

07-20-1999

FORM PTO-1596 (MODIFIED)
(REV. 6-93)
OMB NO. 0651-0011
P09/REV01



U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

101097406

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of the conveying party(ies):
ESA, Inc.
22 Alpha Road,
Chelmsford, Massachusetts 01824

Individual(s) (Association)
 General Partnership Limited Partnership
 Corporation-Massachusetts Other:
Additional name(s) of conveying party(ies) attached? Yes No

2. Name of receiving party(ies):
Genomic Solutions, Inc.
4355 Varsity Drive
Ann Arbor, Michigan 48108

3. Nature of conveyance:

Assignment Merger
 Security Agreement Change of Name
 Other: Asset Purchase Agreement

Execution Date: 10/13/1998

Individual(s) Citizenship
 Association:
 General Partnership:
 Limited Partnership:
 Corporation-State: Delaware
 Other:

Additional name(s) & address(ies) attached? Yes No

4. Application number(s) or registration number(s): 2

A. Trademark Application No.(s)
75/418,011 filed 01/14/98
75/416,617 filed 01/12/98

Additional numbers attached? Yes No

B. Trademark No.(s)

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Loletta L. Darden
Internal Address: RADER, FISHMAN & GRAUER PLLC
Street Address: 1533 N. Woodward Avenue, Suite 140
City: Bloomfield Hills State: Michigan Zip: 48304

6. Total number of applications and trademarks involved:
Two (2)

7. Total fee (37 CFR 3.41):\$ 80.00

Enclosed
 Authorized to be charged to deposit account

8. Deposit account number: 18-0013

DO NOT USE THIS SPACE

9. Statement and signature.
To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Loletta L. Darden Loletta L. Darden 7/12/99
Signature Date

Total number of pages including cover sheet, attachments and document: 11 Atty. Docket No. 65446-005

07/20/1999 DMGUYEN 00000097 180013 75418011

01 FC:481 40.00 CH
02 FC:482 25.00 CH

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TRADEMARK
REEL: 001930 FRAME: 0096

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the "Agreement") is made and entered into as of October 13, 1998 ("Closing Date"), by and between Genomic Solutions Inc. ("Purchaser"), a Delaware corporation with offices at 4355 Varsity Drive, Ann Arbor, Michigan 48108 and ESA, Inc. ("Seller") a Massachusetts corporation with offices at 22 Alpha Road, Chelmsford, Massachusetts 01824.

RECITALS

A. Among other businesses, Seller is engaged in the business of designing, developing, manufacturing, marketing and selling equipment and products used in electrophoresis, a technique for separating proteins and DNA (the "Business"). Equipment and products include, but are not limited to instruments, gels, and reagents described in the ESA, Inc. Electrophoresis Products and Tools for Proteomic Analysis Catalog (Part No. 70-3713) which is attached hereto.

B. Seller desires to sell, and Purchaser desires to purchase, certain assets of Seller used in connection with the operation of the Business, and certain other intangible assets associated with the Business, for the consideration and upon the terms and conditions set forth below.

NOW, THEREFORE, for and in consideration of the foregoing Recitals, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby mutually acknowledged, the parties agree as follows:

ARTICLE I

PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES

1.1 **Purchase and Sale of Assets.** Subject to all of the terms and conditions contained in this Agreement, and except as provided below, on the Closing Date, Seller shall sell, transfer, assign and deliver to Purchaser, and Purchaser shall purchase from Seller, the following assets, owned by Seller or in which Seller has any right or interest, that are used in connection with the Business (all such assets and properties being referred to in this Agreement as the "Assets"):

(a) **Inventories.** All inventories listed in Schedule 1.1(a) ("Inventories");

(b) **Equipment and Other Personal Property.** All equipment, machinery, furniture and fixtures, office machines, maintenance and office supplies, signs, and other tangible personal property ("Personal Property") listed on the attached Schedule 1.1(b);

(c) **Business Records.** Access to and the right to make copies of all databases, sales and business records, inventory records, product specifications, correspondence, maintenance, operating and production records (or portions thereof if the entire record or document was not used for the Business), personnel records of Seller's employees who are associated with the Business as listed on the attached Schedule 3.15 (the "Business Employees"), credit records (or copies thereof) of customers and vendors of the Business, customer and vendor lists to the extent related to the Business, marketing or other studies relating to the

Business, cost and pricing information, and originals or copies of all books, records and other documents (or portions thereof) applicable to the Business or the Assets ("Records");

(d) Licenses. To the extent permitted under applicable law or regulation, all governmental licenses and permits used or usable only in connection with the Business;

(e) Intangibles. Subject to the rights of Protein Databases, Inc., or its successors ("PDI"), pursuant to that Agreement between Millipore Corporation and PDI, dated September 15, 1987 (the "PDI Agreement"), and the Royalty Agreement dated July 31, 1996 ("Royalty Agreement") between Millipore Corporation and Seller which is assigned to Purchaser hereunder, all right, title and interest in any intangible property, rights or claims applicable only to the Business or to the Assets to be transferred, including, without limitation, the U.S. Patents No. 4,966,667; No. 5,149,417; No. 5, 2288,970; and No. 5,281,322 (and corresponding Japanese Patents), all right, title and interest in the names "Duracryl" "Investigator" and "Signal" (and all goodwill with respect thereto), and all variations of those names, patents and pending applications for patents, and copyrights (including registrations);

(f) Business Contracts, Leases and Agreements. All agreements, leases and service contracts related only to the Business to which Seller is a party or to which the Assets are subject as of the Closing Date and which are listed on the attached Schedule 1.1(f) (the "Assumed Business Contracts");

(g) Warranty Rights. All third party warranties to Seller to the extent relating only to the Business or the Assets, whether express or implied, and claims arising under warranties, representations and guaranties made to Seller only in connection with the Business; and

(h) Litigation Claims. All claims and rights concerning any litigation in which, in connection with or with respect to the Business, Seller is a claimant.

1.2 Excluded Assets. Notwithstanding anything to the contrary contained in Section 1.1 above, the following assets (collectively, the "Excluded Assets") are not being sold by Seller to Purchaser and shall not be included as part of the Assets:

(a) Assets Not Related to the Business. Any and all assets not owned by Seller, in which Seller does not have an interest or not used in connection with the Business;

(b) Corporate Records. The minute books, stock books, corporate seal and other corporate records of Seller relating to its organization and existence;

(c) Excluded Contracts. Any and all oral or written contracts, leases or agreements other than the Assumed Contracts (the "Excluded Business Contracts");

(d) Employee Benefit Plans. Those employee benefit plans listed on the attached Schedule 1.2(d).

(e) Other Excluded Assets. Those items listed on the attached Schedule 1.2(e).

(f) Tax Returns. All tax returns of Seller and all tax refunds due Seller from any governmental agency; and

1.3 Assumption of Liabilities. Purchaser shall not assume, or purchase the Assets subject to, and Purchaser shall not be liable for, any liabilities of Seller, regardless of nature, type or kind, whether matured or contingent, except for: (a) those contained in Assumed Business Contracts, including the obligation to pay royalties under the Royalty Agreement which accrue after the Closing Date, (b) sales tax, if any, assessed on the transaction, (c) any amounts owed for Business equipment parts and inventory received by Purchaser after the Closing Date, as evidenced by purchase orders provided to Purchaser at Closing, and (d) any warranty liabilities associated with the sale of Business equipment or other Business products. Seller shall perform, pay and discharge when due all of its obligations and liabilities other than those which Purchaser has specifically agreed to assume pursuant to this Section 1.3, as well as any other known, contingent or unknown liabilities of Seller.

ARTICLE II

CONSIDERATION

2.1 Cash Consideration. For and in consideration of the Assets, Purchaser shall pay to Seller the sum of One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000.00) (the "Purchase Price"), by certified check or wire transfer of immediately available federal funds at the Closing.

2.2 Purchase Price Allocation. The Purchase Price shall be allocated among the Assets in the manner as the parties shall agree within one hundred twenty (120) ninety (90) days after the Closing Date and which shall be consistent with their negotiations and agreement. Seller and Purchaser shall each act in a manner consistent with such allocation in filing Internal Revenue Form 8594, captioned "Asset Acquisition under Section 1060; and (ii) paying sales and other transfer taxes and making any and all other tax filings in connection with the purchase and sale of the Assets pursuant to this Agreement.

2.3 Stock Warrant. At the Closing, Purchaser shall grant Seller a warrant (the "Warrant"), in the form attached hereto as Document 2.3 representing the right to purchase One Hundred Twenty Five Thousand (125,000) shares of Genomic Solutions Inc. common stock at a price of Six Dollars (\$6.00) per share. The Warrant will have a term of ten (10) years.

2.4 Sublease. At the Closing, Purchaser and Seller shall enter into a sublease of a portion of Seller's facility in Chelmsford Massachusetts, whereby Purchaser shall occupy such space for a period of at least six months but no more than two years.

2.5 Manufacturing Agreement. At the Closing, Purchaser and Seller shall enter into an agreement whereby Seller shall manufacture reagent and consumable products associated with the Business for Purchaser for a period of at least six months but no more than two years.

ARTICLE III

REPRESENTATIONS, WARRANTIES AND COVENANTS

Seller understands that each of the following representations, warranties and covenants are material and have been and will be relied on by Purchaser in connection with the consummation of the transactions contemplated in this Agreement. Seller warrants and covenants to Purchaser that the statements contained in this Article III are true, correct and complete in all respects as of the Closing Date:

3.1 **Organization.** Seller is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Massachusetts. Seller has full corporate power and authority, and all franchises, licenses and permits, necessary to own, lease and operate its respective properties and assets and to carry on its businesses as presently conducted.

3.2 **Power and Authority.** Seller has all requisite power and authority to enter into, carry out and perform its obligations under this Agreement and all other instruments and agreements contemplated in this Agreement. The execution of this Agreement and the consummation of the transactions contemplated herein have been duly authorized and approved by Seller's Board of Directors and does not require approval of ESA shareholders. This Agreement constitutes, and all agreements and instruments contemplated hereby when executed and delivered in accordance with the terms of this Agreement will constitute, valid and binding obligations of Seller, enforceable in accordance with their respective terms, except to the extent limited by bankruptcy, insolvency, and other laws of general application relating to or affecting the enforcement of creditors' rights and general equity principles.

3.3 **Absence of Violations.** Neither the execution, delivery, performance or compliance of or with this Agreement or any other agreements contemplated herein, nor the consummation of the transactions herein contemplated by Seller, will (i) violate, conflict with, or constitute a default or breach of Seller's Articles of Organization or bylaws, or other constituent documents; (ii) constitute a violation by Seller of any law, rule, regulation, ordinance, order, writ, injunction, decree or judgment applicable to Seller or affecting the Assets or Business; (iii) result, or with the passage of time will result, in any breach or violation of, or be in conflict with or constitute a default under, or give to others any rights of termination or cancellation of, or accelerate the performance required by or maturity of, any document or instrument binding on or affecting Seller, the Assets or the Business, subject to obtaining the consents to the other parties to the Assumed Business Contracts to the extent required therein or as required by law; or (iv) result in the creation of any lien, charge or encumbrance on any of the Assets.

3.4 **Financial Statements.** The attached Schedule 3.4 consists of Seller's compiled balance sheets and the related statements of operations, retained earnings and cash flows for each of the fiscal years ended December 31, 1995 through December 31, 1997, issued by Seller's auditors (the "Annual Financial Statements"). The attached Schedule 3.4(a) consists of schedules of activity and assets for the Business product line for periods ended December 31, 1996, December 31, 1997 and August 31, 1998 (the "Business Schedules"). The schedules have been prepared in accordance with generally accepted accounting principles and allocations of costs and expenses as stated in the comments on the Business Schedules.

3.5 **No Undisclosed Liabilities or Changes.** Except as disclosed on the attached Schedule 3.5 or reflected in the Statements, and except for current liabilities incurred by Seller in the ordinary course of the Business since August 31, 1998, Seller has not incurred any debts, liabilities or obligations of any nature or kind, whether absolute, accrued, contingent or otherwise that may affect or attach to the Business, and whether due or to become due, including without limitation, any debts, liabilities (and tax liabilities due or to become due) or obligations relating to or arising out of any act, transaction, circumstance or state of facts which occurred or existed on or before the date as of which this representation is made. Seller is not aware of any existing, proposed or threatened change which could result in a material adverse change to the Business or the future prospects of the Business.

3.6 **Tax Matters.** Seller has duly filed all tax returns and reports required to be filed by it, including, where applicable, all federal, foreign, state, county and local income, gross receipts, excise, import, property, franchise, ad valorem, license, sales, use, and withholding tax reports and returns. Seller has filed all reports required by law or regulation to be filed and has duly paid, or accrued on its books of account and will pay when due, all duties and charges due or assessed against it, the Business or the Assets. There are not now, nor on the Closing Date will there be, any assessments, charges, paybacks or obligations requiring payment of any nature or description against any of the Assets which remain unpaid, except for current taxes not yet due or payable and except for the liabilities to be assumed by Purchaser pursuant to Section 1.3. Seller represents and warrants that under the laws of the Commonwealth of Massachusetts, no state tax waiver filing/request is necessary for the completion of this transaction.

3.7 **Tangible Property.** Seller has good and marketable title to and owns each item of tangible Personal Property included in the Assets, free and clear of all title defects and objections, security interests, liens, charges and encumbrances of any nature whatsoever ("Liens"). Seller will convey to Purchaser all tangible Personal Property listed on Schedule 1.1(b) which is attached hereto, free and clear of all Liens.

3.8 **Real Property Owned.** Seller does not own, and has never owned, in whole or in part, any real property which is or was used, in any way, in connection with the Business.

3.9 **Real Property Leased.** The attached Schedule 3.9 lists and briefly describes all real properties leased or subleased to Seller and used in connection with the operation of the Business (the "Leased Real Property"). No property insurer or similar body has made any recommendations with respect to any parcel of Leased Real Property which have not been complied with, and except for leased property located in the United Kingdom and Billerica, as listed on Schedule 3.9, all structures on the Leased Real Property meet all qualifications for "highly protected risk" classification for fire insurance purposes. Seller has delivered to Purchaser true, correct and complete copies of the leases and subleases listed on the attached Schedule 3.9. All of the Assets are located at the Leased Real Property. Each such lease or sublease is

- (a) legal, valid, binding, enforceable and in full force and effect;
- (b) will continue to be legal, valid, binding, enforceable and in full force and effect on identical terms following the Closing;
- (c) neither Seller nor any other party to the lease or sublease is in breach or default, and no event has occurred which, with notice or lapse of time,

could constitute such a breach or default or permit termination, modification or acceleration under the lease or sublease;

(d) no party to the lease or sublease has repudiated any of its provisions;

(e) there are no disputes, oral agreements or forbearance programs in effect as to the lease or sublease;

(f) Seller has not assigned, transferred, conveyed, mortgaged, deeded in trust or encumbered all or any portion of its interest in the leasehold or subleasehold;

(g) all facilities leased or subleased under the lease or sublease have been operated and maintained in accordance with applicable laws, rules and regulations;

(h) all facilities leased or subleased under the lease or sublease are supplied with utilities and other services necessary for the operation of such facilities; and

(i) all facilities leased or subleased under the lease or sublease are in good operating condition, and would not, with ordinary wear and tear, require major repair or replacement during the remainder of the lease term.

3.10 Intellectual Property. The attached Schedule 3.10 sets forth a complete and accurate list of all patents and pending applications for patents, copyrights (including registrations) and applications for registered copyrights, trademarks and applications for trademarks, service marks and applications for service marks, logos and other commercial symbols, trade names and the like, and interests thereunder, used solely with the Business, and any other item in which Seller has any rights or licenses used solely with the Business, including, without limitation, the property described in Section 1.1(e) above. Except as disclosed on Schedule 3.10, Seller's use of the Intangibles is not governed by or pursuant to a license or similar agreement from any third party. Seller owns or has the right to use all of the Intangibles. Seller has taken all reasonable security measures to protect the secrecy, confidentiality, and value of its Intangibles. Except as disclosed on Schedule 3.10, with respect to each Intangible:

(a) Seller owns and possesses all right, title and interest in and to the Intangible;

(b) As of the Closing date, no charge, complaint, action, suit, proceeding, hearing, investigation, claim or demand has been instituted, is pending or, to Seller's knowledge, is threatened, which challenges the legality, validity, enforceability, use or ownership of the Intangible;

(c) to Seller's knowledge, Seller's use of such Intangible does not interfere with, infringe upon, misappropriate or otherwise conflict with the rights of others, and such item is not being interfered with, infringed upon, misappropriated or violated by others and is not subject to any outstanding judgment, order, decree, stipulation, injunction or charge;

(d) Seller has never received any charge, complaint, claim or notice of interference, infringement, misappropriation or violation with respect to the Intangible; and

(e) no license, agreement or permission pertaining to the Intangible has been granted by Seller.

3.11 **Inventory.** Seller's inventory is, and Seller's work-in-process, when completed will be, merchantable and fit for the purpose for which it was procured or manufactured, and except for those listed on Schedule 1.1(a) the applicable Statement without present value, are useable and salable in the ordinary course of the Business, and carried on the Statements at an amount not in excess of the lower of cost or net realizable value.

3.12 **Contracts.** The attached Schedule 3.12 is a true, complete and accurate list of all material agreements, leases and contracts concerning the manufacture and sale of the Business products and to which Seller is a party or to which the Assets are subject, whether oral or written (the "Business Contracts"). Except for the Business Contracts, Seller is not a party to any material written or oral agreement, lease or contract affecting or relating solely to the Assets or the Business in any way. The Business Contracts constitute all material agreements, documents and leases necessary for the manufacture and sale of operation of the Business products as presently conducted. Seller has delivered to Purchaser true and correct copies of all such written Business Contracts and a comprehensive summary of all such Business Contracts which are oral. As listed on Schedule 1.1(f), all of the Assumed Business Contracts are valid, in full force and effect, and enforceable in accordance with their terms, and all of the Assumed Business Contracts are assignable to Purchaser in accordance with their terms. None of the Assumed Business Contracts have been terminated or canceled by Seller or the other parties thereto with respect to the current year or future years. Further, to Seller's knowledge, no party to an Assumed Business Contract has limited its business relationship with Seller in any material respect. No party to any Assumed Business Contract is in material default, nor has any notice of default been received by Seller, and, there exists no event, condition or occurrence which, after notice or lapse of time, or both, could constitute a material default under any Assumed Business Contract. Seller and every other party to the Assumed Business Contracts have in all material respects performed or are performing all obligations required to be performed by them. This Agreement and the consummation of the transactions contemplated herein will not violate or cause a default under any of the Assumed Business Contracts.

3.13 **Compliance with Laws; Permits and Licenses.** Seller is in material compliance with all laws, rules, regulations and orders applicable to its operation of the Business, or the Assets, and no violation exists which would hinder or prevent Seller's performance of its obligations under this Agreement. To Seller's knowledge, neither Seller's use of the Assets nor the operation of the Business violate any laws, rules, regulations or orders. The attached Schedule 3.13 lists all federal, state, local and foreign governmental franchises, permits, licenses or other authorizations held by Seller in connection with its ownership or use of the Assets or operation of the Business (the "Licenses"), true and correct copies of all of which have been delivered to Purchaser. All of the Licenses are in full force and effect, and except as set forth in Schedule 3.13 are assignable or transferable to Purchaser in connection with the consummation of the transactions contemplated in this Agreement. Seller has obtained all permits, licenses, franchises and other authorizations necessary or desirable with respect to, and has complied with all laws applicable to, the operation of the Business, the ownership of the Assets or the lease of the Leased Real Property, and Seller has not engaged in any activity

cause to be executed and delivered such further instruments of conveyance, assignment and transfer and shall take such other action as Purchaser may reasonably request in order more effectively to convey, transfer, reduce to possession or record title to any of the Assets purchased pursuant hereto or to carry out the purpose and intent of this Agreement. Upon the request of Purchaser, and at Purchasers expense, Seller will cooperate and will use its best efforts to have the officers, directors and other employees of Seller cooperate with Purchaser on or after the Closing Date by furnishing information, evidence, testimony and other assistance in connection with any actions, proceedings, arrangements or disputes involving Purchaser and which are based upon contracts, leases, arrangements or acts of Seller which were in effect or occurred on or prior to the Closing Date.

12.11 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall be considered one and the same agreement. Photostatic or facsimile reproductions of this Agreement may be made and relied upon to the same extent as originals.

IN WITNESS WHEREOF, the parties hereto have caused this Asset Purchase Agreement to be fully executed as of October 13, 1998.

SELLER:

ESA, INC., a Massachusetts corporation

By: Walter B. List

Its: President

PURCHASER:

GENOMIC SOLUTIONS INC., a Delaware corporation

By: Jeff Williams

Jeff Williams, President and Chief Executive Officer

Schedule 3.10
Patents, Copyrights, Trademarks, Application for Trademarks

PatentsActive:

4,966,667	Gel Transfer Process and Composite	10/30/90	US
	093297/90 has been filed in Japan but no action received to date		
5,281,322	Electrophoresis Cassette	01/25/94	US
5,149,417	Gel Electrophoresis Cassette	09/22/92	US
	257604/92 has been filed in Japan but no action received to date		

Abandoned:

5,228,970	Gel Electrophoresis Cassette	07/20/93	US
	With Removable strip		

Applications for Patents

None, except the two Japan filings noted above

Registered Copyrights

None

Applications to Register Copyrights

NNon

US Registered Trademarks

None

US Trademark Applications

Duracryl	filed 01/12/98	serial number 75/416617
Investigator	filed 01/14/98	serial number 75/418011

Service Marks, Logos, Tradenames and Applications

Duracryl, Investigator, and Signal are names used on the products.

Certain intangibles are subject to the Millipore Royalty Agreement dated July 31, 1996 and/or the agreement dated September 15, 1987 between Millipore Corporation and Protein Databases, Inc. as assigned.