

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
Pamela Jones Harbour
William E. Kovacic
J. Thomas Rosch

In the Matter of)	
)	
)	
DANAHER CORPORATION,)	Docket No. C-
a corporation;)	
)	
and)	
)	
MDS INC.,)	
a corporation.)	
)	

DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Danaher Corporation (“Danaher”) of certain assets and voting securities of Respondent MDS Inc. (“MDS”), and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge Respondents 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

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents 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 Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order

to Maintain Assets, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure des

accomplish the requirements of this Order in connection with the Commission's determination to make this Order final; or

2. an Entity approved by the Commission to acquire particular assets or rights that Respondents are required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order.
- F. "Acquisition" means the acquisition contemplated by the Stock and Asset Purchase Agreement by and among MDS Inc., MDS Life Sciences (Singapore) Pte. Ltd., the Other Asset Sellers, MDS (US) Inc., the Other Stock Sellers, and Laboratories MDS Quebec Ltée, and DH Technologies Development Pte Ltd., and Danaher Corporation, dated as of September 2, 2009 ("Stock and Asset Purchase Agreement").
- G. "Agency(ies)" means any government regulatory authority or authorities in the world responsible for granting approval(s), clearance(s), qualification(s), license(s), or permit(s) for any aspect of the Research and Development, manufacture, marketing, distribution, or sale of Laser Microdissection Products.
- H. "Arcturus Life Sciences Business" means Respondent MDS's business of Research and Development, marketing, promotion, and sale of Laser Microdissection Products acquired from Arcturus Bioscience, Inc. pursuant to the Asset Purchase Agreement by and between Arcturus Bioscience, Inc. and Molecular Devices Corporation dated as of April 3, 2006, as that business has been Researched and Developed and/or improved by Respondent MDS. The term "Arcturus Life Sciences Business" shall include all improvements to Laser Microdissection Products and any product directly related to the foregoing that is in Research and Development prior to or as of the Closing Date.
- I. "Arcturus Life Sciences Business Assets" means all of Respondent MDS's rights, title and interest in and to all assets throughout the World used in, and/or developed for use in, the Arcturus Life Sciences Business to the extent legally transferable, including, without limitation, the Research and Development, manufacture, distribution, marketing, and sale of Laser Microdissection Products, including, without limitation:
1. all Product Intellectual Property;
 2. all Freedom to Operate Searches;
 3. all Product Approvals;
 4. all Manufacturing Technology;
 5. all Marketing Materials;

6. all Website(s) including, without limitation, those Domain Names and accounts listed in Appendix B to this Order entitled “Arcturus Life Sciences Business Trademarks, Trade Names, Product Names, Domain Names, Accounts;”
7. all Research and Development Records;
8. at the Acquirer’s option, all Product Assumed Contracts (copies to be provided to the Acquirer on or before the Closing Date);
9. a list of all customers and targeted customers for the Arcturus Life Sciences Business and the net sales (in units and dollars) of the Laser Microdissection Products, and other products (including reagents) to such customers on either an annual, quarterly, or monthly basis;
10. at the Acquirer’s option and to the extent approved by the Commission in the relevant Remedial Agreement, all inventory in existence as of the Closing Date, including, but not limited to, raw materials, supplies, operating materials, packaging materials, work-in-process, finished goods and merchandise, and other items of inventory used in, or produced or acquired for use in, the Arcturus Life Sciences Business;

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Respondents provide the Acquirer with the above-described information without requiring Respondents completely to divest themselves of information that, in content, also relates to Retained Product(s).

- J. “Arcturus Life Sciences Business Divestiture Agreement(s)” means the Asset Purchase Agreement by and between Danaher Corporation and Life Technologies Corporation dated as of January 12, 2010, and all amendments, exhibits, attachments, agreements, and schedules thereto.
- K. “Arcturus Life Sciences Business Releasee(s)” means the Acquirer or any Entity controlled by or under common control with such Acquirer, or any licensees, sublicensees, manufacturers, suppliers, distributors, and customers of such Acquirer, or of such Acquirer-affiliated Entities.
- L. “Arcturus Life Sciences Business Licenses” means all of the following related to Laser Microdissection Products:
 - 1. a perpetual, non-exclusive, fully paid-up and royalty-free license(s) with rights to sublicense to all Product Licensed Intellectual Property and all Manufacturing Technology rela

N. "Confidential Business Information" means all information owned by, or in the possession or control of, Respondents that is not in the public domain and that is directly related to the Arcturus Life Sciences Business;

provided however, that the restrictions contained in this Order regarding the use, conveyance, provision, or disclosure of "Confidential Business Information" shall not apply to the following:

1. information that subsequently falls within the public domain through no violation of this Order or breach of confidentiality or non-disclosure agreement with respect to such information by Respondents;
2. information related to the Arcturus Life Sciences Business that Respondent Danaher can demonstrate it obtained without the assistance of Respondent MDS prior to the Acquisition;
3. information that is required by Law to be disclosed;
4. information that does not directly relate to the Arcturus Life Sciences Business; or
5. information relating to Respondent MDS's general business strategies or practices relating to Research and Development, manufacture, marketing or sales of products that do not discuss with particularity the Laser Microdissection Products.

The term "Confidential Business Information" does not include information that is protected by the attorney work product, attorney-client, joint defense or other privilege prepared in connection with the Acquisition and relating to any Use (Case) filed in the U.S. District Court for the District of Columbia with the

- e. the most recent bonus paid, aggregate annual compensation for Respondents' last fiscal year and current target or guaranteed bonus, if any;
 - f. employment status (*i.e.*, active or on leave or disability; full-time or part-time); and
 - g. any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and
3. at the Acquirer's option or the Proposed Acquirer's option (as applicable), copies of all employee benefit plans and summary plan descriptions (if any) applicable to the relevant employees.
- V. "Entity(ies)" means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, joint venture, or other business or Government Entity, and any subsidiaries, divisions, groups or affiliates thereof.
- W. "Freedom to Operate Searches" means all studies, analyses, reports and legal opinions that were prepared for the purposes of identifying, evaluating or analyzing potential patent barriers to the commercialization of the Laser Microdissection Products and technologies directly related to Laser Microdissection Products.
- X. "General Manufacturing Know-How" means all know-how used to manufacture a Laser Microdissection Product that is not specialized or proprietary to such products.
- Y. "Government Entity" means any Federal, state, local or non-U.S. government, or any court, legislature, government agency, or government commission, or any judicial or regulatory authority of any government.
- Z. "Interim Monitor" means any monitor appointed pursuant to Paragraph IV of this Order or Paragraph III of the related Order to Maintain Assets.
- AA. "Laser Microdissection Product(s)" means the following products of Respondent MDS:
- 1. all laser capture microdissection ("LCM") instruments and Software used in or Developed or in Research and Development for use in LCM instruments;
 - 2. all reagents, disposable products and accessories used in connection with the LCM instruments, including reagents for nucleic acid isolation, amplification, detection and expression analysis, and micro-products for low volume capture, extraction and purification of biological molecules;
 - 3. all standalone products comprising any of the foregoing; and

4. all previous and future versions, translations, modifications, enhancements, improvements, upgrades, accessories, follow-ons or outgrowths from or to any of the foregoing products that are currently in Research and Development.

The term “Laser Microdissection Products” shall include, without limitation, the following products: Veritas™ XT Microdissection System; Veritas™ Microdissection Systems; PixCell®; I le LCM System; CapSure® LCM Caps; Paradise® Reagent System; Paradise® Whole Transcript RT Reagent System; RiboAmp® RNA Amplification Kit; RiboAmp® OA RNA Amplification Kit, RiboAmp® OA 1 Round RNA Amplification Kit, RiboAmp® HS RNA Amplification Kit; PicoPure® RNA Isolation Kit, PicoPure® DNA Extraction Kit; HistoGene® LCM Immunofluorescence Staining Kit; HistoGene® LCM Frozen Section Staining Kit; CapSure® HS LCM Caps; CapSure® Micro LCM Caps; ExtracSure™ Sample Extraction Products, Miracol™ Purification Columns; PrepStrip™ Tissue Preparation Strips and AutoPix® Microdissection System; and all improvements, variations or line extensions of the above-listed products that were Developed, marketed or sold on or before the Closing Date.

- BB. “Laser Microdissection Product Core Employees” means the Marketing and Business Development Employees, Manufacturing Employees, Research and Development Employees, and the Sales Employees.
- CC. “Laser Microdissection Production Assets” means all assets used in the manufacture of Laser Microdissection Products including, without limitation, all of the following: Manufacturing Equipment; other equipment; machinery; tools; spare parts; personal property; furniture; fixtures; supplies associated with each particular facility; and other tangible property, owned, leased, or operated by or on behalf of MDS, *except* for non-specialized refrigerators, tools, and work benches used in the manufacture of any Retained Product.
- DD. “Law” means all laws, statutes, rules, regulations, ordinances, and other pronouncements by any Government Entity having the effect of law.
- EE. “Life Technologies” means: Life Technologies Corporation a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its headquarters address at 5791 Van Allen Way, Carlsbad, California 92008.
- FF. “Manufacturing Employees” means all salaried employees of Respondent MDS who have directly participated in the planning, design, implementation or operational management of the Manufacturing Technology of the Laser Microdissection Products (irrespective of the portion of working time involved unless such participation consisted solely of oversight of legal, accounting, tax or financial compliance) within the three (3) year period immediately prior to the Closing Date. The term “Manufacturing Employees” shall include all individuals listed in Non-Public Appendix C

- GG. “Manufacturing Equipment” means all fixtures, equipment (including, without limitation technical equipment and computers), and machinery that is or has been used at any time since April 3, 2006, in the Research and Development, or manufacture of a Laser Microdissection Product and that is suitable for use in the Research and Development, or manufacture of a Laser Microdissection Product as of the Effective Date.
- HH. “Manufacturing Technology” means all technology, trade secrets, know-how, and proprietary information (whether patented, patentable or otherwise) related to the manufacture of the Laser Microdissection Products, including, but not limited to, the following: all product specifications, processes, product designs, plans, trade secrets, ideas, concepts, manufacturing, engineering, and other manuals and drawings, standard operating procedures, flow diagrams, safety, quality assurance, quality control, research records, compositions, annual product reviews, regulatory communications, control history, current and historical information associated with compliance with Agency regulations, and labeling and all other information related to the manufacturing process, and supplier lists; tabulations, descriptions and specifications of, all raw materials inputs, and components related to the Laser Microdissection Products.

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- MM. “Ownership Interest” means any and all rights, title, and interest, present or contingent, of the Respondent(s) to hold any voting or nonvoting stock, share capital, equity, assets or other interests or beneficial ownership in a specified Entity or specified asset(s).
- NN. “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 Closing Date (*except* where this Order specifies a different time), 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 Respondents as of the Closing Date (*except* where this Order specifies a different time).
- OO. “Product Approval(s)” means any approvals, registrations, permits, licenses, consents, authorizations, and other approvals, and pending applications and requests thereof, required by applicable Agencies related to the Research and Development, manufacture, distribution, finishing, packaging, marketing, sale, storage or transport of Laser Microdissection Products.
- PP. “Product Assumed Contracts” means all of the following contracts or agreements (copies of each such contract to be provided to the Acquirer on or before the relevant Closing Date and segregated in a manner that clearly identifies the purpose(s) of each such contract):
1. that make specific reference to the Laser Microdissection Products and pursuant to which any Third Party purchases, or has the option to purchase, the Laser Microdissection Products from Respondent MDS;
 2. pursuant to which Respondent MDS purchases raw materials, inputs, components, software, or other necessary parts or had planned to purchase the raw material(s), inputs, components, software or other necessary parts from any Third Party for use in connection with the manufacture of the Laser Microdissection Products;
 3. relating to any experiments or scientific studies involving the Laser Microdissection Products;
 4. with universities or other research institutions for the use of the Laser Microdissection Products in scientific research;
 5. relating to the particularized marketing of the Laser Microdissection Products or educational matters relating solely to the Laser Microdissection Products;
 6. pursuant to which a Third Party manufactures or packages the Laser Microdissection Products on behalf of Respondent MDS;

7. pursuant to which a Third Party provides the Manufacturing Technology related to the Laser Microdissection Products to Respondent MDS;
8. pursuant to which a Third Party is licensed by Respondent MDS to use the Manufacturing Technology;
9. constituting confidentiality agreements involving the Laser Microdissection Products;
10. involving any royalty, licensing, or similar arrangement for the Laser Microdissection Products;
11. pursuant to which a Third Party provides any specialized services necessary for the Research and Development, manufacture or distribution of the Laser Microdissection Products to Respondent MDS including, but not limited to, consultation arrangements; and
12. pursuant to which any Third Party collaborates with Respondent MDS in the performance of Research and Development, marketing, distribution or selling of the Laser Microdissection Products or the Laser Microdissection Products business;

provided, however, that where any such contract or agreement also relates to a Retained Product(s), Respondent(s) shall assign the Acquirer all such rights under the contract or agreement as are related to the Laser Microdissection Products, but concurrently may retain similar rights for the purposes of the Retained Product(s).

QQ. “Product Intellectual Property” means all of the following related to the Laser Microdissection Products (other than Product Licensed Intellectual Property):

1. All Patents listed in Appendix A to this Order entitled “Arcturus Life Sciences Business Patents” and all reissues, additions, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof;
2. All Patents not listed in Appendix A that are drawn to Laser Microdissection Products the practice of which would infringe one or more claims of Patents owned or controlled by Respondent(s);
3. Assignment of all rights granted to Respondent(s) under Patents owned by Third Parties;
4. Copyrights;
5. Software;
6. Trademarks, including without limitation the

7. Trade Dress;
8. trade secrets, know-how, utility models, design rights, techniques, data, inventions, practices, recipes, raw material specifications, process descriptions, quality control methods in process and in final Laser Microdissection Products, protocols, methods and other confidential or proprietary technical, business, Research and Development and other information, and all rights in any jurisdiction to limit the use or disclosure thereof, other than Product Licensed Intellectual Property;
9. rights to obtain and file for patents, trademarks, and copyrights and registrations thereof; and
10. rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation or breach of any of the foregoing;

provided, however, “Product Intellectual Property” does not include the corporate names or corporate trade dress of “Danaher” or “MDS”, or the corporate names or corporate trade dress of any other corporations or companies owned or controlled by Respondents (other than “Arcturus”, “Arcturus Bioscience” or “Arcturus Engineering”) or the related logos thereof;

provided further, however, Product Intellectual Property shall include all customer specific product specifications for Laser Microdissection Products, licenses from customers related to the manufacture of Laser Microdissection Products for that specific customer, and all customer-specific proprietary and/or trade secret information related to Laser Microdissection Products;

provided further, however, that for any Product Intellectual Property that is the subject of a license from a Third Party to the Respondents, the scope of the rights granted hereunder shall only be required to be equal to the scope of the rights granted by the Third Party to the Respondents.

RR. “Product Intellectual Property” shall include all customer specific product specifications for Laser Microdissection Products, licenses from customers related to the manufacture of Laser Microdissection Products for that specific customer, and all customer-specific proprietary and/or trade secret information related to Laser Microdissection Products;

for a Retained Product(s) that has been marketed or sold on an extensive basis by

granted, licensed, divested, transferred, delivered, or otherwise conveyed, and that has been approved by the Commission to accomplish the requirements of this Order; and/or

4. any agreement between Respondents and a Third Party to effect the assignment of assets or rights of Respondents related to a Laser Microdissection Product to the benefit of an Acquirer that has been approved by the Commission to accomplish the requirements of this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto.

UU. "Research and Development" means all research and development activities, including, without limitation, the following: test method development; stability testing; toxicology; formulation, including without limitation, customized formulation for a particular customer(s); process development;

5. Agency-approved product labeling related to the Laser Microdissection Products;
 6. currently-used product usage instructions, including, without limitation, owner manuals related to the Laser Microdissection Products;
 7. Agency-approved circulars and information related to the Laser Microdissection Products;
 8. reports relating to the protection of human safety and health related to the manufacture or use of the Laser Microdissection Products;
 9. reports relating to the protection of the environment related to the manufacture or use of the Laser Microdissection Products;
 10. summary of product complaints from customers related to the Laser Microdissection Products; and
 11. product recall reports filed with any Agency related to the Laser Microdissection Products.
- XX. “Retained Product” means any product(s) that is not subject to divestiture pursuant to this Order.
- YY. “Sales Employees” means all employees of Respondent MDS who directly have participated (irrespective of the portion of working time involved) in the marketing or promotion of the Laser Microdissection Products directly to customers within the three (3) year period immediately prior to the Closing Date. The term “Sales Employees” shall include employees trained to perform such sales activity for a Laser Microdissection Product within the three (3) year period immediately prior to the Closing Date and all individuals listed in Non-Public Appendix C to this Order identified as Sales Employees.
- ZZ. “Software” means computer programs related to the Laser Microdissection Products, 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 the products, data

- BBB. “Supply Cost” means a cost not to exceed the manufacturer’s average direct per unit cost in United States dollars of manufacturing the Laser Microdissection Products, or raw material or ingredients related to a Laser Microdissection Product, for the twelve (12) month period immediately preceding the Effective Date. “Supply Cost” shall exclude any intracompany business transfer profit; *provided, however*, that in each instance where: (1) an agreement to Contract Manufacture is specifically referenced and attached to this Order, and (2) such agreement becomes a Remedial Agreement for a Laser Microdissection Product, “Supply Cost” means the cost as specified in such Remedial Agreement for that Laser Microdissection Product.
- CCC. “Third Party(ies)” means any Entity other than the Respondents or the Acquirer.
- DDD. “Trade Dress” means the current trade dress of the Laser Microdissection Products, including, without limitation, product packaging, and the lettering of the product trade name or brand name.
- EEE. “Trademark(s)” means all proprietary names or designations, trademarks (whether registered or unregistered), service marks (whether registered or unregistered), trade names, product 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 Arcturus Life Sciences Business that are owned by Respondent MDS and that were used in or are used in the Arcturus Life Sciences Business, or that prior to the Closing Date were being evaluated by Respondent MDS for use in the Arcturus Life Sciences Business.
- FFF. “Website” means the content of the Website(s) located at the Domain Names, the Domain Names, and all copyrights in such Website(s), to the extent owned by Respondents; *provided, however*, “Website” shall not include the following: (1) content owned by Third Parties and other intellectual property not owned by Respondents that are incorporated in such Website(s), such as stock photographs used in the Website(s), *except* to the extent that Respondents can convey their rights, if any, therein; or (2) content unrelated to the product(s).

II.

IT IS FURTHER ORDERED that:

- A. Not later than ten (10) days after the Order Date, Respondents shall divest the Arcturus Life Sciences Business Assets and grant the Arcturus Life Sciences Business Licenses, absolutely and in good faith, to Life Technologies pursuant to, and in accordance with, the Arcturus Life Sciences Business Divestiture Agreement(s) (which agreements shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that this Order shall not be construed to reduce any rights or benefits of Life Technologies or to reduce any obligations of Respondents under such agreements), and each

such agreement, if it becomes a Remedial Agreement related to the Arcturus Life Sciences Business Assets, respectively, is incorporated by reference into this Order and made a part hereof;

provided, however, that if Respondents have divested the Arcturus Life Sciences Business Assets and granted the Arcturus Life Sciences Business Licenses to Life Technologies prior to the Order Date, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that Life Technologies is not an acceptable purchaser of the Arcturus Life Sciences Business Assets then Respondents shall immediately rescind the transaction with Life Technologies, in whole or in part, as

Acquirer and the Interim Monitor (if any has been appointed) for the purposes of effecting such transfer;

2. prepare technology transfer protocols and transfer acceptance criteria for both the processes and analytical methods related to the Laser Microdissection Products, such protocols and acceptance criteria to be subject to the approval of the Acquirer;
3. prepare and implement a detailed technological transfer plan that contains, *inter alia*, the transfer of all relevant information, all appropriate documentation, all other materials, and projected time lines for the delivery of all Manufacturing Technology to the Acquirer; and
4. for a period of two (2) years from the Closing Date, upon reasonable written notice and request from the Acquirer to Respondents, provide in a timely manner, at no greater than Direct Cost, assistance and advice to enable the Acquirer (or the Designee of the Acquirer) to:
 - a. manufacture the Laser Microdissection Products in the same quality achieved by Respondent MDS;
 - b. obtain any Product Approvals necessary for the Acquirer to manufacture, sell, market or distribute the Laser Microdissection Products; and
 - c. receive, integrate, and use such Manufacturing Technology.

D. Respondents shall:

1. upon reasonable written notice and request from the Acquirer to Respondents, Respondents shall Contract Manufacture and deliver to the Acquirer, in a timely manner and under reasonable terms and conditions, a supply of each of the Contract Manufacture Products at Respondents' Supply Cost, for a period of time sufficient to allow the Acquirer (or the Designee of the Acquirer) to:
 - a. obtain all of the relevant Product Approvals necessary to manufacture the Contract Manufacture Products independently of Respondents; and
 - b. secure sources of supply of the ingredients, inputs and components for the Contract Manufacture Products from Entities other than Respondents;
2. make representations and warranties to the Acquirer that the Contract Manufacture Product(s) supplied through Contract Manufacture pursuant to a Remedial Agreement meet the specifications of the relevant customers;
3. for the Contra

claims, actions, demands, liabilities, expenses or losses alleged to result from the failure of the product(s) supplied to the Acquirer pursuant to a Remedial Agreement by Respondents to meet customer specifications. This obligation may be made contingent upon the Acquirer giving Respondents prompt, adequate notice of such claim and cooperating fully in the defense of such claim. The Remedial Agreement shall be consistent with the obligations assumed by Respondents under this Order; *provided, however*, that Respondents may reserve the right to control the defense of any such litigation, including the right to settle the litigation, so long as such settlement is consistent with Respondents' responsibilities to supply the Contract Manufacture Products in the manner required by this Order; *provided further*, that this obligation shall not require Respondents to be liable for any negligent act or omission of the Acquirer or for any representations and warranties, express or implied, made by the Acquirer that exceed the representations and warranties made by Respondents to the Acquirer;

4. for the Contract Manufacture Products supplied by Respondents, make representations and warranties to the Acquirer that Respondents shall hold harmless and indemnify the Acquirer for any liabilities or loss of profits resulting from the failure by Respondents to deliver the products in a timely manner as required by the Remedial Agreement(s) unless Respondents can demonstrate that their failure was entirely beyond the control of Respondents and in no part the result of negligence or willful misconduct by Respondents;
5. during the term of the Contract Manufacture between Respondents and the Acquirer, upon request of the Acquirer or Interim Monitor (if any has been appointed), make available to the Acquirer and the Interim Monitor (if any has been appointed) all records that relate to the manufacture of the Contract Manufacture Products that are generated or created after the Closing Date;
6. during the term of the Contract Manufacture between Respondents and the Acquirer, maintain manufacturing facilities necessary to manufacture each of the Contract Manufacture Products; and
7. during the term of the Contract Manufacture between Respondents and the Acquirer, provide consultation with knowledgeable employees of Respondents and training, at the request of the Acquirer and at a facility chosen by the Acquirer, for the purposes of enabling the Acquirer (or the

6. not provide, disclose or otherwise make available, directly or indirectly, any such Confidential Business Information related to the marketing or sale of the Laser Microdissection Products to the employees associated with business related to those Retained Products that are used or suitable for use in commerce for the same or similar purposes as the Laser Microdissection Products.
- F. Respondents shall not enforce any agreement against a Third Party or the Acquirer to the extent that such agreement may limit or otherwise impair the ability of the Acquirer to acquire the Manufacturing Technology, Product Intellectual Property, or Product Licensed Intellectual Property from the Third Party. Such agreements include, but are not limited to, agreements with respect to the disclosure of Confidential Business Information related to such Manufacturing Technology, Product Intellectual Property and Product Licensed Intellectual Property.
 - G. Not later than ten (10) days after the Closing Date, Respondents shall grant a release to each Third Party that is subject to an agreement as described in Paragraph II.F. that allows the Third Party to provide the relevant Manufacturing Technology, Product Intellectual Property, or Product Licensed Intellectual Property to the Acquirer. Within five (5) days of the execution of each such release, Respondents shall provide a copy of the release to the Acquirer for the relevant assets.
 - H. Respondents shall:
 1. for a period of at least twelve (12) months from the Closing Date, provide the Acquirer with the opportunity to enter into employment contracts with the Laser Microdissection Product Core Employees. Each of these periods is hereinafter referred to as the “Laser Microdissection Product Core Employee Access Period(s)”;
 2. not later than the earlier of the following dates: (1) ten (10) days after notice by staff of the Commission to Respondents to provide the Product Employee Information; (2) Withi

would affect the ability or incentive of those individuals to be employed by the Acquirer. In addition, Respondents shall not make any counteroffer to such a Laser Microdissection Product Core Employee who has received a written offer

Employee who contacts Respondents on his or her own initiative without any direct or indirect solicitation or encouragement from Respondents.

- I. Respondents shall require, as a condition of continued employment post-divestiture of the assets required to be divested pursuant to this Order, that each Laser Microdissection Product Core Employee retained by Respondents, the direct supervisor(s) of any such employee, and any other employee retained by Respondents and designated by the Interim Monitor (if applicable) sign a confidentiality agreement pursuant to which such employee shall be required to maintain all Confidential Business Information related to the Laser Microdissection Products as strictly confidential, including the nondisclosure of such information to all other employees, executives or other personnel of Respondents (other than as necessary to comply with the requirements of Law or this Order).
- J. Not later than thirty (30) days after the Effective Date, Respondents shall provide written notification of the restrictions on the use of the Confidential Business Information related to the Laser Microdissection Products by Respondents' personnel to all of Respondents' employees who:
 1. are or were directly involved in the Research and Development, manufacturing, distribution, sale or marketing of each of the relevant Laser Microdissection Products;
 2. are directly involved in the Research and Development, manufacturing, distribution, sale or marketing of Retained Products that are used or suitable for use in commerce for the same or similar purposes as the relevant Laser Microdissection Products; and/or
 3. may have Confidential Business Information related to the Laser Microdissection Products.

Respondents shall give such notification by e-mail with return receipt requested or similar transmission, and keep a file of such receipts for one (1) year after the relevant Closing Date. Respondents shall provide a copy of such notification to the Acquirer. Respondents shall maintain complete records of all such agreements at Respondents headquarters address within the United States and shall provide an officer's certification to the Commission stating that such acknowledgment program has been implemented and is being complied with. Respondents shall provide the Acquirer with copies of all certifications, notifications and reminders sent to Respondents' personnel.

- K. Until Respondents complete the divestitures required by Paragraph II.A. and fully transfer the related Manufacturing Technology to the Acquirer(s),
 1. Respondents shall take such actions as are necessary to:
 - a. maintain the full economic viability and marketability of the Arcturus Life Sciences Business;

- b. minimize any risk of loss of competitive potential for such business;
 - c. prevent the destruction, removal, wasting, deterioration, or impairment of any of the Arcturus Life Sciences Business Assets;
 - d. ensure the assets required to be divested are transferred to the Acquirer in a manner without disruption, delay, or impairment of the regulatory approval processes related to the Arcturus Life Sciences Business; and
 - e. ensure the completeness of the transfer of the Manufacturing Technology; and
2. Respondents shall not sell, transfer, encumber or otherwise impair the Arcturus Life Sciences Business Assets (other than in the manner prescribed in this Order) nor take any action that lessens the full economic viability, marketability, or competitiveness of the Arcturus Life Sciences Business.
- L. Respondents shall not join, file, prosecute or maintain any suit, in law or equity, against the Acquirer(s) or the Arcturus Life Sciences Releasee(s) for the Research and Development, manufacture, use, import, export, distribution, or sale of the Laser Microdissection Products under any Patent owned or licensed by Respondents as of, or at any time after, the Effective Date (*excluding* those Patents that claim inventions conceived by and reduced to practice after the Effective Date) that claim any aspect of the Research and Development, manufacture, use, import, export, distribution, or sale of a Laser Microdissection Product, or that claims a product relating to the use thereof;

if such suit would have the potential to interfere with the Acquirer's freedom to practice the following: (1) any aspect of the Research and Development, or manufacture of a particular Laser Microdissection Product; or (2) the use within, import into, export from, or the supply, distribution, or sale within, the United States of a particular Laser Microdissection Product that was marketed, distributed or sold within the United States at any time prior to the Effective Date. Respondents shall also covenant to the Acquirer that as a condition of any assignment, transfer, or license to a Third Party of the above-described Patents, the Third Party shall agree to provide a covenant whereby the Third Party covenants not to sue the Acquirer or the Arcturus Life Sciences Releasee(s) under such Patents, if the suit would have the potential to interfere with the Acquirer's freedom to practice the following: (1) any aspect of the Research and Development, or manufacture of a particular Laser Microdissection Product; or (2) the use within, import into, export from, or the supply, distribution, or sale within, the United States of a particular Laser Microdissection Product that was marketed, distributed or sold within the United States at any time prior to the Effective Date.

- M. Upon reasonable written notice and request from an Acquirer to Respondents, Respondents shall provide, in a timely manner, at no greater than Direct Cost, assistance of knowledgeable employees of Respondents to assist the Acquirer to defend against, respond to, or otherwise participate in any litigation related to the Product Intellectual Property

related to any of the Laser Microdissection Products, if such litigation would have the potential to interfere with the Acquirer's freedom to practice the following: (1) the Research
a

- Q. The purpose of the divestiture of the Arcturus Life Sciences Business Assets and the transfer of the Manufacturing Technology related to the Laser Microdissection Products, respectively, and the related obligations imposed on the Respondents by this Order is:
1. to ensure the continued use of the Arcturus Life Sciences Business Assets in the Research and Development, manufacture, use, import, export, distribution, and sale of each of the respective Laser Microdissection Products;
 2. to provide for the future use of the Arcturus Life Sciences Business Assets for the Research and Development, manufacture, use, import, export, distribution, and sale of each of the respective Laser Microdissection Products;
 3. to create a viable and effective competitor, who is independent of the Respondents in the Research and Development, manufacture, use, import, export, distribution, or sale of each of the L

IV.

IT IS FURTHER ORDERED that:

- A. At any time after Respondents sign the Consent Agreement in this matter, the Commission may appoint a monitor (“Interim Monitor”) to assure that Respondents expeditiously comply

manufacture, market, import, export, and sell such Laser Microdissection Product and is able to manufacture such Laser Microdissection Product independently of Respondents;

provided, however, that the Interim Monitor's service shall not exceed five (5) years from the Order Date;

provided further, that the Commission may shorten or extend this period as may be necessary or appropriate to accomplish the purposes of the Orders.

- E. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondents' compliance with their obligations under the Order, including, but not limited to, their obligations related to the relevant assets. Respondents shall cooperate with any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondents' compliance with the Order.
- F. The Interim Monitor shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ, at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.
- G. Respondents shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Interim Monitor.
- H. Respondents shall report to the Interim Monitor in accordance with the requirements of this Order and/or as otherwise provided in any ag

1. obtaining all of the relevant Product Approvals necessary to manufacture and sell, the Laser Microdissection Products independently of Respondents and;
 2. securing sources of supply of the inputs and components for the Laser Microdissection Products from Entities other than Respondents.
- I. Respondents may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.
 - J. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.
 - K. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph.
 - L. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Order.
 - M. The Interim Monitor appointed pursuant to this Order may be the same Entity appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order.

V.

IT IS FURTHER ORDERED that:

- A. If Respondents have not fully complied with the obligations to assign, grant, license, divest, transfer, deliver or otherwise convey the Arcturus Life Sciences Business Assets and grant the Arcturus Life Sciences Business Licenses as required by this Order, the Commission may appoint a trustee ("Divestiture Trustee") to assign, grant, license, divest, transfer, deliver or otherwise convey the assets required to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed pursuant to each of the relevant Paragraphs in a manner that satisfies the requirements of each such Paragraph. In the event that the Commission or the Attorney General brings an action pursuant to § 5(*I*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*I*), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to assign, grant, license, divest, transfer, deliver or otherwise convey the relevant assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture

Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursua

caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court

8. the Divestiture Trustee shall report in writing to Respondents and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture; and
 9. Respondents 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.
- E. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph.
- F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

VI.

IT IS FURTHER ORDERED that, in addition to any other requirements and prohibitions relating to Confidential Business Information in this Order, Respondents shall assure that Respondents' counsel (including in-house counsel under appropriate confidentiality arrangements) shall not retain unredacted copies of documents or other materials provided to an Acquirer or access original documents provided to an Acquirer, except under circumstances where copies of documents are insufficient or otherwise unavailable, and for the following purposes:

- A. To assure Respondents' compliance with any Remedial Agreement, this Order, any Law (including, without limitation, any requirement to obtain regulatory licenses or approvals, and rules promulgated by the Commission), any data retention requirement of any applicable Government Entity, or any taxation requirements; or
- B. To defend against, respond to, or otherwise participate in any litigation, investigation, audit, process, subpoena or other proceeding relating to the divestiture or any other aspect of the Laser Microdissection Products or assets and businesses associated with those Laser Microdissection Products;

provided, however, that Respondents may disclose such information as necessary for the purposes set forth in this Paragraph VI pursuant to an appropriate confidentiality order, agreement or arrangement;

provided further, however, that pursuant to this Paragraph VI, Respondents shall: (1) require those who view such unredacted documents or other materials to enter into

confidentiality agreements with the relevant Acquirer (but shall not be deemed to have violated this requirement if such Acquirer withholds such agreement unreasonably); and (2) use best efforts to obtain a protective order to protect the confidentiality of such information during any adjudication.

VII.

IT IS FURTHER ORDERED that:

	<u>PATENT TITLE</u>	<u>COUNTRY</u>	<u>STATUS</u>	<u>PATENT NO.</u>	<u>APP TYPE</u>	<u>PUBLICATION NO.</u>
3 4.	Interactive and automated tissue image analysis with global training database and variable-abstraction processing in...	United States	Pending		Utility (Regular)	US 2004-0093166 A1
3 5.	Interactive and automated tissue image analysis with global training database and variable-abstraction processing in...	European	Pending		Nationalized PCT	EP 1537533
3 6.	Interactive and automated tissue image analysis with global training database and variable-abstraction processing in...	Canada	Pending		Nationalized PCT	CA 2500805
3 7.	Fluidic extraction of microdissected samples	United States	Issued	7473401	Continuation	
3 8.	Fluidic extraction of microdissected samples	Japan	Pending		Nationalized PCT	JP 2002521668T T
3 9.	Fluidic extraction of microdissected samples	Mexico	Pending		Nationalized PCT	MX PA01000691 A
4 0.	Laser capture microdissection on inverted polymer films	United States	Issued	7456938	Utility (Regular)	US 2006-0023201 A1
4 1.	Transfer film for laser microcapture	United States	Issued	6887703	Utility (Regular)	US 2001-0028934 A1
4 2.	Laser capture microdissection analysis vessel	Canada	Issued	2280087	Nationalized PCT	CA 2280087 A1
4 3.	Laser capture microdissection analysis vessel	United States	Issued	5859699	Utility (Regular)	
4 4.	Laser capture microdissection analysis vessel	United States	Issued	6157446	Continuation	
4 5.	Laser capture microdissection analysis vessel	European	Pending		Nationalized PCT	EP 0974044 A1
4 6.	Laser microdissection apparatus and method	European	Filed		Utility (Regular)	EP1787101
4 7.	Laser microdissection apparatus and method	Canada	Filed		Utility (Regular)	CA 2580025
4 8.	Laser capture microdissection method and apparatus	United States	Pending		Utility (Regular)	US 2006-0087643 A1
4 9.	Laser capture microdissection apparatus and method		Pending		PCT	WO 2006/031574
5 0.	Gene expression profiling from FFPE samples	United States	Filed		Continuation	US 2009-0082215 A1

	<u>PATENT TITLE</u>	<u>COUNTRY</u>	<u>STATUS</u>	<u>PATENT No.</u>	<u>APP TYPE</u>	<u>PUBLICATION No.</u>
69.	Laser capture microdissection method and apparatus	Monaco	Issued	0958491	European Nationalized PCT	EP 0958491
70.	Laser capture microdissection method and apparatus	Ireland	Issued	0958491	European Nationalized PCT	EP 0958491
71.	Laser capture microdissection method and apparatus	France	Issued	0958491	European Nationalized PCT	EP 0958491
72.	Laser capture microdissection method and apparatus	United Kingdom (GB)	Issued	0958491	European Nationalized PCT	
73.	Laser capture microdissection method and apparatus	European	Issued	1288645	Divisional 1	EP 1288645
74.	Laser capture microdissection method and apparatus	Canada	Issued	2279992	Nationalized PCT	CA 2279992
75.	Laser capture microdissection method and apparatus	Japan	Issued	3786711	Nationalized PCT	2001-526795
76.	Laser capture microdissection pressure plate and transfer arm	United States	Issued	6184973	Continuation	
77.	Laser capture microdissection optical system	United States	Issued	6215550	Continuation	
78.	Laser capture microdissection method and apparatus	United States	Issued	6469779	Utility (Regular)	US 2001-0001574 A1
79.	Laser capture microdissection optical system	United States	Issued	6512576	Continuation	
80.	Laser capture microdissection translation stage joystick	United States	Issued	6639657	Continuation	US 2002-0154288 A1
81.	Laser capture microdissection vacuum hold-down	United States	Issued	6697149	Continuation	US 2002-0001074 A1
82.	Laser capture microdissection optical system	United States	Issued	6700653	Divisional 1	US 2003-0058430 A1
83.	Laser capture microdissection vacuum hold-down	United States	Issued	6924889	Divisional 1	US 2004-0106206 A1
84.	Laser capture microdissection method and apparatus	Germany (DE)	Issued	69814041	European Nationalized PCT	
85.	Laser capture microdissection translation stage joystick	United States	Issued	7012676	Divisional 1	US 2004-0027556 A1

APPENDIX B
ARCTURUS LIFE SCIENCES BUSINESS
TRADEMARKS, TRADE NAMES PRODUCT NAMES
DOMAIN NAMES, ACCOUNTS

TRADEMARKS:

1. AUTOPIX
2. CAPSURE
3. IDSTOGENE
4. PARADISE
5. PICOPURE
6. PIXCELL
7. RIBOAMP
8. SYSTEMS FOR MICROGENOMICS
9. VERITAS
10. ARCTURUS & DESIGN
11. ARCTURUS & DESIGN
12. ARCTURUS & DESIGN
13. EXTRACSURE
14. PREPSTRIP
15. MIRACOL

TRADE NAMES:

Arcturus
Arcturus Bioscience
Arcturus Engineering

PRODUCT NAMES:

Veritas XT Microdissection System
Veritas Microdissection System
PixCell® Iie LCM System.
CapSure® LCM Caps
Paradise® Reagent System
Paradise® Whole Transcript RT Reagent System
RiboAmp® RNA Amplification Kit

RiboAmp® OA RNA Amplification Kit
RiboAmp® OA 1 Round RNA Amplification Kit
RiboAmp® HS RNA Amplification Kit
PicoPure® RNA Isolation Kit
PicoPure® DNA Extraction Kit
HistoGene® LCM Immunofluorescence Staining Kit
HistoGene® LCM Fr6182T5

NON-PUBLIC

APPENDIX C

LASER MICRODISSECTION PRODUCT CORE EMPLOYEES

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