

**ASSET PURCHASE AGREEMENT**

**BETWEEN**

**DIAGNOCURE INC.**

– and –

**GEN-PROBE INCORPORATED**

**DECEMBER 23, 2015**

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## ASSET PURCHASE AGREEMENT

THIS AGREEMENT is dated as of December 23, 2015

**B E T W E E N :**

DiagnoCure Inc., a corporation incorporated under  
the laws of the Province of Québec, Canada

(the “Seller”)

- and -

Gen-Probe Incorporated, a corporation incorporated  
under the laws of the State of Delaware, U.S.A.

(the “Buyer”)

**CONTEXT:**

- A.** The Seller carries on the business of developing and providing molecular and genomic tests to support effective clinical decisions enabling personalized medicine in oncology.
- B.** The Seller wishes to sell and the Buyer wishes to purchase certain assets of the Seller, all as more specifically set out in this Agreement and subject to the terms and conditions of this Agreement.
- C.** The Buyer is the owner of 4,900,000 Series A Preferred Shares (the “Shares”) in the capital of the Seller.
- D.** The Buyer wishes to sell, and the Seller wishes to purchase, the Shares for cancellation, all as more specifically set out in this Agreement and subject to the terms and conditions of this Agreement.

**THEREFORE**, the Parties agree as follows:

### ARTICLE 1 INTERPRETATION

#### 1.1 Definitions

In this Agreement, unless the context requires otherwise, capitalized terms defined in Schedule 1.1 have the meanings set out in such schedule.

## **1.2 Certain Rules of Interpretation**

- 1.2.1 In this Agreement, words signifying the singular number include the plural and vice versa, and words signifying gender include all genders. Every use of the words “including” or “includes” in this Agreement is to be construed as meaning “including, without limitation” or “includes, without limitation”, respectively.
- 1.2.2 The division of this Agreement into Articles and Sections, the insertion of headings and the inclusion of a table of contents are for convenience of reference only and do not affect the construction or interpretation of this Agreement.
- 1.2.3 Wherever in this Agreement reference is made to a calculation to be made in accordance with GAAP, the reference is to Canadian generally accepted accounting principles applicable to publicly accountable enterprises under Part I of the CPA Canada Handbook of the Chartered Professional Accountants of Canada, as amended at any time, applicable as at the date on which the calculation is made or required to be made in accordance with GAAP.
- 1.2.4 References in this Agreement to an Article, Section, Schedule or Exhibit are to be construed as references to an Article, Section, Schedule or Exhibit of or to this Agreement unless otherwise specified.
- 1.2.5 Unless otherwise specified in this Agreement, time periods within which or following which any calculation or payment is to be made, or action is to be taken, will be calculated by excluding the day on which the period begins and including the day on which the period ends. If the last day of a time period is not a Business Day, the time period will end on the next Business Day.
- 1.2.6 Unless otherwise specified, any reference in this Agreement to any statute includes all regulations and subordinate legislation made under or in connection with that statute at any time, and is to be construed as a reference to that statute as amended, modified, restated, supplemented, extended, re-enacted, replaced or superseded at any time.

## **1.3 Governing Law**

This Agreement is governed by, and is to be construed and interpreted in accordance with, the Laws of the Province of Québec and the Laws of Canada applicable in that Province.

## **1.4 Entire Agreement**

This Agreement, together with any other agreement or agreements and other documents to be delivered under this Agreement, constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement and supersedes for all purposes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties, and there are no representations, warranties or other agreements between the Parties in connection with the subject matter of this Agreement except as specifically set out in this Agreement or in any of the other agreements and documents delivered under this Agreement. No Party has been induced to

enter into this Agreement in reliance on, and there will be no liability assessed with respect to, any warranty, representation, opinion, advice or assertion of fact, except to the extent it has been included as a term in this Agreement or, if applicable, in any of the other agreements and documents delivered under this Agreement.

## **1.5 Schedules and Exhibits**

The following is a list of Schedules and Exhibits:

<b>Schedule</b>	<b>Subject Matter</b>
1.1	Defined Terms
2	Certain Purchased Assets
4	Special Resolution
5	Representations and Warranties of the Seller
6	Representations and Warranties of the Buyer
7.9.1	PCP Intellectual Property
A	Disclosure Letter

<b>Exhibit</b>	<b>Subject Matter</b>
3.2	Allocations of Purchase Price
7.12	Insurance Policies

## **ARTICLE 2 PURCHASE AND SALE**

### **2.1 Agreement of Purchase and Sale**

Subject to the terms and conditions of this Agreement, on the Closing Date, the Seller will sell, assign and transfer to the Buyer, and the Buyer will purchase from the Seller, as of and with effect from the opening of business on the Closing Date all of the Seller's right, title and interest, in and to, the Purchased Assets.

## **2.2 Non-Assigned Assets**

Nothing in this Agreement will be construed as an assignment of, or an attempt to assign to the Buyer any Contract or Permit which, as a matter of law or by its terms, is (i) not assignable, or (ii) not assignable without first obtaining the consent or approval of a third party (“Third Party Consent”) which has not been obtained.

## **2.3 Excluded Liabilities and Obligations**

Effective as of the Closing Time and subject to this Agreement, the Buyer will not assume, pay, perform, or discharge any of the Excluded Liabilities or any other liabilities or obligations of the Seller, all of which will remain the sole responsibility of the Seller.

# **ARTICLE 3 PURCHASE PRICE**

## **3.1 Purchase Price**

The aggregate purchase price payable by the Buyer to the Seller for the Purchased Assets (the “Purchase Price”) is \$6,534,740, to be satisfied by the Buyer at the Closing Time by:

- 3.1.1 delivering to the Seller a certified cheque or bank draft, or by effecting a wire transfer of immediately available funds to an account designated in writing by the Seller on the Closing Date, in the amount of five million five hundred thousand dollars (\$5,500,000); and
- 3.1.2 the cancellation and surrender of the Shares Promissory Note.

## **3.2 Allocation of Purchase Price**

The Purchase Price will be allocated among the Purchased Assets in accordance with the provisions listed in Exhibit 3.2. The Seller and the Buyer will cooperate in the filing of any elections under the ITA and any other applicable Tax Law as may be necessary or desirable to give effect to that allocation for Tax purposes. The Seller and the Buyer will prepare and file their respective Tax returns in a manner consistent with that allocation and those elections.

## **3.3 Taxes**

- 3.3.1 The Seller will pay, collect and remit all Taxes relating to the Purchased Assets, the PCA3 Technology and the PCP Technology which arise before, or are related to a period of time before, the Closing.
- 3.3.2 Buyer and Seller acknowledge that the sale of the Purchased Assets constitutes a zero-rated supply of property under Part V of Schedule VI to the ETA and Chapter IV of Title I of the QSTA so that no GST or QST is payable in connection with the transfer of the Purchased Assets by Seller to Buyer.

- 3.3.3 The Seller and the Buyer agree that except as provided in this Section, the Buyer will be liable for and will pay all Taxes, including all Commodity Taxes, properly payable by the Buyer in connection with the sale and transfer of the Purchased Assets and the Buyer will furnish proof of the payment of those Commodity Taxes to the appropriate Governmental Entity, as applicable.

### **3.4 Manner of Payment**

All payments required to be made to or to the order of a Party under this Agreement will be made by certified cheque or bank draft, or by wire transfer to an account designated in writing by the Party entitled to receive the payment.

## **ARTICLE 4 SHAREHOLDER APPROVAL**

### **4.1 The Seller Meeting**

- 4.1.1 Subject to the terms of this Agreement and provided that this Agreement has not been terminated, the Seller agrees to convene and conduct the Seller Meeting in accordance with the governing documents of the Seller and as otherwise required by applicable Laws as soon as reasonably practicable following the date hereof and in any event on or before February 12, 2016 and not to propose to adjourn or postpone the Seller Meeting:
- 4.1.1.1 except as required for quorum purposes or by applicable Law or by a Governmental Entity;
  - 4.1.1.2 except for an adjournment consented to by the Buyer for the purpose of attempting to obtain the Requisite Shareholder Approval; or
  - 4.1.1.3 except if this Agreement is terminated pursuant to Section 11.1.1.3 or Section 11.1.1.4.
- 4.1.2 The Seller will fix a record date for the purposes of determining the Shareholders entitled to receive notice of and to vote at the Seller Meeting, which record date will be January 11, 2016 or such other date as agreed by the Seller and the Buyer.
- 4.1.3 The Seller will use its commercially reasonable efforts to solicit proxies in favour of the approval of the Special Resolution, including, if so requested by the Buyer, and at the cost and expense of the Buyer, using dealer and proxy solicitation services and cooperating with any persons engaged by the Buyer to solicit proxies in favour of the approval of the Special Resolution.
- 4.1.4 The Seller will give notice to the Buyer of the Seller Meeting and allow the Buyer's representatives and legal counsel to attend the Seller Meeting.



4.1.5 The Seller will advise the Buyer as the Buyer may reasonably request, and at least on a daily basis on each of the last ten Business Days prior to the date of the Seller Meeting, as to the aggregate tally of the proxies received by the Seller in respect of the Special Resolution and any further information respecting such proxies as the Buyer may reasonably request.

## **4.2 The Seller Circular**

4.2.1 Subject to compliance by the Buyer with this Section 4.2, promptly after the execution of this Agreement, the Seller will prepare and complete the Seller Circular together with any other documents required by the Act, applicable securities Laws and other applicable Laws in connection with the Seller Meeting and the Transaction, and the Seller will cause the Seller Circular and other documentation required in connection with the Seller Meeting to be filed and to be sent to each Shareholder, the directors of the Seller, the auditors of the Seller and any other persons as required by applicable Laws, in each case so as to permit the Seller Meeting to be held within the time required by Section 4.1.1.

4.2.2 The Seller will ensure that the Seller Circular complies in all material respects with all applicable Laws, and, without limiting the generality of the foregoing, that the Seller Circular will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements contained therein not misleading in light of the circumstances in which they are made (other than with respect to any information furnished by the Buyer) and will provide the Shareholders with information in sufficient detail to permit them to form a reasoned judgment concerning the matters to be placed before them at the Seller Meeting. The Seller Circular will include the Seller Recommendation.

4.2.3 The Buyer and its legal counsel will be given a reasonable opportunity to review and comment on drafts of the Seller Circular and other documents related thereto, and reasonable consideration will be given to any comments made by the Buyer and its counsel, provided that all information relating solely to the Buyer included in the Seller Circular will be in form and content satisfactory to the Buyer, acting reasonably.

4.2.4 The Seller and the Buyer will promptly notify each other if at any time before the Closing such Party becomes aware that the Seller Circular contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements contained therein not misleading in light of the circumstances in which they are made, or that otherwise requires an amendment or supplement to the Seller Circular, as required or appropriate, and the Seller will, subject to compliance by the Buyer with this Section 4.2.4, and, if required by applicable Laws, promptly mail or otherwise publicly disseminate any amendment or supplement to the Seller Circular to the Shareholders and file the same with the Securities Authorities and as otherwise required.

**ARTICLE 5  
REPRESENTATIONS AND WARRANTIES OF THE SELLER**

**5.1 Representations and Warranties of the Seller**

Except as disclosed in the Disclosure Letter delivered to the Buyer (the “Disclosure Letter”), the Seller hereby represents and warrants to and in favour of the Buyer as set forth in Schedule 5 and acknowledges that the Buyer is relying upon such representations and warranties in connection with entering into this Agreement.

**5.2 Disclosure Letter**

Contemporaneously with the execution and delivery of this Agreement, the Seller is delivering to the Buyer the Disclosure Letter required to be delivered pursuant to this Agreement, which sets out the disclosures, exceptions and exclusions contemplated or permitted by this Agreement, including certain exceptions and exclusions to the representations and warranties and covenants of the Seller contained in this Agreement. The disclosure of any item in the Disclosure Letter shall constitute disclosure or, as applicable, exclusion of that item for the Disclosure Letter where the relevance of that item as an exception to (or a disclosure for the purposes of) the applicable representations and warranties and covenants is reasonably apparent on the face of such disclosure regardless of whether the applicable representations, warranties or covenants are qualified by the language “Except as disclosed in the Disclosure Letter” or an equivalent qualification.

**ARTICLE 6  
REPRESENTATIONS AND WARRANTIES OF THE BUYER**

**6.1 Representations and Warranties of the Buyer**

The Buyer hereby represents and warrants to and in favour of the Seller as set forth in Schedule 6 and acknowledges that the Seller is relying upon such representations and warranties in connection with the entering into of this Agreement.

**ARTICLE 7  
COVENANTS**

**7.1 Interim Period Covenants**

During the period beginning on the date of this Agreement and ending at the Closing Time, the Seller will:

- 7.1.1 use the PCA3 Technology diligently as currently used in the normal course of business and prudently and refrain from entering into any Contract relating to the

Purchased Assets except with the prior written consent of the Buyer, and will use its commercially reasonable efforts to preserve intact the Purchased Assets;

7.1.2 refrain, directly or indirectly, from doing or proposing to do any of the following without the prior written consent of the Buyer:

7.1.2.1 except as a result of the Seller Subsidiary Wind-Up prior to Closing, amend, modify, assign any rights under, waive or terminate any License Agreement or the Gen-Probe Agreement;

7.1.2.2 transfer, sell, lease, assign, license, mortgage, pledge, impair, surrender, divest, cancel, abandon or allow to lapse or expire or otherwise dispose of any of the Purchased Assets;

7.1.2.3 grant any Encumbrance (other than Permitted Encumbrances) on any Purchased Assets;

7.1.2.4 except as a result of the Seller Subsidiary Wind-Up prior to Closing, assign or grant an exclusive license of any right in any Seller Intellectual Property;

7.1.2.5 amend, waive, terminate or enter into any Contract the primary subject of which is the licensing of Seller Intellectual Property, under which the Seller has obtained or granted any express license or other right to use, or which by their terms expressly restrict the Seller's right to use any Seller Intellectual Property; or

7.1.2.6 except as a result of the Seller Subsidiary Wind-Up prior to Closing, enter into or consummate any tax planning or restructuring transaction which involves any transfer, assignment or other disposition of any Seller Intellectual Property;

7.1.2.7 (A) waive or amend (except in the course of diligently prosecuting the Seller Intellectual Property) the Seller's rights in or to any Seller Intellectual Property that is registered or the subject of an application for registration, (B) fail to diligently prosecute or maintain any material Seller Intellectual Property that is registered or the subject of an application for registration, or (C) fail to make any required payments in accordance with the terms of any License Agreement; or

7.1.2.8 authorize, commit or enter into any Contract to do any of the foregoing, or any action that would make any of the Seller's representations and warranties contained in this Agreement untrue or incorrect in any material respect or prevent the Seller from completing the Transaction;

7.1.3 refrain, directly or indirectly, from doing or proposing to do any of the following without the prior written consent of the Buyer (but only to the extent that such action would prevent, interfere with, hinder or delay the completion of the Transaction):

- 7.1.3.1 amend its governing documents;
  - 7.1.3.2 merge or consolidate the Seller with any other Person, or dissolve or completely or partially liquidate;
  - 7.1.3.3 cancel, waive, release, assign, settle or compromise any Claim relating to the Purchased Assets; or
  - 7.1.3.4 authorize, commit or enter into any Contract to do any of the foregoing, or any action that would make any of the Seller's representations and warranties contained in this Agreement untrue or incorrect in any material respect or prevent the Seller from completing the Transaction;
- 7.1.4 continue in full force the Insurance Policies;
- 7.1.5 comply in all material respects with all Laws applicable to the PCA3 Technology;
- 7.1.6 apply for, maintain in good standing and renew all PCA3 Technology Permits;
- 7.1.7 inform the Buyer as soon as possible of any Contracts forming part of the Purchased Assets for which the Seller has been advised that a necessary consent or approval of a third party to the assignment of the Contracts to the Buyer will not be provided before the Closing Date; and
- 7.1.8 keep the Buyer promptly informed of (A) any material communication (written or oral), received by the Seller, with or from the FDA and any other Regulatory Authority with respect to the PCA3 Technology and (B) any material communications (written or oral) received from any Person relating to the Seller Intellectual Property.

## **7.2 Access for Investigation; Information Rights**

- 7.2.1 The Seller will permit the Buyer through its authorized Representatives, until the Closing Date, to have reasonable access during normal business hours to the Purchased Assets, the Seller's senior management and personnel and to all the Books and Records of the Seller and to the properties and assets of the Seller, in each case relating to the Purchased Assets. The Seller will also furnish to the Buyer any financial and operating data and other information with respect to the Purchased Assets as the Buyer reasonably requests to enable confirmation of the accuracy of the matters represented and warranted in Schedule 5.
- 7.2.2 Any information provided under Section 7.2.1 that is non-public or proprietary in nature will be subject to the Confidentiality Agreement.
- 7.2.3 The Seller authorizes all Governmental Entities having jurisdiction to release all information in their possession respecting the Purchased Assets to the Buyer. The Seller will execute any specific authorizations pursuant to this Section 7.2.3 within three Business Days after being requested to do so by the Buyer.

7.2.4 The collection, use and disclosure of Personal Information by any of the Parties before the Closing is restricted to those purposes that relate to the Transaction.

### **7.3 Actions to Satisfy Closing Conditions**

Each Party will take all actions that are within its power to control, and will make all commercially reasonable efforts to cause other actions to be taken which are not within its power to control, so as to ensure its compliance with, and satisfaction of, all conditions in Article 8 that are for the benefit of the other Party.

### **7.4 Regulatory Approvals**

As soon as reasonably practicable after the date hereof and, if applicable, each Party will make all notifications, filings, applications and submissions with Governmental Entities required or advisable with respect to, and will use commercially reasonable efforts to obtain and maintain, the regulatory approvals reasonably deemed by either Party, acting reasonably, to be necessary to discharge its obligations under this Agreement or otherwise advisable under Laws in connection with the Transaction and this Agreement.

### **7.5 Disclosure Supplements**

Before the Closing, the Seller will promptly notify the Buyer with respect to any matter, condition or occurrence arising which, if existing at or occurring before or on the date of this Agreement, would have been required to be set out or described in the Disclosure Letter. The Parties will make their best efforts to resolve any issues arising from any notification, including amending the Agreement. Failing resolution, the Buyer may terminate this Agreement by notice in writing to the Seller. In that event, both the Buyer and the Seller will be released from all obligations under this Agreement (except as set out in Article 10). Notification under this Section 7.5 will not, in any case, be deemed to cure any breach of any representation or warranty made in this Agreement or have any effect on the Buyer's right to indemnity provided for in Article 10 or have any effect for the purpose of determining the satisfaction of the conditions set out in Article 8 or the compliance by the Seller with any covenants or agreements contained in this Agreement.

### **7.6 Delivery of Books and Records**

At the Closing Time, the Seller will cause to be delivered to the Buyer all of the Books and Records of and related to the PCA3 Technology.

### **7.7 Investment Canada Act Notification Form**

Prior to Closing, the Seller will use commercially reasonable efforts to cooperate with the Buyer in preparing the notification form contemplated by Part III of the Investment Canada Act, to the extent that the required information relates to the Seller.

## **7.8 Covenants Regarding the Performance of Obligations**

Subject to the terms and conditions of this Agreement, the Seller will perform all obligations required or desirable to be performed by the Seller under this Agreement in order to consummate and make effective, as soon as reasonably practicable, the Transaction. Without limiting the generality of the foregoing:

- 7.8.1 the Seller will use best efforts to obtain the Requisite Shareholder Approval, including submitting the Special Resolution for approval by the Shareholders at the Seller Meeting in accordance with Section 4.1;
- 7.8.2 the Seller will, at the Buyer's own cost and expense, execute and deliver any further agreements and documents and provide any further assurances, undertakings and information as may be reasonably required by the Buyer to ensure all relevant Seller Intellectual Property is transferred to the Buyer upon Closing or following the Closing and, without limiting the generality of this Section 7.8.2, will do or cause to be done all acts and things, execute and deliver or cause to be executed and delivered all agreements and documents and provide any assurances, undertakings and information as may be required at any time by the Buyer.
- 7.8.3 the Seller will, and will cause all of its Affiliates to, cease making, using, selling, practicing, exploiting or otherwise dealing with Purchased Assets immediately upon Closing and at all times following Closing. Neither Seller nor any of its Affiliates will accept any benefit (including any payments, compensation or other benefit) from a third party relating directly or indirectly to the Purchased Assets at any time following Closing. If the Seller or any of its Affiliates has knowledge that any such benefit may be conferred upon the Seller or any of its Affiliates by a third party, the Seller will promptly notify: (i) the third party that the Seller is no longer the owner of the Purchased Asset; and (ii) the Buyer of the identity of the third party and all details of the benefit. This Section 7.8.3 will survive termination of this Agreement;
- 7.8.4 the Seller will use best efforts to obtain, prior to the Closing Time, the consent of the University of Nijmegen to the assignment by the Seller of the Nijmegen License Agreement, together with all rights, title and interest held by the Seller therein, to the Buyer, with such assignment to be effective as of the Closing Time;
- 7.8.5 the Seller will use best efforts to obtain, prior to the Closing Time, the consent of Johns Hopkins University to the assignment by the Seller of the Hopkins License Agreement, together with all rights, title and interest held by the Seller therein, to the Buyer, with such assignment to be effective as of the Closing Time; and
- 7.8.6 as soon as reasonably practicable after the date hereof, the Seller will send to each third party counterparty to a Contract that is only assignable with Third Party Consent a notification in writing that is reasonably satisfactory to the Buyer, which notification will (a) notify such third party of the Transaction, and (b) for each counterparty, request the written approval of such counterparty to the assignment of

all rights and obligations under such Contract to the Buyer, with each such assignment to be effective as of the Closing Time.

## **7.9 Right of First Refusal for License Regarding PCP**

- 7.9.1 If the Seller proposes to grant to a third party a right and license to any of its Intellectual Property rights relating to Seller's PCP technology (including, without limitation, the patents and patent applications as specified in Schedule 7.9.1) in the field of high-volume *in vitro diagnostics* (IVD) testing (e.g., IVD applications of an automated instrument with a throughout of greater than 150 tests in an 8 hour period) (a "PCP License"), the Seller will first provide the Buyer with written notice of such proposal, including all material terms and conditions thereof (including, without limitation, license fees, required milestones, terms of payment) (the "PCP License Notice").
- 7.9.2 For 60 days following receipt of the PCP License Notice, the Buyer will have the right to enter into the PCP License upon the terms and conditions contained in the PCP License Notice.
- 7.9.3 In the event the Buyer elects to enter into the PCP License, the Buyer will give written notice of its election to the Seller within such 60-day period and the Parties will enter into the PCP License on the terms and conditions set out in the PCP License Notice.
- 7.9.4 If the Buyer does not elect to enter into the PCP License, the Seller may, within the 60-day period following the expiration of the right granted to the Buyer, enter into a PCP License with the proposed third party licensee, provided that this license shall not be on terms and conditions more favorable to the licensee than those contained in the PCP License Notice.
- 7.9.5 The provisions of this Section 7.9 will terminate upon the later of (i) the 5<sup>th</sup> anniversary of the Closing Date and (ii) 2 years after the Seller's first commercialization of a PCP product (including a commercial offering of such PCP product as a service through a laboratory).

## **7.10 Employees**

- 7.10.1 Subject to Section 7.10.2, at Closing, Employees will remain with the Seller on terms and conditions which, in the aggregate, are no less favourable than the terms in effect as at the signature of this Agreement.
- 7.10.2 The Seller retains the sole discretion to terminate any Employee before or after the Closing. The Seller will deal with any such termination in accordance with applicable Laws and with its contractual obligations.

### **7.11 Series A Preferred Shares**

The Buyer undertakes to retain ownership of the Shares and not to exercise any conversion right as it relates to the Shares prior to the Closing Time.

### **7.12 Insurance**

The Seller covenants and agrees that during the period beginning on the Closing Date and ending upon the 5<sup>th</sup> anniversary of the Closing Date, the Seller will continue in full force the Insurance Policies attached at Exhibit 7.12 on the same terms and conditions in effect as of the Closing Date.

### **7.13 Non-Disparagement**

The Seller covenants and agrees to refrain from making or disseminating any disparaging, denigrating or derogatory remarks, whether electronic, written or oral, that could reasonably be anticipated to cause damage to the PCA3 Technology (including any products utilizing the PCA3 Technology), whether or not the Seller believes these remarks to be true or whether they are, in fact, true.

## **ARTICLE 8 CLOSING CONDITIONS**

### **8.1 Conditions for the Benefit of the Buyer**

The obligation of the Buyer to complete the purchase of the Purchased Assets will be subject to the fulfilment of the following conditions at or before the Closing Time:

- 8.1.1 **Representations, Warranties and Covenants.** The representations and warranties of the Seller made in this Agreement, and in any other agreement or document delivered pursuant to this Agreement, will be true and accurate at the Closing Time with the same force and effect as though those representations and warranties had been made as of the Closing Time, and for certainty, any representations and warranties made as at a date before the Closing Time will be deemed to be made as at the Closing Time. The Seller will have complied with all covenants and agreements to be performed or caused to be performed by it under this Agreement, and in any other agreement or document delivered pursuant to this Agreement, at or before the Closing Time. In addition, the Seller will have delivered to the Buyer a certificate of a senior officer of the Seller confirming the same. The receipt of that certificate and the completion of the Closing will not be deemed to constitute a waiver of any of the representations, warranties or covenants of the Seller contained in this Agreement, or in any other agreement or document delivered pursuant to this Agreement. Those representations, warranties and covenants will continue in full force and effect as provided in Article 10, or, if Article 10 does not apply, the terms of the agreement or document in which they are made.



8.1.2 **Consents.** All pre-Closing filings, notifications, approvals and consents with, to or from Governmental Entities and Regulatory Authorities will have been made or obtained and the consent of each of the University of Nijmegen and of Johns Hopkins University to assign to the Buyer the Nijmegen License Agreement and Hopkins License Agreement, respectively, together with, in each case, all rights, title and interest held by the Seller therein), will have been made, given or obtained on terms acceptable to the Buyer, acting reasonably, so that the transactions contemplated by this Agreement may be completed without resulting in the violation of, or a default under, or any termination, amendment or acceleration of, any obligation under either of the License Agreements.

8.1.3 **Deliveries.** The Seller will have delivered to the Buyer the following in form and substance satisfactory to the Buyer:

8.1.3.1 the consents referred to in Section 8.1.2;

8.1.3.2 all Books and Records of and related to the PCA3 Technology;

8.1.3.3 copies of all of the Insurance Policies;

8.1.3.4 all required Seller Intellectual Property assignments in all applicable jurisdictions;

8.1.3.5 all deeds, conveyances, assurances, transfers and assignments and any other instruments necessary or reasonably required to transfer the Purchased Assets (including, without limitation, any and all material documents, filings, work product or the like in connection with the Purchased Assets) to the Buyer with a good title, free and clear of all Encumbrances other than Permitted Encumbrances; and

8.1.3.6 all documentation and other evidence reasonably requested by the Buyer in order to establish the due authorization and completion of the Transaction, including the taking of all corporate proceedings by the Board of Directors and the shareholders of the Seller required to effectively carry out the obligations of the Seller pursuant to this Agreement.

## **8.2 Waiver or Termination by the Buyer**

The conditions contained in Section 8.1 are inserted for the exclusive benefit of the Buyer and may be waived in whole or in part by the Buyer at any time without prejudice to any of its rights of termination in the event of non-performance of any other condition in whole or in part. If any of the conditions contained in Section 8.1 are not fulfilled or complied with by the time that is required under this Agreement, the Buyer may, at or before the Closing Time, terminate this Agreement by notice in writing after that time to the Seller. In that event the Buyer and the Seller will be released from all obligations under this Agreement (except as set out in Section 10.2).

### **8.3 Conditions for the Benefit of the Seller**

The obligation of the Seller to complete the sale of the Purchased Assets will be subject to the fulfilment of the following conditions at or before the Closing Time:

8.3.1 **Representations, Warranties and Covenants.** The representations and warranties of the Buyer made in this Agreement, and in any other agreement or document delivered pursuant to this Agreement, will be true and accurate at the Closing Time with the same force and effect as though those representations and warranties had been made as of the Closing Time, and for certainty, any representations and warranties made as at a date before the Closing Time will be deemed to be made as at the Closing Time. The Buyer will have complied with all covenants and agreements to be performed or caused to be performed by it under this Agreement, and in any other agreement or document delivered pursuant to this Agreement, at or before the Closing Time. In addition, the Buyer will have delivered to the Seller a certificate of a senior officer of the Buyer confirming the same. The receipt of that certificate and the completion of the Closing will not be deemed to constitute a waiver of any of the representations, warranties or covenants of the Buyer contained in this Agreement, or in any other agreement or document delivered pursuant to this Agreement. Those representations, warranties and covenants will continue in full force and effect as provided in Article 10, or, if Article 10 does not apply, the terms of the agreement or document in which they are made.

8.3.2 **Deliveries.** The Buyer will have delivered to the Seller, in form and substance satisfactory to the Seller, documents evidencing the release of the Gen-Probe Hypothec.

### **8.4 Waiver or Termination by the Seller**

The conditions contained in Section 8.3 are inserted for the exclusive benefit of the Seller and may be waived in whole or in part by the Seller at any time without prejudice to any of its rights of termination in the event of non-performance of any other condition in whole or in part. If any of the conditions contained in Section 8.3 are not fulfilled or complied with by the time that is required under this Agreement, the Seller may, at or before the Closing Time, terminate this Agreement by notice in writing after that time to the Buyer, unless the condition or conditions which have not been fulfilled are reasonably capable of being fulfilled or caused to be fulfilled by the Buyer. In that event the Seller and the Buyer will be released from all obligations under this Agreement (except as set out in Section 10.2).

### **8.5 Conditions Precedent**

The purchase and sale of the Purchased Assets is subject to the following conditions to be fulfilled at or before the Closing Time, which conditions are true conditions precedent to the completion of the transactions contemplated by this Agreement:

8.5.1 **No Action to Restrain.** No order of any Governmental Entity will be in force, and no action or proceeding will be pending or threatened by any Person to restrain or

prohibit the completion of the transactions contemplated by this Agreement, including the sale and purchase of the Purchased Assets.

- 8.5.2 **Mutual Purchase Agreement of Series A Preferred Shares.** The Seller will have entered into a mutual purchase agreement with the Buyer, pursuant to Section 5 of Schedule I of the Articles of Amendment of the Seller filed with the *Registraire des entreprises* (Québec) on May 4, 2009, under which the Buyer will have agreed to sell to the Seller, and the Seller will have agreed to purchase from the Buyer, effective as of the Closing Time, the Shares for the total consideration of \$1,034,740, to be satisfied by the issuance by the Seller in favour of the Buyer of a non-interest bearing promissory note in the principal amount of \$1,034,740 (the “Shares Promissory Note”).
- 8.5.3 **Special Resolution.** The Special Resolution will have been validly approved and adopted by the Shareholders (including, without limitation, Todd M. Axelrod and other holders of more than 5% of the outstanding Common Shares at such time and all officers and directors of the Seller) in the manner required under applicable Laws and will not have been amended, modified or rescinded in any respect.
- 8.5.4 **Termination of Gen-Probe Agreement.** The Parties will have executed all documents necessary to evidence the termination of the Gen-Probe Agreement, together with an irrevocable full, final and mutual release of the Seller by the Buyer, and the Buyer by the Seller, from any and all obligations, liabilities, covenants, agreements, Claims and causes of action that each had, now has or may have arising out of, in connection with, or relating in any way to the Gen-Probe Agreement.
- 8.5.5 **Seller Subsidiary Wind-Up.** The Seller Subsidiary Wind-Up will have been completed in a manner satisfactory to the Buyer.

If any of these conditions precedent have not been fulfilled at or before the Closing Time, this Agreement will be terminated and the Parties will be released from all obligations under this Agreement (except as set out in Section 10.2).

## ARTICLE 9 ADDITIONAL AGREEMENTS

### 9.1 Notice and Cure Provisions

- 9.1.1 Each Party will give prompt notice to the other Party of the occurrence, or failure to occur, at any time from the date hereof until the earlier to occur of the termination of this Agreement and the Closing Time of any event or state of facts which occurrence or failure would, or would be likely to:
- 9.1.1.1 cause any of the representations or warranties of any Party contained herein to be untrue or inaccurate in any material respect on the date hereof or at the Closing Time; or

- 9.1.1.2 result in the failure to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by any Party hereunder prior to the Closing Time.
- 9.1.2 The Buyer may not exercise its right to terminate this Agreement pursuant to Section 11.1.1.3.2 and the Seller may not exercise its right to terminate this Agreement pursuant to Section 11.1.1.4.2 unless the Party seeking to terminate this Agreement will have delivered a written notice to the other Party specifying in reasonable detail all breaches of covenants, representations and warranties or other matters which the Party delivering such notice is asserting as the basis for the termination right. If any such notice is delivered, provided that a Party is proceeding diligently to cure such matter and such matter is reasonably capable of being cured, no Party may exercise such termination right until the date that is 30 days following receipt of such notice by the Party to whom the notice was delivered, if such matter has not been cured by such date. If such notice has been delivered prior to the date of the Seller Meeting, the notifying Party may elect to request that such meeting will, unless the Parties agree otherwise, be postponed or adjourned in accordance with the terms of this Agreement until the expiry of such period (without causing any breach of any other provision contained herein).
- 9.1.3 No notification provided to the Buyer under this Section 9.1 or Section 7.8 will affect or be deemed to modify any representation or warranty of the Seller set forth herein or the conditions to the obligations of the Buyer to consummate the Transaction or the remedies available to the parties hereunder.

## **9.2 Non-Solicitation, Superior Proposal; Right to Match; Notice**

- 9.2.1 Subject to Section 9.2.2 and Section 9.2.3, on and after the date hereof until the termination of this Agreement, the Seller will not, directly or indirectly, through any Representative or otherwise:
  - 9.2.1.1 solicit, or encourage or in any way facilitate (or take any action to solicit, encourage or in any way facilitate) (including, without limitation, by way of furnishing information) the initiation or submission of, any expression of interest, inquiry, proposal, discussion or offer from any Person or entity (other than the Buyer or any of its Representatives) regarding, constituting or that could reasonably be expected to lead to, an Acquisition Proposal (whether from a Person or entity with whom the Seller has previously been in discussions or not);
  - 9.2.1.2 engage in, participate in, or otherwise facilitate any discussions or negotiations or enter into any agreement, understanding or arrangement with, or provide any non-public information to, any Person or entity (other than the Buyer or any of its Representatives) relating to or in connection with an Acquisition Proposal (whether or not such discussions had commenced prior to the date hereof and whether or not such discussions were initiated by a third party);

- 9.2.1.3 entertain, consider or accept any proposal or offer from any Person or entity (other than the Buyer or any of its Representatives) relating to an Acquisition Proposal;
  - 9.2.1.4 make a Change in Recommendation; or
  - 9.2.1.5 publicly propose to do any of the foregoing.
- 9.2.2 Notwithstanding Section 9.2.1, if at any time following the date of this Agreement and prior to obtaining the approval of the Special Resolution by the Shareholders at the Seller Meeting, the Seller or any of its Representatives receives any *bona fide* unsolicited written Acquisition Proposal (including, for greater certainty, a variation or other amendment to an Acquisition Proposal made prior to the date hereof) that was not solicited after the date hereof in contravention of, and other than any Acquisition Proposal that resulted from a breach of, this Section 9.2 by the Seller or its Representatives, then the Seller and its Representatives may, if the Board of Directors unanimously determines in good faith, after consultation with its outside legal counsel and financial advisors, that such Acquisition Proposal is, or is reasonably likely to lead to, a Superior Proposal, and that the failure to take the relevant action would constitute a breach of its fiduciary duties:
- 9.2.2.1 provide non-public information and data concerning the Seller in response to a request thereof by the person making such Acquisition Proposal if the Seller receives from such person an executed confidentiality and standstill agreement that is no less favourable in the aggregate to the Seller than the Confidentiality Agreement and contains a standstill provision on market standard terms and conditions; provided that the Seller will concurrently make available to the Buyer a copy of such confidentiality and standstill agreement and any non-public information and data concerning the Seller that the Seller provides pursuant to such confidentiality and standstill agreement that has not been made previously available to the Buyer; and
  - 9.2.2.2 engage or participate in any discussions or negotiations with the person making such Acquisition Proposal with respect to such Acquisition Proposal.
- 9.2.3 The Seller may terminate this Agreement pursuant to Section 11.1.1.4.1 and approve, accept and enter into any agreement, understanding or arrangement in respect of a Superior Proposal (other than a confidentiality and standstill agreement as described in Section 9.2.2) if and only if:
- 9.2.3.1 the Seller has complied with its obligations under Section 9.2;
  - 9.2.3.2 the Board of Directors has unanimously determined in good faith, after consultation with its outside legal counsel and financial advisors, that such Acquisition Proposal is a Superior Proposal and that the failure to take the relevant action would constitute a breach of its fiduciary duties;

- 9.2.3.3 the Seller has delivered written notice to the Buyer of the determination of the Board of Directors that the Acquisition Proposal is a Superior Proposal and of the intention of the Board of Directors to accept, approve or recommend such Superior Proposal and/or of the Seller to enter into an agreement with respect to such Superior Proposal, together with a description of all material terms and conditions of the Superior Proposal that is the basis for such action (collectively, the “Superior Proposal Notice”);
  - 9.2.3.4 during the 10 Business Day period following receipt of a Superior Proposal Notice by the Buyer (the “Right to Match Period”), the Seller will have negotiated, and will have caused their financial and legal advisors and other Representatives to negotiate, with the Buyer to make such adjustments in the terms and conditions of this Agreement so that such Superior Proposal ceases to constitute a Superior Proposal;
  - 9.2.3.5 following the end of the Right to Match Period, the Board of Directors will have unanimously determined in good faith, taking into account any changes to the terms of this Agreement proposed by the Buyer to the Seller in response to the Superior Proposal Notice, that the Superior Proposal giving rise to the Superior Proposal Notice continues to constitute a Superior Proposal; and
  - 9.2.3.6 prior to or simultaneously with, and as a condition to the effectiveness of a termination of this Agreement pursuant to Section 11.1.1.4.1, the Seller pays the Termination Payment prescribed by Section 9.3.3.
- 9.2.4 Any amendment or modification to the terms of the Superior Proposal described in a Superior Proposal Notice delivered pursuant to Section 9.2.3.3 will constitute a new Superior Proposal and require a new Superior Proposal Notice and an additional Right to Match Period.
- 9.2.5 The Seller agrees that it will promptly (and, in any event, within two Business Days) notify the Buyer (orally and in writing) if any inquiries, proposals or offers with respect to an Acquisition Proposal are received by, any such information is requested from, or any such discussions or negotiation are sought to be initiated or continued with, the Seller or any of its Representatives indicating, in connection with such notice, the name of such Person and the material terms and conditions of any proposals or offers (including, if applicable, copies of any written requests, proposals or offers, including proposed agreements) and thereafter will keep the Buyer informed, on a current basis, of the status and terms of any such proposals or offers (including any amendments thereto) and the status of any such discussions or negotiations.

### **9.3 Expenses and Termination Payment**

- 9.3.1 Except as provided in Section 9.3.2, each Party will pay all fees, costs and expenses incurred by such Party in connection with this Agreement and the Transaction.
- 9.3.2 In consideration of the Buyer's due diligence, good faith negotiation of and entering into this Agreement, and as a reimbursement of the Buyer's expenses incurred in connection with the Transaction, the Seller will pay to Buyer an amount equal to the total of all of the Buyer's expenses reasonably incurred in connection with this Agreement and the Transaction (the "Expense Reimbursement") in the event that this Agreement is terminated pursuant to Section 11.1.1.3.1 or Section 11.1.1.4.1. Such Expense Reimbursement will be paid, concurrently with the payment of the Termination Payment, if applicable, as provided in Section 9.3.4 by reducing by 50% any amount payable to the Seller by the Buyer as royalty payments under the Gen-Probe Agreement until such Expense Reimbursement has been paid in full; provided, however, that the Seller may, at any time, pay the Expense Reimbursement, or any balance thereof, to the Buyer.
- 9.3.3 If a Termination Payment Event occurs, the Seller will pay as directed by the Buyer in writing (by wire transfer of immediately available funds) the Termination Payment in accordance with Section 9.3.4. For the purposes of this Agreement, "Termination Payment" means an aggregate amount of \$250,000, and "Termination Payment Event" means the termination of this Agreement pursuant to:
- 9.3.3.1 Section 11.1.1.3.1 or Section 11.1.1.4.1; or
  - 9.3.3.2 Section 11.1.1.3.2 by the Buyer, but only if, in the case of this Section 9.3.3.2: (a) following the date hereof and prior to the termination of this Agreement, an Acquisition Proposal will have been communicated or otherwise made known to the Seller by any person other than the Buyer or any Affiliate thereof, and (b) a definitive agreement providing for an Acquisition Proposal is entered into within 12 months of termination of this Agreement, and provided that for the purposes of this Section 9.3.3.2, all references to "20% or more" in the definition of Acquisition Proposal will be changed to "more than 50%".
- 9.3.4 If a Termination Payment Event occurs due to a termination of this Agreement by the Seller pursuant to Section 11.1.1.4.1, the Termination Payment will be paid prior to or simultaneously with the occurrence of, and as a condition to the effectiveness of, such Termination Payment Event. If a Termination Payment Event occurs due to a termination of this Agreement by the Buyer pursuant to Section 11.1.1.3.1, the Termination Payment will also be paid, concurrently with the payment of the Expense Reimbursement, if applicable, as provided in Section 9.3.2 by reducing by 50% any amount payable to the Seller by the Buyer as royalty payments under the Gen-Probe Agreement until such Termination Payment has been paid in full; provided, however, that the Seller may, at any time, pay the Termination Payment, or any balance thereof, to the Buyer. If a Termination Payment Event occurs in the circumstances set out in

Section 9.3.3.2, the Termination Payment will be paid upon the consummation of the applicable Acquisition Proposal referred to therein. For the avoidance of doubt, in the event that the Seller terminates this Agreement at a time when the Buyer or the Buyer would have had the right to terminate this Agreement and be entitled hereunder to receive the Termination Payment or the Expense Reimbursement, the Buyer will be entitled to receive the Termination Payment or the Expense Reimbursement that would have been (or would have subsequently become) payable had the Buyer terminated this Agreement at such time.

- 9.3.5 Upon written notice to the Seller, the Buyer may assign its right to receive the Termination Payment or the Expense Reimbursement to any of its Subsidiaries or Affiliates.
- 9.3.6 The Seller will not be obligated to make more than one Termination Payment or Expense Reimbursement, respectively, under this Section 9.3 if one or more of the events specified herein occurs.
- 9.3.7 Each of the Parties acknowledges that the agreements contained in this Section 9.3 are an integral part of the Transaction and that, without these agreements, the Parties would not enter into this Agreement. Accordingly, if the Seller will fail to pay in a timely manner the Termination Payment or the Expense Reimbursement due pursuant to this Section 9.3, and, in order to obtain such payment, the Buyer makes a claim that results in a judgment against the Seller, the Seller will pay to the Buyer its reasonable costs and expenses (including its reasonable attorneys' fees and expenses) incurred in connection with such suit, together with interest on the Termination Payment or Expense Reimbursement due pursuant to this Section 9.3 at the prime rate of the Royal Bank of Canada in effect on the date such payment was required to be made, plus three percentage points.
- 9.3.8 Notwithstanding anything to the contrary contained in this Agreement, no Termination Payment will be payable if this Agreement is terminated pursuant to Section 11.1.1.2.2 either by the Seller or the Buyer, provided that the Board of Directors has not withdrawn or changed the Seller Recommendation.
- 9.3.9 Notwithstanding Section 10.4.2, payment of the Termination Payment or Expense Reimbursement pursuant to this Section 9.3 will be the exclusive remedy of the Buyer if this Agreement is terminated pursuant to Section 11.1.1.4.1; provided, however, that if this Agreement is terminated pursuant to Section 11.1.1.3.1 or Section 11.1.1.3.2, then, notwithstanding anything to the contrary contained in this Agreement, payment of the Termination Payment or Expense Reimbursement will be in addition to and not in lieu of, or replacement or substitution for, any right, power or remedy that may be available to the Buyer (whether at law, in equity, in contract, in tort or otherwise).



#### **9.4 Shareholder Claims**

The Seller will promptly notify the Buyer of any claim brought by (or threatened to be brought by) any present, former or purported holder of any securities of the Seller in connection with the Transaction. The Seller will consult with the Buyer prior to settling any such claim and will not settle or compromise, or agree to settle or compromise, any such claim without the prior written consent of the Buyer.

### **ARTICLE 10 SURVIVAL AND INDEMNIFICATION**

#### **10.1 Survival of Covenants and Representations and Warranties**

All of the covenants and representations and warranties contained in this Agreement and in any other agreement or document delivered pursuant to this Agreement, including this Article 10, will survive the Closing.

#### **10.2 Survival Following Termination**

If this Agreement is terminated at or before the Closing Time pursuant to Sections 7.5, 8.2, 8.4, 8.5 or 11.1.1, the provisions of Sections 1.1, 1.2, 1.3, 1.4, 9.3, 13.2 and 13.16 and any other clause which is stated to survive the termination or expiration of this Agreement will remain in full force and effect. This Article 10 will survive any termination of this Agreement and apply to any Claim that is made with respect to any of those provisions, or under the indemnities set out in Section 10.4.2.

#### **10.3 Mutual Indemnifications for Breaches of Warranty, etc.**

Subject to the remaining provisions of this Article 10, each Party agrees that if it fails to observe or perform any covenant or obligation, or breaches any representation and warranty, contained in this Agreement, or in any other agreement or document delivered pursuant to this Agreement it will indemnify and hold harmless the other Party and each Representative of the other Party from and against any Loss that each may suffer as a result of that failure. Each Party also agrees to indemnify and hold harmless the other Party and each Representative of the other Party from and against any Loss that each may suffer as a result of a Third Party Claim, even if that Third Party Claim is ultimately found not to be meritorious, or is settled with no verdict on its merits being reached.

#### **10.4 Additional Seller's Indemnities**

The Seller will indemnify and hold harmless the Buyer and each Representative of the Buyer from and against any Loss that each may suffer resulting from:

- 10.4.1 Claims that may be made or brought against the Buyer or any Representative of the Buyer:
- 10.4.1.1 related to or arising from (i) liabilities incurred before the Closing; or (ii) Excluded Assets or Excluded Liabilities, whether incurred before, at or after the Closing; or
  - 10.4.1.2 relating to or arising out of any grievance, complaint, arbitration or other proceeding pursuant to a Collective Agreement, the *Charter of Human Rights and Freedoms* (Québec), *An Act Respecting Labour Standards* (Québec), *An Act Respecting Occupational Health and Safety* and all similar Laws in all jurisdictions;
- 10.4.2 subject to Section 9.3.9, the termination of this Agreement under the terms of Section 8.2, if the Loss arises from the non-fulfilment or non-performance of the relevant conditions as a result of a breach of covenant, or representation and warranty, of the Seller; or
- 10.4.3 Claims that may be made or brought against the Seller or any Representative of the Seller:
- 10.4.3.1 relating to or arising out of Excluded Assets or Excluded Liabilities, whether incurred before, at or after the Closing; or
  - 10.4.3.2 relating to or arising out of the failure of the Seller to pay or remit any Commodity Taxes in respect of the purchase and sale of the Purchased Assets, including any GST/HST or QST that may be collectible by the Seller.

## 10.5 Notice of Claim

If an Indemnified Party becomes aware of a Loss or potential Loss in respect of which the Indemnifying Party has agreed to indemnify it under this Agreement, the Indemnified Party will promptly give written notice (an “Indemnity Notice”) of its Claim or potential Claim for indemnification (an “Indemnity Claim”) to the Indemnifying Party. An Indemnity Notice must specify whether the Indemnity Claim arises as the result of a Claim made against an Indemnified Party by a Person who is not a Party (a “Third Party Claim”) or as a result of a Loss that was suffered directly by an Indemnified Party (a “Direct Claim”), and must also specify with reasonable particularity (to the extent that the information is available):

- 10.5.1 the factual basis for the Indemnity Claim; and
- 10.5.2 the amount of the Indemnity Claim, if known.

If, through the fault of the Indemnified Party, the Indemnifying Party does not receive an Indemnity Notice of an Indemnity Claim in time to effectively contest the determination of any liability capable of being contested, the Indemnifying Party will be entitled to set off against the

amount claimed by the Indemnified Party the amount of any Loss incurred by the Indemnifying Party resulting from the Indemnified Party's failure to give an Indemnity Notice on a timely basis.

## **10.6 Time Limits for Notice**

- 10.6.1 Subject to the remaining provisions of this Section 10.6, no Indemnity Claim may be made under Sections 10.3 or 10.4, unless an Indemnity Notice of that Indemnity Claim is delivered to the Indemnifying Party within the time period specified under applicable Law and also within 45 days following Buyer's knowledge of any circumstances that give rise to such Indemnity Claim.
- 10.6.2 An Indemnity Notice of an Indemnity Claim with respect to the breach of the representations and warranties of the Seller contained in Sections (1), (2), (3), (4), (9), (11), (17), (18) and (21) of Schedule 5 may be delivered to the Seller at any time.
- 10.6.3 An Indemnity Notice of a Third Party Claim may be delivered to the Indemnifying Party in accordance with Section 10.5 at any time that the Third Party Claim arises.
- 10.6.4 An Indemnity Notice of an Indemnity Claim may be delivered to the Indemnifying Party in accordance with Section 10.5 at any time with respect to a breach of any of the Indemnifying Party's covenants or representations and warranties, if that breach is attributable to wilful default or fraud.
- 10.6.5 An Indemnity Notice of an Indemnity Claim may be delivered to the Indemnifying Party in accordance with Section 10.5 at any time with respect to the covenants contained at Article 7.

## **10.7 Procedure for Direct Claims**

Following receipt of an Indemnity Notice from the Indemnified Party of a Direct Claim, the Indemnifying Party will have twenty (20) Business Days to make any investigations it considers necessary or desirable. For the purpose of those investigations, the Indemnified Party will make available to the Indemnifying Party the information relied upon by the Indemnified Party to substantiate the Direct Claim, together with all other information that the Indemnifying Party may reasonably request. If both the Indemnified Party and the Indemnifying Party agree at or before the expiration of that 20-day period (or any mutually agreed upon extension) to the validity and amount of the Direct Claim, the Indemnifying Party will pay immediately to the Indemnified Party the full agreed upon amount of the Loss for which the Direct Claim is made, and no subsequent proceeding will be brought in any court of law concerning that Direct Claim.

## **10.8 Procedure for Third Party Claims**

- 10.8.1 Despite any other provision of this Agreement, if the Indemnified Party is required by applicable Law to make a payment into court, into escrow, or to any third party, with respect to a Third Party Claim before the completion of related settlement

- negotiations or legal proceedings, the Indemnified Party may make the required payment and the Indemnifying Party will, promptly after demand by the Indemnified Party, reimburse the Indemnified Party for the required payment made. If the Indemnifying Party makes that reimbursement in full, and if the amount of any liability of the Indemnified Party under the Third Party Claim in respect of which the required payment was made, as finally determined, is less than the amount that was paid by the Indemnifying Party to the Indemnified Party, the Indemnified Party will, promptly after recovery of the surplus amount left over from the required payment, pay that surplus amount to the Indemnifying Party.
- 10.8.2 The Indemnified Party will promptly deliver to the Indemnifying Party copies of all correspondence, notices, assessments or other written Communication received by the Indemnified Party in respect of any Third Party Claim.
- 10.8.3 The Indemnified Party will not negotiate, settle, compromise or pay any Third Party Claim with respect to which it has asserted or proposes to assert an Indemnity Claim, without the prior written consent of the Indemnifying Party, which consent will not be unreasonably withheld, conditioned or delayed.
- 10.8.4 The Indemnified Party will not cause or permit the termination of any right of appeal in respect of any Third Party Claim which is or might become the basis of an Indemnity Claim without giving the Indemnifying Party written notice of the contemplated or potential termination in time to grant the Indemnifying Party an opportunity to contest the Third Party Claim.
- 10.8.5 If the Indemnifying Party first acknowledges in writing its obligation to satisfy an Indemnity Claim to the extent of any binding determination or settlement in connection with a Third Party Claim (or enters into arrangements otherwise satisfactory to the Indemnified Party), in any legal or administrative proceeding in connection with the matters forming the basis of a Third Party Claim, the following will apply:
- 10.8.5.1 the Indemnifying Party will have the right, subject to the rights of any Person having potential liability for it, by written notice delivered to the Indemnified Party within 15 Business Days of receipt by the Indemnifying Party of an Indemnity Notice, to assume carriage and control of the negotiation, defence or settlement of a Third Party Claim and the conduct of any related legal or administrative proceedings at the expense of the Indemnifying Party and by its own counsel;
- 10.8.5.2 if the Indemnifying Party elects to assume carriage and control, the Indemnified Party will have the right to participate at its own expense in the negotiation, defence or settlement of a Third Party Claim assisted by counsel of its own choosing;
- 10.8.5.3 each of the Indemnified Party and the Indemnifying Party will make commercially reasonable efforts to make available to the Party who has

assumed carriage and control of the negotiation, defence or settlement of a Third Party Claim those employees whose assistance or evidence is necessary to assist that Party in evaluating and defending that Third Party Claim and all documents, records and other materials in the possession or control of that Party required for use in the negotiation, defence or settlement of that Third Party Claim;

10.8.5.4 despite Sections 10.8.5.1, 10.8.5.2 and 10.8.5.3, the Indemnifying Party will not settle a Third Party Claim or conduct any related legal or administrative proceeding in a manner which would, in the opinion of the Indemnified Party, acting reasonably, have a material adverse effect on the Indemnified Party except with the Indemnified Party's prior written consent; and

10.8.5.5 the Indemnifying Party will indemnify and hold harmless the Indemnified Party from and against any Loss incurred or suffered as a result of the Indemnifying Party's settlement of the Third Party Claim or conduct of any related legal or administrative proceeding.

10.8.6 When the amount of the Loss with respect to a Third Party Claim is finally determined in accordance with this Section 10.8, including any amount described in Section 10.8.5.5, the Indemnifying Party will immediately pay the full amount of that Loss to the Indemnified Party. If the Indemnified Party has been permitted by the Indemnifying Party to assume the carriage and control of the negotiation, defence, or settlement of the Third Party Claim, the Indemnifying Party will not contest the amount of that Loss. The Indemnifying Party will have no obligation to make any payment with respect to any Third Party Claim that is settled or contested in violation of the terms of this Section 10.8.

## **10.9 No Delay**

Each of the Parties will pursue any Indemnity Claim made by an Indemnified Party under this Agreement with reasonable diligence and dispatch, and without unnecessary delay, once the circumstances that give rise to that Indemnity Claim are known to it.

## **10.10 Third Party Indemnification**

To ensure that the indemnities provided by each of the Seller and the Buyer to the other's directors, officers and employees are enforceable, it is agreed by the Parties that each of the Seller and Buyer is acting as agent for its respective Representatives with respect to the indemnities intended to be given to those Representatives under this Article 10. Each of the Seller and the Buyer agrees that it will hold any right to indemnification that any Representative of it is intended to have under this Article in trust for that Representative, and that funds received by the Seller or Buyer in respect of any Claims under this Article by any Representative of it will be held in trust for that Representative.

## **ARTICLE 11 TERM AND TERMINATION**

### **11.1 Termination**

11.1.1 This Agreement may be terminated and the Transaction may be abandoned at any time prior to the Closing Time (notwithstanding any approval of this Agreement or the Special Resolution or the Transaction by the Shareholders):

11.1.1.1 by mutual written agreement of the Seller and the Buyer;

11.1.1.2 by either the Seller or the Buyer, if:

11.1.1.2.1 after the date hereof, there will be enacted, issued, promulgated, made, enforced or amended any Law (which applicable Law will have become final and non-appealable) that restrains, enjoins or otherwise prevents the completion of the Transaction; or

11.1.1.2.2 the Special Resolution will have failed to receive the Requisite Shareholder Approval at the Seller Meeting (including any adjournment or postponement thereof);

11.1.1.3 by the Buyer, if:

11.1.1.3.1 prior to obtaining the approval of the Special Resolution by the Shareholders, (A) the Board of Directors will have effected a Change in Recommendation, (B) the Seller will have breached Section 9.2 in any material respect, or (C) the Buyer requests in writing that the Board of Directors unconditionally reaffirm its Seller Recommendation and the Board of Directors will not have done so by the earlier to occur of (x) the tenth Business Day following receipt of such request and (y) two Business Days prior to the Seller Meeting; or

11.1.1.3.2 subject to Section 9.1.2, a breach of any representation or warranty or failure to perform any covenant or agreement on the part of the Seller set forth in this Agreement will have occurred that would cause the conditions set forth in Section 8.1 not to be satisfied at such time; provided that the Buyer is not then in breach of this Agreement so as to cause any of the conditions set forth in Section 8.1 not to be satisfied;

11.1.1.4 by the Seller, if:

11.1.1.4.1 prior to obtaining the approval of the Special Resolution by the Shareholders, the Board of Directors authorizes the Seller,

subject to complying with the terms of Section 9.2 and Section 9.3.3, to approve, accept and enter into a definitive agreement (other than a confidentiality agreement) with respect to a Superior Proposal; or

11.1.1.4.2 subject to Section 9.1.2, a breach of any representation or warranty or failure to perform any covenant or agreement on the part of the Buyer set forth in this Agreement will have occurred that would cause the conditions set forth in Section 8.3 not to be satisfied at such time; provided that the Seller is not then in breach of this Agreement so as to cause any of the conditions set forth in Section 8.3 not to be satisfied.

11.1.2 The Party desiring to terminate this Agreement pursuant to this Section 11.1.1 (other than pursuant to Section 11.1.1.1) will give written notice of such termination to the other Party.

## **ARTICLE 12 CLOSING ARRANGEMENTS**

### **12.1 Closing**

Subject to the earlier termination of this Agreement under Sections 7.5, 8.2, 8.4, 8.5 or 11.1.1, the Closing will take place at the Closing Time on the Closing Date by means of:

12.1.1 an electronic closing in which the closing documentation will be delivered by electronic mail exchange of signature pages in pdf or functionally equivalent electronic format, which delivery will be effective without any further physical exchange of the originals or copies of the originals; or

12.1.2 a physical closing at the offices of Gowling Lafleur Henderson LLP, located at 3700-1 Place Ville Marie, in Montréal, QC or at any other place that is agreed to in writing by the Parties.

### **12.2 Closing Procedures**

At the Closing Time:

12.2.1 the Seller will sell and the Buyer will purchase the Purchased Assets for the Purchase Price as provided in this Agreement;

12.2.2 the Seller will deliver or cause to be delivered to the Buyer all documents referred to in Sections 8.1.1 and 8.1.3;

- 12.2.3 the Seller will deliver or cause to be delivered to the Buyer the Purchased Assets accompanied by certified copies of directors' and shareholders' resolutions authorizing the transfer of the Purchased Assets;
- 12.2.4 the Buyer will deliver or cause to be delivered to the Seller pursuant to Section 3.1 a certified cheque, bank draft or wire transfer in the amount set out therein;
- 12.2.5 the Buyer will deliver or cause to be delivered the documents referred to in Section 8.3;
- 12.2.6 the Buyer and the Seller will deliver or cause to be delivered the documents referred to in Section 8.5.4; and
- 12.2.7 pursuant to the mutual purchase agreement provided for in Section 8.5.2, the Buyer will deliver or cause to be delivered share certificates representing all of the Shares accompanied by irrevocable stock transfer powers duly executed in blank by the Buyer.

## **ARTICLE 13 GENERAL**

### **13.1 Time of Essence**

Time is of the essence in all respects of this Agreement.

### **13.2 Notices**

Any Communication must be in writing and either:

- 13.2.1 delivered personally or by courier;
- 13.2.2 sent by prepaid registered mail; or
- 13.2.3 transmitted by facsimile, e-mail or functionally equivalent electronic means of transmission, charges (if any) prepaid.

Any Communication must be sent to the intended recipient at its address as follows:

to the Seller at:

4535 boulevard Wilfrid-Hamel, suite 250  
Québec, QC G1P 2J7

Attention:

Tel. No.:

Facsimile No.:

E-mail:





to the Buyer at:

10210 Genetic Center Drive  
San Diego, CA 92121  
U.S.A.

Attention:  
Tel. No.:  
Facsimile No.:  
E-mail:



or at any other address as any Party may at any time advise the other by Communication given or made in accordance with this Section 13.2. Any Communication delivered to the Party to whom it is addressed will be deemed to have been given or made and received on the day it is delivered at that Party's address, provided that if that day is not a Business Day then the Communication will be deemed to have been given or made and received on the next Business Day. Any Communication sent by prepaid registered mail will be deemed to have been given or made and received on the fifth Business Day after which it is mailed. If a strike or lockout of postal employees is then in effect, or generally known to be impending, every Communication must be delivered personally or by courier or transmitted by facsimile, e-mail or functionally equivalent electronic means of transmission. Any Communication transmitted by facsimile, e-mail or other functionally equivalent electronic means of transmission will be deemed to have been given or made and received on the day on which it is transmitted; but if the Communication is transmitted on a day which is not a Business Day or after 4:00 p.m. (local time of the recipient), the Communication will be deemed to have been given or made and received on the next Business Day.

### **13.3 Severability**

Each Section of this Agreement is distinct and severable. If any Section of this Agreement, in whole or in part, is or becomes illegal, invalid, void, voidable or unenforceable in any jurisdiction by any court of competent jurisdiction, the illegality, invalidity or unenforceability of that Section, in whole or in part, will not affect:

- 13.3.1 the legality, validity or enforceability of the remaining Sections of this Agreement, in whole or in part; or
- 13.3.2 the legality, validity or enforceability of that Section, in whole or in part, in any other jurisdiction.

### **13.4 Submission to Jurisdiction**

Without prejudice to the ability of any Party to enforce this Agreement in any other proper jurisdiction, each of the Parties irrevocably and unconditionally submits and attorns to the non-exclusive jurisdiction of the courts of the Province of Québec to determine all issues arising from this Agreement. To the extent permitted by applicable Law, each of the Parties:

- 13.4.1 irrevocably waives any objection, including any Claim of inconvenient forum, that it may now or in the future have to the venue of any legal proceeding arising out of or relating to this Agreement in the courts of that Province or that the subject matter of this Agreement may not be enforced in those courts;
- 13.4.2 irrevocably agrees not to seek, and waives any right to, judicial review by any court which may be called upon to enforce the judgment of the courts referred to in this Section 13.4, of the substantive merits of any suit, action or proceeding; and
- 13.4.3 to the extent a Party has or may acquire any immunity from the jurisdiction of any court or from any legal process, whether through service or notice, attachment before judgment, attachment in aid of execution, execution or otherwise, with respect to itself or its property, that Party irrevocably waives that immunity in respect of its obligations under this Agreement.

### **13.5 Amendment and Waiver**

No amendment, discharge, modification, restatement, supplement, termination or waiver of this Agreement or any Section of this Agreement is binding unless it is in writing and executed by the Party to be bound. No waiver of, failure to exercise or delay in exercising, any Section of this Agreement constitutes a waiver of any other Section (whether or not similar) nor does any waiver constitute a continuing waiver unless otherwise expressly provided.

### **13.6 Further Assurances**

Each Party will, at the requesting Party's cost and expense, execute and deliver any further agreements and documents and provide any further assurances, undertakings and information as may be reasonably required by the requesting Party to give effect to this Agreement and, without limiting the generality of this Section 13.6, will do or cause to be done all acts and things, execute and deliver or cause to be executed and delivered all agreements and documents and provide any assurances, undertakings and information as may be required at any time by all Governmental Entities or stock exchanges having jurisdiction over the Buyer's affairs, or as may be required at any time under applicable securities Laws.

### **13.7 Assignment and Enurement**

Neither this Agreement nor any right or obligation under this Agreement may be assigned by either Party without the prior written consent of the other Party; provided, however, that this Agreement may be assigned by the Buyer without the consent of the Seller to an Affiliate of the Buyer. This Agreement enures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.

### **13.8 Counterparts and Electronic Delivery**

This Agreement may be executed and delivered by the Parties in one or more counterparts, each of which will be an original, and each of which may be delivered by facsimile, e-mail or other

functionally equivalent electronic means of transmission, and those counterparts will together constitute one and the same instrument.

### **13.9 Costs and Expenses**

Except as otherwise specified in this Agreement, all costs and expenses (including the fees and disbursements of accountants, financial advisors, legal counsel and other professional advisers) incurred in connection with this Agreement, the obligations under this Agreement and the completion of the transactions contemplated by this Agreement, are to be paid by the Party incurring those costs and expenses. If there is a breach of this Agreement or this Agreement is terminated, the obligation of each Party to pay its own costs and expenses is subject to each Party's respective rights arising from a breach or termination.

### **13.10 Tender**

Any tender of documents or money under this Agreement may be made upon the Parties or their respective counsel.

### **13.11 No Broker**

The Seller represents and warrants to the Buyer that no brokerage commission, finder's fee or other similar payment payable or alleged to be payable to any broker, agent or other intermediary who purports to act or have acted in connection with this Agreement or the Transaction may be claimed against the Buyer.

### **13.12 Public Notice**

All public notices to third parties and all other announcements, press releases and publicity concerning this Agreement or the transactions contemplated by this Agreement, must be jointly planned and co-ordinated by the Seller and the Buyer, and neither Party will act unilaterally in this regard without the prior consent of the other Party unless, and only to the extent that, disclosure is required to meet the timely disclosure obligations of any Party under applicable securities Laws or stock exchange rules in circumstances where prior consultation with the other Party is not practicable, or the disclosure is to the Party's board of directors, senior management and its legal, accounting, financial or other professional advisers.

### **13.13 Remedies Cumulative**

The rights, powers and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights, powers and remedies available at law or in equity or otherwise. No single or partial exercise by a Party of any right, power or remedy precludes or otherwise affects the exercise of any other right, power or remedy to which that Party may be entitled.

### **13.14 Payment and Currency**

Any money to be advanced, paid or tendered by one Party to another under this Agreement must be advanced, paid or tendered by bank draft, certified cheque or wire transfer of immediately available funds payable to the Person to whom the amount is due. Unless otherwise specified, the word “dollar” and the “\$” sign refer to Canadian currency, and all amounts to be advanced, paid, tendered or calculated under this Agreement are to be advanced, paid, tendered or calculated in Canadian currency.

### **13.15 Vienna Convention**

The *United Nations Convention on Contracts for the International Sale of Goods* (also called the Vienna Convention) will not be applicable to this Agreement or the transactions contemplated by this Agreement.

### **13.16 No Contra Proferentem**

This Agreement has been reviewed by each Party’s professional advisors, and revised during the course of negotiations between the Parties. Each Party acknowledges that this Agreement is the product of their joint efforts, that it expresses their agreement, and that, if there is any ambiguity in any of its provisions, that provision should not be interpreted in favour of either one of them.

### **13.17 Language**

The Parties have expressly required that this Agreement, any Communication and all other Contracts, documents and notices relating to this Agreement be drafted in the English language. *Les parties ont expressément exigé que la présente convention, la communication et tous les autres contrats, documents et avis qui y sont afférents soient rédigés dans la langue anglaise.*

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK**

Each of the Parties has executed and delivered this Agreement as of the date noted at the beginning of the Agreement.

**DIAGNOCURE INC.**

Per: (s) Jacques Simoneau

Name: Jacques Simoneau

Title: Chairman of the Board of Directors

**GEN-PROBE INCORPORATED**

Per: (s) Robert W. McMahon

Name: Robert W. McMahon

Title: President

## SCHEDULE 1.1

- (1) “Act” means the *Business Corporations Act* (Québec).
- (2) “Affiliate” means an affiliate as that term is defined in the Act.
- (3) “Agreement” means this agreement, including all Schedules and Exhibits, as it may be confirmed, amended, modified, supplemented or restated by written agreement between the Parties.
- (4) “Acquisition Proposal” means any offer, proposal or inquiry, whether written or oral, from any person or group of persons acting jointly or in concert (other than the Buyer and its Affiliates) relating to, that constitutes, or which could reasonably be expected to lead to, in each case whether in a single transaction or a series of related transactions:
  - (a) any sale of any or all of the Purchased Assets or any other transaction(s) involving, directly or indirectly, any or all of the Purchased Assets;
  - (b) any amalgamation, take-over bid, tender offer, arrangement, recapitalization, liquidation, dissolution or share exchange involving the Seller;
  - (c) any sale of 20% or more of any class of equity securities of the Seller (or rights or interests therein or thereto) that would prevent, interfere with, hinder or delay the completion of the Transaction;
  - (d) any transaction that would prevent, interfere with, hinder or delay the completion of the Transaction; or
  - (e) any proposal or offer to do, proposed amendment of, or public announcement of an intention to do, any of the foregoing, directly or indirectly;
- (5) “Board of Directors” means the board of directors of the Seller.
- (6) “Books and Records” means all books, records, files and papers of the Seller relating to the PCA3 Technology.
- (7) “Business Day” means any day excluding a Saturday, Sunday or statutory holiday in the Province of Québec or in the State of Delaware, and also excluding any day on which the principal chartered banks located in the City of Québec, Québec, Canada or San Diego, California, U.S.A. are not open for business during normal banking hours.
- (8) “Buyer” is defined in the recital of the Parties above.
- (9) “Change in Recommendation” by the Board of Directors means:
  - (a) any withholding, amendment, withdrawal, modification or qualification in any manner adverse to the Buyer and/or the consummation of the Transaction of the

Seller Recommendation, including any failure to include the Seller Recommendation in the Seller Circular;

- (b) any approval, acceptance, recommendation or endorsement by the Board of Directors of, or public proposal by the Board of Directors to approve, accept, recommend or endorse, or publicly taking no position or a neutral position with respect to, any Acquisition Proposal (it being understood that publicly taking no position or a neutral position with respect to, or failing to recommend that Shareholders reject, an Acquisition Proposal until the tenth Business Day after the earlier of the receipt and the public announcement of an Acquisition Proposal will not be deemed to be a Change in Recommendation);
  - (c) the Seller enters into a written agreement in respect of an Acquisition Proposal (other than a confidentiality and standstill agreement permitted by Section 9.2.2.1); or
  - (d) the Seller will have publicly announced the intention to, or the Board of Directors will have resolved to, do any of the foregoing.
- (10) “Claim” means any claim, demand, action, cause of action, suit, arbitration, investigation, proceeding, complaint, grievance, charge, prosecution, assessment or reassessment, including any appeal or application for review.
  - (11) “Closing” means the completion of the Transaction.
  - (12) “Closing Date” means the second Business Day after all conditions to the Closing set out in Article 8 have been satisfied or waived (other than those conditions intended to be satisfied at Closing), or any other date that the Parties may agree is the date upon which the Closing will take place.
  - (13) “Closing Time” means the time on the Closing Date at which the Closing takes place.
  - (14) “Commodity Taxes” means all Taxes levied on or measured by, or referred to as transfer, land transfer, registration charges, gross receipt, sales, provincial sales, use, consumption, GST/HST, QST, value-added, turnover, excise or stamp, all customs duties, countervail, anti-dumping and special import measures and all import and export taxes.
  - (15) “Communication” means any notice, demand, request, consent, approval or other communication which is required or permitted by this Agreement to be given or made by a Party.
  - (16) “Common Shares” means the common shares in the capital of the Seller.
  - (17) “Competition Act” means the *Competition Act* (Canada).
  - (18) “Confidentiality Agreement” means the confidential disclosure agreement dated effective as of June 26, 2015, between the Seller and Hologic, Inc., the parent company of the Buyer.

- (19) “Contract” means any agreement, contract, indenture, lease, occupancy agreement, deed of trust, license, option, undertaking, promise or any other commitment, obligation or understanding of any nature relating to the Purchased Assets and to which the Seller is a party or under which the Seller is bound, has, or will have, unfulfilled obligations, including maintenance or support obligations, or any contingent liability or is, or will be, owed unfulfilled obligations, whether asserted or not, entered into, given, issued or agreed to, in any case whether written or oral, express or implied.
- (20) “Direct Claim” is defined in Section 10.5.
- (21) “Disclosure Letter” is defined at Article 5.
- (22) “Employees” means all personnel and independent contractors employed, engaged or retained by the Seller, including any that are on medical or long-term disability leave or other statutory or authorized leave of absence.
- (23) “Encumbrance” means any security interest, mortgage, charge, pledge, hypothec, lien, encumbrance, restriction, option, adverse claim, and right of others or other encumbrance of any kind.
- (24) “ETA” means Part IX of the *Excise Tax Act* (Canada).
- (25) “Excluded Assets” means any:
- (a) property and assets related specifically to PCP;
  - (b) property and assets related specifically to the Seller’s business related to colon cancer;
  - (c) proprietary RNA stabilization and extraction methods;
  - (d) Employees;
  - (e) assets under any Employee Plans;
  - (f) Employee Contracts; and
  - (g) other property and assets not part of the PCA3 Technology or the Purchased Assets.
- (26) “Excluded Liabilities” means:
- (a) any liability of the Seller to any bank or other financial institution by way of loan or other credit facility;
  - (b) any liability of the Seller for any personal injuries Claims arising by reason of the occurrence whether before or after the Closing Date of any injury, accident or other alleged damage-causing event with respect to the operations of the Seller on or before the Closing Date or relating to products manufactured or sold or



services performed by the Seller whether before or after the Closing Date that provide the basis for a personal injury Claim;

- (c) any liability of the Seller to its shareholders, Affiliates or associates or any other Person not dealing at arm's length with any of them;
  - (d) any liability of the Seller for any Claims relating to the Excluded Assets;
  - (e) any liability of the Seller, absolute or contingent, incurred, due or accruing due, whether before or after the Closing Date, relating to the Excluded Assets or any Contract relating to the Excluded Assets, and any obligations, absolute or contingent, arising from, incidental to, or in any way related to the ownership or operation of the Excluded Assets;
  - (f) any liability of the Seller for any breach by the Seller of any Laws relating to the PCA3 Technology or the use of the Purchased Assets up to the Closing Date;
  - (g) any liability incurred or accruing due before the Closing Time under any Contract;
  - (h) any liability of the Seller for any Taxes (including penalties, fines and interest); and
  - (i) any Employee obligation, including (i) any such obligation attached to the Buyer by operation of Law and any other liabilities that may attach by operation of Law in connection with a sale of assets by the Seller; and (ii) any liability of the Seller for wages, salary, bonus, vacation pay or other remuneration, severance pay, pension obligations or other obligations under any Plans or otherwise, or for any Claims pursuant to workers' compensation or similar Laws, relating to any Employee.
- (27) "Expense Reimbursement" is defined in Section 9.3.2.
- (28) "Fairness Opinion" means the opinion of KPMG, the financial advisor to the Seller, rendered to the Board of Directors, to the effect that, as of the date of this Agreement, and based upon and subject to the assumptions, qualifications and limitations set forth in its written opinion, the consideration to be received by the Seller pursuant to the Transaction is fair, from a financial point of view, to the Shareholders.
- (29) "FDA" means the United States Food and Drug Administration.
- (30) "Gen-Probe Agreement" means the license and collaboration agreement dated November 19, 2003 (as amended), between the Seller and the Buyer for the joint development and commercialization of a molecular test for the detection of the PCA3 gene for the diagnosis of prostate cancer.
- (31) "Gen-Probe Hypothec" means the conventional hypothec without delivery held by the Buyer in the amount of \$3,100,000 (together with interest thereon) registered on May 8,

2009 in the Register of Personal and Movable Real Rights in Québec (registration number 09-0261328-0002) covering all right, title and interest of the Seller, both present and future, in and to (i) the License Agreements, (ii) the patents and patent applications listed in paragraph 2 of Schedule A thereto, and all reissues, divisionals, continuations, renewals, extensions and continuations in part in Canada or the United States of such patents and patent applications (but in each case excluding any patent claims for therapeutic use), and (iii) all proceeds derived from any of the foregoing (such as, by way of example, license royalties and proceeds of infringement suits).

- (32) “Governmental Entity” means:
- (a) any federal, provincial, state, local, municipal, regional, territorial, aboriginal, or other government, governmental or public department, branch, ministry, or court, domestic or foreign, including any district, agency, commission, board, arbitration panel or authority and any subdivision of any of them exercising or entitled to exercise any administrative, executive, judicial, ministerial, prerogative, legislative, regulatory, or taxing authority or power of any nature;
  - (b) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of them, and any subdivision of any of them;
  - (c) the Securities Authorities; and
  - (d) any stock exchange, including the TSX.
- (33) “GST/HST” means the goods and services tax and the harmonized sales tax imposed under the ETA.
- (34) “Healthcare Data Requirements” is defined in Section (23) of Schedule 5.
- (35) “Hopkins License Agreement” means the license agreement dated April 18, 2007 (as same may be amended from time to time) between the Seller and the Johns Hopkins University, under which the Seller obtained an exclusive worldwide license on all diagnostic and therapeutic applications of the PCA3 molecular biomarker in relation with prostate cancer.
- (36) “Indemnified Party” means the Party or other indemnified Person entitled to make a Claim for indemnification under any provision of Article 10.
- (37) “Indemnifying Party” means the Party providing indemnification under any provision of Article 10.
- (38) “Indemnity Claim” is defined in Section 10.5.
- (39) “Indemnity Notice” is defined in Section 10.5.
- (40) “Insurance Policies” means the insurance policies maintained by the Seller.

(41) “Intellectual Property” means:

- (a) trade-marks, design marks, logos, service marks, certification marks, official marks, trade names, business names, corporate names, trade dress, distinguishing guises, slogans, meta tags, keywords, adwords and other characters, brand elements or other distinguishing features used in association with wares or services, whether or not registered or the subject of an application for registration and whether or not registrable, and associated goodwill (“Trade-marks”);
- (b) inventions, arts, processes, machines, articles of manufacture, compositions of matter, business methods, formulæ, developments and improvements, whether or not patented or the subject of an application for patent and whether or not patentable, methods and processes for making any of them, and related documentation (whether in written or electronic form) and know-how (“Inventions”);
- (c) software in source code or object code form, documentation, literary works, artistic works, pictorial works, graphic works, musical works, dramatic works, audio visual works, performances, sound recordings and signals, including their content, and any compilations of any of them, whether or not registered or the subject of an application for registration, or capable of being registered (“Works”);
- (d) domain names, whether registered primary domain names or secondary or other higher level domain names (“Domain Names”);
- (e) industrial designs and all variants of industrial designs, whether or not registered or the subject of an application for registration and whether or not registrable (“Designs”); and
- (f) trade secrets, technical expertise, and research data and other confidential information relating to goods and services.

(42) “Intellectual Property Rights” means:

- (a) any common law principle or statutory provision which may provide a right in Intellectual Property, including all:
  - (i) common law rights and registrations, pending applications for registration and rights to file applications for the Trade-marks, including all rights of priority;
  - (ii) patents (including utility and design patents and utility models), pending patent applications and rights to file applications for the Inventions, including all rights of priority and rights in continuations, continuations-in-part, divisions, reissues, renewals, re-examinations, exclusions, divisional, supplementary protection certificates, substitutions, and other derivative applications and patents;

- (iii) copyrights in Works and all registrations, pending applications for registration and rights to file applications for Works and all moral rights and benefits of waivers of moral rights in Works;
  - (iv) registrations, pending applications for registration and rights to file applications for registration of Domain Names and all other common law and statutory rights in Domain Names; and
  - (v) industrial design rights, design patents, design registrations, pending patent and design applications and rights to file applications for Designs, including all rights of priority and rights in continuations, continuations-in-part, divisions, re-examinations, reissues and other derivative applications;
- (b) all rights in licences, sub-licences, franchise agreements, waivers and other contractual rights in any of the items listed in paragraph (a); and
  - (c) all rights to enforce the rights and obtain remedies for a violation of any of the rights listed in paragraphs (a) and (b).
- (43) “Investment Canada Act” means the *Investment Canada Act* (Canada).
- (44) “ITA” means the *Income Tax Act* (Canada).
- (45) “Knowledge of the Seller” means the knowledge that either Yves Fradet, Danielle Allard or Frédéric Boivin has, or would have obtained, after having made or caused to be made all reasonable inquiries necessary to obtain informed knowledge, including inquiries of the records of the Seller, and of counsel and advisors to the Seller, and of the Seller’s subsidiaries.
- (46) “Law” or “Laws” means all laws, statutes, codes, ordinances, decrees, rules, regulations, by-laws, statutory rules, principles of law, published policies and guidelines, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, rulings or awards, including general principles of common and civil law, and the terms and conditions of any grant of approval, permission, authority or licence of any Governmental Entity, and the term “applicable” with respect to Laws and in a context that refers to one or more Persons, means that the Laws apply to the Person or Persons, or its or their business, undertaking or property, and emanate from a Governmental Entity having jurisdiction over the Person or Persons or its or their business, undertaking or property.
- (47) “License Agreements” means, collectively:
- (a) the Nijmegen License Agreement; and
  - (b) the Hopkins License Agreement.

- (48) “Licensed IP” means the Intellectual Property and Intellectual Property Rights owned by Persons other than the Seller, including Intellectual Property owned by those Persons relating to the Technical Information, in each case relating to the PCA3 Technology.
- (49) “Loss” means any direct loss, liability, damage, cost, expense, charge, fine, penalty or assessment including the costs and expenses of any action, suit, proceeding, demand, assessment, judgment, settlement or compromise and all interest, fines, penalties and all professional fees and disbursements.
- (50) “Nijmegen License Agreement” means the license agreement dated May 1, 2000 (as amended by Amendment No. 1 dated April 18, 2007, as same may be further amended from time to time), between the Seller and the University of Nijmegen, under which the Seller obtained an exclusive worldwide license on all diagnostic and therapeutic applications of the PCA3 molecular biomarker in relation with prostate cancer.
- (51) “Owned IP” means all Intellectual Property that is owned by the Seller, including, without limitation, the Seller Registered IP, Intellectual Property relating to the Technical Information, as well as all Intellectual Property Rights that are owned or enforceable by the Seller, in each case relating to the PCA3 Technology.
- (52) “Patents” means all patents (including utility and design patents and utility models), and patent applications, including any divisionals, revisions, supplementary protection certificates, continuations, continuations-in-part, reissues, re-examinations, substitutions, extensions and renewals thereof.
- (53) “Parties” means the Seller and the Buyer, collectively, and “Party” means either of them.
- (54) “PCA3 Technology” means the tangible or intangible Intellectual Property relating to the Seller’s research, development and commercialization of molecular and genomic tests in the field of prostate oncology, but excluding the PCP Technology.
- (55) “PCA3 Technology Permits” is defined in Section (22)(c) of Schedule 5.
- (56) “PCP” means prostate cancer profiling.
- (57) “PCP License” is defined in Section 7.9.1.
- (58) “PCP License Notice” is defined in Section 7.9.1.
- (59) “PCP Technology” means the Seller’s PCP technology and Intellectual Property and business activities related solely to the Seller’s PCP technology.
- (60) “Permits” means all authorizations, registrations, permits, certificates of approval, approvals, grants, licences, quotas, consents, commitments, rights or privileges (other than those relating to the Intellectual Property) issued or granted by any Governmental Entity to the Seller in respect of the PCA3 Technology.

- (61) “Permitted Encumbrances” means any Encumbrance which the Buyer has expressly agreed to assume or accept pursuant to this Agreement.
- (62) “Person” will be broadly interpreted and includes:
- (a) a natural person, whether acting in his or her own capacity, or in his or her capacity as executor, administrator, estate trustee, trustee or personal or legal representative, and the heirs, executors, administrators, estate trustees, trustees or other personal or legal representatives of a natural person;
  - (b) a corporation or a company of any kind, a partnership of any kind, a sole proprietorship, a trust, a joint venture, an association, an unincorporated association, an unincorporated syndicate, an unincorporated organization or any other association, organization or entity of any kind; and
  - (c) a Governmental Entity.
- (63) “Personal Information” means information about an individual who can be identified by the Person who holds that information.
- (64) “Plans” means all plans that provide pension benefits for the benefit of Employees or former Employees, and their respective beneficiaries, and all Employee benefit, fringe benefit, supplemental unemployment benefit, bonus, incentive, profit sharing, termination, change of control, compensation, retirement, salary continuation, stock option, stock purchase, stock appreciation, health, welfare, medical, dental, accident, disability, life insurance and other plans, arrangements, agreements, programs, policies, practices or undertakings, whether oral or written, funded or unfunded, registered or unregistered, insured or self-insured:
- (a) that are sponsored or maintained or funded, in whole or in part, by the Seller, or to which the Seller contributes or is obligated to contribute for the benefit of Employees or former Employees, and their respective beneficiaries; or
  - (b) under which the Seller has any liability or contingent liability.
- (65) “Purchase Price” is defined in Section 3.1.
- (66) “Purchased Assets” means all of the rights, assets, privileges, benefits and property of whatever nature or kind and wherever situated, owned, or used by the Seller or held by it for use primarily in, or primarily with respect to, the PCA3 Technology, including the following properties, assets and rights:
- (a) Books and Records;
  - (b) Contracts;
  - (c) Intellectual Property;

- (d) Permits; and
  - (e) the assets set out in Schedule 2,  
but excluding any property and assets that are Excluded Assets.
- (67) “QST” means the Québec sales tax imposed under the QSTA.
- (68) “QSTA” means *An Act respecting the Québec sales tax* (Québec).
- (69) “Release” means to release, spill, leak, pump, pour, emit, empty, discharge, deposit, inject, leach, dispose, dump or permit to escape.
- (70) “Regulatory Authority” is defined in Section (22)(c) of Schedule 5.
- (71) “Representatives” means the Affiliates of a Party, and the advisors, agents, consultants, directors, officers, management, employees, subcontractors, and other representatives, including accountants, auditors, financial advisors, lenders and lawyers of a Party and of that Party’s Affiliates.
- (72) “Requisite Shareholder Approval” means the requisite approval for the Special Resolution, being at least two-thirds of the votes cast at the Seller Meeting by the Shareholders entitled to vote on the Special Resolution.
- (73) “Right to Match Period” is defined in Section 9.2.3.4.
- (74) “Securities Authorities” means the applicable securities commissions and other securities regulatory authorities in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland.
- (75) “Seller” is defined in the recital of the Parties above.
- (76) “Seller Circular” means the notice of the Seller Meeting and accompanying management information circular, including all schedules, appendices and exhibits thereto, to be sent to, among others, the Shareholders in connection with the Seller Meeting, as amended, supplemented or otherwise modified from time to time;
- (77) “Seller Intellectual Property” means all Owned IP, Licensed IP and Technical Information.
- (78) “Seller Meeting” means the special meeting of the Shareholders, including any adjournment or postponement thereof in accordance with the terms of this Agreement, to be called and held to consider the Special Resolution.
- (79) “Seller Recommendation” is defined in Section (2)(b) of Schedule 5.
- (80) “Seller Registered IP” means

- (a) Patents,
- (b) Trademarks that are the subject of a registration or a pending application for registration and material unregistered Trademarks,
- (c) copyrights that are the subject of a registration or assignment or pending application for registration, and
- (d) domain name registrations, in each case, owned by the Seller,

in each case relating to the PCA3 Technology.

- (81) “Seller Subsidiary Wind-Up” means the proposed wind-up of 9161-6722 Québec Inc., a wholly-owned subsidiary of the Seller.
- (82) “Shares” is defined in the recital of the Parties above.
- (83) “Shareholders” means the registered or beneficial holders of the Common Shares.
- (84) “Shares Promissory Note” is defined in Section 8.5.2.
- (85) “Special Resolution” means the special resolution of the Shareholders approving the Transaction to be considered at the Seller Meeting, to be substantially in the form and content of Schedule 4.
- (86) “Subsidiary” means a “subsidiary” as defined in the Act.
- (87) “Superior Proposal” means a *bona fide* Acquisition Proposal to purchase or otherwise acquire directly or indirectly, including by means of a merger, takeover bid, amalgamation, plan of arrangement, business combination or similar transaction, (i) not less than all of the Common Shares (other than Common Shares beneficially owned by the party making such Acquisition Proposal), or (ii) not less than all or substantially all of the assets of the Seller taken as a whole, that, in either case:
  - (a) complies with all applicable Laws;
  - (b) did not result from a breach of any agreement between any one or more of the persons making such Superior Proposal and its affiliates and the Seller or a breach of Section 9.2;
  - (c) is made in writing after the date hereof;
  - (d) is not subject to any due diligence condition;
  - (e) the Board of Directors has determined in good faith (after consultation with its financial advisors and outside legal counsel) (A) is reasonably capable of being completed in accordance with its terms without undue delay taking into account, to the extent considered appropriate by the Board of Directors, all legal, financial, regulatory and other aspects of such Superior Proposal (including, without



limitation, other issues that may delay or restrict the consummation of such Superior Proposal) and the person or persons making such Superior Proposal, and (B) would, if consummated in accordance with its terms (but expressly taking into account any risk of non-completion), result in a transaction more favourable from a financial point of view to the Shareholders than the Transaction (taking into consideration any adjustment to the terms and conditions of the Transaction proposed by the Buyer pursuant to Section 9.2); and

- (f) in respect of which any required financing to complete such Superior Proposal is available or committed and subject to conditions that the Board of Directors determines in its good faith judgment, after consultation with its financial advisors and its outside counsel are more likely than not to be satisfied.
- (88) “Superior Proposal Notice” is defined in Section 9.2.3.3.
- (89) “Tax” means all taxes, duties, fees, premiums, assessments, imposts, levies, rates, withholdings, dues, government contributions and other charges of any kind whatsoever, whether direct or indirect, together with all interest, penalties, fines, additions to tax or other additional amounts, imposed by any Governmental Entity.
- (90) “Tax Law” means any Law that imposes Taxes or that deals with the administration or enforcement of liabilities for Taxes.
- (91) “Technical Information” means all technical information owned by or licensed to the Seller relating to the PCA3 Technology, including all:
- (a) information of a scientific or business nature, regardless of its form;
  - (b) documentation with respect to research, development, demonstration or engineering work;
  - (c) information that can be or is used to define a design or process, or to procure, produce, support or operate materials or equipment;
  - (d) information regarding methods of production;
  - (e) other drawings, blueprints, patterns, plans, flow charts, equipment parts lists, computer software and procedures, specifications, protocols, data structures, formulas, designs, technical data, descriptions, related instruction manuals, records, passwords, and procedures; and
  - (f) data and databases, whether registered or unregistered.
- (92) “Termination Payment” is defined in Section 9.3.3.
- (93) “Termination Payment Event” is defined in Section 9.3.3.
- (94) “Third Party Claim” is defined in Section 10.5.

- (95) “Third Party Consent” is defined in Section 2.2.
- (96) “TSX” means the Toronto Stock Exchange.
- (97) “Transaction” means the purchase and sale of the Purchased Assets and all other transactions contemplated by this Agreement, including, without limitation, the purchase for cancellation of the Shares.
- (98) “United States” means the United States of America, its territories and possessions, any state of the United States, and the District of Columbia.

## **SCHEDULE 2**

### **(a) PCA3 Assets**

**[Note: Removed for confidentiality reasons.]**

**SCHEDULE 4  
SPECIAL RESOLUTION**

**“BE IT RESOLVED AS A SPECIAL RESOLUTION THAT:**

- (a) the execution and delivery by the Corporation of the asset purchase agreement entered into between the Corporation and Gen-Probe Incorporated as of December 23, 2015 (the “Asset Purchase Agreement”), the performance by the Corporation of its obligations under the Asset Purchase Agreement, the consummation by the Corporation of all transactions contemplated by the Asset Purchase Agreement (including, without limitation, the sale by the Corporation to Gen-Probe Incorporated of all of the Corporation’s right, title and interest in and to the Purchased Assets, as that term is defined and determined in the Asset Purchase Agreement (the “PCA3 Asset Sale”)), and the actions of the officers of the Corporation in executing and delivering the Asset Purchase Agreement and any amendments thereto be and are hereby ratified, approved and confirmed;
- (b) the execution, delivery and performance by the Corporation of all other agreements, documents, certificates and instruments contemplated by the Asset Purchase Agreement (the “Related Documents”), and the actions of the officers of the Corporation in executing and delivering the Related Documents and any amendments thereto be and are hereby ratified, approved and confirmed;
- (c) notwithstanding that this resolution has been duly passed by the shareholders, the directors of the Corporation are hereby authorized and empowered, without further notice to, or approval of, the shareholders of the Corporation to amend the Asset Purchase Agreement to the extent permitted thereby, or, subject to the terms of the Asset Purchase Agreement, not to proceed with the PCA3 Asset Sale; and
- (d) any one or more directors or officers of the Corporation is hereby authorized and directed to perform all such acts, deeds and things and to execute, under corporate seal of the Corporation or otherwise, and deliver all such documents and other writings as may be required to give effect to the true intent of this resolution.”

**SCHEDULE 5**  
**REPRESENTATIONS AND WARRANTIES OF THE SELLER**

**(1) Corporate Existence of Seller**

The Seller is a corporation duly incorporated and validly existing under the laws of Québec.

**(2) Capacity to Enter Agreement**

(a) The Seller has all necessary corporate power, authority and capacity to enter into and perform its obligations under this Agreement and to consummate the Transaction subject only to the approval by the Board of Directors of the Seller Circular and the Requisite Shareholder Approval for the Transaction in the manner required by applicable Laws. The execution and delivery by the Seller of this Agreement, the performance by the Seller of its obligations under this Agreement and the consummation by the Seller of the Transaction have been duly authorized by the Board of Directors and no other corporate proceedings on the part of the Seller are necessary to authorize the execution and delivery by the Seller of this Agreement, the performance by the Seller of its obligations under this Agreement or the consummation by the Seller of the Transaction, subject only to the approval by the Board of Directors of the Seller Circular and receipt of the Requisite Shareholder Approval at the Seller Meeting.

(b) At a meeting duly called and held prior to the execution and delivery of this Agreement, the Board of Directors adopted resolutions by the unanimous vote of all directors of the Seller (A) authorizing and approving this Agreement, and the Transaction in accordance with the requirements of the Act, (B) determining that the terms of this Agreement are fair to the Seller and its shareholders and in the best interest of the Seller and the Transaction is in the best interests of the Seller, and (C) resolving to unanimously recommend that the Shareholders vote in favour of the Transaction (“Seller Recommendation”), and, as of the date hereof, none of the aforesaid actions by the Board of Directors have been amended, rescinded or modified.

(c) The Board of Directors has received the Fairness Opinion, and the Fairness Opinion has not been withdrawn or modified as of the date hereof.

**(3) No Bankruptcy**

There has not been filed any petition or application, or any proceeding commenced which has not been discharged, by or against Seller with respect to any assets of Seller under any law, domestic or foreign, relating to bankruptcy, reorganization, fraudulent transfer, compromise, arrangements, insolvency, readjustments of debt or creditors’ rights, and no assignment has been made by Seller for the benefit of creditors.

(4) **Binding Obligation**

The execution and delivery of this Agreement and the completion of the transactions contemplated by this Agreement have been duly authorized by all necessary corporate action on the part of the Seller. This Agreement has been duly executed and delivered by the Seller and constitutes a valid and binding obligation of the Seller, enforceable against the Seller in accordance with its terms, subject to applicable bankruptcy, insolvency and other Laws of general application limiting the enforcement of creditors' rights generally and to the fact that equitable remedies, including specific performance, are discretionary and may not be ordered in respect of certain defaults.

(5) **Absence of Conflict**

None of the execution and delivery of this Agreement, the performance of the Seller's obligations under this Agreement, or the completion of the transactions contemplated by this Agreement will (with or without the giving of notice or lapse of time, or both):

- (a) result in or constitute a breach of any term or provision of, or constitute a default under, the articles or by-laws or any resolutions of the board of directors or shareholders of the Seller, or any Contract to which the Seller is a party;
- (b) constitute an event which would permit any party to any Contract with the Seller to amend, cancel, terminate, sue for damages with respect to, or accelerate the obligations of the Seller under, that Contract;
- (c) result in the creation or imposition of any Encumbrance on the Purchased Assets;
- (d) contravene any applicable Law; or
- (e) contravene any judgment, order, writ, injunction or decree of any Governmental Entity.

(6) **No Other Agreements to Purchase**

- (a) No Person other than the Buyer has any written or oral agreement or option or any right or privilege (whether by Law, pre-emptive, contractual or otherwise) capable of becoming an agreement or option for the purchase or acquisition from the Seller of any of the Purchased Assets, or of forming an Encumbrance against any of the Purchased Assets.
- (b) Since October 21, 2015, no offer, proposal, inquiry, whether written or oral, involving, directly or indirectly, any or all of the Purchased Assets has been received by the Seller or any of its Representatives prior to the date hereof.
- (c) No activities, discussions or negotiations with any Person or group of Persons (other than the Buyer and its Representatives) have been initiated prior to the date hereof with respect to an Acquisition Proposal that is, or is reasonably likely to lead to, a Superior Proposal.

(7) **Subsidiaries**

Except as disclosed in Section (7) of the Disclosure Letter, the Seller has no Subsidiaries related to the PCA3 Technology or the Purchased Assets.

(8) **Restrictive Covenants**

The Seller is not a party to, or bound or affected by, any Contract containing any covenant expressly limiting its ability to compete in any line of business, to use the PCA3 Technology in any geographic area as the Seller may determine, or transfer or move any of the Purchased Assets, or which could reasonably be expected to have a material adverse effect on the PCA3 Technology.

(9) **Title to Purchased Assets**

The Seller owns, possesses and has good and marketable title to, and is the legal and beneficial owner of, all of the Purchased Assets not otherwise the subject of specific representations and warranties in this Schedule 5, free and clear of all Encumbrances other than Permitted Encumbrances. At Closing, the Seller will have the absolute and exclusive right to sell the Purchased Assets to the Buyer as contemplated by this Agreement.

(10) **Purchased Assets**

Other than the Purchased Assets, there are no other assets that are material to, associated in any way with, used in, or necessary for, the PCA3 Technology. Except as disclosed in Section (10) of the Disclosure Letter, no assets pertaining to the PCA3 Technology are in the possession of, recorded, stored, maintained by or otherwise dependent upon any Person other than the Seller or the Buyer. No part of the PCA3 Technology and none of the Purchased Assets are owned, leased or operated by any Person other than the Seller or the Buyer.

(11) **Residence of Seller**

The Seller is not a non-resident of Canada for purposes of the ITA.

(12) **Regulatory Approvals**

No authorization, approval, order, decision, waiver, permit, exemption, review, consent of, or filing with, any Governmental Entity or Regulatory Authority is required on the part of the Seller in connection with the execution, delivery and performance of this Agreement or any other documents and agreements to be delivered under this Agreement other than compliance with applicable securities Laws and stock exchange rules and policies. True and complete copies of all agreements under which the Seller is obligated to request or obtain any such approval specified in the Disclosure Letter have been provided or made available to the Buyer prior to the date hereof.

(13) **Investment Canada Act**

The Seller does not provide any of the services, or engage in any of the activities of a “cultural business” within the meaning of the Investment Canada Act.

(14) **Competition Act**

Neither the aggregate value of the Purchased Assets in Canada nor the annual gross revenues from sales in or from Canada generated by such assets exceeds \$86 million, in each case as determined in accordance with the Competition Act and the Notifiable Transactions Regulations promulgated thereunder.

(15) **Consents**

Except as disclosed in Section (15) of the Disclosure Letter, there is no requirement to obtain any consent, approval or waiver of a party under any License Agreement in order to complete the transactions contemplated by this Agreement. There is no requirement under any Contract relating to the Purchased Assets to which Seller is a party or by which it is bound to give any notice to, or obtain the consent or approval of, any party to such Contract relating to the consummation of the Transaction, except for the notifications and consents described in the Disclosure Letter.

(16) **Books and Records**

The Books and Records fairly and correctly set out and disclose all material transactions of the Seller relating to the PCA3 Technology.

(17) **Tax Matters**

The Seller has paid or made arrangements for the payment of all Taxes in respect of the PCA3 Technology, the Purchased Assets and the PCP Technology which, as of the Closing Date, are capable of forming or resulting in a lien on the Purchased Assets or of becoming a liability or obligation of the Buyer. There are no Claims either in progress, pending or threatened, in connection with any Taxes in respect of the PCA3 Technology, the Purchased Assets or the PCP Technology. The Seller has deducted, withheld or collected, and remitted all amounts required to be deducted, withheld, collected or remitted by it in respect of any Taxes.

(18) **GST/HST and QST Registration**

The Seller is registered for purposes of the GST/HST levied under the ETA and for purposes of the QST levied under the QSTA and its registration numbers under each is [REDACTED] and [REDACTED], respectively.

(19) **No Interests, Partnership or Joint Ventures**

Except with respect to the Gen-Probe Agreement, the Seller is not, in relation to any part of the PCA3 Technology, a partner or participant in any partnership, joint venture, profit



sharing arrangement or other association of any kind and is not a party to any agreement under which the Seller agrees to use any part of the PCA3 Technology in such manner or by which the Seller agrees to share any revenue or profit of the PCA3 Technology with any Person.

(20) **No Undisclosed Liabilities**

There are no material liabilities or obligations of the Seller in respect of the Purchased Assets of any kind whatsoever, whether accrued, contingent, absolute, determined, determinable or otherwise, other than liabilities or obligations (i) incurred in the ordinary course or (ii) incurred in connection with this Agreement.

(21) **Intellectual Property and Intellectual Property Rights**

- (a) Section (21)(a) of the Disclosure Letter sets out an accurate and complete list and description of all Owned IP that is registered or assigned with any Governmental Entity (including details as to jurisdictions, numbers, and expiry dates of all registrations), Licensed IP and Technical Information, including sufficient particulars to identify each item of Intellectual Property and Technical Information, its respective owner, if that owner is not the Seller, and the nature and jurisdictions of its use, as well as the jurisdictions and particulars of all registrations and assignments of, and applications for registration of, the Owned IP made by the Seller.
- (b) The Seller is the only Person to have any right of title and interest, legal or beneficial, in any of the Owned IP, all of which is owned by the Seller free and clear of any Encumbrances and none of which is registered in the name of any Person other than the Seller. No consent of any Person is necessary to make, construct, use, reproduce, translate, license, sell, modify, update, enhance or otherwise exploit any Owned IP. All Originating Persons have, by irrevocable written assignments, transferred to the Seller all Intellectual Property Rights, and waived all moral rights, that any of them may have enjoyed with respect to any Owned IP to which they contributed.
- (c) Except as disclosed in Section (21)(c) of the Disclosure Letter, the Seller has not assigned, licensed or otherwise granted any interest in any Owned IP, including any right to receive royalties or other payments, to any Person.
- (d) Except as disclosed in Section (21)(d) of the Disclosure Letter, no Person has infringed or misappropriated, or is infringing or misappropriating, any Intellectual Property Right in any Owned IP.
- (e) All Intellectual Property Rights relating to Owned IP are in full force and effect, and all required registration or other fees have been paid to maintain them all in good standing in those jurisdictions where any such Owned IP is registered or assigned.

- (f) All necessary registration, maintenance and renewal fees for the Seller Registered IP have been paid and all necessary documents and certificates have been filed with the relevant Governmental Entity for the purpose of maintaining such Seller Registered IP. Section (21)(f) of the Disclosure Letter accurately identifies and describes each action, filing, and payment that must be taken or made on or before the date that is 120 days after the date of this Agreement in order to maintain the Seller Registered IP in full force and effect.
- (g) The Seller owns, or has a valid right to use all Seller Intellectual Property. Without limiting the foregoing, (A) all documents and instruments necessary to establish, perfect and maintain the rights of the Seller in any Seller Intellectual Property have been validly executed, and to its knowledge delivered, filed and/or recorded in a timely manner with the appropriate Governmental Entity, (B) all officers, employees and contractors (as applicable) of Seller are obligated to assign to Seller all inventions and other Intellectual Property made in the performance of their duties to Seller, and (C) to the Knowledge of the Seller, no officer or employee of the Seller is subject to any Contract with any other Person that requires such officer or employee to assign any interest in inventions or other Intellectual Property to such other Person.
- (h) To the Knowledge of the Seller, (A) the Seller has not infringed, misappropriated, or otherwise violated the Intellectual Property of any third party; and (B) except as disclosed in Section (21)(d) of the Disclosure Letter, no person is infringing, misappropriating, or otherwise violating the Seller Intellectual Property. There has been no claim asserted or threatened in writing directed to the Seller (including in the form of written offers or invitations to obtain a patent license) that the Seller is infringing, misappropriating, or otherwise violating the Intellectual Property of any third party, and to the Knowledge of the Seller, there is no basis for any such claim.
- (i) The Seller is not obligated to indemnify, defend, or hold harmless any other person with respect to the infringement, misappropriation or other violation of any Seller Intellectual Property.
- (j) Other than the License Agreements and the Gen-Probe Agreement, there is no other Licensed IP that is material to, associated in any way with, used in, or necessary for, the PCA3 Technology.
- (k) Each of the License Agreements is valid and binding on the Seller and is in full force and effect. The Seller is not in default or breach of any License Agreement, and there exists no state of facts which, after notice or lapse of time or both, would constitute a default or breach. All approvals and consents required to be obtained in order to assign the License Agreements to the Buyer have been, or will prior to the Closing be, obtained.
- (l) No Seller Intellectual Property is subject to any outstanding injunction, judgment, order, decree, ruling, charge, settlement, or other disposition of a dispute.

- (m) The consummation of the Transaction will not result in the loss or impairment of or payment of any additional amounts with respect to, nor require the consent of any other person in respect of, the Seller's right to own or use any of the Seller Intellectual Property.
- (n) The Seller has not received any written notice from any third party challenging or threatening to challenge the right, title or interest of the Seller in, to or under the Seller Intellectual Property, or the validity, enforceability or claim construction, as applicable, of any Seller Intellectual Property.
- (o) Except as disclosed in Section (21)(o) of the Disclosure Letter:
  - (i) the past, current and proposed use of the PCA3 Technology (including all use or other exploitation of the Seller Intellectual Property by the Seller, or any customers, distributors or other licensees of the Seller) has not resulted in, and neither does nor will result in, any infringement, violation, misappropriation, or other conflict with any Intellectual Property Right of any Person, and there is no action or proceeding ongoing or threatened that alleges any such violation, misappropriation, or other conflict; and
  - (ii) there are no outstanding orders, judgments, rulings, decrees, stipulations, covenants not to sue, or agreements (including any funding or facilities agreements or grants from any college, university, or Governmental Entity) relating to any of the Seller Intellectual Property that restrict the enforcement of any Intellectual Property Rights included in the Seller Intellectual Property, or the use, exercise, practise, or other exploitation of any Seller Intellectual Property by the Seller or any of its customers, distributors or other licensees.

**(22) Compliance with Laws, Permits**

- (a) The Seller is using the PCA3 Technology in material compliance with all applicable Laws.
- (b) No investigation by any Governmental Entity with respect to the Seller is pending or, to the Knowledge of the Seller, threatened, nor has any Governmental Entity indicated an intention to conduct the same.
- (c) All Permits for the use of the Purchased Assets (the "PCA3 Technology Permits"), including all such Permits required by the FDA or any other applicable United States or foreign Governmental Entity responsible for the oversight and approval of the research, development or commercialization of diagnostic, device, pharmaceutical or medicinal products (collectively with the FDA, "Regulatory Authorities") are set out in Section (22)(c) of the Disclosure Letter. All PCA3 Technology Permits are valid and in full effect, and no suspension, revocation or termination of any such PCA3 Technology Permit is pending or, to the Knowledge of the Seller, threatened.

- (d) All PCA3 Technology Permits are renewable by their terms or in the ordinary course of business without the need for the Seller to comply with any special qualifications or procedures or to pay amounts other than routine filing fees.

(23) **Healthcare Data Privacy and Security**

To its knowledge, the Seller has used the PCA3 Technology in compliance with all Laws and Contracts relating to personal information, including medical records and medical information privacy, that regulate or limit the collection, maintenance, use, disclosure, processing or transmission of medical records, patient information or other personal information made available to or collected by the Seller in connection with the operation of its business (the "Healthcare Data Requirements"). Without limiting the foregoing, and to the Knowledge of the Seller, the Seller is and has at all times been in compliance with the privacy and security requirements of the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act (Pub. L. No. 111-5), the Personal Information Protection and Electronic Documents Act (Canada) and other applicable privacy Laws of applicable jurisdictions.

(24) **Unions**

None of the Employees are unionized or, to the Knowledge of the Seller, in the process of becoming unionized.

(25) **Litigation**

Except as disclosed in Section (25) of the Disclosure Letter, there are no Claims, whether or not purportedly on behalf of the Seller, pending, commenced, or, to the Knowledge of the Seller, threatened against or affecting the Seller or the Purchased Assets. Neither the Seller nor any of the Purchased Assets is subject to any outstanding judgment, decree, order, ruling or injunction that would prevent or prohibit the completion of the Transaction.

(26) **No Expropriation**

None of the Purchased Assets have been taken or expropriated by any Governmental Entity and no notice or proceeding in respect of any expropriation has been given or commenced or, to the Knowledge of the Seller, is there any intent or proposal to give any notice or commence any proceeding in respect of any expropriation.

(27) **Related Party Transactions**

There are no existing contracts, transactions, indebtedness or other arrangements, or any related series thereof, between the Seller, on the one hand, and any of the directors, officers or other Affiliates of the Seller, on the other hand, with respect to or otherwise affecting the Purchased Assets.

(28) **No Confidentiality or Standstill Agreements**

The Seller is not a party to any confidentiality or standstill agreement with any third party relating to an Acquisition Proposal or any other acquisition proposal or regarding the PCA3 Technology.

(29) **Disclosure**

No representation or warranty or other statement made by the Seller in this Agreement contains any untrue statement or omits to state a material fact necessary to make it, in light of the circumstances in which it was made, not misleading.

**SCHEDULE 6**  
**REPRESENTATIONS AND WARRANTIES OF THE BUYER**

(1) **Corporate Existence of Buyer**

The Buyer is a corporation duly incorporated and validly existing under the laws of Delaware, U.S.A.

(2) **Capacity to Enter Agreement**

The Buyer has all necessary corporate power, authority and capacity to enter into and perform its obligations under this Agreement.

(3) **Binding Obligation**

The execution and delivery of this Agreement and the completion of the transactions contemplated by this Agreement have been duly authorized by all necessary corporate action on the part of the Buyer. This Agreement has been duly executed and delivered by the Buyer and constitutes a valid and binding obligation of the Buyer, enforceable against the Buyer in accordance with its terms, subject to applicable bankruptcy, insolvency and other Laws of general application limiting the enforcement of creditors' rights generally and to the fact that equitable remedies, including specific performance, are discretionary and may not be ordered in respect of certain defaults.

(4) **Absence of Conflict**

None of the execution and delivery of this Agreement, the performance of the Buyer's obligations in this Agreement, or the completion of the transactions contemplated by this Agreement, will result in or constitute a breach of any term or provision of, or constitute a default under, the articles or by-laws of the Buyer.

(5) **Regulatory Approvals**

Except for a filing of a notice under the Investment Canada Act, no authorization, approval, order, consent of, or filing with, any Governmental Entity is required on the part of the Buyer in connection with the execution, delivery and performance of this Agreement or any other documents and agreements to be delivered under this Agreement.

(6) **Litigation**

There is no outstanding judgment, decree, order, ruling or injunction involving the Buyer relating in any way to the transactions contemplated by this Agreement.

(7) **Tax Registrations**

The Buyer is not resident in Canada and is not registered under Subdivision d of Division V of Part IX of the ETA and Division I of Chapter VIII of the QSTA.

**SCHEDULE 7.9.1**  
**PCP INTELLECTUAL PROPERTY**

**[Note: Removed for confidentiality reasons.]**

**EXHIBIT 3.2**  
**ALLOCATIONS OF PURCHASE PRICE**

To be completed at or before Closing



**EXHIBIT 7.12  
INSURANCE POLICIES**

**(attached)**

**[Note: Removed for confidentiality reasons.]**