

**APPENDIX D**  
**MONITOR AGREEMENT**

**AMENDED AND RESTATED MONITOR AGREEMENT**

This Amended and Restated Monitor Agreement (“Monitor Agreement”) entered into this 19<sup>th</sup> day of February 2020, by and between Mazars LLP (“Monitor”), who has been chosen to act as Monitor, and Danaher (“Danaher” or “Respondent”) (Monitor and Respondent are each individually referred to herein as a “Party” and collectively referred to herein as the “Parties”), provides as follows:

WHEREAS, on February 25, 2019, Danaher entered into an Equity and Asset Purchase Agreement (the “GE Biopharma Purchase Agreement”) with the General Electric Company (“GE”) pursuant to which, upon the terms and subject to the conditions set forth in the GE Biopharma Purchase Agreement, Danaher will acquire GE’s Biopharma business (the “Acquisition”);

WHEREAS, it is expected that the United States Federal Trade Commission (the “Commission”) and Respondent will enter into an Agreement Containing Consent Order, which includes a proposed Decision and Order (the “Order”);

WHEREAS, the Order provides for the appointment of a Monitor to assure that Respondent complies with all of its obligations and performs all of its responsibilities required by the Order and the Divestiture Agreements;

WHEREAS, the Order further provides that Respondent shall execute an agreement, subject to prior approval of the Commission, conferring all the rights, powers, and authority necessary to permit the Monitor to perform its duties and responsibilities pursuant to the Order;

WHEREAS, this Monitor Agreement, although executed by the Monitor and Respondent, is not effective for any purpose, including but not limited to, imposing rights and responsibilities on Respondent or the Monitor, until this Monitor Agreement has been approved by the Commission;

WHEREAS, the Monitor is well versed in the operation of the Divestiture Businesses Assets and wishes to accept such appointment upon the terms and conditions stated herein; and

WHEREAS, the Parties to this Monitor Agreement intend to be legally bound.

NOW, THEREFORE, the Parties agree as follows:

1. Capitalized terms used herein and not specifically defined herein shall have the respective definitions given to them in the Order.
2. The Monitor shall have all of the powers, authority, and responsibilities Respondent is required to confer upon the Monitor by the Order, including, without limitation, the responsibility, consistent with the Order, for monitoring Respondent’s compliance with its obligations under the Order and the Divestiture Agreements. The Monitor shall have the authority, in its sole discretion, to consult with third parties in the exercise of its duties under the

Order and this Monitor Agreement; provided, that the Monitor shall not have the authority to execute any documents or enter into any agreements on behalf of Danaher, GE Biopharma or any of their affiliates.

3. In the performance of its functions and duties under this Monitor Agreement, the Monitor will perform its obligations hereunder in good faith, using its best efforts to perform these services in accordance with generally accepted industry standards.

4. If the Monitor becomes aware during the term of this Monitor 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 Monitor Agreement, the Monitor shall promptly inform Respondent and the Commission of any such conflict.

5. The Monitor shall have reasonable access, subject to any legally recognized privilege of Respondent, to Respondent's personnel, books, records, documents, facilities and technical information to the extent relating to the Respondent's compliance with its obligations under the Order, including its obligations related to the Divestiture Businesses Assets, as the Monitor may reasonably require to perform the services set forth herein, subject to the limitations contained in the Order. Such access shall include, inter alia, access to all relevant information related to the Divestiture Businesses Assets. Respondent shall cooperate with any reasonable request of the Monitor, including but not limited to complying with Monitor's requests for onsite visits and interviews with employees of Respondent. Respondent shall take no action to interfere with or impede the Monitor's ability to monitor Respondent's compliance with the Order and the Divestiture Agreements.

6. Respondent shall designate a senior employee(s) of Respondent to be a primary contact ("Primary Contact") for the Monitor and to notify the Monitor regarding any changes in the contact personnel. Respondent shall notify the Monitor of meetings and other critical events relating to the Divestiture Businesses Assets, the Order, or the Agreements, and provide any available minutes of such meetings to the Monitor.

7. Respondent shall provide and the Monitor shall evaluate the reports submitted by Respondent pursuant to the Order.

8. The Monitor shall report to the Commission pursuant to the terms of the Order and as otherwise requested by the Commission Staff.

9. Monitor shall be compensated by Respondent for its services under this Monitor Agreement, including all work in connection with the negotiation and preparation of this Monitor Agreement, pursuant to the fee schedule attached as Confidential Exhibit A for time spent in connection with the discharge of its duties under this Monitor Agreement and the Order. In addition, Respondent will pay all documented out-of-pocket expenses reasonably incurred by the Monitor in the performance of the Monitor's duties, including all fees and disbursements reasonably incurred by such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. Payments under this Paragraph 12 shall be made on a monthly basis until the Monitor ceases its activities under this Monitor Agreement. The Monitor shall provide Respondent with monthly invoices for time and expenses that include details and an explanation of all matters for which the Monitor submits an invoice to Respondent. Respondent shall pay such invoices

within 30 days of receipt. The Monitor and Respondent shall submit any disputes about invoices to the Commission's Compliance Division for assistance in resolving such disputes.

10. Respondent hereby confirms its obligation to indemnify the Monitor (and all Persons retained by the Monitor) and hold the Monitor harmless against any liabilities arising out of the performance of the Monitor's duties, except to the extent that such liabilities result from the willful default, recklessness, gross negligence, or bad faith of the Monitor, its employees, agents or advisors.

11. In the event of a disagreement or dispute between Respondent 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 arbitrator(s) may be entered in any court having jurisdiction thereof. Binding arbitration shall not be available, however, to resolve any disagreement or dispute concerning Respondent's obligations pursuant to any Order entered by the Commission.

12. The term of this Monitor Agreement shall continue until the latter of (i) the completion of all divestitures required by the Order, and (ii) the end of any Transition Services Agreement in effect with any Commission-Approved Acquirer; provided further, however, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Order. In the event that Monitor is no longer able to perform the duties described in this Monitor Agreement, Monitor may terminate this Monitor Agreement by providing Respondent 30 days written notice. In the event of such termination, Monitor shall cooperate with Respondent pursuant to Paragraph 15.

13. Upon termination of the Monitor's duties under this Monitor Agreement, the Monitor shall consult with the Commission's staff regarding disposition of any written and electronic materials (including materials that Respondent provided to the Monitor) in the possession or control of the Monitor that relate to the Monitor's duties, and the Monitor shall dispose of such materials, which may include sending such materials to the Commission's staff, as directed by the staff. In response to a request by Respondent to return or destroy materials that Respondent provided to the Monitor, the Monitor shall inform the Commission's staff of such request and, if the Commission's staff does not object, shall comply with the Respondent's request. Nothing herein shall abrogate the Monitor's duty of confidentiality, which includes an obligation not to disclose any non-public information that was obtained while acting as a Monitor.

14. Should the Commission appoint a substitute monitor pursuant to an Order to Maintain Assets or should the Monitor terminate this Monitor Agreement pursuant to Paragraph 13, the Monitor shall cooperate with Respondent and the substitute monitor in order to effect a prompt transition to the substitute monitor. Such cooperation shall include, but is not limited to, (i) the prompt return to Respondent of all confidential materials as required by the preceding Paragraph of this Monitor Agreement, and (ii) the provision of access to the Monitor and any

personnel hired by the Monitor for interviews by Respondent and/or the substitute monitor for purposes of gathering relevant information relating to the Monitor's performance of its duties.

15. Any notices or other communication required to be given hereunder shall be deemed to have been properly given if sent by mail or e-mail to the applicable Party at its address below (or to such other address as to which such Party shall hereafter notify the other party):

If to the Monitor, to:

Justin Menezes  
Mazars LLP  
Tower Bridge House, St. Katharine's Way, London, E1W 1DD  
Justin.Menezes@mazars.co.uk

If to Respondent, to:

Attila Bodi  
Danaher Corporate Office  
2200 Pennsylvania Avenue, NW  
Suite 800W Washington, DC 20037  
Attila.Bodi@danaher.com

16. The Monitor Agreement may not be assigned by Respondent or the Monitor without the prior written consent of the other Party and the Commission.

17. It is understood and agreed that the Monitor shall act in consultation with the Commission or its staff, and shall serve as an independent third party and not as an employee or agent of the Respondent or the Commission in the undertaking of this Monitor Agreement and the Monitor shall exercise control over and employ its own means and methods of accomplishing the projects and tasks in performing services hereunder.

18. This Monitor Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

19. This Monitor Agreement contains the entire agreement between the Parties relating to the subject matter hereof and supersedes all previous negotiations, agreements, undertakings and representations, documents, minutes of meetings, letters or notices (whether oral or written) between the Parties and/or their respective affiliates with respect to the subject matter.

20. This Monitor Agreement shall not become binding until it has been approved by the Commission and the Order has been accepted for public comment. The Order shall govern this Monitor Agreement and any provisions herein that conflict or are inconsistent with such orders may be declared void by the Commission and any provision not in conflict shall survive and remain a part of this Monitor Agreement.

21. This Monitor Agreement shall be deemed to have been entered into and shall be construed and enforced in accordance with the laws of New York.

22. For the avoidance of doubt, each of the Parties expressly acknowledges that the Non-Disclosure Agreement, dated as of November 16, 2019 (the "NDA"), by and between the Parties, shall apply to all Confidential Information (as defined in the NDA) provided by Danaher to the Monitor in connection with the Monitor Agreement.

23. This Monitor Agreement amends and restates, in its entirety, and replaces, the prior Monitor Agreement entered into the 13 day of February 2020.

*(Signature Page Follows)*

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

**Respondent:**

By 

Name: Attila Bodi

Title: Vice President and Chief Counsel

**Monitor:**

By: 

Name: Justin Menezes

Title: Partner