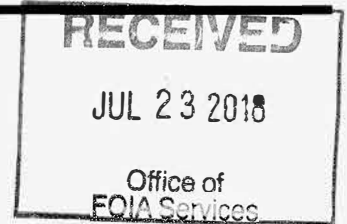


18-05341-E

foiapa

From: Mark Edwards <medwards@biosciadvisors.com>
Sent: Saturday, July 21, 2018 11:10 PM
To: foiapa
Subject: FOIA Request



I would like to request access to Exhibits 10.3 and 10.4 to the 3/31/14 10-Q, as amended, filed by Fluidigm Corp. on 5/13/2014. Confidential treatment was sought as to certain portions when initially filed with the Commission.

In the event that confidential treatment has not expired or has been extended, I further request that you send me the expiration date(s) from the relevant CT order(s) so I will know when I should resubmit my request.

I authorize up to \$61 in search and retrieval fees. Please send the exhibit(s) by PDF if possible.

Sincerely,

Mark

Mark G Edwards
Managing Director
Bioscience Advisors
2855 Mitchell Dr., Suite 103
Walnut Creek, CA 94598
medwards@biosciadvisors.com
925 954-1397



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549-2465

Office of FOIA Services

August 02, 2018

Mr. Mark G. Edwards
Bioscience Advisors
2855 Mitchell Dr., Suite 103
Walnut Creek, CA 94598

RE: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. **18-05341-E**

Dear Mr. Edwards:

This letter is in response to your request, dated July 21, 2018 and received in this office on July 23, 2018, seeking access to Exhibits 10.3 and 10.4 to the Form 10-Q filed on May 12, 2014, by Fluidigm Corp.

The search for responsive records has resulted in the retrieval of 22 pages of records that may be responsive to your request. They are being provided to you with this letter.

As shown on the enclosed invoice, the processing fee is \$61.00 in accordance with our fee schedule. You may use our [Online Payment](#) option to pay by debit or credit card. If paying by mail, checks or money orders should be made payable to the SEC and a copy of the invoice should be mailed to our payment address: Enterprise Services Center, HQ Bldg., Room 181, AMZ-341, 6500 South MacArthur Boulevard, Oklahoma City, OK 73169. Please refer to the following link for detailed instructions on how to remit payments. <http://www.sec.gov/about/offices/ofm.htm>

If you have any questions, please contact me at rollinsc@sec.gov or (202) 551-8329. You may also contact me at foiapa@sec.gov or (202) 551-7900. You also have the right to seek assistance from Aaron Taylor as a FOIA Public Liaison or contact the Office of Government Information Services (OGIS) for dispute resolution services. OGIS can be reached at 1-877-684-6448 or Archives.gov or via e-mail at ogis@nara.gov.

Sincerely,

A handwritten signature in black ink that reads "Carl Rollins".

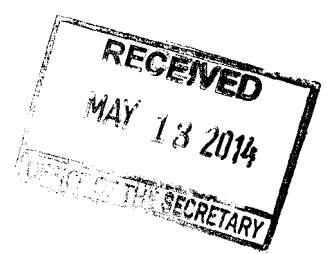
Carl Rollins
FOIA Research Specialist

Enclosures

LICENSE AGREEMENT

THIS AGREEMENT made this 17th day of July, 2008

BETWEEN:



MDS Analytical Technologies, a business unit of MDS INC., a company incorporated pursuant to the laws of Canada, **through its Sciex division**, having divisional offices at 71 Four Valley Drive, Concord, Ontario, Canada, L4K 4V8

(hereinafter, "MDS AT")

and

DVS Sciences, Inc., a company incorporated pursuant to the laws of Ontario, having its head office at 70 Peninsula Crescent, Richmond Hill, Ontario, Canada, L4S 1Z5

(hereinafter, "DVS")

WHEREAS:

A. MDS AT is the owner by assignment of certain intellectual property rights, including, but not limited to, the Licensed IP as herein defined and specified in Schedule A hereto.

B. MDS AT is willing to grant and DVS wishes to obtain a worldwide exclusive, royalty bearing license under the Licensed IP to make, have made, use or sell, sublicense and otherwise commercialize the Licensed Product, as herein defined.

C. MDS AT is further willing to grant and DVS wishes to obtain a worldwide, non-exclusive, royalty bearing license under the Licensed IP, with the right to make, have made, use or sell, without the right to sub-license, Licensed Reagents, as herein defined

THEREFORE, in consideration of the mutual promises set forth below, it is agreed as follows:

1. DEFINITIONS

In this Agreement the following terms shall have the following meanings, whether in singular or plural form:

1.1. "Flow Cytometer" means an analytical instrument that provides assay of a biological sample based on the analysis of individual cells or particles.

- 1.2. “Flow Cytometry” means the art of conducting assays with a Flow Cytometer.
- 1.3. “Field” means ICP-based Flow Cytometry; including, without limitation, the analysis of elemental tagged materials in connection therewith.
- 1.4. “Licensed Intellectual Property” or “Licensed IP” means the patents and/or patent applications listed in Schedule A hereto, and all continuations, continuations-in-part and divisions hereof, and all further patent applications claiming or describing inventions contained in, or claiming priority to, any of the foregoing, and all patents which may issue from any of such patent applications.
- 1.5. “Licensed Processes” means processes and technology that are within a Valid Claim of the Licensed IP.
- 1.6. “Licensed Product” means the ICP MS-based Flow Cytometer that is within a Valid Claim of Licensed IP and includes the use of Licensed Reagents only when used in combination with the ICP MS based Flow Cytometer.
- 1.7. “Licensed Reagent” means reagent or kit that is within a Valid Claim of Licensed IP.
- 1.8. “Licensed Technology” means Licensed Reagents and the Licensed Products.
- 1.9. “Gross Sales”, for any Licensed Technology. In the case of a sale of such Licensed Technology by DVS to a purchaser who is bona fide at arm’s-length from and unrelated to DVS with no consideration involved other than the invoice price, Gross Sales means the gross selling price invoiced by DVS to such purchaser for such Licensed Technology. In all other cases, “Gross Sales” means Gross Sales that would have applied had the Licensed Technology in question been sold to a purchaser who was bona fide at arm’s-length and unrelated to DVS, with no consideration involved other than the invoice price.
- 1.10. “Sublicensee” means any party with which DVS enters into a sublicense agreement in accordance with this Agreement. For greater clarity it is understood that any payments made under this section are deemed to be royalty payments and therefore apply toward the minimum royalties in section 3.
- 1.12. Licensed Products incorporating Licensed Technology shall be deemed to have been sold or disposed of for value when they are shipped to a customer, or when they are invoiced, or when they are leased, or when any value whatsoever is received for them by DVS or a Sublicensee, whichever is first.
- 1.13. “Year” means a calendar year.
- 1.14. All sums mentioned herein shall be in Canadian dollars unless the context otherwise requires.

1.15. "Improvements" means improvements and developments, major or minor, whether patentable or not, relating to the subject matter of the Licensed IP whether developed by MDS AT or DVS.

1.16. "Valid Claim" means a claim in an issued patent of the Licensed IP which has not (i) expired, (ii) been finally adjudicated invalid or unenforceable, (iii) found invalid or unenforceable, or (iv) been abandoned.

2. GRANT OF LICENSE

2.1. MDS AT hereby grants to DVS an exclusive, royalty bearing worldwide license under the Licensed IP, with the right to sublicense, to make, have made, use, lease, sell, and otherwise commercialize Licensed Products within the Field.

2.2. MDS AT hereby grants to DVS a non-exclusive, royalty bearing worldwide license under the Licensed IP, with the right to make, have made, use, lease and sell, without right to sublicense, Licensed Reagents in fields other than the Field.

2.3. Notwithstanding section 2.2, MDS AT retains the right to all Licensed IP in fields other than the Field.

3. FEES AND ROYALTIES

3.1. Fee in the amount of one hundred fifty thousand (\$150,000) dollars, to be guaranteed by manufacturing/distributing partner of DVS (the "Guarantor"), shall be paid by DVS to MDS AT by or before December 31, 2010. Royalties paid in calendar 2010 shall be applied against this fee.

3.2. DVS shall pay to MDS AT royalties (the "Royalties") as follows:

(i) 3% of the Gross Sales of Licensed Technology sold.

(ii) If DVS grants a sublicense to a Sublicensee to make Licensed Products, DVS shall pay to MDS AT royalties equal to 3% of the gross sales of Licensed Products sold by the Sublicensee and 3% of any fees charged for the grant of such sublicense. For greater clarity, it is understood that any payments made under this subsection 3.3 are deemed to be royalty payments and therefore apply toward the minimum royalties required in section 5.

3.3. No Royalties shall accrue or be owed to MDS AT from DVS, including without limitation any payments under Sections 3.1 and 3.2, prior to January 1, 2010.

4. DUE DILIGENCE

4.1. DVS shall, itself or through a Sublicensee, use commercially reasonable efforts to effect introduction of Licensed Technology into the marketplace.

5. **MINIMUM ROYALTIES**

5.1. DVS shall pay to MDS AT minimum royalties under this Agreement as follows:

- (i) For the year 2011: two hundred thousand (\$200,000) dollars, and
- (ii) For each Year of the Agreement thereafter: two hundred fifty thousand (\$250,000) dollars.

5.2. If DVS fails to pay the minimum royalties set forth in subsection 5.1, and such failure to pay is not cured pursuant to section 13.3 herein, such failure shall constitute a breach of this Agreement.

5.3. The minimum royalties payable for the Year in which the last-to-expire Valid Claim expires shall be pro-rated based on date of expiration of such last-to-expire Valid Claim. No minimum royalties shall be payable for any subsequent Year following the expiration of the last-to-expire Valid Claim.

6. **PAYMENT OF ROYALTIES**

6.1. Royalties under subsection 3.2 shall be calculated quarterly, on the last day of each quarter of the Year (the "Quarter"), and should be payable within one (1) month following the end of each Quarter for Gross Sales by DVS which have occurred during the Quarter in question until the expiration of the last-to-expire Valid Claim.

6.2. Subject to Section 5.3, the Royalty payment for each Quarter of each Year beginning with the year 2011 shall be at least equal to the pro-rated minimum royalty payment applicable to that Quarter for such Year. Any overpayment for each Quarter resulting from payment of the minimum royalty may be credited against subsequent royalties otherwise payable for the Year in question and the subsequent Year.

6.3. All payments due to MDS AT under this Agreement shall be made to the credit of MDS AT. Where Gross Sales are in a currency other than Canadian dollars, the conversion into Canadian dollars shall be calculated at the rate of exchange for DVS to sell such currency quoted by the Canadian Imperial Bank of Commerce on the last day of the Quarter in respect of which payment is due.

6.4. For greater clarity, it is understood and agreed that royalty will be paid only once for each Licensed Technology.

7. **RECORDS AND REPORTS**

7.1. Each royalty payment made under this Agreement shall be accompanied by a statement showing particulars of all Gross Sales for the Quarter in question, and the total royalty due and payable to MDS AT.

7.2. DVS shall, and shall require each of its Sublicensees, to keep true and accurate records and books of account containing all data necessary for the determination of the royalties payable hereunder and to evaluate the performance of DVS or its Sublicensee. MDS AT may, upon reasonable prior notice (which shall include the name of the accountant referred to below), have such records and books of account inspected (not exceeding twice per annum) by a duly authorized independent chartered accountant, to verify the accuracy of the reports made hereunder. DVS or the Sublicensee may, by thirty (30) days' notice to MDS AT upon receiving the notice of inspection referred to above, object to the accountant selected by MDS AT if such accountant has a conflict of interest, reasonably determined, due to having provided services currently or during the immediately preceding two (2) years to a competitor of DVS or the Sublicensee in question, and MDS AT shall then select a different independent chartered accountant who has no such conflict of interest. The accountant shall maintain its findings relating to such inspection in confidence but may disclose to MDS AT full particulars of any deficiencies or inaccuracies in reports or payments by DVS.

8. IMPROVEMENTS (If Applicable)

8.1. Each party shall promptly disclose to the other party the Improvements it may discover, develop or acquire during the life of this Agreement.

8.2. Improvements developed by MDS AT may, at DVS's sole option and discretion, be deemed to be included in this Agreement and be subject to the terms hereof, and any such application for patents or equivalent protection made in respect thereof shall be treated as if it were included in the term Licensed IP. DVS shall provide MDS AT with its decision with respect to the foregoing herein Section 8.2 within ninety (90) days of MDS AT's disclosure to DVS.

8.3. Should DVS, during the term of this Agreement, develop any Improvements to the Licensed IP described or claimed in any of the patent or patent applications listed in Schedule A, whether patentable or not, DVS shall disclose the same to MDS AT. DVS shall grant to MDS AT a non-exclusive, royalty free, non-transferable license, without the right to sublicense, to make and use such Improvements in research and development only.

9. PATENTS AND PATENT APPLICATIONS

9.1. At all times during the term of this Agreement and, for greater clarity, for as long as the license remains exclusive, DVS shall control, in consultation with MDS AT, and shall be solely responsible for and shall pay the full costs of preparing, filing and prosecuting any patent applications relating to the Licensed Products. DVS shall advise MDS AT of developments in the prosecution of patents and patent applications and the Licensed Products in a timely manner to allow MDS AT to comment thereon and shall take into fair consideration any such comments.

9.2. MDS AT shall control, in consultation with DVS, and be solely responsible for the costs of, prosecution and maintenance of patents and patent applications for the Licensed Reagents not in the Field. MDS AT shall advise DVS of developments in the prosecution of patents and patent applications the Licensed Reagents not in the Field in a timely manner to allow DVS to comment thereon and shall take into fair consideration any such comments.

9.3. DVS and MDS AT each agree to provide reasonable support to the other for the prosecution of the Licensed Products and Licensed Reagents not in the Field under Sections 9.1 and 9.2, respectively, at no cost to the other Party.

9.4. If MDS AT believes, on reasonable grounds and in good faith, that it will not be possible to obtain a worthwhile patent from any of the patent applications included in the Licensed IP, or that it would not be worthwhile maintaining one of the Licensed IP, then it may discontinue such prosecution or maintenance, but it shall give DVS advance notice of such intention to discontinue so that DVS may itself if it wishes assume responsibility and pay for the full costs thereof for the prosecution or maintenance of the patent application or patent in question. In this instance, the patent application or patent in question will immediately (i) be assigned to DVS from MDS AT at no cost to DVS and (ii) cease to form a part of the Licensed IP.

10. INFRINGEMENT OF THIRD PARTIES

10.1. MDS AT shall have the right to bring an action for infringement of the Licensed IP against alleged infringers. DVS shall cooperate in any such action and agrees to be named as a plaintiff if MDS AT so requests.

10.2. If DVS's exercise of their rights under this license infringes or is alleged or suspected to infringe on the intellectual property rights of an arm's-length third party, then DVS shall so advise MDS AT, and DVS may:

(i) determine that DVS's practice of its rights under this Agreement does not infringe the third party's intellectual property rights, or

(ii) attempt to modify the products or processes which DVS is practicing under this Agreement to render them non-infringing, or

(iii) obtain a license from the third party at DVS's cost, or

(iv) terminate the licenses granted in Section 2.1 and 2.2.

11. WARRANTIES

11.1. MDS AT is the owner of certain intellectual property rights, including, but not limited to, the Licensed IP referred to in Schedule A hereto and has the right to grant this License.

11.2. MDS AT, DVS and Guarantor each represent that they respectively have the capacity and authority to enter into this Agreement.

11.3. The Licensed IP is in good standing and to the knowledge of MDS AT the Licensed IP is valid and enforceable.

11.4. MDS AT otherwise makes no warranties, express or implied, as to any matter whatsoever, including without limitation:

(i) the condition of the Licensed Technology or results derived therefrom,
or

(ii) the merchantability, utility, or fitness for a particular purpose of the Licensed Technology or results derived therefrom, or

(iii) the scope of the Licensed IP or that the Licensed IP may be exploited by DVS without infringing other patents.

12. INDEMNIFICATION

12.1. DVS will indemnify, defend and hold harmless MDS AT, its Affiliates, employees, representatives or agents, from and against all actions, suits, claims or proceedings and any damages, costs expenses (including legal costs) or liability of any kind or incurred by MDS AT in any action whatsoever against MDS AT, its Affiliates, employees, representatives or agents, including all infringement actions relating to practice of the Licensed Technology and liability therefrom:

(i) arising out of the performance by DVS or by others at the request of DVS (more specifically Sublicensees of DVS) functions and/or products contemplated by this Agreement, or

(ii) resulting from the negligent acts or omissions of DVS's employees, representatives or agents (more specifically Sublicensees of DVS) in connection with this Agreement, whether or not information or material supplied by MDS AT is utilized, or

(iii) in respect of any direct, consequential or other damage awarded against MDS AT resulting from the use, sale or other disposition by DVS or its customers of Licensed Technology.

12.2. MDS AT will indemnify, defend and hold harmless DVS, its Affiliates, employees, representatives or agents, from and against all actions, suits, claims or proceedings and any damages, costs expenses (including legal costs) or liability of any kind or incurred by DVS in any action whatsoever against DVS, its Affiliates, employees, representatives or agents:

(i) arising out of the performance by MDS AT or by others at the request of MDS AT functions and/or products contemplated by this Agreement, or

(ii) resulting from the negligent acts or omissions of MDS AT's employees, representatives or agents in connection with this Agreement.

12.3. DVS agrees that it and any Sublicensee will be required to maintain, for so long as is reasonably necessary, general comprehensive liability and product liability insurance in an amount reasonably necessary to enable them to carry out their obligations under this section.

12.4. In the event that any of an Indemnitor's agents, employees or permitted assigns attend at the Indemnitee facilities or use Indemnitee's equipment in relation to this

Agreement, Indemnitor assumes responsibility and will exonerate and hold harmless Indemnitee from and against any liability or any damage to property or injury including death to persons that may be caused by said persons when on Indemnitee property, and shall also be responsible for any injury or death which may be sustained by such persons and for public liability insurance for the negligent acts or omissions of such persons as well as workers compensation coverage for such persons while on Indemnitee property.

12.5. The indemnification obligations of the Parties under Sections 12.1, 12.2 and 12.3 shall apply only if:

- (i) Indemnitee promptly notifies the Indemnitor in writing after the Indemnitee receives notice of any claim; and
- (ii) Indemnitor is given the opportunity to manage and control the defense and/or settlement of such claim; and
- (iii) Indemnitee reasonably co-operates with the Indemnitor and its legal representatives in the defense and/or settlement of any such claim; and
- (iv) Indemnitee refrains from making any admission of liability or any attempt to settle the claim without the Indemnitor's prior written consent.

12.6. Notwithstanding the foregoing, the Indemnitor shall not be liable to indemnify any Indemnitee to the extent that the claim arises out of the Indemnitee's negligence, bad faith, willful misconduct, or breach of this Agreement or any obligation to a third party.

13. TERM AND TERMINATION

13.1. This Agreement is effective as of the date written above and shall, subject to the remainder of this section, remain in force until the expiry of the last Valid Claim unless terminated earlier pursuant to sections 13.2, 13.3 and 13.4 herein.

13.2. MDS AT may at its option terminate this Agreement immediately (and shall promptly give DVS notice of such termination) and avail itself of such other legal remedies as are appropriate, in the event that DVS at any time becomes insolvent, or makes an assignment for the benefit of creditors, or has a petition in bankruptcy filed against it.

13.3. If either party commits a material breach of this Agreement, then the aggrieved party may give written notice of such breach to the defaulting party. If such breach is not cured within sixty (60) days from the date of the notice, or if the breach is correctible but not within such sixty (60) days, then if the defaulting party does not take prompt steps within the sixty (60) days to cure the default and diligently pursue such steps thereafter, then the aggrieved party may terminate this Agreement by written notice to the other, the written notice to take effect when it is given.

13.4. DVS may terminate this Agreement at any time after the date hereof, either in its entirety or as to any country or countries. Such termination shall be on at least ninety (90) days'

written notice and upon payment of the Guarantee under section 3.1 herein, and fulfillment of such other obligations as set for in section(s) 6, 8, 9, 12, 14, 16, 17, 19, and 20.3.

14. **CONFIDENTIAL INFORMATION**

14.1. Each party agrees to respect and maintain Confidential Information as defined in this section 14.1, which it acquires from the other party by virtue of this Agreement, and will not disclose to any third party nor make any use of such Confidential Information without prior written consent of the other party, which consent shall not unreasonably be withheld provided that DVS takes such reasonable and contractual steps to ensure Sublicensees agree to be under a similar duty of confidentiality with respect to MDS AT's confidential information as DVS. "Confidential Information" shall mean information deemed to be confidential by MDS AT or DVS ("Provider") and disclosed to the other party ("Recipient") in confidence and including, but not limited to, know-how, trade secrets, all information, knowledge or data of an intellectual, technical, scientific, commercial, financial or industrial nature, either in written documentation, oral or visual information, whether by inspection of parts or equipment or otherwise, subject to the exceptions set out below. Oral information deemed to be confidential by the Provider, shall be reduced to writing within thirty (30) days from the date of disclosure and provided to the Recipient.

14.2. The obligations of confidentiality in subsection 14.1 shall not apply to information which the Recipient can establish by written proof:

(i) is or becomes a part of the public domain other than by a disclosure in breach of this Agreement, or

(ii) was known to the receiving party prior to the Recipient's receipt of the information in question, or

(iii) comes into the hands of the Recipient from a third party who is entitled to make such disclosure and has no obligation of confidence to the disclosing party, or

(iv) was developed by the Recipient independently of the information received from the disclosing party, or

(v) is approved for release by written authorization of both DVS and MDS AT.

15. **RIGHT OF ASSIGNMENT**

15.1. The obligations of DVS hereunder, including the obligation to report and pay royalties, shall run in favour of the successors and assigns or other legal representatives of MDS AT.

15.2. In the event of the sale, consolidation, reorganization or otherwise of DVS of all or substantially all of the assets related to the Licensed Technology, MDS AT shall consent to negotiate a commercially reasonable license to such person, firm or corporation succeeding to all or substantially all of DVS's business relating to the Licensed Technology provided that such person,

firm or corporation shall, without delay, accept in writing the provisions of this Agreement and agree to become in all respects bound thereby in the place of DVS.

16. USE OF OTHER PARTY'S NAME

16.1. Neither party shall use the other party's name in any advertising material relating to Licensed Technology, without the prior written consent of the other party, as well as consent as to the content of such advertising material relating to the Licensed Technology by the other party.

16.2. Each party shall obtain the prior approval of the other, such approval not to be unreasonably withheld or delayed, to the content of any written publicity, news release or other public statement or announcement relating to this Agreement, prior to originating or releasing it.

17. INVALID CLAUSE

17.1. If any term of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be deemed to be of no effect and the remainder of this Agreement shall continue in force. The parties shall use their best efforts to replace the invalid term with a term which is valid and as nearly as possible achieves the intent of the invalid term.

18. NO AGENCY

18.1. Each party is an independent contractor, and neither is an agent of the other nor is responsible for the debts and obligations of the other. Neither party has any authority to commit or bind the other.

19. NOTICES

19.1. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be sent to the following addresses or such other addresses as the parties may from time to time advise:

MDS INC., through its MDS AT division,
71 Four Valley Drive
Concord, Ontario, Canada L4K 4V8

Attention: Darin Latimer, Ph.D., Director, Instrument Research
and Business Development
Facsimile: (905) 761-3470

Copy to: Legal department - Facsimile: (905) 660-2601

DVS Sciences Inc.
70 Peninsula Crescent,
Richmond Hill, Ontario, Canada L4S 1Z5

Attention: President

19.2. In order for any notices, requests, directions, or other communications to be effective, they will be delivered in person; or, sent by registered mail, or facsimile addressed to the party for whom it is intended at the above-mentioned address and will be deemed to have been received, if sent by registered mail, within five (5) days from the date of the postal receipt; if sent by facsimile or e-mail, when transmitted, as long as the sender subsequently confirms with the recipient that it has been received. The address of either party may be changed by notice in the manner set out in this provision.

20. GENERAL

20.1. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

20.2. This Agreement constitutes the entire understanding between the parties concerning the subject matter hereof, and any amendments or modification shall not be binding upon each party unless it is in writing and signed by a duly authorized representative of each party.

20.3. This Agreement shall be interpreted and governed by the laws of the Province of Ontario in Canada as applied to transactions taking place entirely within Ontario between Ontario residents and whose courts shall have exclusive jurisdiction in respect of all disputes relating to or arising out of this Agreement.

20.4. The persons signing on behalf of the parties to this Agreement hereby warrant and represent that they have authority to execute this Agreement on behalf of, and bind, the party for whom they have signed.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

DVS Sciences, Inc.

Per: _____ /s/
Name: Scott D. Tanner, Ph.D.
Title: President

**MDS Analytical Technologies,
through its Sciex division**

Per: _____ /s/
Name: Darin Latimer, Ph.D.
Title: Director, Instrument Research and
Business Development

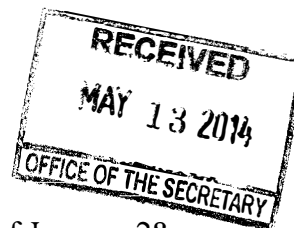
Guarantor

Per: _____ /s/
Name: Nick Roelofs, Ph.D.
Company: Agilent Technologies Inc.
Title: VP GM Life Sciences

Approved for Execution By: Janet Allinson Date: July 17, 2008 MDS Analytical Technologies Legal Department

SCHEDULE A

Country	Patent	Serial/Patent No.
<p>PCT</p> <p>PCT</p> <p>US</p> <p>JP</p> <p>AU</p> <p>CA</p> <p>US</p> <p>US</p> <p>US</p> <p>EU</p>	<p>Elemental Analysis of Tagged Biologically Active Materials (Immunoassay). Related to US provisional 60/258,387 and patent family controlled by MDS Analytical Technologies (“MDS AT”).</p>	<p>PCT/CA2004/000974</p> <p>PCT/CA01/01815; WO02054075</p> <p>60/258,387</p> <p>2002-554722; 4002832</p> <p>2002215784</p> <p>2,431,864</p> <p>11/932,213</p> <p>10/614,115</p> <p>09/905,907; 7,135,296</p> <p>01272578.4; 1348127</p>
<p>PC</p> <p>US</p> <p>CA</p> <p>US</p> <p>EU</p> <p>JP</p> <p>FR</p> <p>DE</p> <p>GB</p>	<p>Method and Apparatus for Flow Cytometry Linked with Elemental Analysis</p> <p>and</p> <p>Flow Cytometer ICP-TOF-MS</p> <p>Related to US provisional 60/555,952 and patent family controlled by MDS Analytical Technologies (“MDS AT”).</p>	<p>PCT/CA2005/000461</p> <p>60/555,952</p> <p>2,561,007</p> <p>11/089,023</p> <p>05730038.6</p>



SUBLICENSE AGREEMENT

This **SUBLICENSE AGREEMENT** (the “**Agreement**”) is made and signed as of January 28, 2014 (the “**Effective Date**”) by and between **DVS SCIENCES INC.**, a company incorporated under the laws of Ontario, with a principal place of business at 70 Peninsula Crescent, Richmond Hill, Ontario, Canada, L4S 1Z5 (“**DVS**”), on the one hand, and **FLUIDIGM CORPORATION**, a Delaware corporation with a principal place of business at 7000 Shoreline, Suite 100, South San Francisco, California 94080 (“**Fluidigm**”), on the other hand. DVS and Fluidigm are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

RECITALS

WHEREAS, DVS and MDS Analytical Technologies, a business unit of MDS Inc. (“**MDS AT**”), entered into a license agreement dated July 17, 2008, pursuant to which MDS AT granted to DVS a worldwide, exclusive license, with the right to grant sublicenses, under certain patent rights owned by MDS AT (the “**Licensed IP**”, as further defined below), to make, have made, use, lease, sell and otherwise commercialize Licensed Products (as defined in the License Agreement) in the field of ICP-based flow cytometry (the “**License Agreement**”).

WHEREAS, by way of a written assignment dated September 2, 2009, MDS AT assigned all of its rights and obligations under the License Agreement and in the Licensed IP to DH Technologies Development PTE Ltd., a subsidiary of Danaher Corporation (“**DH**”), and by way of written agreement date May 4, 2010, DH assigned all of its rights and obligation under the License Agreement and in the Licensed IP to PerkinElmer Health Sciences, Inc. (“**PE**”);

WHEREAS, this exclusive license was granted to DVS, with diligence obligations, to fully exploit the Licensed IP in the Field, including the right to grant sublicenses to facilitate achievement of this goal; and

WHEREAS, DVS desires to grant to Fluidigm, and Fluidigm wishes to obtain a sublicense under DVS’s interest in the Licensed IP, to complement Fluidigm’s existing technology and products and to achieve its goal of using its technology and products to address diagnostic and other worldwide health issues through advanced genomics, using Fluidigm’s innovative microfluidic chips, instruments, and other products, including through the development of products using the Licensed IP.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the covenants and promises contained in this Agreement and intending to be legally bound, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

The terms, as defined herein, shall have the same meanings in both their singular and plural forms. Capitalized terms used, but not defined, herein will have the meanings ascribed to them in the License Agreement.:

1.1 “**Affiliate**” of any particular Person means any other Person controlling, controlled by or

under common control with such particular Person, where “control” means the possession, directly or indirectly, of the power to direct the management and policies of a Person whether through the ownership of voting securities, contract or otherwise. For purposes of this Agreement, DVS shall be deemed not to be an Affiliate of Fluidigm.

1.2 “**Change of Control**” means, with respect to a Party, any of the following: (i) the acquisition by a Party or such Party’s “group” (within the meaning of Section 13(d)(3) of the Exchange Act), in a single transaction or in a related series of transactions, by way of merger, recapitalization, consolidation or other business combination or purchase of beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) of more than 50% of the total voting power of such Party or (ii) the sale, transfer or disposition of all or substantially all of the assets of such Party and its Subsidiaries (on a consolidated basis) to any Person or group (other than such Party or its wholly-owned Subsidiaries).

1.3 “**Confidential Information**” has the meaning set forth in Section 12.1.

1.4 “**Exchange Act**” means the Securities Exchange Act of 1934, as amended.

1.5 “**Field**” means ICP-based Flow Cytometry, including without limitation the analysis of elemental tagged materials in connection therewith.

1.6 “**Flow Cytometer**” means an analytical instrument that provides assay of a biological sample based on the analysis of individual cells or particles.

1.7 “**Flow Cytometry**” means the art of conducting assays with a Flow Cytometer.

1.8 “**Gross Sales**” means, for any Licensed Technology, in the case of a sale of such Licensed Technology by Fluidigm or its Affiliates to a purchaser who is bona fide at arms’ length from and unrelated to Fluidigm with no consideration involved other than the invoice price, Gross Sales means the gross selling price invoiced by Fluidigm (or its Affiliate) to such purchaser for such Licensed Technology. In all other cases, “Gross Sales” means Gross Sales that would have applied, had the Licensed Technology in question been sold to a purchaser who was bona fide at arms’-length and unrelated to DVS, with no consideration involved other than the invoice price.

1.9 “**Improvements**” means improvements and developments, major or minor, whether patentable or not, relating to the subject matter of the Licensed IP whether developed by Fluidigm or DVS.

1.10 “**Licensed IP**” means the patents and/or patent applications listed in Schedule A to the License Agreement, and all continuations, continuations in part and divisions thereof, and all further patent applications claiming or describing inventions contained in, or claiming priority to, any of the foregoing, and all patents which may issue from any of such patent applications.

1.11 “**Licensed Product**” means the ICP MS-based Flow Cytometer that is within a Valid Claim of Licensed IP and includes the use of the Licensed Reagents only when used in combination with the ICP MS-based Flow Cytometer.

- 1.12 “**Licensed Reagent**” means reagent or kit that is within a Valid Claim of Licensed IP.
- 1.13 “**Licensed Technology**” means the Licensed Products and the Licensed Reagents.
- 1.14 “**Person**” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, a governmental entity or any other entity.
- 1.15 “**Subsidiary**” means, with respect to either Party, any corporation of which a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by such Party or one or more of the other Subsidiaries of such Party or a combination thereof, or any partnership, association or other business entity of which a majority of the partnership or other similar ownership interest is at the time owned or controlled, directly or indirectly, by such Party or one or more Subsidiaries of such Party or a combination thereof.
- 1.16 “**Third Party**” means any Person other than DVS or Fluidigm, or their respective Affiliates.
- 1.17 “**Valid Claim**” means a claim in an issued patent of the Licensed IP which has not (i) expired, (ii) been finally adjudicated invalid or unenforceable, (iii) found invalid or unenforceable, or (iv) been abandoned.
- 1.18 “**Year**” means a calendar year.

ARTICLE 2. GRANTS

- 2.1 **License.** Subject to the terms and conditions of this Agreement, DVS hereby grants to Fluidigm under the Licensed IP, a non-exclusive, royalty-bearing, worldwide license, with the right to grant sublicenses solely to Fluidigm’s Affiliates, to make, have made, use, lease, sell, and otherwise commercialize Licensed Products in the Field.
- 2.2 **Reservation of Rights.** Fluidigm acknowledges and agrees that with the exception of certain rights granted to DVS in relation to Licensed Reagents pursuant to Section 2.2 of the License Agreement, PE retains the rights to all Licensed IP in fields other than the Field. Except as explicitly set forth herein, neither Party grants the other Party any other rights in or to its intellectual property, or the intellectual property of any Third Party, pursuant to this Agreement.
- 2.3 **Termination of Sublicenses.** Any sublicense granted by Fluidigm to an Affiliate under the rights granted in Section 2.1 shall terminate immediately in the event of any merger, sale, acquisition or other transaction, including any corporate reorganization, which results in such Affiliate ceasing to be an Affiliate of Fluidigm.

ARTICLE 3. CONSIDERATION

- 3.1 **Upfront Payment.** In consideration for the rights granted to Fluidigm under this Agreement, Fluidigm shall pay to DVS a one-time, non-refundable, non-creditable payment of

seventy-five thousand U.S. dollars (\$75,000), within five (5) days of the Effective Date and receipt by Fluidigm of an invoice in such amount from DVS, by wire transfer of immediately available funds into an account designated in writing by DVS.

3.2 **Royalties.** In consideration for the rights granted to Fluidigm under this Agreement, Fluidigm shall pay DVS a royalty of three percent (3.0%) on annual, worldwide Gross Sales.

ARTICLE 4. PAYMENT

4.1 Royalties under Section 3.2 shall be calculated quarterly, on the last day of each quarter of the Year (the “**Quarter**”), and should be payable within one (1) month following the end of each Quarter for Gross Sales by Fluidigm which have occurred during the Quarter in question until the expiration of the last-to-expire Valid Claim.

4.2 All payments due to DVS under this Agreement shall be made to the credit of DVS. Where Gross Sales are in a currency other than Canadian dollars, the conversion into Canadian dollars shall be calculated at the rate of exchange for Fluidigm to sell such currency quoted by the Canadian Imperial Bank of Commerce on the last day of the Quarter in respect of which payment is due.

4.3 For greater clarity, it is understood and agreed that royalty will be paid only once for each Licensed Technology.

ARTICLE 5. RECORDS AND REPORTS

5.1 Each royalty payment made under this Agreement shall be accompanied by a statement showing particulars of all Gross Sales for the Quarter in question, and the total royalty due and payable to DVS.

5.2 Fluidigm shall keep true and accurate records and books of account containing all data necessary for the determination of the royalties payable hereunder and to evaluate the performance of Fluidigm. DVS may, upon reasonable prior notice (which shall include the name of the accountant referred to below), have such records and books of account inspected (not exceeding twice per annum) by a duly authorized independent chartered accountant, to verify the accuracy of the reports made hereunder. Fluidigm may, by thirty (30) days' notice to DVS upon receiving the notice of inspection referred to above, object to the accountant selected by Fluidigm if such accountant has a conflict of interest, reasonably determined, due to having provided services currently or during the immediately preceding two (2) years to a competitor of Fluidigm in question, and DVS shall then select a different independent chartered accountant who has no such conflict of interest. The accountant shall maintain its findings relating to such inspection in confidence but may disclose to DVS full particulars of any deficiencies or inaccuracies in reports or payments by Fluidigm.

ARTICLE 6. IMPROVEMENTS (If Applicable)

6.1. Each party shall promptly disclose to the other party the Improvements it may discover, develop or acquire during the life of this Agreement.

6.2 Should Fluidigm, during the term of this Agreement, develop any Improvements to the Licensed IP described or claimed in any of the patent or patent applications listed in Schedule A to the License Agreement, whether patentable or not, Fluidigm shall disclose the same to DVS. Fluidigm shall grant to DVS a non-exclusive, royalty free, nontransferable license, without the right to sublicense, to make and use such Improvements in research and development only.

ARTICLE 7. PATENTS AND PATENT APPLICATIONS

7.1 At all times during the term of this Agreement and, DVS shall control, in consultation with PE, and shall be solely responsible for and shall pay the full costs of preparing, filing and prosecuting any patent applications relating to the Licensed Products.

7.2 Fluidigm acknowledges and agrees that PE shall control, in consultation with DVS, and be solely responsible for the costs of, prosecution and maintenance of patents and patent applications for the Licensed IP.

ARTICLE 8. INFRINGEMENT BY THIRD PARTIES

8.1 If Fluidigm's exercise of its rights under this license infringes or is alleged or suspected to infringe on the intellectual property rights of an arm's-length third party, then Fluidigm shall promptly advise DVS of the details of such alleged or suspected infringement.

ARTICLE 9. WARRANTIES

9.1 Fluidigm and DVS each represent that they respectively have the capacity and authority to enter into this Agreement.

9.2 DVS represents that it holds an exclusive license from PE under the Licensed IP to make, have made, use, lease, sell and otherwise commercialize Licensed Products in the Field, and has the right to grant Fluidigm the license under Section 2.1 in accordance with this Agreement.

9.3 Except as explicitly set forth in this Article 7, neither Party otherwise makes any warranties, express or implied, under this Agreement, including without limitation: (a) the condition of the Licensed Technology or results derived therefrom, or (b) the merchantability, utility, or fitness for a particular purpose of the Licensed Technology or results derived therefrom, or (c) the scope of the Licensed IP or that the Licensed IP may be exploited without infringing other patents.

ARTICLE 10. INDEMNIFICATION

10.1 Fluidigm will indemnify, defend and hold harmless DVS, and its Affiliates, employees, representatives or agents of each of the foregoing entities (each a "**DVS Indemnitee**"), from and against all actions, suits, claims or proceedings and any damages, costs expenses (including legal costs) or liability of any kind or incurred by any DVS Indemnitee in any Third Party action whatsoever against any DVS Indemnitee, its employees, representatives or agents, including all infringement actions, in each case to the extent resulting from the practice of the Licensed Technology under this Agreement and liability therefrom: (a) arising out of the performance by Fluidigm or by others at the request of Fluidigm functions and/or products contemplated by this

Agreement, or (b) resulting from the negligent acts or omissions of Fluidigm's employees, representatives or agents in connection with this Agreement, whether or not information or material supplied by any DVS Indemnitee is utilized, or (c) in respect of any direct, consequential or other damage awarded against any DVS Indemnitee resulting from the use, sale or other disposition by Fluidigm or its customers of Licensed Technology. For clarity, any action, suit, claim or proceeding brought by PE against any DVS Indemnitee with respect to DVS's indemnification obligations pursuant to Section 12.1 of the License Agreement that arise from activities by Fluidigm or its Affiliates that fall within the foregoing subsections (a), (b) and (c) of this Section 10.1 shall be considered a Third Party action for the purposes of Fluidigm's indemnification obligations pursuant to this Section 10.1.

10.2. DVS will indemnify, defend and hold harmless Fluidigm, its Affiliates, employees, representatives or agents, from and against all actions, suits, claims or proceedings and any damages, costs expenses (including reasonable legal costs) or liability of any kind or incurred by Fluidigm in any Third Party action whatsoever against Fluidigm, its Affiliates, employees, representatives or agents: resulting from the negligent acts or omissions of DVS's employees, representatives or agents in connection with this Agreement.

10.3 Each Party agrees that it will be required to maintain, for so long as is reasonably necessary, general comprehensive liability and product liability insurance in an amount reasonably necessary to enable them to carry out their obligations under this section.

10.4 The indemnification obligations of the Parties under Sections 10.1 and 10.2 shall apply only if:

(a) the Party seeking indemnification (the "**Indemnitee**") promptly notifies the other Party (the "**Indemnitor**") in writing after the Indemnitee receives notice of any claim; and

(b) the Indemnitor is given the opportunity to manage and control the defense and/or settlement of such claim; and

(c) the Indemnitee reasonably co-operates with the Indemnitor and its legal representatives in the defense and/or settlement of any such claim; and

(d) the Indemnitee refrains from making any admission of liability or any attempt to settle the claim without the Indemnitor's prior written consent.

10.5 Notwithstanding the foregoing, the Indemnitor shall not be liable to indemnify any Indemnitee to the extent that the claim arises out of the Indemnitee's negligence, bad faith, willful misconduct, or breach of this Agreement or any obligation to a Third Party.

ARTICLE 11. TERM AND TERMINATION

11.1 This Agreement is effective as of the Effective Date and shall, unless terminated earlier in accordance with the remainder of this section, remain in force for a period of two (2) years (the "**Initial Term**"). Following the Initial Term, upon Fluidigm's written request, and subject to the remainder of this Section 11, the Parties may mutually agree to extend the term of this Agreement for an additional periods of two (2) years.

11.2 DVS may at its option terminate this Agreement immediately (and shall promptly give Fluidigm notice of such termination) and avail itself of such other legal remedies as are appropriate, in the event that Fluidigm at any time becomes insolvent, or makes an assignment for the benefit of creditors, or has a petition in bankruptcy filed against it.

11.3 DVS may at its option terminate this Agreement and all of the rights and licenses granted hereunder upon five (5) days' written notice to Fluidigm in the event that DVS is subject to any Change of Control in which DVS is acquired by any Third Party.

11.4 If either Party commits a material breach of this Agreement, then the aggrieved Party may give written notice of such breach to the defaulting Party. If such breach is not cured within sixty (60) days from the date of the notice, or if the breach is correctible but not within such sixty (60) days, then if the defaulting Party does not take prompt steps within the sixty (60) days to cure the default and diligently pursue such steps thereafter, then the aggrieved Party may terminate this Agreement by written notice to the other, the written notice to take effect when it is given.

11.5 Fluidigm may terminate this Agreement at any time after the date hereof, either in its entirety or as to any country or countries. Such termination shall be on at least thirty (30) days' written notice.

ARTICLE 12. CONFIDENTIAL INFORMATION

12.1 Each Party agrees to respect and maintain Confidential Information as defined in this Section 12.1, which it acquires from the other Party by virtue of this Agreement, and will not disclose to any Third Party nor make any use of such Confidential Information without prior written consent of the other Party, which consent shall not unreasonably be withheld provided that each Party takes such reasonable and contractual steps to ensure that any such Third Party agrees to be under a similar duty of confidentiality with respect to the other Party's confidential information. "**Confidential Information**" shall mean information deemed to be confidential and disclosed by DVS or Fluidigm ("**Provider**") to the other Party ("**Recipient**") in confidence and including, but not limited to, know-how, trade secrets, all information, knowledge or data of an intellectual, technical, scientific, commercial, financial or industrial nature, either in written documentation, oral or visual information, whether by inspection of parts or equipment or otherwise, subject to the exceptions set out below. Oral information deemed to be confidential by the Provider, shall be reduced to writing within thirty (30) days from the date of disclosure and provided to the Recipient.

12.2 The obligations of confidentiality in Section 12.1 shall not apply to information which the Recipient can establish by written proof:

- (i) is or becomes a part of the public domain other than by a disclosure in breach of this Agreement;
- (ii) was known to the Recipient prior to the Recipient's receipt of the information in question;
- (iii) comes into the hands of the Recipient from a third party who is entitled to make such disclosure and has no obligation of confidence to the Provider;

(iv) was developed by the Recipient independently of the information received from the Provider; or

(v) is approved for release by written authorization of the Provider.

ARTICLE 13. RIGHT OF ASSIGNMENT

13.1 The obligations of Fluidigm hereunder, including the obligation to report and pay royalties, shall run in favor of the successors and assigns or other legal representatives of DVS.

13.2 Neither Party may assign or otherwise transfer this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, and subject to Section 11.3, either Party may assign or otherwise transfer this Agreement to a Third Party successor in interest in the context of a merger, sale or acquisition of such Party, or a sale of all or substantially all of the business or assets of such Party to which this Agreement relates.

ARTICLE 12. USE OF OTHER PARTY'S NAME

12.1 Neither party shall use the other party's name, or the name of MDS AT or PE in any advertising material relating to Licensed Technology, without the prior written consent of the other party, as well as consent as to the content of such advertising material relating to the Licensed Technology by the other party.

12.2 Each party shall obtain the prior approval of the other, such approval not to be unreasonably withheld or delayed, to the content of any written publicity, news release or other public statement or announcement relating to this Agreement, prior to originating or releasing it; provided that each Party shall be permitted to make any such statements or announcements to the extent required by applicable laws, rules and regulations.

ARTICLE 13. MISCELLANEOUS

13.1 If any term of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be deemed to be of no effect and the remainder of this Agreement shall continue in force. The parties shall use their best efforts to replace the invalid term with a term which is valid and as nearly as possible achieves the intent of the invalid term.

13.2 Each Party is an independent contractor, and neither is an agent of the other nor is responsible for the debts and obligations of the other. Neither Party has any authority to commit or bind the other pursuant to this Agreement.

13.3 All notices and other communications required or permitted to be given hereunder shall be in writing and shall be sent to the following addresses or such other addresses as the Parties may from time to time advise:

Fluidigm Corporation
7000 Shoreline, Suite 100
South San Francisco, California 94080
Attention: General Counsel

Facsimile: (650) 871-7195

Copy to:

DVS Sciences Inc.

639 N. Pastoria Avenue

Sunnyvale, CA 94085-2917

Attention: CEO

Copy to:

In order for any notices, requests, directions, or other communications to be effective, they will be delivered in person; or, sent by registered mail, or facsimile addressed to the party for whom it is intended at the above-mentioned address and will be deemed to have been received, if sent by registered mail, within five (5) days from the date of the postal receipt; if sent by facsimile or e-mail, when transmitted, as long as the sender subsequently confirms with the recipient that it has been received. The address of either Party may be changed by notice in the manner set out in this provision.

13.4 This Agreement shall inure to the benefit of and shall be binding upon the Parties hereto and their respective successors and permitted assigns.

13.5 This Agreement constitutes the entire understanding between the Parties concerning the subject matter hereof, and cancels and supersedes any and all prior or contemporaneous negotiations, correspondence, understandings, and agreements, whether oral or written, between the Parties respecting the subject matter hereof, and neither Party shall be liable or bound to the other Party with respect to the subject matter of this Agreement in any manner by any representations, warranties, covenants, or agreements except as specifically set forth herein. Any amendments or modification of this Agreement shall not be binding upon each Party unless it is in writing and signed by a duly authorized representative of each Party.

13.6 This Agreement shall be interpreted and governed by the laws of the Province of Ontario in Canada as applied to transactions taking place entirely within Ontario between Ontario residents.

13.7 This Agreement may be executed simultaneously in two counterparts, either one of which need not contain the signature of more than one Party, but both of which taken together shall constitute one and the same agreement. Signatures to this Agreement transmitted by facsimile, by email in "portable document format" or ".pdf", or by any other electronic means intended to preserve the original graphic and pictorial appearance of this Agreement, shall have the same effect as physical delivery of the paper document bearing original signature. The persons signing on behalf of the Parties to this Agreement hereby warrant and represent that they have authority to execute this Agreement on behalf of, and bind, the Party for whom they have signed.

(Signature Page Follows)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives as set forth below:

FLUIDIGM CORPORATION

DVS SCIENCES INC.

By: /s/_____

By: /s/_____

Name: Gajus Worthington

Name: Joseph J. Victor

Title: President & CEO

Title: President and Chief Executive Officer