
Undertaking to the Australian Competition
and Consumer Commission

Given under section 87B of the Competition
and Consumer Act by

Thermo Fisher Scientific Inc

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1 Person giving the Undertaking

- 1.1 This Undertaking is given to the Australian Competition and Consumer Commission (ACCC) by Thermo Fisher Scientific Inc on behalf of itself, its Australian subsidiaries as set out in Schedule 1 of this Undertaking and any of its other Related Bodies Corporate incorporated in Australia or having a presence in Australia (together referred to as **Thermo Fisher**).

2 Jurisdiction

- 2.1 Thermo Fisher Scientific Inc. submits to the jurisdiction of the Federal Court of Australia in relation to this Undertaking.
- 2.2 Notwithstanding clause 17.2, unless and until Thermo Fisher Scientific Inc. notifies the ACCC in writing of the appointment of another person as its agent within Australia, Thermo Fisher Scientific Inc. irrevocably appoints Thermo Fisher Scientific Australia Pty Ltd (ACN 058390917) as its agent within Australia for the purposes of any service of process in relation to this Undertaking.

3 Background

The Parties and the Proposed Acquisition

- 3.1 On 15 April 2013 Thermo Fisher Scientific Inc. and Life Technologies Corporation (together, the **Parties**) announced that they had signed a definitive agreement, under which Thermo Fisher will acquire all of the shares of Life Technologies (**Proposed Acquisition**).
- 3.2 The Parties are both active in the supply of life science instruments, reagents and consumables. Their business activities are largely complementary. Whereas Thermo Fisher generally focuses on the supply of analytical instruments, laboratory equipment and consumables to a broad range of customers, Life Technologies' activities focus on the supply of genetic analysis instruments and life science reagents, primarily to customers in the research sector.
- 3.3 The Parties' global operations overlap to some extent in relation to the supply of products within the molecular biology, protein biology, cell culture, transplant diagnostics testing, particles, chromatography and fluorescent spectroscopy sectors.
- 3.4 The Parties have provided the ACCC with a submission in support of clearance of the Proposed Acquisition in Australia. In addition, the Parties have submitted filings or notifications in a number of other jurisdictions, namely New Zealand, the European Union, the United States of America, Canada, Japan, Korea, China and Russia.

The ACCC's review

- 3.5 On 20 September 2013, the ACCC commenced its public review of the Proposed Acquisition.
- 3.6 The ACCC undertook market inquiries and considered information provided by the Parties, industry participants and others. The purpose of the ACCC's inquiries was to assess whether or not the Proposed Acquisition would have the effect, or be likely to have the

effect, of substantially lessening competition in a market in Australia in contravention of section 50 of the *Competition and Consumer Act 2010* (the Act).

The ACCC's competition concerns

- 3.7 The ACCC has concluded that, in the absence of the Undertaking, the Proposed Acquisition would have the effect or be likely to have the effect of substantially lessening competition in relation to the markets for the supply of Australian and New Zealand sourced processed foetal bovine serum (FBS), and for the supply of siRNA (a specialised product in the area of molecular biology that is used to effect gene silencing) to customers in Australia.
- 3.8 In the area of FBS, the ACCC has concluded that in the absence of this Undertaking, the Proposed Acquisition would enhance the ability and incentive of the merged entity to raise prices for the supply of FBS.
- 3.9 Each of the Parties processes FBS inputs at their respective facilities in Australia in order to sell processed FBS to end-customers (Thermo Fisher through the brand name HyClone, and Life Technologies through the brand name Gibco). The ACCC considered that outside of the Parties, there are limited alternative sources of supply of FBS, which is itself a scarce resource.
- 3.10 The ACCC concluded that the barriers to forward-integration into the supply of FBS are high, and that the Parties would not be constrained by the threat of new entry following the Proposed Acquisition. Commercial relationships with resellers are important in being able to secure supply of FBS inputs, and these relationships are often built over long periods of time. Factors such as a reliable customer base and strong brand were also found to be important in procuring supply of FBS inputs, and brand reputation is also an important factor in customers' 'batch testing' decisions.
- 3.11 In the area of siRNA, a gene modulation product, the ACCC was concerned that the Parties' position in the supply of siRNA is underpinned by related patents which have only been licensed to four suppliers, so that there may be limited competitive constraints on the merged entity following the Proposed Acquisition. The ACCC was also concerned that many alternative suppliers do not provide full 'libraries' of gene modulation products and so would only provide a marginal constraint on the Parties post the Proposed Acquisition.
- 3.12 The ACCC considered that in the absence of this Undertaking, the Proposed Acquisition would further strengthen the Parties' existing positions as key suppliers of siRNA reagents, and also may increase the merged entity's ability and incentive to raise the prices of these products.

The European Commission and the Federal Trade Commission

- 3.13 The European Commission (EC) has investigated the Proposed Acquisition. In order to avoid delay in securing clearance from the EC, Thermo Fisher has proposed and the EC has accepted a global divestiture of certain assets (**Global Divestiture**).
- 3.14 The Federal Trade Commission (FTC) in the United States of America is investigating the Proposed Acquisition. In order to avoid delay in securing clearance from the FTC, Thermo Fisher has also proposed the Global Divestiture to the FTC.

Global Cell Culture Remedy Package

- 3.15 The Global Divestiture includes a divestiture of certain assets related to Thermo Fisher's cell culture business, being its HyClone cell culture business, excluding single use technologies (**Global Cell Culture Remedy Package**). The Global Cell Culture Remedy Package is described at Exhibit A to Thermo Fisher's Commitments submitted to the EC (**EC Commitments**), which are set out in Schedule 3 of this Undertaking.
- 3.16 Relevant to this Undertaking, the Global Divestiture also includes a divestiture of certain assets related to Thermo Fisher's gene modulation business, including assets relating to its siRNA business (**Global Gene Modulation Remedy Package**).
- 3.17 The EC Commitments will govern the process of the sale of assets that are the subject of the Global Divestiture, including the handling of confidential information and regulatory approvals.
- 3.18 The EC Commitments contain provisions including:
- (a) a commitment to divest;
 - (b) a provision to ensure preservation of the viability, marketability and competitiveness of the businesses forming part of the Global Divestiture;
 - (c) hold-separate obligations to keep the businesses forming part of the Global Divestiture separate from the businesses Thermo Fisher is retaining, including appointment of a hold separate manager;
 - (d) ring fencing obligations to ensure that relevant confidential or proprietary information related to the businesses forming part of the Global Divestiture is protected;
 - (e) provisions related to the appointment and obligations of a monitoring trustee for auditing purposes; and
 - (f) provision for sale of the businesses forming part of the Global Divestiture at no minimum price by the Divestiture Trustee.
- 3.19 The EC Commitments will manage the process of the sale of the assets that are the subject of the Global Divestiture, including handling of confidential information and regulatory approvals for those assets.

Proposed divestiture of Thermo Fisher's Australian Cell Culture Business and Australian siRNA Business, and approval of a purchaser of these businesses

- 3.20 Thermo Fisher does not consider that the Proposed Acquisition would be likely to substantially lessen competition in relation to the supply of Australian and New Zealand sourced FBS to customers in Australia, the supply of siRNA to customers in Australia, or any other relevant market. However, in order to address the ACCC's competition concerns, Thermo Fisher has, without admission, provided this Undertaking pursuant to section 87B of the Act.
- 3.21 The objective of this Undertaking is to address the ACCC's competition concerns which would otherwise arise as a consequence of the Proposed Acquisition, by undertaking to comply with the EC Commitments in relation to the Global Cell Culture and Gene Modulation Remedy Packages, including elements listed in clause 3.18 above. Thermo Fisher undertakes to divest the Australian Cell Culture Business and Australian siRNA Business to a purchaser or purchasers to be approved by the ACCC.

3.22 The Undertaking aims to achieve this objective by:

- (a) ensuring that the Australian Cell Culture Business, as part of the Global Cell Culture Remedy Package, is sold to an ACCC Approved Purchaser;
- (b) ensuring that the Australian siRNA Business, as part of the Global Gene Modulation Remedy Package, is sold to an ACCC Approved Purchaser;
- (c) creating or strengthening a viable, effective, stand-alone, independent and long term competitor for the supply of Australian and New Zealand sourced FBS to customers in Australia;
- (d) ensuring that the purchaser of the Australian Cell Culture Business, a component of the Global Cell Culture Remedy Package, has all the necessary associated assets, including Intellectual Property and Product Approvals, to compete effectively with Thermo Fisher in the supply of Australian and New Zealand sourced FBS to customers in Australia;
- (e) ensuring that the purchaser of the Australian siRNA Business, a component of the Global Gene Modulation Remedy Package, has all the necessary associated assets to compete effectively with Thermo Fisher in the supply of siRNA reagents to customers in Australia;
- (f) maintaining the economic viability, marketability, competitiveness and goodwill of the Australian Cell Culture Business and Australian siRNA Business prior to divestiture; and
- (g) providing for the effective oversight of Thermo Fisher's compliance with this Undertaking.

The Australian Cell Culture Business

3.23 The Australian Cell Culture Business includes the HyClone sera facility located in Mordialloc in Melbourne, Australia and its sera and media operations (the **Mordialloc facility**). The Mordialloc facility is used to process and manufacture Australian FBS and includes supply chain and operations infrastructure.¹

3.24 The Australian Cell Culture Business also includes each of the following assets associated with the Mordialloc facility, which are described in detail in Confidential Schedule 2:

- (a) all intellectual property, technology and know-how:
 - i. The HyClone and HyQ brands will be divested subject to a limited licence back to Thermo Fisher for a period of two years to use the HyClone and HyQ names for the retained single use technologies (SUT) business;
- (b) all dedicated sera and media manufacturing employees;
- (c) all relevant supply chain;
- (d) all inventory;

¹ The Mordialloc facility does not have any media operations.

- (e) all customer and supplier contracts;
- (f) all existing distributor / dealer arrangements:
 - i. Thermo Fisher Scientific Australia Pty Ltd will, at the Approved Purchaser's request, continue to provide the benefit of all current arrangements (on terms and conditions equivalent to those at present unless otherwise agreed with the Approved Purchaser) pursuant to which it currently provides distribution services to the HyClone cell culture business for a transitional period of 12 months after divestment in order to ensure the viability and competitiveness of the HyClone cell culture business; and
- (g) all leases.

Relationship between the Global Divestiture and this Undertaking

- 3.25 Nothing in the terms of the Global Divestiture will be taken to limit, or to excuse non-compliance with, the terms of this Undertaking.

4 Defined terms and interpretation

Definitions in the Dictionary

- 4.1 A term or expression starting with a capital letter:
- (a) which is defined in the Dictionary in Schedule 4 (Dictionary), has the meaning given to it in the Dictionary; and
 - (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.

Interpretation

- 4.2 The interpretation clause in Schedule 4 sets out rules of interpretation for this Undertaking.

5 Commencement and termination of this Undertaking and cessation of ongoing obligations

Commencement

- 5.1 This Undertaking comes into effect when:
- (a) the Undertaking is executed by Thermo Fisher; and
 - (b) the Undertaking so executed is accepted by the ACCC.

(the **Commencement Date**).

Termination

5.2 This Undertaking will terminate on the date:

- (a) the ACCC confirms to Thermo Fisher in writing that it is satisfied that the obligations in clauses 6 to 9 (and Schedule 3 as applicable) as relevant have been satisfied; or
- (b) any earlier date on which the ACCC consents in writing to the withdrawal of the Undertaking in accordance with section 87B of the Act.

Cessation of ongoing obligations

- 5.3 This Undertaking is taken to be withdrawn on the date the ACCC consents in writing to the withdrawal of this Undertaking in accordance with section 87B of the Act.
- 5.4 The ACCC may, at any time, expressly waive in writing any of the obligations contained in this Undertaking or amend the date by which any such obligation is to be satisfied.
- 5.5 The ACCC may, at any time, revoke its acceptance of this Undertaking if the ACCC becomes aware that any information provided to it was materially incorrect, inaccurate or misleading.
- 5.6 Clauses 1, 2, 3, 4, 5, 12, 13, 14, 15, 16, and 17 survive completion of the obligations in clauses 6, 7, 8, 9, 10 and 11, and Schedule 3.

6 Divestiture of the Australian siRNA Business, as part of the Global Gene Modulation Remedy Package

EC Commitments

- 6.1 Thermo Fisher must comply with the EC Commitments (as amended from time to time and approved by the EC) as they relate to the divestiture of the Australian siRNA Business. The EC Commitments will be interpreted in accordance with the applicable laws of the European Union.

Divestiture only to an Approved Purchaser

- 6.2 Thermo Fisher must, within the Divestiture Period and in accordance with this Undertaking, divest, or cause the divestiture of the Australian siRNA Business only to an Approved Purchaser.
- 6.3 The Approved Purchaser must be approved by the ACCC in accordance with clause 8 of this Undertaking.

7 Divestiture of the Australian Cell Culture Business, as part of the Global Cell Culture Remedy Package

- 7.1 Thermo Fisher must comply with the EC Commitments (as amended from time to time and approved by the EC) as they relate to the divestiture of the Australian Cell Culture Business. The EC Commitments will be interpreted in accordance with the applicable laws of the European Union.

- 7.2 Thermo Fisher must, within the Divestiture Period and in accordance with this Undertaking, divest, or cause the divestiture of the Australian Cell Culture Business only to an Approved Purchaser.
- 7.3 The Approved Purchaser must be approved by the ACCC in accordance with clause 8 of this Undertaking.
- 7.4 Thermo Fisher must divest the Australian Cell Culture Business on terms which include:
- (a) the sale, assignment, transfer or licence, to the Approved Purchaser of all assets that comprise the Australian Cell Culture Business as described in Schedule 2 of this Undertaking, including the Material Contracts pursuant to the Approved Sale and Purchase Agreement and within the Divestiture Period, otherwise clause 11 applies;
 - (b) the transfer of any Transferred Personnel required pursuant to clauses 7.5 and 7.6;
 - (c) compliance with any Approved Interim Supply Agreement required pursuant to clauses 7.7 to 7.9; and
 - (d) the transfer or grant to the Approved Purchaser of all Third Party Consents pursuant to clauses 7.10 to 7.14.

Transferred Personnel

- 7.5 At the option of the Approved Purchaser, Thermo Fisher must transfer to the Approved Purchaser, effective on the date of the Cell Culture Divestiture Completion Date those personnel referred to in the EC Commitments in Schedule 3 as part of the Global Cell Culture Remedy Package, and who are, in the view of the Approved Purchaser, necessary for the Approved Purchaser to maintain, operate or conduct effectively the Australian Cell Culture Business and who consent to the transfer of their employment or contract for service to the Approved Purchaser (**Transferred Personnel**).
- 7.6 When fulfilling its obligations under clause 7.5, Thermo Fisher must:
- (a) not directly or indirectly discourage any Transferred Personnel from continuing or seeking employment with, or providing services to, the Approved Purchaser;
 - (b) effective on the Cell Culture Divestiture Completion Date, release the Transferred Personnel from any obligations to provide services to Thermo Fisher;
 - (c) effective on the Cell Culture Divestiture Completion Date, release the Transferred Personnel from any non-compete or similar restraint of trade obligation, to the extent that such an obligation would otherwise prevent the person from performing his or her contemplated role in relation to the Australian Cell Culture Business; and
 - (d) not procure, promote or encourage the transfer of any of the Transferred Personnel from the Approved Purchaser to Thermo Fisher for a period of six months after the Cell Culture Divestiture Completion Date.

Interim Supply Agreements

- 7.7 In order for the Approved Purchaser to be established as a viable, effective, stand-alone, independent and long-term competitor in the Australian market for FBS, at the option of the Approved Purchaser, Thermo Fisher must provide for a transitional period of 12 months the

benefit, on terms and conditions equivalent to those at present afforded to the Australian Cell Culture Business, of all current arrangements under which Thermo Fisher supplies products or services, including SUT bags for media to the Australian Cell Culture Business, unless otherwise agreed with the Approved Purchaser.

- 7.8 Thermo Fisher must ensure that any extension of the interim supply arrangements referred to in clause 7.7 and any renewal or extension of an Approved Interim Supply Agreement:
- (a) is for a reasonable period, to enable the Approved Purchaser of the Australian Cell Culture Business to be established as a competitive and viable business independent of Thermo Fisher, which period is to be agreed by the Approved Purchaser and Thermo Fisher and approved by the ACCC; and
 - (b) provides that the goods or services supplied under that Approved Interim Supply Agreement are supplied on reasonable arm's length terms, or as otherwise commercially agreed between the Parties.
- 7.9 To avoid doubt, Thermo Fisher must seek prior written approval from the ACCC of any renewal or extension of an Approved Interim Supply Agreement. Without limiting the ACCC's discretion, in making a decision on whether to approve a renewal or extension of an Approved Interim Supply Agreement, the ACCC will have regard to the criteria set out in clauses 7.7 and 7.8.

Consents

- 7.10 Thermo Fisher must effect or obtain the transfer, subject to law, of all licences, permits and/or other regulatory approvals to the Approved Purchaser that are required for the operation of the Australian Cell Culture Business.
- 7.11 Thermo Fisher must:
- (a) obtain any Third Party Consents as soon as practicable after entering into the Approved Sale and Purchase Agreement with the Approved Purchaser of the Australian Cell Culture Business;
 - (b) comply with all requirements necessary to obtain any Third Party Consents including providing necessary information promptly to the third party including, where applicable, the requirements contained in Schedule 3;
 - (c) promptly pay the costs and expenses of any third party reasonably incurred in providing the Third Party Consents;
 - (d) enter any further interim supply arrangement under clause 7.7 with the Approved Purchaser, or vary the scope or terms of any existing Approved Interim Supply Agreement or interim supply arrangement under clause 7.7, as required by the Approved Purchaser, in relation to any goods or services that are required for the operation of the Australian Cell Culture Business which may be affected by any failure to gain a Third Party Consent; and
 - (e) act in good faith in its negotiations to obtain any Third Party Consents.
- 7.12 If, before the Cell Culture Divestiture Completion Date:

- (a) the Approved Purchaser of the Australian Cell Culture Business fails to obtain or is unable to obtain any licence, permit or other regulatory approval referred to in clause 7.11 in relation to the Australian Cell Culture Business; or
 - (b) Thermo Fisher fails to obtain or is unable to obtain any Third Party Consents in relation to the Australian Cell Culture Business,
 - (c) then Thermo Fisher must provide the ACCC, at least 7 Business Days prior to the Cell Culture Divestiture Completion Date, with details of those licences, permits, approvals or Third Party Consents that have not been obtained (including reasons why approval, consent or transfer could not be given prior to that date, and what is required to obtain the approval, consent or transfer).
- 7.13 If clause 7.12 applies, Thermo Fisher must continue to do everything reasonably in its power to satisfy clause 7.11 as soon as possible after the completion of the divestiture of the Australian Cell Culture Business (and until such time as clause 7.11 is satisfied).
- 7.14 Even if Thermo Fisher has complied with clauses 7.11 and 7.12, it remains a breach of this Undertaking if Thermo Fisher is unable to effect the divestiture of the Australian Cell Culture Business by reason of a failure to obtain Third Party Consents.

8 Divestiture of the Australian Cell Culture Business and the Australian siRNA Business to an Approved Purchaser

Divestiture only to an Approved Purchaser

- 8.1 Thermo Fisher must sell the Australian Cell Culture Business, which is part of the Global Cell Culture Remedy Package, to an Approved Purchaser, and must not authorise the Divestiture Trustee to sell the Australian Cell Culture Business to a purchaser other than an Approved Purchaser.
- 8.2 Thermo Fisher must sell the Australian siRNA Business, which is part of the Global Gene Modulation Remedy Package, to an Approved Purchaser, and must not authorise the Divestiture Trustee to sell the Australian siRNA Business to a purchaser other than an Approved Purchaser.
- 8.3 To avoid doubt, this Undertaking does not require that the Australian Cell Culture Business and the Australian siRNA Business be acquired by the same Approved Purchaser.

Proposed Purchaser Notice

- 8.4 To seek the ACCC's approval for a Proposed Purchaser in accordance with clause 8.5, Thermo Fisher must provide (or procure that the Divestiture Trustee provides) to the ACCC a Proposed Purchaser Notice in the form prescribed in Schedule 5.
- 8.5 Thermo Fisher must provide a Proposed Purchaser Notice for the Australian Cell Culture Business and a Proposed Purchaser Notice for the Australian siRNA Business to the ACCC at least 20 Business Days prior to the end of the Divestiture Period. To avoid doubt, this clause 8.5 does not apply to a Proposed Purchaser Notice given by the Divestiture Trustee.

Approval of a Proposed Purchaser

- 8.6 The ACCC may, within 15 Business Days after receipt by the ACCC of the Proposed Purchaser Notice, or such further period as is required by the ACCC and notified to Thermo Fisher in writing prior to the expiration of the 15 Business Day period, decide to approve a Proposed Purchaser, which includes approving:
- (a) the draft sale and purchase agreement attached to the Proposed Purchaser Notice; and
 - (b) any draft interim supply agreement attached to the Proposed Purchaser Notice, in accordance with the criteria in clauses 7.7 to 7.8.
- 8.7 If the ACCC approves a Proposed Purchaser, the ACCC will provide Thermo Fisher with a written notice (**Approval Notice**) stating that the Proposed Purchaser is an Approved Purchaser.
- 8.8 Without limiting the ACCC's discretion, in making a decision to provide an Approval Notice, the factors the ACCC will have regard to include whether:
- (a) the Proposed Purchaser has been approved by the EC and the FTC;
 - (b) the draft sale and purchase agreement is consistent with this Undertaking and otherwise acceptable to the ACCC;
 - (c) the Proposed Purchaser will complete the transaction as contemplated by the draft sale and purchase agreement;
 - (d) the Proposed Purchaser is independent of, and has no direct or indirect interest in, Thermo Fisher;
 - (e) the Proposed Purchaser is of good financial standing and has an intention to maintain and operate the Australian Cell Culture Business and/or the Australian siRNA Business as a going concern;
 - (f) the Proposed Purchaser is able to conduct the Australian Cell Culture Business and/or the Australian siRNA Business effectively within the respective global businesses; and
 - (g) the sale of the Australian Cell Culture Business and/or the Australian siRNA Business to the Proposed Purchaser will address any competition concerns of the ACCC, including the likely long-term viability and competitiveness of the business associated with Australian Cell Culture Business and/or the Australian siRNA Business under the ownership of the Proposed Purchaser.
- 8.9 If the ACCC does not approve a Proposed Purchaser, it will advise Thermo Fisher of its decision in writing.
- 8.10 The ACCC may revoke an Approved Purchaser's status as the Approved Purchaser if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.
- 8.11 Any extension of time by the ACCC pursuant to clause 8.6 extends the Divestiture Period by the same length of time.

9 Preservation of the Australian Cell Culture Business

Maintenance of the Australian Cell Culture Business

- 9.1 From the Commencement Date, Thermo Fisher must not sell or transfer its interest in the Australian Cell Culture Business (other than the sale of goods and services in the ordinary course of business), or make any Material Change, except in accordance with this Undertaking.
- 9.2 Until the Cell Culture Divestiture Completion Date, Thermo Fisher must take such actions as are necessary to maintain the economic viability, marketability and competitiveness of the Australian Cell Culture Business.

Thermo Fisher's obligations in relation to the Australian Cell Culture Business

- 9.3 Without limiting this clause 9, Thermo Fisher must, from the Commencement Date until completion of the divestiture of the Australian Cell Culture Business, take all steps available to it to preserve the economic viability, marketability and competitiveness of the Australian Cell Culture Business, in accordance with good business practice and shall minimise as far as possible any risk of loss of competitive potential of the Australian Cell Culture Business. In particular Thermo Fisher will:
- (a) not carry out any act upon its own authority that might have a significant adverse impact on the value, management or competitiveness of the Australian Cell Culture Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Australian Cell Culture Business; and
 - (b) make available sufficient resources for the development of the Australian Cell Culture Business, on the basis and continuation of the existing business plans for the Australian Cell Culture Business.
- 9.4 From the Commencement Date until the Cell Culture Divestiture Completion Date, Thermo Fisher will not:
- (a) terminate or vary the terms of employment or engagement of any of the Transferred Personnel, or agree to do any of those things; and
 - (b) directly or indirectly procure, promote or encourage the redeployment of personnel necessary for the operation of the Australian Cell Culture Business as at the Commencement Date to any other business operated by Thermo Fisher.

Direction to personnel

- 9.5 As soon as practicable after the Commencement Date, Thermo Fisher must direct its personnel, including directors, contractors, managers, officers, employees and agents, not to do anything inconsistent with Thermo Fisher's obligations under this Undertaking.

Confidential Information

- 9.6 Subject to clause 9.7 and 9.8, Thermo Fisher must not, at any time from the Commencement Date, use or disclose any confidential information about the Australian Cell Culture Business gained through:

- (a) the ownership and/or management of the Australian Cell Culture Business; or
 - (b) fulfilling any obligations pursuant to this Undertaking, including the provision of any services to the Approved Purchaser of the Australian Cell Culture Business.
- 9.7 Clause 9.6 does not apply to information that Thermo Fisher requires to comply with legal and regulatory obligations, including obligations relating to:
- (a) taxation;
 - (b) accounting;
 - (c) financial reporting;
 - (d) Australian Securities and Investments Commission, Securities & Exchange Commission and stock exchange disclosure obligations; and
 - (e) defence of legal claims.
- 9.8 Clause 9.6 does not apply to information that Thermo Fisher requires to carry out its obligations under this Undertaking, including its obligations to sell the Australian Cell Culture Business, and to maintain the economic viability, marketability and competitiveness of the Australian Cell Culture Business, provided such information:
- (a) is only made available to those officers, employees, contractors and advisers of Thermo Fisher who need to know the information for the purpose of ensuring compliance with the Undertaking; and
 - (b) is not used for any other purpose.

10 Independent Management of the Australian Cell Culture Business

Obligation to appoint an Approved Independent Manager

- 10.1 Thermo Fisher must appoint and maintain an Approved Independent Manager to manage the Australian Cell Culture Business, from the Control Date until the Cell Culture Divestiture Completion Date, in accordance with this Undertaking.
- 10.2 Thermo Fisher must procure that the Approved Independent Manager reports to the Monitoring Trustee, and the Divestiture Trustee (if any), appointed pursuant to the EC Commitments.
- 10.3 The Approved Independent Manager will be a delegate of the Monitoring Trustee.
- 10.4 Thermo Fisher must procure that, as a delegate of the Monitoring Trustee, the Approved Independent Manager will:
- (a) in the first report to the ACCC made pursuant to clause 10.4(f), propose a detailed work plan describing how it intends to monitor compliance with this Undertaking;

- (b) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as the Approved Independent Manager pursuant to this Undertaking;
- (c) oversee the on-going management of the Australian Cell Culture Business to ensure its continued economic viability, marketability and competitiveness and monitor compliance by Thermo Fisher with this Undertaking. To that end, Thermo Fisher must procure that the Monitoring Trustee shall:
 - (i) monitor the preservation of the economic viability, marketability and competitiveness of the Australian Cell Culture Business, and the keeping separate of the Australian Cell Culture Business from the business retained by the Parties, in accordance with this Undertaking;
 - (ii) supervise the management of the Australian Cell Culture Business, in accordance with this Undertaking;
 - (iii) in consultation with Thermo Fisher, determine all necessary measures to ensure that Thermo Fisher does not after the Cell Culture Divestiture Completion Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Australian Cell Culture Business, in particular, strive for the severing of the Australian Cell Culture Business' participation in a central information technology to the extent possible, without compromising the viability of the Australian Cell Culture Business, and decide whether such information may be disclosed to Thermo Fisher as the disclosure is reasonably necessary to allow Thermo Fisher to carry out the divestiture or as the disclosure is required by law;
 - (iv) monitor the splitting of assets and allocation of personnel between the Australian Cell Culture Business and Thermo Fisher;
- (d) assume the other functions assigned to the Monitoring Trustee under the EC Commitments with respect to the Australian Cell Culture Business;
- (e) propose to Thermo Fisher such measures as the Approved Independent Manager considers necessary to ensure Thermo Fisher's compliance with this Undertaking, in particular, the maintenance of the economic viability, marketability or competitiveness of the Australian Cell Culture Business, the holding separate of the Australian Cell Culture Business and the non-disclosure of competitively sensitive information; and
- (f) provide to the ACCC a copy of the EC Monitoring Trustee's written reports, which will include a section in relation to the operation and management of the Australian Cell Culture Business, and a copy of any non-compliance report which refers or relates to, or has a material effect on, the Australian Cell Culture Business, including any confidential version of any such reports, within 3 Business Days of providing such a report to the EC.

Appointment of the Approved Independent Manager

- 10.5 At least 5 Business Days before the Control Date, Thermo Fisher must provide the ACCC with a notice for a Proposed Independent Manager in the form prescribed in Schedule 6 to this Undertaking (**Proposed Independent Manager Notice**), and will use best endeavours

to consult the ACCC as early as possible as to the identity of any anticipated Proposed Independent Manager.

- 10.6 The ACCC shall have the discretion to approve or reject in writing the proposed Independent Manager. The Approved Independent Manager shall be appointed within 5 Business Days of the ACCC's approval.

Thermo Fisher's obligations in relation to the Approved Independent Manager

- 10.7 Without limiting its obligations in this Undertaking, Thermo Fisher must comply with and enforce the terms of the Monitoring Trustee mandate, as approved by the EC pursuant to the EC Commitments, in relation to the Approved Independent Manager.

Obligations and powers of the Approved Independent Manager

- 10.8 The obligations and powers of the Approved Independent Manager, as a delegate of the Monitoring Trustee, will be as set out in the terms of the Monitoring Trustee mandate as approved by the EC pursuant to the EC Commitments .

Resignation, revocation or termination of the Approved Independent Manager

- 10.9 Thermo Fisher must immediately notify the ACCC in the event that the Monitoring Trustee resigns or otherwise stops acting as the Monitoring Trustee (pursuant to the EC Commitments) before the completion of the divestiture of the Australian Cell Culture Business.
- 10.10 The ACCC may revoke an Approved Independent Manager's status as the Approved Independent Manager if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.
- 10.11 The ACCC may approve any proposal by, or alternatively may direct, Thermo Fisher to terminate the appointment of the Approved Independent Manager if in the ACCC's view the Approved Independent Manager acts inconsistently with the provisions of this Undertaking.
- 10.12 If clauses 10.9, 10.10 or 10.11 apply, Thermo Fisher must provide the ACCC with details of the proposals for the new Monitoring Trustee, to be appointed pursuant to the terms of the EC Commitments, within 7 Business Days after the relevant event occurs, and clause 10.6 will apply (that is, the ACCC shall have the discretion to approve or reject the proposed Independent Manager, and the Approved Independent Manager shall be appointed within 5 Business Days of the ACCC's approval). Consistent with clause 10.3, the new Approved Independent Manager will be a delegate of the new Monitoring Trustee.

11 Failure to divest the Australian Cell Culture Business and/or the Australian siRNA Business within the Divestiture Period

Sale of unsold Businesses

- 11.1 In the event that the sale of the Australian Cell Culture Business (being a component of the Global Cell Culture Remedy Package) or the Australian siRNA Business (being a component of the Global Gene Modulation Remedy Package) to an Approved Purchaser is not completed by the end of the Divestiture Period, then Thermo Fisher must appoint and maintain a Divestiture Trustee, in accordance with the EC Commitments.

Appointment of a Divestiture Trustee

- 11.2 Thermo Fisher must procure that the terms of appointment of the Divestiture Trustee include obligations to the effect that the Divestiture Trustee;
- (a) must divest the Australian Cell Culture Business and/or the Australian siRNA Business to an Approved Purchaser, approved by the ACCC in accordance with clause 8 of this Undertaking with the Divestiture Trustee acting in place of Thermo Fisher; and
 - (b) must provide a Proposed Purchaser Notice to the ACCC at least 20 Business Days prior to the end of the Trustee Divestiture Period.
- 11.3 Thermo Fisher must provide to the ACCC with a copy of the executed terms of appointment of the Divestiture Trustee within 2 Business Days of execution.
- 11.4 Thermo Fisher must procure that the Divestiture Trustee provide to the ACCC a copy of each report (including any confidential version) provided to the EC that indicates that the progress of Thermo Fisher's compliance with the EC Commitments within 3 Business Days of providing such a report to either the EC.
-

12 Information

- 12.1 Thermo Fisher must notify the ACCC in writing of:
- (a) the anticipated date of the Control Date at least 2 Business Days before the Control Date;
 - (b) the date of the Cell Culture Divestiture Completion Date at least 2 Business Days before that date; and
 - (c) the date of the siRNA Divestiture Completion Date at least 2 Business Days before that date.
- 12.2 Thermo Fisher must notify the ACCC in writing of the occurrence of:
- (a) the completion of the Proposed Acquisition within 3 Business Days of the Control Date;
 - (b) the divestiture of the Australian Cell Culture Business within 3 Business Days of the Cell Culture Divestiture Completion Date; and
 - (c) the divestiture of the Australian siRNA Business within 3 Business Days of the siRNA Divestiture Completion Date.

- 12.3 Thermo Fisher must provide the ACCC with a copy of the executed Approved Sale and Purchase Agreement, and any other agreements between Thermo Fisher and an Approved Purchaser relating to the sale of the Australian Cell Culture Business and Australian siRNA Business within 3 Business Days of any such agreement being executed.
- 12.4 The ACCC may direct Thermo Fisher in respect of its compliance with this Undertaking to, and Thermo Fisher must:
- (a) furnish information to the ACCC in the time and in the form requested by the ACCC;
 - (b) produce information, documents and materials to the ACCC within Thermo Fisher's custody, power or control in the time and in the form requested by the ACCC;
 - (c) direct its personnel, including its directors, contractors, managers, officers, employees and agents, to attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (including its Commissioners, its staff or its agents) may have; and/or
 - (d) respond in a timely manner to any questions or requests for information or documents made by the ACCC about this Undertaking.
- 12.5 The ACCC may request information from any Appointee directly at any time in relation to Thermo Fisher's compliance with this Undertaking.
- 12.6 In respect to Thermo Fisher's compliance with this Undertaking, Thermo Fisher must procure that any Appointee:
- (a) furnish information to the ACCC in the time and in the form requested by the ACCC;
 - (b) produce information, documents and materials to the ACCC within the Appointee's custody, power or control in the time and in the form requested by the ACCC; and/or
 - (c) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (including its Commissioners, its staff or its agents) may have.
- 12.7 Thermo Fisher will use its best endeavours to ensure that the Approved Independent Manager complies with any request from the ACCC in accordance with clause 12.6.
- 12.8 Any direction made by the ACCC under clause 12.4 will be notified to corporate legal counsel of Thermo Fisher, in accordance with clause 17.2.
- 12.9 The ACCC may, in its discretion, to be exercised in good faith:
- (a) advise the Approved Independent Manager of any request made by it under this clause 12; and/or
 - (b) provide copies to the Approved Independent Manager of any information furnished, documents and material produced or information given to it under this clause.
- 12.10 Nothing in this clause 12 requires the provision of information or documents in respect of which Thermo Fisher has a claim of legal professional privilege.

13 Disclosure of Undertaking

13.1 Thermo Fisher and the ACCC agree that:

- (a) Confidential Schedule 2 will remain confidential at all times; and
- (b) subject to clause 13.2, Confidential Schedules 3 and 4 will remain confidential at all times.

13.2 If the EC Commitments in Confidential Schedule 3 become publicly available, the ACCC may publish a version of the Undertaking including Confidential Schedules 3 and 4 on its website.

13.3 Thermo Fisher acknowledges that the ACCC may provide the Approved Independent Manager with a copy of this Undertaking which includes unredacted versions of the Schedules.

13.4 Thermo Fisher acknowledges that the ACCC may, subject to clause 13.1:

- (a) make this Undertaking publicly available;
- (b) publish this Undertaking on its Public Section 87B Undertakings Register and Public Mergers Register; and
- (c) from time to time publicly refer to this Undertaking.

13.5 Nothing in the confidential parts of this Undertaking prevents the ACCC from disclosing such information as:

- (a) is required by law;
- (b) is permitted by s 155AAA of the Act;
- (c) is necessary for the purpose of enforcement action under section 87B of the Act; or
- (d) is necessary for the purpose of making such market inquiries as the ACCC thinks fit to assess the impact on competition arising in connection with this Undertaking.

13.6 Nothing in the confidential parts of this Undertaking prevents the ACCC from using the information contained in this Undertaking for any purpose consistent with its statutory functions and powers.

13.7 Nothing in clause 13.1 or the confidential parts of this Undertaking prevents Thermo Fisher from disclosing any information to a potential Proposed Purchaser for a legitimate purpose, including for the purposes of compliance with the EC Commitments or this Undertaking, provided that, to the extent that the information remains confidential, Thermo Fisher requires the recipient to enter into a non-disclosure agreement.

14 Obligation to procure

14.1 Where the performance of an obligation under this Undertaking requires a Related Body Corporate of Thermo Fisher to take or refrain from taking some action, Thermo Fisher will

procure that Related Body Corporate to take or refrain from taking that action, as the case may be.

15 No Derogation

- 15.1 This Undertaking does not prevent the ACCC from taking enforcement action at any time whether during or after the period of this Undertaking in respect of any breach by Thermo Fisher of any term of the Undertaking.
- 15.2 Nothing in this Undertaking is intended to restrict the right of the ACCC to take action under the Act for penalties or other remedies in the event that Thermo Fisher does not fully implement and/or perform its obligations under this Undertaking or in any other event where the ACCC decides to take action under the Act for penalties or other remedies.

16 Costs

- 16.1 Thermo Fisher must pay all of its own costs incurred in relation to this Undertaking.

17 Notices

Giving Notices

- 17.1 Any notice or communication to the ACCC pursuant to this Undertaking must be sent to:

Email address: mergers@accc.gov.au
Attention: Executive General Manager
Mergers and Adjudication Group

With a copy sent to: mergers@accc.gov.au
Director, Undertakings Compliance Unit
Coordination and Strategy Branch
Mergers and Adjudication Group

- 17.2 Any notice or communication to Thermo Fisher pursuant to this Undertaking must be sent to:

Name: Gilbert + Tobin Lawyers
Address: Level 37, 2 Park Street
Sydney, NSW 2000
Email: eavery@gtlaw.com.au
Attention: Elizabeth Avery, Partner

- 17.3 If sent by post, notices are taken to be received three Business Days after posting (or seven Business Days after posting if sent to or from a place outside Australia).
- 17.4 If sent by email, notices are taken to be received at the time shown in the email as the time the email was sent.

Change of contact details

- 17.5 Thermo Fisher or the ACCC must notify the other party of a change to its contact details within three Business Days.
- 17.6 Any notice or communication will be sent to the most recently advised contact details and subject to clause 17.3 and 17.4, will be taken to be received.

Executed as an Undertaking

Executed by Thermo Fisher Scientific Inc. by its authorised signatory:



Name: Jonathan Wilk

Title: Vice President and Deputy General Counsel

Date: 12/12/13

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the
Competition and Consumer Act 2010 on:

Date:

And signed on behalf of the Commission:



Chairman

Ross Sims

Date:

19/12/13

Schedule 1 Thermo Fisher's Australian subsidiaries

Entity Name	Address Type	Address
App-Tek International Pty Ltd (ACN 056895259)	Business	Kremzow CRT, Unit 3, 2 Pinnacle Street, Brendale, QLD 4500
	Registered Office	5 Caribbean Drive, Scoresby, VIC 3179, Australia
Dionex Pty Limited (ACN 094905601)	Business	4 Talavera Road, Level 1, North Ryde, NSW 2113 Australia
	Registered Office	5 Caribbean Drive, Scoresby, VIC 3179, Australia
EGS Gauging Pty Ltd. (ACN 117643704)	Business	Suite 104, 25 Solent Circuit, Baulkham Hills, NSW 2153
	Registered Office	5 Caribbean Drive, Scoresby, VIC 3179, Australia
EnviroEquip Pty Ltd (ACN 056413926)	Business	13A Rocklea Drive, Port Melbourne, Vic 3207
Fisher Scientific Australia Pty Limited (ACN 077737225)	Business	101 Collins Street, Level 39, Melbourne, VIC 3000, Australia
	Registered Office	5 Caribbean Drive, Scoresby, VIC 3179, Australia
Intalysis Pty Ltd (ACN 116067951)	Business	Unit 16, 56 Buffalo Road Gladesville NSW 2111, Australia
	Registered Office	5 Caribbean Drive, Scoresby, VIC 3179, Australia
Kendro Laboratory Products Pty., Ltd. (ACN 084762274)	Business	164 Langford Drive, Kariong NSW 2250
	Registered Office	5 Caribbean Drive, Scoresby, VIC 3179, Australia
Lomb Scientific (Aust) Pty Limited (ACN 002691287)	Business	26 Atkinson Road, Taren Point NSW 2229 Australia
	Registered Office	5 Caribbean Drive, Scoresby, VIC 3179, Australia
Microgenics Diagnostics Pty. Limited (ACN 084443194)	Business	4 Talavera Road, Level 1, North Ryde, NSW 2113 Australia
	Registered Office	5 Caribbean Drive, Scoresby, VIC 3179, Australia
Oxoid Australia Pty. Limited (ACN 005422659)	Business	20 Daigleish Street, Thebarton Adelaide, South Australia 5031
	Registered Office	5 Caribbean Drive, Scoresby, VIC 3179, Australia
Perbio Science	Registered Office	5 Caribbean Drive, Scoresby, VIC 3179, Australia

Entity Name	Address Type	Address
(Australia) Pty. Limited (ACN 099692243)		
Promedica Pty Limited (ACN 093275551)	Business	Suite 4, Level 2, 25 Ryde Road, Pymble NSW 2073
	Registered Office	5 Caribbean Drive, Scoresby, VIC 3179, Australia
Technology Design Solutions Pty Ltd (ACN 056895259)	Business	'Kremzow Crt', Unit 3, 2 Pinnacle Street, Brendale, QLD 4500
	Registered Office	5 Caribbean Drive, Scoresby, VIC 3179, Australia
Thermo Electron Australia Pty Limited (ACN 109074115)	Registered Office	5 Caribbean Drive, Scoresby, VIC 3179, Australia
Thermo Fisher Scientific Australia Pty Ltd (ACN 058390917)	Business	2-26 Clayton Road, Clayton, VIC 3168
	Registered Office	5 Caribbean Drive, Scoresby, VIC 3179, Australia
Thermo Gamma-Metrics Holdings Pty Ltd. (ACN 122205225)	Registered Office	5 Caribbean Drive, Scoresby, VIC 3179, Australia
Thermo Gamma-Metrics Pty Ltd (ACN 087556527)	Registered Office	5 Caribbean Drive, Scoresby, VIC 3179, Australia
Thermo Informatics Asia Pacific Pty Ltd. (ACN 075553785)	Business	18 Butler Boulevard, Burbridge Business Park, Adelaide Airport, South Australia 5950
	Registered Office	5 Caribbean Drive, Scoresby, VIC 3179, Australia
Thermo Optek (Australia) Pty Ltd. (ACN 075554059)	Business	14/38-46 South Street, Rydalmere NSW 2116
	Registered Office	5 Caribbean Drive, Scoresby, VIC 3179, Australia
Thermo Trace Pty Ltd (ACN 002634442)	Registered Office	5 Caribbean Drive, Scoresby, VIC 3179, Australia
Thermo Fisher Scientific Australia Senior Holdings Pty Limited (ACN 165 098 019)	Registered Office	5 Caribbean Drive, Scoresby, VIC 3179, Australia

Confidential Schedule 2

Confidential Schedule 3

Schedule 4 Dictionary

1 Dictionary

In this Undertaking:

ACCC means the Australian Competition and Consumer Commission.

Act means the *Competition and Consumer Act 2010* (Cth).

Appointee means the Approved Independent Manager, Monitoring Trustee, Hold Separate Manager or Divestiture Trustee, as applicable.

Approval Notice is defined in clause 8.7.

Approved Independent Manager means the Australia-based manager for the Australian Cell Culture Business who reports to the Monitoring Trustee and is independent of Thermo Fisher during the Divestiture Period.

Approved Interim Supply Agreement means any agreement, for the supply of goods or services by Thermo Fisher to the Approved Purchaser, approved by the ACCC under clauses 7.9 or 8.6 of this Undertaking.

Approved Purchaser means a purchaser of the Australian Cell Culture Business, who is approved in accordance with clause 8.

Approved Sale and Purchase Agreement means the contract approved by the ACCC in accordance with the terms of this Undertaking, by which the Approved Purchaser will acquire the Australian Cell Culture Business or Australian siRNA Business from Thermo Fisher.

Australian Cell Culture Business means the business and assets described in Schedule 2.

Australian siRNA Business means the part of the Global Gene Modulation Remedy Package that relates to siRNA assets located in Australia.

Business Day means a day other than a Saturday or Sunday on which banks are open for business generally in the Australian Capital Territory.

Cell Culture Divestiture Completion Date means the date on which completion of the divestiture of the Australian Cell Culture Business from Thermo Fisher to the Approved Purchaser occurs.

Commencement Date means the date when the Undertaking comes into effect in accordance with clause 5.1.

Control Date means the date on which the Proposed Acquisition is completed.

Corporations Act means *Corporations Act 2001* (Cth).

Divestiture Period is the period defined in Confidential Schedule 4.

Divestiture Trustee means the person appointed as a Divestiture Trustee pursuant to the EC Commitments as set out in Schedule 3 of this Undertaking. More specifically, the Divestiture Trustee is one or more natural or legal person(s), independent of the Parties, who is approved by the EC and appointed by Thermo Fisher and who has received from Thermo Fisher the mandate to sell the Global Divestiture businesses to a Purchaser at no minimum price.

EC means European Commission.

EC Commitments means the commitments to the European Commission as detailed in Schedule 3 of this Undertaking.

FBS means foetal bovine serum.

FTC means Federal Trade Commission.

Global Cell Culture Remedy Package has the meaning set out in clause 3.15. It refers to the divestiture to which Thermo Fisher has committed in accordance with Exhibit A of its EC Commitments, as set out in Schedule 3 of this Undertaking.

Global Divestiture means the global divestiture of assets set out in clause 3.13. It is the divestiture to which Thermo Fisher has committed in accordance with the EC Commitments.

Global Gene Modulation Remedy Package has the meaning set out in clause 3.17. It refers to the divestiture to which Thermo Fisher has committed in accordance with Exhibit B of its EC Commitments, as set out in Schedule 3 of this Undertaking.

Hold Separate Manager means the person appointed as a Hold Separate Manager pursuant to the EC Commitments as set out in Schedule 3 of this Undertaking.

Intellectual Property includes all rights in relation to copyright, trade marks, inventions (including patents, innovation patents and utility models), confidential information, trade secrets, technical data, information, know-how, formulae, specifications, drawings, data, manuals and instructions which are owned by Thermo Fisher and used for the operation of the business associated with the Australian Cell Culture Business and are necessary for the economic viability, marketability and competitiveness of the business associated with the Australian Cell Culture Business.

Life Technologies means Life Technologies Corporation, a United States company incorporated under the laws of Delaware, with its head office at 5791 Van Alley Way, Carlsbad, California, United States of America.

Material Change means any change to the structure, attributes, extent or operations of a business associated with the Australian Cell Culture Business that may affect, or impact on, that business' competitiveness, independence from Thermo Fisher and viability.

Material Contract means any contract, arrangement or understanding necessary for the operation of a business associated with the Australian Cell Culture Business, whether or not in writing.

Monitoring Trustee means the one or more natural or legal person(s), independent of the Parties, who is approved by the EC and appointed by Thermo Fisher, and who has the duty to monitor Thermo Fisher's compliance with the conditions and obligations in the EC Commitments as set out in Schedule 3 of this Undertaking.

Mordialloc facility is defined in clause 3.23.

Product Approval means any approvals, registrations, permits, licences, consents, authorisations and other approvals, and pending applications and requests therefore, required exclusively for the importation, supply and sale of the cell culture products in Australia.

Proposed Acquisition is defined in clause 3.1.

Proposed Purchaser means a person who proposes to acquire a business associated with the Australian Cell Culture Business and/or the Australian siRNA Business, as named in a Proposed Purchaser Notice.

Proposed Purchaser Notice is defined in clause 8.4.

Public Mergers Register means the ACCC's public register of merger investigations, available at www.accc.gov.au.

Public Section 87B Undertakings Register means the ACCC's public register of section 87B undertakings, available at www.accc.gov.au.

Related Bodies Corporate has the meaning given to it by section 4A of the Act.

siRNA means the product known as "synthetic small interfering RNA".

siRNA Divestiture Completion Date means the date on which completion of the divestiture of the Australian siRNA Business from Thermo Fisher to the Approved Purchaser occurs.

SUT means single use technologies, as defined in clause 3.24.

Thermo Fisher has the meaning given in clause 1.1 of this Undertaking.

Third Party Consents means any consents (including by any governmental agency or authority) required for the assignment, novation, sale, sub-licensing or transfer of any assets, licences, Material Contracts (including those agreements, licences or sub-licences, as the case may be, in Schedule 3), permits or approvals:

- (a) used by or in relation to the Australian Cell Culture Business at the date of this Undertaking;
- (b) which will be subject in each case to Thermo Fisher obtaining the relevant written consent of the third party to the continuation of the use, after the sale of such assets in accordance with this Undertaking, of such asset, licence, Material Contract, permit or approval by any business associated with the Australian Cell Culture Business; and
- (c) without which Thermo Fisher would not be able to effect the divestiture of the Australian Cell Culture Business in accordance with this Undertaking,

on no less favourable terms than enjoyed in relation to the Australian Cell Culture Business at the date of this Undertaking.

Transferred Personnel means employees described in clause 7.4(b).

Trustee Divestiture Period is the period defined in Confidential Schedule 3.

Undertaking is a reference to all the provisions of this document including its Schedules.

2 Interpretation

In the interpretation of this Undertaking, the following provisions apply unless the context otherwise requires:

- (a) a reference to 'this Undertaking' includes all of the provisions of this document including its schedules;
- (b) headings are inserted for convenience only and do not affect the interpretation of this Undertaking;
- (c) if the day on which any act, matter or thing is to be done under this Undertaking is not a Business Day, the act, matter or thing must be done on the next Business Day;
- (d) a reference in this Undertaking to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (e) a reference in this Undertaking to any company includes its Related Bodies Corporate;
- (f) a reference in this Undertaking to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;
- (g) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Undertaking;
- (h) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (i) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (j) a word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes the other genders;
- (k) a reference to the words 'such as', 'including', 'particularly' and similar expressions is to be construed without limitation;

- (l) a construction that would promote the purpose - or object - underlying the Undertaking (whether expressly stated or not) will be preferred to a construction that would not promote that purpose or object;
- (m) material not forming part of this Undertaking may be considered to:
 - (i) confirm the meaning of a clause is the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the competition concerns intended to be addressed by the Undertaking and the clause in question; or
 - (ii) determine the meaning of the clause when the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the purpose or object underlying the Undertaking, leads to a result that does not promote the purpose or object underlying the Undertaking;
- (n) in determining whether consideration should be given to any material in accordance with paragraph (m), or in considering any weight to be given to any such material, regard must be had, in addition to any other relevant matters, to:
 - (i) the effect that reliance on the ordinary meaning conveyed by the text of the clause would, have (taking into account its context in the Undertaking and whether that meaning promotes the purpose or object of the Undertaking); and
 - (ii) the need to ensure that the result of the Undertaking is to completely address any ACCC competition concerns;
- (o) the ACCC may authorise the Mergers Review Committee, a member of the ACCC or a member of the ACCC staff, to exercise a decision making function under this Undertaking on its behalf and that authorisation may be subject to any conditions which the ACCC may impose;
- (p) in performing its obligations under this Undertaking, Thermo Fisher will do everything reasonably within its power to ensure that its performance of those obligations is done in a manner which is consistent with promoting the purpose and object of this Undertaking.
- (q) a reference to:
 - (i) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
 - (ii) a party includes its successors and permitted assigns; and
 - (iii) a monetary amount is in Australian dollars.

Confidential Schedule 4

Schedule 5 Proposed Purchaser Notice Form

Please note in relation to information given on or in relation to this form, giving false or misleading information is a serious offence.

The completed form with requested documents attached may be provided to the ACCC using the following method:

Email

Subject line: Proposed Purchaser Notice – Thermo Fisher
Address: mergers@accc.gov.au
Attention: Executive General Manager – Mergers and Adjudication Group

With an email copy sent to:

Address: mergersucu@accc.gov.au
Attention: Director, Undertakings Compliance Unit, Coordination and Strategy Branch

- 1) In relation to the Proposed Purchaser, please provide the following information:
 - (a) Name of the Proposed Purchaser:
 - (b) Address:
 - (c) Telephone number:
 - (d) Other contact details:
- 2) Please attach a submission containing the following information to this form:
 - (a) a description of the business carried on by the Proposed Purchaser including the locations in which the Proposed Purchaser carries on its business.
 - (b) details of the Proposed Purchaser's experience in the relevant market/s.
 - (c) the names of the owner/s and/or the directors (delete any that do not apply) of the Proposed Purchaser.
 - (d) a section addressing the factors set out in clause 8.8 of this Undertaking, including any information adverse to the Proposed Purchaser, in the power, possession or control of Thermo Fisher.
- 3) Please also attach to this form:
 - (a) the finalised draft of the sale and purchase agreement for approval by the ACCC in accordance with this Undertaking.
 - (b) the finalised draft of any interim supply agreement for approval by the ACCC in accordance with this Undertaking.

Schedule 6 Independent Manager Appointment

This form sets out the information required by the ACCC in relation to proposed appointment of the Independent Manager.

Please note in relation to information given on in relation to this form, giving false or misleading information is a serious offence.

Method of Delivery to the ACCC

The completed form, along with the additional requested information is to be provided to the ACCC with the subject line *proposed Independent Manager Form – Thermo Fisher Undertaking* to the below email addresses:

- 1) **mergers@accc.gov.au**
 Attention: Executive General Manager
 Mergers and Adjudication Group

- 2) **With a copy sent to:**
 mergers@accc.gov.au
 Attention: Director, Undertakings Compliance Unit
 Coordination and Strategy Branch
 Mergers and Adjudication Group

Information Required

The ACCC requires the following information in order to assess an Independent Manager

- 1) Proposed Independent Manager Details:
 - (a) the name of the Proposed Independent Manager; and
 - (b) the name of the proposed Independent Manager's employer and contact details including:
 - Address;
 - Contact name;
 - Telephone number;
 - Other contact details.

- 2) A submission containing the following information:
 - (a) details of the Proposed Independent Manager's qualifications and experience relevant to his or her proposed role pursuant to the Undertaking.
 - (b) the names of the owner/s and the directors of the Proposed Independent Manager's employer.

(c) details of any of the following types of relationships between Thermo Fisher and the Proposed Independent Manager or the Proposed Independent Manager's employer, or confirmation that no such relationship exists whether within Australia or outside of Australia, other than as disclosed:

- (i) Thermo Fisher and the Proposed Independent Manager's employer are Associated Entities.
- (ii) Thermo Fisher is an Entity Connected with Proposed Independent Manager's employer.
- (iii) The Proposed Independent Manager's employer is an Entity Connected with Thermo Fisher.
- (iv) Thermo Fisher and Proposed Independent Manager's employer are Related Entities.
- (v) Thermo Fisher and Proposed Independent Manager's employer are Related Parties
- (vi) any Related Party, Related Entity or Entity Connected with Thermo Fisher is a Related Party, Related Entity or Entity Connected with Proposed Independent Manager.
- (vii) Thermo Fisher and Proposed Independent Manager or the Proposed Independent Manager's employer have a contractual relationship or had one within the past three years, other than those attached to this form.
- (viii) the Proposed Independent Manager's employer is a supplier of Thermo Fisher or has been in the past three years other than the relationships disclosed in 2)(c)(vii) above.
- (ix) Thermo Fisher is a supplier of the Proposed Independent Manager's employer or has been in the past three years.
- (x) any other relationship between Thermo Fisher and the Proposed Independent Manager or the Proposed Independent Manager's employer that allows one to affect the business decisions of the other.

3) A document outlining the terms of appointment for the Proposed Independent Manager.

Specific Information required for appointment of the Approved Independent Manager

The ACCC requires the below information in relation to the appointment of the Approved Independent Manager.

- 1) The finalised draft separation and management plan for the Global Cell Culture Remedy Package, including the Australian Cell Culture Business detailing the measures and timing to be implemented by Thermo Fisher's and the Approved Independent Manager in order to fulfil Thermo Fisher's and the Approved Independent Manager's obligations pursuant to this Undertaking. This plan is to be drafted by the Proposed Independent Manager in consultation with Thermo Fisher to achieve the objectives of, and in accordance with, the Undertaking including:

- (a) the intended mode of operation of the Australian Cell Culture Business until completion of their divestiture;
- (b) separation measures to ensure the Australian Cell Culture Business is operated in a manner which is financially and operationally separate from Thermo Fisher, including the;
 - (i) separation of the books and records of the Australian Cell Culture Business from those of Thermo Fisher;
 - (ii) severance of the Australian Cell Culture Business' participation in any private shared information technology networks, to the extent possible without compromising the viability of the Australian Cell Culture Business;
 - (iii) implementation of specific electronic, information and physical security measures to maintain the confidentiality of any competitively sensitive information of the Australian Cell Culture and Business; and
 - (iv) severance of arrangements to share personnel and plant between the Australian Cell Culture Business and any businesses to be retained by Thermo Fisher, to the extent possible without compromising the viability of the Australian Cell Culture Business;
- (c) details of contracts for the provision of goods or services to the Australian Cell Culture Business which will expire after the completion of the divestiture of the Australian Cell Culture Business to the Approved Purchaser and the actions which will be taken to ensure they are replaced, renewed and/or renegotiated on commercial terms favourable to the Australian Cell Culture Business;
- (d) personnel planning to maintain appropriate personnel levels and ensure that the Australian Cell Culture Business has access to all personnel necessary to operate the Australian Cell Culture Business;
- (e) any Material Changes to the Australian Cell Culture Business required in order to fulfil Thermo Fisher's and the Approved Independent Manager's obligations pursuant to the Undertaking;
- (f) the cooperation required from the Independent Manager with Thermo Fisher in relation to the divestiture of the Australian Cell Culture Business, including:
 - (i) the method by which due diligence information, site visits and personnel interviews (if any) by and to prospective purchasers of the Australian Cell Culture Business will be managed;
 - (ii) the method by which the Independent Manager and Thermo Fisher will preserve the confidentiality of the Australian Cell Culture Business' competitively sensitive information from Thermo Fisher and its advisers throughout this process; and
 - (iii) a protocol whereby the Approved Independent Manager can provide any information requested by Thermo Fisher without disclosing the details of the Australian Cell Culture Business' competitively sensitive information to Thermo Fisher.