

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

COMMISSIONERS: **Jon Leibowitz, Chairman**
 William E. Kovacic
 J. Thomas Rosch
 Edith Ramirez
 Julie Brill

In the Matter of

AGILENT TECHNOLOGIES, INC.,
a corporation.

Docket No. C-

DECISION AND ORDER
[Redacted Public Version]

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition of Varian, Inc. ("Varian") by Agilent Technologies, Inc. ("Respondent Agilent"), and Respondent Agilent 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 Agilent 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 Agilent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing an admission by Respondent Agilent 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 Agilent 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 Agilent has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint, 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 Agilent is a corporation organized, existing and doing business under and by virtue of the laws of Delaware with its office and principal place of business located at 5301 Stevens Creek Boulevard, Santa Clara, California 95051.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER

I.

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

- A. “Agilent” means Agilent Technologies, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Agilent Technologies, Inc. (including Varian, after the Acquisition Date), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Varian” means Varian, Inc., a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 3120 Hansen Way, Palo Alto, California 94304.
- C. “Commission” means the Federal Trade Commission.
- D. “Acquisition” means Respondent Agilent’s acquisition of Varian.
- E. “Acquisition Date” means the date on which the Acquisition is consummated.
- F. “Confidential Business Information” means competitively sensitive, proprietary, and all other information that is not in the public domain owned by or pertaining to a Person or a Person’s business, and includes, but is not limited to, all customer lists, price lists, contracts, cost information, marketing methods, technologies, processes, or other trade secrets.
- G. “Copyrights” means rights to all original works of authorship of any kind directly Related To the Agilent Micro GC Products, Varian Triple Quad Products, or Varian ICP-MS Products, as applicable, and any registrations and applications for registrations thereof, including, but not limited to, the following: all such rights with respect to all promotional, marketing and advertising materials, educational and training materials for the sales force, and sales forecasting models; copyrights in all process development data and reports

Relating To the research and development of the Agilent Micro GC Products, Varian Triple Quad Products, or Varian ICP-MS Products, as applicable, or of any materials used in the research, Development, manufacture, marketing or sale of the Agilent Micro GC Products, Varian Triple Quad Products, or Varian ICP-MS Products, including copyrights in all raw data, statistical programs developed (or modified in a manner material to the use or function thereof (other than through user preferences)) to analyze research data, market research data, market intelligence reports and statistical programs (if any) used for marketing and sales research; all copyrights in customer information; all copyrights in records, including customer lists, sales force call activity reports, vendor lists, sales data, manufacturing records, manufacturing processes, and supplier lists; all copyrights in data contained in laboratory notebooks Relating To the Agilent Micro GC Products, Varian Triple Quad Products, or Varian ICP-MS Products; all copyrights in analytical and quality control data; and all correspondence with governmental agencies.

- H. “Designated Employee” means Designated Micro GC Employee, Designated ICP-MS Employee, or Designated Triple Quad Employee.
- I. “Development” means all research and development activities, including, without limitation, the following: test method development; stability testing; process development; manufacturing scale-up; development-stage manufacturing; quality assurance/quality control development; statistical analysis and report writing; and conducting experiments for the purpose of obtaining any and all product approvals or certifications. Develop means to engage in Development.
- J. “Divested Business” means the Micro GC Business, the ICP-MS Business, or the Triple Quad Business.
- K. “Divested Products” means the Agilent Micro GC Products, the Varian ICP-MS Products, or the Varian Triple Quad Products.
- L. “Effective Date” means the Micro GC Effective Date, the ICP-MS Effective Date, or the Triple Quad Effective Date.
- M. “Patents” means all patents, patent applications, including provisional patent applications, invention disclosures, certificates of invention and applications for certificates of invention and statutory invention registrations, in each case existing as of the Acquisition Date, and includes all reissues, additions, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, and all rights therein provided by international treaties and conventions, Related To any product of or owned by Respondent Agilent as of the Acquisition Date.
- N. “Person” means any natural person, partnership, corporation, association, trust, joint venture, government, government agency, division, or department, or other business or legal entity.

- O. “Relating To” or “Related To” means pertaining in any way to, and is not limited to that which pertains exclusively to or primarily to.
- P. “Software” means computer programs Related To the production and use of Agilent Micro GC Products, Varian Triple Quad Products, or Varian ICP-MS Products, respectively, including all software implementations of algorithms, models, and methodologies whether in source code or object code form, databases and compilations, including any and all data and collections of data, all documentation, including user manuals and training materials, Related To any of the foregoing and the content and information contained on any website; PROVIDED, HOWEVER, that Software does not include software that can readily be purchased or licensed from sources other than Respondent Agilent and which has not been modified in a manner material to the use or function thereof (other than through user preference settings).
- Q. “Trade Dress” means the current trade dress of a particular product or Person including, without limitation, product packaging, logos, and the lettering of the product trade name, brand name, or corporate name.
- R. “Trademark(s)” means all proprietary names or designations, trademarks, service marks, trade names, and brand names, including registrations and applications for registration therefor (and all renewals, modifications, and extensions thereof) and all common law rights, and the goodwill symbolized thereby and associated therewith, for the Agilent Micro GC Products, Varian Triple Quad Products, and Varian ICP-MS Products.

[Micro GC Definitions]

- S. “Agilent-Inficon Micro GC Divestiture Agreement” means all the divestiture agreements, licenses, assignments, and other agreements entered into by Inficon and Respondent Agilent for the sale of the Agilent Micro GC Business. The Agilent-Inficon Micro GC Divestiture Agreement is attached as Confidential Exhibit A to this Order.
- T. “Agilent Micro GC Products” means the Micro GC instruments, Developed, manufactured and sold by Agilent, including but not limited to, Agilent models G2801-300A; G2802-3000A; G2803A-300A; G2804A-300A; G2805A-300A; G2806A-300A; and G2807A-300A.
- U. “Agilent Micro GC Business” means:
1. Agilent Micro GC Information;
 2. Agilent Micro GC Intellectual Property;
- PROVIDED, HOWEVER*, that the Agilent Micro GC Intellectual Property does not include Agilent Micro GC Shared Intellectual Property.

PROVIDED, FURTHER, HOWEVER, that the Agilent Micro GC Intellectual Property does not include the corporate names or corporate Trade Dress of Agilent, or the related logos thereof.

3. Agilent Micro GC Inventory; and
4. Agilent Micro GC Tangible Assets.

V. “Agilent Micro GC Intellectual Property” means all of the following Related To the Agilent Micro GC Products including, but not limited to:

1. Copyrights;
2. Patents;
3. Software;
4. Trademarks;
5. Trade Dress;
6. trade secrets, know-how, drawings, utility models, designs, design rights, techniques, data, inventions, practices, recipes, raw material specifications, process descriptions, quality control methods in process, protocols, methods and other confidential or proprietary technical, business, Development and other information, and all rights in any jurisdiction to limit the use or disclosure thereof;
7. rights to obtain and file for Patents and Copyrights and registrations thereof;
8. rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation or breach of any of the foregoing; and
9. the exclusive right to all Agilent intellectual property used solely in the Development, manufacturing, storage, distribution and sale of the Agilent Micro GC Products including, but not limited to, Software, computer programs, Patents, licenses (including, licenses to third-party Software if transferable and sub-licenses to Software modified by Agilent), know-how (including, but not limited to, flow sheets, process and instrumentation diagrams), risk analysis, certificates of analysis, goodwill, technology (including, but not limited to, equipment specifications and drawings), trade secrets, technical information (including, but not limited to, material and final product specifications), marketing information, protocols (including, but not limited to, operational manuals), quality control information, Trademarks, trade names, service marks, logos, and the modifications or improvements to such intellectual property.

- W. “Agilent Micro GC Information” means all information owned by, or in the possession or control of, Respondent Agilent that is not in the public domain and that is Related To the research, Development, manufacture, marketing, commercialization, importation, exportation, cost, supply, sales, sales support, or use of the Agilent Micro GC Products including, but not limited to, information not otherwise included in the Agilent Micro GC Intellectual Property, customer lists, current and historical customer purchases and data, historical data, complaints, safety history, all data and information Relating To any of Agilent’s approvals, clearances, licenses, registrations, permits, franchises, product registrations, authorizations, or certifications issued by any federal, state, municipal, or foreign authority, or any third party, registrar or certification body Relating To the Agilent Micro GC Products including, without limitation, all filings, engineering and design documentation, manufacturing and test results and procedures, and any other information possessed by Agilent in any location Relating To the Agilent Micro GC Products.
- X. “Agilent Micro GC Inventory” means all inventory of raw materials, intermediate work in progress, spare parts, prototypes, and finished Agilent Micro GC Products, wherever located.
- Y. “Agilent Micro GC Tangible Assets” means all of Respondent’s rights, title, and interest in all physical assets Relating To the Development, manufacture, sale, and distribution of the Agilent Micro GC Products including, without limitation, the following:
1. all machinery, fixtures, equipment, vehicles, transportation and storage facilities, furniture, tools, supplies, stores, spare parts, and other tangible personal property located at or Relating To a facility owned and operated by Respondent at No. 412 Ting Lun Road, Wai Gao Qiao Free Trade Zone, Shanghai, 200131, P.R. China.
 2. all machinery, fixtures, equipment, vehicles, transportation and storage facilities, furniture, tools, supplies, stores, spare parts, and other tangible personal property located at or Relating To a facility owned and operated by Respondent at 2850 Centerville Road, Wilmington, Delaware.
- PROVIDED, HOWEVER, Agilent Micro GC Tangible Assets does not include any real property, plant facilities, or buildings located at Respondent Agilent’s facilities in Shanghai, China or Wilmington, Delaware.*
- Z. “Agilent Micro GC Shared Intellectual Property” means the Agilent Micro GC Intellectual Property that is not used by Agilent exclusively for the Agilent Micro GC Business.
- AA. “Designated Micro GC Employee” means the employee or person filling the job descriptions listed in Confidential Exhibit C to this Order. “Designated Micro GC Employee” may include any other person not listed on Confidential Exhibit C to this Order who has been identified by the Micro GC Acquirer and the Monitor, and determined by the Commission staff to have devoted more than 25% of his/her time to Agilent Micro GC Products in the twelve (12) months preceding the Acquisition Date.

- BB. “Inficon” means Inficon Inc., a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its international headquarters located at Hintergasse 15B, CH-7310 Bad Ragaz, Switzerland and its principal place of business located in the United States at Two Technology Place, East Syracuse, New York 13057-9714.
- CC. “Manifold Supply Agreement” means the agreement between the Micro GC Acquirer and Respondent Agilent under which Respondent Agilent will produce the nickel-plated manifold used in the production of the Agilent Micro GC Products, which shall be approved by the Commission and become a part of the Micro GC Divestiture Agreement.
- DD. “Micro GC” means a portable (transportable by one person) gas chromatograph having intimately connected column, injector valve and detectors, an ability to run on a 200 watt or lower capacity battery or power supply, and a carrier gas requirement of 1 to 5 mL/min per channel or less.
- EE. “Micro GC Acquirer” means the Person specified by name in this Order, or the Person approved by the Commission, to acquire the Agilent Micro GC Business pursuant to Paragraph II or Paragraph VII of this Order. The Micro GC Acquirer may be the same Person as the Triple Quad Acquirer and the ICP-MS Acquirer.
- FF. “Micro GC Acquirer Employee” means any person employed by the Micro GC Acquirer who has been determined by the Micro GC Acquirer, the Monitor, and Commission staff to have devoted any of his/her time to Agilent Micro GC Products after the Micro GC Effective Date.
- GG. “Micro GC Contracts” means:
1. Micro GC Customer Contracts;
 2. Micro GC Sales and Distribution Contracts;
 3. Micro GC Flow Parts Contracts;
 4. Micro GC Service Contracts; and
 5. Micro GC Supply Contracts.
- HH. “Micro GC Customer Contracts” means the customer contracts for the purchase and sale of Agilent Micro GC Products. Micro GC Customer Contracts shall include contracts between Agilent and a customer that are not exclusively for the purchase and sale of Agilent Micro GC Products, but may also include other Agilent products, to the extent that such contracts pertain to the purchase and sale of Agilent Micro GC Products.

- II. “Micro GC Sales and Distribution Contracts” means the contracts between Agilent and Persons who sell and distribute the Agilent Micro GC Products including, but not limited to, those contracts identified in Confidential Exhibit M.
- JJ. “Micro GC Divestiture Agreement” means all the divestiture agreements, licenses, assignments, and other agreements entered into by the Micro GC Acquirer and Respondent Agilent, including the Agilent-Inficon Micro GC Divestiture Agreement, pursuant to Paragraph II.
- KK. “Micro GC Effective Date” means the date on which the divestitures, licensing, and assignments, pursuant to Paragraph II or Paragraph VII of this Order, are consummated.
- LL. “Micro GC Flow Parts Contracts” means the contracts between Agilent and Micralyne, Inc. for the supply and maintenance of flow parts for the manufacture and production of Agilent Micro GC Products, attached as Confidential Exhibit D.
- MM. “Micro GC Service Contracts” means the contracts under which Respondent Agilent provides repair and maintenance services for the Agilent Micro GC Products.
- NN. “Micro GC Supply Contracts” means the contracts under which Respondent Agilent purchases inputs used in the manufacture and production of the Agilent Micro GC Products.
- OO. “Remedial Micro GC Agreement” means the following:
1. the Agilent-Inficon Micro GC Divestiture Agreement if such agreement has not been rejected by the Commission pursuant to Paragraph II.F of this Order; and
 2. any agreement between Respondent Agilent and a Commission-approved Micro GC Acquirer (or between a Divestiture Trustee and a Commission-approved Micro GC Acquirer) that has been approved by the Commission to accomplish the requirements of this Order, and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets to be granted, licensed, delivered or otherwise conveyed, that have been approved by the Commission to accomplish the requirements of this Order.
- PP. “Varian Micro GC Products” means Micro GC instruments Developed, manufactured or sold by Varian including, but not limited to, products contained in the Varian CP-4900 series.

[Triple Quad Definitions]

- QQ. “Bruker” means Bruker Corporation, a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its international headquarters and principal place of business located in the United States at 40 Manning Road, Billerica, Massachusetts 01821.

- RR. “Agilent-Bruker Divestiture Agreement” means all the divestiture agreements, licenses, assignment, and other agreements entered into by Bruker and Respondent Agilent for the sale of the Varian Triple Quad Business and the Varian ICP-MS Business. The Agilent-Bruker Divestiture Agreement is attached as Confidential Exhibit B to this Order.
- SS. “Agilent Triple Quad Products” means Triple Quad instruments manufactured, researched, Developed or sold by Agilent that combine a gas chromatograph with a triple quadrupole mass spectrometer including, but not limited to, the Agilent 7000A product series.
- TT. “Designated Triple Quad Employee” means the employee or person filling the job descriptions listed in Confidential Exhibit E to this Order. “Designated Triple Quad Employee” may include any other person not listed on Confidential Exhibit E to this Order who has been identified by the Triple Quad Acquirer and the Monitor, and determined by Commission staff to have devoted more than 25% of his/her time to Varian Triple Quad Products in the twelve (12) months preceding the Acquisition Date.
- UU. “Remedial Triple Quad Agreement” means the following:
1. the Agilent-Bruker Divestiture Agreement, if such agreement has not been rejected by the Commission pursuant to Paragraph III.F of this Order; and
 2. any agreement between Respondent Agilent and a Commission-approved Triple Quad Acquirer (or between a Divestiture Trustee and a Commission-approved Triple Quad Acquirer) that has been approved by the Commission to accomplish the requirements of this Order, and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets to be granted, licensed, delivered or otherwise conveyed, that have been approved by the Commission to accomplish the requirements of this Order.
- VV. “Triple Quad” means an instrument that combines a gas chromatograph with a triple quadrupole mass spectrometer.
- WW. “Triple Quad Acquirer” means the Person specified by name in this Order, or the Person approved by the Commission, to acquire the Varian Triple Business pursuant to Paragraph III or Paragraph VII of this Order. The Triple Quad Acquirer may be the same Person as the Micro GC Acquirer or the ICP-MS Acquirer.
- XX. “Triple Quad Acquirer Employee” means any person employed by the Triple Quad Acquirer who has been determined by the Triple Quad Acquirer, the Monitor, and Commission staff to have devoted any of his/her time to Varian Triple Quad Products after the Triple Quad Effective Date.

YY. “Triple Quad Contracts” means:

1. Triple Quad Customer Contracts;
2. Triple Quad Sales and Distribution Contracts;
3. Triple Quad Service Contracts; and
4. Triple Quad Supply Contracts.

ZZ. “Triple Quad Customer Contracts” means the customer contracts for the purchase and sale of Varian Triple Quad Products. Triple Quad Customer Contracts shall include contracts between Varian and a customer that are not exclusively for Varian Triple Quad Products, but may also include other Varian products, to the extent that such contracts pertain to the purchase and sale of Varian Triple Quad Products.

AAA. “Triple Quad Sales and Distribution Contracts” means the contracts between Varian and Persons who sell and distribute the Varian Triple Quad Products including, but not limited to, those contracts identified in Confidential Exhibit F.

BBB. “Triple Quad Divestiture Agreement” means all the divestiture agreements, licenses, assignments, and other agreements entered into by the Triple Quad Acquirer and Respondent Agilent pursuant to Paragraph III of this Order, including the Agilent-Bruker Divestiture Agreement.

CCC. “Triple Quad Effective Date” means the date on which the divestitures, licensing, and assignments, pursuant to Paragraph III or Paragraph VII of this Order, are consummated.

DDD. “Triple Quad Laboratory GC Supply Agreement” means an agreement between the Triple Quad Acquirer and Respondent Agilent under which Respondent Agilent will produce laboratory gas chromatographs for incorporation into the Varian Triple Quad Products, which shall be approved by the Commission and become a part of the Triple Quad Divestiture Agreement.

EEE. “Triple Quad Service Contracts” means the contracts under which Varian provides repair and maintenance services for the Varian Triple Quad Products.

FFF. “Triple Quad Supply Contracts” means the contracts for the supply of inputs used in the manufacture and production of the Varian Triple Quad Products including, but not limited to, the contracts identified in Confidential Exhibit G.

GGG. “Triple Quad Vacuum Pump Supply Agreement” means an agreement between the Triple Quad Acquirer and Respondent Agilent under which Respondent Agilent will produce vacuum pumps used in the production of the Varian Triple Quad Products, which shall be approved by the Commission and become a part of the Triple Quad Divestiture Agreement.

HHH. “Vacuum Pump Intellectual Property” means the Varian intellectual property Related To the manufacture and production of the vacuum pump used in the GC-MS 360 Varian Triple Quad Product, currently known as the Dual Flow Turbo Pump for CSB/SMB part number 9300010100, including, but not limited to, Software, computer programs, patents, licenses, know-how (including, but not limited to, flow sheets, process and instrumentation diagrams), risk analysis, certificates of analysis, goodwill, technology (including, but not limited to, equipment specifications and drawings), trade secrets (including, but not limited to, recipes and formulae), technical information (including, but not limited to, material and final product specifications), protocols (including, but not limited to, operational manuals), research and development, quality control information and the modifications or improvements to such intellectual property.

III. “Varian Triple Quad Products” means Triple Quad instruments Developed, manufactured, or sold by Varian before the Triple Quad Effective Date including, but not limited to, the Varian products designated as GC-MS 300, GC-MS 320, and GC-MS 360, which also can be modified for use as a single quadropole gas chromatograph/mass spectrometer.

JJJ. “Varian Triple Quad Business” means:

1. Varian Triple Quad Tangible Assets;
2. Varian Triple Quad Information;
3. Varian Triple Quad Intellectual Property;

PROVIDED, HOWEVER, that the Varian Triple Quad Intellectual Property does not include Varian Triple Quad Shared Intellectual Property;

PROVIDED, FURTHER, HOWEVER, that the Varian Triple Quad Intellectual Property does not include the corporate names or corporate Trade Dress of Varian, or the related logos thereof or the corporate names or corporate Trade Dress of any other corporations or companies owned or controlled by Respondent Agilent or the related logos thereof; and

4. Varian Triple Quad Inventory.

KKK. “Varian Triple Quad Information” means all information owned by, or in the possession or control of, Varian, that is not in the public domain and that is Related To the research, Development, manufacture, marketing, commercialization, importation, exportation, cost, supply, sales, sales support, or use of the Varian Triple Quad Products including but not limited to, customer lists, current and historical customer purchases and data, historical data, complaints, safety history, all data and information Relating To any of Varian’s approvals, clearances, licenses, registrations, permits, franchises, product registrations, authorizations, or certifications issued by any federal, state, municipal, or foreign authority, or any third party, registrar or certification body Relating To the Varian Triple Quad Products including,

without limitation, filings, engineering and design documentation, manufacturing and test results and procedures, and any other information possessed by Varian in any location Relating To the Varian Triple Quad Products.

LLL. “Varian Triple Quad Intellectual Property” means all of the following Related To each Varian Triple Quad Product owned by Varian or for which Varian has the right to sub-license to third parties as of the Acquisition Date including but not limited to:

1. Copyrights;
2. Patents;
3. Software;
4. Trademarks;
5. Trade Dress;
6. trade secrets, know-how, utility models, design rights, techniques, data, inventions, practices, recipes, raw material specifications, process descriptions, quality control methods in process, protocols, methods and other confidential or proprietary technical, business, research, Development and other information, and all rights in any jurisdiction to limit the use or disclosure thereof;
7. rights to obtain and file for Patents and Copyrights and registrations thereof;
8. rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation or breach of any of the foregoing; and
9. the exclusive right to all Varian Triple Quad intellectual property used solely in the research, Development, manufacturing, storage, distribution and sale of Varian Triple Quad Products including, but not limited to, Software, computer programs, Patents, licenses (including, licenses to third-party software if transferable and sub-licenses to software modified by Varian), know-how (including, but not limited to, flow sheets, process and instrumentation diagrams), risk analysis, certificates of analysis, goodwill, technology (including, but not limited to, equipment specifications and drawings), trade secrets (including, but not limited to, recipes and formulae), technical information (including, but not limited to, material and final product specifications), marketing information, protocols (including, but not limited to, operational manuals), quality control information, Trademarks, trade names, service marks, logos, and the modifications or improvements to such intellectual property.

MMM. “Varian Triple Quad Inventory” means all inventory of raw materials, intermediate work in progress, spare parts, prototypes, and finished Varian Triple Quad Products, wherever located. *PROVIDED, HOWEVER*, that spare parts inventory, and demonstration and

research inventory Related To Varian Triple Quad Products shall be allocated between the Varian Triple Quad Acquirer and Respondent Agilent in a manner that is approved by the Commission and the Monitor.

- NNN. “Varian Triple Quad Shared Intellectual Property” means the Varian Triple Quad Intellectual Property that is not used by Varian exclusively for the Varian Triple Quad Business, including but not limited to, Vacuum Pump Intellectual Property.
- OOO. “Varian Triple Quad Tangible Assets” means all of Varian’s rights, title, and interest in the physical assets and businesses located at or Relating To a facility owned and operated by Varian at 2700 Mitchell Drive, Walnut Creek, California, and Relating To the research, Development, manufacture, sale, and distribution of the Varian Triple Quad Products including, but not limited to, the assets identified in the Triple Quad Divestiture Agreement. *PROVIDED, HOWEVER*, that the Varian Triple Quad Tangible Assets does not include any real property, plant facilities, or buildings located at Varian’s facility in Walnut Creek, California.

[ICP-MS Definitions]

- PPP. “Agilent ICP-MS Products” means ICP-MS instruments Developed, manufactured, or sold by Agilent, including but not limited to, the Agilent 7700 product series.
- QQQ. “ICP-MS” means instruments that combine inductively coupled plasma technology and mass spectrometry technology, used for the analysis of inorganic materials.
- RRR. “Remedial ICP-MS Agreement” means the following:
1. the Agilent-Bruker Divestiture Agreement, if such agreement has not been rejected by the Commission pursuant to Paragraph IV.F of this Order; and
 2. any agreement between Respondent Agilent and a Commission-approved ICP-MS Acquirer (or between a Divestiture Trustee and a Commission-approved ICP-MS Acquirer) that has been approved by the Commission to accomplish the requirements of this Order, and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets to be granted, licensed, delivered or otherwise conveyed, that have been approved by the Commission to accomplish the requirements of this Order.
- SSS. “Varian ICP-MS Products” means ICP-MS instruments Developed, manufactured, or sold by Varian before the ICP-MS Effective Date including, but not limited to, the Varian products designated as 810-MS and 820-MS.

TTT. “Varian ICP-MS Business” means:

1. Varian ICP-MS Tangible Assets;
2. Varian ICP-MS Information;
3. Varian ICP-MS Intellectual Property;

PROVIDED, HOWEVER, that the Varian ICP-MS Intellectual Property does not include Varian ICP-MS Shared Intellectual Property;

PROVIDED, FURTHER, HOWEVER, that the Varian ICP-MS Intellectual Property does not include the corporate names or corporate Trade Dress of Varian, or the related logos thereof or the corporate names or corporate Trade Dress of any other corporations or companies owned or controlled by Respondent Agilent or the related logos thereof; and

4. Varian ICP-MS Inventory.

UUU. “Varian ICP-MS Information” means all information owned by, or in the possession or control of, Varian, that is not in the public domain and that is Related To the Development, manufacture, marketing, commercialization, importation, exportation, cost, supply, sales, sales support, or use of the Varian ICP-MS Products including but not limited to, customer lists, current and historical customer purchases and data, historical data, complaints, safety history, all data and information Relating To any of Varian’s approvals, clearances, licenses, registrations, permits, franchises, product registrations, authorizations, or certifications issued by any federal, state, municipal, or foreign authority, or any third party, registrar or certification body Relating To the Varian ICP-MS Products including, without limitation, filings, engineering and design documentation, manufacturing and test results and procedures, and any other information possessed by Varian in any location Relating To the Varian ICP-MS Products.

VVV. “Designated ICP-MS Employee” means the employee or person filling the job descriptions listed in Confidential Exhibit H to this Order. “Designated ICP-MS Employee” may include any other person not listed on Confidential Exhibit H to this Order who has been identified by the Triple Quad Acquirer and the Monitor, and determined by Commission staff to have devoted more than 25% of his/her time to Varian ICP-MS Products in the twelve (12) months preceding the Acquisition Date.

WWW. “Varian ICP-MS Intellectual Property” means all of the following Related To each Varian ICP-MS Product owned by Varian or for which Varian has the right to sub-license to third parties as of the Acquisition Date including but not limited to:

1. Copyrights;
2. Patents;

3. Software;
4. Trademarks;
5. Trade Dress;
6. trade secrets, know-how, utility models, design rights, techniques, data, inventions, practices, recipes, raw material specifications, process descriptions, quality control methods in process, protocols, methods and other confidential or proprietary technical, business, research, Development and other information, and all rights in any jurisdiction to limit the use or disclosure thereof;
7. rights to obtain and file for Patents and Copyrights and registrations thereof;
8. rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation or breach of any of the foregoing; and
9. the exclusive right to all Varian ICP-MS intellectual property used solely in the research, Development, manufacturing, storage, distribution and sale of Varian ICP-MS Products including, but not limited to, Software, computer programs, Patents, licenses (including, licenses to third-party software if transferable and sub-licenses to software modified by Varian), know-how (including, but not limited to, flow sheets, process and instrumentation diagrams), risk analysis, certificates of analysis, goodwill, technology (including, but not limited to, equipment specifications and drawings), trade secrets (including, but not limited to, recipes and formulae), technical information (including, but not limited to, material and final product specifications), marketing information, protocols (including, but not limited to, operational manuals), quality control information, Trademarks, trade names, service marks, logos, and the modifications or improvements to such intellectual property.

XXX. “Varian ICP-MS Shared Intellectual Property” means the Varian ICP-MS Intellectual Property that is not used by Varian exclusively for Varian ICP-MS Products.

YYY. “Varian ICP-MS Tangible Assets” means all of Varian’s rights, title, and interest in the physical assets located at or Relating To a facility owned and operated by Varian at 679 Springvale Road, Mulgrave, Victoria, (Melbourne), Australia and Relating To the Development, manufacture, sale, and distribution of the Varian ICP-MS Products including, without limitation, the assets identified in the ICP-MS Divestiture Agreement. *PROVIDED, HOWEVER*, that the Varian ICP-MS Tangible Assets does not include any real property, plant facilities, or buildings located at Varian’s facility in Melbourne, Australia.

ZZZ. “ICP-MS Acquirer” means the Person specified by name in this Order, or the Person approved by the Commission, to acquire the Varian Triple Quad Business pursuant to Paragraph IV or Paragraph VII of this Order. The ICP-MS Acquirer may be the same Person as the Micro GC Acquirer or the Triple Quad Acquirer.

AAAA. "ICP-MS Contracts" means:

1. ICP-MS Customer Contracts;
2. ICP-MS Sales and Distribution Contracts;
3. ICP-MS Service Contracts; and
4. ICP-MS Supply Contracts.

BBBB. "ICP-MS Customer Contracts" means the customer contracts for the Varian ICP-MS Products. ICP-MS Customer Contracts shall include contracts between Varian and a customer that are not exclusively for Varian ICP-MS Products, but may also include other Varian products to the extent that such contracts Relate To the purchase and sale of Varian ICP-MS Products.

CCCC. "ICP-MS Sales and Distribution Contracts" means the contracts between Varian and Persons who sell and distribute the Varian ICP-MS Products, including but not limited to, those contracts identified in Confidential Exhibit I.

DDDD. "ICP-MS Divestiture Agreement" means all the divestiture agreements, licenses, assignments, and other agreements entered into by the ICP-MS Acquirer and Respondent Agilent including the Agilent-Bruker Divestiture Agreement pursuant to Paragraph IV of this Order.

EEEE. "ICP-MS Effective Date" means the date on which the divestitures, licensing, and assignments, pursuant to Paragraph IV or Paragraph VII of this Order, are consummated.

FFFF. "ICP-MS Inventory" means all inventory of raw materials, intermediate work in progress, spare parts, prototypes, and finished Varian ICP-MS Products, wherever located. *PROVIDED, HOWEVER*, that spare parts inventory, and demonstration and research inventory Related To Varian ICP-MS Products shall be allocated between the Varian ICP-MS Acquirer and Respondent Agilent in a manner that is approved by the Commission and the Monitor.

GGGG. "ICP-MS Service Contracts" means the contracts under which Varian provides repair and maintenance services for the Varian ICP-MS Products.

HHHH. "ICP-MS Supply Contracts" means the contracts for the supply of inputs used in the manufacture and production of the ICP-MS Products. including, but not limited to, the contracts identified in Confidential Exhibit J.

III. "ICP-MS Rotary Pump Supply Agreement" means an agreement between the ICP-MS Acquirer and Respondent Agilent under which Respondent Agilent will produce rotary

pumps used in the production of the Varian ICP-MS Products, which shall be approved by the Commission and become a part of the ICP-MS Divestiture Agreement.

JJJJ. “ICP-MS Turbo Pump Supply Agreement” means an agreement between the ICP-MS Acquirer and Respondent Agilent under which Respondent Agilent will produce turbo pumps used in the production of the Varian ICP-MS Products, which shall be approved by the Commission and become a part of the ICP-MS Divestiture Agreement.

II. [Micro GC Divestiture]

IT IS FURTHER ORDERED that:

- A. Within ten (10) days of the Acquisition Date, Respondent Agilent shall divest the Agilent Micro GC Business and assign the Micro GC Contracts, absolutely and in good faith, to Inficon, pursuant to, and in accordance with, the Agilent-Inficon Micro GC Divestiture Agreements. The Agilent-Inficon Micro GC Divestiture Agreement (which shall include, among other things, the divestiture agreement, the assignments, and licenses) between Respondent Agilent and Inficon shall not vary or contradict, or be construed to vary or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of Inficon, or to reduce any obligations of Respondent Agilent under such agreements, and such agreement, if approved by the Commission, shall be incorporated by reference into this Order and made a part hereof.

PROVIDED, HOWEVER, with respect to assets that are to be divested or agreements entered into pursuant to Paragraphs II.B., II.C., and II.D., at the Micro GC Acquirer’s option, Respondent Agilent need not divest such assets or enter into such agreements only if the Micro GC Acquirer chooses not to acquire such assets or enter into such agreements and the Commission approves the divestiture without such assets or agreements.

PROVIDED, FURTHER, HOWEVER, that if any of the Micro GC Customer Contracts, or the Micro GC Sales and Distribution Contracts, or the Micro GC Supply Contracts are not assignable or the contracting Person refuses to accept the Micro GC Acquirer, Respondent Agilent shall use reasonable best efforts to facilitate the Micro GC Acquirer’s acquisition of a similar contract with similar terms from the customer, distributor, seller, or Person, respectively. Any such contracts shall be subject to the restrictions set forth in Paragraph II.E. of this Order.

PROVIDED, FURTHER, HOWEVER, that if any of the Micro GC Service Contracts are not wholly assignable, Respondent Agilent shall enter into a transition services agreement to assign the rights to provide repair and maintenance services for the Agilent Micro GC Products to the Micro GC Acquirer.

- B. Respondent Agilent shall, at the Micro GC Acquirer's option, grant to the Micro GC Acquirer a fully paid-up, irrevocable, royalty-free license to the Shared Micro GC Intellectual Property in the Micro GC field of use.
- C. Respondent Agilent shall, at the Micro GC Acquirer's option, enter into a Manifold Supply Agreement absolutely and in good faith, to supply the Micro GC Acquirer with the manifold plates used in the production of the Agilent Micro GC Products. The Manifold Supply Agreement shall be subject to the prior approval of the Commission and become a part of the Micro GC Divestiture Agreement. The Manifold Supply Agreement shall include, among other things:
1. no minimum or maximum purchase requirements;
 2. an option for the Micro GC Acquirer to terminate the Manifold Supply Agreement with six (6) months notice;
 3. an option for the Micro GC Acquirer to make an initial purchase of a sufficient quantity of manifold plates to assure a supply for twelve (12) months; and
 4. priority for fulfilment of the Micro GC Acquirer's requirements for manifold plates before any of Respondent Agilent's internal requirements, or any other of Respondent Agilent's external commitments.
- D. Respondent Agilent shall, not later than the Micro GC Effective Date and at the Micro GC Acquirer's option, enter into one or more transition services agreements for the provision of services to be provided by Respondent Agilent to the Micro GC Acquirer. Such agreements shall be subject to the prior approval of the Commission and become a part of the Micro GC Divestiture Agreement.
1. Such agreements may include, among other things:
 - a. an agreement for sales training and support;
 - b. an agreement for technical assistance. Such technical assistance agreement may include, among other things, training in the assembly and service of Agilent Micro GC Products.
 - c. an agreement for information technology services, including but not limited to, data migration services; and
 - d. a supply of columns and other consumables used by the Agilent Micro GC Products.
 2. Respondent Agilent shall not terminate any transition services agreement before the end of the term approved by the Commission without:

- a. the written agreement of the Micro GC Acquirer and thirty (30) days prior notice to the Commission; or,
 - b. in the case of a proposed unilateral termination by Respondent Agilent due to an alleged breach of an agreement by the Micro GC Acquirer, sixty (60) days notice of such termination. *PROVIDED, HOWEVER*, such sixty (60) days notice shall be given only after the parties have:
 - (1) attempted to settle the dispute between themselves, and
 - (2) engaged in arbitration and received an arbitrator's decision, or
 - (3) received a final court decision after all appeals.
- E. Respondent Agilent shall, within three (3) days of the Micro GC Effective Date, (1) notify all parties to Micro GC Sales and Distribution Contracts that Agilent waives any and all rights to exclusivity that would limit sales to only products manufactured and sold by Agilent, thereby enabling sales of the Agilent Micro GC Products after their acquisition by the Micro GC Acquirer; and (2) refrain from selling Varian Micro GC Products to or through the other parties to said Micro GC Sales and Distribution Contracts for a period of one (1) year.
- F. If, at the time the Commission determines to make this Order final, the Commission notifies Respondent Agilent that Inficon is not an acceptable acquirer of the Agilent Micro GC Business or that the manner in which the divestiture was accomplished is not acceptable, then, after receipt of such written notification:
- 1. Respondent Agilent shall immediately notify Inficon of the notice received from the Commission and shall as soon as practicable effect the rescission of the Agilent-Inficon Divestiture Agreement; and
 - 2. Respondent Agilent shall, within one-hundred-twenty (120) days from the date this Order becomes final, divest the Agilent Micro GC Business and assign the Micro GC Contracts (including by sub-assignment if necessary) absolutely and in good faith, at no minimum price, to a Micro GC Acquirer that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission.
- G. Any Remedial Micro GC Agreement that has been approved by the Commission between Respondent Agilent (or a Divestiture Trustee) and a Commission-approved Acquirer of the Agilent Micro GC Business shall be deemed incorporated into this Order, and any failure by Respondent Agilent to comply with any term of such Remedial Micro GC Agreement related to the Agilent Micro GC Business shall constitute a failure to comply with this Order.

- H. The purposes of this Paragraph II of the Order are: (1) to ensure the continuation of the Agilent Micro GC Business as a going concern in the same manner in which it conducted business as of the date the Consent Agreement is signed, (2) to ensure that the Micro GC Acquirer has the intention and ability to produce Agilent Micro GC Products at facilities independent of Respondent Agilent, and (3) to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III. [Varian Triple Quad Divestiture]

IT IS FURTHER ORDERED that,

- A. Within ten (10) days of the Acquisition Date, Respondent Agilent shall divest the Varian Triple Quad Business and assign the Triple Quad Contracts absolutely and in good faith, to Bruker pursuant to, and in accordance with, the Agilent-Bruker Divestiture Agreement. The Triple Quad Divestiture Agreement (which shall include, among other things, the divestiture agreement, the assignments, and licenses) between Respondent Agilent and Bruker shall not vary or contradict, or be construed to vary or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of Bruker or to reduce any obligations of Respondent Agilent under such agreements, and such agreement, if approved by the Commission, shall be incorporated by reference into this Order and made a part hereof.

PROVIDED, HOWEVER, that for the divestiture of the Varian Triple Quad Business to Bruker pursuant to this Paragraph III.A., the Varian Triple Quad Business shall not include the excluded assets identified in Section 2.2 of the Agilent-Bruker Divestiture Agreement, attached as Confidential Exhibit L.

PROVIDED, FURTHER, HOWEVER, with respect to assets that are to be divested or agreements entered into pursuant to Paragraphs III.B., III.C., and III.D., at the Triple Quad Acquirer's option, Respondent Agilent need not divest such assets or enter into such agreements only if the Triple Quad Acquirer chooses not to acquire such assets or enter into such agreements and the Commission approves the divestiture without such assets or agreements.

PROVIDED, FURTHER, HOWEVER, that if any of the Triple Quad Customer Contracts, or Triple Quad Sales and Distribution Contracts, or the Triple Quad Supply Contracts are not assignable or the contracting Person refuses to accept the Triple Quad Acquirer, Respondent Agilent shall use reasonable best efforts to facilitate the Triple Quad Acquirer's acquisition of a similar contract with similar terms from the customer, distributor, seller, or Person, respectively. Any such contracts shall be subject to the restrictions set forth in Paragraph III.E of this Order.

PROVIDED, FURTHER, HOWEVER, that if any of the Triple Quad Service Contracts are not wholly assignable, Respondent Agilent shall assign the rights to provide repair and maintenance services for the Triple Quad Products to the Triple Quad Acquirer.

- B. Respondent Agilent shall, at the Triple Quad Acquirer's option, grant to the Triple Quad Acquirer a fully paid-up, irrevocable, royalty-free license to the Triple Quad Shared Intellectual Property in the Triple Quad field of use. The license shall include the right to modify the Varian Triple Quad to create a single-quadrupole mass spectrometer.
- C. Respondent Agilent shall, at the Triple Quad Acquirer's option, enter into a Triple Quad Laboratory GC Supply Agreement and a Triple Quad Vacuum Pump Supply Agreement, absolutely and in good faith, to supply the Triple Quad Acquirer with the laboratory gas chromatographs and vacuum pumps used in the production of the Varian Triple Quad Products. The Triple Quad Laboratory GC Supply Agreement and the Triple Quad Vacuum Pump Supply Agreement shall be subject to the prior approval of the Commission and become a part of the Triple Quad Divestiture Agreement.
 - 1. The Triple Quad Vacuum Supply Contract shall include, among other things:
 - a. no minimum or maximum purchase requirements;
 - b. an option for the Triple Quad Acquirer to terminate the Triple Quad Vacuum Supply Contract with sixty (60) days notice;
 - c. a provision that the Triple Quad Acquirer's requirements for vacuum pumps be given priority and met before fulfilling any of Respondent Agilent's internal requirements, or any other of Respondent Agilent's external commitments; and
 - d. six (6) months notice to the Triple Quad Acquirer of any anticipated changes to production capacity, output, or to changes in the performance or quality of the laboratory gas chromatographs.
 - 2. The Triple Quad Laboratory GC Supply Agreement shall include, among other things:
 - a. no minimum or maximum purchase requirements;
 - b. an option for the Triple Quad Acquirer to terminate the Triple Quad Laboratory GC Supply Contract with sixty (60) days notice;
 - c. a provision that the Triple Quad Acquirer's requirements for laboratory gas chromatographs be given priority and met before fulfilling any of Respondent Agilent's internal requirements, or any other of Respondent Agilent's external commitments; and

- d. six (6) months notice to the Triple Quad Acquirer of any anticipated changes to production capacity, output, or to changes in the performance or quality of the vacuum pump.
- 3. During the terms of the Triple Quad Laboratory GC Supply Agreement and the Triple Quad Vacuum Pump Supply Agreement, Respondent Agilent shall not terminate such contracts before the end of the term approved by the Commission without:
 - a. the written agreement of the Triple Quad Acquirer and thirty (30) days prior notice to the Commission; or,
 - b. in the case of a proposed unilateral termination by Respondent Agilent due to an alleged breach of an agreement by the Triple Quad Acquirer, sixty (60) days notice of such termination. *PROVIDED, HOWEVER*, such sixty (60) days notice shall be given only after the parties have:
 - (1) attempted to settle the dispute between themselves, and
 - (2) engaged in arbitration and received an arbitrator's decision, or
 - (3) received a final court decision after all appeals.
- D. Respondent Agilent shall, not later than the Triple Quad Effective Date and at the Triple Quad Acquirer's option, enter into one or more transition agreements for the provision of services and supplies to be provided by Respondent Agilent to the Triple Quad Acquirer. Such agreements shall be subject to the prior approval of the Commission and become a part of the Triple Quad Divestiture Agreement.
 - 1. Such agreements may include, among other things:
 - a. an agreement for technical assistance;
 - b. assistance in the transfer of the Varian Triple Quad Business;
 - c. training for employees of the Triple Quad Acquirer; and
 - d. a supply of columns and other consumables used by the Varian Triple Quad Products.
 - 2. Respondent Agilent shall not terminate any transition services agreement before the end of the term approved by the Commission without:
 - a. the written agreement of the Triple Quad Acquirer and thirty (30) days prior notice to the Commission; or,

- b. in the case of a proposed unilateral termination by Respondent Agilent due to an alleged breach of an agreement by the Triple Quad Acquirer, sixty (60) days notice of such termination. *PROVIDED, HOWEVER*, such sixty (60) days notice shall be given only after the parties have:

- (1) attempted to settle the dispute between themselves, and
- (2) engaged in arbitration and received an arbitrator's decision, or
- (3) received a final court decision after all appeals.

E. Respondent Agilent shall, within three (3) days of the Triple Quad Effective Date:

- 1. notify all parties to the Triple Quad Sales and Distribution Contracts that Agilent waives any and all rights to exclusivity that would limit sales to only products manufactured and sold by Agilent, thereby enabling sales of the Varian Triple Quad Products after the acquisition by the Triple Quad Acquirer, and
- 2. refrain from selling Agilent Triple Quad Products to or through the other parties to said Triple Quad Sales and Distribution Contracts for a period of one (1) year.

F. If, at the time the Commission determines to make this Order final, the Commission notifies Respondent Agilent that Bruker is not an acceptable acquirer of the Varian Triple Quad Business or that the manner in which the divestiture was accomplished is not acceptable, then, after receipt of such written notification:

- 1. Respondent Agilent shall immediately notify Bruker of the notice received from the Commission and shall as soon as practicable effect the rescission of the Agilent-Bruker Divestiture Agreement; and
- 2. Respondent Agilent shall, within one-hundred-twenty (120) days from the date this Order becomes final, divest the Varian Triple Quad Business and assign the Triple Quad Contracts (including by sub-assignment if necessary) absolutely and in good faith, at no minimum price, to a Triple Quad Acquirer that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission.

G. Any Remedial Triple Quad Agreement that has been approved by the Commission between Respondent Agilent (or a Divestiture Trustee) and a Commission-approved Acquirer of the Varian Triple Quad Business shall be deemed incorporated into this Order, and any failure by Respondent Agilent to comply with any term of such Remedial Triple Quad Agreement related to the Varian Triple Quad Business shall constitute a failure to comply with this Order.

H. The purposes of this Paragraph III of the Order are: (1) to ensure the continuation of the Varian Triple Quad Business as a going concern in the same manner in which it conducted

business as of the date the Consent Agreement is signed, (2) to ensure that the Triple Quad Acquirer has the intention and ability to produce the Varian Triple Quad Products at facilities independent of Respondent Agilent, and (3) and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

IV. [Varian ICP-MS Divestiture]

IT IS FURTHER ORDERED that:

- A. Within ten (10) days of the Acquisition Date, Respondent Agilent shall divest the Varian ICP-MS Business and assign the ICP-MS Contracts, absolutely and in good faith, to Bruker pursuant to, and in accordance with, the Agilent-Bruker Divestiture Agreement. The ICP-MS Divestiture Agreement (which shall include, among other things, the divestiture agreement, the assignments, and licenses) between Respondent Agilent and Bruker shall not vary or contradict, or be construed to vary or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of Bruker or to reduce any obligations of Respondent Agilent under such agreements, and such agreement, if approved by the Commission, shall be incorporated by reference into this Order and made a part hereof.

PROVIDED, HOWEVER, that for the divestiture of the Varian ICP-MS Business to Bruker pursuant to this Paragraph IV.A., the Varian ICP-MS Business shall not include the excluded assets identified in Section 2.2 of the Agilent-Bruker Divestiture Agreement, attached as Confidential Exhibit L.

PROVIDED, FURTHER, HOWEVER, with respect to assets that are to be divested or agreements entered into pursuant to Paragraphs IV.B. and IV.D at the ICP-MS Acquirer's option, Respondent Agilent need not divest such assets or enter into such agreements only if the ICP-MS Acquirer chooses not to acquire such assets or enter into such agreements and the Commission approves the divestiture without such assets or agreements.

PROVIDED, FURTHER, HOWEVER, that if any of the Varian ICP-MS Customer Contracts, or ICP-MS Sales and Distribution Contracts, or ICP-MS Supply Contracts are not assignable or the contracting Person refuses to accept the ICP-MS Acquirer, Respondent Agilent shall use reasonable best efforts to facilitate the ICP-MS Acquirer's acquisition of a similar contract with similar terms from the customer, distributor, seller, or similar Person supplying such service. Any such contract shall be subject to the restrictions set forth in Paragraph IV.E of this Order.

PROVIDED, FURTHER, HOWEVER, that if any of the Varian ICP-MS Service Contracts are not wholly assignable, Respondent Agilent shall assign the rights to

provide repair and maintenance services for the Varian ICP-MS Products to the ICP-MS Acquirer.

- B. Respondent Agilent shall, at the ICP-MS Acquirer's option, grant to the ICP-MS Acquirer a fully paid-up, irrevocable, royalty-free license to the ICP-MS Shared Intellectual Property in the ICP-MS field of use.
- C. Respondent Agilent shall enter into an ICP-MS Rotary Pump Supply Agreement and an ICP-MS Turbo Pump Supply Agreement with the ICP-MS Acquirer absolutely and in good faith. The ICP-MS Rotary Pump Supply Agreement and the ICP-MS Turbo Pump Supply Agreement shall become a part of the ICP-MS Divestiture Agreement.
 - 1. The ICP-MS Rotary Pump Supply Agreement and ICP-MS Turbo Pump Supply Agreement shall include, among other things:
 - a. no minimum or maximum purchase requirements;
 - b. an option for the ICP-MS Acquirer to terminate the ICP-MS Rotary Pump Supply Agreement and the ICP-MS Turbo Pump Supply Agreement with sixty (60) days notice; and
 - c. a provision that the ICP-MS Acquirer's requirements for rotary pumps and turbo pumps be given priority and met before fulfilling any of Respondent Agilent's internal requirements, or any other of Respondent Agilent's external commitments.
 - 2. During the terms of the ICP-MS Rotary Pump Supply Agreement and the ICP-MS Turbo Pump Supply Agreement:
 - a. Respondent Agilent shall not terminate the ICP-MS Rotary Pump Supply Agreement or the ICP-MS Turbo Pump Supply Agreement before the end of the terms approved by the Commission without:
 - (1) the written agreement of the ICP-MS Acquirer and thirty (30) days prior notice to the Commission; or,
 - (2) in the case of a proposed unilateral termination by Respondent Agilent due to an alleged breach of an agreement by the ICP-MS Acquirer, sixty (60) days notice of such termination. *PROVIDED, HOWEVER*, such sixty (60) days notice shall be given only after the parties have:
 - (a) attempted to settle the dispute between themselves, and
 - (b) engaged in arbitration and received an arbitrator's decision, or
 - (c) received a final court decision after all appeals.

- D. Respondent Agilent shall, not later than the ICP-MS Effective Date and at the ICP-MS Acquirer's option, enter into one or more transition services agreements for the provision of services to be provided by Respondent Agilent to the ICP-MS Acquirer. Such agreements shall be subject to the prior approval of the Commission and become a part of the ICP-MS Divestiture Agreement.
1. Such agreements may include, but are not limited to an agreement for technical assistance. Such transition services agreements shall include, among other things, assistance in the transfer of the Varian ICP-MS Business and providing training for employees of the ICP-MS Acquirer.
 2. Respondent Agilent shall not terminate any transition services agreement before the end of the term approved by the Commission without:
 - a. the written agreement of the ICP-MS Acquirer and thirty (30) days prior notice to the Commission; or,
 - b. in the case of a proposed unilateral termination by Respondent Agilent due to an alleged breach of an agreement by the ICP-MS Acquirer, sixty (60) days notice of such termination. *PROVIDED, HOWEVER*, such sixty (60) days notice shall be given only after the parties have:
 - (1) attempted to settle the dispute between themselves, and
 - (2) engaged in arbitration and received an arbitrator's decision, or
 - (3) received a final court decision after all appeals.
- E. Respondent Agilent shall, within three (3) days of the ICP-MS Effective Date (1) notify all parties to the ICP-MS Sales and Distribution Contracts that Agilent waives any and all rights to exclusivity that would limit sales to only products manufactured and sold by Agilent, thereby enabling sales of the Varian ICP-MS Products after their acquisition by the ICP-MS Acquirer and (2) refrain from selling Agilent ICP-MS Products to or through the other parties to said ICP-MS Sales and Distribution Contracts for a period of one (1) year.
- F. If, at the time the Commission determines to make this Order final, the Commission notifies Respondent Agilent that Bruker is not an acceptable acquirer of the Varian ICP-MS Business or that the manner in which the divestiture was accomplished is not acceptable, then, after receipt of such written notification:
1. Respondent Agilent shall immediately notify Bruker of the notice received from the Commission and shall as soon as practicable effect the rescission of the Agilent-Bruker Divestiture Agreement; and

2. Respondent Agilent shall, within one-hundred-twenty (120) days from the date this Order becomes final, divest the Varian ICP-MS Business, assign the ICP-MS Customer Contracts and the ICP-MS Sales and Distribution Contracts (including by sub-assignment if necessary) absolutely and in good faith, at no minimum price, to an ICP-MS Acquirer that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission.
- G. Any Remedial ICP-MS Agreement that has been approved by the Commission between Respondent Agilent (or a Divestiture Trustee) and a Commission-approved Acquirer of the Varian ICP-MS Business shall be deemed incorporated into this Order, and any failure by Respondent Agilent to comply with any term of such Remedial ICP-MS Agreement related to the Varian ICP-MS Business shall constitute a failure to comply with this Order.
- H. The purposes of this Paragraph IV of the Order are: (1) to ensure the continuation of the Varian ICP-MS Business as a going concern in the same manner in which it conducted business as of the date the Consent Agreement is signed, (2) to ensure that the ICP-MS Acquirer has the intention and ability to produce the Varian ICP-MS Products at facilities independent of Respondent Agilent, and (3) and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

V.

IT IS FURTHER ORDERED that:

- A. Except in the course of performing its obligations under the Micro GC Divestiture Agreement, the Triple Quad Divestiture Agreement, the ICP-MS Divestiture Agreement, or as expressly allowed pursuant to this Order:
1. Respondent Agilent shall not provide, disclose or otherwise make available any Confidential Business Information Relating To the Agilent Micro GC Business, the Varian Triple Quad Business, or the Varian ICP-MS Business to any Person; and
 2. Respondent Agilent shall not use any Confidential Business Information Relating To the Agilent Micro GC Business, the Varian Triple Quad Business, or the Varian ICP-MS Business for any reason or purpose. Among other things, Respondent Agilent shall not use such Confidential Business Information:
 - a. to assist or inform Respondent Agilent employees who Develop, manufacture, solicit for sale, sell, or service Respondent Agilent products that compete with the products divested pursuant to this Order. For example, Respondent Agilent employees who had positions Related To the sale of Agilent Micro GC Products shall not be allowed to use any Confidential Business Information they may have about customers or the Agilent Micro GC Products to assist Respondent Agilent in

the sale of the Varian Micro GC products Respondent Agilent is acquiring in the Acquisition;

- b. to interfere with any suppliers, distributors, resellers, or customers of the Persons who acquired the divested businesses;
- c. to interfere with any contracts divested or assigned pursuant to this Order; or
- d. to interfere in any other way with the Persons who acquired the divested businesses pursuant to this Order or with the businesses divested pursuant to this Order.

B. The requirements of this Paragraph V do not apply to Confidential Business Information that Respondent Agilent demonstrates:

- 1. was or becomes generally available to the public other than as a result of a disclosure by Respondent Agilent, or
- 2. was available, or becomes available, to Respondent Agilent on a non-confidential basis, but only if, to the knowledge of Respondent Agilent, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information.

VI.

IT IS FURTHER ORDERED that:

- A. Mr. Mark Byers of Grant Thornton, United Kingdom (with the direct assistance of Ms. Marti Kopacz of Grant Thornton, United States and Mr. Greg Keith, Grant Thornton, Australia) shall serve as the Monitor pursuant to the agreement executed by the Monitor and Respondent Agilent and attached as Exhibit K (“Monitor Agreement”) and Confidential Exhibit K-1 (Monitor compensation). The Monitor is appointed to assure that Respondent Agilent expeditiously complies with all of its obligations and performs all of its responsibilities as required by this Order.
- B. The Monitor Agreement shall require that, no later than one (1) day after the Acquisition Date, Respondent Agilent transfers to the Monitor all rights, powers, and authorities necessary to permit the Monitor to perform his duties and responsibilities, pursuant to this Order and the Asset Maintenance Order, and consistent with the purposes of the Decision and Order.
- C. No later than one (1) day after the Acquisition Date, Respondent Agilent shall, pursuant to the Monitor Agreement, transfer to the Monitor all rights, powers, and authorities necessary to permit the Monitor to perform his duties and responsibilities, pursuant to and consistent with, the purposes of the Decision and Order.

D. Respondent Agilent 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 Agilent's compliance with the terms 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 including, but not limited to:
 - a. Assuring that Respondent Agilent expeditiously complies with all of its obligations and performs all of its responsibilities as required by this Order; and
 - b. Monitoring any agreements between Respondent Agilent and the Micro GC Acquirer, the Triple Quad Acquirer, or the ICP-MS Acquirer.
2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.
3. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondent Agilent's personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, Related To Respondent Agilent's compliance with its obligations under the Order. Respondent Agilent 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 Agilent's compliance with the Order.
4. The Monitor shall serve, without bond or other security, at the expense of Respondent Agilent on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Respondent Agilent, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission.
5. Respondent Agilent 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, malfeasance, willful or wanton acts, or bad faith by the Monitor.
6. The Monitor Agreement shall provide that within one (1) month from the date the Monitor is appointed pursuant to this paragraph, and every sixty (60) days thereafter, the

Monitor shall report in writing to the Commission concerning performance by Respondent Agilent of its obligations under the Order.

7. Respondent Agilent may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; PROVIDED, HOWEVER, such agreement shall not restrict the Monitor from providing any information to the Commission.
- E. 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 relating to Commission materials and information received in connection with the performance of the Monitor's duties.
 - F. 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 Agilent, which consent shall not be unreasonably withheld. If Respondent Agilent has not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after notice by the staff of the Commission to Respondent Agilent of the identity of any proposed Monitor, Respondent Agilent shall be deemed to have consented to the selection of the proposed Monitor.
 2. Not later than ten (10) days after appointment of the substitute Monitor, Respondent Agilent shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondent Agilent's compliance with the relevant terms of the Order in a manner consistent with the purposes of the Order.
 - G. 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.
 - H. A Monitor appointed pursuant to this Order may be the same person appointed as the Divestiture Trustee pursuant to the relevant provisions of this Order.

VII.

IT IS FURTHER ORDERED that:

- A. If Respondent Agilent has not fully complied with the obligations as required by Paragraphs II, III, and IV of this Order, the Commission may appoint a Divestiture Trustee to divest the Agilent Micro GC Business, the Varian Triple Quad Business, and the Varian ICP-MS Business (if not divested), and enter into other agreements, assignments, and licenses, 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 Agilent shall consent to the appointment of a Divestiture Trustee in such action to effectuate the divestitures and other obligations as described in Paragraphs II, III, and IV. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph VII 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 Agilent to comply with this Order.

- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent Agilent, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent Agilent 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 Agilent of the identity of any proposed Divestiture Trustee, Respondent Agilent 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 Agilent 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 divestitures required by this Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph VII, Respondent Agilent 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, the Divestiture Trustee shall have the exclusive power and authority to divest the Agilent Micro GC Business, divest the Varian Triple Quad Business, and/or divest the Varian ICP-MS Business, and enter into all agreements, licenses and assignments as described in Paragraphs II, III, and IV of this Order.

2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to divest the Agilent Micro GC Business, divest the Varian Triple Quad Business, and/or divest the Varian ICP-MS Business, and enter into all agreements, licenses and assignments as described in Paragraphs II, III, and IV of this Order, absolutely and in good faith, at no minimum price, to one or more acquirers that receives the prior approval of the Commission and in a manner that receives 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 believes that the divestiture can be achieved within a reasonable time, the divestiture period or periods may be extended by the Commission; PROVIDED, HOWEVER, 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 divested by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondent Agilent shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent Agilent shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent Agilent shall extend the time for divestiture under this Paragraph VII in an amount equal to the delay, as determined by the Commission.
4. The Divestiture Trustee shall use best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent Agilent'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, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity for assets and businesses to be divested pursuant to Paragraph II, Paragraph III, and Paragraph IV, respectively, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondent Agilent from among those approved by the Commission;

PROVIDED FURTHER, HOWEVER, that Respondent Agilent shall select such entity 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 Agilent, 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 Agilent, 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 the Respondent Agilent, 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 Agilent 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.
 8. The Divestiture Trustee shall act in a fiduciary capacity for the benefit of the Commission.
 9. The Divestiture Trustee shall report in writing to Respondent Agilent and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
 10. Respondent Agilent 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.
 11. 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 relating 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 VI.
- 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 obligations under Paragraphs II, III, and IV of this Order.

- G. The Divestiture Trustee(s) appointed pursuant to Paragraph VI of this Order may be the same Person appointed as the Monitor pursuant to Paragraph V of this Order.

VIII.

IT IS FURTHER ORDERED that:

- A. Beginning no later than the Acquisition Date until ninety (90) days after each of the Micro GC Effective Date, the Triple Quad Effective Date, and the ICP-MS Effective Date, Respondent Agilent shall, in a manner consistent with local labor laws:
1. facilitate employment interviews between each Designated Micro GC Employee and the Micro GC Acquirer, between each Designated Triple Quad Employee and the Triple Quad Acquirer, and between each Designated ICP-MS Employee and the ICP-MS Acquirer, including providing the names and contact information for such employees and allowing such employees reasonable opportunity to interview with the Micro GC Acquirer, the Triple Quad Acquirer, or the ICP-MS Acquirer, respectively, and shall not discourage such employee from participating in such interviews;
 2. not interfere in employment negotiations between each Designated Micro-GC Employee and the Micro-GC Acquirer, or between each Designated Triple Quad Employee and the Triple Quad Acquirer; or between each Designated ICP-MS Employee and the ICP-MS Acquirer;
 3. with respect to each Designated Micro GC Employee, Designated Triple Quad Employee, or Designated ICP-MS Employee who receives an offer of employment from the Micro GC Acquirer, the Triple Quad Acquirer or the ICP-MS Acquirer, respectively:
 - a. not prevent, prohibit, or restrict, or threaten to prevent, prohibit, or restrict:
 - (1) the Designated Micro GC Employee from being employed by the Micro GC Acquirer, and shall not offer any incentive to the Designated Micro GC Employee to decline employment with the Micro GC Acquirer; or
 - (2) the Designated Triple Quad Employee from being employed by the Triple Quad Acquirer, and shall not offer any incentive to the Designated Triple Quad Employee to decline employment with the Triple Quad Acquirer, or

- (3) the Designated ICP-MS Employee from being employed by the ICP-MS Acquirer, and shall not offer any incentive to the Designated ICP-MS Employee to decline employment with the ICP-MS Acquirer.
- b. cooperate with:
- (1) the Micro GC Acquirer in effecting transfer of the Designated Micro GC Employee to the employ of the Micro GC Acquirer, if the Designated Micro GC Employee accepts an offer of employment from the Micro GC Acquirer;
 - (2) the Triple Quad Acquirer in effecting transfer of the Designated Triple Quad Employee to the employ of the Triple Quad Acquirer, if the Designated Triple Quad Employee accepts an offer of employment from the Triple Quad Acquirer; and
 - (3) the ICP-MS Acquirer in effecting transfer of the Designated ICP-MS Employee to the employ of the ICP-MS Acquirer, if the Designated ICP-MS Employee accepts an offer of employment from the ICP-MS Acquirer.
- c. eliminate any contractual provisions or other restrictions entered into or imposed by Respondent Agilent that would otherwise prevent the Designated Micro GC Employee, Designated Triple Quad Employee, or Designated ICP-MS Employee from being employed by the Micro GC Acquirer, Triple Quad Acquirer, or ICP-MS Acquirer, respectively;
- d. eliminate any confidentiality restrictions that would prevent:
- (1) the Designated Micro GC Employee who accepts employment with the Micro GC Acquirer from using or transferring to the Micro GC Acquirer any information Relating To the operation of the Agilent Micro GC Business;
 - (2) the Designated Triple Quad Employee who accepts employment with the Triple Quad Acquirer from using or transferring to the Triple Quad Acquirer any information Relating To the operation of the Varian Triple Quad Business; and
 - (3) the Designated ICP-MS Employee who accepts employment with the ICP-MS Acquirer from using or transferring to the ICP-MS Acquirer any information Relating To the operation of the Varian ICP-MS Business.
- e. unless alternative arrangements are agreed upon with the Micro GC Acquirer, the Triple Quad Acquirer, or the ICP-MS Acquirer, retain the obligation for the benefit of:

- (1) any Designated Micro GC Employee who accepts employment with the Micro GC Acquirer, all accrued bonuses, vested pensions, and other accrued benefits;
 - (2) any Designated Triple Quad Employee who accepts employment with the Triple Quad Acquirer, all accrued bonuses, vested pensions, and other accrued benefits; and
 - (3) any Designated ICP-MS Employee who accepts employment with the ICP-MS Acquirer, all accrued bonuses, vested pensions, and other accrued benefits.
- B. Respondent Agilent shall not, for a period of two (2) years following the Micro GC Effective Date, Triple Quad Effective Date, and ICP-MS Effective Date, respectively, directly or indirectly, solicit, induce, or attempt to solicit or induce:
1. any Designated Micro GC Employee who is employed by the Micro GC Acquirer or any Micro GC Acquirer Employee to terminate his or her employment relationship with the Micro GC Acquirer, unless that employment relationship has already been terminated by the Micro GC Acquirer; *PROVIDED, HOWEVER*, Respondent Agilent may place general advertisements for employees including, but not limited to, in newspapers, trade publications, websites, or other media not targeted specifically at the Micro GC Acquirer's employees; *PROVIDED FURTHER, HOWEVER*, Respondent Agilent may hire Designated Micro GC Employees who apply for employment with Respondent Agilent as long as such employees were not solicited by Respondent Agilent in violation of this Paragraph.
 2. any Designated Triple Quad Employee who is employed by the Triple Quad Acquirer or any Triple Quad Acquirer Employee to terminate his or her employment relationship with the Triple Quad Acquirer, unless that employment relationship has already been terminated by the Triple Quad Acquirer; *PROVIDED, HOWEVER*, Respondent Agilent may make general advertisements for employees including, but not limited to, in newspapers, trade publications, websites, or other media not targeted specifically at the Triple Quad Acquirer's employees; *PROVIDED, FURTHER, HOWEVER*, Respondent Agilent may hire Designated Triple Quad Employees who apply for employment with Respondent Agilent as long as such employees were not solicited by Respondent Agilent in violation of this Paragraph.
 3. any Designated ICP-MS Employee who is employed by the ICP-MS Acquirer or any ICP-MS Acquirer Employee to terminate his or her employment relationship with the ICP-MS Acquirer, unless that employment relationship has already been terminated by the ICP-MS Acquirer; *PROVIDED, HOWEVER*, Respondent Agilent may make general advertisements for employees including, but not limited to, in newspapers, trade publications, websites, or other media not targeted specifically at the ICP-MS Acquirer's employees; *PROVIDED FURTHER, HOWEVER*, Respondent Agilent may hire Designated ICP-MS Employees who apply for employment with Respondent

Agilent as long as such employees were not solicited by Respondent Agilent in violation of this Paragraph.

IX.

IT IS FURTHER ORDERED that for a period of ten (10) years from the date this Order becomes final:

- A. Respondent Agilent shall not, without the prior approval of the Commission, acquire, directly or indirectly, any assets divested pursuant to this Order; and
- B. Respondent Agilent shall not, without providing advance written notification to the Commission in the manner described in this Paragraph IX.B., directly or indirectly, acquire:
 - 1. any stock, share capital, equity, or other interest in any Person, corporate or non-corporate, that produces, designs, manufactures, or sells Micro GC instruments, Triple Quad instruments, or ICP-MS instrument in or into the United States; or
 - 2. any assets used at the time of the acquisition, or during the six (6) month period prior to the acquisition, in the design, manufacture, production, or sale of Micro GC instruments, Triple Quad instruments, or ICP-MS instruments 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 Agilent and not of any other party to the transaction. Respondent Agilent shall provide the Notification to the Commission at least thirty 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 Agilent shall not consummate the transaction until thirty 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 IX.B. for any acquisition after which Respondent Agilent would not hold more

than one percent of the outstanding securities or other equity interest in any Person described in this Paragraph IX.B.

X.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after the date this Order becomes final, and every sixty (60) days thereafter until Respondent Agilent has fully complied with Paragraphs II, III, IV, and VIII.A. of this Order, Respondent Agilent 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 Agilent shall submit at the same time a copy of its report concerning compliance with this Order to the Monitor or Divestiture Trustee, if any Divestiture Trustee has been appointed pursuant to this Order. Respondent Agilent shall include in its report, 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 description of all substantive contacts or negotiations related to the divestiture of the relevant assets and the identity of all parties contacted. Respondent Agilent shall include in its report copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning completing the obligations.
- B. Beginning twelve (12) months after the date this Order becomes final, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondent Agilent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it has complied, is complying, and will comply with this Order. Respondent Agilent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with the Order and copies of all written communications to and from all persons Relating To this Order. Additionally, Respondent Agilent shall include in its compliance report whether or not it (i) made any notifiable acquisitions pursuant to Paragraph IX. Respondent Agilent shall include a description of such acquisitions including, but not limited to, the identity of the Person or assets acquired, the location of the Person or assets, and a detailed description of the assets or Person and its Micro GC, Triple Quad, or ICP-MS sales or manufacturing.

XI.

- A. Until the Effective Date of a Divested Business, Respondent Agilent shall take such actions as are necessary to maintain the full economic viability, marketability and competitiveness of the Divested Business to minimize any risk of loss of competitive potential for the Divested Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Divested Business, except for ordinary wear and tear. Respondent

Agilent shall not sell, transfer, encumber or otherwise impair the Divested Business (other than in the manner prescribed in this Order) nor take any action that lessens the full economic viability, marketability or competitiveness of the Divested Business.

- B. Respondent Agilent shall retain all of Respondent Agilent's rights, title, and interest in a Divested Business until the Effective Date of such Divested Business.
- C. Until the Effective Date of a Divested Business, Respondent Agilent shall maintain the operations of the Divested Business in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance of the assets, as necessary) and/or as may be necessary to preserve the marketability, viability, and competitiveness of the Divested Business and shall use its best efforts to preserve the existing relationships with the following: suppliers, vendors, distributors, customers, governmental agencies, employees, and others having business relations with the Divested Business.
- D. Until the Effective Date of a Divested Business, Respondent Agilent shall maintain a work force at the equivalent or larger size, and with equivalent or better training and expertise, to what has been associated with the Divested Business as of its Effective Date.
- E. Until the Effective Date of a Divested Business, Respondent Agilent shall provide the Designated Employees of the Divested Business with reasonable financial incentives to continue in their positions and to Develop, and manufacture the Divested Products consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of the Divested Products pending divestiture. Such incentives shall include a continuation of all employee benefits offered by Respondent Agilent until the Effective Date has occurred, including regularly scheduled raises, bonuses, vesting of pension benefits (as permitted by law), and additional incentives as may be necessary to prevent any diminution of the competitiveness of the Divested Business.
- F. The purpose of this Paragraph XI is to maintain the full economic viability, marketability and competitiveness of each Divested Businesses until its Effective Date, to minimize any risk of loss of competitive potential for each Divested Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of each Divested Business, except for ordinary wear and tear.

XII.

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

- A. dissolution of the Respondent Agilent;
- B. acquisition of, merger with, or consolidation by Respondent Agilent; or

- C. other change in the Respondent Agilent, 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.

XIII.

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 Respondent Agilent, Respondent Agilent shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

- A. access, during business office hours of Respondent Agilent 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 Respondent Agilent related to compliance with this Order, which copying services shall be provided by Respondent Agilent at its expense; and
- B. to interview officers, directors, or employees of Respondent Agilent, who may have counsel present, regarding such matters.

XIV.

IT IS FURTHER ORDERED that this Order shall terminate ten (10) years after the date on which this Order becomes final.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED:

**CONFIDENTIAL EXHIBITS A THROUGH M
[REDACTED FROM THE PUBLIC RECORD
VERSION, BUT INCORPORATED BY
REFERENCE]**