

0910135

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

**COMMISSIONERS: Jon Leibowitz, Chairman
 William E. Kovacic**

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 a

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

- 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 collec

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, test methods, and other information.

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 th

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 0.1 on a 5 mL. 200 010000 TD

- 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, assign

RR. “Agilent-Bruker Divestiture Agreement” means all the divestiture ag

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

research inventory Related To Varian Triple Quad Products shall be allocated between the Varian Triple Quad Acquirer and Respondent Ag

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

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 j3.3600 0.0000 TD3000 TD TD(purcha)Tj35.5200 0.0 0.00.0

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'

- 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) d

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

- 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

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 ~~(b)~~ Tj9.2400 0.0000 assign

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.

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.

Varian Triple Quad Business

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 RelatJ19.2000 0.000 TD(apl)Tj18.7200 0.00 TD(gt10.6800 0.0000

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 per(B.)Tj18.1200 0.0000 TD1ETe Ac

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

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 re

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 Ac

- (1) any Designated Micro GC Employee who accepts employment with the Micro GC Acquirer, all accrued bonuses, vested p

Agilent as long as such employees were not solicited by Respondent Ag

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
lre

Agilent shall not sell, transfer, encumber or otherwise impair the Divested Business (other than in the manner prescribed in this Order) nor)

C. other chang

