Contribution;<sup>38</sup>

[“**DIC Investor**” means [DIC Shine Cooperatief U.A], a cooperative entity incorporated under the laws of the Netherlands, with registered number [●] and whose registered office is at [●], registered with the register of Companies;]

“**DIC Investor Distribution Procedures**” means execution by the DIC Investor of the following documents required to effect Distribution of the DIC Investment Consideration to the DIC Investor in consideration for the DIC Equity Contribution:

- (i) a power of attorney, substantially in the form attached as Exhibit [ ] to the Investment Agreement, authorizing the execution on behalf of the DIC Investor of Dutch law notarial deeds of issue of shares and depositary receipts for shares, substantially in the form attached as Exhibit [ ] to the Investment Agreement, between the DIC Investor, STAK 1, and Almatris Topco 1;
- (ii) a confirmation statement issued by a lawyer admitted to practice under the laws of the jurisdiction governing the DIC Investor, which may include in-house counsel, confirming the existence and authority of the DIC Investor, substantially in the form attached as Exhibit [ ] to the Investment Agreement;
- (iii) such information and documentation as the Debtors may reasonably require to ensure compliance with applicable withholding and reporting requirements, including delivery of the applicable Internal Revenue Service Form W-8 or Internal Revenue Service Form W-9;
- (iv) the Investment Agreement; and

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<sup>37</sup> TBD whether provisions of the new JPM closing escrow agreement should also apply.

<sup>38</sup> TBD how the conditions to the effectiveness of the investment agreement will be deemed to be satisfied for purposes of the closing JPM escrow agreement.

(v) any other item reasonably required under the Investment Agreement;

**“DIC Offer Shares”** is defined in clause 16.20

**“DIC Preference Share Issue Notarial Deed”** means the Share Issue Notarial Deed in relation to Almatris Topco 1 issuing Senior Preference Shares to STAK 1 on Completion;

**“DIC Senior Preference Shares”** means Senior Preference Shares with a liquidation preference equal to Euro [38,828,618.24], which shall be issued by Almatris Topco 1 to STAK 1 on the Effective Date and any additional Senior Preference Shares issued by Almatris Topco 1 to STAK 1 under the Fee Equitization Option;

**“DIC Senior Preference STAK 1 Depositary Receipts”** means depositary receipts issued by STAK 1 to the DIC Investor, which depositary receipts represent the beneficial right to the DIC Senior Preference Shares. In accordance with clause [8] of this Agreement, the DIC Senior Preference STAK 1 Depositary Receipts shall be stapled to the Ordinary Shares distributed to the DIC Investor on account of the DIC Equity Contribution;

**“DIC Share Issue Notarial Deed”** means the Share Issue Notarial Deed in relation to Almatris Topco 1 issuing Ordinary Shares D to the DIC Investor on Completion;

**“Direction Agreement”** has the meaning ascribed to it in Recital H;

**“Directors”** means the directors of Almatris Topco 1 from time to time, including the Investor Directors and, **“Director”** means any of them;

**“Disability”** means the incapacity to continue employment due to ill health or disability under applicable local employment and social security legislation and regulations;

**“Disbursing Agent”** means The Bank of New York (Mellon);

**“Disbursing Agent Agreement”** means that certain agreement dated as of [] September 2010 by and among the Disbursing Agent, the New Tower Companies, the Dutch Foundation, STAK 2, Almatris B.V., Almatris Inc, and Almatris GmbH, governing the rights and obligations of the Disbursing Agent and the Debtors with respect to Distributions to Holders of Class 3, 4, and 5 Claims under the Plan and with respect to the assignment of the Class 3 Claims to Almatris Topco 2 and the assignment of the Class 4 and 5 Claims to Almatris Topco 1.;

**“Disputed”** means, with respect to a Claim, a Claim that is not Allowed or as to which an objection to the allowance thereof, or action to equitably subordinate or otherwise seek recovery from the Holder of the Claim or Interest, has been interposed by the Claims Objection Bar Date or within any other applicable period of limitation fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or a Final Order, or as to which an objection has been interposed and such Claim has not been Allowed in whole or in part by a Final Order;

**“Distribution”** means any distribution by the Disbursing Agent to the Holders of Allowed Claims pursuant to Article VIII of the Plan;

**“Distribution Date”** means the date on which a holder of a Claim has fulfilled the relevant Distribution Procedures;



**“Distribution Procedures”** means the Class 3 Distribution Procedures, the Classes 4 and 5 Distribution Procedures, the DIC Investor Distribution Procedures, and the SSN Distribution Procedures, as applicable;

**“Dollar Notes”** means the Senior Secured Notes having an aggregate principal amount of at least USD 400 million but no more than USD 420 million, to be issued on the Effective Date by Reorganized Almatris Holdings 9 B.V. to the Dollar Noteholders pursuant to the terms of the Senior Secured Notes Facility;

**“Dollar Noteholders”** means GSO;

**“Drag-Along Notice”** is defined in clause 16.24

**“Drag-Along Purchaser”** is defined in clause **Error! Reference source not found.**

**“Drag-Along Right”** is defined in clause **Error! Reference source not found.**

**“Drag-Along Sale”** is defined in clause 16.22.2

**“Drag-Along Securities”** is defined in clause **Error! Reference source not found.**

**“Drag-Along Securities Holders”** is defined in clause **Error! Reference source not found.;**

**“Dutch Civil Code”** means the Dutch civil code as in force from time to time;

**“Dutch Co-op”** means DIC Almatris Equityco Cooperatief U.A., a co-operative organized under the laws of The Netherlands;

**“Dutch Foundation”** means Stichting Almatris Restructuring, the sole incorporator of Almatris Topco 1;

**“Dutch Representative”** means such person as may be selected by [-], in its sole discretion, to implement in The Netherlands the transactions contemplated by the Plan;

**“Effective Date”** means the date specified by the Debtors in a notice filed with the Bankruptcy Court as the date on which the Plan shall take effect, which date shall be after the later of (i) the date on which the Confirmation Order shall have been entered and is not subject to any stay; and (ii) the date on which the conditions to the Effective Date provided for in Section 10.1.2 of the Plan have been satisfied or waived;

**“Employment Agreements”** means the employment agreements to be entered into between Almatris Topco 1 and each Manager respectively, in the agreed form and **“Employment Agreement”** means any of them;

**“Enterprise Value”** means [the aggregate consideration expressed as a price (whether that consideration is to be satisfied in cash or cash equivalents, shares, loan stock or a combination thereof or otherwise) paid pursuant to an agreement or offer to acquire the whole of the issued ordinary and preference share capital of the Company, provided that if there is a partial Exit the aggregate consideration expressed as a price shall be grossed up such that a full Exit aggregate consideration is determined, in each case after adding back any indebtedness outstanding or other monies due and/or payable to providers of finance that are outstanding (including any accrued interest payable whether or not such interest has been

paid or capitalised) and after subtracting any cash and after adding back the outstanding principal value of any outstanding payment in kind notes (including any accrued coupon whether or not such coupon has been capitalised). Where the consideration for the Exit includes any amounts otherwise than cash or payable on deferred terms, the value of that consideration shall for the purpose of this calculation be deemed to be such value as at the date of Exit as is determined by an independent bank [from among Credit Suisse, Deutsche Bank, Goldman Sachs & Co, Merrill Lynch and Morgan Stanley International] appointed by the Company and shall be expressed in USD for the purpose of this calculation;].<sup>39</sup>

“**Equity Commitment Letter**” means [●];

“**Equity Cure**” is defined in clause 15.9;

“**Equity Cure Issue**” is defined in clause 15.9;

“**Equity Cure Shares**” is defined in clause 15.10;

“**Equity Instruments**” means, collectively, the Ordinary Shares, Senior Preference Shares, Junior Preference Shares, SSN Warrants, PIK Preference Warrants or other equity instruments issued by Almatris Topco 1;

“**Equity Offer**” is defined in clause 15.1;

“**Equity Security**” means any equity security as defined in section 101(16) of the Bankruptcy Code in a Debtor;

“**Estate**” means, as to each Debtor, the estate created for such Debtor in its Chapter 11 Case pursuant to section 541 of the Bankruptcy Code;

“**Euro**” means the Euro, the single currency unit of those states of the European Union that adopt or have adopted the Euro as its lawful currency in accordance with legislation of the European Union relating to economic and monetary union;

“**Euro Notes**” means the €110,000,000 in aggregate principal amount of Senior Secured Notes to be issued by Reorganized Almatris Holdings 9 B.V. to the Euro Noteholders pursuant to the terms of the Senior Secured Notes Facility;

“**Euro Noteholders**” means GoldenTree and Sankaty;

“**Excess Shares**” is defined in clause 15.1.4;

“**Exercise Price**” means [the DIC Equity Contribution minus (the value of the Senior Preference Shares held by the DIC Investor including accrued 15% interest per annum over the Senior Preference Shares held by the DIC Investor at the date the calculation is made) with the result being divided by (the percentage ownership of the Ordinary Shares held by the DIC Investor as a total of the outstanding Ordinary Shares at the Date of Exercise) divided by (1 minus M) with the result multiplied by M. For these purposes, M shall mean the percentage of Ordinary Shares subject to Stock Options held by the Participants relative to the total Ordinary Share capital. In the event the accreted value of the Senior Preference

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<sup>39</sup> TBD

Shares held by the DIC Investor at the date the calculation is made is more than the DIC Equity Contribution, then the exercise price shall be nil.]<sup>40</sup>

“**Exit**” means (i) a sale, in one or more related transactions, of (A) all of the Ordinary Shares; or (B) all or substantially all of the assets of the Group by way of a stock sale, merger or other business combination transaction, or (ii) any admission to listing or to trading on a securities exchange of Almatris Topco 1, a reorganized Almatris Topco 1 (as a Listco or otherwise), or a material subsidiary of the Group;

“**Exit Proceeds**” [is defined in clause 13.12];

“**Fair Valuation**” is defined in clause 14.6

“**Fee Equitization Option**” has the meaning ascribed to it in clause 6.13.2;

“**File**” or “**Filed**” means file, filed, or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Cases;

“**Final Order**” means, as applicable, an order or judgment of the Bankruptcy Court or other court of competent jurisdiction with respect to the relevant subject matter, which has not been reversed, stayed, modified, or amended, and as to which the time to appeal, seek certiorari, or move for a new trial, reargument, or rehearing has expired and no appeal, petition for certiorari, or motion for a new trial, reargument, or rehearing has been timely filed, or as to which any appeal that has been taken, any petition for certiorari, or motion for a new trial, reargument, or rehearing that has been or may be Filed has been resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought; provided, however, that the possibility that a motion pursuant to section 502(j) or 1144 of the Bankruptcy Code or under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed relating to such order shall not cause such order to not be a “Final Order”;

“**Finance Documents**” has the meaning ascribed to such term in the Senior Credit Agreement;

“**First Lien Lenders**” means those certain Lenders (excluding Second Lien Lenders, but including for the avoidance of doubt, the Hedge Counterparties) as defined in the Senior Credit Agreement;

“**Forfeiture Date**” means the date that is the one year anniversary of the Effective Date;

“**FPO**” means the Financial Services and Markets Act (Financial Promotion) Order 2001;

“**FSMA**” means the Financial Services and Markets Act 2000;

“**Funds Flow**” is defined in clause 6.7.2;

“**General Meeting**” is defined in clause 8.2;

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<sup>40</sup> Drafted to conform with Share Option Plan.

**“GoldenTree”** means GoldenTree Asset Management LP and any of its Permitted Transferees;

**“Good Leaver”** means a Management Investor whose employment is terminated or is under notice, or has given notice, that his or her employment will terminate due to:

- (i) death;
- (ii) Disability;
- (iii) mutual consent, except if such mutual consent has been reached between the parties in order to avoid a summary or ordinary dismissal for misconduct, breach of service agreement justifying summary dismissal or for performance related reasons;
- (iv) dismissal other than dismissal for misconduct, or for performance related reasons as well as any breach of employment or service agreement justifying summary dismissal;
- (v) being adjudicated bankrupt;
- (vi) retirement on or after reaching the statutory retirement age; or
- (vii) any other reason determined by the Remuneration Committee in its absolute discretion.

**“Good Leaver Price”** means the fair market value per Plan Share on a sale or other disposition of the Plan Shares as determined by the Board and notified to the Management Investor. In the event that the Management Investor notifies the Board (with reasons) that he believes the fair market value is 110% or more than the fair market value determined by the Board, then Board shall appoint an independent expert to determine the fair market value per Plan Share. The costs of the independent expert will be borne by Almatris Topco 1 unless the independent expert determines the notification by the Management Investor was frivolous in which case the Management Investor shall pay;

**“Group”** means Almatris Topco 1 and its direct and indirect subsidiary entities from time to time, and **“Group Member”** shall mean any such entity;

**“GSO”** means GSO Capital Partners, LP and/or one or more funds managed or advised by GSO Capital Partners LP and/or its affiliates, and any [Permitted Transferee] of the foregoing;

**“GSO Commitment Letter”** means that certain Commitment Letter and Additional Matters Letter by and among GSO, DIC and the Debtors attached as Exhibit F to the Disclosure Statement;

**“Hedge Counterparties”** means those certain Hedge Counterparties as defined in the Senior Credit Facility and the Intercreditor Agreement;

**“Holder”** means any Person holding an Interest or Claim;

**“Implementation Memorandum”** means the memorandum dated as of [-] September 2010 describing the restructurings, Transfers, or other corporate transactions that the Debtors determine to be necessary or appropriate to effect the Restructuring in compliance with the Bankruptcy Code and applicable Dutch and German law and, to the maximum extent possible, in a tax efficient manner. A non-final form of the Implementation Memorandum is attached to the Disclosure Statement as Exhibit J;

**“Independent Director”** means a director on the Board nominated for appointment by the Board in accordance with clause 7.10;

**“Indulgence”** is defined in clause 23.14;

**“Initial Public Offering”** means the first public offering of any class of equity securities by Almatris Topco 1 (or a new holding company interposed for the purposes of being a successor of Almatris Topco 1) in the legal form (after conversion if necessary) that results in a listing of such class of securities on a public securities market, whether effected by way of an offer for sale, a new issue of shares, an introduction, a placing or otherwise;

**“Intercreditor Agreement”** means that certain intercreditor agreement, dated 31 October 2007 (as amended, restated, supplemented and/or otherwise modified) by and among, inter alia, DIC Almatris Midco B.V. and others, Various Creditors and UBS Limited, as Senior Agent and Security Trustee;

**“Interests”** means, as to each Debtor, any: (i) Equity Security of such Debtor, including all shares or similar securities in any Debtor, whether or not transferable or denominated “stock”, and whether issued, unissued, authorized, or outstanding; (ii) any warrants, options, or contractual rights to purchase, sell, subscribe or acquire such Equity Security at any time and all rights arising with respect thereto; and (iii) any similar interest in a Debtor. For the avoidance of doubt, Interests includes any and all rights of ownership of whatever kind or nature in any Debtor that is organized under the laws of the Federal Republic of Germany or The Netherlands;

**“Investor Consent”** is defined in clause 11.3;

**“Investor Director”** means a DIC Director, a SSN Director or a Mezzanine Director.

**“Investor Majority”** means the Investors together (and with their nominees) holding directly (or indirectly through their nominees) more than half of the aggregate of the Ordinary Shares held by the Investors in issue from time to time;

**“Investor Reserved Matter”** means a matter listed in Part 2 of Schedule [6] requiring the approval of a majority of the Investor Directors;.

**“Investors”** means the persons listed in Schedule [●] and any person who is named an Investor in a Deed of Adherence, in each case subject to clause [●];

**“Issuing Bank”** means UBS Limited and any lender under the Senior Credit Agreement which has notified the Senior Agent that it has agreed to DIC Almatris Bidco B.V.’s request to be an Issuing Bank pursuant to and in accordance with the terms of the Senior Credit Agreement;

**“JPM”** means JPMorgan Chase N.A and/or its affiliates;

**“JPM and MLI Engagement Letter”** means that certain Engagement Letter by and among J.P. Morgan Securities Ltd., Merrill Lynch International, DIC, and the Debtors, attached as Exhibit F to the Disclosure Statement;

**“Junior Advisors”** means, collectively, Versatus Advisers LLP, Freshfields Bruckhaus Deringer LLP, Schulte Roth & Zabel LLP, Capstone Partners LLC, FTI Consulting, Inc., and Simmons & Simmons LLP;

**“Junior Clients”** means the clients engaging the Junior Advisors;

**“Junior Mezzanine Claim”** means a Claim arising under the Junior Mezzanine Credit Agreement and owed to a Junior Mezzanine Lender, including, without limitation, all accrued and unpaid interest, fees, and expenses, and other obligations owed to a Junior Mezzanine Lender under the Junior Mezzanine Credit Agreement. The Junior Mezzanine Claim of a Junior Mezzanine Lender that owns non-USD denominated loans and Claims shall be Allowed in USD using the exchange rate in effect on the Petition Date;

**“Junior Mezzanine Credit Agreement”** means that certain Junior Mezzanine Facility Agreement dated 11 November 2007 (as amended, restated, supplemented and/or otherwise modified), between, among others, DIC Almatris Bidco B.V. and Wilmington Trust (London) Limited as Facility Agent, together with all Finance Documents (as defined therein), agreements, documents, notes, instruments, and any other agreements delivered pursuant thereto or in connection therewith;

**“Junior Mezzanine Lender”** means a Finance Party as defined under the Junior Mezzanine Credit Agreement;

**“Junior Mezzanine Lender Almatris Topco 1 Shares”** means 12.3% of the Aggregate Mezzanine Almatris 1 Topco Shares;

**“Junior Mezzanine Lender Junior Preference STAK 2 Depositary Receipts”** means Junior Preference STAK 2 Depositary Receipts issued by STAK 2 to the Junior Mezzanine Lenders, which depositary receipts represent the beneficial rights to 12.3% of the Mezzanine Junior Preference Shares. In accordance with clause [7] of this Agreement, the Junior Mezzanine Lender Junior Preference STAK 2 Depositary Receipts shall be stapled to the Mezzanine Shares issued on the Effective Date to the Junior Mezzanine Lenders;

**“Junior Mezzanine Lender Share Issue Notarial Deed”** means the Share Issue Notarial Deed in relation to Almatris Topco 1 issuing Ordinary Shares M-II to the Junior Mezzanine Lenders;

**“Junior Mezzanine Junior Preference Shares”** means the Junior Preference shares series M-II to be issued to STAK 2, and for which STAK 2 shall issue (a) Mezzanine Creditor Group STAK Depositary Receipts and (b) upon exercise of the SSN Junior Preference Share Warrants, the SSN Junior Preference STAK 2 Depositary Receipts.;

**“Junior Preference Shares”** means the 15% paid-in-kind junior preference shares issued by Almatris Topco 1, which Junior Preference Shares shall be junior to the Senior Preference Shares, and which shall accrue on a cumulative basis from their date of issue until their maturity in 2070. All Junior Preference Shares, whether issued on the Effective Date or otherwise, shall be issued to STAK 2, for which Junior Preference Shares STAK 2 shall issue

(a) Mezzanine Creditor Group STAK Depositary Receipts and (b) upon exercise of the SSN Junior Preference Share Warrants, the SSN Junior Preference STAK 2 Depositary Receipts. The terms of the Junior Preference Shares will be set out in the Articles, and the definitive documents with respect to such Junior Preference Shares will be filed in the Plan Supplement;

**“Junior Preference Shares M-I”** means the Junior Preference Shares series M-I to be issued to STAK 2 on Completion for which STAK 2 shall issue Mezzanine Lender Junior Preference Share STAK 2 Depositary Receipts;

**“Junior Preference Shares M-II”** means the Junior Preference Shares series M-II to be issued to STAK 2 on Completion for which STAK 2 shall issue Junior Mezzanine Lender Junior Preference Share STAK 2 Depositary Receipts;

**“Junior Preference Share M-I Issue Notarial Deed”** means the Notarial Share Issue Deed in relation to the Junior Mezzanine Preference Shares series M-I to be issued to STAK 2 on Completion;

**“Junior Preference Share M-II Issue Notarial Deed”** means the Notarial Share Issue Deed in relation to the Junior Mezzanine Junior Preference Shares series M-II to be issued to STAK 2 on Completion;

**“Junior Preference STAK 2 Depositary Receipts”** means the depositary receipts issued by STAK 2, as provided in the Plan, upon issuance of Junior Preference Shares to STAK 2;

**“Key Employee Incentive Plan”** means the restructuring incentive plan for key employees, as attached at Schedule [●];

**“Key Senior Employee Incentive Plan”** means the restructuring incentive plan for key senior employees, as attached at Schedule [●];

**“Legico”** means Legico S.a.r.l. and any of its Permitted Transferees;

**“Lien”** has the meaning set forth in section 101(37) of the Bankruptcy Code;

**“Listco”** means a new parent company interposed between Almatris Topco 1 and its shareholders, if approved in accordance with the Investment Agreement, to facilitate an Exit as contemplated in the Investment Agreement, provided that the creation of Listco does not result in having a materially adverse effect on any of the rights or obligations of the holders of Almatris Topco Shares;

**“Listing”** means any admission to listing or to trading on a securities exchange of Almatris Topco 1, a reorganized Almatris Topco 1 (as a Listco or otherwise), or a material subsidiary of the Group;

**“Lock-Up Period”** is defined in clause 14.3

**“Majority Mezzanine Investors”** means a Mezzanine Investor or Mezzanine Investors who in aggregate hold more than 50% of the aggregate number of Ordinary Shares M.

**“Management Incentive Plan”** means the post-Effective Date incentive plan for management of Almatris Topco 1 and its subsidiaries (including the Reorganized Debtors),

the terms and conditions of which are set forth in the summary of principal terms at Schedule [●];

**“Management Investors”** means those Managers who hold Management Options or Ordinary Shares;

**“Management Options”** means the options to acquire Ordinary Shares to be issued to management of the Reorganised Debtors pursuant to the Management Incentive Plan;

**“Management Shares”** means the Ordinary Shares to be issued to management upon exercise of the Management Options pursuant to the Management Incentive Plan following the exercise of Management Options;

**“Managers”** means those managers who hold Management Options or Ordinary Shares;]

**“Maximum Additional Fees”** means the pre-agreed limits of the reasonable and documented, actual fees and expenses incurred by the financial and legal advisors appointed by the Second Lien Lenders, the Mezzanine Steering Committee, the Mezzanine Lenders, the Junior Mezzanine Lenders, DIC, GSO, GoldenTree, Sankaty, JP Morgan and Bank of America Merrill Lynch, to be paid by the Debtors as set out in Schedule [6];

**“Mezzanine Claim”** means a Claim arising under the Mezzanine Credit Agreement and owed to a Mezzanine Lender, including, without limitation, all accrued and unpaid interest, fees, and expenses, and other obligations owed to a Mezzanine Lender under the Mezzanine Credit Agreement. The Mezzanine Claim of a Mezzanine Lender that owns non-USD denominated loans and Claims shall be Allowed in USD using the exchange rate in effect on the Petition Date;

**“Mezzanine Credit Agreement”** means that certain Mezzanine Facility Agreement dated 31 October 2007 (as amended, restated, supplemented and/or otherwise modified) between, among others, DIC Almatris Bidco B.V. and UBS as Facility Agent, together with all Finance Documents (as defined therein), agreements, documents, notes, instruments, and any other agreements delivered pursuant thereto or in connection therewith;

**“Mezzanine Creditor Group”** means, collectively, the Holders of Allowed Mezzanine Claims and Holders of Allowed Junior Mezzanine Claims;

**“Mezzanine Creditor Group STAK Depositary Receipts”** means, collectively, the Mezzanine Lender Junior Preference STAK 2 Depositary Receipts and the Junior Mezzanine Lender Junior Preference STAK 2 Depositary Receipts;

**“Mezzanine Director”** means a director on the Board nominated for appointment by the Mezzanine Steering Committee or after the dissolution of the Mezzanine Steering committee the Mezzanine Investors holding a majority of the of the Ordinary Shares M-I and M-II;

**“Mezzanine Investor Ratchet”** means the entitlement of the Mezzanine Creditor Group to Cash distributions on account of the Mezzanine Shares if, at Exit, the Enterprise Value of Almatris Topco 1 exceeds certain benchmarks as set out in clause 14.12;

**“Mezzanine Investors”** means the Mezzanine Lenders and the Junior Mezzanine Lenders;



**“Mezzanine Junior Preference Shares”** means the Junior Preference shares series M-I to be issued to STAK 2, and for which STAK 2 shall issue (a) Mezzanine Creditor Group STAK Depositary Receipts and (b) upon exercise of the SSN Senior Preference Share Warrants, the SSN Senior Preference STAK 2 Depositary Receipts;

**“Mezzanine Lender”** means a Finance Party as defined in the Mezzanine Credit Agreement;

**“Mezzanine Lender Almatris Topco 1 Shares”** means 87.7 percent of the Aggregate Mezzanine Almatris Topco 1 Shares;

**“Mezzanine Lender Junior Preference STAK 2 Depositary Receipts”** means Junior Preference STAK 2 Depositary Receipts issued by STAK 2 to the Mezzanine Lenders, which depositary receipts represent the beneficial rights to 87.7% of the Mezzanine Junior Preference Shares. In accordance with clause [7] of this Agreement, the Mezzanine Lender Junior Preference STAK 2 Depositary Receipts shall be stapled to the Mezzanine Shares issued on the Effective Date to the Mezzanine Lenders;

**“Mezzanine Lenders Share Issue Notarial Deed”** means the Share Issue Notarial Deed in relation to Almatris Topco 1 issuing Ordinary Shares to the Mezzanine Lenders on the Effective Date.

**“Mezzanine Lenders Preference Share Issue Notarial Deed”** means the Share Issue Notarial Deed in relation to Almatris Topco 1 issuing Junior Preference Shares to STAK 2 on the Effective Date.

**“Mezzanine Shares”** means the Mezzanine Lender Almatris Topco 1 Shares and the Junior Mezzanine Lender Almatris Topco 1 Shares;

**“Mezzanine Steering Committee”** means Alcentra, Babson, Legico and Northwestern;

**“MSC Rights”** means the rights of the Mezzanine Steering Committee under this Agreement including without limitation the rights of the Mezzanine Steering Committee to amounts owed by the Debtors to members of the Mezzanine Steering Committee and their specified financial and legal advisors under clause 6 (Fees and Costs) of this Agreement.]<sup>41</sup>

**“New Articles of Association”** means, as to Almatris Topco 1, Almatris Topco 2, and any Reorganized Debtor that is organized under the laws of The Netherlands, the articles of association of such entity, which articles of association shall be substantially in the form filed in the Plan Supplement;

**“New Intercreditor Agreement”** means the intercreditor agreement among the Reorganized Debtors, the Revolving Credit Lenders, the Senior Secured Noteholders, and the agent for the Revolving Credit Facility. Definitive documents with respect to the New Intercreditor Agreement will be filed in the Plan Supplement;

**“New Tower Companies”** means Almatris Topco 1 and Almatris Topco 2;

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<sup>41</sup> TBD

“**New Shares**” is defined in clause 15.1; “**Northwestern**” means The Northwestern Mutual Life Insurance Company and each of its Permitted Transferees;

“**Notary**” means civil law notary [R.W. Clumpkens, or any other civil law notary of De Brauw Blackstone Westbroek N.V.,] or such notary's substitute;

“**Observer**” has the meaning set out in clause 7.21;

“**Offer**” is defined in clause 16.17;

“**Offered Shares**” is defined in clause 16.16.1

“**Offerees**” is defined in clause 16.16.4

“**Ordinary Shares**” means the ordinary shares (*gewone aandelen*) (or any class of them) in the capital of Almatris Topco 1 from time to time and “**Ordinary Share**” means any of them, with such economic and governance provisions as are set forth in the Investment Agreement and the Articles, which shares shall represent 100% of the ordinary equity in Almatris Topco 1, subject to dilution by the SSN Share Warrants, the PIK Preference Warrants, and the Management Options;

“**Ordinary Shares D**” means the ordinary shares (*gewone aandelen*) series D to be issued to the DIC Investor;

“**Ordinary Shares E**” means the ordinary shares (*gewone aandelen*) series E to be issued to in an Equity Cure Issue;

“**Ordinary Shares M-I**” means the ordinary shares (*gewone aandelen*) series M-I to be issued to the Mezzanine Lenders;

“**Ordinary Shares M-II**” means the ordinary shares (*gewone aandelen*) series M-II to be issued to the Junior Mezzanine Lenders;

“**Ordinary Shares S**” means the ordinary shares (*gewone aandelen*) series S to be issued to the SSN Investors as set out in Schedule 2;

“**Ordinary Shares P**” means the ordinary shares (*gewone aandelen*) series P to be issued pursuant to the exercise of the PIK Preference Warrants;

“**Ordinary Shares X**” means the ordinary shares (*gewone aandelen*) series X to be issued to the Dutch Foundation and later to be issued to the Management Investors under the Management Incentive Plan;

“**Original Warrant Holders**” means GSO and the Euro Noteholders and any financial institutions to which the SSN are originally syndicated;

“**Party**” means a party to this Agreement and “**Parties**” means all of them.

“**Participating Investor**” is defined in clause 16.35

“**Permitted Capex Instrument**” is defined in clause 4.1;

**“Permitted Transfer”** is defined in clause 16.14;

**“Permitted Transferee”** is defined in clause 16.12.1;

**“Petition Date”** means April 30, 2010;

**“PIK Notes”** means the Class 3 PIK Notes and the SSN PIK Notes. The PIK Notes shall be issued pursuant to the PIK Notes Instrument and the terms of the Investment Agreement;]

**“PIK Notes Instrument”** means that certain instrument, the final form of which shall be filed in the Plan Supplement, which shall govern, among other things, the terms and conditions for issuance and repayment of the PIK Notes;

**“PIK Preference Warrants”** shall have the meaning ascribed to such term in the [PIK Warrant Instrument], as attached at Schedule [λ];

**“PIK Warrant Instrument”** means the PIK Preference Warrant Agreement to be entered into between Almatris Topco 1 and the PIK Noteholders attached hereto as schedule [λ];

**“Plan”** means the First Amended Joint Plan of Reorganization for the Debtors under Chapter 11 of the Bankruptcy Code proposed by the Debtors, dated August 23, 2010, and all documents or exhibits attached thereto or referenced therein including, without limitation, the Plan Documents, as the same may be amended, modified, or supplemented from time to time; the Plan incorporates the Subplans for each Debtor;

**“Plan Documents”** means the Plan, the Plan Supplement, the Disclosure Statement, and all documents, attachments, and exhibits attached to the Plan or the Disclosure Statement that aid in effectuating the Plan, as the same may be amended, modified, or supplemented, in accordance with their terms;

**“Plan Supplement”** means the supplement to the Plan to be Filed by the Debtors with the Bankruptcy Court, which supplement shall contain forms of substantially final documents required for the implementation of the Plan;

**“Plan Support Agreement”** means [λ];

**“Prescribed Price”** is defined in clause 16.16.2

**“Preference Shares”** means the Senior Preference Shares and the Junior Preference Shares;

**“Pre-Effective Date Work Fees”** means all fees and expenses incurred in relation to any advisor set out in Schedule [7] relating to work undertaken by the advisor prior to the Effective Date;

**“Proof of Claim”** means any proof of claim filed with the Bankruptcy Court or the Balloting and Claims Agent with respect to a Debtor pursuant to section 501 of the Bankruptcy Code and Bankruptcy Rules 3001 or 3002;

**“Proposed Transferee”** is defined in clause 16.16.3

**“Proxyholder”** is defined in clause 7.32;

“**Recipient**” is defined in clause 23.16;

“**Relevant New Shares**” is defined in clause 15.4;

“**Remuneration Committee**” is defined in clause 7.50.1;

“**Remuneration Policy**” is defined in clause 2.1, Part 3, Schedule 4;

“**Reorganized**” means, when used with reference to a Debtor, such Debtor on and after the Effective Date;

“**Requisite Junior Lenders**” means those Supporting Junior Prepetition Lenders holding at least 66- $\frac{2}{3}$ % of the outstanding principal amount of each of the Second Lien Claims, the Mezzanine Claims, and the Junior Mezzanine Claims (determined separately for each Class of Claims) held by all Supporting Junior Prepetition Lenders who are parties to the Plan Support Agreement;

“**Resolution**” means the resolution of the members of Almatris Topco 1 in the agreed form;

“**Restructuring**” means the restructuring of the Debtors’ capital structure implemented by the Plan, this Agreement and the transactions contemplated in connection therewith;

“**Restructuring Funds Flow**” means [●];

“**Revolving Credit Arranger Parties**” means, collectively, J.P. Morgan plc, Merrill Lynch International, JPMorgan Chase Bank, N.A. and Bank of America, N.A., in any capacity under the applicable Commitment Letters or the Revolving Credit Loan Documents;

“**Revolving Credit Facility**” means that certain USD 50 million exit revolving credit facility, the principal terms of which are set forth in the Revolving Credit Facility Commitment Letter. The Revolving Credit Facility shall be secured by a security interest in substantially all of the assets of the Reorganized Debtors ranking senior to the Senior Secured Notes. The definitive documents related to the Revolving Credit Facility shall be filed in the Plan Supplement;

“**Revolving Credit Facility Commitment Letter**” means that certain Revolving Credit Facility Commitment Letter by and among the Revolving Credit Arranger Parties, DIC and the Debtors attached as Exhibit G to the Disclosure Statement and the related fee letter agreement;

“**Revolving Credit Lenders**” means, collectively, the lenders under the Revolving Credit Facility;

“**Revolving Credit Loan Documents**” means the credit agreement, notes, guarantees, the Revolving Credit Facility Commitment Letter, and all other loan and security documents relating to the Revolving Credit Facility, and all other agreements, instruments and documents executed in connection therewith, in each case, in form and substance acceptable to the Revolving Credit Arranger Parties, and as the same may be amended, restated, supplemented or otherwise modified from time to time;

**“Sale”** means the sale and Transfer of all the shares in Almatris Topco 1 or the sale of the whole (or substantially the whole) of the assets and undertakings of Almatris Topco 1 or the Group;

**“Sankaty”** means Sankaty Credit Opportunities IV, LP [and any of its Permitted Transferees];

**“Sankaty and GoldenTree Commitment Letter”** means that certain Commitment Letter by and among Sankaty, GoldenTree, DIC and the Debtors attached as Exhibit F to the Disclosure Statement;

**“Second Lien Claim”** means a Claim arising under the Senior Credit Facility and owed to a Second Lien Lender, including, without limitation, all accrued and unpaid interest, fees, and expenses, and other obligations owed to a Second Lien Lender under the Senior Credit Agreement. The Second Lien Claim of a Second Lien Lender that owns non-USD denominated securities, shall be Allowed in USD using the exchange rate in effect on the Petition Date;

**“Second Lien Lenders”** means those certain Second Lien Lenders as defined in the Senior Credit Agreement whose information is set forth in Schedule 2;

**“Security Trustee”** means UBS Limited in its capacity as Security Trustee under the Intercreditor Agreement;

**“Selling Investor”** is defined in clause 16.15;

**“Senior Agent”** means UBS Limited, as facility agent for the First Lien Lenders under the Senior Credit Facility;

**“Senior Credit Agreement”** means that certain Senior and Second Lien Facilities Agreement, dated 31 October 2007 (as amended, supplemented, or otherwise modified), for DIC Almatris Bidco B.V. arranged by UBS Limited with UBS Limited acting as Facility Agent, the Issuing Bank, and Security Trustee;

**“Senior Credit Facility”** means the Senior Credit Agreement, together with all Finance Documents (as defined in the Senior Credit Agreement) and agreements, documents, notes, instruments, and any other agreements delivered pursuant thereto or in connection therewith, which provides for certain Term Facilities, Revolving Facilities, and Ancillary Facilities (as these terms are defined in the Senior Credit Agreement);

**“Senior Lenders”** means the First Lien Lenders and the Hedge Counterparties;

**“Senior Preference Shares”** means the 15% paid-in-kind senior preference shares, which shall have a term of 60 years from the Effective Date, to be issued by Almatris Topco 1, which Senior Preference Shares shall be senior to the Junior Preference Shares. All Senior Preference Shares, whether issued on the Effective Date or otherwise, shall be issued to STAK 1, for which Senior Preference Shares STAK 1 shall issue (a) the DIC Senior Preference STAK 1 Depositary Receipts and (b) upon exercise of the SSN Senior Preference Share Warrants, the SSN Senior Preference STAK 1 Depositary Receipts.;

**“Senior Preference Share Depositary Receipts”** means depositary receipts issued by STAK 1 to the DIC Investor (in connection with the DIC Investment) and to holders of SSN

Warrants upon issuance of Senior Preference Shares to STAK 1 pursuant to exercise of such SSN Warrants;]

**“Senior Secured Notes”** means, collectively, the Dollar Notes and the Euro Notes;

**“Senior Secured Noteholders”** means, collectively, the Dollar Noteholders and the Euro Noteholders and such other investors as may purchase Senior Secured Notes pursuant to a syndication process or otherwise;

**“Senior Secured Notes Facility”** means that certain notes purchase and guarantee agreement pursuant to which the Senior Secured Notes (including the Senior Secured Notes Facility Upsize Option) are issued to the Senior Secured Noteholders, the principal terms and conditions of which Senior Secured Notes are set forth in the [SSN Note Instrument];

**“Senior Secured Notes Facility Documents”** means the facility or indenture, notes, guarantees, the [SSN Note Instrument], and all other loan and security documents relating to the Senior Secured Notes Facility, and all other agreements, instruments and documents executed in connection therewith, as the same may be amended, restated, supplemented or otherwise modified from time to time, in each case, in form and substance reasonably acceptable to (i) GSO in the case of such Senior Secured Notes Facility Documents relating to the Dollar Notes and (ii) Sankaty and GoldenTree in the case of such Senior Secured Notes Facility Documents relating to the Euro Notes;

**“Senior Secured Notes Facility Upsize Option”** has the meaning set forth in clause 6.12

**“Shareholder Reserved Matter”** means a matter listed in Part 2 of Schedule [5] requiring Investor Consent;

**“Shareholders”** means the holders of the Almatris Topco Shares;

**“Share Issue Notarial Deed”** means the deed with which Almatris Topco 1 shall issue shares in its capital, in the form as attached hereto as Schedule [●];

**“SSN Director”** means a director on the Board nominated for appointment by the SSN Trustee;

**“SSN Distribution Procedures”** means execution by the Senior Secured Noteholders of the documents required to effect Distribution of the SSN PIK Notes and the SSN Warrants to be distributed to the Senior Secured Noteholders, including but not limited to execution of the documents necessary to bind the Senior Secured Noteholders to the provisions of the Investment Agreement:

- (i) an accession letter binding such Senior Secured Noteholder to the provisions of the Senior Secured Notes Facility, and the other finance documents related thereto, which accession letter shall be substantially in the form attached as Exhibit [ ] to the Senior Secured Notes Facility;
- (ii) a deed of adherence binding such Claimant to the provisions of the Investment Agreement, which deed shall be substantially in the form attached as Exhibit [ ] to the Disbursing Agent Agreement;

- (iii) an accession letter binding such Senior Secured Noteholder to the provisions of the PIK Notes Instrument, and the other finance documents related thereto, which accession letter shall be substantially in the form attached as Exhibit [ ] to the Disbursing Agent Agreement;
- (iv) a deed of adherence binding such Senior Secured Noteholder to the provisions of the SSN Warrant Instrument, which deed shall be substantially in the form attached as Exhibit [ ] to the SSN Warrant Instrument; and
- (v) any other item reasonably required to effect Distribution of the SSN Warrants.

**“SSN Investors”** means any person mentioned in Recital (8) who holds SSN Shares from time to time, together with the Senior Secured Noteholders whose information is set out on Schedule 2;

**“SSN Junior Preference Shares”** means the Junior Preference Shares with a liquidation preference equal to the excess of (1) the quotient obtained by dividing (a) USD 16.7 million by (b) one minus the SSN Percentage (expressed as a fraction), over (2) USD 16.7 million, which Junior Preference Shares will be issued by Almatris Topco 1 to STAK 2 upon exercise of the SSN Junior Preference Share Warrants, for which shares STAK 2 will issue the SSN Junior Preference STAK 2 Depositary Receipts

**“SSN Junior Preference STAK 2 Depositary Receipts”** means depositary receipts issued to the Senior Secured Noteholders by STAK 2 upon the exercise of the SSN Junior Preference Share Warrants, which depositary receipts represent the beneficial rights to the SSN Junior Preference Share Allocation;

**“SSN Junior Preference Share Allocation”** means Junior Preference Shares with a liquidation preference equal to the excess of (1) the quotient obtained by dividing (a) USD 16.7 million by (b) one minus the SSN Percentage (expressed as a fraction), over (2) USD 16.7 million, which Junior Preference Shares will be issued by Almatris Topco 1 to STAK 2 upon exercise of the SSN Junior Preference Share Warrants, for which shares STAK 2 will issue the SSN Junior Preference STAK 2 Depositary Receipts;

**“SSN Junior Preference Share Warrants”** means warrants or similar instruments in Almatris Topco 1, which shall be exercisable at any time, with an exercise price of €0.01 per share that will require the SSN Junior Preference Share Allocation to be issued to STAK 2 and will entitle the Senior Secured Noteholders to acquire the SSN Junior Preference STAK 2 Depositary Receipts, as provided in the [SSN Warrant Instrument attached hereto at Schedule [●];

**“SSN Note Instrument”** means [●];

**“SSN Percentage”** means 7.71%;

**“SSN PIK Notes”** means the senior paid-in-kind, unsecured notes issued by Almatris Topco 2 pursuant to the PIK Notes Instrument in an amount equal to the excess of (1) the quotient obtained by dividing (a) EUR 52.1 million (or the USD equivalent) by (b) one minus the SSN Percentage (expressed as a fraction), over (2) EUR 52.1 million (or the USD equivalent);

**“SSN Share Issue Notarial Deed”** means the Share Issue Notarial Deed for the SSN Shares;

**"SSN Junior Preference Share Issue Notarial Deed"** means the Share Issue Notarial Deed for the SSN Junior Preference Shares;

**"SSN Senior Preference Share Issue Notarial Deed"** means the Share Issue Notarial Deed for the SSN Senior Preference Shares;

**"SSN Senior Preference Shares"** means (a) Senior Preference Shares with a liquidation preference equal to the excess of (1) the quotient obtained by dividing (a) the amount equal to 50% of the DIC Equity Contribution by (b) one minus the SSN Percentage (expressed as a fraction), over (2) the amount equal to 50% of the DIC Equity Contribution, which Senior Preference Shares will be issued by Almatris Topco 1 to STAK 1 upon exercise of the SSN Senior Preference Share Warrants, for which shares STAK 1 will issue the SSN Senior Preference STAK 1 Depositary Receipts and (b) any Senior Preference Shares that are issued to SSN Investors in accordance with clause 3.2;

**"SSN Senior Preference STAK 1 Depositary Receipts"** means depositary receipts issued to the Senior Secured Noteholders by STAK 1 upon the exercise of the SSN Senior Preference Share Warrants, which depositary receipts represent the beneficial rights to the SSN Senior Preference Share Allocation;

**"SSN Senior Preference Share Allocation"** means Senior Preference Shares with a liquidation preference equal to the excess of (1) the quotient obtained by dividing (a) the amount equal to 50% of the DIC Equity Contribution by (b) one minus the SSN Percentage (expressed as a fraction), over (2) the amount equal to 50% of the DIC Equity Contribution, which Senior Preference Shares will be issued by Almatris Topco 1 to STAK 1 upon exercise of the SSN Senior Preference Share Warrants, for which shares STAK 1 will issue the SSN Senior Preference STAK 1 Depositary Receipts to the Senior Secured Noteholders;

**"SSN Senior Preference Share Warrants"** means warrants or similar instruments in Almatris Topco 1, which shall be exercisable at any time, with an exercise price of €0.01 per share that will require the SSN Senior Preference Share Allocation to be issued to STAK 1 and will entitle the Senior Secured Noteholders to acquire the SSN Senior Preference STAK 1 Depositary Receipts, as provided in the [SSN Warrant Instrument as attached at Schedule [●]];

**"SSN Shares"** means the Ordinary Shares issued on exercise of an SSN Warrant and designated as SSN Shares;

**"SSN Trustee"** has the meaning set out in Recital (9);

**"SSN Warrant Instrument"** means the SSN Warrant Agreement to be entered into by Almatris Topco 1, STAK 1 and STAK 2 attached in Schedule[●];

**"SSN Warrants"** means, collectively, the SSN Share Warrants, the SSN Senior Preference Share Warrants, and the SSN Junior Preference Share Warrants as defined in the SSN Warrant Instrument;

**"STAK 1"** has the meaning set out in Recital (6);

**"STAK 1 Depositary Receipts"** means the SSN Senior Preference STAK 1 Depositary Receipts and the DIC Senior Preference STAK 1 Depositary Receipts;



“**STAK 1 Trust Conditions**” means the terms and conditions governing the Senior Preference STAK 1 Depositary Receipts, as set out in Schedule [●];

“**STAK 2**” has the meaning set out in Recital (7);

“**STAK 2 Depositary Receipts**” means the SSN Junior Preference STAK 2 Depositary Receipts, the Mezzanine Lender Junior Preference STAK 2 Depositary Receipts and the Junior Mezzanine Lender Junior Preference STAK 2 Depositary Receipts;

“**STAK 2 Trust Conditions**” means the terms and conditions governing the Junior Preference STAK 2 Depositary Receipts as set out in Schedule [●];

“**Subplan**” means, when used in connection with a Debtor, the Plan of Reorganization under Chapter 11 of the Bankruptcy Code for such Debtor that is incorporated into the Plan;

“**Supporting Junior Prepetition Lenders**” has the meaning ascribed to such term in the Plan Support Agreement;

“**Tag-Along Notice**” is defined in clause 16.34

“**Tag-Along Purchaser**” is defined in clause 16.31;

“**Tag-Along Right**” is defined in clause 16.31;

“**Tag-Along Sale**” is defined in clause 16.31;

“**Tag-Along Seller**” is defined in clause 16.31;

“**Tag-Along Securities**” is defined in clause 16.31;

“**Transfer**” means, in respect of any shares, options or depositary receipts, to sell, Transfer, exchange for shares in another entity, change in beneficial ownership of, grant options, interest or rights over or in respect of or otherwise dispose (including by way of giving or creation of any pledge, charge or other encumbrance) of, directly or indirectly, any such shares or depositary receipts and “**Transferred**” and “**Transferee**” shall be construed accordingly;

“**Transfer Notice**” is defined in clause 16.6;

“**USD**” means United States Dollars, the legal tender of the United States of America; and

“**U.S. Trustee**” means the United States Trustee for the Southern District of New York.

**IN WITNESS WHEREOF** this Agreement has been executed as a DEED on the date that appears on the first page of this Agreement by:

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***[Deed execution clauses]***