

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

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

)	
In the Matter of)	
)	Docket No. C-4431
THERMO FISHER SCIENTIFIC INC.,)	
a corporation.)	
)	

ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS

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, 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 of 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 thereupon accepted the executed Consent Agreement and placed such agreement on the public record for a period of thirty (30) days, now in conformity with the procedure prescribed in § 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and factual findings and issues the following Order to Hold Separate and Maintain Assets (“Hold Separate 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 Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent Thermo Fisher and the proceeding is in the public interest.

I.

IT IS HEREBY ORDERED that, as used in this Hold Separate Order, the following definitions, and all other definitions used in the Consent Agreement and the Decision and Order, shall apply:

- A. “Divestiture Businesses Employee(s)” means any and all employees working, in any capacity and for any amount of time, for the Dharmacon Gene Modulation Business, or the HyClone Cell Culture Business, including all employees who share time between the Divestiture Businesses and businesses that Respondent Thermo Fisher may retain after the divestiture pursuant to the Decision and Order. For purposes of this Hold Separate Order, the Persons not included as Divestiture Businesses Employees are (1) the employees whose time is exclusively dedicated to SUTs; or (2) employees who have no work time devoted to or related to Gene Modulation Products.
- B. “Hold Separate Manager(s)” means the Person or Persons appointed pursuant to Paragraph IV of this Hold Separate Order to be the manager(s) of the Divestiture Businesses.
- C. “Hold Separate Monitor” means the Person appointed pursuant to Paragraph III of this Hold Separate Order to oversee the Hold Separate Manager(s) and the Divestiture Businesses.
- D. “Hold Separate Period” means the period during which the Divestiture Businesses shall be held separate from Respondent Thermo Fisher’s other businesses under this Hold Separate Order, which shall begin on the Acquisition Date and terminate on the Closing Date.
- E. “Hold Separate Services” means those services provided by the Divestiture Businesses and certain Divestiture Businesses Employees (1) in the ordinary course of each such employee’s job, and (2) that are reasonable and necessary to ensure that Respondent Thermo Fisher’s businesses – not a part of the Divestiture Businesses -- are able to continue to operate in the normal course of business, independently of the Divestiture Businesses during the Hold Separate Period, including but not limited to the transition services described in Paragraph VI.B.3 of this Order and in the Schedules to Exhibit C to the Remedial Agreements. Hold Separate Services shall be subject to review and approval of the Hold Separate Monitor.

G. “Orders” means the Decision and Order and the Hold Separate Order.

II.

IT IS FURTHER ORDERED that:

- A. With respect to the Divestiture Businesses, and subject to consultation with the Hold Separate Monitor regarding the Hold Separate Services, during the Hold Separate Period, Respondent Thermo Fisher shall:
1. Hold the Divestiture Businesses separate, apart, and independent of Respondent Thermo Fisher’s other businesses and assets as required by this Hold Separate Order and shall vest the Divestiture Businesses with all rights, powers, and authority necessary to conduct business in a manner consistent with the Orders;
 2. Not exercise direction or control over, or influence directly or indirectly, the Divestiture Businesses or any of their operations, the Hold Separate Monitor, or the Hold Separate Manager, except to the extent that Respondent Thermo Fisher must exercise direction and control over the Divestiture Businesses as is necessary to assure compliance with this Hold Separate Order, the Consent Agreement, the Decision and Order, and all applicable laws and regulations, including, in consultation with the Hold Separate Monitor, continued oversight of compliance of the Divestiture Businesses with policies and standards concerning safety, health, and environmental aspects of its operations and the integrity of its financial controls. Respondent Thermo Fisher shall have the right in consultation with the Hold Separate Monitor to defend any legal claims, investigations, or enforcement actions threatened or brought against the Divestiture Businesses;
 3. Take all actions necessary to maintain and assure the continued viability, marketability, and competitiveness of the Divestiture Businesses (including, but not limited to, taking such actions as the Hold Separate Monitor, in consultation with Commission staff, might request or direct that are reasonably necessary to maintain and assure the continued viability, marketability, and competitiveness of the Divestiture Businesses), and prevent the destruction, removal, wasting, deterioration, or impairment of the Divestiture Businesses, except for ordinary wear and tear;
 4. Not sell, transfer, encumber, or otherwise impair the Divestiture Businesses (except as directed by the Hold Separate Monitor or required by the Orders); and
 5. Provide the Divestiture Businesses with sufficient funding and financial resources necessary to maintain the full economic viability, marketability, and competitiveness of the Divestiture Businesses, including, but not limited to, all funding and financing necessary to: (i) operate the Divestiture Businesses in a

manner consistent with how it has been operated, and is currently operated, in the normal course of business, and consistent with existing business, capital and strategic plans and operating budgets; (ii) carry out any planned or existing capital projects and physical improvements; (iii) perform maintenance, replacement, or remodeling of assets in the ordinary course of business; and (iv) provide capital, working capital, and reimbursement for any operating expenses, losses, capital losses, or other losses;

- B. The purpose of this Hold Separate Order is to: (1) maintain and preserve the Divestiture Businesses as viable, marketable, competitive, and ongoing businesses independent of Respondent Thermo Fisher until the divestiture required by the Decision and Order is achieved; (2) ensure that no Confidential Business Information is exchanged between Respondent Thermo Fisher and the Divestiture Businesses, except in accordance with the provisions of the Orders; (3) prevent interim harm to competition pending the divestiture and other relief; and (4) remedy any anticompetitive effects of the Acquisition.

III.

IT IS FURTHER ORDERED that:

- A. KPMG LLP (Charles A. Riepenhoff, Jr., Managing Director) shall serve as Hold Separate Monitor to monitor and supervise the management of the Divestiture Businesses and ensure that Respondent Thermo Fisher comply with its obligations under the Orders.
- B. Respondent Thermo Fisher shall enter into the Hold Separate Monitor Agreement with the Hold Separate Monitor that is attached as Appendix A, with the Hold Separate Monitor compensation attached at Non-Public Appendix A-1. The Hold Separate Monitor Agreement shall become effective on the Acquisition Date. The Hold Separate Monitor Agreement shall transfer to and confer upon the Hold Separate Monitor all rights, powers, and authority necessary to permit the Hold Separate Monitor to perform his duties and responsibilities pursuant to this Hold Separate Order in a manner consistent with the purposes of the Orders and in consultation with Commission staff, and shall require that the Hold Separate Monitor act in a fiduciary capacity for the benefit of the Commission. Further, the Hold Separate Monitor Agreement shall provide that:
1. The Hold Separate Monitor shall have the responsibility for monitoring the organization of the Divestiture Businesses; supervising the management of the Divestiture Businesses by the Hold Separate Manager; overseeing the on-going Hold Separate Services coming from the Divestiture Businesses and Divestiture Business Employees to Respondent Thermo Fisher; maintaining the independence of the Divestiture Businesses; ensuring continued and adequate funding of the Divestiture Businesses; and monitoring Respondent Thermo Fisher's compliance with its obligations pursuant to this Hold Separate Order and the Decision and Order.

2. The Hold Separate Monitor shall act in a fiduciary capacity for the benefit of the Commission.
3. The Hold Separate Monitor shall have full and complete access to all of Respondent Thermo Fisher's facilities, personnel, and books and records relating to the Divestiture Businesses as may be necessary for or relate to the performance of the Hold Separate Monitor's duties under the Orders and the Hold Separate Monitor Agreement. The Books and Records to which the Hold Separate Monitor shall have access include, but are not limited to, any and all:
 - a. Data and databases, including, but not limited to, databases with financial information relating to the Divestiture Businesses;
 - b. Regularly-prepared reports relating to the Divestiture Businesses, including, but not limited to, financial, revenue, customer or operating statements or reports prepared daily, weekly, monthly, or on some other regular interval;
 - c. Regularly-prepared or periodic reports prepared and filed with any Government Entity;
 - d. Reports or summaries of marketing and promotional activities by Respondent Thermo Fisher that relate to the Divestiture Businesses;
 - e. Reports, summaries, records, or documents from the past operations of the Divestiture Businesses sufficient to allow the Hold Separate Monitor to evaluate the performance of the Divestiture Businesses during the Hold Separate Period in comparison to the past performance of the Divestiture Businesses;
 - f. Other relevant reports, summaries, records documents, or information relating to the Divestiture Businesses as the Hold Separate Monitor may request; and
 - g. Financial summaries or reports, or other information, reports, or summaries relating to the Divestiture Businesses as the Hold Separate Monitor may request Respondent Thermo Fisher to locate, collect, organize, and develop for the Hold Separate Monitor.
4. The Hold Separate Monitor shall have the authority to employ, at the cost and expense of Respondent Thermo Fisher, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Hold Separate Monitor's duties and responsibilities.
5. The Hold Separate Monitor shall serve, without bond or other security, at the cost and expense of Respondent Thermo Fisher, on reasonable and customary terms

commensurate with the person's experience and responsibilities. Respondent Thermo Fisher shall provide compensation to the Hold Separate Monitor, and pay the Hold Separate Monitor's costs and expenses (including, but not limited to, those related to consultants, accountants, attorneys, and other representatives and assistants) on a monthly or other reasonable periodic basis.

6. Respondent Thermo Fisher shall indemnify the Hold Separate Monitor and hold him harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Hold Separate 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 the Hold Separate Monitor's gross negligence, willful or wanton acts, or bad faith.
7. The Commission may require the Hold Separate Monitor and each of the Hold Separate Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement relating to materials and information received from the Commission in connection with performance of the Hold Separate Monitor's duties.
8. Respondent Thermo Fisher may require the Hold Separate Monitor and each of the Hold Separate 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 Hold Separate Monitor from providing any information to the Commission.
9. Thirty (30) calendar days after the Hold Separate Order becomes final, and every thirty (30) calendar days thereafter until the Hold Separate Order terminates, and as requested by the Commission or Commission staff, the Hold Separate Monitor shall report in writing to the Commission concerning the efforts to accomplish the purposes of this Hold Separate Order. Each report shall include, but not be limited to, the Hold Separate Monitor's assessment of the extent to which each of the Divestiture Businesses is meeting (or exceeding) its projected goals as reflected in business planning documents, budgets, projections, or any other regularly prepared financial statements.
10. Respondent Thermo Fisher shall comply with all terms of the Hold Separate Monitor Agreement, and any breach by Respondent Thermo Fisher of any term of the Hold Separate Monitor Agreement shall constitute a violation of this Hold Separate Order. Notwithstanding any paragraph, section, or other provision of the Hold Separate Monitor Agreement, any modification of the Hold Separate Monitor Agreement, without the prior approval of the Commission, shall constitute a failure to comply with the Hold Separate Order and the Decision and Order.

- C. If the Hold Separate Monitor ceases to act or fails to act diligently and consistently with the purposes of this Hold Separate Order, the Commission may appoint a substitute Hold Separate Monitor, subject to the consent of Respondent Thermo Fisher, which consent shall not be unreasonably withheld, as follows:
1. If Respondent Thermo Fisher has not opposed in writing, including the reasons for opposing, the selection of the proposed substitute Hold Separate Monitor within five (5) business days after notice by the Commission staff to Respondent Thermo Fisher of the identity of the proposed substitute Hold Separate Monitor, then Respondent Thermo Fisher shall be deemed to have consented to the selection of the proposed substitute Monitor.
 2. Respondent Thermo Fisher shall, no later than five (5) business days after the Commission appoints a substitute Hold Separate Monitor, enter into an agreement with the substitute Hold Separate Monitor that, subject to the prior approval of the Commission, confers on the substitute Hold Separate Monitor all the rights, powers, and authority necessary to permit the substitute Hold Separate Monitor to perform his or her duties and responsibilities on the same terms and conditions as provided in Paragraph III of this Hold Separate Order.
- D. The Hold Separate Monitor shall serve through the Hold Separate Period; *PROVIDED, HOWEVER*, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.
- E. The Hold Separate Monitor shall not make any material changes in the ongoing operations or development of the Divestiture Businesses, and shall continue the management and operation of the Divestiture Businesses in a manner intended to ensure continued compliance with the indentures and credit agreements governing Respondent Thermo Fisher's indebtedness (and all notes and agreements related thereto), except with prior approval of the Commission staff, and after providing written notice to, and an opportunity for consultation with, Respondent Thermo Fisher.
- F. The Commission may on its own initiative or at the request of the Hold Separate Monitor issue such additional orders or directions as may be necessary or appropriate to ensure compliance with the requirements of this Hold Separate Order.

IV.

IT IS FURTHER ORDERED that:

- A. Respondent Thermo Fisher's employees shall not receive, have access to, use or continue to use, or disclose any Confidential Business Information pertaining to the Divestiture Businesses except in the course of:

1. Performing their obligations as permitted under this Hold Separate Order;
2. Performing their obligations under any Remedial Agreement; or
3. Complying with financial reporting requirements, obtaining legal advice, defending legal claims, investigations, or enforcing actions threatened or brought against the Divestiture Businesses, or as required by law.

For purposes of this Paragraph IV.A., Respondent Thermo Fisher's employees who provide support services under the Hold Separate Order or staff the Divestiture Businesses shall be deemed to be performing obligations under the Order to Hold Separate.

- B. If the receipt, access to, use, or disclosure of Confidential Business Information pertaining to the Divestiture Businesses is permitted to Respondent Thermo Fisher's employees under Paragraph IV.A. of this Order, Respondent Thermo Fisher shall limit such information (1) only to those Persons who require such information for the purposes permitted under Paragraph IV.A., (2) only to the extent such Confidential Business Information is required, and (3) only after such Persons have signed an appropriate agreement in writing to maintain the confidentiality of such information.
- C. Respondent Thermo Fisher shall enforce the terms of this Paragraph IV as to any Person other than the Acquirer of the Divestiture Businesses and take such action as is necessary to cause each such Person to comply with the terms of this Paragraph IV, including training of Respondent Thermo Fisher's employees and all other actions that Respondent Thermo Fisher would take to protect its own trade secrets and proprietary information.

V.

IT IS FURTHER ORDERED that:

- A. Effective on the Acquisition Date, Respondent Thermo Fisher shall appoint Mike Deines as the Hold Separate Manager to manage and maintain the operations of the Dharmacon Gene Modulation Business and David Radspinner as the Hold Separate Manager to manage and maintain the operations of the HyClone Cell Culture Business in the regular and ordinary course of business and in accordance with past practice.
- B. Respondent Thermo Fisher shall enter into the manager agreement with the Hold Separate Managers attached as Appendix B and Appendix C to this Hold Separate Order. Each manager agreement shall become effective on the Acquisition Date. The manager agreement shall transfer all rights, powers, and authority necessary to permit the Hold Separate Manager to perform his or her duties and responsibilities pursuant to this Hold Separate Order to manage the Divestiture Businesses. Further, the manager agreement shall provide that:

1. Each Hold Separate Manager shall be responsible for managing the operations of the Dharmacon Gene Modulation Business and the HyClone Cell Culture Business, respectively, through the Hold Separate Period, and shall report directly and exclusively to the Hold Separate Monitor and, subject to the Hold Separate Services, shall manage each business independently of the management of Respondent Thermo Fisher and its other businesses.
2. Each Hold Separate Manager shall make no material changes in the ongoing operations or development of the business, and shall continue the management and operation of each business in a manner intended to ensure continued compliance with the indentures and credit agreements governing the Respondent Thermo Fisher's indebtedness (and all notes and agreements related thereto), except with the approval of the Hold Separate Monitor, in consultation with Commission staff, and after providing written notice to and an opportunity for consultation with Respondent Thermo Fisher, or as otherwise allowed by the Orders.
3. Each Hold Separate Manager, with the approval of the Hold Separate Monitor, shall have the authority to employ such Persons as are reasonably necessary to assist the Hold Separate Manager in managing each business, including, without limitation, consultants, accountants, attorneys, and other representatives, assistants, and employees.
4. Respondent Thermo Fisher shall provide each Hold Separate Manager with reasonable financial incentives to undertake these positions. Such incentives shall include a continuation of all employee benefits, including regularly scheduled raises, bonuses, vesting of pension benefits (as permitted by law), and additional incentives as may be necessary to assure the continuation, and prevent any diminution, of the viability, marketability, and competitiveness of the Divestiture Businesses, and as may otherwise be necessary to secure the Hold Separate Manager's agreement to achieve the purposes of this Hold Separate Order.
5. Each Hold Separate Manager shall serve, without bond or other security, at the cost and expense of Respondent Thermo Fisher, on reasonable and customary terms commensurate with the person's experience and responsibilities, and with any financial incentives that may be reasonable or necessary as described in this Paragraph V. Respondent Thermo Fisher shall pay each Hold Separate Manager's costs and expenses (including, but not limited to, those related to consultants, accountants, attorneys, and other representatives and assistants) on a monthly or other reasonable periodic basis.
6. Respondent Thermo Fisher shall indemnify the Hold Separate Manager and hold him harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Manager'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 the Manager's gross negligence, willful or wanton acts, or bad faith.

7. Nothing contained herein shall preclude each Hold Separate Manager from contacting or communicating directly with the Commission staff, either at the request of the Commission staff or the Hold Separate Monitor, or in the discretion of the Hold Separate Manager.
 8. Each Hold Separate Manager shall have the authority, in consultation with the Hold Separate Monitor, to staff the Divestiture Businesses with sufficient employees to maintain the viability and competitiveness of the businesses, including:
 - a. Replacing any departing or departed employee with a person who has similar experience and expertise or determine not to replace such departing or departed employee;
 - b. Removing any employee who ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate Order, and replacing or not replacing such employee with another person of similar experience or skills;
 - c. Ensuring that no employee shall be involved in any way in the operations of Respondent Thermo Fisher's other businesses, unless allowed or required by the Hold Separate Services or otherwise under the Orders;
 - d. Providing each Divestiture Businesses Employee, with reasonable financial incentives, including continuation of all salaries, employee benefits, and regularly scheduled raises and bonuses, to continue in his or her position during the Hold Separate Period; and
 - e. Providing each Divestiture Businesses Employee with additional financial incentives, to continue in his or her position throughout the Hold Separate Period.
- C. Each Hold Separate Manager may be removed for cause by the Hold Separate Monitor, in consultation with the Commission staff. If a Hold Separate Manager is removed, resigns, or otherwise ceases to act as Hold Separate Manager, the Hold Separate Monitor shall, within three (3) business days of such action, subject to the prior approval of Commission staff, appoint a substitute Hold Separate Manager, and Respondent Thermo Fisher shall enter into an agreement with the substitute Hold Separate Manager on the same terms and conditions as provided in this Hold Separate Order.

VI.

IT IS FURTHER ORDERED that:

- A. Respondent Thermo Fisher shall cooperate with, and take no action to interfere with or impede the ability of: (i) the Hold Separate Monitor; (ii) the Hold Separate Managers; or (iii) any Divestiture Businesses Employee, to perform his or her duties and responsibilities consistent with the terms of the Orders.
- B. Respondent Thermo Fisher shall continue to offer and provide any support services and goods (directly or through third-party contracts) to the Divestiture Businesses.
 - 1. For support services and goods that Respondent Thermo Fisher provides to the Divestiture Businesses, Respondent Thermo Fisher may charge no more than the same price, if any, charged by Respondent Thermo Fisher for such support services and goods as of the Acquisition Date.
 - 2. Respondent Thermo Fisher employees who provide support to the Divestiture Businesses shall retain and maintain all Confidential Business Information of the Divestiture Businesses on a confidential basis and, except as is permitted by the Orders, shall not provide, discuss, exchange, circulate, or otherwise furnish any such information to or with any Person whose employment involves any of Respondent Thermo Fisher's other businesses, other than the Divestiture Businesses. Respondent Thermo Fisher employees who provide support to the Divestiture Businesses shall also execute confidentiality agreements prohibiting the disclosure of any Confidential Business Information of the Divestiture Businesses.
 - 3. The services and goods that Respondent Thermo Fisher shall offer the Divestiture Businesses shall include, but not be limited to, the following:
 - a. Human resources and administrative support services, including, but not limited to, payroll processing and employee benefits, including health benefits and administration;
 - b. Preparation of tax returns;
 - c. Environmental health and safety services, which are used to insure compliance with federal and state regulations and corporate policies;
 - d. Financial accounting and reporting services;
 - e. Legal, licensing, and audit services;
 - f. Federal and state regulatory compliance;

- g. Maintenance and oversight of all information technology systems and databases, including, but not limited to, all hardware, software, electronic mail, word processing, document retention, enterprise management systems, financial management systems and databases, customer databases, gaming systems, security systems, and reporting systems;
 - h. Processing of accounts payable and accounts receivable;
 - i. Distribution thru Fisher Scientific of products of the Divestiture Businesses on terms and with the level of support at least equivalent to the terms and support before the Acquisition;
 - j. Procurement of supplies, goods, and services utilized in the ordinary course of business by the Divestiture Businesses;
 - k. Public relations and public affairs support services;
 - l. Construction and development services;
 - m. Procurement and renewal of insurance and related services; and
 - n. Security and safety services.
4. Notwithstanding the above, the Divestiture Businesses shall have, at the option of the Hold Separate Managers and with the approval of the Hold Separate Monitor following consultation with Commission staff, the right to acquire support services from third parties unaffiliated with Respondent Thermo Fisher.

C. Respondent Thermo Fisher shall not permit:

- 1. Any of its employees, officers, agents, or directors, other than: (i) the Hold Separate Monitor; (ii) the Hold Separate Managers; and (iii) any Divestiture Businesses employee, to be involved in the operations of the Divestiture Businesses, except to the extent otherwise provided in this Hold Separate Order or required for the provision of Hold Separate Services.
- 2. The Hold Separate Managers or any of the Divestiture Business Employees to be involved, in any way, in the operations of Respondent Thermo Fisher's businesses other than the Divestiture Businesses, except to the extent required for the provision of Hold Separate Services.

D. Respondent Thermo Fisher shall provide the Divestiture Businesses with sufficient financial and other resources as are appropriate in the judgment of the Hold Separate Monitor, consistent with his obligations and responsibilities in this Hold Separate Order, to:

1. Operate the Divestiture Businesses at least as they are currently operated (including efforts to generate new business and complete development and construction projects) consistent with the practices of the Divestiture Businesses, and Respondent Thermo Fisher's business, capital, and strategic plans, in place as of the Acquisition;
2. Provide each Divestiture Businesses employee with reasonable financial incentives to continue in his or her position consistent with past practices and/or as may be necessary to preserve the marketability, viability, and competitiveness of the Divestiture Businesses pending divestiture. Such incentives shall include a continuation of all salaries, employee benefits, including funding of regularly scheduled raises and bonuses, vesting of pension benefits (as permitted by law), and additional incentives as may be necessary to assure the continuation, and prevent any diminution, of the viability, marketability, and competitiveness of the Divestiture Businesses during the Hold Separate Period, and as may otherwise be necessary to achieve the purposes of this Hold Separate Order;
3. Respondent Thermo Fisher will provide sufficient financial resources to allow the Hold Separate Monitor to provide certain important management or sales personnel of the Divestiture Businesses, at his discretion, with additional financial incentives to continue in his or her position until the termination of the Hold Separate Period;
4. Perform all maintenance to, and replacements or remodeling of, the assets of the Divestiture Businesses in the ordinary course of business, in accordance with past practice, and Respondent Thermo Fisher's business, capital, and strategic plans in place prior to the Acquisition Date;
5. Carry on such capital projects, physical plant improvements, and business plans as are already under way or planned, including, but not limited to, existing or planned renovation, remodeling, and expansion projects, all in accordance with Respondent Thermo Fisher's business, capital, and strategic plans in place prior to the Acquisition Date; and
6. Maintain the viability, competitiveness, and marketability of the Divestiture Businesses.

Such financial resources to be provided to the Divestiture Businesses shall include, but shall not be limited to: (i) general funds; (ii) capital; (iii) working capital; and (iv) reimbursement for any operating expenses, losses, capital losses, or other losses, *PROVIDED, HOWEVER* that, consistent with the purposes of the Orders, the Hold Separate Monitor may, and in consultation with Commission staff, substitute any capital or development project for another of like cost.

- E. No later than five (5) business days after the Acquisition Date, Respondent Thermo Fisher shall establish and implement written procedures, subject to the approval of the Hold Separate Monitor and in consultation with Commission staff, regarding the operational independence of the Divestiture Businesses and the independent management by the Hold Separate Monitor and each Hold Separate Manager, consistent with the provisions of this Hold Separate Order, the Decision and Order, the Hold Separate Monitor Agreement (attached as Appendix A to this Hold Separate Order), and the Hold Separate Manager agreements (attached as Appendices B and C to this Hold Separate Order).
- F. No later than five (5) business days after the Acquisition Date, Respondent Thermo Fisher shall circulate to Divestiture Businesses employees, and to Respondent Thermo Fisher's employees who have responsibilities associated with businesses that compete with the Divestiture Businesses, the Decision and Order, and to Persons who are employed in Respondent Thermo Fisher's businesses that compete with the Divestiture Businesses, a notice of the Orders, in a form approved by the Hold Separate Monitor in consultation with Commission staff. This notice shall include, but not be limited to, information and directions about the independent operation of the Divestiture Businesses, and the limitations on Respondent Thermo Fisher's rights to use or have access to Confidential Business Information.

VII.

IT IS FURTHER ORDERED that:

- A. During the Hold Separate Period, Respondent Thermo Fisher shall:
 - 1. Not provide, disclose, or otherwise make available any Confidential Business Information to any Person except as required or permitted by the Orders; and
 - 2. Not use any Confidential Business Information for any reason or purpose other than as required or permitted by the Orders.

PROVIDED, HOWEVER, that nothing in this Paragraph VII shall prevent Respondent Thermo Fisher from using any tangible or intangible property that Respondent Thermo Fisher retains the right to use pursuant to the Orders, *PROVIDED, FURTHER, HOWEVER*, that to the extent that the use of such property involves disclosure of Confidential Business Information to another Person, Respondent Thermo Fisher shall require such Person to maintain the confidentiality of such Confidential Business Information under terms no less restrictive than Respondent Thermo Fisher's obligations under the Orders.

- B. Notwithstanding Paragraph VII.A. of this Hold Separate Order and subject to the Decision and Order, Respondent Thermo Fisher is permitted to retain a copy of any information used by, necessary for, or relating to Respondent Thermo Fishers businesses

other than a Divestiture Businesses and may use Confidential Business Information:

1. For the purpose of performing Respondent Thermo Fisher's obligations under this Hold Separate Order, the Decision and Order, or the Divestiture Agreement; and
 2. As otherwise allowed in the Decision and Order.
- C. If access to or disclosure of Confidential Business Information of the Divestiture Businesses to Respondent Thermo Fisher's employees and agents is necessary and permitted under Paragraph VII.B. of this Hold Separate Order, Respondent Thermo Fisher shall:
1. Implement and maintain processes and procedures, as approved by the Hold Separate Monitor and in consultation with Commission staff, pursuant to which Confidential Business Information of the Divestiture Businesses may be disclosed or used by Respondent Thermo Fisher's employees and agents;
 2. Limit disclosure or use by its employees or agents to those who require access to such Confidential Business Information for uses permitted by the Orders;
 3. Maintain and make available for inspection and copying by the Hold Separate Monitor and Commission staff records of Respondent Thermo Fisher's employees or agents who have accessed or used Confidential Business Information, a reasonable description of the Confidential Business Information to which they had access or used, and the dates upon which they accessed or used such information;
 4. Require its employees and agents to sign, and maintain and make available for inspection and copying by the Hold Separate Monitor and Commission staff, appropriate written agreements to maintain the confidentiality of such information and to use such information only as permitted by the Orders; and
 5. Enforce the terms of this Paragraph VII as to any of Respondent Thermo Fisher's employees and take such action as is necessary to cause each such employee to comply with the terms of this Paragraph VII. including:
 - a. Training of Respondent Thermo Fisher's employees and agents in permitted access to and use of Confidential Business Information;
 - b. Appropriate discipline of Respondent Thermo Fisher's employees and agents who fail to comply with processes and procedures established by Respondent Thermo Fisher pursuant to this Paragraph VI. Or any confidentiality agreement; and

- c. All other actions that Respondent Thermo Fisher would take to protect their own trade secrets, proprietary, and other non-public information.
- D. Respondent Thermo Fisher shall implement and maintain in operation a system, approved by the Hold Separate Monitor and in consultation with Commission staff, of written procedures covering access and data controls to prevent unauthorized access to, or dissemination or use of, Confidential Business Information of the Divestiture Businesses, including, but not limited to, the opportunity by the Hold Separate Monitor to audit Respondent Thermo Fisher's networks and systems to verify compliance with Respondent Thermo Fisher's systems with the Orders.
- E. Neither the Hold Separate Managers nor any Divestiture Businesses' employees shall receive or have access to, or use or continue to use, any Confidential Business Information relating to Respondent Thermo Fisher's businesses (not subject to the Hold Separate Order), except such information as is necessary to maintain and operate the Divestiture Businesses and provide Hold Separate Services.

VIII.

IT IS FURTHER ORDERED that:

- A. Respondent Thermo Fisher shall cooperate with and assist any proposed Acquirer of each of the Divestiture Businesses to evaluate independently and retain any of the Divestiture Businesses employees, such cooperation to include at least to implement the provisions of the Decision and Order relating to employee interviewing and hiring.
- B. During the Hold Separate Period, Respondent Thermo Fisher shall waive any corporate policy, rules, and regulations, and waive any written or oral agreement or understanding, that might prevent or limit any Hold Separate Monitor, Hold Separate Manager, or Divestiture Businesses Employee from performing any services, engaging in any activities, or other conduct reasonably related to achieving the purposes of the Orders.

IX.

IT IS FURTHER ORDERED that, within seven (7) calendar days after this Hold Separate Order becomes final, and every seven (7) calendar days thereafter until this Hold Separate Order terminates, Respondent Thermo Fisher shall submit to the Commission, with a copy to the Hold Separate Monitor, a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with all provisions of this Hold Separate Order. Respondent Thermo Fisher shall include in their reports, among other things that are required from time to time:

- A. A description in reasonable detail of any claim (whether Respondent Thermo Fisher agrees or disagrees with the claim) by any Person (including, but not limited to, any of Respondent Thermo Fisher's employees or agents) that Respondent Thermo Fisher has failed to comply fully with the Orders, and the name, address, phone number, and email address of such Person; and
- B. A description in reasonable detail of any information in Respondent Thermo Fisher's possession, custody, or control (including, but not limited to, information obtained from Respondent Thermo Fisher's monitoring of the compliance of its employees and agents with processes, procedures, and agreements intended to secure Respondent Thermo Fisher's compliance with their obligations under the Orders) relevant to any failure by Respondent Thermo Fisher, its employees, or agents to comply fully with Respondent Thermo Fisher's obligations under the Orders.

X.

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

- A. dissolution of Respondent Thermo Fisher;
- B. acquisition, merger, or consolidation of Respondent Thermo Fisher; or
- C. any other change in the 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 the Orders.

XI.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondent Thermo Fisher, with respect to any matter contained in this Order, Respondent Thermo Fisher shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all non-privileged books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondent Thermo Fisher related to compliance with the Consent Agreement and the Orders, which copying services shall be provided by Respondent Thermo Fisher at the request of the authorized representative of the Commission and at the expense of Respondent Thermo Fisher;

- B. Upon five (5) days' notice to Respondent Thermo Fisher and without restraint or interference from them, to interview officers, directors, or employees of Respondent Thermo Fisher, who may have counsel present.

XII.

IT IS FURTHER ORDERED that this Hold Separate Order shall terminate when all of the obligations relating to the Divestiture Businesses have been performed, and the Divestiture Businesses have been divested pursuant to Paragraph II or Paragraph VII of the Decision and Order.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: January 30, 2014

APPENDIX A
HOLD SEPARATE MONITOR AGREEMENT

NON-PUBLIC APPENDIX A-1
HOLD SEPARATE MONITOR COMPENSATION

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

APPENDIX B
**AGREEMENT OF THE HOLD SEPARATE MANAGER OF THE DHARMA CON
GENE MODULATION BUSINESS**

APPENDIX C
**AGREEMENT OF THE HOLD SEPARATE MANAGER
OF HYCLONE CELL CULTURE BUSINESS**