



U.S. Department of Justice

Criminal Division

*Fraud Section, Suite 4100, Bond Building
1400 New York Avenue, NW
Washington, D.C. 20530*

February 1, 2012

Paul Gerlach
Sidley Austin LLP
1501 K Street, N.W.
Washington, DC 20005

Angela T. Burgess
Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, NY 10017

Re: Smith & Nephew, Inc.

Dear Mr. Gerlach and Ms. Burgess:

Smith & Nephew, Inc. (“Smith & Nephew”), by its undersigned attorneys, pursuant to authority granted by Smith & Nephew’s Board of Directors, and the United States Department of Justice, Criminal Division, Fraud Section (the “Department”) enter into this deferred prosecution agreement (the “Agreement”). The terms and conditions of this Agreement are as follows:

1. **Criminal Information and Acceptance of Responsibility:** Smith & Nephew agrees to waive venue and accepts and acknowledges that the United States will file a three-count criminal Information in the United States District Court for the District of Columbia. The Information charges Smith & Nephew, Inc. with conspiracy to commit an offense against the United States, in violation of 18 U.S.C. § 371, that is, to violate the Foreign Corrupt Practices Act (“FCPA”), 15 U.S.C. § 78dd-1 *et seq.* (Count One); one count of violating the FCPA, 15 U.S.C. § 78dd-2 and 18 U.S.C. § 2 (Count Two); and one count of violating the books and records provisions of the FCPA, 15 U.S.C. § 78m and 18 U.S.C. § 2 (Count Three).

a. In so doing, Smith & Nephew knowingly waives its right to indictment on these charges, as well as all rights to a speedy trial pursuant to the Sixth Amendment to the United States Constitution, 18 U.S.C. § 3161, and Federal Rule of Criminal Procedure 48(b). In addition, Smith & Nephew consents to the filing of the Information and the Agreement in the United States District Court for the District of Columbia.

b. Smith & Nephew admits, accepts, and acknowledges that it is responsible for the acts of its officers, employees and agents, and wholly-owned subsidiaries, as set forth in the Statement of Facts attached hereto as Attachment A, and incorporated by reference into this Agreement, and that the allegations described in the Information and the facts described in

Attachment A are true and accurate. Should the Department initiate the prosecution that is deferred by this Agreement, Smith & Nephew agrees that neither it nor any Smith & Nephew subsidiary or affiliate will contest the admissibility of, or contradict, the Statement of Facts in any such proceeding, including any guilty plea or sentencing proceeding.

2. **Term of the Agreement:** This Agreement is effective for a period beginning on the date on which the Information is filed in the United States District Court for the District of Columbia and ending three (3) years from that date (the "Term"). However, Smith & Nephew agrees that, in the event that the Department determines, in its sole discretion, that Smith & Nephew has knowingly violated any provision of this Agreement, an extension or extensions of the term of the Agreement may be imposed by the Department, in its sole discretion, for up to a total additional time period of one year, without prejudice to the Department's right to proceed as provided in Paragraph 14 below. Any extension of the Agreement extends all terms of this Agreement, including the obligations of corporate compliance monitorship and reporting described in Paragraphs 7-12 below, for an equivalent period. Conversely, in the event the Department finds, in its sole discretion, that there exists a change in circumstances sufficient to eliminate the need for reporting and the other provisions of this Agreement have been satisfied, the Term of the Agreement may be terminated early.

3. **Relevant Considerations:** The Department enters into this Agreement based on the individual facts and circumstances presented by this case and Smith & Nephew. Among the facts considered were the following:

- a. Smith & Nephew investigated and disclosed to the Department and the United States Securities and Exchange Commission (the "SEC") the misconduct described in the Information and Statement of Facts;
- b. Smith & Nephew reported its findings to the Department and the SEC;
- c. Smith & Nephew cooperated fully with the Department's investigation of this matter, as well as the SEC's investigation;
- d. Smith & Nephew undertook remedial measures, including the implementation of an enhanced compliance program and agreed to undertake further remedial measures as contemplated by this Agreement;
- e. Smith & Nephew agreed to continue to cooperate with the Department in any investigation of the conduct of Smith & Nephew and its directors, officers, employees, agents, consultants, subsidiaries, contractors, and subcontractors relating to violations of the FCPA;
- f. Smith & Nephew has cooperated and agreed to continue to cooperate with the SEC and, at the direction of the Department, foreign authorities investigating the conduct of

Smith & Nephew and its directors, officers, employees, agents, consultants, subsidiaries, contractors, and subcontractors relating to corrupt payments;

g. Smith & Nephew has cooperated and agreed to continue to cooperate with the Department in the Department's investigations of other companies and individuals in connection with business practices overseas in various markets; and

h. Were the Department to initiate a prosecution of Smith & Nephew and obtain a conviction, instead of entering into this Agreement to defer prosecution, Smith & Nephew would potentially be subject to exclusion from participation in federal health care programs pursuant to 42 U.S.C. § 1320a-7(a).

4. **Cooperation:** During the term of this Agreement, Smith & Nephew shall continue to cooperate fully with the Department in any and all matters relating to corrupt payments, related false books and records, and inadequate internal controls. At the request of the Department, Smith & Nephew shall also cooperate fully with such other domestic or foreign law enforcement authorities and agencies, as well as the multilateral development banks ("MDBs"), in any investigation of Smith & Nephew or any of its present and former directors, officers, employees, agents, consultants, contractors, and subcontractors, or any other party, in any and all matters relating to corrupt payments, related false books and records, and inadequate internal controls, in such manner as the parties may agree. Smith & Nephew agrees that its cooperation shall include, but not be limited to, the following:

a. Smith & Nephew shall truthfully disclose all factual information not protected by a valid claim of attorney-client privilege or work product doctrine with respect to its activities and those of its present and former subsidiaries and affiliates, and the directors, officers, employees, agents, subsidiaries, consultants, contractors, and subcontractors thereof, concerning all matters relating to corrupt payments, related false books and records, and inadequate internal controls about which Smith & Nephew has any knowledge or about which the Department may inquire. This obligation of truthful disclosure includes the obligation of Smith & Nephew to provide to the Department, upon request, any non-privileged document, record, or other tangible evidence relating to such corrupt payments, false books and records, and inadequate internal controls about which the Department may inquire of Smith & Nephew.

b. Upon request of the Department, with respect to any issue relevant to its investigation of corrupt payments, related false books and records, and inadequate internal controls in connection with the operations of Smith & Nephew, Smith & Nephew shall designate knowledgeable employees, agents, or attorneys to provide the Department with the information and materials described in Paragraph 4(a) above, on behalf of Smith & Nephew. It is further understood that Smith & Nephew must at all times provide complete, truthful, and accurate information.

c. With respect to any issue relevant to the Department’s investigation of corrupt payments, related false books and records, and inadequate internal controls in connection with the operations of Smith & Nephew or any of its present or former subsidiaries or affiliates, Smith & Nephew shall use its best efforts to make available for interviews or testimony, as requested by the Department, present or former directors, officers, employees, agents, and consultants of Smith & Nephew as well as directors, officers, employees, agents, and consultants of contractors and subcontractors. This includes, but is not limited to, sworn testimony before a federal grand jury or in federal trials, as well as interviews with federal law enforcement authorities. Cooperation under this Paragraph will include identification of witnesses who, to the knowledge of Smith & Nephew, may have material information regarding the matters under investigation.

d. With respect to any information, testimony, documents, records, or other tangible evidence provided to the Department pursuant to this Agreement, Smith & Nephew consents to any and all disclosures, subject to applicable law and regulations, to other governmental authorities, including United States authorities and those of a foreign government, and the MDBs, of such materials as the Department, in its sole discretion, shall deem appropriate.

5. **Payment of Monetary Penalty:** The Department and Smith & Nephew agree that application of the United States Sentencing Guidelines (“USSG” or “Sentencing Guidelines”) to determine the applicable fine range yields the following analysis:

a. Base Offense. Based upon USSG 2C1.1, the total offense level is 32, calculated as follows:

2C1.1(a)(2)	Base Offense Level	12
2C1.1(b)(1)	More than one bribe	+2
2C1.1(b)(2)	Value of benefit received between \$2.5-7 million	+18
TOTAL OFFENSE LEVEL		32

b. Base Fine. Based upon USSG § 8C2.4(a)(1) and (d), the base fine is \$17,500,000 (the fine indicated in the Offense Level Fine Table (\$17,500,000) is used where such number is greater than the pecuniary gain to the organization from the offense (approximately \$4,000,000)).

c. Culpability Score. Based upon USSG § 8C2.5, the culpability score is 6, calculated as follows:

(a)	Base Culpability Score	5
(b)(3)	Unit of the organization had 200 or more employees and	

an individual within high-level personnel of the unit participated in, condoned, or was willfully ignorant of the offense +3

(g)(2) The organization fully cooperated in the investigation and clearly demonstrated recognition and affirmative acceptance of responsibility for its criminal conduct -2

TOTAL CULPABILITY SCORE 6

d. Calculation of Fine Range.

Base Fine	\$17,500,000
Multipliers	1.2 (minimum)/2.4 (maximum)
Fine Range	\$21,000,000-42,000,000

Smith & Nephew agrees to pay a monetary penalty in the amount of \$16,800,000, a 20 percent reduction off the bottom of the fine range. Smith & Nephew and the Department agree that this fine is appropriate given Smith & Nephew’s internal investigation, the nature and extent of Smith & Nephew’s cooperation in this matter, and Smith & Nephew’s extensive remediation. Smith & Nephew and the Department agree that Smith & Nephew will pay this \$16,800,000 monetary penalty within ten days of the execution of this agreement. The \$16,800,000 penalty is final and shall not be refunded. Furthermore, nothing in this Agreement shall be deemed an agreement by the Department that the \$16,800,000 amount is the maximum penalty that may be imposed in any future prosecution, and the Department is not precluded from arguing that the Court should impose a higher fine, although the Department agrees that under those circumstances, it will recommend to the Court that the amount paid under this Agreement should be offset against any fine the Court imposes as part of a future judgment. Smith & Nephew acknowledges that no tax deduction may be sought in connection with the payment of any part of this \$16,800,000 penalty.

6. **Conditional Release from Criminal Liability:** In return for the full and truthful cooperation of Smith & Nephew, and its compliance with the terms and conditions of this Agreement, the Department agrees not to use any information related to the conduct described in the attached Statement of Facts against Smith & Nephew or any of its wholly-owned or -controlled subsidiaries in any criminal or civil case, except: (a) in a prosecution for perjury or obstruction of justice; (b) in a prosecution for making a false statement; (c) in a prosecution or other proceeding relating to any crime of violence; or (d) in a prosecution or other proceeding relating to a violation of any provision of Title 26 of the United States Code. In addition, the

Department agrees, except as provided herein, that it will not bring any criminal or civil case against Smith & Nephew related to the conduct of present and former directors, officers, employees, agents, consultants, contractors, and subcontractors, as described in the attached Statement of Facts, or relating to information Smith & Nephew disclosed to the Department prior to the date on which this Agreement was signed.

a. This Paragraph does not provide any protection against prosecution for any corrupt payments, false books and records, or inadequate internal controls issues, if any, by Smith & Nephew in the future.

b. In addition, this Paragraph does not provide any protection against prosecution for any corrupt payments, false books and records, or inadequate internal controls issues in the past which are not described in the attached Statement of Facts or were not disclosed to the Department prior to the date on which this Agreement was signed. In addition, this Paragraph does not provide any protection against criminal prosecution of any present or former director, officer, employee, shareholder, agent, or consultant of Smith & Nephew for any violations committed by them.

7. **Corporate Compliance Program:** Smith & Nephew represents that it has implemented and will continue to implement and maintain a compliance and ethics program designed to prevent and detect violations of the FCPA and other applicable anticorruption laws throughout its operations, including those of its affiliates, joint ventures, contractors, and subcontractors, with responsibilities that include interactions with foreign officials or other high-risk activities. Implementation of these policies and procedures shall not be construed in any future enforcement proceeding as providing immunity or amnesty for any crimes not disclosed to the Department as of the date of signing this Agreement for which Smith & Nephew would otherwise be responsible.

8. **Corporate Monitor:** Smith & Nephew agrees to engage an independent corporate compliance monitor (“the Monitor”) within ninety (90) calendar days of signing this Agreement. Within thirty (30) calendar days after the signing of this Agreement, and after consultation with the Department, Smith & Nephew will recommend to the Department three qualified Monitor candidates. The Monitor shall have, at a minimum, the following qualifications:

a. demonstrated expertise with respect to the FCPA, including experience counseling on FCPA issues;

b. experience designing and/or reviewing corporate compliance policies, procedures, and internal controls, including FCPA-specific policies, procedures, and internal controls;

c. the ability to access and deploy resources as necessary to discharge the Monitor's duties as described in the Agreement; and

d. sufficient independence from Smith & Nephew to ensure effective and impartial performance of the Monitor's duties as described in this Agreement.

9. The Department retains the right, in its sole discretion, to accept or reject any Monitor candidate proposed by Smith & Nephew pursuant to the Agreement. In the event the Department rejects a proposed Monitor, Smith & Nephew shall propose another candidate within ten (10) calendar days after receiving notice of the rejection. This process shall continue until a Monitor acceptable to both parties is chosen. The Department may also propose the names of qualified Monitor candidates for consideration. The term of the monitorship, as set forth in Attachment D, shall commence upon the Department's acceptance of a Monitor candidate proposed by Smith & Nephew.

10. The Monitor will be retained by Smith & Nephew for a period of not less than eighteen (18) months from the date the Monitor is selected. The term of the monitorship, including the circumstances that may support an extension of the term, as well as the Monitor's powers, duties, and responsibilities will be as set forth in Attachment D. Smith & Nephew may not employ or be affiliated with the Monitor for a period of not less than one year from the date of the termination of the monitorship.

11. At the end of the monitorship, provided all requirements set forth in Paragraph 8 of Attachment D are met, Smith & Nephew will report on its compliance to the Department as set forth in Paragraph 12 below for the remainder of the term of this Agreement.

12. **Corporate Compliance Reporting:** Smith & Nephew agrees that, following the monitorship, it will report to the Department periodically, at no less than six-month intervals, for the remainder of this Agreement, regarding remediation and implementation of the enhanced compliance measures set forth by the monitor as described in Paragraph 8 of Attachment D. Smith & Nephew shall designate a senior company officer as the person responsible for overseeing Smith & Nephew's corporate compliance reporting obligations. Should Smith & Nephew discover credible evidence that questionable or corrupt payments or questionable or corrupt transfers of property or interests may have been offered, promised, paid, or authorized by any Smith & Nephew entity or person, or any entity or person working directly for Smith & Nephew, or that related false books and records have been maintained, Smith & Nephew shall promptly report such conduct to the Department. During this period, Smith & Nephew shall conduct and prepare at least three follow-up reviews and reports, as described below:

a. Smith & Nephew shall undertake follow-up reviews at six-month intervals, each incorporating the Department's views and comments on Smith & Nephew's prior reviews and reports, to further monitor and assess whether the policies and procedures of Smith & Nephew are reasonably designed to detect and prevent violations of the FCPA and other

applicable anticorruption laws. Reports shall be transmitted to Deputy Chief - FCPA Unit, Fraud Section, Criminal Division, U.S. Department of Justice, 10th and Constitution Ave., N.W., Bond Building, Fourth Floor, Washington, D.C. 20530.

b. The first follow-up review and report shall be completed by no later than 180 calendar days after the approval of the enhanced compliance measures described in Paragraph 8 of Attachment D by the Department. Subsequent follow-up reviews and reports shall be completed by no later than 180 calendar days after the completion of the preceding follow-up review.

c. Smith & Nephew may extend the time period for submission of any of the follow-up reports with prior written approval of the Department.

13. **Deferred Prosecution:** In consideration of: (a) the past and future cooperation of Smith & Nephew described in Paragraph 4 above; (b) Smith & Nephew's payment of a monetary penalty of \$16,800,000; and (c) Smith & Nephew's implementation and maintenance of remedial measures, the Department agrees that any prosecution of Smith & Nephew for the conduct set forth in the attached Statement of Facts, and for the conduct that Smith & Nephew disclosed to the Department, prior to the signing of this Agreement, be and hereby is deferred for the Term of this Agreement. The Department further agrees that if Smith & Nephew fully complies with all of its obligations under this Agreement, the Department will not continue the criminal prosecution against Smith & Nephew described in Paragraph 1 and, after the Term, this Agreement shall expire and the Department shall seek move to dismissal with prejudice of the criminal Information filed against Smith & Nephew.

14. **Breach of the Agreement:** If, during the Term of this Agreement, the Department determines, in its sole discretion, that Smith & Nephew has: (a) committed any felony under federal law¹ subsequent to the signing of this Agreement; (b) at any time, provided deliberately false, incomplete or misleading information; or (c) otherwise breached the Agreement, Smith & Nephew shall thereafter be subject to prosecution for any federal criminal violation of which the Department has knowledge, including the charges in the Information, which may be pursued by the Department in the U.S. District Court for the District of Columbia. Any such prosecutions may be premised on information provided by Smith & Nephew. Any such prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against Smith & Nephew notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the expiration of the Term plus one year. Thus, by signing this Agreement, Smith & Nephew agrees that the statute of limitations with respect to any prosecution that is not time-barred on the date of this Agreement shall be tolled for the Term plus one year.

¹ The filing or unsealing of a qui tam action shall not, by itself, constitute a breach of this Agreement.

15. In the event that the Department determines that Smith & Nephew has breached this Agreement, the Department agrees to provide Smith & Nephew with written notice of such breach prior to instituting any prosecution resulting from such breach. Smith & Nephew shall, within thirty (30) days of receipt of such notice, have the opportunity to respond to the Department in writing to explain the nature and circumstances of such breach, as well as the actions Smith & Nephew has undertaken to address and remediate the situation, which explanation the Department shall consider in determining whether to institute a prosecution.

16. In the event that the Department determines that Smith & Nephew has breached this Agreement:

a. All statements made by or on behalf of Smith & Nephew to the Department or to the Court, including the attached Statement of Facts, and any testimony given by Smith & Nephew before a grand jury or any tribunal, at any legislative hearings whether prior or subsequent to this Agreement, or any leads derived from such statements or testimony, shall be admissible in evidence in any and all criminal proceedings brought by the Department against Smith & Nephew; and

b. Smith & Nephew shall not assert any claim under the United States Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that statements made by or on behalf of Smith & Nephew prior or subsequent to this Agreement, and any leads derived therefrom, should be suppressed. The decision whether conduct or statements of any current director or employee, or any person acting on behalf of, or at the direction of, Smith & Nephew, will be imputed to Smith & Nephew for the purpose of determining whether Smith & Nephew has violated any provision of this Agreement shall be in the sole discretion of the Department.

17. Smith & Nephew acknowledges that the Department has made no representations, assurances, or promises concerning what sentence may be imposed by the Court if Smith & Nephew breaches this Agreement and this matter proceeds to judgment. Smith & Nephew further acknowledges that any such sentence is solely within the discretion of the Court and that nothing in this Agreement binds or restricts the Court in the exercise of such discretion.

18. **Sale or Merger:** Smith & Nephew agrees that in the event it sells, merges, or transfers all or substantially all of its business operations as they exist as of the date of this Agreement, whether such sale is structured as a stock or asset sale, merger, or transfer, it shall include in any contract for sale, merger, or transfer a provision binding the purchaser, or any successor in interest thereto, to the obligations described in this Agreement.

19. **Public Statements by Smith & Nephew:** Smith & Nephew expressly agrees that it shall not, through present or future attorneys, directors, officers, employees, agents, or any other person authorized to speak for Smith & Nephew make any public statement, in litigation or otherwise, contradicting the acceptance of responsibility by Smith & Nephew set forth above or

the facts described in the attached Statement of Facts. Any such contradictory statement shall, subject to cure rights of Smith & Nephew described below, constitute a breach of this Agreement and Smith & Nephew thereafter shall be subject to prosecution as set forth in Paragraphs 14-16 of this Agreement. The decision whether any public statement by any such person contradicting a fact contained in the Statement of Facts will be imputed to Smith & Nephew for the purpose of determining whether they have breached this Agreement shall be at the sole discretion of the Department. If the Department determines that a public statement by any such person contradicts in whole or in part a statement contained in the Statement of Facts, the Department shall so notify Smith & Nephew, and Smith & Nephew may avoid a breach of this Agreement by publicly repudiating such statement(s) within five business days after notification. Consistent with the obligations of Smith & Nephew as set forth above, Smith & Nephew shall be permitted to raise defenses and to assert affirmative claims in civil and regulatory proceedings relating to the matters set forth in the Statement of Facts. This Paragraph does not apply to any statement made by any present or former employee of Smith & Nephew in the course of any criminal, regulatory, or civil case initiated against such individual, unless such individual is then specifically authorized to speak on behalf of Smith & Nephew.

20. Smith & Nephew agrees that if it or any of its direct or indirect affiliates or subsidiaries issues a press release or holds any press conference in connection with this Agreement, Smith & Nephew shall first consult the Department to determine: (a) whether the release or proposed statements at the press conference are true and accurate with respect to matters between the Department and Smith and Nephew; and (b) whether the Department has no objection to the release.

21. The Department agrees to bring to the attention of governmental and other authorities the facts and circumstances relating to the nature of the conduct underlying this Agreement, including the nature and quality of Smith & Nephew's cooperation and remediation, if requested by Smith & Nephew to do so. By agreeing to provide this information, the Department is not agreeing to advocate on behalf of Smith & Nephew, but rather is providing facts to be evaluated independently by the authorities.

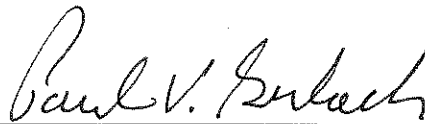
22. **Limitations on Binding Effect of Agreement:** This Agreement is binding on Smith & Nephew and the Department but specifically does not bind any other federal agencies, or any state, local, or foreign law enforcement or regulatory agencies, although the Department will bring the cooperation of Smith & Nephew and its compliance with its other obligations under this Agreement to the attention of such agencies and authorities if requested to do so by Smith & Nephew.

23. **Complete Agreement:** This Agreement sets forth all the terms of the Deferred Prosecution Agreement between Smith & Nephew and the Department. No amendments, modifications, or additions to this Agreement shall be valid unless they are in writing and signed by the Department and a duly authorized representative of Smith & Nephew.

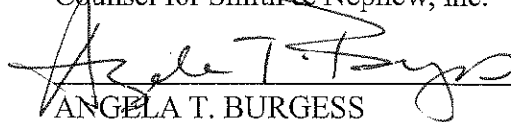
24. **Notice:** Any notice to the Department under this Agreement shall be given by personal delivery, overnight delivery by a recognized delivery service, or registered or certified mail, in each case, for the Department, addressed to Deputy Chief - FCPA Unit, Fraud Section, Criminal Division, U.S. Department of Justice, Fourth Floor, 1400 New York Avenue, N.W., Washington, D.C. 20005. Any notice to Smith & Nephew under this agreement shall be given by personal delivery, overnight delivery by a recognized delivery service, or registered or certified mail, addressed to Jean Mercer, Associate General Counsel, Smith & Nephew, Inc., 7135 Goodlett Farms Parkway, Cordova, Tennessee, 38016. Notice shall be effective upon actual receipt by the Department or Smith & Nephew.

AGREED:

FOR Smith & Nephew, Inc.:



PAUL GERLACH
Sidley Austin LLP
Counsel for Smith & Nephew, Inc.



ANGELA T. BURGESS
Davis Polk & Wardwell LLP
Counsel for Smith & Nephew, Inc.



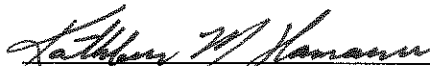
JOHN W. CAMPO, JR.
Executive Vice President and General Counsel
Smith & Nephew, Inc.

FOR THE DEPARTMENT OF JUSTICE:

JEFFREY KNOX
Principal Deputy Chief, Fraud Section

CHARLES E. DUROSS
Deputy Chief, Fraud Section

By:



KATHLEEN M HAMANN
Trial Attorney, Fraud Section
Criminal Division
United States Department of Justice
1400 New York Avenue, NW
Washington, D.C. 20530
(202) 305-7413

Filed at Washington, D.C., on this 3rd day of February, 2012.

OFFICER'S CERTIFICATE

I have read this Agreement and carefully reviewed every part of it with counsel for Smith & Nephew, Inc. ("Smith & Nephew"). I understand the terms of this Agreement and voluntarily agree, on behalf of Smith & Nephew, to each of its terms. Before signing this Agreement, I consulted with outside counsel for Smith & Nephew. Counsel fully advised me of the rights of Smith & Nephew, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into this Agreement.

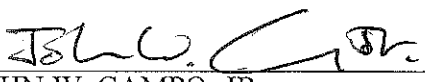
I have carefully reviewed this Agreement with the Board of Directors of Smith & Nephew. I have advised, and caused outside counsel for Smith & Nephew to advise, that Board of Directors fully of the rights of Smith & Nephew, of possible defenses and of the consequences of entering into the Agreement.

No promises or inducements have been made other than those contained in this Agreement. Furthermore, no one has threatened or forced me, or to my knowledge any person authorizing this Agreement on behalf of Smith & Nephew, in any way to enter into this Agreement. I am also satisfied with the attorney's representation in this matter. I certify that I am an officer of Smith & Nephew and that I have been duly authorized by Smith & Nephew to execute this Agreement on behalf of Smith & Nephew.

Date: February 3, 2012

Smith & Nephew, Inc.

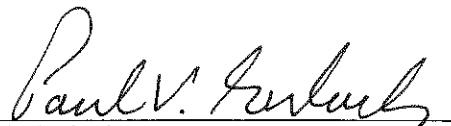
By:


JOHN W. CAMPO, JR.
Executive Vice President and General Counsel
Smith & Nephew, Inc.

CERTIFICATE OF COUNSEL

I am counsel for Smith & Nephew, Inc. ("Smith & Nephew") in the matter covered by this Agreement. In connection with such representation, I have examined relevant Smith & Nephew documents and have discussed this Agreement with Smith & Nephew Board of Directors. Based on my review of the foregoing materials and discussions, I am of the opinion that: the representative of Smith & Nephew has been duly authorized to enter into this Agreement on behalf of Smith & Nephew and that this Agreement has been duly and validly authorized, executed, and delivered on behalf of Smith & Nephew and is a valid and binding obligation of Smith & Nephew. Further, I have carefully reviewed this Agreement with the Board of Directors and General Counsel of Smith & Nephew. I have fully advised them of the rights of Smith & Nephew, of possible defenses, of the Sentencing Guidelines' provisions and of the consequences of entering into this Agreement. To my knowledge, the decision of Smith & Nephew to enter into this Agreement is an informed and voluntary one.

Date: February 3, 2012



Paul Gerlach
Sidley Austin LLP
Counsel for Smith & Nephew, Inc.



Angela T. Burgess
Davis Polk & Wardwell LLP
Counsel for Smith & Nephew, Inc.

ATTACHMENT A

STATEMENT OF FACTS

The following Statement of Facts is incorporated by reference as part of the Deferred Prosecution Agreement (the “Agreement”) between the United States Department of Justice, Criminal Division, Fraud Section (the “Department”) and Smith & Nephew, Inc. (“Smith & Nephew”) and the parties hereby agree and stipulate that the following information is true and accurate. As set forth in Paragraph 1 of the Agreement, Smith & Nephew accepts and acknowledges that it is responsible for the acts of its officers, employees, and agents that are set forth below.

Should the Department initiate the prosecution that is deferred by this Agreement, Smith & Nephew agrees that it will neither contest the admissibility of, nor contradict, this Statement of Facts in any such proceeding.

The Foreign Corrupt Practices Act

1. The Foreign Corrupt Practices Act of 1977 (“FCPA”), as amended, Title 15, United States Code, Sections 78dd-1, *et seq.*, was enacted by Congress for the purpose of, among other things, making it unlawful for certain classes of persons and entities to act corruptly in furtherance of an offer, promise, authorization, or payment of money or anything of value to a foreign government official for the purpose of securing any improper advantage, or of obtaining or retaining business for, or directing business to, any person. The FCPA also requires that any issuer of securities shall make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer.

2. Greece has a national healthcare system wherein most Greek hospitals are publicly owned and operated. Health care providers who work at publicly-owned hospitals (“HCPs”) are government employees, providing health care services in their official capacities. Therefore, such HCPs in Greece are “foreign officials” as that term is defined in the FCPA, 15 U.S.C. § 78dd-2(h)(2)(A).

Relevant Entities and Individuals

3. Smith & Nephew, plc (“PLC”) was incorporated in England and Wales and had its principal place of business in the United Kingdom. It issued and maintained a class of publicly-traded securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934 (15 U.S.C. § 78l), which traded on the New York Stock Exchange. As such, it was required to file periodic reports with the United States Securities and Exchange Commission under Section 13 of the Securities Exchange Act (15 U.S.C. § 78m). Accordingly, PLC was an “issuer” within the meaning of the FCPA, 15 U.S.C. § 78dd-1(a). By virtue of its status as an issuer, PLC was required to make and keep books, records, and accounts which, in reasonable

detail, accurately and fairly reflected the transactions and disposition of assets of PLC and its subsidiaries, including those described below, which were incorporated into the books, records, and accounts of PLC.

4. Defendant Smith & Nephew, Inc. (“S&N”), a wholly-owned subsidiary of PLC, together with related companies, was a global manufacturer and supplier of orthopedic medical devices. S&N was incorporated in Delaware and headquartered in Memphis, Tennessee, and, through related companies and subsidiaries, maintained operations in a number of foreign countries. S&N was a “domestic concern” as that term is defined in the FCPA, 15 U.S.C. § 78dd-2(h)(1)(B).

5. Smith & Nephew Orthopaedics GmbH (“GmbH.”), is a German corporation headquartered in Tuttlingen, Germany and reporting to S&N. GmbH operated a factory and sold its products through a distributor in Greece.

6. “Greek Distributor,” based in Athens, Greece, was an agent and distributor for S&N and GmbH in Greece.

7. “VP International,” a U.S. citizen, was Vice President for International Sales for S&N until May 2004 and was based in Memphis, Tennessee.

8. “Greece Sales Manager,” a U.S. citizen, oversaw S&N sales in Greece until September 2003 and was based in Memphis, Tennessee.

9. “Legal Advisor,” a U.S. citizen, was Senior Corporate Counsel for S&N and was based in Memphis, Tennessee.

Shell Company A

10. Until in or around late 1997, S&N and GmbH had standard relationships with the Greek Distributor’s entities in which they sold products at a discount to the “list” price and the Greek Distributor would re-sell to Greek HCPs and government hospitals at a profit. The arrangement provided that S&N and GmbH would cover marketing expenses for Greek Distributor, up to ten percent of sales.

11. Beginning in or around 1998, S&N and GmbH had various “marketing” arrangements with two offshore shell companies controlled by Greek Distributor, which provided that a percentage of sales made by Greek Distributor would be paid to the shell companies. Arrangements with a third offshore shell company provided for increased discounts to generate cash for improper purposes. No true services were provided in exchange for these payments and discounts. S&N and GmbH maintained these relationships with Greek Distributor and his companies until in or around December 2007.

12. In January 1998, GmbH signed a contract for “marketing services” with a shell company incorporated in the United Kingdom that was owned by Greek Distributor. The shell company did not perform any services and was paid approximately 40 percent of the sales made to Greek HCPs by Greek Distributor.

13. In or around May 1998, Greek Distributor met with Greek Sales Manager and S&N’s Vice President for Marketing, and recommended that S&N also sign a contract for “marketing services” with an offshore shell company controlled by Greek Distributor.

14. In or around October 1998, an S&N executive in Memphis signed a contract for “marketing services” with a shell company (“Shell Company A”) incorporated in the Isle of Man that was owned by Greek Distributor. Shell Company A did not perform any true services and was paid between 25 and 35 percent of the sales to Greek HCPs made by Greek Distributor.

15. In or around late fall 1999, the S&N Chief Financial Officer raised with S&N Legal questions from internal auditors about the payments to the Greek Distributor’s shell companies.

16. On or around November 9, 1999, Greece Sales Manager met with Legal Advisor to discuss issues with GmbH’s relationship with Greek Distributor, during which the fact that surgeons in Greece were being paid to use medical devices products was discussed; notes from the meeting include reference to the fact that such payments were “not legal or ethic[al].”

17. On or around November 17, 1999, Legal Advisor spoke with an employee of GmbH, notes from the call reflect that GmbH pays “promotion support,” stating that it is the “same as Memphis [S&N].”

18. Also on or around November 17, 1999, Legal Advisor briefed a more senior S&N lawyer on the issue; notes from the meeting reflect that they discussed the fact that Greek Distributor was receiving “promotion support” from GmbH and that S&N was doing the same thing, but no services were received in exchange.

19. In or around January 2001, S&N renewed the contract with the Shell Company A purportedly to provide “marketing services” when in reality it was to provide bribes to Greek HCPs.

20. In or around February 2002, Greek Distributor traveled to Memphis, Tennessee and met with VP International and others regarding reductions in Greek government reimbursement rates for S&N products sold by Greek Distributor; during the meeting, Greek Distributor proposed that the discount to Greek Distributor be increased to account for the reimbursement reduction, without any reduction in the “marketing” payments to Shell Company A.

21. On or around February 23, 2002, VP International sent an email from Memphis, Tennessee to Greek Distributor, proposing that the “marketing” payments to Shell Company A should also be reduced.

22. On or around March 8, 2002, Greek Distributor sent an email from Athens to VP International in Memphis, Tennessee, copying Greece Sales Manager, stating, “the [Shell Company A] commission cannot be reduced for the time being, since it is already not sufficient to cover my company’s cash incentive requirements at the current market level, with major competitors paying 30-40% more than [Greek Distributor]. As I explained to you in Memphis (as well as during your last visit to Athens) I absolutely need this fund to promote my sales with surgeons, at a time when competition offers substantially higher rates. [Shell Company A]’s only reason for being is the need for cash incentives, a real pain in the neck but an unavoidable fact of Greek life;” Greek Distributor goes on to state, “In case it is not clear to you, please understand that I am paying cash incentives right after each surgery....” (Emphasis in original.)

23. In or around mid-2002, Greek Distributor and S&N agreed on an eight percent reduction in price on some products sold to Greek Distributor, with no reduction in “marketing” payments to Shell Company A.

Shell Company B

24. In or around January 2003, the contract with Shell Company A was terminated and VP International in Memphis signed a new “marketing services” contract with a new shell company (“Shell Company B”), which was owned by Greek Distributor with which GmbH had a contract; although the contract stated that the shell company would charge based on a fee system, the invoices were still based on a percentage of sales by Greek Distributor of approximately 26 percent.

25. In or around mid-2004, internal auditors asked VP International about the payments to Shell Company A and Shell Company B due to an investigation into GmbH payments by foreign authorities.

26. On or around May 28, 2004, VP International left S&N.

Shell Company C

27. On or around January 1, 2005, S&N entered into a “distribution” contract with a different shell company, incorporated in the United Kingdom, which was owned by Greek Distributor (“Shell Company C”). Shell Company C did not perform any true services but was a pass-through for Greek Distributor. Shell Company C received a 35 percent discount off its purchases of S&N orthopedic products sold in Greece, which Greek Distributor used to fund bribe payments to Greek HCPs.

28. In or around December 2004, GmbH terminated its relationships with Greek Distributor and related companies.

29. In or around April 2005, Greek Distributor contacted S&N about a reduction in reimbursement rates by the Greek government; S&N requested a marketing plan from Greek Distributor to justify further discounts to Shell Company C.

30. In or around May 2005, Greek Distributor met with an S&N representative, who informed Greek Distributor that it could not make payments to doctors, and that Greek Distributor would need to produce a marketing plan; no further steps were taken to ensure that Greek Distributor was not paying Greek HCPs.

31. In or around mid-February 2007, in connection with the acquisition of a company as a new subsidiary of S&N's operations in Greece, an employee of Greek Distributor stated to an S&N employee that Greek Distributor was paying "incentives" to doctors and that the newly acquired company paid even higher incentives to Greek HCPs for purchasing medical products.

32. In or around June 2007, subsequent to completion of the acquisition of the company, Greek Distributor again noted to an S&N employee that he paid Greek HCPs for purchasing S&N's products, but that he paid them at a lower rate than the Greek subsidiary of the newly-acquired company.

33. In or around December 2007, the contract between S&N and Shell Company C expired; however, S&N continued to sell products to Greek Distributor.

34. In or around June 2008, S&N terminated all relationships with Greek Distributor and related entities.

Books and Records

35. From in or around 1998 through in or around at least June 2008, in the District of the District of Columbia and elsewhere, at the end of each of PLC's fiscal years, the books and records of S&N contained false characterizations of payments made to Greek Distributor to fund bribes paid to publicly employed Greek HCPs as "marketing services," as well as false characterizations of "discounts" given to Greek Distributor, and those books and records were incorporated into the books and records of PLC for purposes of preparing PLC's year-end financial statements, which were filed with the Securities and Exchange Commission in Washington, D.C.

ATTACHMENT B

CERTIFICATE OF CORPORATE RESOLUTION

WHEREAS, Smith & Nephew, Inc. (“Smith & Nephew” or, the “Company”) has been engaged in discussions with the United States Department of Justice, Criminal Division, Fraud Section (the “Department”) in connection with issues arising in relation to certain corrupt payments to foreign officials to obtain and retain business for Smith & Nephew; and

WHEREAS, in order to resolve such discussions, it is proposed that the Company enter into a certain agreement with the Department; and

WHEREAS the Company’s General Counsel, together with outside counsel for the Company, have advised the Board of Directors of the Company’s rights, possible defenses, the Sentencing Guidelines’ provisions, and the consequences of entering into such agreement with the Department;

Therefore, this Board hereby RESOLVES that:


1. The Company (a) consents to the filing in the United States District Court for the District of Columbia of an Information charging Smith & Nephew, Inc. with conspiracy to commit an offense against the United States, namely, to violate the Foreign Corrupt Practices Act (“FCPA”) (15 U.S.C. § 78dd-1 *et seq.*), in violation of 18 U.S.C. § 371; the payment of bribes, in violation of 15 U.S.C. § 78dd-2 and 18 U.S.C. § 2 (Count Two); and falsification of the books and records of an issuer, 15 U.S.C. § 78m and 18 U.S.C. § 2 (Count Three); (b) waives indictment on such charges and enters into a Deferred Prosecution Agreement with the Department; and (c) agrees to accept a monetary penalty against Smith & Nephew of \$16,800,000, and to pay \$16,800,000 to the United States Treasury with respect to the conduct described in the Information and the Statement of Facts.

2. The General Counsel, or his delegate, is hereby authorized, empowered, and directed, on behalf of the Company, to execute the Deferred Prosecution Agreement substantially in such form as reviewed by this Board of Directors at this meeting with such changes as the General Counsel, or his delegate, may approve;

3. The General Counsel, or his delegate, is hereby authorized, empowered, and directed to take any and all actions as may be necessary or appropriate, and to approve the forms, terms, or provisions of any agreement or other documents as may be necessary or appropriate to carry out and effectuate the purpose and intent of the foregoing resolutions; and

4. All of the actions of the General Counsel, which actions would have been authorized by the foregoing resolutions except that such actions were taken prior to the adoption of such resolutions, are hereby severally ratified, confirmed, approved, and adopted as actions on behalf of the Company.

Date: February 3, 2012


Jean Mercer, Assistant Secretary
Board of Directors
Smith & Nephew, Inc.

ATTACHMENT C

CORPORATE COMPLIANCE PROGRAM

In order to address deficiencies in its internal controls, policies, and procedures regarding compliance with the Foreign Corrupt Practices Act (“FCPA”), 15 U.S.C. §§ 78dd-1, *et seq.*, and other applicable anti-corruption laws, Smith & Nephew, Inc. and its subsidiaries (collectively, “Smith & Nephew”) agree to continue to conduct, in a manner consistent with all of its obligations under this Agreement, appropriate reviews of its existing internal controls, policies, and procedures.

Where necessary and appropriate, Smith & Nephew agrees to adopt new or to modify existing internal controls, policies, and procedures in order to ensure that it maintains: (a) a system of internal accounting controls designed to ensure that Smith & Nephew makes and keeps fair and accurate books, records, and accounts; and (b) a rigorous anti-corruption compliance code, standards, and procedures designed to detect and deter violations of the FCPA and other applicable anti-corruption laws. At a minimum, this should include, but not be limited to, the following elements to the extent they are not already part of the company’s existing internal controls, policies, and procedures:

1. Smith & Nephew will develop and promulgate a clearly articulated and visible corporate policy against violations of the FCPA, including its anti-bribery, books and records, and internal controls provisions, and other applicable counterparts (collectively, the “anti-corruption laws,”), including strong, explicit, and visible support and commitment from senior management to the program.

2. Smith & Nephew will develop and promulgate compliance standards and procedures designed to reduce the prospect of violations of the anti-corruption laws and Smith & Nephew’s compliance code and will take appropriate measures to encourage and support the observance of ethics and compliance standards and procedures against foreign bribery at all levels of the company. These standards and procedures shall apply to all directors, officers, and employees and, where necessary and appropriate, outside parties acting on behalf of Smith & Nephew in a foreign jurisdiction, including but not limited to, agents and intermediaries, consultants, representatives, distributors, teaming partners, contractors and suppliers, consortia, and joint venture partners (collectively, “agents and business partners”), and shall notify all employees that compliance with the standards and procedures is the duty of individuals at all levels of the company. Such standards and procedures shall include policies governing:

- a. Gifts;
- b. Hospitality, entertainment, and expenses;
- c. Customer travel;

- d. Political contributions;
- e. Charitable donations and sponsorships;
- f. Facilitation payments; and
- g. Solicitation and extortion.

3. Smith & Nephew will develop these compliance standards and procedures, including internal controls, ethics, and compliance programs on the basis of a risk assessment addressing the individual circumstances of the company, in particular the foreign bribery risks facing the company, including, but not limited to, its geographical organization, interaction with governments, and industrial sector of operation.

4. Smith & Nephew shall review its compliance standards and procedures, including internal controls, ethics, and compliance programs, no less than annually, and updated as appropriate, taking into account relevant developments in the field and evolving international and industry standards, and update and adapt as necessary to ensure the continued effectiveness of the company's internal controls, ethics, and compliance programs.

5. Smith & Nephew will assign responsibility to one or more senior corporate executives of Smith & Nephew for the implementation and oversight of compliance with policies, standards, and procedures regarding the anti-corruption laws. Such corporate official(s) shall have direct reporting obligations to independent monitoring bodies, including internal audit, Smith & Nephew's Board of Directors, or any appropriate committee of the Board of Directors, and shall have an adequate level of autonomy from management as well as sufficient resources and authority to maintain such autonomy.

6. Smith & Nephew will ensure that it has a system of financial and accounting procedures, including a system of internal controls, reasonably designed to ensure the maintenance of fair and accurate books, records, and accounts to ensure that they cannot be used for the purpose of foreign bribery or concealing such bribery.

7. Smith & Nephew will implement mechanisms designed to ensure that the policies, standards, and procedures of Smith & Nephew regarding the anti-corruption laws are effectively communicated to all directors, officers, employees, and, where appropriate, agents and business partners. These mechanisms shall include: (a) periodic training for all directors, officers, and employees, and, where necessary and appropriate, agents and business partners; and (b) annual certifications by all such directors, officers, and employees, and, where necessary and appropriate, agents, and business partners, certifying compliance with the training requirements.

8. Smith & Nephew will establish an effective system for:
 - a. Providing guidance and advice to directors, officers, employees, and, where appropriate, agents and business partners, on complying with Smith & Nephew's compliance policies, standards, and procedures, including when they need advice on an urgent basis on difficult situations in foreign jurisdictions;
 - b. Internal and, where possible, confidential reporting by, and protection of, directors, officers, employees, and, where appropriate, agents and business partners, not willing to violate professional standards or ethics under instructions or pressure from hierarchical superiors, as well as for directors, officers, employee, and, where appropriate, agents and business partners, willing to report breaches of the law or professional standards or ethics concerning anti-corruption occurring within the company, suspected criminal conduct, and/or violations of the compliance policies, standards, and procedures regarding the anti-corruption laws for directors, officers, employees, and, where necessary and appropriate, agents and business partners; and
 - c. Responding to such requests and undertaking appropriate action in response to such reports.

9. Smith & Nephew will institute appropriate disciplinary procedures to address, among other things, violations of the anti-corruption laws and Smith & Nephew's compliance and ethics program by Smith & Nephew's directors, officers, and employees. Smith & Nephew shall implement procedures to ensure that where misconduct is discovered, reasonable steps are taken to remedy the harm resulting from such misconduct, and to ensure that appropriate steps are taken to prevent further similar misconduct, including assessing the internal controls, ethics, and compliance program and making modifications necessary to ensure the program is effective.

10. Smith & Nephew will institute appropriate due diligence and compliance requirements pertaining to the retention and oversight of all agents and business partners, including:

- a. Properly documented risk-based due diligence pertaining to the hiring and appropriate and regular oversight of agents and business partners;
- b. Informing agents and business partners of Smith & Nephew's commitment to abiding by laws on the prohibitions against foreign bribery, and of Smith & Nephew's ethics and compliance standards and procedures or other measures for preventing and detecting such bribery; and

c. Seeking a reciprocal commitment from agents and business partners.

11. Where appropriate, Smith & Nephew will include standard provisions in agreements, contracts, and renewals thereof with all agents and business partners that are reasonably calculated to prevent violations of the anti-corruption laws, which may, depending upon the circumstances, include: (a) anti-corruption representations and undertakings relating to compliance with the anti-corruption laws; (b) rights to conduct audits of the books and records of the agent or business partner to ensure compliance with the foregoing; and (c) rights to terminate an agent or business partner as a result of any breach of anti-corruption laws, and regulations or representations and undertakings related to such matters.

12. Smith & Nephew will conduct periodic review and testing of the compliance code, standards, and procedures designed to evaluate and improve their effectiveness in preventing and detecting violations of anti-corruption laws and Smith & Nephew's compliance and ethics programs, taking into account relevant developments in the field and evolving international and industry standards.

ATTACHMENT D

CORPORATE COMPLIANCE MONITOR

The duties and authority of the Corporate Compliance Monitor (the “Monitor”), and the obligations of Smith & Nephew, Inc. (“Smith & Nephew”) with respect to the Monitor and the Department, are as described below:

1. Smith & Nephew shall retain the Monitor for a period of not less than eighteen (18) months. Subject to certain conditions specified below that would, in the sole discretion of the Department, allow for a reduction or extension of the term (the “Term of the Monitorship”), the Monitor shall be retained until the criteria in Paragraph 8 are satisfied or the Agreement expires, whichever occurs first.

2. The Monitor’s primary responsibility is to assess and monitor Smith & Nephew’s compliance with the terms of this Agreement so as to specifically address and reduce the risk of any recurrence of Smith & Nephew’s misconduct. During the Term of the Monitorship, the Monitor will evaluate, in the manner set forth in Paragraphs 3 through 10 below, the effectiveness and implementation of the corporate compliance program, internal controls and financial reporting policies and procedures of Smith & Nephew as they relate to Smith & Nephew’s current and ongoing compliance with the anti-bribery provisions of the FCPA and other anti-corruption laws applicable to Smith & Nephew (collectively, the “anti-corruption laws”), and take such reasonable steps as, in his or her view, may be necessary to fulfill the foregoing mandate (the “Mandate”).

3. Smith & Nephew shall cooperate fully with the Monitor, and the Monitor shall have the authority to take such reasonable steps as, in his or her view, may be necessary to be fully informed about Smith & Nephew’s compliance program within the scope of the Mandate in accordance with the principles set forth herein and applicable law, including data protection, blocking statutes, and labor laws and regulations applicable to Smith & Nephew. To that end, Smith & Nephew shall: provide the Monitor access to Smith & Nephew’s documents and resources; not limit such access, except as provided in this Paragraph; and provide guidance on applicable laws (such as relevant data protection, blocking statutes, and labor laws). Smith & Nephew shall provide the Monitor with access to all information, documents, records, facilities and/or employees, as requested by the Monitor, that fall within the scope of the Mandate of the Monitor under this Agreement. Any disclosure by Smith & Nephew to the Monitor concerning corrupt payments shall not relieve Smith & Nephew of any otherwise applicable obligation to truthfully disclose such matters to the Department.

a. The parties agree that no attorney-client relationship shall be formed between Smith & Nephew and the Monitor.

b. In the event that Smith & Nephew seeks to withhold from the Monitor access to information, documents, records, facilities and/or employees of Smith & Nephew that may be subject to a claim of attorney-client privilege or to the attorney work-product doctrine, or where Smith & Nephew reasonably believes production would otherwise be inconsistent with applicable law, Smith & Nephew shall work cooperatively with the Monitor to resolve the matter to the satisfaction of the Monitor. If the matter cannot be resolved, at the request of the Monitor, Smith & Nephew shall promptly provide written notice to the Monitor and the Department. Such notice shall include a general description of the nature of the information, documents, records, facilities and/or employees that are being withheld, as well as the basis for the claim. To the extent Smith & Nephew has provided information to the Department in the course of the investigation leading to this action pursuant to a non-waiver of privilege agreement, Smith & Nephew and the Monitor may agree to production of such information to the Monitor pursuant to a similar non-waiver agreement.

4. To carry out the Mandate during the Term of the Monitorship, the Monitor shall conduct an initial review and prepare an initial report, followed by at least one (1) follow-up review and report as described in Paragraph 7 below, and one (1) final report as described in Paragraph 8 below. With respect to the initial report and the follow-up review, after consultation with Smith & Nephew and the Department, the Monitor shall prepare a written work plan, which shall be submitted no fewer than sixty (60) calendar days prior to commencing each review to Smith & Nephew and the Department for comment, which comment shall be provided no more than thirty (30) calendar days after receipt of the written work plan. The Monitor's work plan for the initial review shall include such steps as are reasonably necessary to conduct an effective initial review in accordance with the Mandate, including developing an understanding, to the extent the Monitor deems appropriate, of the facts and circumstances surrounding any violations that may have occurred before the date of this Agreement is filed with the Court. In developing such understanding, the Monitor is to rely to the extent possible on available information and documents provided by Smith & Nephew, and it is not intended that the Monitor will conduct his or her own inquiry into those historical events. In developing each work plan and in carrying out the reviews pursuant to such plans, the Monitor is encouraged to coordinate with Smith & Nephew personnel, including auditors and compliance personnel, and, to the extent the Monitor deems appropriate, he or she may rely on Smith & Nephew processes, on the results of studies, reviews, audits and analyses conducted by or on behalf of Smith & Nephew and on sampling and testing methodologies. Any disputes between Smith & Nephew and the Monitor with respect to the work plan shall be decided by the Department in its sole discretion.

5. The initial review shall commence no later than ninety (90) calendar days from the date of the engagement of the Monitor (unless otherwise agreed by Smith & Nephew, the Monitor and the Department), and the Monitor shall issue a written report within ninety (90) calendar days of initiating the initial review, setting forth the Monitor's assessment and making recommendations reasonably designed to improve the effectiveness of Smith & Nephew's program for ensuring compliance with the anti-corruption laws. The Monitor is encouraged to consult with Smith & Nephew concerning his or her other findings and recommendations on an

ongoing basis, and to consider and reflect Smith & Nephew's comments and input to the extent the Monitor deems appropriate. The Monitor need not in his or her initial or subsequent reports recite or describe comprehensively Smith & Nephew's history or compliance policies, procedures and practices, but rather may focus on those areas with respect to which the Monitor wishes to make recommendations for improvement or which the Monitor otherwise concludes merit particular attention. The Monitor shall provide the report to the Board of Directors of Smith & Nephew and contemporaneously transmit copies to Deputy Chief - FCPA Unit, Fraud Section, Criminal Division, U.S. Department of Justice, 10th and Constitution Ave., N.W., Bond Building, Fourth Floor, Washington, D.C. 20530. After consultation with Smith & Nephew, the Monitor may extend the time period for issuance of the report for up to thirty (30) calendar days with prior written approval of the Department.

6. Within ninety (90) calendar days after receiving the Monitor's report, Smith & Nephew shall adopt all recommendations in the report; provided, however, that within thirty (30) calendar days after receiving the report, Smith & Nephew shall notify the Monitor and the Department in writing of any recommendations that Smith & Nephew considers unduly burdensome, inconsistent with local or other applicable law or regulation, impractical, unduly costly or otherwise inadvisable. With respect to any recommendation that Smith & Nephew considers unduly burdensome, inconsistent with local or other applicable law or regulation, impractical, unduly costly or otherwise inadvisable, Smith & Nephew need not adopt that recommendation within that time but shall propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose. As to any recommendation on which Smith & Nephew and the Monitor do not agree, such parties shall attempt in good faith to reach an agreement within thirty (30) calendar days after Smith & Nephew serves the written notice. In the event Smith & Nephew and the Monitor are unable to agree on an acceptable alternative proposal, Smith & Nephew shall promptly consult with the Department. Any disputes between Smith & Nephew, on the one hand, and the Monitor, on the other hand, with respect to the recommendations shall be decided by the Department in its sole discretion. The Department may consider the Monitor's recommendation and Smith & Nephew's reasons for not adopting the recommendation in determining whether Smith & Nephew has fully complied with its obligations under this Agreement. Pending such determination, Smith & Nephew shall not be required to implement any contested recommendation(s). With respect to any recommendation that the Monitor determines cannot reasonably be implemented within ninety (90) calendar days after receiving the report, the Monitor may extend the time period for implementation with prior written approval of the Department.

7. The Monitor shall undertake at least one follow-up review to carry out the Mandate. Within one hundred and twenty (120) calendar days of initiating the follow-up review, the Monitor shall: (a) complete the review; (b) certify whether the compliance program of Smith & Nephew, including its policies and procedures, is reasonably designed and implemented to detect and prevent violations within Smith & Nephew of the anti-corruption laws and is functioning effectively; and (c) report on the Monitor's findings in the same fashion as set forth in Paragraph 5 with respect to the initial review. The first follow-up review shall commence one

year after the initial review commenced. If, reasonably promptly after completing the follow-up review, the Monitor and the Department mutually agree that Smith & Nephew has not by that time successfully satisfied its obligations under the Agreement with respect to the Monitor's Mandate, the Term of the Monitorship shall be extended for one additional year, and the Monitor shall undertake a second follow-up review in accordance with the procedures for such follow-up reviews set out in the Agreement. If, after completing a second follow-up review, the Monitor and the Department again mutually agree that Smith & Nephew has not successfully satisfied its obligations under the Agreement with respect to the Monitor's Mandate, the Term of the Monitorship shall be extended until expiration of the Agreement, and the Monitor shall undertake a third follow-up review in accordance with the procedures for such follow-up reviews set out in the Agreement. Additional follow-up reviews, should any be required, shall commence one year after the first follow-up review commenced. After consultation with Smith & Nephew, the Monitor may extend the time period for these follow-up reviews for up to sixty (60) calendar days with prior written approval of the Department.

8. If, reasonably promptly after completing a follow-up review, the Monitor, the Department, and Smith & Nephew mutually agree that Smith & Nephew's compliance program is reasonably designed and implemented to detect and prevent violations of the anti-corruption laws and is functioning effectively, the Monitor and Smith & Nephew shall submit to the Department a written report within sixty (60) calendar days of the submission of the follow up review setting forth a complete description of its remediation efforts to date, its proposals reasonably designed to improve the internal controls, policies, and procedures of Smith & Nephew for ensuring compliance with the FCPA and other applicable anticorruption laws, and the proposed scope for Smith & Nephew's self-reporting. This report shall include a schedule of enhanced compliance obligations already undertaken by Smith & Nephew for the Department's approval, and Smith & Nephew's self-reporting shall include measures taken to implement the enhanced compliance obligations. Smith & Nephew may extend the time period for issuance of the report with prior written approval of the Department. At such time as the Department approves the schedule of enhanced compliance obligations, the Monitorship shall be terminated and Smith & Nephew will self-report to the Department on its enhanced compliance obligations for the remainder of the term of the Agreement, as described in Paragraph 12 of the Agreement.

9. In undertaking the assessments and reviews described in Paragraphs 4 through 8 of this Agreement, the Monitor shall formulate conclusions based on, among other things: (a) inspection of relevant documents, including Smith & Nephew's current anti-corruption policies and procedures; (b) on-site observation of selected systems and procedures of Smith & Nephew at sample sites, including internal controls and record-keeping and internal audit procedures; (c) meetings with, and interviews of, relevant employees, officers, directors and other persons at mutually convenient times and places; and (d) analyses, studies and testing of Smith & Nephew's compliance program with respect to the anticorruption laws.

10. Should the Monitor, during the course of his or her engagement, discover that questionable or corrupt payments or questionable or corrupt transfers of property or interests may

have been offered, promised, paid or authorized by any entity or person within Smith & Nephew, or any entity or person working directly or indirectly for Smith & Nephew, either (a) after the date on which this Agreement is accepted by the Court or (b) that have not been adequately dealt with by Smith & Nephew (collectively, “improper activities”), the Monitor shall promptly report such improper activities to Smith & Nephew’s General Counsel for further action. If the Monitor believes that any improper activity or activities may constitute a significant violation of law, the Monitor shall also report such improper activity to the Department. The Monitor shall disclose improper activities in his or her discretion directly to the Department, and not to the General Counsel, only if the Monitor believes that disclosure to Smith & Nephew’s General Counsel would be inappropriate under the circumstances, and in such case should disclose the improper activities to Smith & Nephew’s General Counsel as promptly and completely as the Monitor deems appropriate under the circumstances. The Monitor shall address in his or her reports the appropriateness of Smith & Nephew’s response to all improper activities, whether previously disclosed to the Department or not. Further, in the event that Smith & Nephew, or any entity or person working directly or indirectly within Smith & Nephew, refuses to provide information necessary for the performance of the Monitor’s responsibilities, if the Monitor believes that such refusal is without just cause, the Monitor shall disclose that fact to the Department. Smith & Nephew shall not take any action to retaliate against the Monitor for any such disclosures or for any other reason. The Monitor may report any criminal or regulatory violations by Smith & Nephew or any other entity discovered in the course of performing his or her duties in the same manner as described above.

11. At least annually, and more frequently if appropriate, representatives from Smith & Nephew and the Department will meet together to discuss the monitorship and any suggestions, comments or improvements Smith & Nephew may wish to discuss with or propose to the Department.