



September 12, 2012

EUSA/PUBLIC DISCLOSURE  
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Top Hat Plan Exemption  
Pension and Welfare Benefits Administration  
Room N-1513  
U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210

Dear Sir or Madame:

This statement is filed under DOL Regulations § 2520.104-23.

Employer: Gillette Children's Specialty HealthCare

Address: 200 East University Avenue  
St. Paul, MN 55101

Employer ID  
Number: 36-3379150

Effective June 1, 2012, the Employer adopted the following plan primarily for the purpose of providing deferred compensation for a member of the select group of management or highly compensated employees:

Plan	Number of Participants
VPHR Retention Incentive Plan	1

The Employer will provide plan documents to the Secretary of Labor on request.

Sincerely,

  
Margaret Perryman  
President and CEO, Gillette Children's Specialty Healthcare

# GILLETTE CHILDREN'S SPECIALTY HEALTHCARE VPHR RETENTION INCENTIVE PLAN

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## Article 1

### The Plan

1.1 **Name/Effective Date.** GILLETTE CHILDREN'S SPECIALTY HEALTHCARE (the "Company") hereby establishes this VPHR Retention Incentive Plan (the "Plan") for the Company's Vice President of Human Resources, ELIZABETH RIVARD (the "Participant"). This Plan is effective as of June 1, 2012.

1.2 **Purpose.** The Plan provides the Participant with supplemental deferred compensation, subject to substantial risks of forfeiture, to encourage continued employment with the Company during a crucial period of time.

1.3 **Legal Status.** The Plan is a defined benefit non-qualified deferred compensation plan subject to cliff vesting. Therefore, the Company intends that the Plan qualify for the "short-term deferral" exemption under Section 409A of the Code (defined below), and for income and employment tax deferral under Sections 457(f) and 3121(v)(2)(A)(ii) of the Code.

## Article 2

### Definitions

Whenever used in the Plan, the following words and phrases have the meanings set forth below unless the context plainly requires a different meaning. Except as noted below, when the defined meaning is intended, the term is capitalized:

2.1 **"Administrator"** means the Board or the committee, individual or other designee of the Board with authority and responsibility to administer the Plan.

2.2 **"Affiliate"** means an entity that is considered a single employer with the Company under Section 414(b) or (c) of the Code (but using an "at least 50 percent" rather than an "at least 80 percent" control level under such sections), whether as parent-

subsidiary corporations, brother-sister corporations or other relationships described in such Code sections.

2.3 **"Base Salary"** means the total annual base salary payable to the Participant at the rate in effect as of the applicable date. Base Salary is not reduced for any salary reduction contributions (i) to deferred arrangements under Section 401(k) or Section 403(b) of the Code, (ii) to a cafeteria plan under Section 125 of the Code, or (iii) to a nonqualified deferred compensation plan. Base Salary does not take into account any bonuses, reimbursed expenses, credits or benefits (including benefits under any plan of deferred compensation), or any additional cash compensation or compensation payable in a form other than cash.

2.4 **"Board"** means the Company's Board of Directors.

2.5 **"Code"** means the Internal Revenue Code of 1986, as amended. References to a Code section are to that section as it now exists and to any successor provision.

2.6 **"Disability"** means (i) the Participant, by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, either (A) being unable to engage in any substantial gainful activity, or (B) receiving income replacement benefits for a period of not less than three months under an accident and health plan covering employees of the Company; or (ii) the Social Security Administration determining that the Participant is totally disabled.

2.7 **"Distribution Date"** means December 31, 2014.

2.8 **"Involuntary Separation from Service"** means a Separation from Service due to the independent exercise of the unilateral authority of the Company to terminate the services of the Participant that is not due to the Participant's implicit or explicit request where the Participant was willing and able to

continue performing services for the Company (as further described in Treasury Regulation Section 1.409A-1(n)(1)).

2.9 “**Reasonable Cause**” means any of the following, with respect to the Participant’s position of employment with the Company:

2.9.1 Gross negligence, fraud or willful violation of any law or significant Company policy, committed in connection with the position and resulting in a material adverse effect on the Company; or

2.9.2 Failure to substantially perform (for reasons other than Disability) the duties reasonably assigned or appropriate to the position, in a manner reasonably consistent with prior practice;

provided, however, that the term “Reasonable Cause” does not include ordinary negligence or failure to act, whether due to an error in judgment or otherwise, if the Participant has exercised substantial efforts in good faith to perform the duties reasonably assigned or appropriate to the position.

2.10 “**Retention Benefit**” means the retention benefit described in Section 4.1.1 or 4.1.2 (whichever applies).

2.11 “**Separation from Service**” (or any similar phrase, such as “separate from service”) means the Participant’s termination of employment for any reason whatsoever, determined as follows:

2.11.1 **Generally.** The Participant terminates employment when the facts and circumstances indicate that the Company and the Participant reasonably anticipate that the Participant will perform no further services for the Company or an Affiliate, or that the level of services the Participant will perform for the Company and Affiliates will permanently decrease to no more than 20% of the average level of services the Participant performed over the immediately preceding 36-month period (or the full period of services if the Participant has been providing services to the Company and Affiliates less than 36 months) (the “36-month average”).

2.11.2 **Presumptions.** Barring contrary facts and circumstances, the Company will presume (i) that a decrease in services to 20% or less of the 36-month average constitutes termination of employment, and (ii) that continued services at 50% or more of the 36-month average does not constitute termination of employment. Continued services at more than 20% but less than 50% of the 36-month average will remain subject to the facts and circumstances test under Section 2.11.1.

2.11.3 **Employee vs. Contractor.** For purposes of the foregoing, and except as provided in Treasury Regulation Section 1.409A-1(j)(5) regarding employees also serving as members of the Board, services include those performed as employee or as independent contractor.

### **Article 3 Participation**

The Participant commenced participation in the Plan on June 1, 2012, and will continue to participate in the Plan until all benefits have been paid or forfeited. As a condition of participation in and receipt of benefits under this Plan, the Participant agrees to observe all rules and regulations established by the Company for administering the Plan and will abide by all decisions of the Company in the construction and administration of the Plan.

### **Article 4 Retention Benefit**

#### **4.1 Benefit Entitlement/Calculation and Payment**

4.1.1 **Generally.** If the Participant (i) remains employed with the Company to the Distribution Date, or (ii) experiences an Involuntary Separation from Service without Reasonable Cause prior to the Distribution Date (for reasons other than Disability), the Company will pay a Retention Benefit equal to 50% of the Participant’s Base Salary in effect as of such event.

4.1.2 **Early Separation for Death or Disability – Benefit Payment.** If, prior to becoming entitled to the Retention Benefit under Section 4.1.1,

the Participant dies or suffers a Disability, the Company will pay a prorated Retention Benefit to the Participant (or in the case of death, to the Participant's Beneficiary). The prorated Retention Benefit is 50% of the Participant's Base Salary in effect as of such event, multiplied by a fraction. The numerator of the fraction is the number of complete months, if any, from January 1, 2013 through the date of death or Disability, and the denominator is 24.

**4.1.3 Early Separation – Benefit Forfeiture.** If, prior to the Distribution Date, the Participant separates from service (i) voluntarily, or (ii) under an Involuntary Separation from Service with Reasonable Cause, the Participant forfeits all rights to receive any unpaid Retention Benefit under this Plan.

**4.1.4 Time and Method of Payment of Benefits.** The Company will pay the Retention Benefit to the Participant (or beneficiary, if applicable) in a lump sum on the date determined in the Company's sole discretion that is no later than the 15th day of the third month after the event under Section 4.1.1 or 4.1.2 (whichever applies) entitling the Participant (or beneficiary) to the Benefit.

## 4.2 Beneficiary Provisions

**4.2.1 Beneficiary Designations.** The Participant may designate a beneficiary only by filing a written notice of such designation with the Company. The Participant may revoke or modify the designation at any time by a further written designation. However, no such designation, revocation or modification will be effective unless signed by the Participant and accepted by the Company during the Participant's lifetime. The Participant's beneficiary designation will be deemed automatically revoked (i) if the beneficiary dies prior to the Participant's death, or (ii) if the Participant designates the Participant's spouse as beneficiary and then, prior to the Participant's death, the Participant's marriage to such individual is dissolved. If the Participant dies without a valid beneficiary designation, all payments will

be made to the Participant's surviving spouse, if any, and if none, to the Participant's estate.

**4.2.2 Death of Beneficiary.** If a beneficiary dies before receiving the payment due to such beneficiary pursuant to this Plan, the Company will pay the remaining payment to the legal representatives of the beneficiary's estate.

**4.2.3 Facility of Payment.** If a benefit is payable to a minor or person declared incompetent or to a person incapable of handling the disposition of his or her property, the Company may pay such benefit to the guardian, legal representative or person having the care or custody of such minor, incompetent or person. The Company may require proof of incompetence, minority or guardianship as it may deem appropriate prior to distribution of the benefit. Such distribution will completely discharge the Company from all liability with respect to such benefit.

## Article 5

### Claims and Review Procedures

Claims for benefits under the Plan will be made and processed under the procedures described in Sections 5.1 and 5.2 subject to the adjustments referred to in Section 5.3 for the determination of whether a Disability has occurred.

**5.1 Claims Procedure.** Any individual ("claimant") who has not received benefits under the Plan that he or she believes should be paid may make a claim for such benefits only as follows:

**5.1.1 Initiation – Written Claim.** The claimant initiates a claim by submitting to the Administrator a written claim for the benefits.

**5.1.2 Timing of Administrator Response.** The Administrator will respond to such claimant within 90 days after receiving the claim. If the Administrator determines that special circumstances require additional time for processing the claim, the Administrator can extend the response period by an additional 90 days by notifying the claimant in writing, prior to the end of the initial 90-day period, that an additional period is re-

quired. The notice of extension must set forth the special circumstances and the date by which the Administrator expects to render its decision.

**5.1.3 Notice of Decision.** If the Administrator denies part or all of the claim, the Administrator will notify the claimant in writing of such denial. The Administrator will write the notification in a manner calculated to be understood by the claimant. The notification will set forth:

5.1.3.1 The specific reasons for the denial,

5.1.3.2 A reference to the specific provisions of the Plan on which the denial is based,

5.1.3.3 A description of any additional information or material necessary for the claimant to perfect the claim and an explanation of why it is needed,

5.1.3.4 An explanation of the Plan's review procedures and the time limits applicable to such procedures, and

5.1.3.5 A statement of the claimant's right to bring a civil action under ERISA Section 502(a) following an adverse benefit determination on review.

**5.2 Review Procedure.** If the Administrator denies part or all of the claim, the claimant will have the opportunity for a full and fair review by the Administrator of the denial, as follows:

**5.2.1 Initiation – Written Request.** To initiate the review, the claimant, within 60 days after receiving the Administrator's notice of denial, must file with the Administrator a written request for review.

**5.2.2 Additional Submissions – Information Access.** The claimant will then have the opportunity to submit written comments, documents, records and other information relating to the claim. The Administrator will also provide the claimant, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information relevant (as de-

finied in applicable ERISA regulations) to the claimant's claim for benefits.

**5.2.3 Considerations on Review.** In considering the review, the Administrator will take into account all materials and information the claimant submits relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination.

**5.2.4 Timing of Administrator Response.** The Administrator will respond in writing to such claimant within 60 days after receiving the request for review. If the Administrator determines that special circumstances require additional time for processing the claim, the Administrator can extend the response period by an additional 60 days by notifying the claimant in writing, prior to the end of the initial 60-day period, that an additional period is required. The notice of extension must set forth the special circumstances and the date by which the Administrator expects to render its decision.

**5.2.5 Notice of Decision.** The Administrator will notify the claimant in writing of its decision on review. The Administrator will write the notification in a manner calculated to be understood by the claimant. The notification will set forth:

5.2.5.1 The specific reasons for the denial,

5.2.5.2 A reference to the specific provisions of the Plan on which the denial is based,

5.2.5.3 A statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information relevant (as defined in applicable ERISA regulations) to the claimant's claim for benefits, and

5.2.5.4 A statement of the claimant's right to bring a civil action under ERISA Section 502(a).

**5.3 Disability Determination.** To the extent a claim for benefits submitted under Section 5.1 involves the

issue of whether a Disability has occurred, the foregoing procedures will be adjusted as described in the Department of Labor Regulations Section 2560.503-1 for disability determinations.

## **Article 6**

### **Administration and Finances**

**6.1 Administration.** The Administrator is the named fiduciary and acts for the Company under this Plan.

**6.2 Powers of the Administrator.** The Administrator has all powers necessary to administer the Plan, including, without limitation, the sole powers and discretionary authority:

6.2.1 to interpret the provisions of the Plan;

6.2.2 to establish and revise the method of accounting for the Plan and to maintain the accounts; and

6.2.3 to establish rules for the administration of the Plan and to prescribe any forms required to administer the Plan.

**6.3 Actions of the Administrator.** All determinations, interpretations, rules, and decisions of the Administrator are conclusive and binding upon all persons having or claiming to have any interest or right under the Plan.

**6.4 Delegation.** The Administrator has the power to delegate specific duties and responsibilities to officers or other employees of the Administrator or other individuals or entities. Any delegation by the Administrator may allow further delegations by the individual or entity to which the delegation is made. The Administrator may rescind any delegation at any time. Each person or entity to which a duty or responsibility has been delegated is responsible for the exercise of such duty or responsibility and will not be responsible for any act or failure to act of any other person or entity.

**6.5 Reports and Records.** The Administrator and those to whom the Administrator has delegated duties under the Plan will keep records of all their proceedings and actions and will maintain books of account, records, and other data as will be necessary for the

proper administration of the Plan and for compliance with applicable law.

**6.6 Finances.** The costs of the Plan will be borne by the Administrator, except as otherwise provided herein.

### **6.7 Timing of Benefit Payments**

**6.7.1 General Rule.** Wherever any provision of this Plan provides a time period for paying a benefit, the Administrator will use its best efforts to pay the benefit within such time period, but will in all cases, except as provided in Section 6.7.2, pay such benefit no earlier than the event entitling the Participant (or beneficiary) to the payment, and no later than December 31 of the year in which the entitling event occurs (or the 15th day of the third calendar month after the entitling event, if later), as it determines in its sole discretion.

**6.7.2 Administrative Impracticability.** To the extent the calculation of the amount of a benefit payment is not administratively practicable due to events beyond the Participant's control, the Administrator will make such payment as soon as the calculation becomes administratively practicable. The Participant's failure to make an election or to provide reasonably available information does not constitute an event beyond the Participant's control.

## **Article 7**

### **Amendments and Termination**

The Company may amend or terminate the Plan only with the written consent of the Participant, and then only after considering the implications of such action under Section 409A of the Code.

## **Article 8**

### **Miscellaneous**

**8.1 No Guaranty of Employment.** The adoption and maintenance of the Plan is not a contract of employment between the Company and the Participant. Nothing contained herein gives the Participant the right to continue to be retained by the Company or to interfere with the right of the Company to terminate

the services of the Participant at any time, nor does it give the Company the right to require the Participant to continue to provide services to the Company or to interfere with the Participant's right to separate from service at any time.

**8.2 Non-Alienation.** No benefit payable at any time under this Plan may be subject in any manner to alienation, sale, transfer, assignment, pledge, attachment, or encumbrance of any kind.

**8.3 Assignment to Successor.** The Company will assign its rights and obligations under this Plan to any successor organization resulting from a merger, acquisition or affiliation involving the Company, or resulting from a sale of substantially all of the Company's assets.

**8.4 Applicable Law.** The Plan and all rights hereunder are governed by and construed according to the laws of Minnesota, except to the extent the laws of the United States of America preempt such state laws.

**8.5 Tax Withholding.** The Company will withhold from any benefit payable under the Plan any applicable income tax withholding and employment taxes.

**GILLETTE CHILDREN'S SPECIALTY  
HEALTHCARE**

By Margaret K. Perryman  
Title President / CEO  
8/31/2012

**EXHIBIT A**  
**VPHR RETENTION INCENTIVE PLAN**  
**BENEFICIARY DESIGNATION FORM**

I designate the following as beneficiary of any benefits under the VPHR Retention Incentive Plan payable following my death:

Primary: Sandra M. Ling and Molly R. Mittelstadt

Contingent: \_\_\_\_\_

**Note:** To name a trust as beneficiary, please provide the name of the trustee and the *exact* date of the trust agreement.

I understand that I may change these beneficiary designations by filing a new written designation with GILLETTE CHILDREN'S SPECIALTY HEALTHCARE. I further understand that the designations will be automatically revoked if the beneficiary predeceases me or, if I have named my spouse as beneficiary, in the event of the dissolution of our marriage.

Elizabeth L. Rivard  
Executive's Signature

August 30, 2012  
Date

Accepted by GILLETTE CHILDREN'S SPECIALTY HEALTHCARE on August 31, 2012  
By Margaret K. Perryman  
Title President / CEO

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Children's  
Healthcare

15  
Avenue East  
Minnesota 55101

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Department of Health and Human Services, Office of Inspector General, Washington, DC