

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright

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In the Matter of)	
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)	
THERMO FISHER SCIENTIFIC INC.,)	Docket No. C-
a corporation.)	
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_____)	

DECISION AND ORDER

[Public Record Version]

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition of Life Technologies Corporation (“Life”), by Thermo Fisher Scientific Inc. (“Respondent Thermo Fisher”), and Respondent Thermo Fisher having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent Thermo Fisher with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent Thermo Fisher, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondent Thermo Fisher of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent Thermo Fisher that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent Thermo Fisher has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Hold Separate and Maintain Assets, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Thermo Fisher is a corporation organized, existing and doing business under the laws of the State of Delaware with its office and principal headquarters located at 81 Wyman Street, Waltham, Massachusetts 02451.
2. The Commission has jurisdiction of the subject matter of this proceeding and of the Respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in the Order, the following definitions shall apply:

- A. “Thermo Fisher” or “Respondent” means Thermo Fisher Scientific Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Thermo Fisher Scientific Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Life” means Life Technologies Corporation, a corporation organized, existing and doing business under the laws of the State of Delaware with its headquarters located at 5791 Van Allen Way, Carlsbad, California 92008.
- C. “Commission” means the Federal Trade Commission.
- D. “GE Healthcare” means GE Healthcare, a division of General Electric Company, a corporation organized, existing and doing business under the laws of the State of New York with its headquarters located at 3135 Easton Turnpike, Fairfield, Connecticut 06828. GE Healthcare’s United States headquarters is located at 9900 W. Innovation Drive, Wauwatosa, Wisconsin 55226.
- E. “Aalst, Belgium Facility” means:
 1. the warehouse site leased by Respondent Thermo Fisher located at 27 Industrielaan, 9320 Erembodegen-Aalst, Belgium, and
 2. the office site leased by Respondent Thermo Fisher located at Clinton Park, 198 Ninovesteenweg, 9320 Erembodegen-Aalst, Belgium.

- F. “Acquisition” means the Respondent Thermo Fisher’s proposed acquisition of Life.
- G. “Acquirer” means the following:
1. a Person specified by name in this Order to acquire particular assets or rights that Respondent Thermo Fisher is required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order; or
 2. a Person approved by the Commission to acquire particular assets or rights that Respondent Thermo Fisher is required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order.
- H. “Acquisition Date” means the date on which the Acquisition is consummated.
- I. “Beijing Facility” means the facility currently leased by Respondent Thermo Fisher located at Area B, Beijing Tianzhu Airport Economic Development Zone, China.
- J. “Cell Culture Media” means growth media products used for cell culture, designed to support the growth of cells, in any form, including process liquids, standard basal media, customized media, proprietary media, and chemically defined media; *PROVIDED, HOWEVER*, that Cell Culture Media does not include microbiological culture media.
- K. “Cell Culture Sera” means raw or processed animal blood sera used for cell culture, including, but not limited to, fetal bovine serum, adult bovine serum, newborn calf serum, calf serum, equine serum, and porcine serum.
- L. “Cell Line Development for Biologics” means the use of molecular biology to create or modify the genome of a biological producing cell line to enhance its production of the biologics, *e.g.*, antibody, EPO, or Factor VIII.
- M. “Confidential Business Information” means information owned by, or in the possession or control of, Respondent Thermo Fisher that is not in the public domain and that is directly related to the conduct of the Divestiture Businesses. The term “Confidential Business Information” *excludes* the following:
1. information relating to any of Respondent Thermo Fisher’s general business strategies or practices that does not discuss with particularity the Divestiture Businesses;
 2. information specifically excluded from the Divestiture Businesses conveyed to the Acquirer;
 3. information that is contained in documents, records, or books of Respondent Thermo Fisher that is provided to an Acquirer that is unrelated to the Divestiture Businesses acquired by that Acquirer or that is exclusively related to businesses or products retained by Respondent Thermo Fisher; and
 4. information that is protected by the attorney work product, attorney-client, joint defense, or other privilege prepared in connection with the Acquisition and relating to any United States, state, or foreign antitrust or competition law; and

5. information that Respondent Thermo Fisher demonstrates to the satisfaction of the Commission, in the Commission's sole discretion:
- a. Was or becomes generally available to the public other than as a result of disclosure by Respondent Thermo Fisher;
 - b. Is necessary to be included in Thermo Fisher's mandatory regulatory filings; *PROVIDED, HOWEVER*, that Respondent Thermo Fisher shall make all reasonable efforts to maintain the confidentiality of such information in the regulatory filings;
 - c. Was available, or becomes available, to Respondent Thermo Fisher on a non-confidential basis, but only if, to the knowledge of Respondent Thermo Fisher, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information;
 - d. Is information the disclosure of which is consented to by the Acquirer;
 - e. Is necessary to be exchanged in the course of consummating the Acquisition or the transaction under the Remedial Agreement;
 - f. Is disclosed in complying with the Order;
 - g. Is information the disclosure of which is necessary to allow Respondent Thermo Fisher to comply with the requirements and obligations of the laws of the United States and other countries, and decisions of Government Entities; or
 - h. Is disclosed in obtaining legal advice.

- N. "Closing Date" means the respective dates on which Respondent Thermo Fisher or a Divestiture Trustee divests the HyClone Cell Culture Business and the Dharmacon Gene Modulation Business.
- O. "Cramlington Facility" means the two sites located at unit 9, Nelson Park Industrial Estate, Cramlington, United Kingdom, and unit 12, Atley Way, Nelson Park Industrial Estate, Cramlington, United Kingdom, currently owned and leased, respectively, by Respondent Thermo Fisher.
- P. "Designated Employees" means all employees of Respondent Thermo Fisher who are working for the Divestiture Businesses, or have worked for the Divestiture Businesses in the last six (6) months including, but not limited to:
1. At the HyClone Cell Culture Leased Facilities;
 2. At the HyClone Cell Culture Owned Facilities;
 3. At the HyClone Cell Culture Excluded Facilities;
 4. At the Lafayette Facility; and

5. Anywhere in the world in the marketing, selling, managing, researching, manufacturing, or otherwise working for the Divestiture Businesses.

PROVIDED, HOWEVER, that if the Acquirer is GE Healthcare, the number of “Designated Employees” who can be hired shall be limited as described in Non-Public Appendix B-2 to this Order. *PROVIDED, FURTHER, HOWEVER*, that if the Acquirer is GE Healthcare, the “Designated Employees” does not include the employees listed on Non-Public Appendix B-1.

- Q. “Dharmacon Divestiture Agreement” means the Remedial Agreement, between Respondent Thermo Fisher and GE Healthcare or an Acquirer for the divestiture of the Dharmacon Gene Modulation Business. The Dharmacon Divestiture Agreement between Respondent Thermo Fisher and GE Healthcare is attached as part of Non-Public Appendix A.
- R. “Dharmacon Gene Modulation Business” means all of Respondent Thermo Fisher’s assets, tangible and intangible, businesses and goodwill, related to the research, development, manufacture, distribution, marketing, or sale of Dharmacon Gene Modulation Products including, but not limited to:
 1. Dharmacon Gene Modulation Intellectual Property;
 2. Dharmacon Gene Modulation Product Marketing Materials;
 3. Dharmacon Gene Modulation Products scientific and regulatory material;
 4. Dharmacon Gene Modulation Products manufacturing and other equipment located at any facility owned or leased by Respondent Thermo Fisher, or used by Respondent Thermo Fisher or its agents for the production of Dharmacon Gene Modulation Products;
 5. inventory; and
 6. Confidential Business Information and current and historical product, customer, and supplier information and data, relating to the Dharmacon Gene Modulation Business (to the extent there is shared information, Respondent Thermo Fisher shall provide redacted versions to the Acquirer and retain copies with information redacted relating to the Dharmacon Gene Modulation Business).
- S. “Dharmacon Gene Modulation Contracts” means Respondent Thermo Fisher’s current customer, licensing, sourcing, or distribution contracts for Dharmacon Gene Modulation Products to the extent that they pertain to the manufacture, supply, or distribution of Dharmacon Gene Modulation Products. *PROVIDED, HOWEVER*, that if such customer, licensing, sourcing, or distribution contract also relates to products other than Dharmacon Gene Modulation Products, then only those portions of such contracts that relate to the sale, supply, or distribution of Dharmacon Gene Modulation Products shall be included for purposes of this Order. *PROVIDED, FURTHER, HOWEVER*, that Dharmacon Gene Modulation Contracts do not include the contracts listed in Non-Public Appendix H to this Order.

- T. “Dharmacon Gene Modulation Intellectual Property” means all Intellectual Property relating to the design, manufacture, and sale of Dharmacon Gene Modulation Products designed, manufactured, or sold by, or on behalf of, Respondent Thermo Fisher, even where such Intellectual Property has not been reduced to practice or commercialized, including, but not limited to, web domain names relating to the Dharmacon Gene Modulation Business. *PROVIDED, HOWEVER*, that unless otherwise provided for in this Order, the Dharmacon Gene Modulation Intellectual Property does not include (i) the Gene Sequence Patents, (ii) the Intellectual Property relating to TurboFECT transfection products, and (iii) the Thermo Fisher brand name, or the names of any other divisions, businesses, corporations, or companies owned by Respondent Thermo Fisher.
- U. “Dharmacon Gene Modulation Products” means products related to Gene Modulation and Gene Silencing, made by, or being researched and developed but not yet commercialized by, Respondent Thermo Fisher’s Dharmacon subsidiary, part of Respondent Thermo Fisher’s Molecular Biology Business Unit, and formerly marketed under the Dharmacon or Open Biosystems brand names at any time since January 1, 2012, including, but not limited to, the following product platforms: small/short interfering RNA (siRNA), Custom RNA, microRNA, RNAi Controls, Transfection, and short hairpin RNA (shRNA), which include, among other products, RNAi Control Reagents, libraries and standalone reagents for siRNA, cDNA, ORFs, DNA oligos, viral packaging vector products, transfection reagents, and RNAi ancillary reagents. *PROVIDED, HOWEVER*, that “Dharmacon Gene Modulation Products” does not include TurboFECT transfection products.
- V. “Divestiture Businesses” means the Dharmacon Gene Modulation Business and the HyClone Cell Culture Business.
- W. “Gene Modulation” means the use of RNA interference (RNAi), also called post-transcriptional gene silencing, as a biological process in which RNA molecules inhibit gene expression, typically by causing the destruction of specific mRNA molecules, or gene over-expression by inserting cDNA or ORF sequences into a genome causing the cell to express the inserted gene.
- X. “Gene Silencing” means the use of nucleic acid (including, but not limited to RNAi, siRNA, shRNA, microRNA, DNA, and ORFs) molecules to inhibit (either partially or totally) gene expression.
- Y. “Gene Sequence Patents” means the Patents claiming or disclosing the sequences of synthetic RNA duplexes and their use in RNA interference covered under patent families listed in Non-Public Appendix F.
- Z. “Government Entity” means any federal, state, local, or non-U.S. government entity, or any court, legislature, government agency, or government commission, or any judicial or regulatory authority of any government.
- AA. “Green Bay Facility” means the facility currently leased by Respondent Thermo Fisher located at 1263 Waube Lane, Green Bay, Wisconsin 54304.

- BB. “Hold Separate Monitor” means the person appointed to be the Hold Separate Monitor pursuant to Paragraph III of the Order to Hold Separate and Maintain Assets.
- CC. “HyClone Cell Culture Business” means all of Respondent Thermo Fisher’s assets, tangible and intangible, businesses and goodwill, related to the research, development, manufacture, distribution, marketing, or sale of HyClone Cell Culture Products including, without limitation, the following:
1. HyClone Cell Culture Owned Facilities;
 2. HyClone Cell Culture Intellectual Property;
 3. HyClone Cell Culture Product Marketing Materials;
 4. HyClone Cell Culture Products scientific and regulatory material;
 5. HyClone Cell Culture Products manufacturing equipment, owned by Respondent Thermo Fisher and at the Acquirer’s option, located at the HyClone Cell Culture Owned Facilities, HyClone Cell Culture Leased Facilities, and the Excluded Facilities, or at any other facility owned or leased by Respondent Thermo Fisher or used by Respondent Thermo Fisher or its agents for the production of HyClone Cell Culture Products;
 6. inventory; and
 7. Confidential Business Information and current and historical product, customer, and supplier information and data, relating to the HyClone Cell Culture Business (to the extent there is shared information, Respondent Thermo Fisher shall provide redacted versions to the Acquirer and retain copies with information redacted relating to the HyClone Cell Culture Business).
- PROVIDED, HOWEVER*, that, unless otherwise provided for in this Order, the HyClone Cell Culture Business does not include SUTs, HyClone Excluded Facilities, the Lanzhou Joint Venture, and the Thermo Fisher Microbiological Culture Media products or business.
- DD. “HyClone Cell Culture Contracts” means the current customer, supply, sourcing, or distribution contracts for HyClone Cell Culture Products to the extent that they pertain to the manufacture, supply, or distribution of HyClone Cell Culture Products. *PROVIDED, HOWEVER*, that if such customer, sourcing, or distribution contract also relates to products other than HyClone Cell Culture Products, then only those portions of such contracts that relate to the sale, supply or distribution of HyClone Cell Culture Products shall be included for the purposes of this Order. *PROVIDED, FURTHER, HOWEVER*, that HyClone Cell Culture Contracts do not include the contracts listed in Non-Public Appendix H to this Order.
- EE. “HyClone Cell Culture Divestiture Agreement” means the Remedial Agreement between Respondent Thermo Fisher and GE Healthcare or an Acquirer for the divestiture of the HyClone Cell Culture Business attached as part of Non-Public Appendix A.

- FF. “HyClone Cell Culture Intellectual Property” means all Intellectual Property relating to the design, manufacture, and sale of the HyClone Cell Culture Products designed, manufactured, or sold by, or on behalf of, Respondent Thermo Fisher, even where such Intellectual Property has not been reduced to practice or commercialized including, but not limited to, web domain names relating to the HyClone Cell Culture Business. *PROVIDED, HOWEVER*, that unless otherwise provided for in this Order and the Remedial Agreement, HyClone Cell Culture Intellectual Property does not include (i) Intellectual Property exclusively related to SUTs or Thermo Fisher Microbiological Culture Media products or businesses, (ii) the use of HyClone and HyQ brand names for the sale or marketing of SUTs, and (iii) the Thermo Fisher brand name or the names of any other divisions, businesses, corporations, or companies owned by Respondent Thermo Fisher.
- GG. “HyClone Cell Culture Leased Facilities” means the following facilities used for the manufacture, processing, and distribution of Cell Culture Media and Cell Culture Sera:
1. the Cell Culture facility leased by Respondent Thermo Fisher located at 917 W 600 North, Suite 114, Logan, Utah;
 2. the Singapore Facility;
 3. the Mordialloc Facility;
 4. the Green Bay Facility; and
 5. the Aalst, Belgium Facility.
- HH. “HyClone Cell Culture Owned Facilities” means the following facilities including all physical assets and equipment for the manufacture, processing, and distribution of Cell Culture Media and Cell Culture Sera as well as operation of the facilities:
1. The General Administration Building currently owned by Respondent Thermo Fisher located at 925 West 1800 South, Logan, Utah;
 2. The Sera and Liquid Media Facility currently owned by Respondent Thermo Fisher located at 1725 S Hyclone Road, Logan, Utah;
 3. Powder Media and Component Facility currently owned by Respondent Thermo Fisher located at 1665 S Hyclone Road, Logan, Utah;
 4. Distribution Warehouse Facility owned by Respondent Thermo Fisher located at 925 West 1800 South, Logan, Utah;
 5. the Omaha Facility; and
 6. the Omokora Facility.
- II. “HyClone Cell Culture Products” means the entire HyClone product line produced, or other HyClone products or product lines being researched or developed but not yet commercialized, at any time since January 1, 2012, including, but not limited to, Australia- and New Zealand-origin fetal bovine serum, U.S.-origin fetal bovine serum, and USDA-approved fetal bovine serum, and all HyClone liquid and dry powder media product lines

including, but not limited to, media, sera, and process buffers and reagents, in all packaging options including SUT packaging. For purposes of this Order, “HyClone Cell Culture Products” does not include the Thermo Fisher Microbiological Culture Media products or the SUTs products.

JJ. “HyClone Excluded Facilities” means the following facilities owned or leased by Respondent Thermo Fisher:

1. SUTs Facility, Logan, Utah;
2. the Beijing Facility;
3. the Cramlington Facility; and
4. the Tokyo Facility.

KK. “Intellectual Property” means:

1. Patents;
2. product manufacturing technology, including process technology and technology for equipment;
3. product and manufacturing copyrights;
4. all plans (including proposed and tentative plans, whether or not adopted or commercialized), research and development, specifications, drawings, and other assets (including the non-exclusive right to use Patents, know-how, and other intellectual property relating to such plans);
5. product trademarks, trade dress, trade secrets, technology, know-how, techniques, data, inventions, practices, methods, and other confidential or proprietary technical, business, research, development, and other information, formulas, and proprietary information (whether patented, patentable, or otherwise) related to the manufacture of the products, including, but not limited to, all product specifications, processes, analytical methods, product designs, plans, trade secrets, ideas, concepts, manufacturing, engineering, and other manuals and drawings, standard operating procedures, flow diagrams, chemical, safety, quality assurance, quality control, research records, clinical data, compositions, annual product reviews, regulatory communications, control history, current and historical information associated with any Government Entity approvals and compliance, and labeling and all other information related to the manufacturing process, and supplier lists;
6. licenses including, but not limited to, third party software, if transferrable, and sublicenses to software modified by Respondent Thermo Fisher;
7. recipes and a description of all ingredients, materials, or components used in the manufacture of products;

8. rights to obtain and file for Patents, trademarks, and copyrights and registrations thereof and to bring suit against a Third Party for the past, present, or future infringement, misappropriation, dilution, misuse, or other violations of any of the foregoing; and
9. any other intellectual property used in the past by Respondent Thermo Fisher in the design, manufacture, and sale of products.

PROVIDED, HOWEVER, that unless otherwise provided for in this Order, “Intellectual Property” does not include (i) the corporate names or corporate trade dress of Respondent Thermo Fisher, or the related corporate logos thereof, or the corporate names or corporate trade dress of any other corporations or companies owned or controlled by Respondent Thermo Fisher, and (ii) Respondent Thermo Fisher’s licenses with third party vendors for Oracle and Salesforce.com software or databases, and (iii) the software and databases listed in Non-Public Appendix G.

- LL. “Lafayette Facility” means the Dharmacon Gene Modulation Product production and distribution facility currently leased by Respondent Thermo Fisher located at 2600 Campus Drive and 2650 Crescent Drive, Lafayette, Colorado 80026.
- MM. “Lanzhou Joint Venture” means the National HyClone Bio-engineering Co., Ltd., a joint venture between HyClone Laboratories, Inc. and China Northwest Minorities University in which Respondent Thermo Fisher has a 51% interest.
- NN. “Monitor” means any Person appointed pursuant to Paragraph IV of this Order.
- OO. “Mordialloc Facility” means the facility currently leased by Respondent Thermo Fisher located at 27A White Street, Melbourne, Victoria, Australia.
- PP. “Omaha Facility” means the facility currently owned by Respondent Thermo Fisher located at 3566 South 32nd Avenue, Omaha, Nebraska 68105.
- QQ. “Omokora Facility” means the facility currently owned by Respondent Thermo Fisher located at Barrett Road, Whakamarama, Tauranga, New Zealand.
- RR. “Order Date” means the date on which this Decision and Order is issued by the Commission.
- SS. “Order to Hold Separate and Maintain Assets” means the Order to Hold Separate and Maintain Assets incorporated into and made a part of the Agreement Containing Consent Orders.
- TT. “Person” means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, or other business or Government Entity, and any subsidiaries, divisions, groups, or affiliates thereof.
- UU. “Patents” means all United States and foreign patents, and any applications for and registrations of such patents, and any renewal, derivation, divisions, reissues, continuation, continuations in-part, modifications, or extensions thereof or, if the patents have already been issued on the basis of said applications, the resulting patents.

- VV. “Product Marketing Materials” means all marketing materials used specifically in the marketing or sale of the products of the specified Divestiture Businesses as of the Acquisition Date, including, without limitation, all advertising materials, training materials, product data, mailing lists, sales materials (*e.g.*, detailing reports, vendor lists, sales data), marketing information (*e.g.*, competitor information, research data, market intelligence reports, statistical programs (if any) used for marketing and sales research), customer information (including customer net purchase information to be provided on the basis of either dollars and/or units for each month, quarter, or year), sales forecasting models, educational materials, and advertising and display materials, speaker lists, promotional and marketing materials, website content and advertising and display materials, artwork for the production of packaging components, television masters, and other similar materials related to the products of the specified Divestiture Businesses.
- WW. “Regulatory Approval” means approval required from any Government Entity in order to complete the divestiture of the Dharmacon Gene Modulation Business and/or the HyClone Cell Culture Business.
- XX. “Remedial Agreement(s)” means the following:
1. any agreement between Respondent Thermo Fisher and an Acquirer that is specifically referenced and attached to this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, including without limitation, any agreement to supply specified products or components thereof, and that have been approved by the Commission to accomplish the requirements of the Order in connection with the Commission’s determination to make this Order final and effective;
 2. any agreement between Respondent Thermo Fisher and an Acquirer (or between a Divestiture Trustee and an Acquirer) that has been approved by the Commission to accomplish the requirements of this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, including without limitation, any agreement by Respondent Thermo Fisher to supply specified products or components thereof, and that have been approved by the Commission to accomplish the requirements of this Order. A Remedial Agreement for the Dharmacon Gene Modulation Business and the HyClone Cell Culture Business under this subparagraph may include different or additional assets or provide broader employee access, interview, and hiring provisions related to the Dharmacon Gene Modulation Products and Business and the HyClone Cell Culture Business or Products, than the Dharmacon Divestiture Agreement and HyClone Divestiture Agreement attached as Non-Public Exhibit A to this Order.
- YY. “Singapore Facility” means the facility currently leased by Respondent Thermo Fisher located at 25 Tuas South Street 1, Singapore.

- ZZ. “SUTs” means Respondent Thermo Fisher’s business and products related to single-use technology including, but not limited to, Thermo Fisher’s bioprocess container products, such as HyQtainer, HyClone Labtainer, HyClone tankliners, Single Use Bioreactors (“SUBs”), SUB bags, bioprocess container (“BPC”) bags or assemblies, Single Use Mixers (“SUM”), SUM bags, HyQ, Harvestainer BPC bags, HyClone PowderTrainer BioProcess containers, and, unless otherwise required in this Order, brand names, licenses, permits, Intellectual Property, know-how, equipment, and facilities related to Respondent Thermo Fisher’s single-use technology.
- AAA. “SUTs Facilities, Logan, Utah” means the following facilities and buildings, leased or owned by Respondent Thermo Fisher, used for research and development, production, testing and distribution of SUTs, and located at:
1. 3050 North 300 West, Logan, Utah;
 2. 881 West 700 North, Suites 104-114, Logan, Utah (Building B);
 3. 650 North 870 West, Suites 101-113, Logan, Utah (Building C);
 4. 918 West 700 North, Suite 114, Logan, Utah (Building D); and
 5. 1726 S. HyClone Road, Logan, Utah (SUT Facility (BioCenter)).
- BBB. “Software” means executable computer code and the documentation for such computer code, but does not mean data processed by such computer code.
- CCC. “Thermo Fisher Microbiological Culture Media” means Respondent Thermo Fisher’s culture media business and products sold and/or developed for microbiology applications including, but not limited to, dehydrated culture media, dehydrated culture media supplements, REMEL, OXOID, VersaTREK REDOX Media, and VersaTREK Myco Media and any licenses, permits, Intellectual Property, know-how, equipment, and facilities related to such products and business.
- DDD. “Third Party(ies)” means any non-governmental Person other than the Respondent Thermo Fisher or the Acquirer of particular assets or rights pursuant to this Order.
- EEE. “Tokyo Facility” means the facility managed by a third-party logistics provider located at 1-8-26 Horinouchi, Suginami ward, Tokyo 166-0013, Japan.
- FFF. “Tuschl Patents” means:
1. the Tuschl I patents (the family of patents and patent applications entitled “RNA Sequence-Specific Mediators of RNA Interference” (attached to this Order as Non-Public Appendix J)), co-owned by the Massachusetts Institute of Technology, The Whitehead Institute for Biomedical Research, the University of Massachusetts, and Max Planck Gesellschaft zur Förderung der Wissenschaften e.V., and covers the uses of 21-23 sequence specific mediators of double-stranded RNAi as a tool to study gene function and as a gene-specific therapeutic; and
 2. the Tuschl II patents (the family of patents and patent applications entitled “RNA Interference Mediating Small RNA Molecules” (attached to this Order as Non-

Public Appendix J)) owned by the Max Planck Institute and covers RNAi-mediating small RNA molecules.

II.

IT IS FURTHER ORDERED that:

- A. Within (i) forty-five (45) days after the Acquisition Date, or (ii) ten (10) days after all requisite Regulatory Approvals for completion of the divestiture of the Dharmacon Gene Modulation Business to GE Healthcare are obtained, whichever date is earlier, Respondent Thermo Fisher shall:
1. Divest the Dharmacon Gene Modulation Business, absolutely and in good faith, to GE Healthcare pursuant to, and in accordance with, the Dharmacon Divestiture Agreement (which agreement shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that this Order shall not be construed to reduce any rights or benefits of GE Healthcare or to reduce any obligations of Respondent Thermo Fisher under such agreement), and such agreement is incorporated by reference into this Order and made a part hereof.
 2. grant to GE Healthcare a royalty-free, fully-paid-up, irrevocable, perpetual, (with rights to sublicense):
 - a. exclusive license (even as to Respondent Thermo Fisher) to the Gene Sequence Patents, for use in the research, development, manufacture, and sale of Gene Silencing products for research applications; and
 - b. a non-exclusive license to the Gene Sequence Patents for use in the field of gene modification and/or gene expression modulation for research purposes and Cell Line Development for Biologics.
 3. assign, or otherwise transfer, to GE Healthcare the Dharmacon Gene Modulation Contracts, and with respect to the excluded contracts in Non-Public Appendix H, at the option of the Acquirer, Respondent Thermo Fisher shall use all reasonable commercial efforts to secure for the Acquirer a substantially similar contract on the same terms.
 4. assign, or otherwise transfer, to GE Healthcare the license to the Tuschl Patents; and
 5. assign, or otherwise transfer, to GE Healthcare the lease to the Lafayette Facility.

PROVIDED, HOWEVER, that for any obligation of Respondent Thermo Fisher pursuant to this Paragraph that is at the option of the Acquirer, Respondent Thermo Fisher need not fulfill such obligation only if the following two conditions are satisfied: (1) the Acquirer exercises its option not to have Respondent Thermo Fisher fulfill the obligation; and (2) the Commission approves the divestiture without the fulfillment of that obligation;

PROVIDED, FURTHER, HOWEVER, that if Respondent Thermo Fisher has divested the Dharmacon Gene Modulation Business to GE Healthcare prior to the Order Date, and if, at the time the Commission determines to make this Order final and effective, the Commission notifies Respondent Thermo Fisher that GE Healthcare is not an acceptable purchaser of the Dharmacon Gene Modulation Business, then Respondent Thermo Fisher shall immediately rescind the transaction with GE Healthcare, in whole or in part, as directed by the Commission, and shall divest the Dharmacon Gene Modulation Business within one hundred eighty (180) days from the Order Date, absolutely and in good faith, at no minimum price, to an Acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission;

PROVIDED, FURTHER, HOWEVER, that if Respondent Thermo Fisher has divested the Dharmacon Gene Modulation Business to GE Healthcare prior to the Order Date, and if, at the time the Commission determines to make this Order final and effective, the Commission notifies Respondent Thermo Fisher that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct Respondent Thermo Fisher, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the Dharmacon Gene Modulation Business (including, but not limited to, entering into additional agreements or arrangements) as the Commission may determine are necessary to satisfy the requirements of this Order.

- B. Within (i) forty-five (45) days after the Acquisition Date, or (ii) ten (10) days after all requisite Regulatory Approvals for completion of the divestiture of the HyClone Cell Culture Business to GE Healthcare are obtained, whichever date is earlier, Respondent Thermo Fisher shall:
1. divest the HyClone Cell Culture Business, absolutely and in good faith, to GE Healthcare pursuant to, and in accordance with, the HyClone Cell Culture Divestiture Agreement (which agreement shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that this Order shall not be construed to reduce any rights or benefits of GE Healthcare or to reduce any obligations of Respondent Thermo Fisher under such agreement), and such agreement is incorporated by reference into this Order and made a part hereof;
 2. assign, or otherwise transfer, to GE Healthcare the HyClone Cell Culture Contracts, and with respect to the excluded contracts in Non-Public Appendix H, at the option of the Acquirer, Respondent Thermo Fisher shall use all reasonable commercial efforts to secure for the Acquirer a substantially similar contract on the same terms, and
 3. at the Acquirer's option, assign, or otherwise transfer, to GE Healthcare the HyClone Cell Culture Leased Facilities.

PROVIDED, HOWEVER, that for any obligation of Respondent Thermo Fisher pursuant to this Paragraph that is at the option of the Acquirer, Respondent Thermo Fisher need not fulfill such obligation only if the following two conditions are satisfied: (1) the Acquirer

exercises its option not to have Respondent Thermo Fisher fulfill the obligation; and (2) the Commission approves the divestiture without the fulfillment of that obligation;

PROVIDED, FURTHER, HOWEVER, that if Respondent Thermo Fisher has divested the HyClone Cell Culture Business to GE Healthcare prior to the Order Date, and if, at the time the Commission determines to make this Order final and effective, the Commission notifies Respondent Thermo Fisher that GE Healthcare is not an acceptable purchaser of the HyClone Cell Culture Business, then Respondent Thermo Fisher shall immediately rescind the transaction with GE Healthcare, in whole or in part, as directed by the Commission, and shall divest the HyClone Cell Culture Business within one hundred eighty (180) days from the Order Date, absolutely and in good faith, at no minimum price, to an Acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission;

PROVIDED, FURTHER, HOWEVER, that if Respondent Thermo Fisher has divested the HyClone Cell Culture Business to GE Healthcare prior to the Order Date, and if, at the time the Commission determines to make this Order final and effective, the Commission notifies Respondent Thermo Fisher that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct Respondent Thermo Fisher, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the HyClone Cell Culture Business (including, but not limited to, entering into additional agreements or arrangements) as the Commission may determine are necessary to satisfy the requirements of this Order.

- C. Prior to the Closing Date for each of the Divestiture Businesses, Respondent Thermo Fisher shall secure all consents and waivers from all Third Parties that are required for the Acquirer to manufacture and sell products made by the Divestiture Businesses as of the Closing Date. Such consents shall include, but not be limited to:
1. securing requisite assignments to leases to manufacturing and other facilities, if such facilities are being leased to the Acquirer;
 2. securing requisite consents to assign customer and supplier contracts to the Acquirer pursuant to this Order;
 3. if necessary for transfer, securing a consent to assign the Tuschl Patents license that is part of the Dharmacon Gene Modulation Business to the Acquirer; and
 4. any Regulatory Approvals.

PROVIDED, HOWEVER, that Respondent Thermo Fisher may satisfy this requirement by certifying that the relevant Acquirer for each of the Divestiture Businesses has, to the Acquirer's satisfaction, either (i) executed all such agreements directly with each of the relevant Third Parties, or (ii) secured a similar contract with similar terms from the customer or from a similar supplier supplying such product or service.

- D. Any Remedial Agreement that has been approved by the Commission between Respondent Thermo Fisher (or a Divestiture Trustee) and an Acquirer shall be deemed incorporated into this Order, and any failure by Respondent Thermo Fisher to comply with any term of such Remedial Agreement shall constitute a failure to comply with the Order.
- E. Respondent Thermo Fisher shall include in each Remedial Agreement related to each of the Divestiture Businesses a specific reference to this Order, the remedial purposes thereof, and provisions to reflect the full scope and breadth of each of Respondent Thermo Fisher's obligations to the Acquirer pursuant to this Order.
- F. Respondent Thermo Fisher shall not seek, directly or indirectly, pursuant to any dispute resolution mechanism incorporated in any Remedial Agreement, or in any agreement related to any of the Divestiture Products a decision the result of which would be inconsistent with the terms of this Order or the remedial purposes thereof.
- G. Respondent Thermo Fisher shall not modify or amend any of the terms of any Remedial Agreement without the prior approval of the Commission, except as otherwise provided in Rule 2.41(f)(5) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(5). Notwithstanding any term of the Remedial Agreement(s), any modification or amendment of any Remedial Agreement made without the prior approval of the Commission, or as otherwise provided in Rule 2.41(f)(5), shall constitute a failure to comply with this Order.
- H. Respondent Thermo Fisher shall include, as part of the Remedial Agreement(s), any transition services agreement or agreements under which Respondent Thermo Fisher shall provide services or assistance to the Acquirer, at the Acquirer's option. Such agreements shall include, but not be limited to:
1. A royalty-free, fully-paid-up, irrevocable, non-exclusive license for no more than two (2) years from Respondent Thermo Fisher to the Acquirer solely to use the "Thermo Scientific" brand name for the sale of HyClone Cell Culture Products inventory bearing that brand name, to the extent such inventory was transferred by Respondent Thermo Fisher as part of the Remedial Agreement.
 2. A supply contract to provide up to two (2) years of HyClone Cell Culture media manufacturing at the Thermo Fisher media production facilities in Cramlington, UK, and Beijing, China. Such agreement shall include a provision for the orderly transfer of the media manufacturing equipment used in the production of HyClone Cell Culture Media to the Acquirer.
 3. Transition services agreements to cover, among other things and if requested by the Acquirer, administrative assistance to assist the Acquirer in the divestiture and transfer of the Divestiture Businesses, the transfer or replication of information technology and computer systems, the distribution of products acquired by the Acquirer as part of the divestiture, and the transfer of data divested pursuant to this Order to the Acquirer.

4. A transition services agreement to cover:
 - a. The supply of laboratory services at Respondent Thermo Fisher's Logan, Utah, facilities, for up to two (2) years, related to Cell Culture Media and Cell Culture Sera; and
 - b. The purchase of new laboratory equipment, and the creation of a laboratory at a facility of Acquirer's choice in Logan, Utah, related to Cell Culture Media and Cell Culture Sera, and comparable in size and capabilities of the Respondent Thermo Fisher laboratory currently supplying laboratory services related to Cell Culture Media and Cell Culture Sera.
- I. Respondent Thermo Fisher shall not terminate any agreement that is part of a Remedial Agreement before the end of the term approved by the Commission without:
 1. Prior approval of the Commission;
 2. The written agreement of the Acquirer and thirty (30) days prior notice to the Commission; or
 3. In the case of a proposed unilateral termination by Respondent Thermo Fisher due to an alleged breach of an agreement by the Acquirer, sixty (60) days notice of such termination. *PROVIDED, HOWEVER*, that such sixty (60) days notice shall be given only after the parties have:
 - a. Attempted to settle the dispute between themselves, and
 - b. Either engaged in arbitration and received an arbitrator's decision, or received a final court decision after all appeals.
- J. Until Respondent Thermo Fisher or the Divestiture Trustee complete the divestitures and other obligations to transfer the Divestiture Businesses as required by this Order:
 1. Respondent Thermo Fisher shall take actions as are necessary to:
 - a. maintain the full economic viability and marketability of the Divestiture Businesses;
 - b. minimize any risk of loss of competitive potential for each Divestiture Business;
 - c. prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets related to the Divestiture Businesses; and
 2. Respondent Thermo Fisher shall not sell, transfer, encumber, or otherwise impair the Divestiture Businesses (other than in the manner prescribed in this Order) nor take any action that lessens the full economic viability, marketability, or competitiveness of the Divestiture Businesses.

- K. The purpose of the divestiture of the Divestiture Businesses and other obligations to transfer the Divestiture Businesses to the Acquirer is:
1. to ensure the continued operation of the Divestiture Businesses;
 2. to minimize the loss of competitive potential for the Divestiture Businesses;
 3. to minimize the risk of disclosure and unauthorized use of Confidential Business Information related to the Divestiture Businesses;
 4. to prevent the destruction, removal, wasting, deterioration, or impairment of the Divestiture Businesses, except for ordinary wear and tear;
 5. to create a viable and effective competitor that is independent of Respondent Thermo Fisher in the Divestiture Businesses; and
 6. to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

- A. Respondent Thermo Fisher shall:
1. Deliver all Confidential Business Information related to the Divestiture Businesses being acquired by that Acquirer to that Acquirer:
 - a. in good faith;
 - b. in a timely manner, *i.e.*, as soon as practicable, avoiding any delays in transmission of the respective information; and
 - c. in a manner that ensures its completeness and accuracy and that fully preserves its usefulness.
 2. Pending complete delivery of all such Confidential Business Information to the relevant Acquirer, provide that Acquirer, the Hold Separate Monitor, and the Monitor (if any has been appointed) with access to all such Confidential Business Information and employees who possess or are able to locate such information for the purposes of identifying the books, records, and files directly related to the relevant Divestiture Businesses that contain such Confidential Business Information and facilitating the delivery in a manner consistent with this Order
- B. Respondent Thermo Fisher shall not seek, receive, obtain, use, share, or otherwise have or grant access to, directly or indirectly, any Confidential Business Information from or with any Person, except the Acquirer of the particular Divestiture Business, the Hold Separate Monitor, the Monitor, the Divestiture Trustee (if appointed), or Commission staff or other Persons specifically authorized by that Acquirer, the Hold Separate Monitor, the Monitor,

Divestiture Trustee, or Commission staff to receive such information. Among other things, Respondent Thermo Fisher shall not use such Confidential Business Information:

1. to assist or inform Respondent Thermo Fisher employees who research, develop, manufacture, solicit for sale, sell, or service Respondent Thermo Fisher products acquired in the Acquisition that compete with the products of the Divested Businesses, including Gene Modulation, Cell Culture Media, and Cell Culture Sera products acquired from Life;
2. to interfere with any suppliers, distributors, resellers, or customers of the Acquirer;
3. to interfere with any contracts divested, assigned, or extended to the Acquirer pursuant to this Order; or
4. to interfere in any way with the Acquirer pursuant to this Order or with the Divested Businesses.

C. Respondent Thermo Fisher shall:

1. institute procedures and requirements to ensure that:
 - a. Respondent Thermo Fisher employees with access to Confidential Business Information do not provide, disclose or otherwise make available Confidential Business Information as in contravention with this Order; and
 - b. Respondent Thermo Fisher employees associated with the products acquired in the Acquisition that compete with the products of the Divested Businesses, including Gene Modulation, Cell Culture Media, and Cell Culture Sera products acquired from Life, do not, for any purpose, solicit, access, or use any Confidential Business Information that this Order prohibits them from receiving.

D. As part of the procedures and requirements, above, require all Designated Employees not hired by the Acquirer, and all other employees who managed or otherwise were engaged in the research, development, manufacture, marketing, or sale of products of the Divestiture Businesses, to sign a non-disclosure agreement within ten (10) days of the Closing Date agreeing to comply with the confidentiality requirements of this Order. A draft copy of that non-disclosure agreement is attached at Appendix I to this Order.

E. The requirements in Paragraph III.A., III.B., III.C. do not apply to Confidential Business Information that Respondent Thermo Fisher demonstrates to the satisfaction of the Commission, in the Commission's sole discretion:

1. was or becomes generally available to the public other than as a result of a disclosure by Respondent Thermo Fisher;

2. necessary to be included in mandatory regulatory filings; *PROVIDED, HOWEVER*, that Respondent Thermo Fisher shall make all reasonable efforts to maintain the confidentiality of such information, and to obtain a protective order for such information, in the regulatory filings;
3. was available, or becomes available, to Respondent Thermo Fisher on a non-confidential basis, but only if, to the knowledge of Respondent Thermo Fisher, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information;
4. is information the disclosure of which is consented to by the Acquirer;
5. is necessary to be exchanged in the course of consummating the Acquisition or the transaction under the Remedial Agreement;
6. is disclosed in complying with the Order;
7. is information the disclosure of which is necessary to allow Respondent Thermo Fisher to comply with the requirements and obligations of the laws of the United States and other countries; *PROVIDED, HOWEVER*, that Respondent Thermo Fisher shall make all reasonable efforts to maintain the confidentiality of such information, and to obtain a protective order for such information, in such disclosures;
8. is disclosed in defending legal claims, investigations, or enforcement actions threatened or brought against Respondent Thermo Fisher or the Divestiture Businesses; *PROVIDED, HOWEVER*, that Respondent Thermo Fisher shall make all reasonable efforts to maintain the confidentiality of such information, and to obtain a protective order for such information, in such actions or claims; or
9. is disclosed in obtaining legal advice; *PROVIDED, HOWEVER*, that Respondent Thermo Fisher shall make all reasonable efforts to maintain the confidentiality of such information, and to obtain a protective order for such information, in such advice.

PROVIDED, HOWEVER, that pursuant to this Paragraph III, if Respondent Thermo Fisher needs access to original documents, it shall: (1) require those who view such unredacted documents or other materials to enter into confidentiality agreements with the Acquirer (but shall not be deemed to have violated this requirement if the Acquirer withholds such agreement unreasonably); and (2) use its best efforts to obtain a protective order to protect the confidentiality of such information during any adjudication.

IV.

IT IS FURTHER ORDERED that:

- A. KPMG LLP (Charles A. Riepenhoff, Jr., Managing Director) shall serve as the Monitor pursuant to the agreement executed by the Monitor and Respondent Thermo Fisher and attached as Appendix C (“Monitor Agreement”) and Non-Public Appendix D (“Monitor Compensation”). The Monitor is appointed to assure that Respondent Thermo Fisher expeditiously complies with all of its obligations and performs all of its responsibilities as required by this Order and the Order to Hold Separate and Maintain Assets.
- B. No later than one (1) day after the Acquisition Date, the Monitor Agreement shall require that Respondent Thermo Fisher transfer to the Monitor all rights, powers, and authorities necessary to permit the Monitor to perform his/her duties and responsibilities, pursuant to this Order and the Order to Hold Separate and Maintain Assets and consistent with the purposes of this Order, and Respondent Thermo Fisher shall effectuate such transfer.
- C. Respondent Thermo Fisher shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
 - 1. The Monitor shall have the power and authority to monitor Respondent Thermo Fisher’s compliance with the divestiture and asset maintenance obligations and related requirements of the Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the Order and in consultation with the Commission.
 - 2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.
- D. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondent Thermo Fisher’s personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondent Thermo Fisher’s compliance with its obligations under the Order, including, but not limited to, its obligations related to the Divestiture Businesses.
- E. Respondent Thermo Fisher shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor’s ability to monitor Respondent Thermo Fisher’s compliance with the Order.
- F. The Monitor shall serve, without bond or other security, at the expense of Respondent Thermo Fisher, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have the authority to employ, at the expense of Respondent Thermo Fisher, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor’s duties and responsibilities.
- G. Respondent Thermo Fisher shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor’s duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses,

claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Monitor.

- H. Respondent Thermo Fisher shall report to the Monitor in accordance with the requirements of this Order and as otherwise provided in the agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor by Respondent Thermo Fisher and any reports submitted by the Acquirer with respect to the performance of Respondent Thermo Fisher's obligations under the Order or the Remedial Agreement(s). Within thirty (30) days from the date the Monitor receives these reports, the Monitor shall report in writing to the Commission concerning performance by Respondent Thermo Fisher of its obligations under the Order.
- I. Respondent Thermo Fisher may require the Monitor and each of the Monitor's consultants, accountants, and other representatives and assistants to sign a customary confidentiality agreement; *PROVIDED, HOWEVER*, that such agreement shall not restrict the Monitor from providing any information to the Commission.
- J. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.
- K. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor:
 - 1. The Commission shall select the substitute Monitor, subject to the consent of Respondent Thermo Fisher, which consent shall not be unreasonably withheld. If Respondent Thermo Fisher has not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after the notice by the staff of the Commission to Respondent Thermo Fisher of the identity of any proposed Monitor, Respondent Thermo Fisher shall be deemed to have consented to the selection of the proposed Monitor.
 - 2. Not later than ten (10) days after the appointment of the substitute Monitor, Respondent Thermo Fisher shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all rights and powers necessary to permit the Monitor to monitor Respondent Thermo Fisher's compliance with the relevant terms of the Order in a manner consistent with the purposes of the Order.
- L. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Order.
- M. The Monitor appointed pursuant to this Order may be the same Person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order or as the Hold Separate Monitor pursuant to the relevant provisions of the Order to Hold Separate and Maintain Assets.

V.

IT IS FURTHER ORDERED that:

- A. Beginning no later than the time Respondent Thermo Fisher signs the Consent Agreement in this matter until one-hundred-twenty (120) days after the Closing Date:
1. Respondent Thermo Fisher shall provide the applicable Designated Employees with reasonable financial incentives to continue in their positions for such period. Such incentives shall include a continuation of all employee benefits offered by Respondent Thermo Fisher until the Designated Employee has been hired by the Acquirer, the Acquirer has decided not to hire such Designated Employee, or the Designated Employee has declined, in writing, the Acquirer's offer, including regularly scheduled raises, bonuses, vesting of pension benefits (as permitted by law), and additional incentives as may be necessary to transition the Divestiture Businesses to the Acquirer.
 2. Respondent Thermo Fisher shall not interfere with the interviewing, hiring, or employing of the Designated Employees by the Acquirer as described in this Order, and shall remove any impediments within the control of Respondent Thermo Fisher that may deter, or otherwise prevent or discourage the Designated Employees from accepting employment with the Acquirer including, but not limited to, any non-compete provisions of employment or other contracts with Respondent Thermo Fisher that would affect the ability or incentive of those individuals to be employed by the Acquirer. In addition, Respondent Thermo Fisher shall not make any offer for a new or different employment or a counteroffer to a Designated Employee who receives a written offer of employment from the Acquirer, unless and until the Designated Employee has declined, in writing, the Acquirer's offer, or that the Acquirer has decided not to hire the Designated Employee and sent such notice to Respondent Thermo Fisher.
 3. Respondent Thermo Fisher shall, in a manner consistent with local labor laws:
 - a. Facilitate employment interviews between each Designated Employee and the Acquirer including providing the names and contact information for such employees, and allowing such employees reasonable opportunity to interview with the Acquirer, and shall not discourage such employee from participating in such interviews;
 - b. Not interfere in employment negotiations between each Designated Employee and the Acquirer; and
 - c. With respect to each Designated Employee who receives an offer of employment from the Acquirer:
 - (1) not prevent, prohibit or restrict, or threaten to prevent, prohibit, or restrict the Designated Employee from being employed by the Acquirer, and shall not offer any incentive to the Designated

Employee to decline employment with the Acquirer including, but not limited to, the Acquirer offering to hire the Designated Employee;

- (2) cooperate with the Acquirer in effecting transfer of the Designated Employee to the employ of the Acquirer, if the Designated Employee accepts an offer of employment from the Acquirer;
- (3) eliminate any confidentiality restrictions that would prevent the Designated Employee who accepts employment with the Acquirer from using or transferring to the Acquirer any information relating to the manufacture and sale of the products of the Divestiture Businesses; and
- (4) unless alternative arrangements are agreed upon with the Acquirer, pay, and retain the obligation to pay, the benefits of any Designated Employee who accepts employment with the Acquirer including, but not limited to, all accrued bonuses, vested pensions, and other accrued benefits.

PROVIDED, HOWEVER, that subject to the conditions of continued employment prescribed in this Order, this Paragraph shall not prohibit Respondent Thermo Fisher from continuing to employ any Designated Employee under the terms of such employee's employment as in effect prior to the date of the written offer of employment from the Acquirer to such employee.

- B. Respondent Thermo Fisher shall not, for a period of two (2) years following the Closing Date, directly or indirectly, solicit, induce, or attempt to solicit or induce any Person employed by the Acquirer and working in or for the Divestiture Businesses, to terminate his or her employment relationship with the Acquirer.

PROVIDED, HOWEVER, that Respondent Thermo Fisher may place general advertisements for, or conduct general searches for, employees including, but not limited to, in newspapers, trade publications, websites, or other media not targeted specifically at the Acquirer's employees.

PROVIDED, FURTHER, HOWEVER, that Respondent Thermo Fisher may hire Designated Employees who apply for employment with Respondent Thermo Fisher as long as such employees were not solicited by Respondent Thermo Fisher in violation of this Paragraph IV.

VI.

IT IS FURTHER ORDERED that, for a period of ten (10) years from the Order Date, Respondent Thermo Fisher shall not, without providing advance written notification to the Commission in the manner described in this Paragraph VI, directly or indirectly, acquire:

- A. any stock share capital, equity, or other interest in any Person, corporate or non-corporate, that produces, designs, manufactures, or sells Cell Culture Media, Cell Culture Sera, or Gene Modulation products in or into the United States;
- B. any business, whether by asset purchase or otherwise, that engages in or engaged in, at any time after the Acquisition, or during the six (6) month period prior to the Acquisition, the design, manufacture, production, or sale Cell Culture Media, Cell Culture Sera, or Gene Modulation products in or into the United States.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (herein referred to as “the Notification”), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such Notification, Notification shall be filed with the Secretary of the Commission, Notification need not be made to the United States Department of Justice, and Notification is required only of Respondent Thermo Fisher and not of any other party to the transaction. Respondent Thermo Fisher shall provide the Notification to the Commission at least thirty (30) days prior to consummating the transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondent Thermo Fisher shall not consummate the transaction until thirty (30) days after submitting such additional information or documentary material. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition.

PROVIDED, HOWEVER, that prior notification shall not be required by this paragraph for a transaction for which Notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

PROVIDED, FURTHER, HOWEVER, that prior notification shall not be required by this Paragraph V for any acquisition after which Respondent Thermo Fisher would hold no more than one percent (1%) of the outstanding securities or other equity interest in any Person described in this Paragraph VI.

VII.

IT IS FURTHER ORDERED that:

- A. If Respondent Thermo Fisher has not fully complied with the obligations to assign, grant, license, divest, transfer, deliver, or otherwise convey the Divestiture Businesses required by this Order, the Commission may appoint a trustee (“Divestiture Trustee”) to assign, grant, license, divest, transfer, deliver, or otherwise convey these assets in a manner that satisfies the requirements of this Order. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent Thermo Fisher shall consent to the appointment of a Divestiture Trustee in such action to assign, grant, license, divest, transfer, deliver, or otherwise convey these assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent Thermo Fisher to comply with this Order.
- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent Thermo Fisher, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a Person with experience and expertise in acquisitions and divestitures. If Respondent Thermo Fisher has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondent Thermo Fisher of the identity of any proposed Divestiture Trustee, Respondent Thermo Fisher shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestiture required by this Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondent shall consent to the following terms and conditions regarding the Divestiture Trustee’s powers, duties, authority, and responsibilities:
 1. Subject to the prior approval of the Commission:
 - a. The Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed.

- b. The Divestiture Trustee may divest the Divestiture Businesses in a manner different from the Dharmacon Divestiture Agreement or the HyClone Cell Culture Divestiture Agreement between Respondent Thermo Fisher and GE Healthcare, described and incorporated into this Order. For example, the Divestiture Trustee may, in his or her sole discretion, change the number of employees interviewed and hired, and the terms of the patents, licenses, transitions services, related to the Divestiture Businesses.
2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan of divestiture or the Commission believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission; *PROVIDED, HOWEVER*, that the Commission may extend the divestiture period only two (2) times.
3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondent Thermo Fisher shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent Thermo Fisher shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent Thermo Fisher shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.
4. The Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent Thermo Fisher's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer as required by this Order; *PROVIDED, HOWEVER*, that if the Divestiture Trustee receives bona fide offers from more than one acquiring Person, and if the Commission determines to approve more than one such acquiring Person, the Divestiture Trustee shall divest to the acquiring Person selected by Respondent Thermo Fisher from among those approved by the Commission; *PROVIDED, FURTHER, HOWEVER*, that Respondent Thermo Fisher shall select such Person within five (5) days after receiving notification of the Commission's approval.

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent Thermo Fisher, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondent Thermo Fisher, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondent Thermo Fisher, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a Commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.
6. Respondent Thermo Fisher shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.
7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order; *PROVIDED, HOWEVER*, that the Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Monitor pursuant to the relevant provisions of this Order or the Order to Hold Separate and Maintain Assets in this matter.
8. The Divestiture Trustee shall report in writing to Respondent Thermo Fisher and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
9. Respondent Thermo Fisher may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *PROVIDED, HOWEVER*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
10. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.

- E. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph.
- F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

VIII.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after the Order Date, and every thirty (30) days thereafter until Respondent Thermo Fisher has fully complied with Paragraphs II.A., II.B., II.C., II.D., II.E., II.H., II.I., III.A., V.A., Respondent Thermo Fisher shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondent Thermo Fisher shall submit at the same time a copy of its report concerning compliance with this Order to the Monitor, if any Monitor has been appointed. Respondent Thermo Fisher shall include in its reports, among other things that are required from time to time, a full description of the efforts being made to comply with the relevant paragraphs of the Order, including a full description of all substantive contacts or negotiations related to the divestiture of the relevant assets and/or the agreement to supply relevant Products and the identity of all Persons contacted, including copies of all written communications to and from such Persons, all internal memoranda, and all reports and recommendations concerning completing the obligations.
- B. One (1) year after the Order Date, annually for the next nine (9) years on the anniversary of the Order Date, and at other times as the Commission may require, Respondent Thermo Fisher shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with the Order.

IX.

IT IS FURTHER ORDERED that Respondent Thermo Fisher shall notify the Commission at least thirty (30) days prior to:

- A. any proposed dissolution of Respondent Thermo Fisher;
- B. any proposed acquisition, merger, or consolidation of the Respondent Thermo Fisher; or

- C. any other change in Respondent Thermo Fisher including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

X.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to any Respondent Thermo Fisher made to its principal United States offices, registered office of its United States subsidiary, or its headquarters address, that Respondent Thermo Fisher shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. access, during business office hours of Respondent Thermo Fisher and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of the Respondent Thermo Fisher related to compliance with this Order, which copying services shall be provided by Respondent Thermo Fisher at the request of the authorized representative(s) of the Commission and at the expense of Respondent Thermo Fisher; and
- B. to interview officers, directors, or employees of Respondent Thermo Fisher, who may have counsel present, regarding such matters.

XI.

IT IS FURTHER ORDERED that this Order shall terminate ten (10) years from the Order Date.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED:

NON-PUBLIC APPENDIX A
DHARMACON GENE MODULATION AND HYCLONE CELL CULTURE
DIVESTITURE AGREEMENT
BETWEEN RESPONDENT THERMO FISHER AND GE HEALTHCARE

[Redacted From the Public Record Version, But Incorporated By Reference]

NON-PUBLIC APPENDIX B-1
EXCLUDED EMPLOYEES

[Redacted From the Public Record Version, But Incorporated By Reference]

NON-PUBLIC APPENDIX B-2
SHARED EMPLOYEES

[Redacted From the Public Record Version, But Incorporated By Reference]

APPENDIX C
MONITOR AGREEMENT

APPENDIX C

MONITOR AGREEMENT

MONITOR AGREEMENT (this "**Agreement**") entered into this 27th day of January 2014 by and between KPMG LLP (the "**Monitor**") and Thermo Fisher Scientific Inc., ("**Respondent Thermo Fisher**") provides as follows:

PRELIMINARY STATEMENT

WHEREAS the Federal Trade Commission (the "**Commission**") is considering for public comment an Agreement Containing Consent Orders with Respondent Thermo Fisher, which provides, among other things, that Respondent Thermo Fisher divest the HyClone Cell Culture Business and Dharmacon Gene Modulation Business, and engage a monitor to monitor Respondent Thermo Fisher's compliance with its obligations under (a) the Decision and Order and (b) and Order to Hold Separate and Maintain Assets (collectively, the "**Orders**");

WHEREAS, the Commission is expected to issue the Agreement Containing Consent Orders and appoint the Monitor pursuant to the Orders to monitor Respondent Thermo Fisher's compliance with the terms of the Orders, and the Monitor has consented to such appointment;

WHEREAS, the Orders further provide that Respondent Thermo Fisher shall execute an agreement, subject to prior approval of the Commission, conferring all the rights and powers necessary to permit Monitor to carry out its duties and responsibilities pursuant to the Orders;

WHEREAS, this Agreement, although executed by Monitor and Respondent Thermo Fisher, is not effective for any purpose, including but not limited to imposing rights and responsibilities on Respondent Thermo Fisher or Monitor under the Orders, until the Order to Hold Separate and Maintain Assets has been issued and this Agreement has been approved by the Commission;

WHEREAS, the parties to this Agreement intend to be legally bound by this Agreement, subject only to the Commission's approval of this Agreement.

DEFINITIONS

1. "**Thermo Fisher**" or "**Respondent**" means Thermo Fisher Scientific Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Thermo Fisher Scientific Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

2. "**Acquirer**" means the following:

- a. a Person specified by name in this Order to acquire particular assets or rights that Respondent Thermo Fisher is required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order; or

- b. a Person approved by the Commission to acquire particular assets or rights that Respondent Thermo Fisher is required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order.
3. **"Remedial Agreement(s)"** means the following:
- a. any agreement between Respondent Thermo Fisher and an Acquirer that is specifically referenced and attached to this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, including without limitation, any agreement to supply specified products or components thereof, and that have been approved by the Commission to accomplish the requirements of the Order in connection with the Commission's determination to make this Order final and effective;
 - b. any agreement between Respondent Thermo Fisher and an Acquirer (or between a Divestiture Trustee and an Acquirer) that has been approved by the Commission to accomplish the requirements of this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, including without limitation, any agreement by Respondent Thermo Fisher to supply specified products or components thereof, and that have been approved by the Commission to accomplish the requirements of this Order. A Remedial Agreement for the Dharmacon Gene Modulation Business and the HyClone Cell Culture Business under this subparagraph may include different or additional assets or provide broader employee access, interview, and hiring provisions related to the Dharmacon Gene Modulation Products and Business and the HyClone Cell Culture Business or Products, than the Dharmacon Divestiture Agreement and HyClone Divestiture Agreement attached as Non-Public Exhibit A to the Decision and Order.
4. All other capitalized words or phrases appearing in this Agreement that are not otherwise defined herein are deemed to have the defined meanings assigned to them in the Orders.

ARTICLE I

1.1 **Powers of the Monitor.** Monitor shall have the rights, duties, powers and authority conferred upon Monitor by the Orders that are necessary for Monitor to monitor Respondent Thermo Fisher's compliance with the Orders. No later than the Acquisition Date, Thermo Fisher hereby transfers to Monitor all rights, powers, and authorities necessary to permit Monitor to perform its duties and responsibilities pursuant to the Decision and Order and Order to Hold Separate and Maintain Assets and consistent with the purposes of the Decision and Order. Any descriptions thereof contained in this Agreement in no way modify Monitor's powers and authority or Respondent Thermo Fisher's obligations under the Orders.

1.2 Exercise of Monitor's Power. The Monitor shall have the power and authority to monitor Respondent Thermo Fisher's compliance with the divestiture and asset maintenance obligations and related requirements of the Decision and Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the Decision and Order and in consultation with the Commission.

1.3 Monitor's Duties. The Monitor shall act in a fiduciary capacity for the benefit of the Commission, notwithstanding the fact that Respondent Thermo Fisher is the party to this Agreement and responsible for compensating the Monitor hereunder. The Monitor shall monitor Respondent Thermo Fisher's compliance with the Orders, including, but not limited to:

- a. Assuring that Respondent Thermo Fisher expeditiously complies with all of the obligations, and performs all of the responsibilities, of Respondent Thermo Fisher as required by the Orders in this matter;
- b. Monitoring Remedial Agreements; and
- c. Assuring that Confidential Business Information is not received or used by Respondent Thermo Fisher or the Acquirer, except as allowed in the Orders in this matter.

1.4 Duration of Monitor's Authority. Monitor shall have all powers and duties described above and consistent with the Orders for the term set forth in the Orders.

1.5 Confidential and Proprietary Information. The Monitor shall maintain the confidentiality of all information provided by Respondent Thermo Fisher, all Confidential Business Information of the Divestiture Businesses and all confidential aspects of the performance of its duties under this Agreement (collectively, "Confidential Materials"). Except as provided in this Agreement, such information may be disclosed only to (i) Persons employed by or working with the Monitor under this Monitor Agreement including persons working at Monitor or other members of the KPMG network of independent firms, (ii) Persons employed at Smith & Williamson LLP with regard to Regulatory Approvals by the European Commission or other Government Entities, (iii) any other Person to whom disclosure is reasonably necessary for the Monitor to fulfill its duties (provided that such Person shall execute a confidentiality agreement prior to receiving Confidential Materials), or (iv) persons employed at the Commission, the European Commission or any other Government Entity. When providing Confidential Materials to a third party pursuant to this Paragraph, the Monitor shall label such information "Confidential." The Monitor shall request confidential treatment by the Commission and staff of any Confidential Materials turned over to the Commission, including any information labeled "Confidential" by Respondent Thermo Fisher. The Monitor shall also request confidential treatment by the European Commission or any other Government Entity of any Confidential Materials turned over to the European Commission or any other Government Entity, respectively, including any information labeled "Confidential" by Respondent Thermo Fisher. The Monitor shall use the Confidential Materials provided by Respondent Thermo Fisher pursuant to this Agreement or learned in connection with performing its obligations under this Agreement only in performance of the duties set forth herein or in connection with any decision by a Government Entity. At no time shall the Monitor use such information for any other purpose or for the benefit of any other Person. For the avoidance of doubt, it shall not be a breach hereof for the Monitor, or any of the persons permitted to be used or

employed under Section 2.1 below, to disclose Confidential Materials to the extent that it is otherwise required to be disclosed pursuant to a statutory or regulatory provision or court or administrative order, or, subject to appropriate conditions of confidentiality, to fulfill professional obligations and standards (including quality and peer review) or to submit and process an insurance claim. The confidentiality obligations of this Paragraph shall survive the termination of this Agreement.

1.6 Confidentiality Agreements. Respondent Thermo Fisher may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement; provided, however, that such agreement shall not restrict the Monitor from providing any information to the Commission.

1.7 Confidentiality of Commission Materials. The Commission may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.

1.8 Restrictions. Monitor shall not be involved in any way in the management, production, supply and trading, sales marketing, and financial operations of any products of Respondent Thermo Fisher that compete with the products sold by the HyClone Cell Culture Business or Dharmacon Gene Modulation Business except to the extent permitted by the Orders.

1.9 Reports. Respondent Thermo Fisher shall report to the Monitor in accordance with the requirements of the Decision and Order. Monitor shall report to the Commission pursuant to the terms of the Orders and as otherwise requested by the Commission staff.

1.10 Access to Records, Documents and Facilities. Subject to any demonstrated legally recognized privilege, Monitor and any of the persons permitted to be used or employed under Section 2.1 below shall have full and complete access to Respondent Thermo Fisher's personnel, to include those employees designated to be transferred to an acquirer, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as Monitor may reasonably request, related to Respondent Thermo Fisher's compliance with the obligations of Respondent Thermo Fisher under the Orders in this matter. Documents, records and other relevant information are to be provided in an electronic format if they exist in that form. Respondent Thermo Fisher shall cooperate with any reasonable request of Monitor and shall take no action to interfere with or impede Monitor's ability to monitor Respondent Thermo Fisher's compliance with the Orders.

ARTICLE II

2.1 Retention and Payment of Counsel, Consultants, and other Assistants. Monitor shall have the authority to use or employ, at the cost and expense of the Respondent Thermo Fisher, such personnel of Monitor or other members of the KPMG network of independent firms, or such other attorneys, consultants, accountants, and other representatives and assistants as are necessary to carry out the Monitor's duties and responsibilities as allowed pursuant to the Orders.

2.2 Compensation. The Monitor shall serve, without bond or other security, at the expense of Respondent Thermo Fisher. Where Monitor is reimbursed for expenses, it is its policy to bill clients the amount incurred at the time the good or service is purchased. If Monitor subsequently receives a volume rebate or other incentive payment from a vendor relating to such expenses, Monitor does not credit such payment to its client. Instead, Monitor applies such payments to reduce its overhead costs, which costs are taken into account in determining its standard billing rates and certain transaction charges that may be charged to clients. Monitor shall be compensated by Respondent Thermo Fisher for its services under this Agreement, including all work in connection with the negotiation and preparation of this Monitor Agreement, pursuant to the fee schedule attached hereto and to the Decision and Order as Non-Public Appendix D for time spent in connection with the discharge of its duties under this Agreement and the Orders. Compensation paid to Monitor by Respondent Thermo Fisher will include amounts for costs and expenses incurred by other members of the KPMG network of independent firms retained by Monitor in connection herewith, and those related to other persons engaged by the Monitor under Section 2.1 above. In addition, Respondent Thermo Fisher will pay: (a) out-of-pocket expenses reasonably incurred by Monitor in the performance of its duties under the orders; and (b) fees and disbursements reasonably incurred by any advisor appointed by the Monitor pursuant to the first paragraph in Article II. At its own expense, Respondent Thermo Fisher may retain an independent auditor to verify such invoices. Monitor shall provide Respondent Thermo Fisher with monthly invoices for time and expenses that include details and an explanation of all matters for which Monitor submits an invoice to Respondent Thermo Fisher. Respondent Thermo Fisher shall pay such invoices within thirty (30) days of receipt. Monitor shall retain fee and expense records for two years after the completion or termination of the Monitor's duties hereunder and shall make such records available to Thermo Fisher during normal business hours upon reasonable advance written notice. Monitor shall cooperate in any verification audit of such records that Thermo Fisher may undertake; provided, however, that: (i) no such audit may occur more than once in any twelve (12) month period; and (ii) Monitor shall have the right to approve any third party independent auditor used for any such audit, with such approval not to be unreasonably withheld. The Monitor and Respondent Thermo Fisher shall submit any disputes about invoices to the Commission for assistance in resolving such disputes.

2.3 To the extent available, Respondent Thermo Fisher will provide the Monitor with temporary workspace and access to office equipment owned or used by Respondent Thermo Fisher at sites the Monitor is required to visit in order to fulfill its obligations under this Agreement. Monitor agrees to comply with all of Respondent Thermo Fishers' safety and security regulations, instructions and procedures while at Respondent Thermo Fisher's sites.

ARTICLE III

3.1 Monitor's Liabilities and Indemnification. Respondent Thermo Fisher shall indemnify the Monitor and its partners or principals and any other persons used or employed under Section 2.1 above (collectively, "Monitor Indemnified Persons") and hold Monitor Indemnified Persons harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of Monitor's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by Monitor. The Monitor's maximum liability to Respondent Thermo Fisher relating to services rendered in accordance with this Agreement (regardless

of form of action, whether in contract, statutory law, or tort including without limitation negligence) shall be limited to an amount equal to the total sum of the fees paid to the Monitor by the Respondent Thermo Fisher. Any claim arising from this Agreement that Respondent Thermo Fisher may have against the Monitor must be brought no later than one (1) year following the termination or expiration of this Agreement. In the performance of its duties under this Agreement, the Monitor shall exercise the standard of care and diligence that would be expected of a reasonable person in the conduct of his own business affairs. The Monitor shall not be liable for any delays or other failures to perform resulting from circumstances or causes beyond its reasonable control, including, without limitation, fire or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority. The Monitor warrants that it will perform its obligations hereunder in good faith. Monitor disclaims other warranties, expressed or implied, other than those expressly agreed to in writing between the Parties.

3.2 In the event of a disagreement or dispute between Respondent Thermo Fisher and the Monitor, and in the event that such disagreement or dispute cannot be resolved by the Parties, either Party may seek the assistance of the Assistant Director of the Commission's Compliance Division, to resolve the issue. In the event that such disagreement or dispute cannot be resolved by the Parties, the Parties shall submit the matter to binding arbitration before the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. For the avoidance of doubt, each party shall have the right to appoint one arbitrator, and the two arbitrators so chosen shall select a third. Binding arbitration shall not be available, however, to resolve any disagreement or dispute concerning Respondent Thermo Fisher's obligations pursuant to any Consent Agreement entered by the Commission.

3.3 Monitor's Removal. If the Commission determines that Monitor ceases to act or fails to act diligently and consistent with the purpose of the Orders, Respondent Thermo Fisher shall terminate this Agreement and appoint a substitute Monitor, subject to Commission approval and consistent with the Orders.

3.4 Approval by the Commission. This Agreement shall have no force or effect until approved by the Commission.

3.5 Termination. This Agreement shall terminate the earlier of: (a) thirty (30) days following the termination date set forth in the applicable Order; (b) Respondent Thermo Fisher's receipt of written notice from the Commission that the Commission has determined that Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve as Monitor; (c) with at least thirty (30) days advance notice to be provided by Monitor to Respondent Thermo Fisher and to the Commission, upon resignation of the Monitor; or (d) when Respondent Thermo Fisher's last obligation under the Orders and the Remedial Agreements that pertains to the Monitor's service has been fully performed; provided, however, that the Commission may require that Respondent Thermo Fisher extend this Agreement or enter into an additional agreement with Monitor as may be necessary or appropriate to accomplish the purposes of the Orders. If this Agreement is terminated for any reason, the confidentiality obligations set forth in this Agreement will remain in force. The foregoing shall not be construed to require Monitor or its subcontractors to return or destroy copies of Confidential Materials retained in work paper files or records in order to comply with applicable professional standards, or anything that may be stored in back up media

or other electronic data storage systems, latent data and metadata. Any Confidential Materials so retained shall remain subject to the confidentiality obligations hereof.

3.6 Conflicts of Interest. If Monitor becomes aware during the term of this Agreement that it has or may have a conflict of interest that may affect or could have the appearance of affecting performance by the Monitor of any of its duties under this Agreement, Monitor shall promptly inform Respondent Thermo Fisher and the Commission of any such conflict. Monitor and one or more members of the KPMG network of independent firms perform audit, tax and advisory services to GE Healthcare [defined in the Orders]. Respondent Thermo Fisher agrees that such relationships do not constitute a conflict of interest for the purposes of this matter.

3.7 Governing Law. This Agreement shall be deemed to have been entered into and shall be construed and enforced in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

MONITOR

RESPONDENT THERMO FISHER

By: 

Charles A. Riepenhoff, Jr.
Managing Director

KPMG LLP

303 Peachtree St., NE

Suite 2000

Atlanta, GA 30308

Fax:

E-mail: criepenhoffjr@kpmg.com

By: 

Seth H. Hoogasian

Senior Vice President, General Counsel &
Secretary

Thermo Fisher Scientific Inc.

81 Wyman Street

Waltham, Massachusetts 02455

Fax:

E-mail: seth.hoogasian@thermofisher.com

NON-PUBLIC APPENDIX D
MONITOR COMPENSATION

[Redacted From the Public Record Version, But Incorporated By Reference]

APPENDIX E

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NON-PUBLIC APPENDIX F
GENE SEQUENCE PATENTS

[Redacted From the Public Record Version, But Incorporated By Reference]

NON-PUBLIC APPENDIX G
EXCLUDED SOFTWARE AND DATABASES

[Redacted From the Public Record Version, But Incorporated By Reference]

NON-PUBLIC APPENDIX H
NON-ASSIGNED CONTRACTS

[Redacted From the Public Record Version, But Incorporated By Reference]

APPENDIX I
DRAFT NON-DISCLOSURE AGREEMENT

APPENDIX I

NOTICE OF FTC ORDERS AND REQUIREMENT TO MAINTAIN CONFIDENTIALITY

AND

DRAFT NON-DISCLOSURE AGREEMENT

Thermo Fisher Scientific Inc. (“Thermo Fisher”), sometimes referred to as “Respondent Thermo Fisher,” has entered into an Agreement Containing Consent Orders (“Consent Agreement”) with the Federal Trade Commission (“Commission”) providing for divestiture of certain businesses and other relief in connection with Thermo Fisher’s acquisition of Life Technologies Corporation (“Life”) (the “Acquisition”). The Consent Agreement includes two orders: the Decision and Order and the Order to Hold Separate and Maintain Assets (“Orders”). Both Orders are attached to this notice. The Commission has appointed Charles A. Riepenhoff, Jr., Managing Director, KPMG US (the “Monitor”) to monitor Thermo Fisher’s compliance with the Orders.

Complete definitions of all capitalized terms in this notice can be found in Section I of the attached Decision and Order or Section I of the Order to Hold Separate and Maintain Assets.

Pursuant to the requirements of the Decision and Order, and pursuant to a Purchase and Sale Agreement dated December 24, 2013 with General Electric Company (“GE”), Thermo Fisher has agreed to divest its cell culture and gene modulation businesses (“Divestiture Businesses”) to GE. During the Hold Separate Period, which begins on the date Thermo Fisher acquires Life and ends after Thermo Fisher has completed the required divestitures, Thermo Fisher must hold the Divestiture Businesses separate, apart, and independent from Thermo Fisher’s other businesses. Until the required divestitures occur, Thermo Fisher must take such actions as are necessary to maintain the economic viability, marketability, and competitiveness of each of the businesses and assets to be divested, and must prevent the destruction, removal, wasting, deterioration, sale, disposition, transfer, or impairment of these businesses and assets except for ordinary wear and tear. Pending the divestitures to GE, the Commission has appointed Mr. Riepenhoff to also serve as Hold Separate Trustee with responsibilities including the supervision of the management of the Divestiture Businesses and the maintenance of the Divestiture Businesses’ independence.

The Orders require Thermo Fisher to restrict its use of “Confidential Business Information,” which is information owned by, or in the possession or control of Thermo Fisher that is not in the public domain and that is directly related to the conduct of the Divestiture Businesses during the Hold Separate Period and after the required divestitures to GE.

You are receiving this notice because you are an employee who was identified as a Designated Employee under the Decision and Order and/or a Thermo Fisher employee who is or was directly engaged in the research, development, manufacture, marketing, or sale of products of the Divestiture Businesses and may have Confidential Business Information.

Confidential Business Information does not include: (i) information relating to any of Thermo Fisher's general business strategies or practices that does not discuss with particularity the Divestiture Businesses; (ii) information specifically excluded from the Divestiture Businesses conveyed to GE; (iii) information that is contained in documents, records or books of Thermo Fisher, that is provided to GE that is unrelated to the Divestiture Businesses acquired by GE or that is exclusively related to businesses or products retained by Thermo Fisher; and (iv) information that is protected by the attorney work product, attorney-client, joint defense, or other privilege prepared in connection with the Acquisition and relating to any United States, state, or foreign antitrust or competition law. When documents or data contain information related to the Divestiture Businesses and other products and topics, only the portion of the document or data related to the Divestiture Businesses is Confidential Business Information. Public information about the Divestiture Businesses is not Confidential Business Information.

Confidential Business Information also does not include information (that Thermo Fisher demonstrates to the satisfaction of the Commission) that: (i) was or becomes generally available to the public other than as a result of disclosure by Thermo Fisher; (ii) is necessary to be included in Thermo Fisher's mandatory regulatory filings, provided that Thermo Fisher makes all reasonable efforts to maintain the confidentiality of such information in the regulatory filings; (iii) was available, or becomes available to Thermo Fisher on a non-confidential basis, but only if, to the knowledge of Thermo Fisher, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information; (iv) is information the disclosure of which is consented to by GE; (v) is necessary to be exchanged in the course of consummating the Acquisition or Thermo Fisher's divestiture agreements with GE; (vi) is disclosed in complying with the Decision and Order; (vii) is information the disclosure of which is necessary to allow Thermo Fisher to comply with the requirements and obligations of the laws of the United States and other countries, and to comply with decisions by Government Entities; or (viii) is disclosed in obtaining legal advice.

During the Hold Separate Period, all Confidential Business Information must be retained and maintained on a confidential basis by the persons who have been and continue to be involved in the operations or sale of the Divestiture Businesses. Except as provided in the Decision and Order or the Order to Hold Separate and Maintain Assets, all such persons are prohibited from disclosing, providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person employed by Thermo Fisher or whose employment relates to any of Thermo Fisher's businesses other than the Divestiture Businesses. Similarly, persons involved in similar activities with respect to Thermo Fisher's businesses are prohibited from disclosing, providing, discussing, exchanging, circulating, or otherwise furnishing any similar

Thermo Fisher information to or with any other person whose employment involves the Divestiture Businesses, except as otherwise provided in the Decision and Order or Order to Hold Separate and Maintain Assets.

Even after the Hold Separate Period, the Decision and Order requires Thermo Fisher to commit that, except in limited circumstances, no Confidential Business Information will be sought, received, obtained, disclosed, shared or otherwise used by any employee who works for Thermo Fisher after the Acquisition. In particular, this is to protect Confidential Business Information from being used in any way:

- to assist or inform Thermo Fisher employees who research, develop, manufacture, solicit for sale, sell, or service Thermo Fisher products acquired in the Acquisition that compete with the products of the Divestiture Businesses, including Gene Modulation, Cell Culture Media and Cell Culture Sera products acquired from Life;
- to interfere with any suppliers, distributors, resellers, or customers of GE;
- to interfere with any contracts divested, assigned, or extended to GE pursuant to the Orders; or
- to interfere in any way with GE pursuant to the Orders or with the Divestiture Businesses.

The Orders also require Thermo Fisher to provide GE and the Monitor/Hold Separate Trustee with access to all such Confidential Business Information along with current and historical product, customer and supplier information and data relating to the Divestiture Businesses. To the extent this includes information relating to the Divestiture Businesses and Thermo Fisher's retained businesses, the Decision and Order requires Thermo Fisher to redact information relating to the retained businesses it provides to GE and redact information relating to the Divestiture Businesses in copies it retains.

Thermo Fisher must also provide GE and the Monitor/Hold Separate Trustee with access to employees who possess or are able to locate such information for the purposes of identifying books, records, and files directly related to the relevant Divestiture Businesses that contain such information and facilitate the delivery in a manner consistent with the Orders.

The Decision and Order further requires that Thermo Fisher make commercially reasonable efforts to assure that in any instance wherein its own counsel (including its own in-house counsel) under appropriate confidentiality agreements retains Confidential Business Information related to the Divestiture Businesses provided to GE or accesses original documents containing Confidential Business Information related to the Divestiture Businesses (under circumstances where copies of documents are insufficient or otherwise unavailable), that Thermo Fisher's counsel does so only for the following purposes: (i) to assure Thermo Fisher's compliance with its divestiture agreements with GE, the Decision and Order, any law (including, without limitation, any requirement to obtain regulatory licenses or approvals, and rules

promulgated by the Commission), any data retention requirement of any applicable Government Entity, or any taxation requirements; or (ii) to defend against, respond to, or otherwise participate in any litigation, investigation, audit, process, subpoena or other proceeding relating to the divestiture or any other aspect of the Divestiture Businesses or the assets or products associated with the Divestiture Businesses. The Decision and Order permits Thermo Fisher to disclose information necessary for the purposes of this paragraph pursuant to an appropriate confidentiality order, agreement or arrangement. If Thermo Fisher, however, needs, pursuant to this paragraph, such access to original documents, it must: (i) require those who view such unredacted documents or other materials to enter into confidentiality agreements with GE, (however, Thermo Fisher will not be deemed to have violated this requirement if GE withholds such agreement unreasonably) and (ii) use its best efforts to obtain a protective order to protect the confidentiality of such information during any adjudication.

Except as permitted under the Orders, you must keep Confidential Business Information confidential and must not provide, discuss, exchange, circulate, or otherwise disclose any Confidential Business to or with any other person whose job responsibilities relate to the products Thermo Fisher acquired in the Acquisition that compete with the products of the Divestiture Businesses, including Gene Modulation, Cell Culture Media and Cell Culture Sera products acquired from Life. Finally, if you have documents that might contain Confidential Business Information and you have not received specific instructions as to how these documents should be delivered to GE, you should contact Jonathan Wilk, Vice President, General Counsel Analytical Instruments Group, Deputy General Counsel at Thermo Fisher.

Any violation of the Orders may subject Thermo Fisher to civil penalties and other relief as provided by law. If you have any questions regarding the contents of this notice, the confidentiality of information, or the Orders, you should contact Jonathan Wilk, Vice President, General Counsel Analytical Instruments Group, Deputy General Counsel at Thermo Fisher.

AGREEMENT

I, _____ (print name), hereby acknowledge that I have read the above notification, agree to abide by its provisions and to comply with the confidentiality requirements of the Orders.

EMPLOYEE

THERMO FISHER

By: _____
[Print Name]

By: _____
[Print Name]

[Title]

[Title]
Thermo Fisher Scientific Inc.
81 Wyman Street
Waltham, Massachusetts 02455

Date: _____

Date: _____

NON-PUBLIC APPENDIX J
TUSCHL PATENTS

[Redacted From the Public Record Version, But Incorporated By Reference]