



ASX Announcement | Friday 07 June 2019

Creso Pharma to be acquired by Canadian listed PharmaCielo Ltd (TSXV: PCLO) for AUD\$122m at AUD\$0.63 per share¹

Investment Highlights

- Creso Pharma Limited ("**Creso Pharma**") has entered into a definitive agreement with Canadian cannabis company PharmaCielo Limited (TSXV:PCLO) ("**PharmaCielo**"), for a recommended acquisition of Creso Pharma by PharmaCielo
- PharmaCielo is a leading cannabis company listed on Canada's TSX Venture Exchange with a current market capitalisation of approximately CAD\$675 million
- PharmaCielo is the Canadian parent of Colombia's premier cultivator and producer of medicinal cannabis oil PharmaCielo Colombia Holdings S.A.S, the largest cannabis producer in Colombia, and a fully licensed producer of medicinal cannabis oil products in Colombia
- The acquisition will be effected by a scheme of arrangement between Creso Pharma and its shareholders, and a separate concurrent scheme of arrangement between Creso Pharma and its listed optionholders
- PharmaCielo has a robust balance sheet with a current cash balance of approximately CAD\$40 million
- Creso Pharma shareholders will receive 0.0775 PharmaCielo shares for every Creso Pharma share held representing a value of AUD\$0.63 based on the PCLO VWAP¹
- Creso Pharma listed optionholders will receive 0.0185 PharmaCielo shares for each Creso Pharma listed option held representing a value of AUD\$0.15 based on the PCLO VWAP¹
- Holders of Creso Pharma performance shares, performance rights and other unlisted securities will also be eligible to receive PharmaCielo shares subject to agreed ratios
- Creso Pharma securityholders will hold approximately 13% of the issued shares in the PharmaCielo following implementation, with PharmaCielo shareholders holding the remaining 87%
- The offer price of AUD\$0.63 for each Creso Pharma share will be paid in PharmaCielo shares determined at a fixed price of AUD\$8.1261/CAD\$7.61661 being the PCLO VWAP.

¹ Based on the three day VWAP of PharmaCielo shares for the three trading days ending 4 June 2019 of CAD\$7.6166/AUD\$8.1261 when using the exchange rate of AUD\$0.9373/CAD\$1.00 (**PCLO VWAP**).



- The Creso Pharma Board of Directors unanimously recommend shareholders and listed optionholders vote in favour of the Share Scheme and the Option Scheme respectively, in the absence of a superior proposal and subject to an Independent Expert opining that the Schemes are in the best interests of Creso Pharma securityholders
- Creso Pharma securityholders do not need to take any action at the present time
- The proposed transaction is expected to create a well-capitalised, publicly traded company with a strong growth profile and significant strategic advantages

Creso Pharma Limited (ASX:CPH) (“Creso Pharma”) is pleased to announce it has entered into a scheme implementation agreement with PharmaCielo Limited (TSXV:PCLO) (“**PharmaCielo**”), under which PharmaCielo will acquire Creso Pharma (“**Implementation Agreement**”).

PharmaCielo is a TSXV listed cannabis company, which is a fully licensed producer of medicinal cannabis oil products in Colombia and is the largest cannabis producer in Colombia. Implementation of the proposed acquisition will combine two complementary cannabis companies to create a well-capitalised, publicly traded company with a strong growth profile and significant strategic advantages.

The acquisition will be conducted through a scheme of arrangement between Creso Pharma and its shareholders (“**Share Scheme**”) and a separate concurrent scheme of arrangement between Creso Pharma and the holders of listed options (“**Option Scheme**”) (together, the “**Schemes**”). The Share Scheme is not dependent on the Option Scheme proceeding. However, the Option Scheme will only proceed if the Share Scheme proceeds.

Acquisition Highlights

- **Creation of a vertically integrated supply chain:** The acquisition will result in the combination of PharmaCielo, a global leader in terms of price, quantity and quality in cannabis cultivation, production and extraction, and Creso Pharma, an early mover in human and animal cannabis-based products, to create a vertically integrated supply chain.
- **Experienced Board and management team:** PharmaCielo benefits from the combined experience and expertise of its management team and board. PharmaCielo is led by top executives from an alumni of global companies and organisations including Philip Morris International, the World Health Organisation, Bayer, Citigroup, and American Express. The PharmaCielo board will be strengthened by the addition of Creso Pharma's Co-Founder and CEO, Dr Miri Halperin Wernli, as a director of PharmaCielo following implementation of the Schemes.



- **Expansion of cultivation and processing facilities:** PharmaCielo will hold dual-market licensed cultivation and processing facilities (in Canada and Colombia) allowing PharmaCielo to provide high-grade medicinal cannabis materials to multiple global markets.
- **Expansion of commercial networks:** PharmaCielo's sales networks in South America, Mexico and Italy will add to Creso Pharma's active commercial network and sales presence in thirteen countries, including Australia, New Zealand, Brazil, Switzerland, Germany, France, the Netherlands and the United Kingdom.
- **Expansion of product portfolio:** The acquisition will expand PharmaCielo's on-shelf product portfolio with Creso Pharma existing products to be made available via PharmaCielo's global market presence, especially in South America.
- **Continued participation for Creso Pharma securityholders:** Creso Pharma securityholders will retain continued participation in a global medicinal cannabis company with greater capitalization enabling aggressive market and sale development.

Scheme Consideration

As stated above the acquisition will be implemented through a Share Scheme and an Option Scheme.

Under the Share Scheme, Creso Pharma shareholders will receive 0.0775 PharmaCielo shares for each Creso Pharma share held representing an offer price of AUD\$0.63 per Creso Pharma share (based on the three day VWAP of PharmaCielo shares for the three trading days ending 4 June 2019 of AUD\$8.1261 ("**PCLO VWAP**"). This is a 50% premium to Creso Pharma shareholders based on the closing price of Creso Pharma shares on 6 June 2019.

Under the Option Scheme, Creso Pharma listed optionholders will receive 0.0185 PharmaCielo shares for each listed option held. This ratio represents an offer price of AUD\$0.15 per Creso Pharma listed options based on the PCLO VWAP.

The Share Scheme is not dependent on the Option Scheme proceeding. However, the Option Scheme will only proceed if the Share Scheme proceeds.

On approval of the Share Scheme by the relevant Australian court, unvested Creso Pharma performance rights and performance shares will vest, and holders will be entitled to participate in the Share Scheme on the terms above as a Creso Pharma shareholder. Holders of the various other classes of unlisted Creso Pharma securities will be offered PharmaCielo shares based on ratios detailed in the Implementation Agreement.



Following implementation, the Creso Pharma securityholders will hold approximately 13% of the issued shares in the PharmaCielo, with PharmaCielo shareholders holding the remaining 87%.

The Schemes and the related arrangements for the various other classes of unlisted Creso Pharma securities imply a total equity value of AUD\$122million for Creso Pharma. The PharmaCielo share price is likely to change between the date of this announcement and the date of implementation of the Schemes, which will affect the implied equity valuation.

Acquisition Terms

The Share Scheme and the Option Scheme are subject to customary conditions for a transaction of this nature, which are set out in full in the Implementation Agreement, a copy of which has been released to the ASX today in a separate announcement. These conditions include, amongst other things, shareholder approval (in the case of the Share Scheme), listed optionholder approval (in the case of the Option Scheme), and, in the case of each Scheme relevant Australian court approval, TSXV approval for the quotation of the new PharmaCielo shares to be issued to Creso Pharma securityholders, no material adverse change and no prescribed occurrences or material breach of warranty in relation to Creso Pharma and PharmaCielo respectively. Approval of PharmaCielo shareholders is not required.

The Implementation Agreement includes customary deal protection and exclusivity terms, including “no shop”, “no talk”, “notification”, “matching” obligations for the benefit of PharmaCielo, a break fee of AUD\$1.2 million that is payable by either party to the other in certain circumstances and a cost reimbursement fee of \$450,000 payable by Creso Pharma to PharmaCielo if the Share Scheme is not approved by Creso Pharma shareholders. The exclusivity provisions in favour of PharmaCielo are subject to customary exceptions to enable the Creso Pharma board members to comply with their fiduciary or statutory duties.

PharmaCielo has also agreed to appoint Creso Pharma's Co-Founder and CEO Dr Miri Halperin Wernli as a director of PharmaCielo following implementation. The terms and remuneration of Dr Miri Halperin Wernli's appointment with PharmaCielo are being negotiated and will be subject to the approval of Dr Miri Halperin Wernli, PharmaCielo and Creso Pharma. Creso Pharma confirms that the agreed terms will be announced to the market.

Further details are set out in the Implementation Agreement attached to this announcement.



Loan Agreement

As a condition of the Share Scheme, PharmaCielo has agreed to advance Creso Pharma a CAD\$3,500,000 secured bridge loan pursuant to an amendment to Creso Pharma's existing loan trust deed, originally entered on 26 April 2019. The proceeds of the loan are expected to be used by Creso Pharma for its general working capital requirements.

The loan will be repayable on 31 December 2019. However, if the Share Scheme is not approved by Creso Pharma shareholders, the loan will become repayable on the date which is four (4) months after the date of the meeting.

Creso Pharma Director's Recommendation

The Creso Pharma board of directors unanimously recommends that Creso Pharma securityholders vote in favour of the Schemes in the absence of a superior proposal and subject to an Independent Expert opining that the Schemes are in the best interests of Creso Pharma securityholders. Subject to those same qualifications, each Creso Pharma director intends to vote all the shares and listed options that they hold in Creso Pharma in favour of the Schemes.

In agreeing to publicly recommend the Schemes, the directors of Creso Pharma have taken into account:

- (a) the attractive value attributed to Creso Pharma by PharmaCielo under the proposed transaction;
- (b) significant short-term investment requirements to execute Creso Pharma's strategic growth plan; and
- (c) the potential synergies between Creso Pharma and PharmaCielo as a result of their complimentary business offerings and growth strategies.

Indicative Timetable and Next Steps

Creso Pharma securityholders do not need to take any action at the present time.

Creso Pharma shareholders will be given the opportunity to vote on the Share Scheme and Creso Pharma listed optionholders will be given the opportunity to vote on the Option Scheme at the scheme meetings to be held later this year



Subject to the approval of Creso Pharma shareholders and listed optionholders, and the other conditions of the Schemes including regulatory and court approval being satisfied, the Schemes are expected to be implemented in September/October 2019. These dates are indicative and subject to change.

A Scheme Booklet containing more detailed information relating to the Schemes, reasons for the Directors' recommendation, an Independent Expert's report and details of the scheme meetings will be sent to Creso Pharma securityholders shortly. Creso securityholders should read the Scheme Booklet and seek appropriate advice before making a decision on how to vote.

Creso Pharma will keep the market informed in accordance with its continuous disclosure obligations.

Advisors

EverBlu Capital is acting as corporate advisor and will be entitled to a fee of 3% of the deal value following successful implementation. Steinepreis Paganin is acting as legal counsel to Creso Pharma.

Cormark Securities Inc. is acting as financial advisor and McMillan LLP and Minter Ellison are acting as Canadian and Australian legal counsel respectively to PharmaCielo.

Management Commentary

PharmaCielo CEO David Attard says: "PharmaCielo's proposed acquisition of Creso Pharma harnesses the synergies between us and creates a combined company poised to become a global powerhouse in the medicinal cannabis industry. Upon closing of the transaction the combined company will quadruple our global footprint with presence in more than a dozen countries spanning North and Latin America, Switzerland, Europe, the Middle East, Australia and New Zealand.

"The acquisition will afford us the opportunity to bring our high-quality Colombian oil production to market immediately and expand into higher-margin, branded product sales faster by harnessing the expertise of a proven and highly engaged commercialisation team possessing both an immediately available product portfolio and active international sales channels."



Creso Pharma Co-Founder and CEO Dr Miri Halperin Wernli says: “This arrangement with PharmaCielo is an incredible opportunity for Creso Pharma securityholders to benefit from being part of a best in class and well-capitalised global medicinal cannabis company. The combined companies will offer a unique combination of assets and professional skills across the cannabis value chain that will lay the foundations for significant international expansion of cannabis products of the highest quality for the benefits of patients and consumers.

The quality and scale of PharmaCielo’s cultivation and oil extraction operations in Colombia complements our focus on meeting global demand for the highest quality cannabis-derived therapeutic, nutraceutical and animal health products through increased access to the necessary quality and volume of oil production”.

Ends.

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About Creso Pharma

Creso Pharma brings the best of cannabis to better the lives of people and animals. It brings pharmaceutical expertise and methodological rigor to the cannabis world and strives for the highest quality in its products.

It develops cannabis and hemp derived therapeutic, nutraceutical, and life style products with wide patient and consumer reach for human and animal health. Creso Pharma uses GMP (Good Manufacturing Practice) development and manufacturing standards for its products as a reference of quality excellence with initial product registrations in Switzerland. It has worldwide rights for a number of unique and proprietary innovative delivery technologies which enhance the bioavailability and absorption of cannabinoids.

To learn more, please visit: www.cresopharma.com



About PharmaCielo Limited (TSXV:PCLO)

PharmaCielo Limited (TSXV:PCLO) is a global company privately held and headquartered in Canada, with a focus on processing and supplying all natural, medicinal-grade cannabis oil extracts and related products to large channel distributors. PharmaCielo's principal (and wholly owned) subsidiary is PharmaCielo Colombia Holdings S.A.S., headquartered at its nursery and propagation centre located in Rionegro, Colombia.

The boards of directors and executive teams of both PharmaCielo and PharmaCielo Colombia Holdings consist of a diversely talented group of international business executives and specialists with relevant and varied expertise. PharmaCielo has recognised the significant role that Colombia's ideal location will play in building a sustainable business in the medical cannabis industry. The company has built a compelling business plan focused on supplying the international marketplace.

To learn more, please visit: www.pharmacielo.com

Forward Looking Statements

This announcement contains forward-looking statements with respect to Creso Pharma and its respective operations, strategy, investments, financial performance and condition. These statements generally can be identified by use of forward-looking words such as "may", "will", "expect", "estimate", "anticipate", "intends", "believe" or "continue" or the negative thereof or similar variations. The actual results and performance of Creso could differ materially from those expressed or implied by such statements.

Such statements are qualified in their entirety by the inherent risks and uncertainties surrounding future expectations. Some important factors that could cause actual results to differ materially from expectations include, among other things, general economic and market factors, competition and government regulation. The cautionary statements qualify all forward-looking statements attributable to Creso Pharma and persons acting on its behalf. Unless otherwise stated, all forward-looking statements speak only as of the date of this announcement and Creso has no obligation to up-date such statements, except to the extent required by applicable laws.



Execution version

Scheme Implementation Agreement

Creso Pharma Limited ACN 608 409 911
(**Creso Pharma**)
PharmaCielo Ltd. (**PharmaCielo**)

Scheme Implementation Agreement

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Details

Date 6 June 2019

Parties

Name **Creso Pharma Limited** ACN 609 406 911
Short form name **Creso Pharma**
Notice details Level 24, 300 Barangaroo Avenue, Barangaroo, New South Wales 2000
Email: miri.halperin.wernli@gmail.com
Attention: Dr Miri Halperin Wernli

Name **PharmaCielo Ltd.**
Short form name **PharmaCielo**
Notice details 1 Toronto Street, Suite 805, Toronto, ON M5C 2V6
Email: d.attard@pharmacielo.com
Attention: David Attard

Background

- A Creso Pharma and PharmaCielo have agreed to implement the Proposed Transaction on and subject to the terms and conditions of this agreement.
- B Creso Pharma and PharmaCielo have agreed certain other matters in connection with the Proposed Transaction as set out in this agreement.

Details

Date June 2019

Parties

Name **Creso Pharma Limited** ACN 609 406 911
Short form name **Creso Pharma**
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Attention: Dr Miri Halperin Wernli

Name **PharmaCielo Ltd.**
Short form name **PharmaCielo**
Notice details 1 Toronto Street, Suite 805, Toronto, ON M5C 2V6
Email: d.attard@pharmacielo.com
Attention: David Attard

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- A Creso Pharma and PharmaCielo have agreed to implement the Proposed Transaction on and subject to the terms and conditions of this agreement.
- B Creso Pharma and PharmaCielo have agreed certain other matters in connection with the Proposed Transaction as set out in this agreement.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this agreement, unless the context otherwise requires, the following words and expressions have meanings as follows:

Acceptable Confidentiality Agreement means a confidentiality agreement which contains obligations on the recipient of confidential information which are no less onerous in any material respect than the obligations of PharmaCielo under the Confidentiality Agreement.

Accounting Standards means:

- (a) the applicable accounting standards made by the relevant regulatory body, and the requirements relating to the preparation and content of accounts; and
- (b) generally accepted accounting principles that are consistently applied, except those inconsistent with the standards or requirements referred to in paragraph (a).

Adviser means in relation to an entity:

- (a) a financier to the entity in connection with the Proposed Transaction; or
- (b) a financial, corporate, legal, accounting, technical or other expert adviser or consultant, who provides advisory or consultancy services in a professional capacity in the ordinary course of its business and has been engaged in that capacity in connection with the Proposed Transaction by the entity.

Announcements means the respective announcements by Creso Pharma and PharmaCielo in the form agreed by Creso Pharma and PharmaCielo (both acting reasonably), prior to signing of this agreement.

ASIC means the Australian Securities and Investments Commission.

Associate has the meaning given in Division 2 of Part 1.2 of the Corporations Act as if section 12(1) of that Act included a reference to this agreement and Creso Pharma was the designated body.

ASX means ASX Limited (ABN 98 008 624 691) or as the context requires or permits, the financial market known as the Australian Securities Exchange operated by it.

Authorisation means any approval, licence, consent, authority or permit.

Authorised Person means, in respect of a person:

- (a) a director, officer, member or employee of the person;
- (b) an Adviser of the person; and
- (c) a director, officer or employee of an Adviser of the person.

Business Day means a day that is not a Saturday, Sunday or a public holiday or bank holiday in

- (a) Melbourne, Australia; or
- (b) Toronto, Canada.

Claim means, in relation to a person, a demand, claim, action or proceeding made or brought by or against the person, however arising and whether present, unascertained, immediate, future or contingent.

Competing Proposal means any offer, proposal, transaction or expression of interest under which, if ultimately completed, a person or two or more persons who are Associates would:

- (a) directly or indirectly acquire Voting Power in Creso Pharma of more than 20% or otherwise acquire, or have a right to acquire, a legal, beneficial or economic interest in

- more than 20% of the Creso Pharma Shares or more than 50% of the share capital of any material subsidiary of Creso Pharma (including through one or more derivative contracts);
- (b) acquire control (within the meaning of section 50AA of the Corporations Act) of, or directly or indirectly merge with, Creso Pharma or a material subsidiary of Creso Pharma;
 - (c) directly or indirectly acquire, become the holder of or have a right to acquire a legal, beneficial or equitable interest in, or control of, all or a substantial part of the property or any of the material assets of Creso Pharma Group, or otherwise acquire or have a right to acquire a legal, beneficial or economic interest in, or control of, such property or assets; or
 - (d) enter into any agreement, arrangement or understanding requiring Creso Pharma to abandon, or otherwise fail to proceed with, the Proposed Transaction,

whether by way of a takeover bid, scheme of arrangement, shareholder approved acquisition, capital reduction, buy back, sale, lease or purchase of shares, other securities or assets, assignment of assets or liabilities, joint venture, dual listed company (or other synthetic merger), deed of company arrangements, any debt for equity arrangement or other transaction or arrangement.

Conditions means the conditions set out in clause 3.1 in respect of the Share Scheme and the conditions set out in clause 3.3 in respect of the Option Scheme, and **Condition** means any one of them.

Confidentiality Agreement means the confidentiality agreement between Creso Pharma and PharmaCielo Limited dated 4 April 2019.

Corporations Act means the *Corporations Act 2001* (Cth).

Counter Proposal has the meaning given in clause 17.7(b).

Court means the Supreme Court of Western Australia or any other court of competent jurisdiction under the Corporations Act as the parties may agree in writing.

Creso Pharma Board means the board of directors of Creso Pharma (or any committee of the board of directors of Creso Pharma constituted to consider the Proposed Transaction on behalf of Creso Pharma).

Creso Pharma Break Fee has the meaning given to that term in clause 15.3(a).

Creso Pharma Consolidated Tax Group means the consolidated group of which Creso Pharma is the head company (where 'consolidated group' and 'head company' have the same meaning as in the *Income Tax Assessment Act 1997* (Cth)).

Creso Pharma Data Room means the CPH Project Matilda data room hosted by Dropbox at <https://www.dropbox.com/home/CPH%20Project%20Matilda%20Dataroom> prior to the date of this agreement.

Creso Pharma Director means a director of Creso Pharma who is a member of the Creso Pharma Board.

Creso Pharma Disclosure Letter means the letter so entitled from Creso Pharma provided to PharmaCielo on or prior to the execution of this agreement.

Creso Pharma Due Diligence Material means the written information disclosed by or on behalf of Creso Pharma and its Subsidiaries (including management presentations and all written responses provided in response to written questions or requests for information) to PharmaCielo or any of its Authorised Persons prior to the date of this agreement in:

- (a) the Creso Pharma Data Room; and
- (b) the Creso Pharma Disclosure Letter.

Creso Pharma Exchangeable Share means an exchangeable preferred share in Creso Canada Limited granted to the vendors (or their nominees) of the Mernova Acquisition.

Creso Pharma Exchangeable Share Holder means a person who holds a Creso Pharma Exchangeable Share.

Creso Pharma Group means Creso Pharma and each of its Related Bodies Corporate. A reference to a member of the **Creso Pharma Group** or a **Creso Pharma Group Member** is a reference to Creso Pharma or any such Related Bodies Corporate.

Creso Pharma Information means information to be included by Creso Pharma in the Explanatory Booklet that explains the effect of the Share Scheme and the Option Scheme and sets out the information prescribed by the Corporations Act and the *Corporations Regulations 2001* (Cth), and any other information that is material to the making of a decision by Creso Pharma Shareholders and Creso Pharma Listed Optionholders whether or not to vote in favour of the Share Scheme or the Option Scheme (as applicable), being information that is within the knowledge of the Creso Pharma Board and has not previously been disclosed to Creso Pharma Shareholders and Creso Pharma Listed Optionholders, other than the PharmaCielo Information, the Independent Expert's Report and the Investigating Accountant's Report.

Creso Pharma Listed Option means an option granted by Creso Pharma to acquire by way of issue one or more Creso Pharma Shares, which option is listed for quotation on ASX.

Creso Pharma Listed Optionholder means each person who is registered in the Creso Pharma Register as a holder of Creso Pharma Listed Options.

Creso Pharma Loan Agreement means the agreement between Creso Pharma and PharmaCielo dated on or about the date of this agreement pursuant to which PharmaCielo agrees to grant Creso Pharma the right to draw down funds of up to C\$3,500,000 consistent with agreed terms, with such agreement to be effected by way of an amendment to the Secured Loan Agreements and the entering of additional security agreements as reflected in the amendment to the Secured Loan Agreements.

Creso Pharma Material Adverse Change means an event, change, condition, matter, thing or circumstance that occurs, is announced or becomes known to PharmaCielo or the Creso Pharma Board (in each case whether or not it becomes public) after the date of this agreement which (in each case determined in accordance with Accounting Standards) has or could reasonably be expected to have the result that the business of the Creso Pharma Group is unable to be carried on in substantially the same manner as it is carried on at the date of this agreement but does not include any event or circumstance:

- (a) required to be done or procured by Creso Pharma under this agreement, the Share Scheme or the Option Scheme;
- (b) which PharmaCielo has previously approved in writing;
- (c) to the extent it was Fairly Disclosed in the Creso Pharma Due Diligence Materials or in documents that were publicly available in the 12 months prior to the date of this agreement from public filings of Creso Pharma with ASX, ASIC or public registers;
- (d) relating to costs and expenses incurred by Creso Pharma associated with the process for the Share Scheme and the Option Scheme, including all fees payable to external advisers of Creso Pharma, to the extent such amounts are Fairly Disclosed in the Creso Pharma Disclosure Letter;
- (e) comprising a change in any applicable law; or
- (f) relating to any material adverse change or major disruption to the existing financial markets, political or economic conditions of Australia, Canada, Switzerland, Colombia and Israel, excluding any events, changes, conditions, matters, things or circumstances which have a disproportionate effect on the Creso Pharma Group as compared to other participants in the industries in which the Creso Pharma Group operates.

Creso Pharma Parties means each member of the Creso Pharma Group and its Related Bodies Corporate and Authorised Persons.

Creso Pharma Performance Right means a right to acquire by way of issue a Creso Pharma Share for no or nominal consideration, subject to achieving certain defined milestones.

Creso Pharma Performance Rights Holder means a person who holds a Creso Pharma Performance Right.

Creso Pharma Performance Share means a performance share granted to the vendors (or their nominees) of the Kunna Acquisition or the Hemp Industries Acquisition.

Creso Pharma Performance Share Holder means a person who holds a Creso Pharma Performance Share.

Creso Pharma Prescribed Occurrence means the occurrence of any of the following on or after the date of this agreement:

- (a) Creso Pharma converts all or any of its shares into a larger or smaller number of shares (see section 254H of the Corporations Act);
- (b) any member of the Creso Pharma Group resolves to reduce its share capital in any way;
- (c) any member of the Creso Pharma Group:
 - (i) enters into a buy-back agreement; or
 - (ii) resolves to approve the terms of a buy-back agreement under subsections 257C(1) or 257D(1) of the Corporations Act;
- (d) any member of the Creso Pharma Group issues securities, or grants a performance right, or an option over its securities, or agrees to make such an issue or grant such a security, right or an option including under any secured loan or convertible note but excluding any issue or grant under:
 - (i) the valid exercise of a Creso Pharma Listed Option, a Creso Pharma Unlisted Option, a Creso Pharma Performance Share, a Creso Pharma Exchangeable Share or a Creso Pharma Performance Right on issue immediately before the date of this agreement; or
 - (ii) the Secured Loan Agreements;
- (e) any member of the Creso Pharma Group issues, or agrees to issue, convertible notes other than under any of the Secured Loan Agreements;
- (f) any member of the Creso Pharma Group disposes, or agrees to dispose, of the whole, or a substantial part, of its business or property;
- (g) any member of the Creso Pharma Group creates or agrees to create, any security interest over the whole, or a substantial part, of its business or property other than in respect of the Creso Pharma Loan Agreement or in the usual and ordinary course of business consistent with past practice;
- (h) an Insolvency Event occurs in relation to any member of the Creso Pharma Group;
- (i) Creso Pharma pays, declares, distributes or incurs a liability to make or pay a dividend, bonus or other share of its profits, income, capital or assets by way of dividend or other form of distribution;
- (j) any member of the Creso Pharma Group ceases, or threatens to cease to, carry on the business conducted as at the date of this agreement except in circumstances where this could not reasonably be expected to have a material adverse effect on the financial and operational performance or reputation of the Creso Pharma Group;
- (k) any member of the Creso Pharma Group directly or indirectly authorises, commits or agrees to take or announces any of the actions referred to in paragraphs (a) to (j) above insofar as it applies to the member of the Creso Pharma Group the subject of such direct or indirect authorisation, commitment, agreement or announcement;

provided that a Creso Pharma Prescribed Occurrence will not include any matter:

- (l) expressly required to be done or procured by the Creso Pharma Group under this agreement, the Share Scheme or the Option Scheme;
- (m) required by law or by an order of a court or Governmental Agency;
- (n) to the extent it is Fairly Disclosed in filings of Creso Pharma with the ASX in the 12 months prior to the date of this agreement;

- (o) to the extent it is Fairly Disclosed in the Creso Pharma Due Diligence Material; or
- (p) the undertaking of which PharmaCielo has previously approved in writing.

Creso Pharma Register means the register of shareholders and optionholders maintained by Creso Pharma under section 168(1) of the Corporations Act.

Creso Pharma Reimbursement Fee has the meaning given to that term in clause 15.4.

Creso Pharma Share means an issued fully paid ordinary share in the capital of Creso Pharma.

Creso Pharma Shareholder means each person who is registered in the Creso Pharma Register as a holder of Creso Pharma Shares.

Creso Pharma Unlisted Option means an option to acquire by way of issue one or more Creso Pharma Shares, which option is not listed for quotation on ASX.

Creso Pharma Unlisted Optionholder means each person who is registered in the Creso Pharma Register as a holder of Creso Pharma Unlisted Options.

Creso Pharma Warranties means the representations and warranties of Creso Pharma set out in clause 11.4.

Cut Off Date has the meaning given in clause 17.7(b).

Delivery Time means, in relation to the Second Court Date, 2 hours before the commencement of the hearing (or if the commencement of the hearing is adjourned, 2 hours before the commencement of the adjourned hearing), of the Court to approve the Share Scheme in accordance with section 411(4)(b) of the Corporations Act.

Effective means, when used in relation to the Share Scheme or the Option Scheme, the coming into effect, under section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to the Share Scheme or the Option Scheme (as relevant).

Effective Date means the date on which the Share Scheme or the Option Scheme (as relevant) becomes Effective.

End Date means:

- (a) 31 December 2019; or
- (b) such other date and time agreed in writing between PharmaCielo and Creso Pharma.

Exchangeable Share Terms means the terms of the Creso Pharma Exchangeable Shares dated 14 February 2018 and contained in Schedule 7 of the Mernova Acquisition Agreement.

Exclusivity Period means the period commencing on the date of this agreement and ending on the earliest of:

- (a) the End Date;
- (b) the Effective Date of the Share Scheme; and
- (c) the date this agreement is terminated in accordance with its terms.

Explanatory Booklet means the explanatory booklet to be prepared by Creso Pharma in respect of the Proposed Transaction in accordance with the terms of this agreement and to be dispatched to Creso Pharma Shareholders and Creso Pharma Listed Optionholders.

Financial Indebtedness means any debt or other monetary liability (whether actual or contingent) in respect of monies borrowed or raised or any financial accommodation including under or in respect of any:

- (a) bill, bond, debenture, note or similar instrument;
- (b) acceptance, endorsement or discounting arrangement;
- (c) guarantee;
- (d) finance or capital lease;

- (e) agreement for the deferral of a purchase price or other payment in relation to the acquisition of any asset or business;
- (f) agreement for the deferral of a purchase price or other payment in relation to the provision of services other than in the ordinary course of business of the Creso Pharma Group; or
- (g) obligation to deliver goods or provide services paid for in advance by any financier.

First Court Date means the date the Court first hears the application to order the convening of the Share Scheme Meeting and the Option Scheme Meeting under section 411(1) of the Corporations Act or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.

Governmental Agency means, whether domestic or foreign, any government or representative of a state or federal government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity and includes any minister, ASIC, ASX, the Takeovers Panel, TSXV and any regulatory organisation established under statute or any stock exchange.

Headcount Test means the requirement under section 411(4)(a)(ii)(A) of the Corporations Act that the resolution to approve the Share Scheme at the Share Scheme Meeting is passed by a majority in number of Creso Pharma Shareholders present and voting, either in person or by proxy.

Hemp Industries Acquisition means the acquisition by Creso Pharma of 100% of the shares in Hemp Industries sro, a company incorporated in Slovakia.

Implementation Date means, with respect to the Share Scheme or the Option Scheme, the later of:

- (a) the fifth Business Day following the Share Scheme Record Date or the Option Scheme Record Date (as relevant); or
- (b) such other Business Day as the parties agree.

Independent Expert means an expert, independent of the parties, engaged by Creso Pharma in good faith to prepare the Independent Expert's Report.

Independent Expert's Report means the report from the Independent Expert commissioned by Creso Pharma for inclusion in the Explanatory Booklet, which includes an opinion from the Independent Expert on whether:

- (a) the Share Scheme is in the best interest of Creso Pharma Shareholders; and
- (b) the Option Scheme is in the best interest of Creso Pharma Listed Optionholders,

and includes any update of that report by the Independent Expert.

Ineligible Foreign Securityholder means a Scheme Shareholder or a Scheme Optionholder whose address as shown in the Creso Pharma Register (as at the Share Scheme Record Date or the Option Scheme Record Date (as applicable)) is located outside of:

- (a) Australia and its external territories;
- (b) New Zealand; and
- (c) any other jurisdictions as may be agreed in writing by Creso Pharma and PharmaCielo,

(unless PharmaCielo is satisfied, acting reasonably, that it is permitted to allot and issue New PharmaCielo Shares to that Scheme Shareholder or Scheme Optionholder under the Share Scheme or Option Scheme (as relevant) by the laws of that place either unconditionally or after compliance with conditions that PharmaCielo in its sole discretion regards as acceptable and not unduly onerous or impracticable).

Insolvency Event means in relation to a person:

- (a) **insolvency official**: the appointment of a liquidator, provisional liquidator, administrator, statutory manager, controller, receiver, receiver and manager or other insolvency official (whether under an Australian law or a foreign law) to the person or to the whole or a

substantial part of the property or assets of the person and the action is not stayed, withdrawn or dismissed within 14 days;

- (b) **arrangements:** the entry by the person into a scheme of arrangement (other than the Share Scheme or the Option Scheme) or composition with its creditors or takes similar actions as a result of which the entity's assets are, or are proposed to be, submitted to the control of its creditors;
- (c) **winding up:** the calling of a meeting to consider a resolution to wind up the person (other than where the resolution is frivolous or cannot reasonably be considered to be likely to lead to the actual winding up of the person) or the making of an application or order for the winding up or deregistration of the person other than where the application or order (as the case may be) is set aside or withdrawn within 14 days;
- (d) **suspends payments:** the person suspends or threatens to suspend payment of its debts, or becomes unable to pay its debts, as and when they become due;
- (e) **ceasing business:** the person ceases or threatens to cease to carry on business;
- (f) **insolvency:** the person is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act or is otherwise presumed to be insolvent under the Corporations Act;
- (g) **creditor protection:** the entity seeks or obtains protection from its creditors under any statute or any other law;
- (h) **deregistration:** the person being deregistered as a company or otherwise dissolved;
- (i) **deed of company arrangement:** the person executing a deed of company arrangement;
- (j) **assets:** any attachment, distress, execution or other process is made or levied against any asset of the entity in excess of A\$1,000,000 and is not withdrawn, stayed or dismissed within 14 days;
- (k) **person as trustee or partner:** the person incurs a liability while acting or purporting to act as trustee (or co-trustee) or general partner of a trust or partnership (including a limited partnership) and the person is not entitled to be fully indemnified against the liability out of trust or partnership assets because of one or more of the following:
 - (i) a breach of trust or obligation as partner by the person;
 - (ii) the person acting outside the scope of its powers as trustee or partner;
 - (iii) a term of the trust or partnership denying, or limiting, the person's right to be indemnified against the liability;
 - (iv) the assets of the trust or partnership being insufficient to discharge the liability; or
- (l) **analogous events:** anything analogous to those set out in any of paragraphs (a) to (k) inclusive occurs in relation to the person under the laws of a foreign jurisdiction,

and a person shall be **Insolvent** if any event specified in paragraphs (a) to (l) inclusive occurs in respect of that person.

Interest Rate means the 90 day Bank Bill Swap Reference Rate as published as at the relevant due date for payment by the Australian Financial Markets Association.

Investigating Accountant means the accountant appointed by Creso Pharma in accordance with clause 8.1(d).

Investigating Accountant's Report means the report prepared by the Investigating Accountant for inclusion in the Explanatory Booklet.

Kunna Acquisition means the acquisition by Creso Pharma of 100% of the shares in Kunna Canada Limited, a company registered in Canada, and its wholly owned subsidiary Kunna S.A.S., a company registered in Colombia.

Listing Rules means the official listing rules of ASX as amended from time to time.

Material Contracts means the contracts agreed in a letter between Creso Pharma and PharmaCielo dated on or about the date of this agreement.

Mernova Acquisition means the acquisition by Creso Pharma of 100% of the shares in Mernova Medicinal Inc., a company registered in Canada.

Mernova Acquisition Agreement means the Binding Heads of Agreement between Creso Pharma, Mernova Medicinal Inc, William Fleming, Mary Fleming and the Fleming Family Trust dated 25 July 2017 (as amended).

Milestone 1 has the meaning given in the Mernova Acquisition Agreement.

Milestone 1 Exchangeable Shares means the 4,125,000 Creso Pharma Exchangeable Shares that have vested as required under the terms of the Support and Exchange Agreement and Exchangeable Share Terms due to Milestone 1 being achieved.

Milestone 2 has the meaning given in the Mernova Acquisition Agreement.

New PharmaCielo Shares means the new PharmaCielo Shares to be issued under the terms of the Share Scheme as Share Scheme Consideration or under the terms of the Option Scheme as Option Scheme Consideration.

Option Scheme means the proposed scheme of arrangement under Part 5.1 of the Corporations Act between Creso Pharma and Scheme Optionholders in respect of all Scheme Options, substantially in the form set out in Schedule 4 or in such other form as the parties agree in writing, subject to any alterations or conditions that are:

- (a) agreed to in writing by Creso Pharma and PharmaCielo, and approved by the Court; or
- (b) made or required by the Court under section 411(6) of the Corporations Act and agreed to by each party.

Option Scheme Consideration means the consideration to be provided to Scheme Optionholder for the cancellation of each Scheme Option being the number of New PharmaCielo Shares for every Scheme Option specified in the Option Scheme Consideration Ratio.

Option Scheme Consideration Ratio means 0.0185 New PharmaCielo Shares per Scheme Option.

Option Scheme Deed Poll means the deed poll to be executed by PharmaCielo prior to the First Court Date in relation to the Option Scheme, in the form set out in Schedule 5 or in such other form as is acceptable to Creso Pharma acting reasonably

Option Scheme Meeting means the meeting of the Creso Pharma Listed Optionholders ordered by the Court to be convened under section 411(1) of the Corporations Act to consider and vote on the Option Scheme and includes any meeting convened following any adjournment or postponement of that meeting.

Option Scheme Record Date means 7.00pm on the third Business Day (or such other Business Day as the parties agree in writing) following the Effective Date.

Permitted Security Interest means any of the following:

- (a) any lien, charge or other Security Interest arising by operation of law that arises in the ordinary course of business and not securing Financial Indebtedness;
- (b) any retention of title or conditional sale arrangement in connection with the acquisition of goods in the ordinary course of business;
- (c) a PPS Lease (as defined in the PPSA);
- (d) any security interest within the meaning of section 12(3) of the PPSA; and
- (e) any Security Interest approved in writing by PharmaCielo (such consent not to be unreasonably withheld or delayed in respect of any Security Interest granted in the ordinary course of Creso Pharma or any Creso Pharma Group Member's business).

PharmaCielo Board means the board of directors of PharmaCielo.

PharmaCielo Break Fee has the meaning given to that term in clause 16.3(a).

PharmaCielo Disclosure Letter means the letter so entitled from PharmaCielo provided to Creso Pharma on or prior to the execution of this agreement.

PharmaCielo Due Diligence Material means the written information disclosed by or on behalf of PharmaCielo (including management presentations and all written responses provided in response to written questions or requests for information) to Creso Pharma or any of its Authorised Persons prior to the date of this agreement, as evidenced conclusively in the PharmaCielo Disclosure Letter.

PharmaCielo Group means PharmaCielo and each of its Related Bodies Corporate (excluding, at any time, Creso Pharma and its Subsidiaries to the extent that Creso Pharma and its Subsidiaries are Subsidiaries of PharmaCielo at that time). A reference to a member of the **PharmaCielo Group** or a **PharmaCielo Group Member** is a reference to PharmaCielo or any such Related Bodies Corporate.

PharmaCielo Information means such information regarding PharmaCielo that is provided by or on behalf of PharmaCielo or any of its Advisers, to Creso Pharma or the Independent Expert for inclusion in the Explanatory Booklet (and that is specifically identified as such by PharmaCielo) and, for the avoidance of doubt, does not include the Creso Pharma Information, the Independent Expert's Report or the Investigating Accountant's Report.

PharmaCielo Material Adverse Change means an event, change, condition, matter, thing or circumstance that occurs, is announced or becomes known to Creso Pharma or the PharmaCielo Board (in each case whether or not it becomes public) after the date of this agreement which (in each case determined in accordance with Accounting Standards) has or could reasonably be expected to have the result that the business of the PharmaCielo Group is unable to be carried on in substantially the same manner as carried on at the date of this agreement, but does not include any event or circumstance:

- (a) required to be done or procured by PharmaCielo under this agreement, the Share Scheme or the Option Scheme;
- (b) which Creso Pharma has previously approved in writing;
- (c) to the extent it was Fairly Disclosed in the PharmaCielo Due Diligence Materials or in documents that were publicly available in the 12 months prior to the date of this agreement from public filings of PharmaCielo with public registers in Canada;
- (d) relating to costs and expenses incurred by PharmaCielo associated with the process for the Share Scheme and the Option Scheme, including all fees payable to external advisers of PharmaCielo, to the extent such amounts are Fairly Disclosed in the PharmaCielo Disclosure Letter;
- (e) comprising a change in any applicable law; or
- (f) relating to any material adverse change or major disruption to the existing financial markets, political or economic conditions of Canada or Colombia, excluding any events, changes, conditions, matters, things or circumstances which have a disproportionate effect on the PharmaCielo Group as compared to other participants in the industries in which the PharmaCielo Group operates.

PharmaCielo Nominee has the meaning given to that term in clause 2(c).

PharmaCielo Parties means each member of the PharmaCielo Group and its respective Related Bodies Corporate and Authorised Persons.

PharmaCielo Prescribed Occurrence means the occurrence of any of the following on or after the date of this agreement:

- (a) PharmaCielo converts all or any of its shares into a larger or smaller number of shares;
- (b) PharmaCielo resolves to reduce its share capital in any way;
- (c) PharmaCielo:

- (i) enters into a buy-back agreement; or
- (ii) resolves to approve the terms of a buy-back agreement;
- (d) any member of the PharmaCielo Group issues securities, warrants, any option over its securities, or agrees to make such an issue or grant such a security, right or an option other than under the exercise of a warrant or option on issue immediately before the date of this agreement;
- (e) any member of the PharmaCielo Group disposes, or agrees to dispose, of the whole, or a substantial part, of its business or property;
- (f) PharmaCielo pays, declares, distributes or incurs a liability to make or pay a dividend, bonus or other share of its profits, income, capital or assets by way of dividend or other form of distribution;
- (g) an Insolvency Event occurs in relation to PharmaCielo;
- (h) any member of the PharmaCielo Group ceases, or threatens to cease to, carry on the business conducted as at the date of this agreement, except in circumstances where this could not be reasonably expected to have a material adverse effect on the financial and operational performance or reputation of the PharmaCielo Group;
- (i) any member of the PharmaCielo Group directly or indirectly authorises, commits or agrees to take or announces any of the actions referred to in paragraphs (a) to (h) above insofar as it applies to the member of the PharmaCielo Group the subject of such direct or indirect authorisation, commitment, agreement or announcement;

provided that a PharmaCielo Prescribed Occurrence will not include any matter:

- (j) expressly required to be done or procured by the PharmaCielo Group under this agreement, the Share Scheme or the Option Scheme;
- (k) required by law or by an order of a court or Governmental Agency;
- (l) to the extent it is Fairly Disclosed in PharmaCielo's public filings on SEDAR in the 12 months prior to the date of this agreement;
- (m) to the extent it is Fairly Disclosed in the PharmaCielo Due Diligence Material; or
- (n) the undertaking of which Creso Pharma has previously approved in writing.

PharmaCielo Shares means an issued fully paid common share in the capital of PharmaCielo.

PharmaCielo Warranties means the representations and warranties of PharmaCielo set out in clause 11.1.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Proposed Transaction means:

- (a) the proposed acquisition by PharmaCielo in accordance with the terms and conditions of this agreement, of all of the Creso Pharma Shares through the implementation of the Share Scheme and all of the Creso Pharma Listed Options through the implementation of the Option Scheme; and
- (b) all associated transactions and steps contemplated by this agreement.

Regulatory Approvals means the approvals set out in clause 3.1(a) and 3.3(a).

Related Body Corporate of a person means a related body corporate of that person under section 50 of the Corporations Act and includes any body corporate that would be a related body corporate if section 48(2) of the Corporations Act was omitted.

Relevant Interest has the meaning given in the Corporations Act.

RG 60 means Regulatory Guide 60 issued by ASIC.

Sanctioned Person means, at any time:

- (a) any person listed in any sanctions-related list of designated persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the US

Department of State, the United Nations Security Council, the European Union, any Member State of the European Union, the United Kingdom, Canada, or Australia;

- (b) any person operating organised or resided in a US Sanctioned Country (including Iran, Syria, Sudan, Cuba, North Korea, or the Crimea Region of Ukraine); or

any person owned or controlled by any such person.

Scheme Option means a Creso Pharma Listed Option on issue as at the Option Scheme Record Date.

Scheme Optionholder means a person who holds one or more Scheme Options.

Scheme Share means a Share on issue as at the Share Scheme Record Date.

Scheme Shareholder means a person who holds one or more Scheme Shares.

Second Court Date means the first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Share Scheme and/or the Option Scheme is heard or scheduled to be heard or, if the application is adjourned for any reason, the date on which the adjourned application is heard or scheduled to be heard.

Secured Loan Agreements mean the loan agreements entered into between Creso Pharma and the secured lenders who provided loans totalling \$5,350,000 to Creso Pharma (as announced by Creso Pharma on ASX on 11 April 2019).

Security Interest means any mortgage, charge, pledge, lien, assignment or other security interest or any other arrangement (including a right of set off or combination) entered into for the purpose of conferring a priority, including any security interest as defined in section 51A of the Corporations Act or in the PPSA.

SEDAR means the System for Electronic Document Analysis and Retrieval as available at www.sedar.com and PharmaCielo's profile thereon.

Senior Manager means an employee of any member of the Creso Pharma Group reporting directly to the managing director, chief financial officer or group chief operating officer of Creso Pharma.

Share Registry means Automatic Share Registry of Level 2, 267 St Georges Terrace, Perth WA 6000 or any replacement provider of share registry services to Creso Pharma.

Share Scheme means the proposed scheme of arrangement under Part 5.1 of the Corporations Act between Creso Pharma and Scheme Shareholders in respect of all Scheme Shares, substantially in the form set out in Schedule 2 or in such other form as the parties agree in writing, subject to any alterations or conditions that are:

- (a) agreed to in writing by Creso Pharma and PharmaCielo, and approved by the Court; or
- (b) made or required by the Court under section 411(6) of the Corporations Act and agreed to by each party.

Share Scheme Consideration means the consideration to be provided to Scheme Shareholders under the terms of the Share Scheme (subject to clauses 4.4 and 4.5), being the number of New PharmaCielo Shares for every Scheme Share specified in the Share Scheme Consideration Ratio.

Share Scheme Consideration Ratio means 0.0775 New PharmaCielo Shares per Scheme Share.

Share Scheme Deed Poll means the deed poll to be executed by PharmaCielo prior to the First Court Date in relation to the Share Scheme, in the form set out in Schedule 3 or in such other form as is acceptable to Creso Pharma acting reasonably.

Share Scheme Meeting means the meeting of Creso Pharma Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act to consider and vote on the Share Scheme and includes any meeting convened following any adjournment or postponement of that meeting.

Share Scheme Record Date means 7.00pm on the third Business Day (or such other Business Day as the parties agree in writing) following the Effective Date.

Share Splitting means the splitting by a holder of Creso Pharma Shares into two or more parcels of Creso Pharma Shares whether or not it results in any change in beneficial ownership of the Creso Pharma Shares.

Small Securityholder means a Scheme Shareholder or Scheme Optionholder who is entitled to receive New PharmaCielo Shares equal to a value of less than \$500 (or such other amount as may be agreed between PharmaCielo and Creso Pharma in writing) on the Share Scheme Record Date or the Option Scheme Record Date (as applicable).

Stock means all stocks of raw materials, materials used in manufacture, packaging materials, finished goods, goods under manufacture, work in progress, components, consumables and other stock in trade of the Creso Pharma Group business, including goods in transit and stock ordered by and paid for by any Creso Pharma Group member before the Implementation Date but not received by the Implementation Date.

Subsidiary has the meaning given to that term in section 46 of the Corporations Act.

Superior Proposal means a bona fide Competing Proposal (in relation to which there has been no contravention of clause 17 by Creso Pharma) which the Creso Pharma Board, acting in good faith in the interests of the Creso Pharma Shareholders, and after taking written advice from its legal and financial advisers, determines:

- (a) is reasonably capable of being valued and completed taking into account all aspects of the Competing Proposal, including its conditions, the identity, reputation and financial credentials of the person making such proposal, and all relevant legal, regulatory and financial matters; and
- (b) would be more favourable to Creso Pharma Shareholders than the latest proposal provided by a member of the PharmaCielo Group to Creso Pharma, taking into account all aspects of the Competing Proposal and the latest proposal provided by a member of the PharmaCielo Group to Creso Pharma, including the identity, reputation and financial credentials of the person making such proposal, legal, regulatory and financial matters, certainty and any other matters affecting the probability of the relevant proposal being completed in accordance with its terms.

Support and Exchange Agreement means the support and exchange agreement between Creso Pharma, Creso Canada Limited, Creso Canada Corporate Limited, William Fleming and Marybeth Fleming dated 14 February 2018.

Takeovers Panel means the Takeovers Panel constituted under the *Australian Securities and Investments Commission Act 2001* (Cth).

Timetable means the indicative timetable in relation to the Proposed Transaction set out in Schedule 1 with such modifications as may be agreed in writing by the parties.

TSXV means the TSX Venture Exchange.

Voting Power has the meaning given in section 610 of the Corporations Act.

1.2 Interpretation

In this agreement, except where the context otherwise requires:

- (a) the singular includes the plural, and the converse also applies;
- (b) gender includes other genders;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this agreement, and a reference to this agreement includes any schedule or annexure;
- (e) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;

- (f) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (g) a reference to **C\$** is to Canadian currency;
- (h) a reference to time is to Melbourne, Australia time;
- (i) a reference to a party is to a party to this agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (j) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (k) a reference to legislation or to a provision of legislation (including a listing rule or operating rule of a financial market or of a clearing and settlement facility) includes a modification or re enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (l) unless otherwise defined, a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (m) a reference to conduct includes an omission, statement or undertaking, whether or not in writing;
- (n) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (o) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it;
- (p) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (q) a reference to **Fairly Disclosed** means disclosed to a party or any of its Authorised Persons to a sufficient extent and in sufficient detail so as to enable a reasonable person who is experienced in transactions similar to the Proposed Transaction and experienced in the medicinal cannabis or cannabidiol derived medicine business to identify the nature and scope of the relevant matter, event or circumstance.

1.3 Headings

Headings are for ease of reference only and do not affect interpretation.

1.4 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

1.5 Consents or approvals

If the doing of any act, matter or thing under this agreement is dependent on the consent or approval of a party or is within the discretion of a party, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion unless provided otherwise.

1.6 Listing requirements included as law

A listing rule or operating rule of a financial market or of a clearing and settlement facility will be regarded as a law, and a reference to such a rule is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party.

1.7 Reasonable endeavours

Any provision of this agreement which requires a party to use reasonable endeavours or best endeavours to procure that something is performed or occurs or does not occur does not include any obligation:

- (a) to pay any money or provide any financial compensation, valuable consideration or any other incentive to or for the benefit of any person except for payment of any applicable fee for the lodgement or filing of any relevant application with any Governmental Agency; or
 - (b) to commence any legal action or proceeding against any person,
- except where that provision specifies otherwise.

2. Agreement to propose Share Scheme and Option Scheme

- (a) Creso Pharma agrees to propose and implement the Share Scheme and the Option Scheme on and subject to the terms and conditions of this agreement, and substantially in accordance with the Timetable.
- (b) Subject to clauses 2(c) and 2(d), PharmaCielo agrees to assist Creso Pharma in proposing and implementing the Share Scheme and the Option Scheme on and subject to the terms and conditions of this agreement, and substantially in accordance with the Timetable.
- (c) PharmaCielo expects that the entity that acquires the Scheme Shares under the Share Scheme will be a wholly-owned Subsidiary of PharmaCielo incorporated in Australia, but may nominate any wholly-owned Subsidiary of PharmaCielo (**PharmaCielo Nominee**) to acquire the Scheme Shares by giving written notice to Creso Pharma on or before the date that is 5 Business Days before the First Court Date.
- (d) If PharmaCielo nominates the PharmaCielo Nominee to acquire the Scheme Shares under the Share Scheme, then:
 - (i) references in this agreement to PharmaCielo are to be read as references to the PharmaCielo Nominee;
 - (ii) PharmaCielo must procure that the PharmaCielo Nominee complies with the obligations of PharmaCielo under this agreement and under the Share Scheme and enter into a deed of accession on terms acceptable to Creso Pharma, acting reasonably; and
 - (iii) any such nomination will not relieve PharmaCielo of its obligations under this agreement, including the obligation to provide (or procure the provision by the PharmaCielo Nominee of) the Share Scheme Consideration in accordance with the terms of the Share Scheme and the Option Scheme Consideration in accordance with the terms of the Option Scheme.

3. Conditions precedent and pre-implementation steps

3.1 Conditions to Share Scheme

Subject to this clause 3, the Share Scheme will not become Effective, and the respective obligations of the parties in relation to the implementation of the Share Scheme will not be binding, until each of the following conditions precedent is satisfied or waived to the extent and in the manner set out in this clause 3:

- (a) **(Regulatory Approvals):**
 - (i) **(ASIC and ASX)** before the Delivery Time on the Second Court Date, ASIC and ASX issue or provide such consents, waivers, relief or approvals as are necessary or which Creso Pharma and PharmaCielo agree are desirable to implement the Share Scheme (noting that if such consents waivers/and/or approvals are subject to conditions those conditions must be acceptable to Creso Pharma and

PharmaCielo (both acting reasonably)) and such consent, approval or other act has not been withdrawn or revoked before the Delivery Time on the Second Court Date;

- (ii) **(Other Governmental Authorities)** before the Delivery Time on the Second Court Date, the relevant Governmental Agency issue or provide such consents, waivers, approvals which Creso Pharma and PharmaCielo consider are necessary or desirable to implement the Share Scheme (noting that if such consents waivers/and/or approvals are subject to conditions those conditions must be acceptable to Creso Pharma and PharmaCielo (both acting reasonably)) and such consent, approval or other act has not been withdrawn or revoked before the Delivery Time on the Second Court Date;
- (b) **(TSXV Listing)** TSXV conditionally accepting PharmaCielo to close the Proposed Transaction and approving the conditional listing of the New PharmaCielo Shares, subject to any conditions that TSXV may reasonably require, including customary listing conditions relating to the Share Scheme becoming Effective;
- (c) **(No Creso Pharma Prescribed Occurrence)** no Creso Pharma Prescribed Occurrence occurs between the date of this agreement and the Delivery Time on the Second Court Date;
- (d) **(No PharmaCielo Prescribed Occurrence)** no PharmaCielo Prescribed Occurrence occurs between the date of this agreement and the Delivery Time on the Second Court Date;
- (e) **(Creso Pharma Warranties)** the Creso Pharma Warranties being true and correct in all material respects on the date of this agreement and at the Delivery Time on the Second Court Date;
- (f) **(PharmaCielo Warranties)** the PharmaCielo Warranties being true and correct in all material respects on the date of this agreement and at the Delivery Time on the Second Court Date;
- (g) **(Shareholder approval)** the Share Scheme is approved by Creso Pharma Shareholders at the Share Scheme Meeting by the majorities required under section 411(4)(a)(ii) of the Corporations Act;
- (h) **(Creso Pharma Convertible Securities):**
 - (i) before or at the Delivery Time, Creso Pharma has complied with its obligations under clause 6.1 in relation to the Creso Pharma Performance Rights, the Creso Pharma Unlisted Options, the Creso Pharma Exchangeable Shares and the Creso Pharma Performance Shares;
 - (ii) before the Delivery Time, legally binding arrangements are in place so that there will be no Creso Pharma Performance Rights, Creso Pharma Unlisted Options (other than the Creso Pharma Unlisted Options issued under tranche CPHOPT3) and Creso Pharma Performance Shares in existence immediately prior to the Share Scheme Record Date; and
 - (iii) before the Delivery Time, legally binding arrangements are in place in relation to the Creso Pharma Exchangeable Shares in respect of the matters set out in clause 6.4.
- (i) **(Court approval)** the Share Scheme is approved by the Court in accordance with section 411(4)(b) of the Corporations Act either unconditionally or on conditions that do not impose unduly onerous obligations upon either party (acting reasonably);
- (j) **(No Creso Pharma Material Adverse Change)** no Creso Pharma Material Adverse Change occurs between the date of this agreement and the Delivery Time on the Second Court Date;
- (k) **(No PharmaCielo Material Adverse Change)** no PharmaCielo Material Adverse Change occurs between the date of this agreement and the Delivery Time on the Second Court Date;

- (l) **(Third party consents)** all consents, approvals or waivers of rights by parties other than Creso Pharma under any Material Contracts that in the reasonable opinion of PharmaCielo and Creso Pharma are necessary or desirable are obtained on terms acceptable to both PharmaCielo and Creso Pharma acting reasonably;
- (m) **(Restraints)**: no temporary restraining order, preliminary or permanent injunction or other order including cease trade orders, in each case issued by a court of competent jurisdiction or securities regulatory authority in Australia in a proceeding brought by a Governmental Agency in either Australia, Canada, Switzerland, Colombia or Israel preventing or delaying the Proposed Transaction, unless such order or injunction has been disposed of to the reasonable satisfaction of Creso Pharma and PharmaCielo acting reasonably and in good faith, is in effect at the Delivery Time on the Second Court Date;
- (n) **(Creso Pharma Loan Agreement)**: PharmaCielo has not defaulted in payment or making available the relevant funds under the Creso Pharma Loan Agreement other than where this is due to the conditions precedent to drawdown under the Creso Pharma Loan Agreement not being satisfied; and
- (o) **(Conversion of Secured Loan Agreements)**: before the Delivery Time, in relation to the Secured Loan Agreements:
 - (i) all Secured Loan Agreements have been converted into convertible notes (excluding PharmaCielo) and as a consequence;
 - (A) all Loans provided by those lenders have been deemed to be fully satisfied and discharged, in accordance with clause 4.1(b) of the Loan Conditions (as defined in the Secured Loan Agreements); and
 - (B) the Early Repayment Fee (as defined in the Secured Loan Agreements) no longer applies in relation to those lenders,
 - (ii) all holders of those convertible notes (excluding PharmaCielo) have irrevocably exercised their conversion right in respect of all of their convertible notes to receive Creso Pharma Shares and Creso Pharma Listed Options,

in each case on terms acceptable to PharmaCielo (acting reasonably).

3.2 Share Scheme - Benefit and waiver of conditions precedent

- (a) The Conditions in clauses 3.1(a) (Regulatory Approvals), 3.1(b) (TSXV Listing), and 3.1(m) (Restraints) are for the benefit of each party and any breach or non-fulfilment of them may only be waived (if capable of waiver) with the written consent of both parties, which consent either party may give or withhold in its absolute discretion.
- (b) The Conditions in clauses 3.1(c) (No Creso Pharma Prescribed Occurrences), 3.1(e) (Creso Pharma Warranties), 3.1(h) (Creso Pharma Convertible Securities), 3.1(j) (No Creso Pharma Material Adverse Change), 3.1(l) (Third party consents), and 3.1(o) (Conversion of Secured Loan Agreements) are for the sole benefit of PharmaCielo and any breach or non-fulfilment of them may only be waived by PharmaCielo giving its written consent.
- (c) The Conditions in clauses 3.1(d) (No PharmaCielo Prescribed Occurrences), 3.1(f) (PharmaCielo Warranties), 3.1(k) (No PharmaCielo Material Adverse Change) and 3.1(n) (Creso Pharma Loan Agreement) are for the sole benefit of Creso Pharma and any breach or non-fulfilment of them may only be waived by Creso Pharma giving its written consent.
- (d) The Conditions in clauses 3.1(g) (Shareholder approval) and 3.1(i) (Court approval) cannot be waived.
- (e) A party entitled to waive a Condition under this clause 3.2 may do so in its absolute discretion. Any waiver of a Condition by a party for whose benefit the condition applies must take place on or prior to the Delivery Time on the Second Court Date.
- (f) If a party waives the breach or non-fulfilment of any of the Conditions in clause 3.1, that waiver will not preclude it from suing the other party for any breach of this agreement including a breach that resulted in the non-fulfilment of the Condition that was waived.

3.3 Conditions to Option Scheme

Subject to this clause 3, the Option Scheme will not become Effective, and the respective obligations of the parties in relation to the implementation of the Option Scheme will not be binding, until each of the following conditions precedent is satisfied or waived to the extent and in the manner set out in this clause 3:

- (a) **(Regulatory Approvals):**
 - (i) **(ASIC and ASX)** before the Delivery Time on the Second Court Date, ASIC and ASX issue or provide such consents, waivers, relief or approvals as are necessary or which Creso Pharma and PharmaCielo agree are desirable to implement the Option Scheme and such consent, approval or other act has not been withdrawn or revoked before the Delivery Time on the Second Court Date;
 - (ii) **(Other Governmental Authorities)** before the Delivery Time on the Second Court Date, the relevant Governmental Agency issue or provide such consents, waivers, approvals which Creso Pharma and PharmaCielo consider are necessary or desirable to implement the Option Scheme (noting that if such consents waivers/and/or approvals are subject to conditions those conditions must be acceptable to Creso Pharma and PharmaCielo (both acting reasonably)) and such consent, approval or other act has not been withdrawn or revoked before the Delivery Time on the Second Court Date;
- (b) **(TSXV Listing):** TSXV conditionally accepting PharmaCielo to close the Proposed Transaction and approving the conditional listing of the New PharmaCielo Shares, subject to any conditions that TSXV may reasonably require, including customary listing conditions and conditions relating to the Option Scheme becoming Effective;
- (c) **(Share Scheme):** the Share Scheme becoming Effective;
- (d) **(Optionholder approval)** the Option Scheme is approved by Creso Pharma Listed Optionholders at the Option Scheme Meeting by the majority required under section 411(4)(a)(i) of the Corporations Act; and
- (e) **(Court approval)** the Option Scheme is approved by the Court in accordance with section 411(4)(b) of the Corporations Act either unconditionally or on conditions that do not impose unduly onerous obligations upon either party (acting reasonably).

3.4 Option Scheme - Benefit and waiver of conditions precedent

- (a) The Conditions in clauses 3.1(a) (Regulatory Approvals) and 3.3(b) (TSXV quotation) are for the benefit of each party and any breach or non-fulfilment of them may only be waived (if capable of waiver) with the written consent of both parties, which consent either party may give or withhold in its absolute discretion.
- (b) The Conditions in clauses 3.3(c) (Share Scheme Effective), 3.3(d) (Optionholder approval) and 3.3(e) (Court approval) cannot be waived.
- (c) A party entitled to waive a Condition under this clause 3.4 may do so in its absolute discretion. Any waiver of a Condition by a party for whose benefit the condition applies must take place on or prior to the Delivery Time on the Second Court Date.
- (d) If a party waives the breach or non-fulfilment of any of the Conditions in clause 3.4, that waiver will not preclude it from suing the other party for any breach of this agreement including a breach that resulted in the non-fulfilment of the Condition that was waived

3.5 Reasonable endeavours

- (a) Creso Pharma and PharmaCielo will use their respective reasonable endeavours to procure that each of the Conditions (as applicable) is satisfied as soon as reasonably practicable after the date of this agreement or continues to be satisfied at all times until the last time they are to be satisfied (as the case may require).

- (b) Without limiting clauses 3.6 and 3.7 below, each of Creso Pharma and PharmaCielo must:
 - (i) consult and co-operate fully with the other party in relation to the satisfaction of the Conditions, including in relation to all material communications with any Governmental Agency in relation to Regulatory Approvals;
 - (ii) promptly apply for all relevant Regulatory Approvals and provide the other party with a copy of all applications for Regulatory Approvals and all material communications with any Governmental Agency in relation to Regulatory Approvals;
 - (iii) take all the steps for which it is responsible as part of the Regulatory Approvals process;
 - (iv) respond to all requests for information in respect of the applications for Regulatory Approvals at the earliest practicable time; and
 - (v) provide the other with all information and assistance reasonably requested in connection with the applications for Regulatory Approvals,
 provided that:
 - (vi) the party applying for a Regulatory Approval may withhold or redact information or documents from the other party if and to the extent that they are either confidential to a third party or commercially sensitive and confidential to the applicant; and
 - (vii) neither party is required to disclose materially commercially sensitive information to the other party.

3.6 Notifications

Each of PharmaCielo and Creso Pharma must:

- (a) keep the other promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions;
- (b) promptly notify the other in writing if it becomes aware that any Condition has been satisfied; and
- (c) promptly notify the other in writing if it becomes aware that any Condition is or has become incapable of being satisfied (having regard to the respective obligations of each party under clause 3.5).

3.7 Certificate

- (a) At or before the hearing on the Second Court Date, in respect of the Share Scheme:
 - (i) PharmaCielo and Creso Pharma will provide a joint certificate to the Court confirming whether or not the Conditions set out in clauses 3.1(a) (Regulatory Approvals), 3.1(b) (TSXV quotation) and 3.1(m) (Restraints) have been satisfied or waived in accordance with the terms of this agreement;
 - (ii) Creso Pharma will provide a certificate to the Court confirming whether or not the Conditions set out in clauses 3.1(c) (No Creso Pharma Prescribed Occurrences), 3.1(e) (Creso Pharma Warranties), 3.1(g) (Shareholder approval), 3.1(h) (Creso Pharma Convertible Securities), 3.1(j) (No Creso Pharma Material Adverse Change), 3.1(l) (Third party consents), and 3.1(o) (Conversion of Secured Loan Agreements) have been satisfied or waived in accordance with the terms of this agreement;
 - (iii) PharmaCielo will provide a certificate to the Court confirming whether or not the Conditions set out in clauses 3.1(d) (No PharmaCielo Prescribed Occurrences), 3.1(f) (PharmaCielo Warranties), 3.1(k) (No PharmaCielo Material Adverse Change) and 3.1(n) (Creso Pharma Loan Agreement) have been satisfied or waived in accordance with the terms of this agreement;
 - (iv) Creso Pharma will provide a certificate to PharmaCielo confirming whether or not:

- (A) Creso Pharma has breached any of its obligations under this agreement (including a breach of a representation or warranty), and if it has, giving details of such breaches; and
- (B) any Creso Pharma Material Adverse Change has occurred and, if it has, giving details of each Creso Pharma Material Adverse Change; and
- (v) PharmaCielo will provide a certificate to Creso Pharma confirming whether or not:
 - (A) PharmaCielo has breached any of its obligations under this agreement (including a breach of a representation or warranty), and if it has, giving details of such breaches; and
 - (B) any PharmaCielo Material Adverse Change has occurred and, if it has, giving details of each PharmaCielo Material Adverse Change.
- (b) At or before the hearing on the Second Court Date, in respect of the Option Scheme:
 - (i) PharmaCielo and Creso Pharma will provide a joint certificate to the Court confirming whether or not the Conditions set out in clauses 3.3(a) (Regulatory Approvals) and 3.3(b) (TSXV quotation) have been satisfied or waived in accordance with the terms of this agreement; and
 - (ii) Creso Pharma will provide a certificate to the Court confirming whether or not the Condition set out in clause 3.3(d) (Optionholder approval), has been satisfied

3.8 Share Scheme voted down because of Headcount Test

If the Share Scheme is not approved by Creso Pharma Shareholders at the Share Scheme Meeting by reason only of the non-satisfaction of the Headcount Test and Creso Pharma or PharmaCielo considers, acting reasonably, that Share Splitting or some abusive or improper conduct may have caused or contributed to the Headcount Test not having been satisfied then Creso Pharma must:

- (a) apply for an order of the Court contemplated by section 411(4)(a)(ii)(A) of the Corporations Act to disregard the Headcount Test and seek Court approval of the Share Scheme under section 411(4)(b) of the Corporations Act, notwithstanding that the Headcount Test has not been satisfied; and
- (b) make such submissions to the Court and file such evidence as counsel engaged by Creso Pharma to represent it in Court proceedings related to the Share Scheme, in consultation with PharmaCielo, considers is reasonably required to seek to persuade the Court to exercise its discretion under section 411(4)(a)(ii)(A) of the Corporations Act by making an order to disregard the Headcount Test.

3.9 Conditions not capable of being fulfilled

- (a) If:
 - (i) any Condition relating to the Share Scheme is not satisfied or (where capable of waiver) waived by the date specified in this agreement for its satisfaction (or an event occurs which would or does prevent a condition precedent being satisfied by the date specified in this agreement);
 - (ii) a circumstance occurs with the result that a Condition relating to the Share Scheme is not capable of being fulfilled and, if the Condition is able to be waived by a party under clause 3.2 the party does not waive the Condition within 5 Business Days after the occurrence of the circumstance; or
 - (iii) it becomes more likely than not that the Share Scheme does not become Effective by the End Date,

and neither of the following has occurred:

 - (iv) the Independent Expert opines to the effect that the Share Scheme is not in the best interest of Creso Pharma Shareholders; or
 - (v) a Superior Proposal has been publicly announced,

then Creso Pharma and PharmaCielo must consult in good faith with a view to determining whether:

- (vi) the Share Scheme may proceed by way of alternative means or methods;
 - (vii) to extend the relevant time or date for satisfaction of the Condition;
 - (viii) to change the date of the application to be made to the Court for orders under section 411(4)(b) of the Corporations Act approving the Share Scheme or adjourning that application (as applicable) to another date agreed by the parties; or
 - (ix) to extend the End Date.
- (b) Subject to clause 3.9(c), if a Condition becomes incapable of being satisfied before the End Date and Creso Pharma and PharmaCielo are unable to reach agreement under clause 3.9(a) within 10 Business Days of the date on which they both become aware that the Condition has become incapable of being satisfied (or, if earlier, by the Delivery Time on the Second Court Date), then unless the relevant Condition (where capable of waiver) is waived:
- (i) in relation to the Conditions in clauses 3.1(a) (Regulatory Approvals), 3.1(b) (TSXV quotation), 3.1(g) (Shareholder approval) and 3.1(m) (Restrictions), either PharmaCielo or Creso Pharma may terminate this agreement by giving the other notice without any liability to any party by reason of that termination alone;
 - (ii) in relation to the Conditions in clauses 3.1(b) (No Creso Pharma Prescribed Occurrences), 3.1(e) (Creso Pharma Warranties), 3.1(h) (Creso Pharma Convertible Securities), 3.1(j) (No Creso Pharma Material Adverse Change), 3.1(l) (Third party consents), and 3.1(o) (Conversion of Secured Loan Agreements), PharmaCielo may terminate this agreement by giving Creso Pharma notice without any liability to any party by reason of that termination alone; and
 - (iii) in relation to the Conditions in 3.1(d) (No PharmaCielo Prescribed Occurrences), 3.1(f) (PharmaCielo Warranties), 3.1(k) (No PharmaCielo Material Adverse Change) and 3.1(n) (Creso Pharma Loan Agreement), Creso Pharma may terminate this agreement by giving PharmaCielo notice without any liability to any other party by reason of that termination alone.
- (c) A party will not be entitled to terminate this agreement under clause 3.9(b) if the relevant Condition has not been satisfied as a result of:
- (i) a breach of this agreement by that party; or
 - (ii) a deliberate act or omission of that party which either alone or together with other circumstances prevents that Condition being satisfied.

3.10 Interpretation

For the purposes of this clause 3, a Condition will be incapable of satisfaction, or incapable of being fulfilled if:

- (a) in the case of a Condition relating to a Regulatory Approval – the relevant Governmental Agency makes or has made a final adverse determination in writing to the effect that it will not provide the Regulatory Approval; and
- (b) in all other cases – there is an act, failure to act or occurrence that will prevent the Condition being satisfied by the End Date (and the breach or non-fulfilment that would otherwise have occurred has not already been waived in accordance with this agreement).

4. Share Scheme structure

4.1 Share Scheme

- (a) Creso Pharma must, as soon as reasonably practicable after the date of this agreement and substantially in compliance with the Timetable, propose the Share Scheme under which, subject to the Share Scheme becoming Effective, all of the Scheme Shares will be

transferred to PharmaCielo and the Scheme Shareholders will be entitled to receive, for each Scheme Share held at the Share Scheme Record Date, the Share Scheme Consideration.

- (b) Creso Pharma must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Share Scheme without the prior written consent of PharmaCielo.

4.2 Share Scheme Consideration

- (a) PharmaCielo covenants in favour of Creso Pharma (in Creso Pharma's own right and separately as trustee for each Scheme Shareholder) that, in consideration of the transfer to PharmaCielo of the Scheme Shares under the terms of the Share Scheme, on the Implementation Date, PharmaCielo will:
 - (i) accept that transfer; and
 - (ii) provide each Scheme Shareholder the Share Scheme Consideration, in accordance with the Share Scheme.
- (b) Subject to clauses 4.4 and 4.5 and to the Share Scheme becoming Effective, at 10.00am on the Implementation Date, the transactions which form part of the Share Scheme will be implemented as follows:
 - (i) all existing Scheme Shares at the Share Scheme Record Date will be transferred to PharmaCielo or a wholly-owned Subsidiary of PharmaCielo; and
 - (ii) in exchange, each Scheme Shareholder will receive the Share Scheme Consideration for each Scheme Share held by that Scheme Shareholder at the Share Scheme Record Date, which is to be issued in the manner set out in clause 4.3.
- (c) In order to facilitate the provision of the Share Scheme Consideration, Creso Pharma must provide, or procure the provision of, to PharmaCielo a complete copy of the Creso Pharma Register as at the Share Scheme Record Date (which must include the name, registered address and registered holding of each Scheme Shareholder as at the Share Scheme Record Date), within one Business Day after the Share Scheme Record Date. The details and information to be provided under this clause must be provided in such form as PharmaCielo or PharmaCielo's share registry may reasonably require, as notified to Creso Pharma by PharmaCielo prior to the Share Scheme Record Date.

4.3 Allotment and issue of New PharmaCielo Shares

Subject to clauses 4.4 and 4.5 and to the Share Scheme becoming Effective, PharmaCielo must:

- (a) allot and issue the New PharmaCielo Shares to Scheme Shareholders in accordance with the Share Scheme on terms such that each New PharmaCielo Share will rank equally in all respects with each existing PharmaCielo Share;
- (b) do everything reasonably necessary to ensure that the New PharmaCielo Shares are listed for trading on TSXV and that trading in the New PharmaCielo Shares commences as soon as practicable after the Effective Date; and
- (c) ensure that on issue, each New PharmaCielo Share will be fully paid and free from any mortgage, charge, lien, encumbrance or other Security Interest.

4.4 Ineligible Foreign Securityholders

Unless PharmaCielo is satisfied that the laws of an Ineligible Foreign Securityholder's country of residence (as shown in the Creso Pharma Register) permit the issue of New PharmaCielo Shares to the Ineligible Foreign Securityholder either unconditionally or after compliance with terms which PharmaCielo reasonably regards as acceptable and practical:

- (a) PharmaCielo will be under no obligation under the Share Scheme to issue, and will not issue, any New PharmaCielo Shares to Ineligible Foreign Securityholders, and instead will issue the New PharmaCielo Shares that would otherwise have been issued to the Ineligible Foreign Securityholders to a nominee appointed by PharmaCielo;

- (b) PharmaCielo will procure that as soon as reasonably practicable after the Implementation Date, the nominee sell those New PharmaCielo Shares issued to the nominee on-market in such manner, at such price and on such other terms as the nominee determines in good faith;
- (c) promptly after the last sale of those New PharmaCielo Shares, PharmaCielo will procure that the nominee pays the net proceeds from that sale (after deducting any applicable brokerage, stamp duty and other selling costs, taxes and charges) to PharmaCielo; and
- (d) PharmaCielo will then remit the proceeds it receives from the nominee to each Ineligible Foreign Securityholder in accordance with their entitlement by either:
 - (i) dispatching, or procuring the dispatch, to that Ineligible Foreign Securityholder by prepaid post to that Ineligible Foreign Securityholder's registered address (at the Share Scheme Record Date), a cheque in the name of that Ineligible Foreign Securityholder; or
 - (ii) making a deposit in an account with any ADI (as defined in the Banking Act 1959 (Cth)) in Australia notified by that Ineligible Foreign Securityholder to Creso Pharma (or the Share Registry) and recorded in or for the purposes of the Creso Pharma Register at the Record Date,

for the relevant amount, with that amount being denominated in Australian dollars.

4.5 Small Securityholder

- (a) Each Small Securityholder may, instead of being issued its entitlement to New PharmaCielo Shares in accordance with clause 4.2, elect to have the New PharmaCielo Shares to which it is entitled issues to a nominee appointed by PharmaCielo. Any such election must be in writing in a form approved by PharmaCielo acting reasonably and received by 5.00pm on the date that is two Business Days prior to the Implementation Date.
- (b) Where the Small Securityholder makes a valid election under clause 4.5(a):
 - (i) PharmaCielo will procure that as soon as reasonably practicable after the Implementation Date, the nominee sell those New PharmaCielo Shares issued to the nominee on-market in such manner, at such price and on such other terms as the nominee determines in good faith;
 - (ii) promptly after the last sale of those New PharmaCielo Shares, PharmaCielo will procure that the nominee pays the net proceeds from that sale (after deducting any applicable brokerage, stamp duty and other selling costs, taxes and charges) to PharmaCielo;
 - (iii) PharmaCielo will then remit the proceeds it receives from the nominee to each relevant Small Securityholder in accordance with their entitlement by either:
 - (A) dispatching, or procuring the dispatch, to that Small Securityholder by prepaid post to that Small Securityholder's registered address (at the Share Scheme Record Date), a cheque in the name of that Small Securityholder; or
 - (B) making a deposit in an account with any ADI (as defined in the Banking Act 1959 (Cth)) in Australia notified by that Small Securityholder to Creso Pharma (or the Share Registry) and recorded in or for the purposes of the Creso Pharma Register at the Record Date,

for the relevant amount, with that amount being denominated in Australian dollars; and
 - (iv) each Small Securityholder appoints Creso Pharma as its agent to receive on its behalf any financial services guide or other notices (including any updates of those documents) that the nominee appointed by PharmaCielo is required to provide to Small Securityholder under the Corporations Act.

4.6 Fractional entitlements

Any fractional entitlement of a Scheme Shareholder to a part of a New PharmaCielo Share will be rounded up or down to the nearest whole number of New PharmaCielo Shares (rounded up if the fractional entitlement is equal to or greater than one half, and rounded down if the fractional entitlement is less than one half).

4.7 Joint holders

In the case of Creso Pharma Shares held in joint names, any certificates or uncertificated holding statements for New PharmaCielo Shares to be issued to Scheme Shareholders will be issued in the names of the joint holders and will be forwarded to the holder whose name appears first in the Creso Pharma Register on the Share Scheme Record Date.

4.8 Share Scheme Deed Poll

PharmaCielo covenants in favour of Creso Pharma (in Creso Pharma's own right and separately as trustee for each of the Scheme Shareholders) to execute, deliver and perform the Share Scheme Deed Poll prior to the dispatch of the Explanatory Booklet.

4.9 Share Scheme not conditional

The Share Scheme is not conditional on the Option Scheme becoming Effective.

5. Option Scheme structure

5.1 Option Scheme

- (a) Creso Pharma must, as soon as reasonably practicable after the date of this agreement and substantially in compliance with the Timetable, propose the creditors' scheme of arrangement, to be conducted concurrently with the Share Scheme under which all outstanding Scheme Options will be cancelled and each Scheme Optionholder will be entitled to receive the Option Scheme Consideration.
- (b) Creso Pharma must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Option Scheme without the prior written consent of PharmaCielo.

5.2 Option Scheme Consideration

- (a) PharmaCielo covenants in favour of Creso Pharma (in Creso Pharma's own right and separately as trustee for each Scheme Optionholder) that, in consideration of the cancellation of each Scheme Options under the terms of the Option Scheme, on the Implementation Date, PharmaCielo will provide each Scheme Optionholder the Option Scheme Consideration in accordance with the Option Scheme.
- (b) Subject to clauses 5.4 and 5.6 and to the Option Scheme becoming Effective, at 10.00am on the Implementation Date, the transactions which form part of the Option Scheme will be implemented as follows:
 - (i) all existing Scheme Options at the Option Scheme Record Date will be cancelled; and
 - (ii) in exchange, each Scheme Optionholder will receive the Option Scheme Consideration for each Scheme Option held by that Scheme Optionholder at the Option Scheme Record Date, which is to be issued in the manner set out in clause 5.3.
- (c) In order to facilitate the provision of the Option Scheme Consideration, Creso Pharma must provide, or procure the provision of, to PharmaCielo a complete copy of the Creso Pharma Register as at the Option Scheme Record Date (which must include the name, registered address and registered holding of each Scheme Optionholder as at the Option Scheme Record Date), within one Business Day after the Option Scheme Record Date. The details and information to be provided under this clause must be provided in such

form as PharmaCielo or PharmaCielo's share registry may reasonably require, as notified to Creso Pharma by PharmaCielo prior to the Option Scheme Record Date.

5.3 Allotment and issue of New PharmaCielo Shares

Subject to clauses 5.4 and 5.6 and to the Option Scheme becoming Effective, PharmaCielo must:

- (a) allot and issue the New PharmaCielo Shares to Scheme Optionholders in accordance with the Option Scheme on terms such that each New PharmaCielo Share will rank equally in all respects with each existing PharmaCielo Share;
- (b) do everything reasonably necessary to ensure that the New PharmaCielo Shares are listed for trading on TSXV and that trading in the New PharmaCielo Shares commences as soon as practicable after the Effective Date; and
- (c) ensure that on issue, each New PharmaCielo Share will be fully paid and free from any mortgage, charge, lien, encumbrance or other Security Interest.

5.4 Ineligible Foreign Shareholders

Unless PharmaCielo is satisfied that the laws of an Ineligible Foreign Securityholder's country of residence (as shown in the Creso Pharma Register) permit the issue of New PharmaCielo Shares to the Ineligible Foreign Securityholder either unconditionally or after compliance with terms which PharmaCielo reasonably regards as acceptable and practical:

- (a) PharmaCielo will be under no obligation under the Option Scheme to issue, and will not issue, any New PharmaCielo Shares to Ineligible Foreign Securityholders, and instead will issue the New PharmaCielo Shares that would otherwise have been issued to the Ineligible Foreign Securityholders to a nominee appointed by PharmaCielo;
- (b) PharmaCielo will procure that as soon as reasonably practicable after the Implementation Date, the nominee sell those New PharmaCielo Shares issued to the nominee on-market in such manner, at such price and on such other terms as the nominee determines in good faith;
- (c) promptly after the last sale of those New PharmaCielo Shares, PharmaCielo will procure that the nominee pays the net proceeds from that sale (after deducting any applicable brokerage, stamp duty and other selling costs, taxes and charges) to PharmaCielo; and
- (d) PharmaCielo will then remit the proceeds it receives from the nominee to each Ineligible Foreign Securityholder in accordance with their entitlement by either:
 - (i) dispatching, or procuring the dispatch, to that Ineligible Foreign Securityholder by prepaid post to that Ineligible Foreign Securityholder's registered address (at the Option Scheme Record Date), a cheque in the name of that Ineligible Foreign Securityholder; or
 - (ii) making a deposit in an account with any ADI (as defined in the Banking Act 1959 (Cth)) in Australia notified by that Ineligible Foreign Securityholder to Creso Pharma (or the Share Registry) and recorded in or for the purposes of the Creso Pharma Register at the Record Date,

for the relevant amount, with that amount being denominated in Australian dollars.

5.5 Small Securityholder

- (a) Each Small Securityholder may, instead of being issued its entitlement to New PharmaCielo Shares in accordance with clause 5.2, elect to have the New PharmaCielo Shares to which it is entitled issued to a nominee appointed by PharmaCielo. Any such election must be in writing in a form approved by PharmaCielo acting reasonably and received by 5.00pm on the date that is two Business Days prior to the Implementation Date.
- (b) Where the Small Securityholder makes a valid election under clause 5.5(a):
 - (i) PharmaCielo will procure that as soon as reasonably practicable after the Implementation Date, the nominee sell those New PharmaCielo Shares issued to

the nominee on-market in such manner, at such price and on such other terms as the nominee determines in good faith;

- (ii) promptly after the last sale of those New PharmaCielo Shares, PharmaCielo will procure that the nominee pays the net proceeds from that sale (after deducting any applicable brokerage, stamp duty and other selling costs, taxes and charges) to PharmaCielo;
- (iii) PharmaCielo will then remit the proceeds it receives from the nominee to each relevant Small Securityholder in accordance with their entitlement by either:
 - (A) dispatching, or procuring the dispatch, to that Small Securityholder by prepaid post to that Small Securityholder's registered address (at the Option Scheme Record Date), a cheque in the name of that Small Securityholder; or
 - (B) making a deposit in an account with any ADI (as defined in the Banking Act 1959 (Cth)) in Australia notified by that Small Securityholder to Creso Pharma (or the Share Registry) and recorded in or for the purposes of the Creso Pharma Register at the Record Date,for the relevant amount, with that amount being denominated in Australian dollars; and
- (iv) each Small Securityholder appoints Creso Pharma as its agent to receive on its behalf any financial services guide or other notices (including any updates of those documents) that the nominee appointed by PharmaCielo is required to provide to Small Securityholders under the Corporations Act.

5.6 Fractional entitlements

Any fractional entitlement of a Scheme Optionholder to a part of a New PharmaCielo Share will be rounded up or down to the nearest whole number of New PharmaCielo Shares (rounded up if the fractional entitlement is equal to or greater than one half, and rounded down if the fractional entitlement is less than one half).

5.7 Joint holders

In the case of Creso Pharma Listed Options held in joint names, any certificates or uncertificated holding statements for New PharmaCielo Shares to be issued to Scheme Optionholders will be issued in the names of the joint holders and will be forwarded to the holder whose name appears first in the Creso Pharma Register on the Option Scheme Record Date.

5.8 Option Scheme Deed Poll

PharmaCielo covenants in favour of Creso Pharma (in Creso Pharma's own right and separately as trustee for each of the Scheme Optionholders) to execute, deliver and perform the Option Scheme Deed Poll prior to the dispatch of the Explanatory Booklet.

5.9 Option Scheme conditional

The Option Scheme is conditional on the Share Scheme becoming Effective.

6. Treatment of other Creso Pharma securities

6.1 Creso Pharma Performance Rights

- (a) As soon as practicable after the Share Scheme has been approved by Creso Pharma Shareholders at the Share Scheme Meeting, the Creso Pharma Board must give a written notice to each Creso Pharma Performance Rights Holder stating that, subject to the Court approving the Share Scheme on the Second Court Date:
 - (i) all Creso Pharma Performance Rights will be deemed to have vested; and
 - (ii) subject to securing the agreement of each Creso Pharma Performance Rights Holder to exercise the Creso Pharma Performance Rights into Creso Pharma

Shares, Creso Pharma will issue to the Creso Pharma Performance Rights Holder such number of Creso Pharma Shares to which the Creso Pharma Performance Rights Holder is entitled prior to the Share Scheme Record Date.

- (b) Without limiting clause 6.1(a), Creso Pharma must take all necessary steps to procure each Creso Pharma Performance Rights Holder to exercise its Creso Pharma Performance Rights prior to the Share Scheme Record Date.

6.2 Creso Pharma Unlisted Options

- (a) As soon as reasonably practicable after the date of this agreement but in any event within 20 Business Days of that date, Creso Pharma must use all reasonable endeavours to obtain the written agreement of each person who is a Creso Pharma Unlisted Optionholder to have their Creso Pharma Unlisted Options cancelled, subject to:
 - (i) Creso Pharma obtaining a waiver from ASX in relation to Listing Rule 6.23.2 or, where no waiver is obtained, Creso Pharma obtaining Creso Pharma Shareholder approval;
 - (ii) all other Creso Pharma Unlisted Optionholders agreeing to have their Creso Pharma Unlisted Options cancelled; and
 - (iii) the Court approving the Share Scheme on the Second Court Date, under private treaty agreement between PharmaCielo, Creso Pharma and each Creso Pharma Unlisted Optionholder. The form of agreement to be used for this purpose must be agreed to by PharmaCielo and must reflect the consideration set out in clause 6.2(c)
- (b) Creso Pharma agrees to seek a waiver as soon as reasonably practicable after the date of this agreement from Listing Rule 6.23.2 to allow for the cancellation of up to all Creso Pharma Unlisted Options.
- (c) PharmaCielo agrees that:
 - (i) the consideration to be paid to a Creso Pharma Unlisted Optionholder per Creso Pharma Unlisted Option whose Creso Pharma Unlisted Option has an exercise price less than the \$0.63 (other than the Creso Pharma Unlisted Options issued under tranche CPHOPT3), is the difference between the \$0.63 and the exercise price of that Creso Pharma Unlisted Option, with such consideration being satisfied by the issue of new PharmaCielo Shares at a price of \$8.1261 per PharmaCielo Share;
 - (ii) the consideration to be paid to a Creso Pharma Unlisted Optionholder per Creso Pharma Unlisted Option whose Creso Pharma Unlisted Option has an exercise price that is \$0.80, is \$0.15 per Creso Pharma Unlisted Option, with such consideration being satisfied by the issue of new PharmaCielo Shares at a price of \$8.1261 per PharmaCielo Share; and
 - (iii) the consideration to be paid to a Creso Pharma Unlisted Optionholder per Creso Pharma Unlisted Option whose Creso Pharma Unlisted Options were issued under tranche CPHOPT3 is \$1.00 in aggregate for all of his or her Creso Pharma Unlisted Options.
- (d) The parties acknowledge and agree that the obligations of Creso Pharma under this clause 6.2 will be deemed to be satisfied in relation to any Creso Pharma Unlisted Options that have an exercise price less than the \$0.63 (other than the Creso Pharma Unlisted Options issued under tranche CPHOPT3), to the extent that those Creso Pharma Unlisted Options are exercised by the relevant Creso Pharma Unlisted Option Holder prior to the Delivery Time on the Second Court Date.
- (e) From the date of this agreement up to the Implementation Date, if Creso Pharma receives any cash payment from a Creso Pharma Unlisted Optionholder as a result of the exercise any Creso Pharma Unlisted Options that have an exercise price less than the \$0.63 (other than the Creso Pharma Unlisted Options issued under tranche CPHOPT3), Creso Pharma

must ensure that such cash payment is deposited into a special purpose escrow account, from which payments may only be made with the prior written consent of PharmaCielo, which such consent not being unreasonably withheld or delayed.

6.3 Creso Pharma Performance Shares

- (a) In respect of the Creso Pharma Performance Shares issued in relation to the Hemp Industries Acquisition, those Creso Pharma Performance Shares must be cancelled by Creso Pharma on or prior to 30 June 2019 or such other date as agreed between Creso Pharma and PharmaCielo.
- (b) In respect of the Creso Pharma Performance Shares issued in relation to the Kunna Acquisition, as soon as practicable after the Share Scheme has been approved by Creso Pharma Shareholders at the Share Scheme Meeting, the Creso Pharma Board must give a written notice to each Creso Pharma Performance Share Holder stating that, subject to the Court approving the Share Scheme on the Second Court Date and in accordance with the terms and conditions of the Creso Pharma Performance Shares:
 - (i) each Creso Pharma Performance Share will automatically convert to a new Creso Pharma Share on a one for one basis; and
 - (ii) Creso Pharma will issue to the Creso Pharma Performance Share Holder such number of Creso Pharma Shares to which the Creso Pharma Performance Share Holder is entitled prior to the Share Scheme Record Date.

6.4 Creso Pharma Exchangeable Shares

- (a) Creso Pharma must comply with its obligation to issue such number of Creso Pharma Shares to each Creso Pharma Exchangeable Share Holder in exchange of the Milestone 1 Exchangeable Shares as soon as practicable after each Creso Pharma Exchangeable Share Holder exercises his or her right to convert Milestone 1 Exchangeable Shares to Creso Pharma Shares.
- (b) In relation to the remainder of the 4,125,000 Creso Pharma Exchangeable Shares that have not yet vested, as soon as reasonably practicable after the date of this agreement but in any event within 20 Business Days of that date, Creso Pharma must use all reasonable endeavours to obtain the written agreement of each person who is a Creso Pharma Exchangeable Share Holder to amend the terms of the Support and Exchange Agreement and Exchangeable Share Terms so that, subject to the Share Scheme becoming Effective, upon Milestone 2 being achieved, the holders of the Creso Pharma Exchangeable Shares will receive PharmaCielo Shares instead of Creso Pharma Shares on terms to be agreed between PharmaCielo, Creso Pharma and each person who is a Creso Pharma Exchangeable Share Holder, acting reasonably.

7. Recommendation, intentions and announcements

7.1 Creso Pharma Board Recommendation and Voting Intention

- (a) Subject to clause 7.2, Creso Pharma must ensure that the Creso Pharma Announcement and the Explanatory Booklet state that each Creso Pharma Director:
 - (i) considers:
 - (A) the Share Scheme to be in the best interests of Creso Pharma Shareholders and that the Creso Pharma Director recommends that Creso Pharma Shareholders vote in favour of the Share Scheme; and
 - (B) the Option Scheme to be in the best interests of Creso Pharma Listed Optionholders and that the Creso Pharma Director recommends that Creso Pharma Listed Optionholders vote in favour of the Option Scheme, **(Recommendation)**; and

- (ii) intends to cause:
 - (A) any Creso Pharma Shares in which it has a Relevant Interest to be voted in favour of the Share Scheme; and
 - (B) any Creso Pharma Listed Options in which it has a Relevant Interest to be voted in favour of the Option Scheme,

(Voting Intention),

in each case qualified only by words to the effect of:

- (iii) *'in the absence of a Superior Proposal'*; and
 - (iv) other than in respect of the Explanatory Booklet, *'subject to the Independent Expert concluding that the Share Scheme is in the best interest of Creso Pharma Shareholders and the Option Scheme is in the best interest of Creso Pharma Listed Optionholders'* and in any public document issued after the Explanatory Booklet, *'subject to the Independent Expert continuing to conclude that the Share Scheme is in the best interest of Creso Pharma Shareholders and the Option Scheme is in the best interest of Creso Pharma Listed Optionholders'*.
- (b) Subject to clause 7.2, Creso Pharma must ensure that the Creso Pharma Board collectively, and the members of the Creso Pharma Board individually, do not change, withdraw or modify its, his or her Recommendation or Voting Intention unless:
- (i) Creso Pharma has received, other than as a result of a breach of clause 17, a Superior Proposal and (i) has entered into a legally binding agreement to undertake or give effect to that proposal or (ii) in the case of a proposal by way of takeover bid which is not subject to an agreement with Creso Pharma, an announcement has been made which attracts section 631(1) of the Corporations Act; or
 - (ii) the Independent Expert concludes in the Independent Expert's Report (either in its initial report or any subsequent update of its report) that the Share Scheme is not in the best interest of the Creso Pharma Shareholders (other than where the conclusion is due to the existence of a Competing Proposal),

and Creso Pharma has complied with its obligations under clause 17 (including ensuring that all of PharmaCielo's rights under clause 17.7 have been exhausted).

7.2 Exclusion from Recommendation

The obligation of Creso Pharma under clause 7.1 to ensure that each Creso Pharma Director provides and maintains the Recommendation is qualified to the extent that any Creso Pharma Director considers, after taking written advice from his or her legal adviser, that he or she should not provide or continue to maintain any recommendation (positive or adverse) because that Creso Pharma Director has an interest in the Share Scheme that is so materially different from other Creso Pharma Shareholders which would properly preclude him or her from providing any such recommendation.

7.3 Confirmation

Creso Pharma represents and warrants to PharmaCielo that each Creso Pharma Director has confirmed his or her agreement not to do anything inconsistent with their Recommendation and Voting Intention (including withdrawing, changing or in any way qualifying their Recommendation or Voting Intention) other than in the circumstances referred to in clause 7.1(b).

7.4 Announcements

- (a) Promptly after the execution of this agreement, Creso Pharma and PharmaCielo must issue their Announcement to the ASX and TSXV respectively.
- (b) Subject to clause 7.4(c), any further public announcements by Creso Pharma or PharmaCielo in relation to, or in connection with, the Proposed Transaction or any other transaction related to this agreement or the Share Scheme or the Option Scheme may only be made in a form approved by each party in writing (acting reasonably).

- (c) Where a party is required by law or the Listing Rules to make any announcement or to make any disclosure in relation to, or in connection with the Proposed Transaction or any other transaction related to this agreement, the Share Scheme or the Option Scheme, it may do so to the extent legally required and only then after it has given the other party as much notice as reasonably possible and has consulted to the fullest extent reasonably possible in the circumstances with the other party.

8. Proposed Transaction – parties' respective implementation obligations

8.1 Creso Pharma's obligations

Creso Pharma must take all steps reasonably necessary to propose and (subject to all of the Conditions being satisfied or waived in accordance with their terms) implement the Share Scheme and the Option Scheme as soon as reasonably practicable and substantially in accordance with the Timetable, including without limitation taking each of the following steps:

- (a) **(Explanatory Booklet)** prepare the Explanatory Booklet in accordance with clause 8.3;
- (b) **(Independent Expert)** promptly appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (c) **(review of draft Independent Expert's Report)** on receipt from the Independent Expert, provide PharmaCielo with the draft report received from the Independent Expert for factual accuracy review (noting in each case that any draft of the Independent Expert's Report provided to PharmaCielo for review will not include those sections containing the Independent Expert's opinion), and promptly give to the Independent Expert any comments that PharmaCielo provides Creso Pharma in relation to factual matters regarding PharmaCielo in any draft of the Independent Expert's Report;
- (d) **(Investigating Accountant)** promptly appoint an investigating accountant (acceptable to PharmaCielo and Creso Pharma) **(Investigating Accountant)** to review the financial information included in the Explanatory Booklet and assist with the preparation of the pro forma historical accounts and provide all assistance and information reasonably requested by the Investigating Accountant in connection with the preparation of the Investigating Accountant's Report for inclusion in the Explanatory Booklet;
- (e) **(approval of draft for ASIC)** as soon as reasonably practicable after the preparation of an advanced draft of the Explanatory Booklet suitable for review by ASIC, procure that a meeting of the Creso Pharma Board, or of a committee of the Creso Pharma Board appointed for the purpose, is held to consider approving that draft as being in a form appropriate for provision to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act;
- (f) **(liaison with ASIC)** as soon as reasonably practicable after the preparation of an advanced draft of the Explanatory Booklet:
 - (i) provide that draft of the Explanatory Booklet, in a form approved in accordance with clauses 8.1(e) and 8.2(g), to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act; and
 - (ii) liaise with ASIC during the period of its consideration of that draft of the Explanatory Booklet and keep PharmaCielo reasonably informed of any material matters raised by ASIC in relation to the Explanatory Booklet and use reasonable endeavours, in consultation with PharmaCielo, to resolve any such matters (provided that, where any matters relate to PharmaCielo Information, Creso Pharma must not take any steps to address them without the prior written consent of PharmaCielo, not to be unreasonably withheld or delayed);
- (g) **(approval of Explanatory Booklet)** as soon as reasonably practicable after the conclusion of the review by ASIC of the Explanatory Booklet, procure that a meeting of the Creso Pharma Board, or of a committee of the Creso Pharma Board appointed for the purpose, is held to consider approving the Explanatory Booklet for dispatch to the Creso

Pharma Shareholders and Creso Pharma Listed Optionholders, subject to orders of the Court under section 411(1) of the Corporations Act;

- (h) **(section 411(17)(b) statements)** apply to ASIC for the production of statements in writing under section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Share Scheme and the Option Scheme;
- (i) **(first Court hearing)** lodge all documents with the Court and take all other reasonable steps to ensure that promptly after, and provided that, the approvals in clauses 8.1(g) and 8.2(h) have been received, an application is heard by the Court for an order under section 411(1) of the Corporations Act directing Creso Pharma to convene the Share Scheme Meeting and the Option Scheme Meeting;
- (j) **(registration of explanatory statement)** request ASIC to register the explanatory statement included in the Explanatory Booklet in relation to the Share Scheme;
- (k) **(information)**
 - (i) provide reasonable information about the Share Scheme, the Option Scheme, the Creso Pharma Shareholders and Creso Pharma Listed Optionholders to PharmaCielo and its Advisers, which PharmaCielo requests and reasonably requires in order to:
 - (A) canvass views on the Share Scheme by Creso Pharma Shareholders and the Option Scheme by Creso Pharma Listed Optionholders;
 - (B) facilitate the provision by, or on behalf of, PharmaCielo of the Share Scheme Consideration and the Option Scheme Consideration; or
 - (C) review the tally of proxy appointments and directions received by Creso Pharma before the Share Scheme Meeting and the Option Scheme Meeting;
 - (ii) within 5 Business Days after the date of this agreement, provide PharmaCielo with:
 - (A) a copy of the Creso Pharma Register as at the date of this agreement to the extent doing so does not breach applicable privacy laws; and
 - (B) the most recently available information in Creso Pharma's possession regarding the beneficial ownership of Creso Pharma Shares and Creso Pharma Listed Options including a copy of the most recent beneficial ownership analysis report received by Creso Pharma (which, for the avoidance of doubt, may be as at a date prior to the date of this agreement);
 - (iii) provide PharmaCielo:
 - (A) every two weeks, a copy of the latest Creso Pharma Register; and
 - (B) every two weeks, the most recently available information in Creso Pharma's possession regarding the beneficial ownership of Creso Pharma Shares and Creso Pharma Listed Options including a copy of the most recent beneficial ownership analysis report received by Creso Pharma, provided that if the Creso Pharma Register or any beneficial ownership analysis report is received by Creso Pharma more frequently than every two weeks Creso Pharma must provide PharmaCielo with a copy of each such report after it is received by Creso Pharma;
- (l) **(convene Share Scheme Meeting)** take all reasonable steps necessary to comply with the orders of the Court including, as required, despatching the Explanatory Booklet to the Creso Pharma Shareholders and convening and holding the Share Scheme Meeting;
- (m) **(convene Option Scheme Meeting)** take all reasonable steps necessary to comply with the orders of the Court including, as required, despatching the Explanatory Booklet to the Creso Pharma Listed Optionholders and convening and holding the Option Scheme Meeting;

- (n) (**Court approval application if parties agree that conditions are capable of being satisfied**) if the resolution submitted to the Share Scheme Meeting and Option Scheme Meeting is passed by the majorities required under section 411(4)(a)(ii) of the Corporations Act and, if necessary, the parties agree on the Business Day immediately following the Share Scheme Meeting and the Option Scheme Meeting that it can be reasonably expected that all of the Conditions will be satisfied or waived prior to the proposed Second Court Date, apply to the Court for orders approving the Share Scheme and the Option Scheme;
- (o) (**appeal process**) if the Court refuses to make any orders directing Creso Pharma to convene either the Share Scheme Meeting or the Option Scheme Meeting or approving the Share Scheme or the Option Scheme, Creso Pharma and PharmaCielo must:
 - (i) consult with each other in good faith as to whether to appeal the Court's decision; and
 - (ii) appeal the court decision unless the parties agree otherwise or an independent senior counsel opines that, in his view, an appeal would have no reasonable prospect of success;
- (p) (**implementation of Share Scheme**) if the Share Scheme is approved by the Court:
 - (i) subject to the Listing Rules, promptly lodge with ASIC an office copy of the orders approving the Share Scheme in accordance with section 411(10) of the Corporations Act;
 - (ii) determine entitlements to the Share Scheme Consideration as at the Share Scheme Record Date in accordance with the Share Scheme;
 - (iii) execute proper instruments of transfer of and effect and register the transfer of the Scheme Shares to PharmaCielo on the Implementation Date; and
 - (iv) do all other things contemplated by or necessary to give effect to the Share Scheme and the orders of the Court approving the Share Scheme;
- (q) (**implementation of Option Scheme**) if the Option Scheme is approved by the Court:
 - (i) subject to the Listing Rules, promptly lodge with ASIC an office copy of the orders approving the Option Scheme in accordance with section 411(10) of the Corporations Act;
 - (ii) determine entitlements to the Option Scheme Consideration as at the Option Scheme Record Date in accordance with the Option Scheme;
 - (iii) cancel the Scheme Options on the Implementation Date; and
 - (iv) do all other things contemplated by or necessary to give effect to the Option Scheme and the orders of the Court approving the Option Scheme;
- (r) (**Regulatory notifications**) in relation to the Regulatory Approvals, lodge with any Governmental Agency within the relevant periods all documentation and filings required by law to be so lodged by Creso Pharma in relation to the Proposed Transaction;
- (s) (**PharmaCielo Information**) without the prior written consent of PharmaCielo, not use the PharmaCielo Information for any purposes other than those contemplated by this agreement, the Share Scheme or the Option Scheme;
- (t) (**Documents**) consult with PharmaCielo in relation to the content of the documents required for the purpose of the Share Scheme and the Option Scheme including originating process, affidavits, submissions and draft minutes of Court orders;
- (u) (**Shareholder support**) in consultation with PharmaCielo, promote to its shareholders the merits of the Share Scheme and encourage Creso Pharma Shareholders to vote on the Share Scheme in accordance with the recommendation of the Creso Pharma Board, including soliciting proxy votes in favour of the Share Scheme;
- (v) (**Optionholder support**) in consultation with PharmaCielo, promote to its listed optionholders the merits of the Option Scheme and encourage Creso Pharma Listed

- Optionholders to vote on the Option Scheme in accordance with the recommendation of the Creso Pharma Board, including soliciting proxy votes in favour of the Option Scheme;
- (w) **(Compliance with laws)** do everything reasonably within its power to ensure that all transactions contemplated by this agreement are effected in accordance with all applicable laws and regulations;
 - (x) **(Audit consents and letters)** do everything reasonably within its power in order to cause its independent public auditors who have audited Creso Pharma's financial statements to:
 - (i) deliver any customary auditors' consents, including consents to the incorporation by reference of such audits on the financial statements of Creso Pharma in any filing of PharmaCielo under Canadian securities laws addressed to Canadian provincial securities regulators or stock exchanges that may be required, including in respect of any prospectus filing;
 - (ii) deliver any letters (including "negative assurance" comfort) in form and substance customary for "comfort" letters delivered by independent public accountants, including in connection with any securities offering of PharmaCielo; and
 - (iii) cooperate with PharmaCielo in participating in any due diligence procedures, including without limitation, oral due diligence sessions, that may be required in connection with any securities offering of PharmaCielo.

8.2 PharmaCielo's obligations

PharmaCielo must take all steps reasonably necessary to assist Creso Pharma to implement the Share Scheme and the Option Scheme as soon as reasonably practicable and substantially in accordance with the Timetable including, without limitation, taking each of the following steps:

- (a) **(PharmaCielo Information)** provide to Creso Pharma, in a form appropriate for inclusion in the Explanatory Booklet, all PharmaCielo Information that is required by all applicable law, the Listing Rules and ASIC Regulatory Guides for inclusion in the Explanatory Booklet, which information must without limiting the above:
 - (i) contain all information necessary to enable Creso Pharma to ensure that the Explanatory Booklet complies with the requirements of RG 60;
 - (ii) not be misleading or deceptive in any material respect (whether by omission or otherwise) including in the form and context in which it appears in the Explanatory Booklet; and
 - (iii) be updated by all such further or new material information which may arise after the Explanatory Booklet has been dispatched until the date of the Share Scheme Meeting which is necessary to ensure that it is not misleading or deceptive in any material respect (whether by omission or otherwise);
- (b) **(Regulatory notifications)** in relation to the Regulatory Approvals, lodge with any regulatory authority within the relevant time periods all documentation and filings required by law to be so lodged by PharmaCielo in relation to the Proposed Transaction;
- (c) **(TSXV quotation)** do everything reasonably necessary to ensure that the New PharmaCielo Shares are listed for trading on TSXV and that trading in the New PharmaCielo Shares commences as soon as practicable after the Effective Date;
- (d) **(Independent Expert)** promptly provide all assistance and information reasonably requested by the Independent Expert to enable it to prepare the Independent Expert's Report;
- (e) **(Investigating Accountant)** promptly provide all assistance and information reasonably requested by the Investigating Accountant to enable it to prepare the Investigating Accountant's Report for inclusion in the Explanatory Booklet;
- (f) **(review of Explanatory Booklet)** as soon as reasonably practicable after delivery, review the drafts of the Explanatory Booklet prepared by Creso Pharma and provide comments on those drafts in good faith;

- (g) (**approval of draft for ASIC**) as soon as reasonably practicable after the preparation of an advanced draft of the Explanatory Booklet suitable for review by ASIC, procure that a meeting of the appropriate representatives of PharmaCielo is held to consider approving those sections of that draft that relate to PharmaCielo as being in a form appropriate for provision to ASIC for review;
- (h) (**approval of Explanatory Booklet**) as soon as reasonably practicable after the conclusion of the review by ASIC of the Explanatory Booklet, procure that a meeting of the appropriate representatives of PharmaCielo is held to consider approving those sections of the Explanatory Booklet that relate to PharmaCielo as being in a form appropriate for dispatch to Creso Pharma Shareholders and Creso Pharma Listed Optionholders, subject to approval of the Court;
- (i) (**Representation**) procure that PharmaCielo is represented by counsel at the Court hearings convened for the purposes of section 411(4)(b) of the Corporations Act;
- (j) (**Creso Pharma Information**) without the prior written consent of Creso Pharma, not use Creso Pharma Information for any purposes other than those contemplated by this agreement or the Share Scheme and the Option Scheme; and
- (k) (**Compliance with laws**) do everything reasonably within its power to ensure that all transactions contemplated by this agreement are effected in accordance with all applicable laws and regulations.

8.3 Explanatory Booklet - preparation principles

- (a) As soon as reasonably practicable after the date of this agreement and substantially in accordance with the Timetable, Creso Pharma must prepare the Explanatory Booklet in compliance with:
 - (i) all applicable laws, in particular with the Corporations Act, RG 60 and the Listing Rules; and
 - (ii) this clause 8.3.
- (b) The Explanatory Booklet will include:
 - (i) the terms of the Share Scheme and the Option Scheme;
 - (ii) the notice of Share Scheme Meeting, the notice of Option Scheme Meeting, and any other notice of meeting in respect of any resolution that is necessary, expedient or incidental to give effect to the Share Scheme and the Option Scheme, together with a proxy form for the Share Scheme Meeting and the Option Scheme Meeting and for any ancillary meeting;
 - (iii) the Creso Pharma Information;
 - (iv) the PharmaCielo Information;
 - (v) a copy of this agreement (without the schedules or annexures);
 - (vi) a copy of the executed Share Scheme Deed Poll;
 - (vii) a copy of the executed Option Scheme Deed Poll;
 - (viii) a copy of the Independent's Expert Report; and
 - (ix) a copy of the Investigating Accountant's Report.
- (c) The Explanatory Booklet must include a statement that:
 - (i) PharmaCielo is responsible for the PharmaCielo Information (other than any information provided by Creso Pharma to PharmaCielo or obtained from Creso Pharma's public filings on ASX regarding the Creso Pharma Group contained in, or used in the preparation of, the information regarding the merged PharmaCielo-Creso Pharma entity following the implementation of the Share Scheme) contained in the Explanatory Booklet; and
 - (ii) Creso Pharma is responsible for the Creso Pharma Information and is also responsible for the information contained in the Explanatory Booklet provided by

Creso Pharma to PharmaCielo or obtained from Creso Pharma's public filings on ASX regarding the Creso Pharma Group contained in, or used in the preparation of, the information regarding the merged PharmaCielo-Creso Pharma entity following the implementation of the Share Scheme contained in the Explanatory Booklet.

- (d) Creso Pharma must make available to PharmaCielo drafts of the Explanatory Booklet (excluding any part of the draft Independent Expert's Report which contains the Independent Expert's opinion), consult with PharmaCielo in relation to the content of those drafts (other than the PharmaCielo Information), and consider in good faith, for the purpose of amending those drafts, comments from PharmaCielo on those drafts. PharmaCielo acknowledges and agrees that Creso Pharma has ultimate discretion with respect to the preparation, form and content of the Explanatory Booklet, other than as provided in this agreement with respect to the PharmaCielo Information.
- (e) Creso Pharma must seek approval from PharmaCielo for the form and context in which the PharmaCielo Information appears in the Explanatory Booklet, which approval PharmaCielo must not unreasonably withhold or delay, and Creso Pharma must not lodge the Explanatory Booklet with ASIC until such approval is obtained from PharmaCielo.
- (f) If Creso Pharma and PharmaCielo disagree on the form or content of the Explanatory Booklet, they must consult in good faith to try to settle an agreed form of the Explanatory Booklet. If agreement is not reached after reasonable consultation, then:
 - (i) if the disagreement relates to the form or content of any information appearing in the Explanatory Booklet other than the PharmaCielo Information, the Creso Pharma Board will, acting in good faith, decide the final form or content of the disputed part of the Explanatory Booklet; and
 - (ii) if the disagreement relates to the form or content of the PharmaCielo Information, Creso Pharma will make such amendments to the form or content of the disputed part of the PharmaCielo Information as PharmaCielo reasonably requires.
- (g) Creso Pharma must take all reasonable steps to ensure that the Explanatory Booklet (other than the PharmaCielo Information) is not misleading or deceptive in any material respect (whether by omission or otherwise) as at the date it is dispatched to Creso Pharma Shareholders and Creso Pharma Listed Optionholders.
- (h) PharmaCielo must take all reasonable steps to ensure that the PharmaCielo Information is not misleading or deceptive in any material respect (whether by omission or otherwise) as at the date on which the Explanatory Booklet is dispatched to Creso Pharma Shareholders and Creso Pharma Listed Optionholders.
- (i) Creso Pharma must provide to PharmaCielo all such further or new information of which Creso Pharma becomes aware that arises after the Explanatory Booklet has been dispatched until the date of the Share Scheme Meeting and the Option Scheme Meeting where this is or may be necessary to disclose to Creso Pharma Shareholders and Creso Pharma Listed Optionholders to ensure that the Explanatory Booklet continues to comply with the Corporations Act, RG 60 and the Listing Rules.
- (j) PharmaCielo must provide to Creso Pharma all such further or new information of which PharmaCielo becomes aware that arises after the Explanatory Booklet has been dispatched until the date of the Share Scheme Meeting and the Option Scheme Meeting where this is or may be necessary to disclose to Creso Pharma Shareholders and Creso Pharma Listed Optionholders to ensure that the PharmaCielo Information continues to comply with the Corporations Act, RG 60 and the Listing Rules.
- (k) Creso Pharma and PharmaCielo each agree that the efficient preparation of the Explanatory Booklet and the implementation of the Share Scheme and the Option Scheme are in the interests of Creso Pharma Shareholders, Creso Pharma Listed Optionholders and PharmaCielo and that they will use all reasonable endeavours and utilise all necessary resources (including management resources and the resources of external advisers) to comply with their respective obligations under this clause 8.3 and to implement the Share Scheme and the Option Scheme as soon as reasonably practicable and substantially in accordance with the Timetable.

9. Conduct of business before the Implementation Date

9.1 Conduct of Creso Pharma business

- (a) Subject to clause 9.2(a), from the date of this agreement up to and including the Implementation Date, Creso Pharma must conduct and must cause each of its Subsidiaries to conduct their businesses in the ordinary and usual course of business and:
- (i) operate those businesses consistent with past practice, in substantially the same manner as conducted in the 12 month period prior to the date of this agreement and use its reasonable endeavours to operate those businesses generally and materially consistent with the budget agreed between Creso Pharma and PharmaCielo prior to the date of this agreement and subject to any restrictions imposed under the Creso Pharma Loan Agreement;
 - (ii) use reasonable endeavours to:
 - (A) preserve their relationships with customers, suppliers, landlords, licensors, licensees, Governmental Agencies and others having material business dealings with them, and to retain the services of all key employees;
 - (B) preserve and maintain the value of the businesses and assets of the Creso Pharma Group; and
 - (C) keep available the services of the directors, officers, contractors and employees of each member of the Creso Pharma Group.
 - (iii) use reasonable endeavours to ensure that all assets are maintained in the normal course consistent with its practices in the 12 month period prior to the date of this agreement;
 - (iv) without limiting clause 9.1(a), ensure each Creso Pharma Group Member collects receivables and pays payables in a manner generally consistent with its practices in the 12 month period prior to the date of this agreement;
 - (v) not enter into any new line of business or new type of activities in which the Creso Pharma Group is not engaged as of the date of this agreement;
 - (vi) ensure that Stock is ordered, managed, maintained or otherwise dealt with consistent with the Creso Pharma Group's practices in the 12 month period prior to the date of this agreement;
 - (vii) ensure that no material change is made or permitted to be made to the businesses' product prices, promotional activity or terms of supply of any goods or services other than consistent with its practices in the 12 month period prior to the date of this agreement;
 - (viii) use reasonable endeavours to ensure that Mernova Medicinal Inc continues to take all steps necessary to obtain EU GMP Certification;
 - (ix) manage the working capital of the Creso Pharma Group in the ordinary course of business and in substantially the same manner as it was prior to the date of this agreement;
 - (x) use reasonable endeavours to comply in all material respects with all material contracts to which a member of the Creso Pharma Group is a party, and with laws, authorisations and licences which are material to the operation of the Creso Pharma Group and are applicable to a member of the Creso Pharma Group;
 - (xi) not take or fail to take any action that constitutes a Creso Pharma Prescribed Occurrence or that could reasonably be expected to result in a Creso Pharma Prescribed Occurrence; and
 - (xii) use its reasonable endeavours to avoid the occurrence of an event within its control or the control of any other Creso Pharma Group Member that would constitute or be likely to constitute a Creso Pharma Material Adverse Change.

- (b) Without limiting clause 9.1(a) but subject to clause 9.2(a), Creso Pharma must not, and must procure that its Subsidiaries do not, from the date of this agreement up to and including the Implementation Date, do any of the following (or agree or offer to do any of the following):
- (i) incur any additional Financial Indebtedness;
 - (ii) make any change to its constitution;
 - (iii) (except as required by law or as provided in an existing contract in place as at the date of this agreement) enter into or make any material change to the terms of employment of (including increasing the remuneration or compensation of), any person, including an officer, director, executive or other employee, whose total employment cost exceeds \$100,000 (**Key Person**), in each case other than relating to rights or entitlements in effect on the date of this agreement and which are Fairly Disclosed in the Creso Pharma Due Diligence Materials;
 - (iv) amend the terms of any option, performance right, incentive or share plan;
 - (v) accelerate the rights of any of their employees to compensation or benefits of any kind (including under any option, performance right, incentive or share plan);
 - (vi) terminate or encourage the resignation of a Key Person, except in accordance with current personnel practices;
 - (vii) pay any of its officers, directors, executives or other employees a bonus, severance, termination or retention payment in excess of \$5,000 (in aggregate), other than pursuant to contractual arrangements in effect on the date of this agreement and which are Fairly Disclosed in the Creso Pharma Due Diligence Materials;
 - (viii) settle or compromise any dispute, audit on inquiry in relation to tax or duty or amends any tax return, other than in the ordinary course of its business;
 - (ix) (except under contractual arrangements in effect on the date of this agreement and which are Fairly Disclosed in the Creso Pharma Due Diligence Materials) enter into any enterprise bargaining agreement or similar collective employment agreement;
 - (x) in respect of any single transaction or series of related or similar transactions, acquire, lease or dispose of any interest in a business, securities, assets, real property, entity or undertaking, the value of which exceeds \$10,000, individually or \$25,000 when aggregated with all such businesses, securities, assets, real property, entities or undertakings the subject of the transaction or series of related or similar transactions;
 - (xi) enter into, amend or terminate any contracts or commitments with an annual value in excess of \$10,000 or with a value over the life of the contracts or commitments in excess of \$25,000;
 - (xii) incur or enter into commitments involving capital expenditure of more than \$10,000 whether in one transaction or a series of related transactions;
 - (xiii) write-down any of its material assets other than in accordance with the Accounting Standards;
 - (xiv) enter into, vary or terminate any contract, joint venture, partnership or commitment for a duration of over 2 years or involving total expenditure greater than \$25,000 per year, individually or when aggregated with all such contracts, joint ventures, partnerships or commitments;
 - (xv) create any Security Interest (other than a Permitted Security Interest) over any of its assets;
 - (xvi) provide financial accommodation to any person other than to members of the Creso Pharma Group (irrespective of what form of Financial Indebtedness that accommodation takes);

- (xvii) enter into any agreement, arrangement or transaction with respect to derivative instruments (including swaps, futures contracts, forward commitments, commodity derivatives or options) or similar instruments;
- (xviii) settle any legal proceedings, disputed claim, investigation, arbitration or other like proceeding where the settlement amount payable by any member of the Creso Pharma Group exceeds \$50,000;
- (xix) change any accounting policy applied to a party to report its financial position, other than any change in policy required by a change in Accounting Standards;
- (xx) cancel any existing insurance policy in the name of or for the benefit of a Creso Pharma Group Member in respect of any material assets or material risks unless a replacement policy (on the same or substantially similar terms) has been put in place;
- (xxi) vary or terminate or intentionally fail to renew any Material Contract or material Authorisation;
- (xxii) do anything that would result in a change in the Creso Pharma Consolidated Tax Group;
- (xxiii) amend any arrangements with its advisers, or appoint any new adviser, resulting in an increase in fees payable by the Creso Pharma Group to any existing or new adviser of \$100,000 or more (in aggregate), in respect of the Proposed Transaction or a Competing Proposal. For the avoidance of doubt, Creso Pharma may make any payment as and when required to be made under an engagement existing at the date of this agreement which are Fairly Disclosed in the Creso Pharma Due Diligence Materials in accordance with the terms of that engagement (without amendment);
- (xxiv) allow any regulatory licences or permits material to the Creso Pharma Group or any other material Authorisations to lapse or fall out of good standing; or
- (xxv) authorise, commit or agree to do any of the matters set out above.

9.2 Permitted activities

- (a) The obligations of Creso Pharma under clause 9.1 do not apply in respect of any matter:
 - (i) expressly required to be done by Creso Pharma under, or which is otherwise permitted by, this agreement or the Share Scheme or the Option Scheme;
 - (ii) required by law or by an order of a court or Governmental Agency;
 - (iii) to comply with his or her fiduciary or statutory duties, provided that, to the extent possible in the circumstances, Creso Pharma first provides PharmaCielo with reasonable details and consults in good faith with PharmaCielo in relation to the act to be done (or not done) in reliance of this clause;
 - (iv) required in order to pay any tax or duty when due;
 - (v) required to obtain insurances for the Creso Pharma Group (or any member thereof) or the business conducted by the Creso Pharma Group (or any member thereof);
 - (vi) which, in the reasonable opinion of Creso Pharma, is a necessary and prudent response to any emergency or disaster (including a situation giving rise to a risk of personal injury or damage to property);
 - (vii) which was Fairly Disclosed in the Creso Pharma Due Diligence Materials or in documents that were publicly available in the 12 months prior to the date of this agreement from public filings of Creso Pharma with ASX, ASIC or public registers; or
 - (viii) the undertaking of which PharmaCielo has approved in writing (which approval must not be unreasonably withheld or delayed).

9.3 Conduct of PharmaCielo business

- (a) Subject to clause 9.4(a), from the date of this agreement up to and including the Implementation Date, PharmaCielo must conduct and must cause each of its Subsidiaries to conduct their businesses in the ordinary and usual course of business and:
- (i) operate those businesses consistent with past practice, in substantially the same manner as conducted in the 12 month period prior to the date of this agreement;
 - (ii) use reasonable endeavours to:
 - (A) preserve their relationships with customers, suppliers, landlords, licensors, licensees, Governmental Agencies and others having material business dealings with them, and to retain the services of all key employees including without limitation the maintenance of its material Authorisations in Colombia;
 - (B) preserve and maintain the value of the businesses and assets of the PharmaCielo Group;
 - (C) keep available the services of the directors, officers, contractors and employees of each member of the PharmaCielo Group;
 - (D) maintain its TSXV listing and not be in default with respect to its reporting issuer status in Canadian provincial jurisdictions when it currently has such status;
 - (iii) use reasonable endeavours to ensure that all assets are maintained in the normal course consistent with its practices in the 12 month period prior to the date of this agreement;
 - (iv) manage the working capital of the PharmaCielo Group in the ordinary course of business and in substantially the same manner as it was prior to the date of this agreement;
 - (v) use reasonable endeavours to comply in all material respects with all material contracts to which a member of the PharmaCielo Group is a party, and with laws, authorisations and licences which are material to the operation of PharmaCielo and are applicable to a member of the PharmaCielo Group;
 - (vi) without limiting clause 9.1(a), ensure each PharmaCielo Group Member collects receivables and pays payables in a manner generally consistent with its practices in the 12 month period prior to the date of this agreement;
 - (vii) not take or fail to take any action that constitutes a PharmaCielo Prescribed Occurrence or that could reasonably be expected to result in a PharmaCielo Prescribed Occurrence; and
 - (viii) use its reasonable endeavours to avoid the occurrence of an event within its control or the control of any other PharmaCielo Group Member that would constitute or be likely to constitute a PharmaCielo Material Adverse Change.
- (b) Without limiting clause 9.3(a) but subject to clause 9.4(a), PharmaCielo must not, and must procure that its Subsidiaries do not, from the date of this agreement up to and including the Implementation Date, do any of the following (or agree or offer to do any of the following):
- (i) write-down any of its material assets other than in accordance with the Accounting Standards;
 - (ii) vary the rights attaching to the common shares of PharmaCielo;
 - (iii) change any accounting policy applied to a party to report its financial position, other than any change in policy required by a change in Accounting Standards;
 - (iv) cancel any existing insurance policy in the name of or for the benefit of a PharmaCielo Group Member in respect of any material assets or material risks unless a replacement policy (on the same or substantially similar terms) has been put in place;

- (v) vary or terminate or intentionally fail to renew any material contract or material Authorisation (except where such variance, termination or intentional failure to renew does not materially impact the PharmaCielo Group as a whole);
- (vi) allow any regulatory licences or permits material to the PharmaCielo Group or any other material Authorisations to lapse or fall out of good standing; or
- (vii) authorise, commit or agree to do any of the matters set out above.

9.4 Permitted activities

- (a) The obligations of PharmaCielo under clause 9.3 do not apply in respect of any matter:
 - (i) expressly required to be done by PharmaCielo under, or which is otherwise permitted by, this agreement, the Share Scheme or the Option Scheme;
 - (ii) required by law or by an order of a court or Governmental Agency;
 - (iii) required for any director of PharmaCielo to comply with his or her fiduciary or statutory duties, provided that, to the extent possible in the circumstances, PharmaCielo first provides Creso Pharma with reasonable details and consults in good faith with Creso Pharma in relation to the act to be done (or not done) in reliance of this clause;
 - (iv) required in order to pay any tax or duty when due;
 - (v) required to obtain insurances for the PharmaCielo Group (or any member thereof) or the business conducted by the PharmaCielo Group (or any member thereof);
 - (vi) which, in the reasonable opinion of PharmaCielo, is a necessary and prudent response to any emergency or disaster (including a situation giving rise to a risk of personal injury or damage to property);
 - (vii) which was Fairly Disclosed in the PharmaCielo Due Diligence Materials or in documents that were publicly available in the 12 months prior to the date of this agreement from PharmaCielo's public filings on SEDAR; or
 - (viii) the undertaking of which Creso Pharma has approved in writing (which approval must not be unreasonably withheld or delayed).

9.5 Access by PharmaCielo

- (a) In the period from the date of this agreement to the Implementation Date, and for so long as the Creso Pharma Board continues to publicly recommend the Proposed Transaction, Creso Pharma must:
 - (i) keep PharmaCielo fully informed of all material developments relating to the Creso Pharma Group and the conduct of its business;
 - (ii) procure that at least two members of Creso Pharma's executive management team meet with representatives of PharmaCielo every two weeks to assist with, among other things:
 - (A) keeping PharmaCielo fully informed of the matters contemplated by clause 9.5(a)(i) above; and
 - (B) providing PharmaCielo with access to information and people it has requested under clause 9.5(a)(iv) below;

- (iii) within 21 days from the end of each month, provide PharmaCielo with a copy of the management accounts and other reports on the financial affairs of the Creso Pharma Group relating to the previous month;
- (iv) promptly following a reasonable request by PharmaCielo, provide PharmaCielo (or its Authorised Persons) with reasonable access to:
 - (A) documents and information relating to the Creso Pharma Group, including the Creso Pharma Group's monthly management accounts and other reports on the financial affairs of the Creso Pharma Group; and
 - (B) executives and Senior Managers of the Creso Pharma Group, for the purpose of or in connection with:
 - (C) planning the transition of the Creso Pharma Group and other matters relating to the conduct of the Creso Pharma Group following the Implementation Date; and
 - (D) otherwise facilitating the Proposed Transaction.
- (b) Nothing in this clause 9.5 obliges Creso Pharma to provide to PharmaCielo or its Authorised Persons any information:
 - (i) concerning the Creso Pharma Directors' consideration of the Share Scheme and the Option Scheme; or
 - (ii) which would breach an obligation of confidentiality to any person or any applicable privacy laws.
- (c) Creso Pharma will provide reasonable assistance to PharmaCielo for the purpose of satisfying Creso Pharma's obligations under this clause 9.5 but nothing in this clause 9.5 requires Creso Pharma to provide access to its people or documentation or to take any other action which would involve refreshing or updating the Creso Pharma Due Diligence Material or which would result in unreasonable disruption to the usual and ordinary course of Creso Pharma's businesses and operations.
- (d) The parties acknowledge and agree that nothing in this clause 9.5 requires Creso Pharma to provide any information that is different or in addition to the information Creso Pharma provides to the Creso Pharma Board and its Senior Managers in the usual and ordinary course consistent with past practice.

9.6 Access by Creso Pharma

In the period from the date of this agreement to the Implementation Date, and for so long as the Creso Pharma Board continues to publicly recommend the Proposed Transaction, PharmaCielo must:

- (a) keep Creso Pharma fully informed of all material developments relating to the PharmaCielo Group and the conduct of its business (other than material developments disclosed on SEDAR); and
- (b) at the same meeting under clause 9.5(a)(ii), procure that one member of the PharmaCielo executive management team meet with representatives of Creso Pharma to assist with, keeping PharmaCielo fully informed of the matters contemplated by clause 9.6(a).

9.7 Change of control provisions

- (a) As soon as practicable after the date of this agreement, Creso Pharma and PharmaCielo must seek to identify any change of control or unilateral termination rights in material contracts to which Creso Pharma or another Creso Pharma Group Member is party which may be triggered by or exercised in response to the implementation of the Proposed Transaction.
- (b) In respect of those contracts:
 - (i) the parties will agree a proposed course of action and then Creso Pharma will initiate contact, including joint discussions if required, with the relevant

counterparties and request that they provide any consents or confirmations required or appropriate, including confirmation that the counterparties will not terminate those contracts because of a change in control in Creso Pharma or as a result of the implementation of the Proposed Transaction;

- (ii) Creso Pharma must take all reasonable action necessary to obtain such consents or confirmations as expeditiously as possible, including by promptly providing any information reasonably required by counterparties. Creso Pharma must strongly resist any requirements of landlords or contract counterparties that new or increased bank guarantees or security deposits be provided and ensure that no directors or other personal guarantees are offered or agreed to; and
- (iii) PharmaCielo must cooperate with, and provide all reasonable assistance to, Creso Pharma to obtain such consents or confirmations, including by promptly providing any information reasonably required by counterparties.

10. Actions on and following Implementation Date

10.1 Reconstitution of the board of each member of the Creso Pharma Group

- (a) On the Implementation Date, but subject to the Share Scheme Consideration having been provided in full by PharmaCielo to Scheme Shareholders and receipt by Creso Pharma of signed consents to act, Creso Pharma must take all actions necessary (and in accordance with the constitution of the Creso Pharma Group member, the Corporations Act and the Listing Rules) to appoint the persons nominated by PharmaCielo as new Creso Pharma Directors and new directors of each Subsidiary.
- (b) Without limiting clause 10.1(a), on the Implementation Date, but subject to receipt by Creso Pharma of written notices of resignation to the effect that the outgoing directors have no claim outstanding against any member of the Creso Pharma Group, Creso Pharma must procure that:
 - (i) all outgoing Creso Pharma Directors resign from the Creso Pharma Board; and
 - (ii) all outgoing directors of each Subsidiary of Creso Pharma resign from their office.
- (c) Unless otherwise agreed between Creso Pharma and PharmaCielo, for the purposes of this clause 10, the outgoing Creso Pharma Directors and the outgoing directors of each Subsidiary of Creso Pharma will be all directors appointed to Creso Pharma and each Subsidiary of Creso Pharma prior to the Implementation Date other than Dr Miri Halperin Wernli.

10.2 PharmaCielo Board

PharmaCielo represents and warrants to Creso Pharma that it has been advised by each PharmaCielo director that he or she will, on the Implementation Date, take all actions necessary to ensure that Dr Miri Halperin Wernli is lawfully appointed as a director of PharmaCielo, subject to her having provided a consent to act as a director of PharmaCielo.

10.3 Sequence of actions on the Implementation Date

On the Implementation Date, the transactions which form part of the Share Scheme and the Option Scheme will be implemented in the following sequence:

- (a) PharmaCielo will provide the Share Scheme Consideration to Scheme Shareholders in accordance with the Share Scheme;
- (b) PharmaCielo will provide the Option Scheme Consideration to Scheme Optionholders in accordance with the Option Scheme;
- (c) the Creso Pharma Board and the board of each Subsidiary of Creso Pharma will be reconstituted in accordance with clause 10.1;
- (d) the PharmaCielo Board will be reconstituted in accordance with 10.2;

- (e) PharmaCielo will acquire all of the Scheme Shares in accordance with the Share Scheme; and
- (f) the Scheme Options will be cancelled in accordance with the Option Scheme; and
- (g) Creso Pharma will apply to ASX to be removed from the official list of ASX.

11. Representations and warranties

11.1 PharmaCielo representations

- (a) PharmaCielo represents and warrants to Creso Pharma (on Creso Pharma's own behalf and separately as trustee for each of the other Creso Pharma Parties) each of the matters set out in clause 11.1(b) as at the date of this agreement and on each subsequent day until the Delivery Time on the Second Court Date (except that where any statement is expressed to be made only at a particular date it is given only at that date).
- (b) PharmaCielo represents and warrants that:
 - (i) each member of the PharmaCielo Group is a validly existing corporation registered under the laws of its place of incorporation;
 - (ii) the execution and delivery of this agreement has been properly authorised by all necessary corporate action and PharmaCielo has full corporate power and lawful authority to execute and deliver this agreement and to perform or cause to be performed its obligations under this agreement;
 - (iii) this agreement constitutes legal, valid and binding obligations on it and this agreement does not result in a breach of or default under any provision of PharmaCielo's constitution or any deed or any writ, order or injunction, rule or regulation to which PharmaCielo is a party or is bound;
 - (iv) the PharmaCielo Information provided to Creso Pharma in accordance with clause 8.2(a) for inclusion in the Explanatory Booklet will:
 - (A) comply in all material respects with the requirements of the Corporations Act, the Listing Rules and RG 60; and
 - (B) be provided in good faith on the understanding that each of the Creso Pharma Parties will rely on that information for the purposes of preparing the Explanatory Booklet and proposing and implementing the Share Scheme in accordance with the requirements of the Corporations Act;
 - (v) all information provided by or on behalf of PharmaCielo to the Independent Expert to enable the Independent Expert's Report to be included in the Explanatory Booklet to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purposes of preparing the Independent Expert's Report;
 - (vi) all information provided by or on behalf of PharmaCielo to the Investigating Accountant to enable the Investigating Accountant's Report to be included in the Explanatory Booklet to be prepared and completed will be provided in good faith and on the understanding that the Investigating Accountant will rely upon that information for the purposes of preparing the Investigating Accountant's Report;.
 - (vii) as at the date the Explanatory Booklet is dispatched to Creso Pharma Shareholders, the PharmaCielo Information, in the form and context in which that information appears in the version of the Explanatory Booklet registered by ASIC under section 412(6) of the Corporations Act will not be misleading or deceptive in any material respect (whether by omission or otherwise);
 - (viii) PharmaCielo will, as a continuing obligation, provide to Creso Pharma all such further or new information which may arise after the Explanatory Booklet has been dispatched until the date of the Share Scheme Meeting and Option Scheme Meeting which is necessary to ensure that the PharmaCielo Information, in the form

and context in which that information appears in the version of the Explanatory Booklet registered by ASIC under section 412(6) of the Corporations Act, is not misleading or deceptive in any material respect (whether by omission or otherwise);

- (ix) all factual information PharmaCielo has provided to Creso Pharma prior to this agreement is, to the best of PharmaCielo's knowledge, accurate in all material respects and not misleading in any material respect (whether by omission or otherwise), including that there are reasonable grounds for all statements as to future matters and a reasonable basis for all statements of opinion in that information;
- (x) no PharmaCielo Prescribed Occurrence has occurred;
- (xi) as at the date of this agreement, no shareholder approval of PharmaCielo is required to complete the Proposed Transaction;
- (xii) other than expressly contemplated in this agreement, no Regulatory Approvals are required to be obtained by PharmaCielo in order for it to complete the Proposed Transaction;
- (xiii) as at the date of this agreement, the total issued capital of PharmaCielo is:
 - (A) 96,125,419 issued common shares;
 - (B) 14,430,180 issued stock options; and
 - (C) 1,258,000 restricted stock units,and there are no other PharmaCielo stock options, warrants, performance rights, shares, convertible notes or other securities (or offers or agreements to issue any of the foregoing);
- (xiv) as at the date of this agreement, PharmaCielo is not in breach of its disclosure obligations under the TSXV listing rules and is not relying on any exclusion to withhold any information for disclosure (other than in relation to the Proposed Transaction or as Fairly Disclosed in writing to Creso Pharma on or before the date of this agreement) that a reasonable person would expect to have a material effect on the price or value of PharmaCielo Shares;
- (xv) no Insolvency Event has occurred in relation to it or another PharmaCielo Group Member, nor, as far as PharmaCielo is aware, has any regulatory action of any nature been taken that would prevent or restrict its ability to fulfil its obligations under this agreement;
- (xvi) as far as PharmaCielo is aware, no litigation, prosecution, arbitration, mediation, or other proceedings relating to the PharmaCielo Group is current or, as far as PharmaCielo is aware, pending or threatened or might reasonably be expected to arise as a result of current circumstances other than where such proceedings, could not be reasonably expected to have a material adverse effect on the financial or operational performance or reputation of the PharmaCielo Group;
- (xvii) as at the date of this agreement, neither PharmaCielo nor any member of the PharmaCielo Group has a Voting Power in any Creso Pharma Shares;
- (xviii) the PharmaCielo Due Diligence Materials have been collated and disclosed in good faith for the purposes of a due diligence process and in this context and, so far as the PharmaCielo Board is aware after due enquiry, the PharmaCielo Due Diligence Materials are true, complete and accurate and not misleading or deceptive in any material respect, including by omission;
- (xix) PharmaCielo's financial statements as filed on SEDAR have been prepared in accordance with the Accounting Standards on a basis consistent with past practice financial statements and, as far as PharmaCielo is aware, there has not been any event, change, effect or development which would require PharmaCielo to restate its financial statements as filed on SEDAR; and

- (xx) between the date of this agreement and the Share Scheme Record Date, PharmaCielo will not, and will procure that each other member of the PharmaCielo Group does not, enter into any arrangement under which it obtains the beneficial interest in any Creso Pharma Shares, unless the Creso Pharma Shares are registered in the name of PharmaCielo.

11.2 PharmaCielo's indemnity

PharmaCielo agrees with Creso Pharma (on Creso Pharma's own behalf and separately as trustee or nominee for each of the other Creso Pharma Parties) to indemnify and keep indemnified the Creso Pharma Parties from and against all claims, actions, proceedings, liabilities, obligations, damages, loss, harm, charges, costs, expenses, duties and other outgoings of whatever nature and however arising which any of the Creso Pharma Parties may suffer or incur by reason of any breach of any of the representations and warranties in clauses 11.1(a) or 11.1(b).

11.3 Qualifications on PharmaCielo's representations, warranties and indemnities

- (a) The representations and warranties in clause 11.1 and the indemnity in clause 11.2 are each subject to matters that have been Fairly Disclosed in:
 - (i) the PharmaCielo Due Diligence Materials; and
 - (ii) PharmaCielo's public filings on SEDAR, in the 12 month period prior to the date of this agreement.
- (b) Creso Pharma and PharmaCielo agree and acknowledge that no warranty or representation is given by or on behalf of PharmaCielo, and Creso Pharma may not bring any claim, with respect to any information that is a forecast, projection, estimate, opinion, or other forward looking statement as to the future performance, financial condition, results of operations, strategy and plans of the PharmaCielo Group, in each case whether contained in the PharmaCielo Due Diligence Materials or otherwise.

11.4 Creso Pharma representations

- (a) Creso Pharma represents and warrants to PharmaCielo (on its own behalf and separately as trustee for each of the PharmaCielo Parties) each of the matters set out in clause 11.4(b) as at the date of this agreement and on each subsequent day until on the Second Court Date (except that where any statement is expressed to be made only at a particular date it is given only at that date).
- (b) Creso Pharma represents and warrants that:
 - (i) each member of the Creso Pharma Group is a validly existing corporation registered under the laws of its place of incorporation;
 - (ii) the execution and delivery of this agreement by Creso Pharma has been properly authorised by all necessary corporate action and Creso Pharma has full corporate power and lawful authority to execute and deliver this agreement and to perform or cause to be performed its obligations under this agreement;
 - (iii) this agreement constitutes legal, valid and binding obligations on Creso Pharma and the execution of this agreement of itself does not result in a breach of or default under:
 - (A) any provision of Creso Pharma's constitution; or
 - (B) any agreement or deed or any writ, order or injunction, rule or regulation to which Creso Pharma or any of its Subsidiaries is a party or to which they are bound,and it is not otherwise bound by any agreement that would prevent or restrict it from entering into or performing this agreement;
 - (iv) the Creso Pharma Information contained in the Explanatory Booklet:
 - (A) will comply in all material respects with the requirements of the Corporations Act, Listing Rules and RG 60; and

- (B) will be prepared and included in the Explanatory Booklet in good faith and on the understanding that PharmaCielo and each other PharmaCielo Party will rely on that information,

and all information provided by Creso Pharma to the Independent Expert to enable the Independent Expert's Report to be included in the Explanatory Booklet to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report;

- (v) as at the date the Explanatory Booklet is dispatched to Creso Pharma Shareholders, the Explanatory Booklet registered by ASIC under section 412(6) of the Corporations Act (excluding the PharmaCielo Information and the Independent Expert's Report) will not be misleading or deceptive in any material respect (with any statement of belief or opinion having been formed on a reasonable basis), whether by omission or otherwise;
- (vi) Creso Pharma will, as a continuing obligation (but in respect of the PharmaCielo Information, only to the extent that PharmaCielo provides Creso Pharma with updates to the PharmaCielo Information), ensure that the Explanatory Booklet is updated to include all further or new information which arises after the Explanatory Booklet has been dispatched to Creso Pharma Shareholders until the date of the Share Scheme Meeting which is necessary to ensure that the Explanatory Booklet is not misleading or deceptive (including by way of omission) in any material respect;
- (vii) as at the date of this agreement, Creso Pharma is not in breach of its continuous disclosure obligations under the Listing Rules and is not relying on the exclusion in Listing Rule 3.1A to withhold any information from disclosure (other than in relation to the Proposed Transaction or as Fairly Disclosed in writing to PharmaCielo on or before the date of this agreement);
- (viii) as at the date of this agreement, the total issued capital of Creso Pharma is:
 - (A) 133,744,332 Creso Pharma Shares;
 - (B) 57,346,411 Creso Pharma Listed Options;
 - (C) 7,586,250 Creso Pharma Unlisted Options;
 - (D) 12,096,000 Creso Pharma Performance Rights; and
 - (E) 2,212,120 Creso Pharma Performance Shares,and, apart from the 8,300,000 Creso Pharma Exchangeable Shares and 500,000 Creso Pharma Performance Rights to be issued to a Creso Pharma employee following release of the Announcements, and up to 107 convertible notes, with face value of \$50,000 each, that may be issued under the Secured Loan Agreements, there are no other Creso Pharma options, performance rights, shares, convertible notes, warrants or other securities which may convert into Creso Pharma Shares (or offers or agreements to issue any of the foregoing) and no person has any right to call for the issue or grant of, any Creso Pharma Shares, options, warrants, performance rights or other securities or instruments in Creso Pharma;
- (ix) the Creso Pharma Due Diligence Materials set out the details of any company, partnership, trust, joint venture or other enterprise in which Creso Pharma or another Creso Pharma Group Member owns or otherwise holds any interest;
- (x) no Insolvency Event has occurred in relation to it or another Creso Pharma Group Member, nor, as far as Creso Pharma is aware, has any regulatory action of any nature been taken that would prevent or restrict its ability to fulfil its obligations under this agreement;
- (xi) no member of the Creso Pharma Group has incurred any Financial Indebtedness;

- (xii) there are no Security Interests (other than a Permitted Security Interest) over any asset or securities of a member of the Creso Pharma Group;
- (xiii) each member of the Creso Pharma Group has complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Australian and foreign Governmental Agencies having jurisdiction over them and have all material licenses, Authorisations and permits necessary for them to conduct the business of the Creso Pharma Group as presently being conducted;
- (xiv) Creso Pharma's financial statements as disclosed to ASX have been prepared in accordance with the Accounting Standards on a basis consistent with past practice financial statements and, as far as Creso Pharma is aware, there has not been any event, change, effect or development which would require Creso Pharma to restate its financial statements as disclosed to ASX;
- (xv) the Creso Pharma Group owns, or has the right to use, all of the assets that are material for the conduct of the business of the Creso Pharma Group, and will continue to do so upon and immediately following the Implementation Date;
- (xvi) no litigation, prosecution, arbitration, mediation, or other proceedings relating to the Creso Pharma Group is current or, as far as Creso Pharma is aware, pending or threatened or might reasonably be expected to arise as a result of current circumstances;
- (xvii) as far as Creso Pharma is aware, no agreement which is material to the business of the Creso Pharma Group is to be terminated as a result of the Proposed Transaction and there are no contracts that are terminable as a result of a change of control other than the contracts agreed in a letter between Creso Pharma and PharmaCielo dated on or about the date of this agreement;
- (xviii) during the 5 year period prior to the date of this agreement, no member of the Creso Pharma Group nor, to the Creso Pharma Group's knowledge, any of the officers, directors, employees, agents, intermediaries, representatives, suppliers or joint venture partners of any member of the Creso Pharma Group has, directly or indirectly, in connection with the business of the Creso Pharma Group:
 - (A) requested, received, made, offered, authorised, solicited or promised to make or offer any unlawful payment, loan or transfer of anything of value or advantage to or for the benefit of or from any person, including any government official, candidate for public office, political party or political campaign;
 - (B) requested, received, paid, offered or promised to make or offer any bribe, payoff, influence payment, kickback, unlawful rebate, or other similar unlawful payment of any nature;
 - (C) requested, received, made, offered or promised to make or offer any unlawful contributions (including political or charitable contributions), gifts, entertainment or other unlawful expenditures;
 - (D) established or maintained any unlawful fund of corporate monies or other properties;
 - (E) created or caused the creation of any false or inaccurate books and records of any member of the Creso Pharma Group related to any of the foregoing;
 - (F) otherwise directly or indirectly violated any local or international anti-corruption or anti-bribery law (including, without limitation, the US Foreign Corrupt Practices Act of 1977 as amended and the UK Bribery Act of 2010) applicable to the Creso Pharma Group; or
 - (G) have sold or purchased goods or services from, or otherwise engaged in any such transaction with, any person in Cuba, Iran, North Korea, Syria, Sudan or the Crimea Region of Ukraine and no such sales, purchases or other transactions are pending or have any outstanding obligations

involving any person in Cuba, Iran, North Korea, Syria, Sudan or the Crimea Region of Ukraine;

- (xix) during the five year period prior to the date of this agreement, no current or former director or officer of any member of the Creso Pharma Group is or was a Sanctioned Person and, so far as Creso Pharma is aware, no member of the Creso Pharma Group or any of their respective current or former employees or their respective intermediaries is or was a Sanctioned Person;
- (xx) the Creso Pharma Due Diligence Materials adequately and completely describe all:
 - (A) arrangements for the award of any payments, bonus, incentive or severance pay to senior management of the Creso Pharma Group;
 - (B) fees payable to all third party advisers in connection with the Proposed Transaction; and
 - (C) other agreements or arrangements entered into by any member of the Creso Pharma Group pursuant to which consideration becomes payable to any person in connection with the Proposed Transaction;
- (xxi) the Creso Pharma Due Diligence Materials have been collated and disclosed in good faith for the purposes of a due diligence process and in this context and, so far as the Creso Pharma Board and the Senior Managers of Creso Pharma are aware after due enquiry, the Creso Pharma Due Diligence Materials are true, complete and accurate and not misleading or deceptive in any material respect, including by omission;
- (xxii) the Creso Pharma Shares do not satisfy the principal asset test in section 855-30 of the *Income Tax Assessment Act 1997* (Cth) (**ITAA 1997**), in that the sum of the 'market values' (as that term is defined in the ITAA 1997) of Creso Pharma's assets that are 'taxable Australian real property' (as that term is defined in the ITAA 1997) does not exceed the sum of the 'market values' (as that term is defined in the ITAA 1997) of Creso Pharma's assets that are not 'taxable Australian real property' (as that term is defined in the ITAA 1997);
- (xxiii) the funds made available under the Creso Pharma Loan Agreement are sufficient to fund the normal course of operations of the Creso Pharma Group for the five months following the date of this agreement;
- (xxiv) none of the Authorisations of any member of the Creso Pharma Group will be terminated or terminable as a result of the implementation of the Proposed Transaction and the resulting change of control of Creso Pharma will not require new applications in relation to such Authorisations; and
- (xxv) as far as Creso Pharma is aware, it has disclosed all material information relating to the Creso Pharma Group or its respective businesses or operations as at the date of this agreement, which could reasonably be expected to be material for a reasonable and sophisticated buyer to make an informed assessment of:
 - (A) Creso Pharma's material agreements and their respective change of control or termination provisions which would be enlivened by implementation of the Proposed Transaction; and
 - (B) material disputes between Creso Pharma and a third party (including a Governmental Agency).

11.5 Creso Pharma's indemnity

Creso Pharma agrees with PharmaCielo (on PharmaCielo's own behalf and separately as trustee for each of the PharmaCielo Parties) to indemnify and keep indemnified the PharmaCielo Parties from and against all claims, actions, proceedings, liabilities, obligations, damages, loss, harm, charges, costs, expenses, duties and other outgoings of whatever nature and however arising which any of the PharmaCielo Parties may suffer or incur by reason of any breach of any of the representations and warranties in clauses 11.4(a) or 11.4(b).

11.6 Qualifications on Creso Pharma's representations, warranties and indemnities

- (a) With the exception on the Creso Pharma Warranty in clause 11.4(b)(viii), the representations and warranties in clause 11.4 and the indemnity in clause 11.5 are each subject to matters that have been Fairly Disclosed in:
 - (i) the Creso Pharma Due Diligence Materials; and
 - (ii) Creso Pharma's announcements to ASX, in the 12 month period prior to the date of this agreement.
- (b) Creso Pharma and PharmaCielo agree and acknowledge that no warranty or representation is given by or on behalf of Creso Pharma, and PharmaCielo may not bring any claim, with respect to any information that is a forecast, projection, estimate, opinion, or other forward looking statement as to the future performance, financial condition, results of operations, strategy and plans of the Creso Pharma Group, in each case whether contained in the Creso Pharma Due Diligence Materials or otherwise.

11.7 Notifications

Each party will promptly advise the other in writing if it becomes aware of any fact, matter or circumstance which constitutes or may constitute a breach of any of the representations or warranties given by it under this clause 11.

11.8 Survival of representations

Each representation and warranty in clauses 11.1 and 11.4:

- (a) is severable;
- (b) will survive the termination of this agreement; and
- (c) is given with the intent that liability thereunder will not be confined to breaches which are discovered prior to the date of termination of this agreement.

11.9 Survival of indemnities

Each indemnity in this agreement (including those in clauses 11.2 and 11.5) will:

- (a) be severable;
- (b) be a continuing obligation;
- (c) constitute a separate and independent obligation of the party giving the indemnity from any other obligations of that party under this agreement; and
- (d) survive the termination of this agreement.

12. Releases

12.1 Creso Pharma Parties

- (a) Without limiting PharmaCielo's rights under clause 11, PharmaCielo (for itself and as agent of every member of the PharmaCielo Group) releases all rights against and agrees with Creso Pharma that it will not make a Claim against, any Creso Pharma Party (other than Creso Pharma) in connection with:
 - (i) Creso Pharma's execution or delivery of this agreement;
 - (ii) any breach of any representation or warranty of Creso Pharma in this agreement;
 - (iii) the implementation of the Share Scheme or the Option Scheme; or
 - (iv) any disclosure made by any Creso Pharma Party including in the Creso Pharma Due Diligence Material that contains any statement which is false or misleading whether in content or by omission,

except to the extent the relevant Creso Pharma Party has not acted in good faith or has engaged in wilful misconduct or fraud.

- (b) This clause is subject to any Corporations Act restriction and will (if and to the extent required) be read down accordingly. Creso Pharma receives and holds the benefit of this clause as trustee for each other Creso Pharma Party.

12.2 PharmaCielo Parties

- (a) Without limiting Creso Pharma's rights under clause 11, Creso Pharma releases its rights against, and agrees with PharmaCielo that it will not make a Claim against any PharmaCielo Party (other than PharmaCielo) in connection with:
 - (i) PharmaCielo's execution or delivery of this agreement;
 - (ii) any breach of any representation or warranty of PharmaCielo in this agreement;
 - (iii) the implementation of the Share Scheme or the Option Scheme; or
 - (iv) any disclosure made by any PharmaCielo Party that contains any statement which is false or misleading whether in content or by omission,except to the extent that the relevant PharmaCielo Party has not acted in good faith or has engaged in wilful misconduct or fraud.
- (b) This clause is subject to any Corporations Act restriction and will (if and to the extent required) be read down accordingly. PharmaCielo receives and holds the benefit of this clause as trustee for each other PharmaCielo Party.

12.3 Deeds of indemnity

- (a) Subject to the Share Scheme becoming Effective, PharmaCielo undertakes in favour of Creso Pharma and each other person who is a Creso Pharma Party that it will:
 - (i) subject to clause 12.3(d), for 7 years from the Implementation Date, ensure that the constitutions of Creso Pharma and each other member of the Creso Pharma Group continue to contain such rules as are contained in those constitutions at the date of this agreement that provide for each company to indemnify each of its directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to any person other than a member of the Creso Pharma Group; and
 - (ii) procure that Creso Pharma and each other member of the Creso Pharma Group complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time.
- (b) The undertakings contained in clause 12.3(a) are subject to any Corporations Act restriction, or any restriction in the law of a jurisdiction in which an entity is incorporated, and will be read down accordingly.
- (c) Creso Pharma receives and holds for the benefit of clause 12.3(a), to the extent it relates to the other Creso Pharma Parties, as trustee for them.
- (d) The undertakings contained in clause 12.3(a) are given:
 - (i) in the case of clause 12.3(a)(i), until the earlier of 7 years from the Implementation Date or the relevant member of the Creso Pharma Group ceasing to be part of the PharmaCielo Group; or
 - (ii) in the case of clause 12.3(a)(ii), until the earlier of 7 years from the retirement of each director and officer or the relevant member of the Creso Pharma Group ceasing to be part of the PharmaCielo Group.

12.4 Directors' and officers' insurance

PharmaCielo acknowledges that Creso Pharma will in respect of Creso Pharma and all other members of the Creso Pharma Group:

- (a) prior to the Effective Date, arrange for the cover currently provided under the directors' and officers' insurance policy for Creso Pharma and all other members of the Creso Pharma Group (**Policy**) to be extended for a further 12 months; and

- (b) by no later than the Implementation Date, to the extent practicable at normal commercial rates, arrange for the cover provided under the Policy to be amended so as to provide run off cover in accordance with the terms of the Policy for 7 years from the end of the term of the Policy, and pay all premiums required so as to ensure that insurance cover is provided under the Policy on those terms until that date.

12.5 Obligations in relation to directors' and officers' insurance

From the Implementation Date, Creso Pharma must not:

- (a) vary or cancel the Policy; or
- (b) unless required under the Policy, commit any act or omission that may prejudice any claim by a director or officer of Creso Pharma under the Policy as extended under clause 12.4(b) above.

13. Confidentiality and public announcement

13.1 Confidentiality

Each party acknowledges and agrees that it is bound by the terms of the Confidentiality Agreement except that the terms of this agreement will prevail over the Confidentiality Agreement to the extent of any inconsistency.

13.2 Required announcement

Where a party is required by applicable law, the Listing Rules (in the case of Creso Pharma), the listing rules of TSXV (in the case of PharmaCielo) or any other applicable financial market regulation to make any announcement or to make any disclosure in connection with the Proposed Transaction or any other transaction the subject of this agreement, the Share Scheme or the Option Scheme, it may do so but must use reasonable endeavours, to the extent practicable and lawful, to consult with the other party before making the relevant disclosure and must give the other party as much notice as reasonably practicable.

13.3 Statements on termination

The parties must use all reasonable endeavours to issue agreed statements in respect of any termination of this agreement and, to that end but without limitation, clause 13.2 applies to any such statements or disclosures.

14. Termination

14.1 Termination by notice

- (a) PharmaCielo or Creso Pharma may, by notice in writing to the other, terminate this agreement at any time prior to the Delivery Time on the Second Court Date:
 - (i) if the other is in material breach of any of its obligations under this agreement (other than the breaching of a party's respective representations and warranties which are regulated by clause 14.2) and the other party has failed to remedy that breach within 10 Business Days (or the Delivery Time on the Second Court Date if earlier) of receipt by it of a notice in writing from the terminating party setting out details of the relevant circumstance and requesting the other party to remedy the breach;
 - (ii) in accordance with clause 3.9;
 - (iii) if the Court refuses to make any order directing Creso Pharma to convene the Share Scheme Meeting, provided that both Creso Pharma and PharmaCielo have met and consulted in good faith and agreed that they do not wish to proceed with the Share Scheme; or

- (iv) if the Effective Date for the Share Scheme has not occurred on or before the End Date.
- (b) Creso Pharma may, by notice in writing to PharmaCielo, terminate this agreement at any time prior to the Delivery Time on the Second Court Date if at any time before then each of that number of Creso Pharma Directors as constitutes a majority of the Creso Pharma Board publicly changes, withdraws or modifies his or her Recommendation as permitted by clause 7.1(b).
- (c) PharmaCielo may, by notice in writing to Creso Pharma, terminate this agreement at any time prior to the Delivery Time on the Second Court Date if at any time before then any Creso Pharma Director:
 - (i) fails to recommend the Share Scheme or the Option Scheme;
 - (ii) withdraws, adversely revises or adversely modifies their recommendation of the Proposed Transaction; or
 - (iii) makes a public statement indicating that they no longer recommend the Proposed Transaction or recommends, endorses or supports a Competing Proposal, other than as a result of the circumstances described in clause 7.2, which for the avoidance of doubt will not extend to any Creso Pharma Director adversely revising or adversely modifying his or her recommendation of the Proposed Transaction or making a public statement indicating that they recommend, endorse or support a Competing Proposal.

14.2 Termination for breach of representations and warranties

- (a) PharmaCielo may, by notice in writing to Creso Pharma, terminate this agreement at any time prior to the Delivery Time on the Second Court Date if:
 - (i) Creso Pharma is in material breach of a Creso Pharma Warranty; or
 - (ii) Creso Pharma is in breach of the Creso Pharma Warranty in clause 11.4(b)(viii), and Creso Pharma has failed to remedy that breach within 10 Business Days (or the Delivery Time on the Second Court Date if earlier) of receipt by it of a notice in writing from PharmaCielo setting out details of the relevant circumstance and requesting Creso Pharma to remedy the breach.
- (b) Creso Pharma may, by notice in writing to PharmaCielo, terminate this agreement at any time prior to the Delivery Time on the Second Court Date if PharmaCielo is in material breach of a PharmaCielo Warranty and PharmaCielo has failed to remedy that breach within 10 Business Days (or the Delivery Time on the Second Court Date if earlier) of receipt by it of a notice in writing from Creso Pharma setting out details of the relevant circumstance and requesting PharmaCielo to remedy the breach.

14.3 Effect of termination

- (a) In the event of termination of this agreement under clause 3.9, 14.1 or 14.2, this agreement will become void and have no effect, except that the provisions of clauses 11.8, 11.9, 14, 15, 16 and 20.3 to 20.15 (inclusive) survive termination.
- (b) Termination of this agreement does not affect any accrued rights of a party in respect of a breach of this agreement prior to termination.

15. Creso Pharma Break Fee and Reimbursement Fee

15.1 Background

- (a) Creso Pharma and PharmaCielo acknowledge that, if they enter into this agreement and the Share Scheme is subsequently not implemented, PharmaCielo will incur significant costs including those described in clause 15.2.

- (b) In the circumstances referred to in clause 15.1(a), PharmaCielo has requested that provision be made for the payments outlined in clauses 15.3 and 15.4, without which PharmaCielo would not have entered into this agreement.
- (c) The Creso Pharma Board believes that the Share Scheme will provide benefit to Creso Pharma and Creso Pharma Shareholders and that it is appropriate for Creso Pharma to agree to the payments referred to in this clause 15 in order to secure PharmaCielo's participation in the Proposed Transaction.

15.2 Costs incurred by PharmaCielo

- (a) The fee payable under clause 15.3 has been calculated to reimburse PharmaCielo for the following:
 - (i) fees for legal, taxation and financial advice in planning and implementing the Proposed Transaction;
 - (ii) reasonable opportunity costs incurred in engaging in the Proposed Transaction or in not engaging in other alternative acquisitions or strategic initiatives;
 - (iii) costs of management and directors' time in planning and implementing the Proposed Transaction;
 - (iv) out of pocket expenses incurred in planning and implementing the Proposed Transaction;
 - (v) costs associated with the financing arrangements in respect of the Proposed Transaction; and
 - (vi) any damage to PharmaCielo's reputation associated with a failed transaction and the implications of those damages if PharmaCielo seeks to execute alternative acquisitions in the future,

in each case, incurred by PharmaCielo directly or indirectly as a result of having entered into this agreement and pursuing the Proposed Transaction.
- (b) The fee payable under clause 15.4 has been calculated to reimburse PharmaCielo for the fees for legal, taxation and financial advice in planning and implementing the Proposed Transaction, incurred by PharmaCielo directly or indirectly as a result of having entered into this agreement and pursuing the Proposed Transaction.
- (c) The parties acknowledge that:
 - (i) the amount of fees, costs and losses referred to in this clause 15.2 is inherently unascertainable and that, even after termination of this agreement, the costs will not be able to be accurately ascertained; and
 - (ii) the amount of the costs payable under clauses 15.3 and 15.4 is a genuine and reasonable pre-estimate of those fees, costs and losses and is not a penalty.

15.3 Creso Pharma Break Fee

- (a) Creso Pharma agrees to pay to PharmaCielo \$1,200,000 (exclusive of GST) (**Creso Pharma Break Fee**) in any of the following circumstances:
 - (i) (**Competing Proposal Succeeds**) both of the following occur:
 - (A) a Competing Proposal is publicly announced during the period commencing on the date of this agreement and ending on the End Date; and
 - (B) within 12 months from the date of the public announcement of such Competing Proposal:
 - (I) the Competing Proposal is implemented or completed substantially on the terms described in the public announcement; or
 - (II) without limiting clause 15.3(a)(i)(B)(I), the proponent of that Competing Proposal acquires a relevant interest in at least 50% of

the Creso Pharma Shares and the Competing Proposal is (or becomes) free of any defeating condition; or

- (ii) **(Change of Recommendation)** At any time prior to the Second Court Date, any Creso Pharma Director:
- (A) withdraws or adversely modifies their recommendation of the Proposed Transaction or recommends or supports a Competing Proposal;
 - (B) does not recommend in the Creso Pharma Announcement or Explanatory Booklet that Creso Pharma Shareholders approve the Share Scheme and that Creso Pharma Listed Optionholders approve the Option Scheme; or
 - (C) makes any public statement to the effect that the Share Scheme or the Option Scheme is not, or is no longer, recommended,
- except where that act is:
- (D) as a result of the circumstances set out in the clause 7.2, which for the avoidance of doubt will not extend to any Creso Pharma Director adversely revising or adversely modifying his or her recommendation of the Proposed Transaction or making a public statement indicating that they recommend, endorse or support a Competing Proposal;
 - (E) as a result of the Independent Expert (either in its initial report or any updated, revised or supplemental report) opining that the Share Scheme is not in the best interest of Creso Pharma Shareholders (other than where the reason for that opinion is a Superior Proposal);
 - (F) as a result of a failure of a condition precedent in clause 3, other than as result of a failure of a condition precedent in clauses 3.1(c) (No Creso Pharma Prescribed Occurrences), 3.1(e) (Creso Pharma Warranties), 3.1(j) (No Creso Pharma Material Adverse Change) 3.1(h) (Creso Pharma Convertible Securities), 3.1(l) (Third party consents) or 3.1(o) (Conversion of Secured Loan Agreements); or
 - (G) in circumstances where Creso Pharma is entitled to terminate this agreement under clause 14.1(a)(i) or 14.2(b); or
- (iii) **(Material breach)** PharmaCielo terminates this agreement in accordance with clause 14.1(a)(i) or 14.2(a).
- (b) Creso Pharma must pay PharmaCielo the Creso Pharma Break Fee within 10 Business Days of receipt by Creso Pharma of a demand for payment from PharmaCielo made after the occurrence of the event referred to in clause 15.3.
 - (c) The Creso Pharma Break Fee is not payable merely because the resolution submitted to the Share Scheme Meeting in respect of the Share Scheme is not approved by the majorities required under section 411(4)(a)(ii) of the Corporations Act.
 - (d) The Creso Pharma Break Fee is not payable by Creso Pharma if Creso Pharma validly terminates this agreement in accordance with clause 14.1(a)(i) or 14.2(b).
 - (e) The Creso Pharma Break Fee is only payable once and the maximum amount payable by Creso Pharma under this clause 15.3 is \$1,200,000 (exclusive of GST).
 - (f) Where the Creso Pharma Break Fee becomes payable to PharmaCielo under this clause 15.3 and is actually paid to PharmaCielo, PharmaCielo (for itself and as agent of every member of the PharmaCielo Group):
 - (i) releases all rights against and agrees with Creso Pharma that PharmaCielo will not make a Claim against any Creso Pharma Party (other than a claim under this clause 15.3 or a claim in respect of a breach of clause 17) in connection with:
 - (A) the event that gave rise to the right to demand the payment of the Creso Pharma Break Fee; nor

- (B) any other event, matter or circumstance that may give rise to a separate right to the Creso Pharma Break Fee or that constitutes or may constitute a breach of this agreement; and
- (ii) indemnifies any Creso Pharma Party against a Claim that is made contrary to the release under clause 15.3(f)(i),
with the effect that the payment of the Creso Pharma Break Fee represents the sole and exclusive remedy of any PharmaCielo Group Member for the circumstances set forth in this clause 15.3.
- (g) Notwithstanding any other provision of this agreement but subject to clause 18:
 - (i) the maximum liability of Creso Pharma to PharmaCielo under or in connection with this agreement including in respect of any breach of this agreement will be the Creso Pharma Break Fee; and
 - (ii) a payment by Creso Pharma in accordance with this clause 15.3 represents the sole and absolute liability of Creso Pharma under or in connection with this agreement and no further damages, fees, expenses or reimbursements of any kind will be payable by Creso Pharma in connection with this agreement.
- (h) The Creso Pharma Break Fee is not payable if the Creso Pharma Reimbursement Fee becomes payable to PharmaCielo under clause 15.4 and is actually paid to PharmaCielo.
- (i) The Creso Pharma Break Fee is not payable if the Share Scheme becomes Effective, notwithstanding the occurrence of any event in clause 15.3.

15.4 Creso Pharma Reimbursement Fee

- (a) Creso Pharma agrees to pay to PharmaCielo \$450,000 (exclusive of GST) (**Creso Pharma Reimbursement Fee**) if the resolution to approve the Share Scheme is submitted to the Share Scheme Meeting, the Share Scheme Meeting is held but the resolution is not approved by the majorities required under section 411(4)(a)(ii) of the Corporations Act.
- (b) Creso Pharma must pay PharmaCielo the Creso Pharma Reimbursement Fee within 10 Business Days of receipt by Creso Pharma of a demand for payment from PharmaCielo made after the occurrence of the event referred to in clause 15.4(a).
- (c) The Creso Pharma Reimbursement Fee is not payable by Creso Pharma if Creso Pharma validly terminates this agreement in accordance with clause 14.1(a)(i) or 14.2(b).
- (d) The Creso Pharma Reimbursement Fee is only payable once and the maximum amount payable by Creso Pharma under this clause 15.4 is \$450,000 (exclusive of GST).

16. PharmaCielo Break Fee

16.1 Background

- (a) Creso Pharma and PharmaCielo acknowledge that, if they enter into this agreement and the Share Scheme is subsequently not implemented, Creso Pharma will incur significant costs including those described in clause 16.2.
- (b) In the circumstances referred to in clause 16.1(a), Creso Pharma has requested that provision be made for the payments outlined in clause 16.3, without which Creso Pharma would not have entered into this agreement.
- (c) The PharmaCielo Board believes that the Share Scheme will provide benefit to PharmaCielo and the shareholders of PharmaCielo and that it is appropriate PharmaCielo to agree to the payments referred to in this clause 15 in order to secure Creso Pharma's participation in the Proposed Transaction.

16.2 Costs incurred by Creso Pharma

- (a) The fee payable under clause 15.3 has been calculated to reimburse Creso Pharma for the following:
- (i) fees for legal, taxation and financial advice in planning and implementing the Proposed Transaction;
 - (ii) reasonable opportunity costs incurred in engaging in the Proposed Transaction or in not engaging in other alternative acquisitions or strategic initiatives;
 - (iii) costs of management and directors' time in planning and implementing the Proposed Transaction;
 - (iv) out of pocket expenses incurred in planning and implementing the Proposed Transaction;
 - (v) costs associated with the financing arrangements in respect of the Proposed Transaction; and
 - (vi) any damage to Creso Pharma's reputation associated with a failed transaction and the implications of those damages if Creso Pharma seeks to execute alternative acquisitions in the future,
- in each case, incurred by Creso Pharma directly or indirectly as a result of having entered into this agreement and pursuing the Proposed Transaction.
- (b) The parties acknowledge that:
- (i) the amount of fees, costs and losses referred to in this clause 16.2 is inherently unascertainable and that, even after termination of this agreement, the costs will not be able to be accurately ascertained; and
 - (ii) the amount of the costs payable under clause 16.3 is a genuine and reasonable pre-estimate of those fees, costs and losses and is not a penalty.

16.3 PharmaCielo Break Fee

- (a) PharmaCielo agrees to pay to Creso Pharma \$1,200,000 (exclusive of GST) (**PharmaCielo Break Fee**) if
- (i) the Share Scheme and the Option Scheme each became Effective but:
 - (A) PharmaCielo does not pay the Share Scheme Consideration or the Option Scheme Consideration in accordance with the terms and conditions of this agreement, the Share Scheme Deed Poll and the Option Scheme Deed Poll; or
 - (B) PharmaCielo does not comply with its obligations to pay the agreed consideration for the unlisted securities in accordance with the terms and conditions in clause 6 of this agreement; or
 - (ii) Creso Pharma terminates this agreement in accordance with either:
 - (A) clause 14.1(a)(i) as a result of a material breach of one or more of PharmaCielo's obligations under this agreement which have not been remedied within the time period set out clause 14.1(a)(i); and
 - (B) clause 14.2(b) as a result of a material breach by PharmaCielo of a PharmaCielo Warranty that has not been remedied within the time period set out in clause 14.2(b).
- (b) PharmaCielo must pay Creso Pharma the PharmaCielo Break Fee within 10 Business Days of receipt by Creso Pharma of a demand for payment from Creso Pharma made after the occurrence of the event referred to in clause 16.3.
- (c) The PharmaCielo Break Fee is not payable merely because the resolution submitted to the Share Scheme Meeting in respect of the Share Scheme is not approved by the majorities required under section 411(4)(a)(ii) of the Corporations Act.

- (d) The PharmaCielo Break Fee is not payable by PharmaCielo if PharmaCielo validly terminates this agreement in accordance with clause 14.1(a)(i) or 14.2(a).
- (e) The PharmaCielo Break Fee is only payable once and the maximum amount payable by PharmaCielo under this clause 16.3 is \$1,200,000 (exclusive of GST).
- (f) Where the PharmaCielo Break Fee becomes payable to Creso Pharma under this clause 16.3 and is actually paid to Creso Pharma, Creso Pharma (for itself and as agent of every member of the Creso Pharma Group):
 - (i) releases all rights against and agrees with PharmaCielo that Creso Pharma will not make a Claim against any PharmaCielo Party (other than a claim under this clause 16.3 or a claim in respect of a breach of clause 17) in connection with:
 - (A) the event that gave rise to the right to demand the payment of the PharmaCielo Break Fee; nor
 - (B) any other event, matter or circumstance that may give rise to a separate right to the PharmaCielo Break Fee or that constitutes or may constitute a breach of this agreement; and
 - (ii) indemnifies any PharmaCielo Party against a Claim that is made contrary to the release under clause 16.3(f)(i)

with the effect that the payment of the PharmaCielo Break Fee represents the sole and exclusive remedy of any Creso Pharma Group Member for the circumstances set forth in this clause 16.3.
- (g) Notwithstanding any other provision of this agreement but subject to clause 18:
 - (i) the maximum liability of PharmaCielo to Creso Pharma under or in connection with this agreement including in respect of any breach of this agreement will be the PharmaCielo Break Fee; and
 - (ii) a payment by PharmaCielo in accordance with this clause 16.3 represents the sole and absolute liability of PharmaCielo under or in connection with this agreement and no further damages, fees, expenses or reimbursements of any kind will be payable by PharmaCielo in connection with this agreement.

17. Exclusivity

17.1 No shop restriction

During the Exclusivity Period, except with the prior written consent of PharmaCielo, Creso Pharma must not, and must ensure that none of its Related Bodies Corporate nor any of their Authorised Persons, directly or indirectly:

- (a) solicit, invite, encourage, continue or initiate any Competing Proposal or any enquiries, negotiations or discussions with any third party in relation to, or that may reasonably be expected to lead to, an actual, proposed or potential Competing Proposal or which may otherwise lead to the Proposed Transaction not being completed; or
- (b) solicit, invite, encourage or initiate approaches, enquiries, discussions or proposals with a view to obtaining any offer, proposal or expression of interest from any person in relation to, or which may reasonably be expected to lead to, an actual, proposed or potential Competing Proposal,

or communicate any intention to do any of those things.

17.2 No talk restriction

Subject to clause 17.4, during the Exclusivity Period, Creso Pharma must not, and must ensure that none of its Related Bodies Corporate nor any of their Authorised Persons (whether directly or indirectly):

- (a) negotiate or enter into or participate in or continue any negotiations or discussions with any person; or

- (b) communicate any intention to do any of these things, in relation to, or that may reasonably be expected to lead to, an actual or potential Competing Proposal or any agreement, understanding or arrangement that may be reasonably expected to encourage or lead to a Competing Proposal or which may otherwise lead to the Proposed Transaction not being completed, even if:
- (c) the Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by Creso Pharma or any of its Related Bodies Corporate; or
- (d) that person has publicly announced the Competing Proposal.

17.3 No due diligence

- (a) During the Exclusivity Period, except with the prior written consent of PharmaCielo, Creso Pharma must not, and must ensure that its Related Bodies Corporate and their respective Authorised Persons do not, directly or indirectly:
 - (i) solicit, invite, initiate, or encourage, or (subject to clause 17.4) facilitate or permit, any person (other than PharmaCielo) to undertake due diligence investigations in respect of Creso Pharma, its Related Bodies Corporate, or any of their businesses and operations, in connection with or with a view to obtaining or which would reasonably be expected to lead to such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal; or
 - (ii) subject to clause 17.4, make available to any person (other than PharmaCielo) or permit any such person to receive any non-public information relating to Creso Pharma, its Related Bodies Corporate, or any of their businesses and operations, in connection with or with a view to obtaining or which would reasonably be expected to lead to such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal.
- (b) If Creso Pharma proposes that any non-public information be provided to a third party, then:
 - (i) before Creso Pharma provides such information, the third party must enter into a confidentiality agreement which contains obligations on the recipient of that information which are no less onerous in any material respect than the obligations of PharmaCielo and Creso Pharma under the Confidentiality Agreement; and
 - (ii) any non-public information provided to that third party must also be provided to PharmaCielo (unless the information has already been provided to PharmaCielo or a PharmaCielo Authorised Person).

17.4 Exceptions

Clauses 17.2 and 17.3 do not apply:

- (a) to the extent that it restricts Creso Pharma or the Creso Pharma Board from taking or refusing to take any action with respect to a genuine Competing Proposal (in relation to which there has been no contravention of this clause 17) provided that:
 - (i) the Competing Proposal is bona fide and is made by or on behalf of a person that the Creso Pharma Board considers is of sufficient commercial standing; and
 - (ii) the Creso Pharma Board, acting in good faith, determines:
 - (A) where there is a written Competing Proposal, after consultation with its financial advisors, that the Competing Proposal is a Superior Proposal or the steps which the Creso Pharma Board proposes to take may reasonably be expected to lead to a Competing Proposal which is a Superior Proposal; and
 - (B) after receiving written legal advice from Creso Pharma's external legal advisers experienced in transactions of this nature, that failing to respond

to the Competing Proposal may constitute a breach of its fiduciary or statutory duties; or

- (b) to Creso Pharma contacting the person making a genuine Competing Proposal (in relation to which there has been no contravention of this clause 17) and its Authorised Persons solely for the purpose of clarifying the terms and conditions of such Competing Proposal and the likelihood of its consummation so as to determine whether such Competing Proposal is, or is reasonably likely to lead to, a Superior Proposal.

17.5 Creso Pharma warranty and undertakings

- (a) Creso Pharma warrants as at the date of this agreement:
 - (i) that it has, and its Authorised Persons have, ceased any existing discussions or negotiations with any party which may reasonably be expected to lead to a Competing Proposal; and
 - (ii) that it has requested, or will as soon as practicable request, the return of Creso Pharma's confidential information in accordance with the terms of any relevant confidentiality agreement from all third parties conducting due diligence investigations on the Creso Pharma Group prior to the date of this agreement in connection with (or contemplation of) a Competing Proposal or potential Competing Proposal.

- (b) During the Exclusivity Period, Creso Pharma must:
 - (i) enforce all its rights under each confidentiality agreement entered into in connection with a Competing Proposal (before the date of this agreement), including any standstill obligations and its rights to require the return of confidential information as referred to in clause 17.5(a)(ii);
 - (ii) as soon as reasonably practicable, ensure that the electronic data room access granted to any third party prior to the date of this agreement in connection with a Competing Proposal is withdrawn; and
 - (iii) not grant any waivers or agree to any amendments under any confidentiality agreements entered into in connection with a Competing Proposal (before the date of this agreement).

17.6 Notice of Competing Proposal

- (a) During the Exclusivity Period, Creso Pharma must promptly (and in any event, within 48 hours) notify PharmaCielo in writing of:
 - (i) any approach, inquiry or proposal made by any person to Creso Pharma, any of its Related Bodies Corporate or any of their respective Authorised Persons, to initiate any discussions or negotiations that concern, or that could reasonably be expected to lead to, an actual, proposed or potential Competing Proposal; and
 - (ii) any request made by any person to Creso Pharma, any of its Related Bodies Corporate or any of their respective Authorised Persons, for any information relating to Creso Pharma, its Related Bodies Corporate, or any of their businesses and operations, which Creso Pharma has reasonable grounds to suspect that the request may be in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of a Competing Proposal,

(Competing Proposal Notice).

- (b) A Competing Proposal Notice must be accompanied by all material details of the relevant event, including (as the case may be):
 - (i) the identity of the person who made the relevant approach, inquiry or proposal to initiate discussions or negotiations referred to in clause 17.6(a)(i) or who made the relevant request for information referred to in clause 17.6(a)(ii); and

- (ii) the material terms and conditions (including price, conditions precedent, timetable and any break fee) of any Competing Proposal or any proposed Competing Proposal (to the extent known).
- (c) If Creso Pharma gives PharmaCielo a Competing Proposal Notice, PharmaCielo agrees that the notice will be Confidential Information of Creso Pharma (as defined in the Confidentiality Agreement).
- (d) During the Exclusivity Period, Creso Pharma must also notify PharmaCielo in writing as soon as possible after becoming aware of any material developments in relation to any actual, proposed or potential Competing Proposal, including in respect of any of the information previously notified to the bidder under this clause 17.6.

17.7 Creso Pharma's response to Competing Proposal and PharmaCielo's right to respond

- (a) If Creso Pharma receives a Competing Proposal and as a result, any Creso Pharma Director proposes to either:
 - (i) change, withdraw or modify his or her recommendation of the Share Scheme; or
 - (ii) approve or recommend entry into any agreement, commitment, arrangement or understanding relating to the Competing Proposal with the person who has made the applicable Competing Proposal (other than an Acceptable Confidentiality Agreement),

Creso Pharma must ensure that no Creso Pharma Director does so:

 - (iii) unless the Competing Proposal is bona fide and constitutes a Superior Proposal; and
 - (iv) until each of the following has occurred:
 - (A) Creso Pharma has given PharmaCielo written notice (**Relevant Notice**) of the Creso Pharma Director's proposal to take the action referred to in clauses 17.7(a)(i) or 17.7(a)(ii) (subject to PharmaCielo's rights under clause 17.7(b)), including details of the grounds on which the Creso Pharma Directors propose to take such action;
 - (B) Creso Pharma has given PharmaCielo all information that would be required by clause 17.6(b); and
 - (C) either:
 - (I) PharmaCielo has not announced or provided to Creso Pharma a Counter Proposal before the Cut Off Date; or
 - (II) PharmaCielo has announced or provided to Creso Pharma a Counter Proposal before the Cut Off Date and the Creso Pharma Board has determined, in good faith, that the Counter Proposal would not provide an equivalent or superior outcome to Creso Pharma shareholders as a whole compared with the Competing Proposal and PharmaCielo has been given an opportunity to amend the Counter Proposal in accordance with clause 17.7(e).
- (b) If Creso Pharma gives a Relevant Notice to PharmaCielo under clause 17.7(a)(iv)(A), PharmaCielo will have the right, but not the obligation, at any time during the 5 Business Days following the receipt of the Relevant Notice (**Cut Off Date**), to amend the terms of the Proposed Transaction including increasing the amount of consideration offered under the Proposed Transaction or proposing another form of transaction (each a **Counter Proposal**), and if it does so then the Creso Pharma Directors must review the Counter Proposal and determine whether, in good faith, the Counter Proposal would provide an equivalent or superior outcome to Creso Pharma shareholders as a whole compared with the Competing Proposal.
- (c) Creso Pharma must procure that the Creso Pharma Board promptly, and in any event within 2 Business Days, notifies PharmaCielo of the determination in writing, stating reasons for that determination.

- (d) If the Creso Pharma Directors determine in good faith that the Counter Proposal would provide an equivalent or superior outcome to Creso Pharma Shareholders as a whole compared with the Competing Proposal, then Creso Pharma and PharmaCielo must use their best endeavours to agree the amendments to this agreement that are reasonably necessary to reflect the Counter Proposal, and to enter into an amended agreement to give effect to those amendments and to implement the Counter Proposal, and Creso Pharma must use its best endeavours to procure that the Creso Pharma Directors recommend the Counter Proposal to the Creso Pharma Shareholders and not recommend the applicable Competing Proposal.
- (e) If the determination is that the Counter Proposal would not provide an equivalent or superior outcome to Creso Pharma shareholders as a whole compared with the Competing Proposal, then PharmaCielo may take steps to amend the Counter Proposal to address the reasons given within a further period of 2 Business Days. If PharmaCielo does so to Creso Pharma's satisfaction, then the process in clause 17.7(d) applies to that amended Counter Proposal.
- (f) For the purposes of this clause 17.7, each successive material modification of any third party expression of interest, offer or proposal in relation to a Competing Proposal will constitute a new Competing Proposal.

17.8 Normal provision of information

Nothing in this clause 17 prevents Creso Pharma from:

- (a) providing information required to be provided by law, any court of competent jurisdiction, any Governmental Agency or the Listing Rules; or
- (b) making presentations to and responding to bona fide enquires from stockbrokers, portfolio investors and equity market analysts in relation to the Share Scheme or the Option Scheme to in accordance with its usual practices,

subject to Creso Pharma complying with its obligations under the Confidentiality Agreement and clause 7.4(c)

18. Modification of Creso Pharma Break Fee, Creso Pharma Reimbursement Fee, PharmaCielo Break Fee or exclusivity arrangements

18.1 Modifications following regulatory intervention

If any of the following occurs:

- (a) a Governmental Agency finds that all or any part of the payment required to be made under clauses 15 or 16 or an exclusivity arrangement under clause 17 is unacceptable or unenforceable; or
- (b) as a result of an application to the Takeovers Panel, the Takeovers Panel indicates that, in the absence of a written undertaking under section 201A of the *Australian Securities and Investments Commission Act 2001* (Cth) to modify the amount of the Creso Pharma Break Fee, the Creso Pharma Reimbursement Fee or the PharmaCielo Break Fee or the circumstances in which it is to be paid or the circumstances in relation to an exclusivity arrangement under clause 17, it will make a declaration of unacceptable circumstances,

then, subject to clause 18.3:

- (c) the parties must amend clause 15, 16 and/or 17 to the extent required to give effect to the requirements of the Governmental Agency or the Takeovers Panel (as the case may be) and (in circumstances referred to in clause 18.1(b)) must give the required undertaking(s); and
- (d) neither the occurrence of any of the events referred to in clauses 18.1(a) or 18.1(b) nor the amendment of clause 15, 16 and/or 17 will be taken to be a breach of, or permit any party to terminate, this agreement.

18.2 Conduct during proceedings

- (a) During the course of any Takeovers Panel or court proceedings (including any appeal or review thereof) referred to in clause 18.1, the parties must take all reasonable steps to ensure that any such declaration or determination has the minimum effect possible.
- (b) The parties must not make or cause or permit to be made any application to a court of the Takeovers Panel for or in relation to a determination referred to in clause 18.1.

18.3 No requirement to act unless decision final

The parties are only required to take steps under 18.1(c) in relation to any requirement of a Governmental Agency or the Takeovers Panel if:

- (a) no appeal or review proceeding is available from the decision to impose that requirement or the period for lodging an appeal or commencing review proceedings has expired without an appeal having been lodged or review proceedings commenced; or
- (b) PharmaCielo and Creso Pharma agree in writing not to appeal or seek review of the decision to impose that requirement.

18.4 Appeals and review of regulatory decisions

Nothing in this agreement requires either party to appeal or seek review of any decision of a Governmental Agency or the Takeovers Panel referred to in clauses 18.1(a) or 18.1(b). If either PharmaCielo and Creso Pharma wishes to appeal or seek review of any such decision then the other must make submissions in the course of those proceedings supporting the review made by the first party.

18.5 Determination by Governmental Agency

If a Governmental Agency determines that payment of all or any part of the Creso Pharma Break Fee or Creso Pharma Reimbursement Fee is unacceptable, unlawful or involves a breach of the fiduciary or statutory duties of the members of the Creso Pharma Board (**Impugned Amount**) and either no appeal from that determination is available or the period for lodging an appeal has expired without having an appeal having been lodged then:

- (a) the obligation of Creso Pharma to pay the Creso Pharma Break Fee does not apply to the extent of the Impugned Amount;
- (b) the obligation of Creso Pharma to pay the Creso Pharma Reimbursement Fee does not apply to the extent of the Impugned Amount; and
- (c) if either party has received any part of the Impugned Amount, it must refund it within 5 Business Days after that determination is made or the period for lodging has expired, whichever is later.

19. Notices

Any communication under or in connection with this agreement:

- (a) must be in writing;
- (b) must be sent to the address for service of the addressee specified in the Details;
- (c) must be signed by the party making the communication or by a person duly authorised by that party;
- (d) must be delivered to the address, or sent by email to the email address, of the addressee, in accordance with the Details; and
- (e) will be deemed to be received by the addressee:
 - (i) **(in the case of delivery by hand)** on delivery at the address of the addressee as provided in the Details, unless that delivery is not made on a Business Day, or after 5.00pm on a Business Day, when that communication will be deemed to be received at 9.00am on the next Business Day; and

- (ii) **(in the case of email)** immediately after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered, unless that local time is not a Business Day, or is after 5.00pm on a Business Day, when that communication will be deemed to be received at 9.00am on the next Business Day.

20. General

20.1 Further acts

Each party will promptly do and perform all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by any other party to give effect to this agreement.

20.2 Timetable

The parties agree that the Timetable is indicative only and is not binding on the parties.

20.3 Payments

Unless otherwise provided in this agreement, where an amount is required to be paid to a party (**Receiving Party**) by another party under this agreement, that amount shall be paid:

- (a) in immediately available and irrevocable funds by electronic transfer to a bank account or accounts notified by the Receiving Party in writing on or before the due date for payment, or in other such immediately payable funds as the parties may agree; and
- (b) without deduction, withholding or set-off.

20.4 Interest

- (a) If a party fails to pay any amount payable under this agreement on the due date for payment, that party must pay interest on the amount unpaid at the higher of the Interest Rate plus 3% per annum or the rate (if any) fixed or payable under any judgment or other thing into which the liability to pay the amount becomes merged.
- (b) The interest payable under clause 20.4(a):
 - (i) accrues from day to day from and including the due date for payment up to the actual date of payment, before and, as an additional and independent obligation, after any judgment or other thing into which the liability to pay the amount becomes merged; and
 - (ii) may be capitalised by the person to whom it is payable at monthly intervals.

20.5 GST

- (a) Any reference in this clause 20.5 to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Unless expressly included, the consideration for any supply under or in connection with this agreement does not include GST.
- (c) To the extent that any supply made by a party (**Supplier**) to another party (**Recipient**) under or in connection with this agreement is a taxable supply, the Recipient must pay to the Supplier, in addition to the consideration to be provided under this agreement but for the application of this clause 20.5(c) for that supply (**GST Exclusive Consideration**), an amount equal to the amount of the GST Exclusive Consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. This clause 20.5(c) does not apply to any taxable supply under or in connection with this agreement that is stated to include GST.
- (d) The amount on account of GST payable in accordance with this clause 20.5 will be paid at the same time and in the same manner as the consideration otherwise payable for the supply is provided.

- (e) Any reference in the calculation of any consideration or of any indemnity, reimbursement or similar amount to a cost, expense or liability incurred by a person (**Relevant Expense**) is a reference to the relevant expense reduced by an amount equal to any input tax credit entitlement of that person (or of the representative member of any GST group to which the person belongs) in relation to the Relevant Expense. A party will be assumed to have an entitlement to a full input tax credit unless it demonstrates otherwise prior to the date on which the relevant payment or consideration must be provided.

20.6 Stamp duty

PharmaCielo must pay all stamp duties (if any) and any fines and penalties with respect to stamp duty in respect of this agreement, the Share Scheme or the Option Scheme or the steps to be taken under this agreement, the Share Scheme or the Option Scheme (including without limitation the acquisition or transfer of Scheme Shares under the Share Scheme and the cancellation of Scheme Options under the Option Scheme).

20.7 Expenses

Except as otherwise provided in this agreement, each party will pay its own costs and expenses in connection with the negotiation, preparation, execution, and performance of this agreement and the Explanatory Booklet and the proposed, attempted or actual implementation of this agreement, the Share Scheme and the Option Scheme.

20.8 Amendments

This agreement may only be varied by a document signed by or on behalf of each of the parties.

20.9 Assignment

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior written consent of each other party, which consent that other party may give or withhold in its absolute discretion.

20.10 Waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this agreement by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this agreement.
- (b) Any waiver or consent given by any party under this agreement will only be effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of any term of this agreement will operate as a waiver of another breach of that term or of a breach of any other term of this agreement.
- (d) Nothing in this agreement obliges a party to exercise a right to waive any conditional term of this agreement that may be in its power.

20.11 Counterparts

- (a) This agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. Each counterpart is an original but the counterparts together are one and the same agreement.
- (b) This agreement is binding on the parties on the exchange of duly executed counterparts.
- (c) The parties agree that a copy of an original executed counterpart sent by email to the other party, instead of the original, is sufficient evidence of the execution of the original and may be produced in evidence for all purposes in place of the original.

20.12 Entire agreement

- (a) This agreement:
 - (i) embodies the entire understanding of the parties and constitutes the entire terms agreed on between the parties; and
 - (ii) supersedes any prior agreement (whether or not in writing) between the parties.
- (b) Despite clause 20.12(a), the Confidentiality Agreement continues to apply to the parties in accordance with its terms, except to the extent of any express inconsistency, in which case this agreement prevails.

20.13 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this agreement, except for representations or inducements set out in this agreement.
- (b) Each party acknowledges and confirms that it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement set out in this agreement.

20.14 No merger

The rights and obligations of the parties will not merge on completion of any transaction under this agreement. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing any transaction.

20.15 Governing law

- (a) This agreement is governed by and will be construed according to the laws of Victoria.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria and of the courts competent to determine appeals from those courts.

Schedule 1 - Indicative timetable

[Not reproduced here. Await scheme booklet]

Schedule 2 – Share Scheme

[Not reproduced here. Await scheme booklet]

Schedule 3 – Share Scheme Deed Poll

[Not reproduced here. Await scheme booklet]

Schedule 4- Option Scheme

[Not reproduced here. Await scheme booklet]

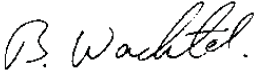
Schedule 5- Option Scheme Deed Poll

[Not reproduced here. Await scheme booklet]

Signing page

EXECUTED as an agreement.

Executed by Creso Pharma Limited in accordance with Section 127 of the *Corporations Act 2001*



Signature of director

Boaz Wachtel

Name of director (print)

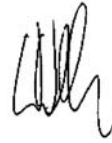
Executed by PharmaCielo Ltd. by its authorised representatives



Signature of authorised representative



Name of authorised representative (print)



Signature of ~~director~~/company secretary
(Please delete as applicable)

Winton Willesee

Name of ~~director~~/company secretary (print)



Signature of authorised representative



Name of authorised representative (print)

Signing page

EXECUTED as an agreement.

Executed by **Creso Pharma Limited** in accordance with Section 127 of the *Corporations Act 2001*

Signature of director

Name of director (print)

Signature of director/company secretary
(Please delete as applicable)

Name of director/company secretary (print)

Executed by **PharmaCielo Ltd.** by its authorised representatives


Signature of authorised representative

DAVID ATTARD
Name of authorised representative (print)


Signature of authorised representative

SCOTT LATINEN
Name of authorised representative (print)