Execution Copy

EXHIBIT 10.1

QIAGEN N.V. HAS OMITTED FROM THIS EXHIBIT 10.1 PORTIONS OF THE AGREEMENT FOR WHICH QIAGEN N.V. HAS REQUESTED CONFIDENTIAL TREATMENT FROM THE SECURITIES AND EXCHANGE COMMISSION. THE PORTIONS OF THE AGREEMENT FOR WHICH CONFIDENTIAL TREATMENT HAS BEEN REQUESTED ARE MARKED WITH BRACKETS AND AN ASTERISK AND SUCH CONFIDENTIAL PORTIONS HAVE BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

MASTER AGREEMENT

AMONG

BECTON, DICKINSON AND COMPANY,

BECTON DICKINSON SAMPLE COLLECTION GMBH,

QIAGEN AG,

AND

QIAGEN N.V.

AUGUST 5, 1999

TABLE OF CONTENTS

Page

1. DEFINITIONS **1**

1.1 Acquisition 1
1.2 Additional Capital Contributions 1
1.3 Additional Technology 1
1.4 Additional Technology Notice 1
1.5 Administrative Services 1
1.6 Administrative Services Agreement 2
1.7 Affiliate 2
1.8 Articles 2
1.9 Ancillary Agreements 2
1.10 Applicable Royalty Rate 2
1.11 BECTON Background Materials 2
1.12 BECTON Background Patent Rights 2
1.13 BECTON Background Technology 2
1.14 BECTON Field 2
1.15 BECTON License Agreement 2
1.16 BECTON Patent Rights 2
1.17 BECTON Product 2
1.18 BECTON Program Collection Technology 3
1.19 BECTON Program Patent Rights 3
1.20 BECTON Program Preparation Technology 3
1.21 BECTON Program Stabilization Technology 3
1.22 BECTON Program Technology 3
1.23 BECTON Technology 3
1.24 "Budgeted Costs" 3
1.25 C-Component 3
1.26 Change of Control 3
1.27 Closing 3
1.28 Closing Date 3
1.29 Collection Field 4
1.30 Combined Product 4
1.31 Commercialization and Commercialize 4
1.32 Commercialization Budget 4
1.33 Commercialization Milestones 4
1.34 Commercialization Plan 4
1.35 Confidential Information 4
1.36 Control or Controlled 4
1.37 C-Product 4
1.38 Cross License Agreement 5
1.39 Effective Date 5
1.40 Events of Termination 5
1.41 Existing Research Agreement 5
1.42 First Commercial Sale 5
1.43 Fiscal Year 5
1.44 Integration Technology 5
1.45 Joint Patent Rights 5
1.46 Joint Technology 5
1.47 Joint Venture 6
1.48 JV Field 6

1.49 JV LICENSE AGREEMENT ... 6
1.50 JV OPERATING AGREEMENT ... 6
1.51 JV PATENT RIGHTS ... 6
1.52 JV PRODUCT ... 6
1.53 JV TECHNOLOGY ... 6
1.54 LICENSE TERM ... 6
1.55 MANAGEMENT COMMITTEE ... 6
1.56 MEMBERS ... 6
1.57 NET SALES ... 6
1.58 ORGANIZATIONAL RULES ... 6
1.59 OTHER JV TECHNOLOGY ... 7
1.60 PARTY ... 7
1.61 "PATENT COORDINATORS" ... 7
1.62 PATENT RIGHTS ... 7
1.63 P-COMPONENT ... 7
1.64 P-PRODUCT ... 7
1.65 PERCENTAGE INTEREST ... 7
1.66 PREPARATION FIELD ... 7
1.67 PRIMARY FILING COUNTRIES ... 7
1.68 PRINCIPAL OFFICE ... 7
1.69 PRODUCT AGREEMENT ... 7
1.70 PROGRAM END DATE ... 7
1.71 PROGRAM MILESTONES ... 7
1.72 PROGRAM TECHNOLOGY ... 7
1.73 QIAGEN BACKGROUND MATERIALS ... 8
1.74 QIAGEN BACKGROUND PATENT RIGHTS ... 8
1.75 QIAGEN BACKGROUND TECHNOLOGY ... 8
1.76 QIAGEN FIELD ... 8
1.77 QIAGEN LICENSE AGREEMENT ... 8
1.78 QIAGEN PATENT RIGHTS ... 8
1.79 QIAGEN PRODUCT ... 8
1.80 QIAGEN PROGRAM COLLECTION TECHNOLOGY ... 8
1.81 QIAGEN PROGRAM PATENT RIGHTS ... 8
1.82 QIAGEN PROGRAM PREPARATION TECHNOLOGY ... 8
1.83 QIAGEN PROGRAM STABILIZATION TECHNOLOGY ... 9
1.84 QIAGEN PROGRAM TECHNOLOGY ... 9
1.85 QIAGEN TECHNOLOGY ... 9
1.86 RESEARCH PLAN ... 9
1.87 RESEARCH PROGRAM ... 9
1.88 RESEARCH PROJECT ... 9
1.89 ROYALTY-BEARING PRODUCT ... 9
1.90 ROYALTY TERM ... 9
1.91 SCIENTIFIC ADVISORY BOARD ... 9
1.92 SCIENTIFIC DIRECTORS ... 9
1.93 SCIENTIFIC RESEARCH SERVICES ... 9
1.94 SCIENTIFIC RESEARCH SERVICES AGREEMENT ... 9
1.95 S-COMPONENT ... 10
1.96 S-PRODUCT ... 10
1.97 S/P FIELD ... 10
1.98 S/P PRODUCT ... 10
1.99 STABILIZATION FIELD ... 10
1.100 TECHNOLOGY ... 10
1.101 TERM ... 10
1.102 THIRD PARTY ... 10

1.103 THIRD PARTY COLLECTION TECHNOLOGY 10
1.104 THIRD PARTY PREPARATION TECHNOLOGY 10
1.105 THIRD PARTY STABILIZATION TECHNOLOGY 10
1.106 THIRD PARTY TECHNOLOGY 11
1.107 VALID CLAIM 11
1.108 WINDING UP DATE 11

2. FORMATION OF THE JOINT VENTURE 11

2.1 FORMATION OF THE GMBH 11
2.2 NAME OF THE JOINT VENTURE 11
2.3 PURPOSE OF JOINT VENTURE 12
2.4 ADMINISTRATION 12
2.5 TERM 12

3. BUSINESS ACTIVITIES COMPETITIVE WITH THE JOINT VENTURE 12

3.1 ACTIVITIES WITHIN THE JV FIELD 12
3.2 Acquisitions Competitive with the Joint Venture *12*

4. INTENTIONALLY OMITTED 12

5. OPERATIONS OF THE JOINT VENTURE 13

5.1 PROVISION OF ADMINISTRATIVE SERVICES; COMPENSATION 13
5.2 LITIGATION 13
5.3 ACCESS 13
5.4 COOPERATION 13

6. STRUCTURE OF RESEARCH PROGRAM 13

6.1 RESEARCH PROGRAM; RESEARCH PLAN 13
6.2 PERFORMANCE OF SCIENTIFIC RESEARCH 14
6.2.1 Scientific Research Services Agreement *14*
6 .2.2 COOPERATION 14
6.2.3 Research Collaborations *14*

7. TREATMENT OF CONFIDENTIAL INFORMATION 15

7.1 CONFIDENTIALITY 15
7.1.1 Confidential Information *15*
7.1.2 Limited Disclosure of Confidential Information *15*
7.1.3 Obligations of Employees and Consultants *15*
7.2 PUBLICITY 15
7.3 PUBLICATION 15
7.4 SOLICITATION 16

8. INTELLECTUAL PROPERTY RIGHTS 16

8.1 DISCLOSURE OF TECHNOLOGY 16
8.1.1 Disclosure *16*
8.1.2 Obligations of Employees *16*
8.2 OWNERSHIP OF TECHNOLOGY 16
8.2.1 QIAGEN Program Technology Rights And Patent Rights Therein *17*
8.2.2 BECTON Program Technology Rights And Patent Rights Therein *17*
8.2.3 Joint Technology *17*
8.2.4 JV Technology *17*
8.2.5 Background Technology *17*
8.3 USE OF CERTAIN TECHNOLOGY DURING THE TERM 18
8.3.1 Joint Technology *18*

8.3.2 Integration Technology ... *18*
8.3.3 JV Technology ... *18*

9. TECHNOLOGY LICENSE RIGHTS ... 18

9.1 PATENT AND TECHNOLOGY RIGHTS OF JOINT VENTURE ... 18
9.1.1 QIAGEN Licenses to Joint Venture ... *18*
9.1.2 BECTON Licenses to Joint Venture ... *19*
9.1.3 Royalty to Third Parties ... *19*
9.1.4 Limitation on In-Licenses to Joint Venture ... *20*
9.2 LICENSE RIGHTS BETWEEN THE PARTIES ... 20
9.2.1 Licenses from QIAGEN GmbH to BECTON ... *20*
9.2.2 License from BECTON to QIAGEN ... *20*
9.2.3. License from Joint venture to BECTON and QIAGEN ... *21*
9.3 LICENSE TERM; ROYALTY TERM ... 21
9.4 EXTENSION OF RIGHTS TO AFFILIATES; SUBLICENSES TO THIRD PARTIES ... 22
9.5 RIGHTS TO JV TECHNOLOGY ... 22
9.6 RIGHTS TO JOINT TECHNOLOGY ... 23
9.7 REVIEW OF ADDITIONAL TECHNOLOGY ... 24

10. COMMERCIALIZATION OF JOINT VENTURE PRODUCTS ... 24

10.1 COMMERCIALIZATION OF JV PRODUCTS ... 24
10.1.1 Supply of JV Products to BECTON and QIAGEN; Transfer Pricing ... *25*
10.1.2 Commercialization of JV Products ... *25*
10.2 RIGHTS TO JV PRODUCTS ... 26

11. CONDITIONS TO CLOSING ... 26

11.1 CLOSING ... 26
11.2 CONDITIONS TO CLOSING ... 26

12. TERMINATION AND DISENGAGEMENT ... 27

12.1 TERM ... 27
12.2 TERMINATION OF AGREEMENT AND RESEARCH PROGRAM. ... 27
12.2.1 Events of Termination ... *27*
12.2.3 Early Termination of Research Program ... *27*
12.3 CONSEQUENCES OF EVENT OF TERMINATION ... 28
12.3.1 Technology Rights ... *28*
12.3.2 Effect of Breach on Royalty Rates ... *28*
12.4 SURVIVING PROVISIONS ... 28
12.5 CONSEQUENCES OF CHANGE OF CONTROL OR ACQUISITION ... 29
12.5.1 Notice ... *29*
12.5.2 Definitions ... *29*

13. REPRESENTATIONS AND WARRANTIES ... 29

13.1 MUTUAL REPRESENTATIONS ... 29
13.1.1 Organization ... *29*
13.1.2 Authorization ... *29*
13.1.3 Binding Agreement ... *29*
13.1.4 No Inconsistent Obligation ... *30*
13.1.5 Intellectual Property ... *30*
13.1.6 Compliance. ... *30*

14. INDEMNIFICATION ... 30

14.1 INDEMNIFICATION OF QIAGEN BY BECTON ... 30
14.2 INDEMNIFICATION OF BECTON BY QIAGEN ... 30

14.3 WARRANTY DISCLAIMER 31
14.4 LIMITED LIABILITY 31

15. RESOLUTION OF DISPUTES 31

15.1 MEDIATION 31
15.2 ARBITRATION 32

16. MISCELLANEOUS 32

16.1 NOTICES 32
16.2 GOVERNING LAW AND JURISDICTION 33
16.3 CURRENCY TRANSLATIONS 33
16.4 BINDING EFFECT 33
16.5 HEADINGS 33
16.6 COUNTERPARTS 33
16.7 AMENDMENT; WAIVER 34
16.8 NO THIRD PARTY BENEFICIARIES 34
16.9 ASSIGNMENT AND SUCCESSORS 34
16.10 FORCE MAJEURE 34
16.11 INTERPRETATION 34
16.12 INTEGRATION; SEVERABILITY 35
16.13 FURTHER ASSURANCES 35
16.14 ACTIONS BY JOINT VENTURE 35

EXHIBITS

EXHIBIT A-1 FORM OF OPERATING AGREEMENT
EXHIBIT A-2 FORM OF ORGANIZATIONAL RULES
EXHIBIT B - FORM OF ARTICLES
EXHIBIT C - FORM OF ADMINISTRATIVE SERVICES AGREEMENT
EXHIBIT D - FORM OF SCIENTIFIC RESEARCH SERVICES AGREEMENT
EXHIBIT E - FORM OF QIAGEN LICENSE AGREEMENT
EXHIBIT F - FORM OF BECTON LICENSE AGREEMENT
EXHIBIT G-1 FORM OF CROSS LICENSE AGREEMENT
EXHIBIT G-2 FORM OF JV LICENSE AGREEMENT
EXHIBIT H FORM OF NON-COMPETITION AGREEMENT

MASTER AGREEMENT

This MASTER AGREEMENT (this "Agreement") is entered into as of August 5, 1999 by and among BECTON, DICKINSON AND COMPANY, a New Jersey corporation having its principal offices at 1 Becton Drive, Franklin Lakes, NJ 07417 ("BDX"), BECTON DICKINSON SAMPLE COLLECTION GmbH, a Swiss Gesellschaft mit beschraenkter Haftung and a wholly owned subsidiary of BDX having its principal offices at Immengasse 7, CH-4056, Basel, Switzerland ("BECTON GmbH"), QIAGEN N.V., a Dutch corporation having its principal offices at Sportstraat 50 5911 KJ Venlo, The Netherlands ("QIAGEN NV") and QIAGEN AG, a Swiss company and a subsidiary of QIAGEN NV, having its principal offices at Auf dem Wolf 39, 4052, Basel, Switzerland ("QIAGEN AG"). BDX, BECTON GmbH and their respective Affiliates are sometimes collectively referred to herein as "BECTON". QIAGEN AG, QIAGEN NV, QIAGEN GmbH, a German Gesellschaft mit beschraenkter Haftung and an affiliated company of QIAGEN AG having its principal offices at Max-Volmer Strasse 4, 40724 Hilden, Germany ("QIAGEN GmbH"), and their respective Affiliates are sometimes collectively referred to herein as "QIAGEN".

WHEREAS, the parties desire to enter into a Joint Venture through a Swiss Gesellschaft mit beschraenkter Haftung (the "Joint Venture" or "GmbH") for the purposes set forth herein;

WHEREAS, in order to implement the Joint Venture, the parties wish to agree upon the terms thereof and to describe the agreements to be executed to set forth in detail the terms and conditions of the Joint Venture.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the parties hereto, intending to be legally bound, hereby agree as follows:

1. DEFINITIONS

Whenever used in this Agreement with an initial capital letter, the terms defined in this Section 1 shall have the meanings specified.

1.1 **"Acquisition"** has the meaning set forth in Section 12.5.2.

1.2 **"Additional Capital Contributions"** has the meaning set forth in Section 3.2 of the JV Operating Agreement.

1.3 **"Additional Technology"** has the meaning set forth in Section 9.7.

1.4 **"Additional Technology Notice"** has the meaning set forth in Section 9.7.

1.5 **"Administrative Services"** has the meaning set forth in the Administrative Services Agreement.

1.6 “Administrative Services Agreement” has the meaning set forth in Section 5.1.

1.7 “Affiliate” means, with respect to any of BDX, BECTON GmbH, QIAGEN AG, QIAGEN N.V. or QIAGEN GmbH, or any corporation, firm, partnership or other entity which directly or indirectly controls or is controlled by or is under common control with any such party. [*] For purposes of determining the obligations of any Party under this Agreement, the JV Operating Agreement and the Ancillary Agreements only, the Joint Venture shall not be treated as an “Affiliate” of any Party.

1.8 “Articles” has the meaning set forth in Section 2.1.

1.9 “Ancillary Agreements” means the Administrative Services Agreement, the QIAGEN License Agreement, the Articles, the Cross License Agreement, the BECTON License Agreement, the Non-Competition Agreement, the Scientific Research Services Agreement, the Organizational Rules, the JV License Agreement with QIAGEN, the JV License Agreement with BECTON and the Product Agreement.

1.10 “Applicable Royalty Rate” means, with respect to each Royalty-Bearing Product, a [*] of Net Sales for such Royalty-Bearing Product.

1.11 “BECTON Background Materials” means those materials Controlled by BECTON that are useful in the JV Field and supplied to the Joint Venture pursuant to the Scientific Research Services Agreement.

1.12 “BECTON Background Patent Rights” means Patent Rights with respect to BECTON Background Technology.

1.13 “BECTON Background Technology” means (a) BECTON Intellectual Property, as defined in the Existing Research Agreement; (b) BECTON’s interest in Joint Intellectual Property, as defined in the Existing Research Agreement; and (c) Technology Controlled by BECTON that exists as of the Effective Date and Technology other than BECTON Program Technology that otherwise becomes Controlled by BECTON during the Term that is useful in the JV Field and is licensed to the Joint Venture in accordance with Section 9.1.2 of this Agreement.

1.14 “BECTON Field” means the Collection Field.

1.15 “**BECTON License Agreement”** has the meaning set forth in Section 9.1.2.

1.16 “BECTON Patent Rights” means, collectively, BECTON Program Patent Rights, BECTON Background Patent Rights and BECTON’s interest in Joint Patent Rights.

1.17 “BECTON Product” means any product manufactured or distributed by BECTON that was either developed by BECTON prior to the Effective Date or was, as of the Effective Date, in the

process of being developed by BECTON without the use of JV Technology, QIAGEN Technology or QIAGEN Background Materials.

1.18 "BECTON Program Collection Technology" means any Technology developed or conceived by employees of or consultants to BECTON alone or jointly with Third Parties in the conduct of the Research Program but independent of any JV Technology or QIAGEN Technology, that is necessary or useful for the manufacture, use or sale of a C-Product or a C-Component or the providing of services in the Collection Field.

1.19 "BECTON Program Patent Rights" means Patent Rights with respect to BECTON Program Technology.

1.20 "BECTON Program Preparation Technology" means any Technology developed or conceived by employees of or consultants to BECTON alone or jointly with Third Parties in the conduct of the Research Program but independent of any JV Technology or QIAGEN Technology, that is necessary or useful for the manufacture, use or sale of a P-Product or a P-Component or the providing of services in the Preparation Field.

1.21 "BECTON Program Stabilization Technology" means any Technology developed or conceived by employees of or consultants to BECTON alone or jointly with Third Parties in the conduct of the Research Program but independent of any JV Technology or QIAGEN Technology, that is necessary or useful for the manufacture, use or sale of an S-Product or an S-Component or the providing of services in the Stabilization Field.

1.22 "BECTON Program Technology" means, collectively, BECTON Program Collection Technology, BECTON Program Preparation Technology and BECTON Program Stabilization Technology.

1.23 "BECTON Technology" means, collectively, BECTON Background Technology and BECTON Program Technology.

1.24 "Budgeted Costs" has the respective meanings set forth in Section 1.1 of the Administrative Services Agreement and the Scientific Research Services Agreement.

1.25 "C-Component" means the component or portion of a Combined Product used or useful for the collection of nucleic acid comprising samples.

1.26 "Change of Control" has the meaning set forth in Section 12.5.2.

1.27 "Closing" has the meaning set forth in Section 11.1.

1.28 "Closing Date" has the meaning set forth in Section 11.1.

1.29 "Collection Field" means sample collection.

1.30 "Combined Product" means any product other than a JV Product consisting of a C-Component chemically or physically linked to an S-Component and/or a P-Component.

1.31 "Commercialization" and "Commercialize" refers to all activities undertaken pursuant to an approved Commercialization Plan relating to the marketing and sale of a JV Product.

1.32 "Commercialization Budget" has the meaning set forth in Section 10.1.2.

1.33 "Commercialization Milestones" has the meaning set forth in Section 6.1.

1.34 "Commercialization Plan" has the meaning set forth in Section 10.1.2.

1.35 "Confidential Information" means, with respect to a Party or the Joint Venture (the "Receiving Party"), all tangible embodiments of Technology and all information (including but not limited to information about any element of Technology and all Confidential Information arising under the Existing Research Agreement) which the other Party or the Joint Venture believes to be confidential, proprietary, trade secret or like undisclosed information and which relates to the JV Field and which is disclosed to the Receiving Party and so declared by the other Party or the Joint Venture to be "Confidential" or "Proprietary", except to the extent that such information (i) as of the date of disclosure is demonstrably known to the Receiving Party, as shown by written documentation, other than by virtue of a prior confidential disclosure to such Receiving Party; (ii) as of the date of disclosure is in, or subsequently enters, the public domain, through no fault or omission of the Receiving Party; (iii) as of the date of disclosure or thereafter is lawfully provided by a Third Party free from any obligation of confidentiality to the other Party; or (iv) is developed independently of and without reference to Confidential Information received by the Receiving Party from the other Party.

1.36 "Control" or "Controlled" means (a) with respect to Technology and Patent Rights, the possession by a Party of the ability to grant a license or sublicense of such Technology and/or Patent Rights as provided herein without violating the terms of any agreement or arrangement between such Party and any Third Party and (b) with respect to BECTON Background Materials and QIAGEN Background Materials, the possession by a Party of the ability to supply such Background Materials to the Joint Venture as provided herein without violating the terms of any agreement or arrangement between such Party and any Third Party.

1.37 "C-Product" means any product used or useful for the collection of nucleic acid comprising samples that is not physically or chemically linked to, or otherwise sold or designed for use with, any product used for the stabilization, isolation and/or purification of nucleic acids in samples;

provided, however, that C-Product shall not mean (i) devices purchased by QIAGEN from BECTON or a Third Party which devices, if purchased from a Third Party, to QIAGEN's knowledge, do not use any BECTON Background Technology, BECTON Background Patent Rights, BECTON Program Collection Technology, QIAGEN Program Collection Technology or Patent Rights covering BECTON Program Collection Technology or QIAGEN Program Collection Technology and are sold by QIAGEN with QIAGEN stabilization or preparation reagents therein for delivery of such reagents to customers and not for the collection of samples from patients or (ii) devices purchased by QIAGEN from BECTON or a Third Party which devices, if purchased from a Third Party, to QIAGEN's knowledge, do not use any BECTON Background Technology, BECTON Background Patent Rights, BECTON Program Collection Technology, QIAGEN Program Collection Technology or Patent Rights covering BECTON Program Collection Technology or QIAGEN Program Collection Technology and are sold by QIAGEN with a QIAGEN Product which is an S-Product, a P-Product and/or an S/P Product for the collection of eluted nucleic acids from a capture matrix and not for the collection of samples from patients.

1.38 "Cross License Agreement" has the meaning set forth in Section 9.2.

1.39 "Effective Date" means the date first written above.

1.40 "Events of Termination" has the meaning set forth in Section 12.2.

1.41 "Existing Research Agreement" means the Collaborative Research Agreement dated as of November 18, 1998 by and between QIAGEN GmbH and BDX.

1.42 "First Commercial Sale" means the date of the first sale of a Royalty-Bearing Product in the ordinary course of business in any country by a party granted a license pursuant to this Agreement and/or an Ancillary Agreement or sublicensee of such party.

1.43 "Fiscal Year" means, with respect to the Joint Venture, the year starting October 1 and ending September 30 and, with respect to any other entity, the fiscal year of such entity.

1.44 "Integration Technology" means any Technology developed or conceived by either BDX or QIAGEN GmbH or jointly by BDX and QIAGEN GmbH in the conduct of the Research Program that is necessary or useful to link or combine, whether physically or chemically, any two or more of a C-Component, an S-Component and/or a P-Component.

1.45 "Joint Patent Rights" means Patent Rights with respect to Joint Technology.

1.46 "Joint Technology" means any Technology other than Integration Technology (i) developed or conceived by employees of or consultants to one Party as a result of the use by such Party of any Technology of the other Party or any JV Technology or (ii) jointly developed by employees of or

consultants to both BDX and QIAGEN GmbH in the conduct of the Research Program.

1.47 **"Joint Venture"** means the Swiss Gesellschaft mit beschraenkter Haftung to be established pursuant to Article 2 of this Agreement by BECTON GmbH and QIAGEN AG for the purposes set forth therein.

1.48 **"JV Field"** means the collection of nucleic acid comprising samples and the stabilization, isolation and/or purification of nucleic acids in such samples, using a device or system which combines, through physical or chemical integration, such collection of such samples with such stabilization, isolation and/or purification of nucleic acids in such samples.

1.49 **"JV License Agreement"** has the meaning set forth in Section 9.2.

1.50 **"JV Operating Agreement"** has the meaning set forth in Section 2.1.

1.51 **"JV Patent Rights"** means Patent Rights with respect to JV Technology.

1.52 **"JV Product"** means any product consisting of a C-Component chemically or physically linked to an S-Component and/or a P-Component developed after the Effective Date and prior to the Program End Date that incorporates or uses any Integration Technology, JV Technology, BECTON Program Technology, QIAGEN Program Technology or Joint Technology.

1.53 **"JV Technology"** means (i) any Integration Technology and (ii) any Technology acquired by the Joint Venture from any Third Party pursuant to Section 9.7.

1.54 **"License Term"** means, with respect to any Royalty-Bearing Product, the time period referenced in Section 9.3.

1.55 **"Management Committee"** means the committee of QIAGEN and BECTON representatives that shall manage the affairs of the Joint Venture, established pursuant to Section 2.4 hereof.

1.56 **"Members"** has the meaning set forth in Section 2.1.

1.57 **"Net Sales"** means, with respect to a party granted a license pursuant to this Agreement and/or an Ancillary Agreement, the gross amount billed by such party or sublicensees to Third Parties worldwide for the sales of Royalty-Bearing Products,

[*]

[two pages redacted]

1.58 **"Organizational Rules"** has the meaning set forth in Section 2.1.

1.59 “Other JV Technology” has the meaning set forth in Section 9.2.3(b).

1.60 “Party” means either BECTON or QIAGEN; **“Parties”** means, collectively, BECTON and QIAGEN.

1.61 “Patent Coordinators” has the meaning set forth in Section 9.6(c).

1.62 “Patent Rights” means the rights and interests in and to issued patents and pending patent applications (which for purposes of this Agreement shall be deemed to include certificates of invention and applications for certificates of invention and priority rights) in any country, including all substitutions, continuations, continuations-in-part, divisions, and renewals, all letters patent granted thereon, and all reissues, reexaminations, supplemental protective certificates and extensions thereof, Controlled by a Party.

1.63 “P-Component” means the component or portion of a Combined Product used or useful for the isolation and purification of nucleic acids in samples.

1.64 “P-Product” means any product used or useful for the isolation and purification of nucleic acids in samples that is not physically or chemically linked to, or otherwise sold or designed for use with, a product used for the collection of nucleic acid comprising samples or the stabilization of nucleic acids in samples.

1.65 “Percentage Interest” has the meaning set forth in Section 2.1.

1.66 “Preparation Field” means the field of nucleic acid isolation and purification.

1.67 “Primary Filing Countries” means the United States, France, Germany, Japan and the United Kingdom.

1.68 “Principal Office” means the principal office of the Joint Venture initially located at Hombrechtikon in the canton of Zurich dedicated for the business activities and operations of the Joint Venture.

1.69 “Product Agreement” has the meaning set forth in Section 10.1.

1.70 “Program End Date” means the date of exercise by a Party of its right to terminate the Research Program as a result of the occurrence of any of the Events of Termination as set forth in Section 12.2.1.

1.71 “Program Milestones” means each of the Program Milestones described in the Research Plan attached as Schedule 1 to this Agreement.

1.72 "Program Technology" means, collectively, QIAGEN Program Technology, BECTON Program Technology and Joint Technology.

1.73 “QIAGEN Background Materials” means those materials Controlled by QIAGEN that are useful in the JV Field and supplied to the Joint Venture pursuant to the Scientific Research Services Agreement.

1.74 “QIAGEN Background Patent Rights” means Patent Rights with respect to QIAGEN Background Technology.

1.75 “QIAGEN Background Technology” means (a) QIAGEN Intellectual Property, as defined in the Existing Research Agreement; (b) QIAGEN’s interest in Joint Intellectual Property, as defined in the Existing Research Agreement; and (c) Technology Controlled by QIAGEN that exists as of the Effective Date and Technology other than QIAGEN Program Technology that otherwise becomes Controlled by QIAGEN during the Term that is useful in the JV Field and is licensed to the Joint Venture in accordance with Section 9.1.1 of this Agreement.

1.76 “QIAGEN Field” means the Preparation Field and/or the Stabilization Field and/or the S/P Field.

1.77 “QIAGEN License Agreement” has the meaning set forth in Section 9.1.1.

1.78 "QIAGEN Patent Rights" means, collectively, QIAGEN Program Patent Rights, QIAGEN Background Patent Rights and QIAGEN’s interest in Joint Patent Rights.

1.79 “QIAGEN Product” means any product manufactured or distributed by QIAGEN that was either developed by QIAGEN prior to the Effective Date or that was, as of the Effective Date, in the process of being developed by QIAGEN without use of JV Technology, BECTON Technology or BECTON Background Materials.

1.80 “QIAGEN Program Collection Technology” means any Technology developed or conceived by employees of or consultants to QIAGEN alone or jointly with Third Parties in the conduct of the Research Program, but independent of any JV Technology or BECTON Technology, that is necessary or useful for the manufacture, use or sale of a C-Product or C-Component or the providing of services in the Collection Field.

1.81 “QIAGEN Program Patent Rights” means Patent Rights with respect to QIAGEN Program Technology.

1.82 “QIAGEN Program Preparation Technology” means any Technology developed or conceived by employees of or consultants to QIAGEN alone or jointly with Third Parties in the conduct of the Research Program, but independent of any JV Technology or BECTON Technology, that is necessary or useful for the manufacture, use or sale of a P-Product or a P-Component or the providing of services in

the Preparation Field.

1.83 "QIAGEN Program Stabilization Technology" means any Technology developed or conceived by employees of or consultants to QIAGEN alone or jointly with Third Parties in the conduct of the Research Program, but independent of any JV Technology or BECTON Technology, that is necessary or useful for the manufacture, use or sale of an S-Product or an S-Component or the providing of services in the Stabilization Field.

1.84 "QIAGEN Program Technology" means QIAGEN Program Collection Technology, QIAGEN Program Preparation Technology and/or QIAGEN Program Stabilization Technology.

1.85 "QIAGEN Technology" means, collectively, QIAGEN Background Technology and QIAGEN Program Technology.

1.86 "Research Plan" means the written plan describing the scientific research and other activities to be carried out by the Joint Venture attached as Schedule 1 to this Agreement, as amended from time to time by the Management Committee.

1.87 "Research Program" means the research program to be conducted by the Joint Venture pursuant to the Ancillary Agreements and reflected in the Research Plan.

1.88 "Research Project" means a detailed project approved by the Management Committee, the objective of which is to develop JV Products.

1.89 "Royalty-Bearing Product" means, with respect to a Party and permitted sublicensees, any of a Combined Product, C-Product, S-Product, P-Product or S/P Product, to the extent that any of them (i) cannot be manufactured, used or sold without infringing a Valid Claim contained in the Patent Rights of the other Party or the Joint Venture or (ii) utilizes or was made utilizing or contains any JV Technology or Joint Technology, or the Program Technology of the other Party.

1.90 "Royalty Term" means, with respect to Royalty-Bearing Products, the time period referenced in Section 9.3.

1.91 "Scientific Advisory Board" or **"SAB"** means the Scientific Advisory Board created pursuant to Section 6.15 of the JV Operating Agreement.

1.92 "Scientific Directors" has the meaning set forth in Section 6.3 of the JV Operating Agreement.

1.93 "Scientific Research Services" has the meaning set forth in the Scientific Research Services Agreement.

1.94 "Scientific Research Services Agreement" has the meaning set forth in Section 6.2.1.

1.95 "S-Component" means the component or portion of a Combined Product used or useful for the stabilization of nucleic acids in samples.

1.96 "S-Product" means any product used or useful for the stabilization of nucleic acids in samples that is not physically or chemically linked to, or otherwise sold or designed for use with, a product used for the collection of nucleic acid comprising samples or the isolation and purification of nucleic acids in samples.

1.97 "S/P Field" means the combined field of nucleic acid stabilization, isolation and purification.

1.98 "S/P Product" means any product used or useful for the stabilization of nucleic acids in samples that is physically or chemically linked to a product used or useful for the isolation and purification of nucleic acids in samples and that is not physically or chemically linked to or otherwise sold or designed for use with, a product used for the collection of nucleic acid comprising samples.

1.99 "Stabilization Field" means the field of nucleic acid stabilization.

1.100 "Technology" means and includes all inventions, discoveries, improvements, proprietary materials, data, formulations, techniques and know-how, whether or not patentable or copyrightable, including any negative results. **"Technology"** of a Party includes Technology Controlled by that Party.

1.101 "Term" means the term of the Research Program in accordance with Article 12.

1.102 "Third Party" means any entity other than the Joint Venture, QIAGEN or BECTON.

1.103 "Third Party Collection Technology" means any Technology other than JV Technology (i) that is conceived or developed by any Third Party outside the Joint Venture and independent of any JV Technology, BECTON Technology and QIAGEN Technology, that is necessary or useful for the manufacture, use or sale of a C-Product or a C-Component or the providing of services in the Collection Field and (ii) for which rights are acquired by a Party after the Program End Date.

1.104 "Third Party Preparation Technology" means any Technology other than JV Technology (i) that is conceived or developed by any Third Party outside the Joint Venture and independent of any JV Technology, BECTON Technology and QIAGEN Technology, that is necessary or useful for the manufacture, use or sale of a P-Product or a P-Component or the providing of services in the Preparation Field and (ii) for which rights are acquired by a Party after the Program End Date.

1.105 "Third Party Stabilization Technology" means any Technology other than JV Technology (i) that is conceived or developed by any Third Party outside the Joint Venture and independent of any JV Technology, BECTON Technology and QIAGEN Technology, that is necessary or

useful for the manufacture, use or sale of an S-Product or an S-Component or the providing of services in the Stabilization Field and (ii) for which rights are acquired by a Party after the Program End Date.

1.106 "Third Party Technology" means, collectively, Third Party Collection Technology, Third Party Stabilization Technology and Third Party Preparation Technology.

1.107 "Valid Claim" means any claim of a pending patent application which application or a counterpart thereof has been published for less than four (4) years or an unexpired patent claim which has not been held unenforceable, unpatentable or invalid by a decision of a court or other governmental agency of competent jurisdiction, unappealed within the time allowed for appeal or unappealable, and which claim has not been admitted to be invalid or unenforceable through reissue, reexamination, disclaimer or otherwise.

1.108 "Winding Up Date" has the meaning set forth in Section 12.3.1(d).

2. FORMATION OF THE JOINT VENTURE

2.1 Formation of the GmbH. On the Closing Date, QIAGEN AG and BECTON GmbH shall establish or cause to be established the GmbH (the "GmbH") under the laws of Switzerland in accordance with the Swiss Code of Obligations (the "CO"). For purposes of this Agreement, QIAGEN AG and BECTON GmbH may be referred to individually as a "Member" and collectively as the "Members". The "Percentage Interest" in the GmbH of each of the two Members shall be fifty percent (50%). The Members shall, on the Closing Date, take all actions necessary to enter into a Joint Venture Operating Agreement (the "JV Operating Agreement") in the form of Exhibit A-1 hereto and agree to be bound by the Organizational Rules (the "Organizational Rules") in the form of Exhibit A-2 hereto, setting forth the rights, obligations and duties of the Members with respect to the GmbH, to assure the prompt filing of the Articles of the GmbH in the form of Exhibit B hereto (the "Articles") with the Register of Commerce of the canton of Zurich as required by the CO, and to execute the other Ancillary Agreements to be executed and delivered on the Closing Date, all in form and substance satisfactory to each of the Parties. Except as expressly provided herein and in the JV Operating Agreement and the Ancillary Agreements, the rights and obligations of the Members with respect to the GmbH shall be governed by the CO.

2.2 Name of the Joint Venture. The name of the Joint Venture shall be "QBD Systems GmbH" or such other name as the Members may from time to time determine. The Members shall cause to be filed on behalf of the Joint Venture such corporate, assumed or fictitious name or foreign qualification certificate or certificates as may from time to time be required by law.

2.3 Purpose of Joint Venture. The purpose of the Joint Venture shall be to develop, manufacture and commercialize JV Products in the JV Field as set forth in Article 10 hereof, and to do and perform all acts necessary or desirable to carry out the foregoing purpose in accordance with the terms and conditions of this Agreement, the JV Operating Agreement and the Ancillary Agreements, and to take any other action relevant to such purpose not prohibited under the CO or other applicable law.

2.4 Administration. The program, operations, and business of the Joint Venture shall be administered by the Management Committee as provided in the JV Operating Agreement and pursuant to the Ancillary Agreements.

2.5 Term. The term of the Joint Venture shall commence upon the filing of the Articles with the Register of Commerce and the Joint Venture shall continue perpetually unless sooner terminated pursuant to the terms hereof, the JV Operating Agreement or pursuant to applicable law.

3. BUSINESS ACTIVITIES COMPETITIVE WITH THE JOINT VENTURE.

3.1 Activities Within the JV Field. Either Party may, during the Term, engage independently or with Third Parties in other business ventures or activities of every nature and description including, without limitation, with respect to BECTON, the continued manufacture, use and sale of BECTON Products, and, with respect to QIAGEN, the continued manufacture, use and sale of QIAGEN Products; provided, that, during the Term, [*]. Each Party shall keep the Management Committee informed at regularly-scheduled Management Committee meetings as to any research undertaken by such Party [*]. Subject to the foregoing and to Section 3.2 hereof, neither the Joint Venture nor either Party shall have any right by virtue of the JV Operating Agreement or any of the Ancillary Agreements or the relationship created thereunder, in or to such other permitted ventures or activities of a Party or to the income or proceeds derived therefrom, except as set forth in this Agreement. Without limitation of the foregoing, on the Closing Date, the Parties shall enter into a [*] with respect to their respective activities [*] in the form of Exhibit H attached hereto (the "[*]").

3.2 Acquisitions Competitive with the Joint Venture.

[*]

[one page redacted]

4. INTENTIONALLY OMITTED

5. OPERATIONS OF THE JOINT VENTURE

5.1 Provision of Administrative Services; Compensation. Immediately following formation of the GmbH as set forth in Section 2.1, QIAGEN and BECTON agree to enter into and agree to cause the Joint Venture to enter into an Administrative Services Agreement in the form of Exhibit C hereto (the "Administrative Services Agreement") pursuant to which each of QIAGEN and BECTON will use commercially reasonable efforts to provide to the Joint Venture the Administrative Services (as such term is defined in the Administrative Services Agreement). Pursuant to the terms of the Administrative Services Agreement, each of QIAGEN and BECTON shall provide their respective Administrative Services in a prompt manner generally consistent with each of their respective past practices in the conduct of their respective business and operations.

5.2 Litigation. Each of QIAGEN, BECTON and the Joint Venture shall promptly notify the others of any actions which are threatened or commenced against or by such Party or the Joint Venture which relates to or may affect the business or operations of the Joint Venture.

5.3 Access. At any time and from time to time during the term of the Joint Venture and until the Winding Up Date, authorized representatives of QIAGEN and BECTON (which representatives may be or may include, at the request of either Party, outside auditors reasonably acceptable to the other Party) shall have access to the Principal Office and/or to the relevant books and records of the other Party, upon reasonable notice and at reasonable times for specified periods, without further consideration and subject to reasonable confidentiality undertakings in accordance with this Agreement, for the purpose of allowing such QIAGEN and BECTON authorized representatives to (i) review the operations, books and records of the Joint Venture and to assist with the business and purposes of the Joint Venture, and (ii) reasonably confirm the amount of Outside Income and/or Excess Loss (as such terms are defined in the JV Operating Agreement) generated by the other Party under the JV Operating Agreement.

5.4 Cooperation. Each of QIAGEN, BECTON and the Joint Venture shall use commercially reasonable efforts to perform and fulfill all conditions and obligations to be fulfilled or performed by it under this Article 5 and as provided in the Administrative Services Agreement.

6. STRUCTURE OF RESEARCH PROGRAM

6.1 Research Program; Research Plan. The Research Plan for the first year of the Research Program shall be prepared by BECTON and QIAGEN and approved by the Management Committee as promptly as practical after the Closing Date. For each year of the Research Program commencing with the

second year, updates and supplements to the Research Plan shall be prepared by the Management Committee no later than sixty (60) days before the end of the prior year. The Research Plan, as so updated and supplemented from time to time, shall set forth: (i) the Research Program to be pursued, (ii) the specific objectives of each Research Program, (iii) a detailed plan to achieve such objectives and the tasks to be performed, and (iv) initial milestones for gauging commercial success of the Joint Venture ("Commercialization Milestones"). The Management Committee shall review and monitor the progress of the Research Program. The Management Committee may make adjustments in the Research Plan at its meetings or otherwise as it may determine.

6.2 Performance of Scientific Research.

6.2.1 Scientific Research Services Agreement. Concurrently with the execution of the JV Operating Agreement, QIAGEN GmbH and BDX shall enter into and agree to cause the Joint Venture to enter into a Scientific Research Services Agreement in the form of Exhibit D hereto (the "Scientific Research Services Agreement") pursuant to which (i) each of QIAGEN GmbH and BDX will use commercially reasonable efforts to provide to the Joint Venture the Scientific Research Services (as such term is defined in the Scientific Research Services Agreement) for the purpose of developing one or more JV Products, (ii) QIAGEN GmbH shall supply the Joint Venture with QIAGEN Background Materials to research, discover, develop, have developed, make, have made, sell, have sold, import and have imported JV Products in the JV Field in accordance with the Research Program and the terms of the Scientific Research Services Agreement and (iii) BDX will supply the Joint Venture with BECTON Background Materials to research, discover, develop, have developed, make, have made, sell, have sold, import and have imported JV Products in accordance with the Research Program and the terms of the Scientific Research Services Agreement. Pursuant to the terms of the Scientific Research Services Agreement, each of QIAGEN GmbH and BDX will provide the Scientific Research Services in a prompt manner generally consistent with such party's past practices in the conduct of its own business and operations.

6.2.2 Cooperation. Each of QIAGEN GmbH, BDX and the Joint Venture shall use commercially reasonable efforts to perform and fulfill all conditions and obligations to be fulfilled or performed by it under this Article 6 and as provided in the Scientific Research Services Agreement.

6.2.3 Research Collaborations. In the event that the Management Committee or its designee determines that any research task exceeds the scope or capacity available under the Scientific Research Services Agreement, the Joint Venture may contract separately with BECTON, QIAGEN or a Third Party (including any academic laboratory) to perform such research task. Such research contracts

shall be on terms approved by the Management Committee or its designee.

7. **TREATMENT OF CONFIDENTIAL INFORMATION**

7.1 Confidentiality.

7.1.1 Confidential Information.

[*]
[one page redacted]

7.1.3 Obligations of Employees and Consultants. QIAGEN and BECTON each represent that all of their respective employees, and any consultants to such Party participating in the Joint Venture's activities who shall have access to Confidential Information, are bound or will be bound by written obligations to maintain such information in confidence and not to use such information except as expressly permitted herein and in the JV Operating Agreement and the Ancillary Agreements. Each Party agrees to enforce confidentiality obligations to which their respective employees and consultants are obligated.

7.2 Publicity. Neither Party may disclose the terms of this Agreement, the JV Operating Agreement or the Ancillary Agreements without the prior consent of the other Party; provided, however, that either Party may make such a disclosure (i) to the extent required by applicable law or legal process or (ii) to any investors, prospective investors, lenders and other potential financing resources who are obligated to keep such information confidential. The Parties, upon the execution of this Agreement, will agree to a joint news release for publication by the Parties generally and a German news release for publication by QIAGEN in Germany. Once any written statement is approved for public disclosure by the parties, either Party may make subsequent public disclosure of the contents of such statement without the further approval of the other Party.

7.3 Publication. It is expected that QIAGEN, BECTON and the Joint Venture may wish to publish the results of the research under the Research Program. In order to safeguard patent rights, the Party wishing to publish or otherwise publicly disclose the results of any such research shall first submit a draft of the proposed manuscript or disclosure to the Scientific Directors and Patent Coordinators for review, comment and consideration of appropriate action at least four (4) weeks prior to any submission for publication or other public disclosure. Within thirty (30) days following receipt of the prepublication

materials, the Scientific Directors, with the advice of the Co-Chairs of the Management Committee and the Patent Coordinators, will advise the Party seeking publication as to whether a patent application shall be prepared and filed and the Party seeking publication shall delay submission for ninety (90) days following such request. Notwithstanding the foregoing, the Members agree that the Co-Chairs of the Management Committee may jointly prohibit any proposed publication or disclosure.

7.4 Solicitation. Neither Party shall, during the Term or [*], hire or solicit for employment any person who was employed by the other Party during such period; provided, that, this provision shall not apply to any employee of either Party who responds to a general advertisement for employment of the other Party.

8. INTELLECTUAL PROPERTY RIGHTS

8.1 Disclosure of Technology.

8.1.1 Disclosure. Each Party shall provide the other Party with prompt written disclosure with respect to any Program Technology, JV Technology or Joint Technology that is conceived, made or developed by such Party in the course of carrying out the Research Program by employees of or consultants to such Party alone or jointly with employees or consultants of the other Party or Third Parties.

8.1.2 Obligations of Employees. During the Term (i) subject to any rights of employees under the Arbeitnehmererfindungsrecht, QIAGEN shall require all employees of or consultants to QIAGEN and all Third Parties under contract to QIAGEN who are involved in, or associated with, the Research Program to have executed agreements for the assignment to QIAGEN GmbH of QIAGEN Program Technology, for the assignment to QIAGEN GmbH of all Joint Technology with respect to which QIAGEN GmbH shall grant a joint assignment to BDX, for the assignment to QIAGEN GmbH of all JV Technology which QIAGEN GmbH shall assign to the Joint Venture and for the protection of all information generated or discovered during the Research Program and (ii) subject to any rights of employees under the Arbeitnehmererfindungsrecht, BECTON shall require all employees of BECTON and all Third Parties under contract to BECTON who are involved in, or associated with, the Research Program to have executed agreements for the assignment to BDX of BECTON Program Technology, for the assignment to BDX of all Joint Technology with respect to which BDX shall grant a joint assignment to QIAGEN GmbH, for the assignment to BDX of all JV Technology which BDX shall assign to the Joint Venture and for the protection of all information generated or discovered during the Research Program.

8.2 Ownership of Technology.

8.2.1 <u>QIAGEN Program Technology Rights And Patent Rights Therein</u>. QIAGEN GmbH shall have sole and exclusive ownership of all right, title and interest on a worldwide basis in and to all QIAGEN Program Technology, with full rights to license or sublicense, subject to the licenses described in Sections 9.1.1 and 9.2.1 hereof and subject to any rights of employees under the Arbeitnehmererfindungsrecht. Without limiting the foregoing, subject to the licenses granted in Article 9 hereof, QIAGEN GmbH shall be the sole owner of all Patent Rights, all trade secret rights and any other intellectual property rights in the QIAGEN Program Technology, including the sole and exclusive right to exclude others from making, using, selling, offering for sale or importing QIAGEN Program Technology. QIAGEN GmbH shall also be responsible for determining what patents will be filed on QIAGEN Program Technology, the filing and prosecution of such patents and all costs and expenses associated therewith.

8.2.2 <u>BECTON Program Technology Rights And Patent Rights Therein</u>. BDX shall have sole and exclusive ownership of all right, title and interest on a worldwide basis in and to all BECTON Program Technology, with full rights to license or sublicense, subject to the licenses described in Sections 9.1.2 and 9.2.2 hereof and subject to any rights of employees under the Arbeitnehmererfindungsrecht. Without limiting the foregoing, subject to the licenses granted in Article 9 hereof, BDX shall be the sole owner of all Patent Rights, all trade secret rights and any other intellectual property rights in the BECTON Program Technology, including the sole and exclusive right to exclude others from making, using, selling, offering for sale or importing BECTON Program Technology. BDX shall also be responsible for determining what patents will be filed on BECTON Program Technology, the filing and prosecution of such patents and all costs and expenses associated therewith.

8.2.3 <u>Joint Technology</u>. BDX and QIAGEN GmbH shall jointly own all Joint Technology and all Joint Patent Rights, subject to the rights of, and licenses granted to, the Joint Venture and to each Party hereunder and under the Ancillary Agreements.

8.2.4 <u>JV Technology</u>. The Joint Venture shall own all JV Technology and all JV Patent Rights, subject to the rights of, and licenses granted to, each Party and the Joint Venture hereunder and under the Ancillary Agreements.

8.2.5 <u>Background Technology</u>. Notwithstanding anything to the contrary contained herein (i) QIAGEN shall retain the sole and exclusive ownership of all right, title and interest in and to all QIAGEN Background Technology and QIAGEN Background Patent Rights, subject to the license granted to the Joint Venture hereunder and under the QIAGEN License Agreement and (ii) BECTON shall retain the sole and exclusive ownership of all right, title and interest in and to all BECTON Background

Technology and BECTON Background Patent Rights, subject to the license granted to the Joint Venture hereunder and under the BECTON License Agreement.

8.3 Use of Certain Technology During the Term.

8.3.1 Joint Technology. [*]

8.3.2 Integration Technology. [*]

8.3.3 JV Technology. [*]

9. TECHNOLOGY LICENSE RIGHTS

9.1 Patent and Technology Rights of Joint Venture. In order to fulfill its obligations under the Research Program, the Joint Venture shall be granted rights by the Parties as follows:

9.1.1 QIAGEN Licenses to Joint Venture. Immediately following the formation of the GmbH as set forth in Section 2.1, each of QIAGEN AG, QIAGEN NV and QIAGEN GmbH agrees to enter into, and the Members shall cause the Joint Venture to enter into, a License Agreement in the form of Exhibit E hereto (the "QIAGEN License Agreement") in form and substance satisfactory to each of QIAGEN AG, QIAGEN NV and QIAGEN GmbH and the Joint Venture pursuant to which (i) QIAGEN AG and QIAGEN GmbH shall grant to the Joint Venture a world-wide, non-exclusive, royalty-free (except as may be required under Section 9.1.3) license or sublicense, as the case may be, to all QIAGEN Technology and QIAGEN Patent Rights and QIAGEN GmbH's rights in Joint Technology and Joint Patent Rights to research, discover, develop, have developed, make, have made, sell, have sold, import and have imported JV Products in the JV Field in accordance with the Research Program and the terms of the QIAGEN License Agreement and (ii) QIAGEN GmbH shall grant to the Joint Venture a worldwide, exclusive, royalty-bearing license to all QIAGEN Program Technology, QIAGEN Program Patent Rights and QIAGEN GmbH's rights in Joint Technology and Joint Patent Rights for the purposes of developing, making, using, selling and importing Combined Products and for the purposes of developing, making, using, selling and importing S-Products, P-Products and/or S/P Products and providing services to Third Parties in the Preparation Field, the Stabilization Field and/or the S/P Field. In connection with the license described in 9.1.1 (i) above, QIAGEN NV hereby agrees to license to QIAGEN AG, and to cause its Affiliates to license to QIAGEN AG, all QIAGEN Background Technology and QIAGEN Background Patent Rights Controlled by QIAGEN NV or such Affiliates at any time during the Term of the Research Program. In connection with the license described in Section 9.1.1 (ii) above, the Joint Venture shall pay QIAGEN GmbH a royalty based on Net Sales of each Combined Product, S-Product, P-Product or S/P

Product which is a Royalty-Bearing Product sold during the applicable License Term by the Joint Venture equal to the Applicable Royalty Rate. Except as set forth in Section 9.1.3, any fees payable to any Third Party as a result of the grant of any such sublicense to the Joint Venture shall be paid by QIAGEN.

9.1.2 BECTON Licenses to Joint Venture. Immediately following formation of the GmbH as set forth in Section 2.1, each of BECTON GmbH and BDX agrees to enter into, and the Members shall cause the Joint Venture to enter into, a License Agreement in the form of Exhibit F hereto (the "BECTON License Agreement") in form and substance satisfactory to each of BECTON GmbH, BDX and the Joint Venture pursuant to which (i) BECTON GmbH and BDX shall grant to the Joint Venture a world-wide, non-exclusive, royalty-free (except as may be required under Section 9.1.3) license or sublicense, as the case may be, to all BECTON Technology and BECTON Patent Rights and BDX's rights in Joint Technology and Joint Patent Rights to research, discover, develop, have developed, make, have made, sell, have sold, import and have imported JV Products in the JV Field in accordance with the Research Program and the terms of the BECTON License Agreement and (ii) BDX shall grant to the Joint Venture a worldwide, exclusive, royalty-bearing license to all BECTON Program Technology, BECTON Program Patent Rights and BDX's rights in Joint Technology and Joint Patent Rights for the purposes of developing, making, using, selling and importing Combined Products and for the purposes of developing, making, using, selling and importing C-Products and providing services to Third Parties in the Collection Field. In connection with the grant of the license described in 9.1.2 (i) above, BDX hereby agrees to license to BECTON GmbH, and to cause its Affiliates to license to BECTON GmbH, all BECTON Background Technology and BECTON Background Patent Rights Controlled by BDX or such Affiliates at any time during the Term of the Research Program. In connection with the license described in Section 9.1.2(ii), the Joint Venture shall pay BDX a royalty based on Net Sales of each Combined Product and C-Product which is a Royalty-Bearing Product sold during the applicable License Term by the Joint Venture equal to the Applicable Royalty Rate. Except as set forth in Section 9.1.3, any fees payable to any Third Party as a result of the grant of any such sublicense to the Joint Venture shall be paid by BECTON.

9.1.3 Royalty to Third Parties. If any Party would be obligated to pay a Third Party any royalties or other payments with respect to a particular JV Product being developed or sold by the Joint Venture, as a result of granting any sublicense pursuant to Section 9.1.1(i) or 9.1.2(i), the Joint Venture, shall reimburse the Party granting the sublicense for the amount of such royalties or other payments, within thirty (30) days after receipt of an invoice for such payment from the Party granting the sublicense. The Joint Venture receiving the sublicense shall not be obligated to pay any license fees, annual

maintenance fees, subscription fees, minimum royalties or the like, except for those: (i) based on or resulting from (a) the granting of the sublicense or (b) the development, manufacture or sale of a JV Product by the Joint Venture receiving the sublicense or (ii) as otherwise expressly provided in the Ancillary Agreements.

9.1.4 Limitation on In-Licenses to Joint Venture. Notwithstanding anything to the contrary in this Section 9.1, no Party shall be obligated to make any disclosure of or grant under any license for any Background Technology or Background Patent Rights of such Party if such Party is prohibited by law or Third Party agreements from making such disclosure or granting such license. Each Party agrees to use commercially reasonable efforts to obtain the rights to make such disclosures and grant such licenses in all Third Party agreements related to Background Technology and Background Patent Rights. QIAGEN represents and warrants to BECTON and the Joint Venture that QIAGEN is not permitted under the terms of the license agreement by and between QIAGEN and Organon Teknika to license or sublicense to the Joint Venture any technology that is the subject of such license agreement.

9.2 License Rights Between the Parties. In order to provide the Parties with the ability to exploit the results of the Research Program (i) each of QIAGEN GmbH and BDX shall enter into a Cross License Agreement with each other in the form of Exhibit G-1 attached hereto (the "Cross License Agreement") and (ii) the Joint Venture shall enter into a License Agreement with each of QIAGEN and BECTON in the form of Exhibit G-2 attached hereto (the "JV License Agreement"), each of which shall be effective as of the Effective Date, shall be in form and substance satisfactory to each of QIAGEN and BECTON, and shall provide as follows:

9.2.1 Licenses from QIAGEN GmbH to BECTON.

(a) QIAGEN Program Collection Technology. [*]

(1) Royalty. [*]

(b) QIAGEN Program Stabilization Technology/QIAGEN Program Preparation Technology. [*]

(1) Royalty. [*]

9.2.2 License from BDX to QIAGEN.

(a) BECTON Program Stabilization Technology/BECTON Program Preparation Technology. [*]

(1) Royalty. [*]

(b) BECTON Program Collection Technology. [*]

(i) Royalty. [*]

9.2.3. **License from Joint Venture to BECTON and QIAGEN**.

(a) Integration Technology.

(i) License to QIAGEN. [*]

(1) Royalty. [*]

(ii) License to BECTON. [*]

(1) Royalty. [*]

(b) Other JV Technology.

(i) Licenses to QIAGEN. [*]

(1) Royalty. [*]

(ii) Licenses to BECTON. [*]

(1) Royalty. [*]

(c) BECTON Program Technology.

(i) Licenses to BECTON. [*]

(1) Royalty. [*]

(d) QIAGEN Program Technology.

(i) Licenses to QIAGEN. [*]

(1) Royalty. [*]

9.3 **License Term; Royalty Term**. The License Term and the Royalty Term as to each Royalty-Bearing Product shall commence (i) with respect to any C-Product sold by BECTON under Section 9.2.1(a)(i), 9.2.3(a)(ii)(A) or Section 9.2.3(b)(ii)(A), any S-Product, P-Product or S/P Product sold by QIAGEN under Section 9.2.2(a)(i), Section 9.2.3(a)(i)(A) or 9.2.3(b)(i)(A) or any Combined Product sold by the Joint Venture under Section 9.1.1(ii) or 9.1.2(ii), on the Effective Date; (ii) with respect to any Combined Product sold by BECTON under Section 9.2.1(a)(ii) or 9.2.3(c)(i)(B) or sold by QIAGEN under Section 9.2.2(a)(ii) or 9.2.3(d)(i)(B), on the Program End Date; (iii) with respect to any Combined Product sold by BECTON under Section 9.2.1(b), 9.2.3(a)(ii)(B), 9.2.3(b)(ii)(B) or 9.2.3(c)(i)(C) or sold by QIAGEN under 9.2.2(b), 9.2.3(a)(i)(B), 9.2.3(b)(i)(B) or 9.2.3(d)(i)(C), on the [*] anniversary of the Program End Date, and shall continue in each case on a country-by-country and product-by-product basis until the last to expire of the Patent Rights in the country covering the composition or use of the Royalty-

Bearing Product, or, in the event there is no such Patent Right in the country of manufacture or sale, until the expiration of [*] years from the First Commercial Sale in any country of such Royalty-Bearing Product; provided, that, notwithstanding the foregoing, (x) the Royalty Term for any Combined Product sold by BECTON under Section 9.2.1(a)(ii) or sold by QIAGEN under Section 9.2.2(a)(ii) shall continue only until the [*] of the Program End Date, (y) the Royalty Term for any Combined Product sold by BECTON under Section 9.2.1(b) or Section 9.2.3(c)(i)(C) or sold by QIAGEN under Section 9.2.2(b) or Section 9.2.3(d)(i)(C) shall continue only for a [*] and (z) the License Term and the Royalty Term for any Combined Product sold by the Joint Venture under Section 9.1.1(ii) and 9.1.2(ii) shall continue only until the Program End Date. Upon the expiration of the Royalty Term and License Term for each Royalty-Bearing Product, the paying Party shall have a paid up, royalty-free license under any and all Technology and Patent Rights of the other Party covering such Royalty-Bearing Product, for purposes of the manufacture, use, sale or import thereof. The Parties hereby acknowledge that royalties may be payable for a Royalty-Bearing Product for which no Patent Rights exist. In such case, such royalties shall be in consideration of the commercial advantage and background information gained from the Joint Venture hereunder, for the other Party's contribution to the Research Program and for the exclusivity of the relationship as set forth in Section 3.1 and in the Non-Competition Agreement.

9.4 Extension of Rights to Affiliates; Sublicenses to Third Parties. BECTON shall have the right to extend the rights and licenses granted to it under Section 9.2.1 and 9.2.3, and QIAGEN shall have the right to extend the rights and licenses granted to it under Section 9.2.2 and 9.2.3, to their respective Affiliates. Additionally, BECTON and QIAGEN shall have the right to grant sublicenses under such licenses to Third Parties only to the extent provided in such Section 9.2.1, 9.2.2 or 9.2.3, as the case may be. It shall be a condition of any such extension or sublicense that the Affiliate and Third Parties agree to be bound by all of the applicable terms and conditions of this Agreement. Each Party shall provide copies to such other Party of each sublicense to be granted to any Third Parties under this Section in the form to be executed at least ten (10) days prior to such execution. If either Party grants a sublicense to a Third Party or extends rights or licenses to its Affiliates, such Party shall be deemed to have guaranteed that such sublicensee or Affiliate will fulfill all of such Party's obligations under this Agreement; provided, however, that such Party shall not be relieved for its obligations pursuant to this Agreement as a result of such sublicense or extension of rights.

9.5 Rights to JV Technology.

(a) Any and all JV Technology and JV Patent Rights shall be owned by the Joint Venture.

(b) In consultation with the Patent Coordinators, the Management Committee will coordinate the determination of what patents will be filed on JV Technology. Responsibility for filing and prosecution of patents (including the defense of interferences and similar proceedings) on JV Technology will be agreed upon by the Patent Coordinators on a case-by-case basis and handled by mutually acceptable outside patent counsel charged with the duty to act in the best interests of the Joint Venture. Each Party shall also promptly give notice to the other of the grant, lapse, revocation, surrender, invalidation or abandonment of any JV Patent Rights for which it has responsibility.

9.6 Rights to Joint Technology. Rights to Joint Technology shall be allocated as follows:

(a) Any and all Joint Technology and Joint Patent Rights shall be jointly owned by QIAGEN GmbH and BDX.

(b) Promptly after the identification by either Party or by the Joint Venture of any Joint Patent Rights, the Patent Coordinators shall, solely for purposes of determining which Party shall control patent filings with respect thereto, use their respective good faith efforts to apportion the inventorship of such Joint Technology between the Parties in accordance with procedures mutually agreed to the Parties. The Party to which the majority of the inventorship of such patentable Joint Technology is attributed in accordance with the foregoing procedures shall be responsible for the preparation of patent applications for such Joint Technology and shall file, prosecute and maintain such patent applications in the Primary Filing Countries at its cost and expense. If the Patent Coordinators determine that each Party has a 50% inventorship interest or are otherwise unable to determine inventorship as between the Parties as provided herein, the Management Committee shall determine, in good faith, for each item of Joint Patent Rights or other patentable Joint Technology, which of the Parties shall be responsible for filing, prosecuting, maintaining and enforcing patent rights with respect thereto in the Primary Filing Countries. If both Parties desire that a particular patent application be filed in a country or countries in addition to the Primary Filing Countries, then the responsibility for payment of the costs and expenses of filing, prosecution and maintenance of such patent applications shall be as set forth in this Section 9.6(b), as applicable. If either Party, alone, desires that a particular patent application be filed in a country or countries in addition to the Primary Filing Countries, then that Party shall pay all costs and expenses for filing, prosecution and maintenance of patent applications filed in such additional countries. Each Party shall keep the other currently informed of the filing and progress of all material aspects of the prosecution of all patent applications filed by it in accordance with this Section 9.6 and of the issuance of patents thereon, and shall consult with the other Party concerning any decisions which would affect the scope of any issued claims and

other prosecutorial details, including the potential abandonment of any application. The Party with responsibility for prosecution shall furnish copies of relevant filings and correspondence to the Joint Venture as reasonably requested by the Joint Venture and cooperate with the Joint Venture and the other Party to achieve consistency in prosecution of all patent applications relating to the Research Program.

(c) QIAGEN and BECTON shall each appoint a Patent Coordinator who shall serve as such Party's primary liaison with the other Party on matters relating to patent filing, prosecution, maintenance and enforcement. Each Party may replace its Patent Coordinator at any time by notice in writing to the other Party. The initial Patent Coordinators shall be:

For QIAGEN: Patent and Licensing Manager
QIAGEN GmbH
Max-Volmer Strasse 4
40724 Hilden, Germany
Tel. No. 49-2103-892-704
Fax No. 49-2103-892-777

For BECTON: David W. Highet
Senior Intellectual Property Counsel
Becton, Dickinson and Company
1 Becton Drive
Franklin Lakes, New Jersey 07417
Tel. No. 201-847-5317
Fax No. 201-848-9228
Email: david_w_highet@bd.com

9.7 Review of Additional Technology.

[*]

[one page redacted]

10. COMMERCIALIZATION OF JOINT VENTURE PRODUCTS

10.1 Commercialization of JV Products. Whenever QIAGEN, BECTON or the Joint Venture believes a JV Product has been developed in the course of the Research Program, it shall promptly notify and provide all relevant data to the Management Committee. Upon such notice (and on its own initiative even without notice), the Management Committee shall determine whether a JV Product has been developed by the Joint Venture utilizing criteria to be established by the Management Committee and furnished to the Parties in writing. Upon a determination by the Management Committee that a JV

Product has been developed by the Joint Venture (i) the Management Committee shall provide prompt written notice to each of QIAGEN and BECTON and (ii) QIAGEN and BECTON and the Joint Venture shall negotiate, execute and deliver a Product Manufacturing, Supply and Marketing Agreement (the "Product Agreement") in form and substance satisfactory to the Parties covering such JV Product, and including the following terms:

10.1.1 Supply of JV Products to BECTON and QIAGEN; Transfer Pricing. The Product Agreement shall provide that, during the term of the Product Agreement, the Joint Venture shall manufacture and sell or shall contract with either or both Parties to manufacture or supply JV Products or components thereof, exclusively to the Party or Parties designated in the Commercialization Plan all of such Party's total worldwide requirements of JV Product. The Management Committee shall determine and recommend to the Parties the transfer pricing terms for such JV Products, which transfer price shall reflect a distribution discount for such JV Products of [*] shall be determined by the Management Committee.

10.1.2 Commercialization of JV Products. The Product Agreement shall provide that BECTON and QIAGEN shall develop and the Management Committee shall review, a joint commercialization plan ("Commercialization Plan") for each JV Product, which shall include but not be limited to (i) demographics and market dynamics, market strategies, estimated country launch dates, a worldwide sales and expense forecast (including at [*]) and expected product profile, (ii) a market plan (including advertising and detailing forecasts and pricing strategies pertaining to discounts, samples and nominal price sales, as well as expected assignments of detailing responsibilities between the Parties' respective sales forces; (iii) a commercialization budget ("Commercialization Budget") for each JV Product, including the Third Parties to be utilized, if any, and the arrangements with them that have been or are proposed to be agreed upon; and (iv) amended Commercialization Milestones or Commercialization Milestones in addition to those Commercialization Milestones set forth in the Research Plan. Each Commercialization Budget shall include a budget of the expenses expected to be incurred in connection with performing the Commercialization Plan and the Commercialization Budget shall be submitted to the Management Committee for review and approval by a date to be established by the Management Committee. The Parties hereby acknowledge that the JV Products contemplated under the Joint Venture's business plan as of the Effective Date are intended to have the characteristics set forth in Schedule 10.1.2 attached hereto, and the [*] provided, however, that the Management Committee may, from time to time, make decisions to change the distributorship of such JV Products. It is the

understanding of the Parties that the Management Committee shall determine which Party or Parties shall be the distributor of JV Products other than JV Products having characteristics set forth in Schedule 10.1.2.

10.2 Rights to JV Products. Subject to this Agreement, the Management Committee shall have sole discretion in determining whether to grant any licenses to, or to otherwise enter into contracts with, QIAGEN, BECTON or Third Parties for the manufacture of any JV Product, and the terms and conditions of any such licenses or contracts, in order to maximize the value of the Joint Venture.

11. CONDITIONS TO CLOSING

11.1 Closing. The closing of the transactions which are the subject matter of this Agreement (the "Closing") will take place at 9:00 a.m. Eastern Standard Time on a date to be specified by the parties (the "Closing Date"), which shall be not later than the second business day after satisfaction or waiver of the conditions set forth in Section 11.2 (and in no event later than September 30, 1999), at the offices of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. in Boston, Massachusetts unless another date or place is agreed to in writing by the parties hereto.

11.2 Conditions to Closing. The respective obligations of each Party to effect the transactions contemplated under this Agreement shall be subject to the satisfaction, at or prior to the Closing Date, of the following conditions (the performance of any of which by the other Party may be waived in writing by QIAGEN or BECTON, as the case may be):

(a) Neither QIAGEN nor BECTON shall be subject to any order, decree or injunction by a court of competent jurisdiction which prevents or materially delays the consummation of the transactions contemplated hereby;

(b) No statute, rule or regulation shall have been enacted or promulgated, and no decree, writ or injunction shall have issued and shall remain in effect, by any court or governmental or regulatory body, agency or authority which restrains, enjoins or otherwise prohibits the consummation of the transactions contemplated hereby. No inquiry, action, suit or proceeding before any court or governmental or regulatory body, agency or authority, and no inquiry or investigation by any governmental or regulatory body, agency or authority shall have commenced, with respect to the transactions contemplated hereby.

(c) The Parties shall have filed for and obtained a favorable ruling from the appropriate Swiss tax authorities with respect to the proposed allocation of profits and losses of the Joint Venture under Swiss law;

(d) The JV Operating Agreement shall have been entered into by the parties thereto and the

Articles shall have been filed with the Register of Commerce of the canton of Zurich;

(e) Each Party shall have executed and delivered the Ancillary Agreements.

(f) Each Party shall have furnished to the other Party evidence satisfactory to the other Party of its authority to enter into the Joint Venture, the consent or approval of those persons or entities whose consent or approval shall be required in order for such Party to consummate the transactions contemplated hereby (including, without limitation, any necessary consents of third parties for the grant of licenses or sublicenses to the Joint Venture), and such other documents as the other Party may reasonably request; and

(g) The representations and warranties of the other Party shall be accurate in all material respects as of the time of the Closing and such other Party shall have delivered a certificate of an officer certifying the same.

(h) [*]

12. TERMINATION AND DISENGAGEMENT

12.1 Term. This Agreement shall take effect as of the Effective Date and shall continue until the Winding Up Date, unless sooner terminated pursuant hereto.

12.2 Termination of Agreement and Research Program.

12.2.1 Events of Termination. The following shall constitute "Events of Termination" hereunder:

(a) if either Party makes an assignment for the benefit of creditors, appoints or suffers appointment of a receiver or trustee over substantially all of its property, files a petition under any bankruptcy or insolvency act or has any such petition filed against it, and in the case of an involuntary bankruptcy filing only, which is not discharged within sixty (60) days of the filing thereof;

(b) upon a material breach of either Party (subject first to the dispute resolution procedures set forth in Article 15 hereof) in the full and timely observance or performance of its material covenants or obligations under this Agreement, the JV Operating Agreement and/or the Ancillary Agreements which affects the ability of the Joint Venture to carry out its objectives and purposes, upon sixty (60) days' prior written notice by the other Party, which notice shall specify the nature of the breach and the steps to be taken to cure such breach; provided, however, that if such breach is cured by the breaching Party within such sixty (60) day period, such notice of termination shall be deemed null and void as if the same had never been given and such breach shall not constitute an Event of Termination;

(c) if without fault of the terminating Party, the Closing shall not have occurred on or before September 30, 1999; [*]

12.3 Consequences of Event of Termination.

12.3.1 Technology Rights. Upon the occurrence of an Event of Termination:

(a) Each Party will retain the licenses granted to it by the other Party pursuant to the Cross License Agreement and the license granted to it by the Joint Venture pursuant to the JV License Agreement; provided, that, the royalty rates provided in the Cross License Agreement shall be subject to adjustment in accordance with Section 12.3.2.

(b) Each of the BECTON License Agreement and the QIAGEN License Agreement [*]

(c) The Product Agreement [*]

(d) Following the Program End Date and until the Winding Up Date (as defined below), the Joint Venture will continue to operate its business in the same manner as it was operated prior to the Program End Date, and shall, among other things, continue to maintain its existing licenses and collect royalties and other license fees with respect thereto, [*]

(e) This Agreement shall terminate and be of no further force and effect except as provided in Section 12.4.

12.3.2 Effect of Breach on Royalty Rates.

(a) In the event that an Event of Termination shall have occurred pursuant to Section 12.2.1(b):

(i) [*]

(ii) [*]

12.4 Surviving Provisions.

Termination of this Agreement shall be without prejudice to:

(a) the rights and obligations of the Parties provided in Article 7 and 14 and Sections 8.2.1, 8.2.2 and 8.2.3 hereof;

(b) QIAGEN's and BECTON's right to receive all payments earned and/or accrued prior to the; and

(c) any other rights or remedies which either Party may otherwise have against the other.

12.5 Consequences of Change of Control or Acquisition.

12.5.1 Notice. In accordance with the following provisions in this Section 12.5, if either QIAGEN or BECTON (the "Acquired Party ") shall seek to enter into a transaction involving an Acquisition or Change of Control, then the [*]

12.5.2 Definitions. For purposes hereof, an "Acquisition" shall be deemed to have occurred if either Party shall consolidate or merge with [*]

13. REPRESENTATIONS AND WARRANTIES

13.1 Mutual Representations. QIAGEN and BECTON each represents and warrants as follows which are true and correct as of the Effective Date and as of the Closing Date and which shall survive the Closing:

13.1.1 Organization. It is a corporation duly organized, validly existing and is in good standing under the laws of the State of New Jersey as to BDX; the laws of the Switzerland, as to BECTON GmbH, QIAGEN NV and QIAGEN AG; and the laws of Germany as to QIAGEN GmbH, is qualified to do business and is in good standing as a foreign corporation in each jurisdiction in which the performance of its obligations hereunder requires such qualification and has all requisite power and authority, corporate or otherwise, to conduct its business as now being conducted, to own, lease and operate its properties and to execute, deliver and perform this Agreement.

13.1.2 Authorization. The execution, delivery and performance by it of this Agreement, the JV Operating Agreement and the Ancillary Agreements have been duly authorized by all necessary corporate action and do not and will not (a) require any consent or approval of its stockholders or (b) conflict with, constitute a default under, or result in breach or violation of, any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to it or any provision of its charter documents, or any indenture, mortgage, deed of trust, note agreement or other agreement or instrument to which it is a party or by which it is bound.

13.1.3 Binding Agreement. This Agreement, the JV Operating Agreement and each of the Ancillary Agreements is a legal, valid and binding obligation of it enforceable against it in accordance with its terms and conditions.

13.1.4 <u>No Inconsistent Obligation</u>. It is not under any obligation to any person, or entity, contractual or otherwise, that is materially conflicting or materially inconsistent in any respect with the terms of this Agreement, the JV Operating Agreement and the Ancillary Agreements or that would materially impede the diligent and complete fulfillment of its obligations.

13.1.5 <u>Intellectual Property</u>. It has the full right and authority to grant the licenses set forth in Section 9.1 hereof.

13.1.6 <u>Compliance</u>. No approval or consent of any United States federal, state, county, local or other governmental agency or body, or any individual or other entity is required in connection with the execution, delivery, consummation and performance by such Party of this Agreement, the JV Operating Agreement and the Ancillary Agreements.

14. INDEMNIFICATION

14.1 <u>Indemnification of QIAGEN by BECTON</u>. BECTON shall indemnify, defend and hold harmless QIAGEN and their respective directors, officers, employees, and agents and their respective successors, heirs and assigns (collectively, the "QIAGEN Indemnitees"), against any liability, damage, loss or expense (including reasonable attorneys' fees and expenses of litigation) incurred by or imposed upon the QIAGEN Indemnitees, or any one of them, in connection with any claims, suits, actions, demands or judgments of Third Parties (except in cases where such claims, suits, actions, demands or judgments result from a material breach of this Agreement, gross negligence or willful misconduct on the part of QIAGEN), arising out of any actions of BECTON in the performance of the Research Program, the use by the Joint Venture of the BECTON Background Technology or the development, testing, production, manufacture, promotion, import, sale or use by any person of any Combined Product which is manufactured or sold by BECTON or by a licensee, sublicensee, distributor or agent of BECTON. BECTON shall also indemnify and hold harmless QIAGEN, its officers and employees against all claims of QIAGEN inventors of Patent Rights licensed to BECTON hereunder that are entitled under the Arbeitnehmererfindungsrecht to receive royalty payments relating to BECTON's, or its successors', heirs', affiliates', assignees', agents', distributors' or the likes', commercial use of such Patent Rights.

14.2 <u>Indemnification of BECTON by QIAGEN</u>. QIAGEN shall indemnify, defend and hold harmless BECTON and their respective directors, officers, employees, and agents and their respective successors, heirs and assigns (collectively, the "BECTON Indemnitees"), against any liability, damage, loss or expense (including reasonable attorneys' fees and expenses of litigation) incurred by or imposed upon the BECTON Indemnitees, or any one of them, in connection with any claims, suits, actions,

demands or judgments of Third Parties (except in cases where such claims, suits, actions, demands or judgments result from a material breach of this Agreement, gross negligence or willful misconduct on the part of BECTON), arising out of any actions of QIAGEN in the performance of the Research Program, the use by the Joint Venture of the QIAGEN Background Technology or the development, testing, production, manufacture, promotion, import, sale or use by any person of any Combined Product which is manufactured or sold by QIAGEN or by a licensee, sublicensee, distributor or agent of QIAGEN. QIAGEN shall also indemnify and hold harmless BECTON, its officers and employees against all claims of BECTON inventors of Patent Rights licensed to QIAGEN hereunder that are entitled under the Arbeitnehmererfindungsrecht to receive royalty payments relating to QIAGEN's, or its successors', heirs', affiliates', assignees', agents', distributors' or the likes', commercial use of such Patent Rights.

14.3 Warranty Disclaimer. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTY WITH RESPECT TO ANY TECHNOLOGY, GOODS, SERVICES, RIGHTS OR OTHER SUBJECT MATTER HEREOF AND HEREBY DISCLAIMS WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT WITH RESPECT TO ANY AND ALL OF THE FOREGOING.

14.4 Limited Liability. NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT OR OTHERWISE, NEITHER QIAGEN NOR BECTON WILL BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR (I) ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OR LOST PROFITS OR (II) COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES.

15. RESOLUTION OF DISPUTES

15.1 Mediation. In the event of any dispute, difference or question arising between the Parties in connection with this Agreement, the JV Operating Agreement or the Ancillary Agreements, the construction hereof or thereof, or the rights, duties or liabilities of either Party hereunder or under the JV Operating Agreement or Ancillary Agreements (other than disputes concerning Management Committee decisions subject to resolution by the good faith efforts of specified persons under Section 6.8 of the JV Operating Agreement), either Party may, but shall not be obligated to, invite mediation of the controversy or claim under the then correct Center for Public Resources Procedure for Mediation of Business Disputes. Once mediation is initiated by one Party, the other Party shall participate in and conduct the

mediation procedures in good faith. If a negotiator intends to be accompanied at a telephone conference or a meeting by an attorney, the negotiator for the other Party shall be given at least three (3) days notice of such intention, and may also be accompanied by an attorney. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for the purposes of the Federal Rules of Evidence and any state rules of evidence. All applicable statutes of limitations and defenses based on the passage of time shall be tolled while the negotiation and mediation procedures set forth in this Section 15.1 are pending. The parties will take such action, if any, as may be reasonably required to effectuate such tolling.

15.2 Arbitration. In the event that the Parties are unable or unwilling to resolve any such dispute, difference or question as provided in Section 15.1, and such dispute, difference or question is not an Event of Termination (a "Non-Termination Dispute"), then, within ninety (90) days following the initiation of mediation, such Non-Termination Dispute shall be resolved by binding arbitration in accordance with this Section 15.2 and the procedures described on Schedule 15.2 attached hereto. Unless the parties to the arbitration shall otherwise agree to a place of arbitration, the place of arbitration shall be at New York, New York, U.S.A. at a site determined by the arbitrator. The arbitration award shall be final and binding upon the parties to such arbitration and may be entered in any court having jurisdiction.

16. MISCELLANEOUS

16.1 Notices. All notices, requests and other communications to QIAGEN, BECTON and the Joint Venture hereunder or under the JV Operating Agreement or Ancillary Agreements shall be in writing (including telecopy or similar electronic transmissions), shall refer specifically to the Agreement(s) to which they pertain and shall be delivered personally to a member of the Management Committee delivered by a courier service providing evidence of receipt or delivered by facsimile transmission with a printed acknowledgement of receipt, in each case to the respective address specified below (or such other address as may be specified in writing to the other Party hereto):

If to BECTON:

BECTON DICKINSON BIOSCIENCES
54 Loveton Circle
Sparks, MD 21152
Attn: General Manager, BD Gene

With a copy to:

BECTON, DICKINSON AND COMPANY
1 Becton Drive
Franklin Lakes, NJ 07417

Attn: General Counsel

If to QIAGEN:	QIAGEN GmbH Max Volmer-Strasse 4 40724 Hilden, Germany Attn: Chief Executive Officer
With copies to:	Patent and Licensing Manager Qiagen GmbH Max Volmer-Strasse 4 40724 Hilden Germany
	Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. One Financial Center Boston, MA 02111 Attn: Jeffrey M. Wiesen, Esq.
If to the Management Committee:	To the Co-Chairs at their respective addresses at BECTON and QIAGEN.

Any notice or communication given in conformity with this section shall be deemed to be effective on the same day as delivered if delivered personally, delivered by courier or delivered by facsimile transmission.

16.2 Governing Law and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the application of principles of conflicts of law thereof.

16.3 Currency Translations. All costs charged by either Party hereunder will be charged in the currency or currencies in which the same are incurred. Any costs incurred by either Party in currencies other than United States Dollars will be converted to United States Dollars as of the end of each calendar quarter using the average exchange rate for such calendar quarter based on rates reported daily in The Wall Street Journal during such calendar quarter. The Parties hereto shall each bear all risks of exchange losses and/or currency restrictions, regardless of when expenditures relating to the charging of such costs are actually made by either Party.

16.4 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective legal representatives, successors and permitted assigns.

16.5 Headings. Section and subsection headings are inserted for convenience of reference only and do not form a part of this Agreement.

16.6 Counterparts. This Agreement may be executed simultaneously in two or more

counterparts, each of which shall be deemed an original.

16.7 Amendment; Waiver. This Agreement may be amended, modified, superseded or canceled, and any of the terms may be waived, only by a written instrument executed by each Party or, in the case of waiver, by the Party or Parties waiving compliance. The delay or failure of any Party at any time or times to require performance of any provisions shall in no manner affect the rights at a later time to enforce the same. No waiver by any Party of any condition or of the breach of any term contained in this Agreement, whether by conduct, or otherwise, in any one or more instances, shall be deemed to be, or considered as, a further or continuing waiver of any such condition or of the breach of such term or any other term of this Agreement.

16.8 No Third Party Beneficiaries. Except as set forth in Article 14 hereof, no Third Party, including any employee of any Party to this Agreement, shall have or acquire any rights by reason of this Agreement.

16.9 Assignment and Successors. Neither this Agreement nor any obligation of a Party hereunder may be assigned by either Party without the consent of the other which shall not be unreasonably withheld, except that each Party may assign this Agreement, its interest in the Joint Venture, and the rights, obligations and interests of such Party, in whole or in part, to any of its Affiliates, to any entity created for the purpose of providing financing for either Party's contributions to the Joint Venture provided, however, that any such assignment by a Party to such entity shall not be permitted without the prior consent of the other Party, which shall not be unreasonably withheld, and provided, further, that no such assignment shall relieve the assigning Party of responsibility for its obligations hereunder. Subject to the foregoing and Section 12.5 hereof, any reference to QIAGEN or BECTON hereunder shall be deemed to include the successor thereto and assigns thereof. Subject to the terms hereof, this Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

16.10 Force Majeure. Neither QIAGEN nor BECTON shall be liable for failure of or delay in performing obligations set forth in this Agreement, and neither shall be deemed in breach of its obligations, if such failure or delay is due to natural disasters or any causes beyond the reasonable control of QIAGEN or BECTON. In event of the occurrence of such force majeure, the Party affected thereby shall use reasonable efforts to cure or overcome the same and resume performance of its obligations hereunder.

16.11 Interpretation. The Parties hereto acknowledge and agree that: (i) each Party and its counsel reviewed and negotiated the terms and provisions of this Agreement and have contributed to its

revision; (ii) the rule of construction to the effect that any ambiguities are resolved against the drafting Party shall not be employed in the interpretation of this Agreement; and (iii) the terms and provisions of this Agreement shall be construed fairly as to all parties hereto and not in a favor of or against any Party, regardless of which Party was generally responsible for the preparation of this Agreement.

16.12 Integration; Severability. This Agreement, together with the JV Operating Agreement and the Ancillary Agreements, constitutes on and as of the Effective Date the entire understanding of the Parties with respect to the subject matter hereof and effective upon their execution and delivery, all prior or contemporaneous agreements and understandings, whether written or oral, between the Parties with respect to the subject matter hereof and thereof are hereby superseded in their entirety, including but not limited to the Existing Research Agreement. Unless otherwise indicated, in the event of a conflict between this Agreement and any of the Ancillary Agreements, this Agreement shall control. If any provision hereof should be held invalid, illegal or unenforceable in any respect, in whole or in part, in any jurisdictions then, to the fullest extent permitted by law, (a) all other provisions hereof shall remain in full force and effect in such jurisdiction and shall be liberally construed in order to carry out the intentions of the Parties hereto as nearly as may be possible and (b) such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of such provision in any other jurisdiction. To the extent permitted by applicable law, each Party hereby waives any provision of law that would render any provision hereof prohibited or unenforceable in any respect.

16.13 Further Assurances. Each of QIAGEN and BECTON agrees to duly execute and deliver, or cause to be duly executed and delivered, such further instruments and do and cause to be done such further acts and things, including, without limitation, the filing of such additional assignments, agreements, documents and instruments, that may be necessary or as the other Party hereto may at any time and from time to time reasonably request in connection with this Agreement or to carry out more effectively the provisions and purposes of, or to better assure and confirm unto such other Party its rights and remedies under, this Agreement.

16.14 Actions by Joint Venture. Whenever this Agreement provides that the Joint Venture (or its Management Committee) shall take or refrain from taking any action or shall do or refrain from doing anything, the Members agree that they shall cause the Joint Venture (or its Management Committee) to do so.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

BECTON, DICKINSON AND COMPANY

By: ______________________________

Title: ______________________________

Date: ______________________________

By: ______________________________

Title: ______________________________

Date: ______________________________

BECTON DICKINSON SAMPLE COLLECTION GmbH

By: ______________________________

Title: ______________________________

Date: ______________________________

QIAGEN N.V.

By: ______________________________

Title: ______________________________

Date: ______________________________

QIAGEN AG

By: ______________________________

Title: ______________________________

Date: ______________________________

SCHEDULE 1

RESEARCH PLAN

The attached plan is descriptive of the research to be undertaken by the Joint Venture. Terms used herein may not have the exact meaning of terms defined in Section 1 of the Joint Venture Master Agreement.

SCHEDULE 10.1.2

A device wherein stabilization technology is incorporated into a collection vessel, such as a device wherein the QCX technology is incorporated into a VACUTAINER™ brand collection tube envisioned to become the first JV Product.

An integrated system of sample collection, nucleic acid stabilization and nucleic purification/isolation including a device wherein stabilization and purification/isolation technology are incorporated into a collection vessel such as envisioned in phase 3 of the Research Program.

SCHEDULE 15.2

ARBITRATION PROCEDURES

Any arbitration commenced pursuant to Section 15.2 of this Agreement will be conducted in accordance with the following rules:

(1) In the event that either Party (the "Complaining Party") notifies the other (the "Defending Party") in writing that it believes that the Defending Party is in violation of any provision of this Agreement that is a Non-Termination Dispute, and in that notification states with reasonable particularity the nature of such alleged Non-Termination Dispute, the parties will then cooperate in an expedited arbitration proceeding in which the merits of such allegation are determined.

(2) Immediately upon receipt of the above-mentioned notification, the parties will confer and seek to agree upon a single arbitrator who is available to hear and decide the merits of the alleged violation within the time frame set forth herein. If such agreement is not reached within five (5) days of said notification, the parties will, on the first business day following the expiration of such five (5) days, jointly request in writing, sent immediately by facsimile, that the New York office of the American Arbitration Association ("AAA") select an arbitrator within five (5) days who the AAA believes, in its sole discretion, is qualified and sufficiently available to decide the matters in issue and to do so within the time frame set forth herein. If either party fails to join in such joint request the other party shall have the right to make such request on behalf of both parties.

(3) Within ten (10) days following the designation of the arbitrator, the Complaining Party shall serve, by immediate facsimile, upon the Defending Party and the arbitrator, its factual and legal submission, together with all documents it wishes to be considered by the arbitrator, in support of its claim that the Defending Party is in violation of the Agreement.

(4) Within twenty (20) days following the service of the submission referred to in sub-subsection (3) above, the Defending Party shall serve, by immediate facsimile, upon the Complaining Party, its factual and legal submission together with all documents it wishes to be considered by the arbitrator, in opposition to the Complaining Party's allegations.

(5) Within five (5) days after service of the Defending Party's submission, either party may request from the other party any specifically identified documents in the other party's possession which the requesting party believes is relevant and important for the arbitrator to consider in deciding the case. Within five (5) days of receiving such request, the other party shall either provide the requested documents or notify the requesting party and arbitrator that it opposes the request or some part thereof, in which case the arbitrator shall hold a conference call with the parties within five (5) days, hear

the parties' arguments, and decide, under the general principles followed in AAA proceedings, within two (2) days, what documents must be provided. Within two (2) days after such decision by the arbitrator, all documents required to be produced shall be delivered to the requesting party. In the event of a party's failure to make timely production of documents pursuant to the arbitrator's ruling, the arbitrator shall have discretion to disallow the claim or defense of that party.

(6) Within ten (10) days following production of all documents by the parties as provided for herein, the arbitrator shall request, by facsimile to the parties, any further factual or legal information from the parties he/she believes to be necessary to decide the matters in issue. The parties shall provide such information to the arbitrator and to each other within ten (10) days of said request.

(7) Within thirty (30) days following the completion of document production, the arbitrator shall hold a hearing at a location of the arbitrator's choosing in New York City. The length of such hearing, the number of witnesses, the number of documents to be considered, and all other aspects of such hearing shall be determined by the arbitrator such that such hearing does not last for more than ten (10) days, including weekends.

(8) Within three (3) days following the close of the hearing, either party may submit to the arbitrator, with service upon the other, further written arguments based upon evidence heard at the hearing.

(9) Within thirty three (33) days following the close of the hearing, the arbitrator shall render her/his written decision, sent by facsimile to the parties, on all issues submitted for decision. The arbitrator shall state briefly the facts and reasons for such decision.

(10) Within ten (10) days after receiving the decision, either party may submit a request to the arbitrator, with service by facsimile on the other party, for reconsideration of the decision, setting forth all factual and legal arguments in support of such request. Within five (5) days thereafter, the other party may submit to the arbitrator, with service by facsimile on the other party, an opposition or other response to the request.

(11) Within fifteen (15) days after receipt of any such requests for reconsideration and responses thereto, the arbitrator shall render her/his decision as to such request and a final ruling on the merits of all claims heard in the arbitration. This decision will be final and binding upon the parties as to all issues decided in the arbitration, subject only to judicial review under the Federal Arbitration Act.

(12) The parties shall pay promptly and in equal shares all expenses of the arbitration as assessed by the arbitrator and/or the AAA.

(13) In addition to the specific powers and responsibilities set forth herein, the arbitrator shall have all powers and discretion customarily exercised in arbitrations under the Commercial Rules of the AAA.

EXHIBIT A-1

FORM OF OPERATING AGREEMENT

EXHIBIT A-2

FORM OF ORGANIZATIONAL RULES

EXHIBIT B

FORM OF ARTICLES

EXHIBIT C

FORM OF ADMINISTRATIVE SERVICES AGREEMENT

EXHIBIT D

FORM OF SCIENTIFIC RESEARCH SERVICES AGREEMENT

EXHIBIT E

FORM OF QIAGEN LICENSE AGREEMENT

EXHIBIT F

FORM OF BECTON LICENSE AGREEMENT

EXHIBIT G-1

FORM OF CROSS LICENSE AGREEMENT

EXHIBIT G-2

FORM OF JV LICENSE AGREEMENT

TRADOCS:1312960.1(S53401!.DOC)

Execution Copy

EXHIBIT 10.2

AGREEMENT AND PLAN OF MERGER

BY AND AMONG

QIAGEN, N.V.,

QIAGEN ACQUISITION CORP.

RAPIGENE, INC.,

DARWIN MOLECULAR CORPORATION

AND

CELLTECH GROUP, plc

Dated as of December 23, 1999

TABLE OF CONTENTS

Page

ARTICLE I THE MERGER **1**

1.1 THE MERGER **1**

1.2 EFFECTIVE TIME 2
1.3 EFFECT OF THE MERGER 2
1.4 CERTIFICATE OF INCORPORATION AND BY-LAWS OF SURVIVING CORPORATION 2
1.5 DIRECTORS AND OFFICERS. 2
1.6 MERGER CONSIDERATION; CONVERSION OF COMPANY SHARES 2
1.7 CANCELLATION OF TREASURY SHARES 3
1.8 CAPITAL STOCK OF MERGER SUB. 3
1.9 SURRENDER OF CERTIFICATES 4
1.10 FURTHER OWNERSHIP RIGHTS IN COMPANY COMMON SHARES. 4
1.12 CLOSING 4
1.13 FURTHER ASSURANCES 4
1.14 CLOSING OF COMPANY TRANSFER BOOKS 5

ARTICLE II REPRESENTATIONS AND WARRANTIES OF THE COMPANY AND THE AFFILIATED ENTITIES **5**

2.1 ORGANIZATION AND QUALIFICATION; SUBSIDIARIES 5
2.2 CERTIFICATE OF INCORPORATION AND BY-LAWS. 5
2.3 CAPITALIZATION 6
2.4 AUTHORITY RELATIVE TO THIS AGREEMENT 6
2.5 NO CONFLICT; REQUIRED FILINGS AND CONSENTS 7
2.6 MATERIAL AGREEMENTS 8
2.7 COMPLIANCE 8
2.8 FINANCIAL STATEMENTS 9
2.9 BOOKS AND RECORDS 9
2.10 ACCOUNTS AND NOTES RECEIVABLE 9
2.11 INVENTORY 10
2.12 CUSTOMERS AND DISTRIBUTORS 10
2.13 ABSENCE OF CERTAIN CHANGES OR EVENTS 10
2.14 NO UNDISCLOSED LIABILITIES 11
2.15 ABSENCE OF LITIGATION 11
2.16 EMPLOYEE BENEFIT PLANS 12
2.17 EMPLOYMENT AND LABOR MATTERS 14
2.18 ABSENCE OF RESTRICTIONS ON BUSINESS ACTIVITIES 15
2.19 TITLE TO ASSETS; LEASES 15
2.20 TAXES. 16
2.21 ENVIRONMENTAL MATTERS 18
2.22 INTELLECTUAL PROPERTY 19
2.23 INSURANCE 21
2.24 BROKERS 22
2.25 CERTAIN BUSINESS PRACTICES 22
2.26 INTERESTED PARTY TRANSACTIONS 23
2.27 DISCLOSURE. 23
2.28 HSR FILING. 23

ARTICLE III REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB **23**

3.1 Organization and Qualification 23
3.2 Reports 24
3.3 Authorization of Agreement 24
3.4 Approvals. 25
3.5 No Violation 25
3.6 Absence of Certain Changes or Events; Right to Use Intellectual Property 25
3.7 Brokers. 26
3.8 Disclosure. 26

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF THE COMPANY STOCKHOLDER 26

4.1 Ownership of Company Shares 26
4.2 Investment Representations 26

ARTICLE V CONDUCT OF BUSINESS PENDING THE MERGER 27

5.1 Conduct of Business by the Company Pending the Merger 27
5.2 No Solicitation of Other Proposals 29

ARTICLE VI ADDITIONAL OBLIGATIONS 30

6.1 Access to Information; Confidentiality 30
6.2 All Reasonable Efforts; Further Assurances 30
6.3 Notification of Certain Matters 32
6.4 Public Announcements 32
6.5 Takeover Laws 33
6.6 Release Agreements 33
6.8 Maintenance, Prosecution and Filing Obligations 33
6.8 Employee Benefits. 33
6.9 Listings 34
6.10 Indemnification of Directors and Officers 34
6.11 Registration of Shares Issued in the Merger. 34

ARTICLE VII CONDITIONS OF MERGER 38

7.1 Conditions to Obligation of Each Party to Effect the Merger 38
7.2 Additional Conditions to Obligations of Parent and Merger Sub. 39
7.3 Additional Conditions to Obligations of the Company 40

ARTICLE VIII TERMINATION, AMENDMENT AND WAIVER 41

8.1 Termination 41
8.2 Effect of Termination. 42
8.3 Fees and Expenses 42
8.4 Amendment 42
8.5 Waiver 42

ARTICLE IX INDEMNIFICATION; ESCROW 42

9.1 Survival 42
9.2 Indemnification 43
9.3 Claims for Indemnification 43
9.4 Threshold for Indemnification 44
9.5 Indemnification Priority 44
9.6 Limitations of Indemnification 44
9.7 Escrow Arrangements 45

ARTICLE X GENERAL PROVISIONS 45

10.1 Agreement Not to Compete 45
10.2 Additional Covenants 46

10.3	**NOTICES**	46
10.4	**DISCLOSURE SCHEDULES**	47
10.5	**CERTAIN DEFINITIONS**	47
10.6	**INTERPRETATION**	50
10.7	**SEVERABILITY**	51
10.8	**ENTIRE AGREEMENT**	51
10.9	**ASSIGNMENT**	51
10.10	**PARTIES IN INTEREST**.	51
10.11	**FAILURE OR INDULGENCE NOT WAIVER; REMEDIES CUMULATIVE**	51
10.12	**GOVERNING LAW**.	51
10.13	**COUNTERPARTS**	52

EXHIBIT A - Certificate of Merger
EXHIBIT B - Form of Release Agreement
EXHIBIT C - Form of Opinion of Counsel to the Company
EXHIBIT D - Form of Opinion of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
EXHIBIT E - Form of Escrow Agreement
EXHIBIT F - Form of License Agreement
EXHIBIT G - Form of Services Agreement
EXHIBIT H - Terms of Facility Agreement
EXHIBIT I - Form of Convertible Promissory Note

SCHEDULES

Company's Schedules

2.2	Certificate of Incorporation and Bylaws
2.3(a)	Stock Appreciation Rights; Other Rights
2.3(b)	Capitalization; Registration Rights
2.5(a)	No Conflict; Required Filings and Consents
2.5(b)	Company Approvals
2.6	Material Agreements
2.7	Permits
2.8	Company Financial Statements
2.10	Accounts and Notes Receivable
2.12	Customers and Distributors
2.15	Absence of Litigation
2.16(a)	Employee Benefit Plans
2.16(e)	Benefits; Acceleration
2.16(g)	Medical Benefits
2.16(i)	Severance Payments
2.16(k)	Holders of Option, Warrant or Other Right to Purchase Capital Stock
2.17(a)	Employment and Consultant Agreements
2.17(b)	Employee Controversies
2.18	Restrictions on Business Activity
2.19	Real Property
2.20	Taxes
2.20(m)	Net Operating Loss; Capital Loss Carry Forwards
2.20(n)	Limitations of Net Operating Loss
2.21	Environmental Matters
2.22(a)	Intellectual Property: Patents, Trademarks, Copyrights
2.22(b)	Intellectual Property: Non-Exclusive Intellectual Property Rights
2.22(c)	Maintenance Fees
2.23	Insurance
2.24	Broker Agreements
2.26	Interested Parties

Other Schedules

5.1(l)	Related Party Agreements, Arrangements, Understandings
6.6	Release Agreements

AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER (the "Agreement"), dated as of December 23, 1999 (the "Execution Date") by and among **QIAGEN N.V.,** a Netherlands corporation ("Parent"), **QIAGEN ACQUISITION CORP,** a Delaware corporation and a wholly owned subsidiary of Parent ("Merger Sub"), **RAPIGENE, INC.**, a Delaware corporation (the "Company"), **DARWIN MOLECULAR CORPORATION,** a Delaware corporation and the sole stockholder of the Company (the "Company Stockholder"), and **CELLTECH GROUP, plc**, an English corporation (Registration No. 2159282), the parent corporation of the Company Stockholder ("Company Parent" and, collectively with the Company Stockholder, the "Affiliated Entities").

WHEREAS, the Boards of Directors of Parent, Merger Sub and the Company have each determined that it is in the best interests of their respective stockholders for Parent to acquire the Company upon the terms and subject to the conditions set forth herein; and

WHEREAS, in furtherance of such acquisition, the Boards of Directors of Parent, Merger Sub, the Company and the Company Stockholder have each approved the merger (the "Merger") of Merger Sub with and into the Company, and the Company Stockholder has consented to the Merger, each in accordance with the General Corporation Law of the State of Delaware (the "DGCL"), and the corporate law of the Netherlands, as the case may be subject to the conditions set forth herein, which Merger will result in, among other things, the Company becoming a wholly owned subsidiary of Parent, and all of the issued and outstanding shares of the common stock of the Company, $.01 par value per share (the "Company Shares"), of the Company, held by the Company Stockholder will be exchanged and converted into shares of Common Stock, Eur 0.01 par value, of Parent (the "Parent Common Stock") on the terms described herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements herein contained, and intending to be legally bound hereby, Parent, Merger Sub and the Company and the Affiliated Entities hereby agree as follows:

ARTICLE I

THE MERGER

1.1 **The Merger**. At the Effective Time (as defined in Section 1.2) and subject to and upon the terms and conditions of this Agreement and the provisions of the DGCL, Merger Sub shall be merged with and into the Company, the separate corporate existence of Merger Sub shall cease and the Company shall, as the surviving corporation in the Merger, continue its existence under the provisions of the DGCL as a wholly owned subsidiary of Parent. The Company as the

surviving corporation after the Merger is hereinafter sometimes referred to as the "Surviving Corporation."

1.2 **Effective Time**. As promptly as practicable after the satisfaction or, to the extent permitted hereunder, waiver of the conditions set forth in Article VII of this Agreement, the parties hereto shall cause the Merger to be consummated by filing the Certificate of Merger substantially in the form of Exhibit A (the "Certificate of Merger"), along with a certified copy of this Agreement, if required, with the Secretary of State of the State of Delaware, executed in accordance with the relevant provisions of the DGCL (the date and time of such filing, or such later date and time as may be specified in the Certificate of Merger by mutual agreement of Parent, Merger Sub and the Company, being the "Effective Time").

1.3 **Effect of the Merger**. At the Effective Time, the effect of the Merger shall be as provided in the applicable provisions of the DGCL. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, all the property, rights, privileges, powers and franchises of the Company and Merger Sub shall vest in the Surviving Corporation, and all debts, liabilities and duties of the Company and Merger Sub shall become the debts, liabilities and duties of the Surviving Corporation.

1.4 **Certificate of Incorporation and By-Laws of Surviving Corporation**. Unless otherwise determined by Parent prior to the Effective Time, at the Effective Time, the Certificate of Incorporation of the Company, as amended by the Certificate of Merger, shall be the Certificate of Incorporation of the Surviving Corporation until thereafter amended as provided by the DGCL. The by-laws of the Merger Sub shall be the by-laws of the Surviving Corporation until thereafter amended as provided by the DGCL.

1.5 **Directors and Officers**. The directors of Merger Sub immediately prior to the Effective Time shall be the initial directors of the Surviving Corporation, each to hold office in accordance with the Certificate of Incorporation of the Surviving Corporation. The officers of the Merger Sub immediately prior to the Effective Time shall be the initial officers of the Surviving Corporation, in each case until their respective successors are duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the Surviving Corporation's Certificate of Incorporation and by-laws. Prior to the Effective Time, the Company shall deliver to Parent resignation letters of each of the directors of the Company to be effective as of such Effective Time.

1.6 **Merger Consideration; Conversion of Company Shares**. (a) The aggregate amount of consideration to be paid to the Company Stockholder upon the conversion of, and as consideration for, all of the issued and outstanding Company Shares at the Effective Time shall equal $12,000,000 (the "Aggregate Merger Consideration"), payable as provided in subsection (b) hereof.

(b) At the Effective Time, by virtue of the Merger and without any action on the part of the parties hereto:

(i) Subject to the other provisions of this Article I, all Company Shares issued and outstanding immediately prior to the Effective Time shall be converted automatically into the right to receive the Convertible Note (as defined in subsection (ii) below).

(ii) Parent shall deliver to the Company Stockholder a convertible promissory note (the "Convertible Note") substantially in the form attached hereto as Exhibit I which shall be convertible into fully-paid and non-assessable shares of Parent Common Stock on the terms and subject to the conditions set forth in the Convertible Note.

(c) As of the Effective Time, all Company Shares issued and outstanding immediately prior to the Effective Time shall no longer be outstanding, shall automatically be canceled and retired and shall cease to exist, and the Company Stockholder shall cease to have any rights with respect thereto, except the right to receive the Aggregate Merger Consideration in the form of the Convertible Note upon surrender of such certificate in accordance with Section 1.9 hereof.

(d) The Convertible Note and the shares of Parent Common Stock issuable upon conversion of the Convertible Note (the "Conversion Shares") to be issued to the Company Stockholder in connection with the Merger will be issued in a transaction exempt from registration under the Securities Act of 1933, as amended (the "Securities Act"), by reason of Section 4(2) thereof, will be "restricted securities" which have not been registered under the Securities Act, and must be held until they are either registered or an exemption from registration becomes available for their resale. As provided in Section 6.11 hereof, Parent shall use its best efforts to prepare and file as promptly as practicable, and, in any event, within twenty (20) days following the Closing Date, a registration statement on Form F-3 with the SEC covering the resale of such shares of the Conversion Shares (the "Resale Registration Statement") and Parent shall use commercially reasonable best efforts to cause the Resale Registration Statement to become effective as promptly as practicable after filing (the date of effectiveness of such Resale Registration Statement being referred to herein as the "Registration Statement Effective Date").

(e) As soon as practicable following the Effective Time, Parent will deposit in escrow certificates representing shares of Parent Common Stock (the "Escrow Shares") having a value (based on the Closing Average) equal to 10% of the Aggregate Merger Consideration, to be held in accordance with the terms of the Escrow Agreement, a form of which is attached hereto as Exhibit E (the "Escrow Agreement"). As used herein, the term "Closing Average" shall mean the average closing price per share of Parent Common Stock (rounded to the nearest cent) on the Nasdaq National Market (as reported on the Nasdaq website) for the ten (10) consecutive trading days ending on the fifth trading day immediately prior to the Execution Date.

1.7 **Cancellation of Treasury Shares**. Each Company Share held in the treasury of the Company immediately prior to the Effective Time shall be canceled and extinguished without any conversion thereof.

1.8 **Capital Stock of Merger Sub**. Each share of common stock, par value $.001 per share, of Merger Sub (the "Merger Sub Common Stock"), issued and outstanding immediately prior to the Effective Time shall be converted into and exchanged for one validly issued, fully

paid and nonassessable share of Common Stock, par value $.01 per share, of the Surviving Corporation. Each stock certificate of Merger Sub evidencing ownership of any Merger Sub Common Stock shall continue to evidence ownership of such shares of capital stock of the Surviving Corporation.

1.9 **Surrender of Certificates**.

(a) **Exchange Agent**. Prior to the Effective Time, Parent shall designate one or more Persons to act as Exchange Agent hereunder.

(b) **Parent to Provide Convertible Note**. On or prior to the Effective Time, Parent shall make available to the Exchange Agent the originally-executed Convertible Note.

(c) **Exchange Procedures**. At the Effective Time, the Company Stockholder shall deliver to the Exchange Agent a certificate or certificates (the "Certificates") which immediately prior to the Effective Time represented outstanding Company Shares whose shares were converted into the right to receive the Convertible Note pursuant to Section 1.6 accompanied by an executed stock power. Upon surrender of the Certificates for cancellation to the Exchange Agent, together with such stock power, the Exchange Agent shall deliver to the Company Stockholder in exchange therefor, the originally-executed Convertible Note, and the Certificate so surrendered shall forthwith be canceled. Until so surrendered, each Certificate that, prior to the Effective Time, represented Company Shares will be deemed from and after the Effective Time, for all corporate purposes, to evidence the right to receive the Convertible Note.

1.10 **Further Ownership Rights in Company Common Shares**. The Convertible Note issued upon the surrender for exchange of Company Shares in accordance with the terms of this Article I shall be deemed to have been issued in full satisfaction of all rights pertaining to such Company Shares under this Article I, and there shall be no further registration of transfers on the records of the Surviving Corporation of Company Shares which were outstanding immediately prior to the Effective Time.

1.11 **Closing**. The closing of the Merger (the "Closing") will take place at 10:00 a.m. (Eastern time) on a date (the "Closing Date") to be mutually agreed upon by the parties, which date shall be not later than December 31, 1999, unless another time and/or date is agreed to in writing by the parties. The Closing shall take place at the offices of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, Massachusetts, unless another place is agreed to in writing by the parties.

1.12 **Further Assurances**. If at any time after the Effective Time, the Surviving Corporation shall consider or be advised that any deeds, bills of sale, assignments or assurances or any other acts or things are necessary, desirable or proper (a) to vest, perfect or confirm, of record or otherwise, in the Surviving Corporation its right, title or interest in, to or under any of the rights, privileges, immunities, powers, purposes, franchises, properties or assets of the Company or Merger Sub, or (b) otherwise to carry out the purposes of this Agreement, the Surviving Corporation and its proper officers and directors or their designees shall be authorized to solicit in the name of the Company or Merger Sub any third party consents or other documents

required to be delivered by any third party, to execute and deliver, in the name and on behalf of the Company or Merger Sub, all such deeds, bills of sale, assignments and assurances and do, in the name and on behalf of the Company or Merger Sub, all such other acts and things necessary, desirable or proper to vest, perfect or confirm its right, title or interest in, to or under any of the rights, privileges, immunities, powers, purposes, franchises, properties or assets of the Company or Merger Sub and otherwise to carry out the purposes of this Agreement.

1.13 **Closing of Company Transfer Books**. At the Effective Time, the stock transfer books of the Company shall be closed and no transfer of Company Shares shall thereafter be made. If, after the Effective Time, certificates representing shares of Company Shares are presented to the Surviving Corporation, they shall be canceled and presented to the Exchange Agent in accordance with Section 1.9.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE COMPANY AND THE AFFILIATED ENTITIES

Each of the Company and the Affiliated Entities hereby represent and warrant to Parent and Merger Sub that the statements contained in this Article II are correct and complete as of the Execution Date and will be correct and complete at the Effective Time, except as disclosed in the disclosure schedule dated the date hereof, certified by the President and Chief Executive Officer of the Company and delivered by the Company to Parent and Merger Sub simultaneously herewith (which disclosure schedule shall contain specific references to the representations and warranties to which the disclosures contained therein relate and an item on such disclosure schedule shall be deemed to qualify only the particular subsection or subsections specified for such item) (the “Company Disclosure Schedule”) as follows:

2.1 **Organization and Qualification; Subsidiaries**. The Company is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation. The Company has all the requisite corporate power and authority and is in possession of all franchises, grants, authorizations, licenses, permits, easements, consents, certificates, approvals and Orders (“Company Approvals”) necessary to own, lease and operate its properties and to carry on its business as it is now being conducted, except where the failure to be so organized, existing and in good standing or to have such power, authority and Company Approvals would not, individually or in the aggregate, have a Material Adverse Effect. The Company is duly qualified or licensed as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its activities makes such qualification or licensing necessary, except for such failures to be so duly qualified or licensed and in good standing which would not, individually or in the aggregate, have a Material Adverse Effect.

2.2 **Certificate of Incorporation and By-laws**. The Company has heretofore furnished to Parent a complete and correct copy of each of its Certificate of Incorporation and by-laws or equivalent organizational documents, as amended or restated to the date hereof. Such

Certificate of Incorporation and by-laws, as amended, and equivalent organizational documents of the Company are in full force and effect. The Company is not in violation of any of the provisions of its Certificate of Incorporation or by-laws or equivalent organizational documents.

2.3 **Capitalization**.

(a) The authorized capital stock of the Company consists of 2,000 Company Shares. As of the date hereof, 1,000 Company Shares are issued and outstanding; and no Company Shares were held in the treasury of the Company. Except as set forth above, as of the date hereof, no shares of voting or non-voting capital stock, other equity interests, or other voting securities of the Company were issued, reserved for issuance or outstanding. Except as set forth in Section 2.3(a) of the Company Disclosure Schedule, there are no outstanding stock appreciation rights of the Company and no outstanding limited stock appreciation rights. All outstanding shares of capital stock of the Company are, duly authorized, validly issued, fully paid and nonassessable and not subject to preemptive rights. None of the outstanding equity securities or other securities of the Company was issued in violation of the Securities Act or any other Law, Regulation or Order. There are no bonds, debentures, notes or other indebtedness of the Company with voting rights (or convertible into, or exchangeable for, securities with voting rights) on any matters on which stockholders of the Company may vote. The Company Shares owned by the Company Stockholder and being purchased pursuant to this Agreement represent one hundred percent (100%) of the outstanding capital stock of the Company of all classes.

(b) There are no outstanding securities, options, warrants, calls, rights, commitments, agreements, arrangements or undertakings of any kind (contingent or otherwise) to which the Company is a party or by which it is bound obligating the Company to issue, deliver or sell, or cause to be issued, delivered or sold, additional shares of its capital stock or other voting securities of the Company or obligating the Company to issue, grant, extend or enter into any such security, option, warrant, call, right, commitment, agreement, arrangement or undertaking. There are no outstanding contractual obligations of the Company to repurchase, redeem or otherwise acquire any shares of capital stock (or options to acquire any such shares) of the Company. There are no agreements, arrangements or commitments of any character (contingent or otherwise) pursuant to which any person is or may be entitled or to cause the Company to file a registration statement under the Securities Act or which otherwise relate to the registration of any securities of the Company, except as disclosed in Section 2.3(b) of the Company Disclosure Schedule.

(c) There are no voting trusts, proxies or other agreements, commitments or understandings of any character to which the Company is a party or by which the Company is bound with respect to the voting of any shares of capital stock of the Company or with respect to the registration of the offer, sale or delivery of any shares of the capital stock of the Company under the Securities Act.

(d) The Company has no Subsidiaries.

2.4 **Authority Relative to this Agreement**.

Each of the Company and the Affiliated Entities has all necessary corporate power and authority to execute and deliver this Agreement, and each instrument required to be executed and delivered by it at the Closing, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by each of the Company and the Affiliated Entities of this Agreement, the performance of its obligations hereunder, and the consummation by each of the Company and the Affiliated Entities of the transactions contemplated hereby, have been duly and validly authorized by all corporate action and no other corporate proceedings on the part of the Company or the Affiliated Entities are necessary to authorize this Agreement or to consummate the transactions so contemplated). This Agreement has been duly and validly executed and delivered by the Company and each of the Affiliated Entities and, constitutes the legal, valid and binding obligation of the Company and each of the Affiliated Entities, in each case except to the extent the enforcement thereof may be limited by (A) bankruptcy, insolvency, reorganization, moratorium or other similar law now or hereafter in effect relating to creditor's rights generally and (B) general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law).

2.5 **No Conflict; Required Filings and Consents**.

(a) The execution and delivery by each of the Company and the Affiliated Entities of this Agreement or any instrument required by this Agreement to be executed and delivered by the Company or the Affiliated Entities at the Closing do not, and the performance by the Company or any of the Affiliated Entities of their respective obligations under this Agreement or any instrument required by this Agreement to be executed and delivered by the Company or any of the Affiliated Entities at the Closing, shall not (i) conflict with or violate the Certificate of Incorporation or by-laws or equivalent organizational documents of the Company or any of the Affiliated Entities, (ii) conflict with or violate any Law, Regulation or Order in each case applicable to the Company or any of the Affiliated Entities or by which its or any of their respective properties is bound or affected, (iii) except as set forth in Section 2.5(a) of the Company Disclosure Schedule, result in any breach or violation of or constitute a default (or an event that with notice or lapse of time or both would become a default) under, or impair the Company's or any of the Affiliated Entities' rights or alter the rights or obligations of any third party under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the creation of a Lien or encumbrance on any of the properties or assets of the Company or any of the Affiliated Entities pursuant to, any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which the Company or any of the Affiliated Entities is a party or by which the Company or any of its Affiliated Entities or its or any of their respective properties is bound or affected, (iv) cause Parent, the Merger Sub or the Company to become subject to, or to become liable for the payment of, any Tax, or (v) cause any of the assets owned by the Company to be reassessed or revalued by any Tax authority except as set forth in Section 2.5(a) of the Company Disclosure Schedule.

(b) The execution and delivery by each of the Company and the Affiliated Entities of this Agreement or any instrument required by this Agreement to be executed and delivered by the Company or any of the Affiliated Entities at Closing do not, and the performance by the Company or any of the Affiliated Entities of their respective obligations

under this Agreement and any instrument required by this Agreement to be executed and delivered by the Company or any of the Affiliated Entities at Closing, shall not, require the Company or any of the Affiliated Entities to obtain any consent or waiver of any Person or the consent, approval, authorization or action by, license, waiver, qualification, Order or Permit, observe any waiting period imposed by, or make any filing with or notification to, any Court or Governmental Authority, domestic or foreign, except for (A) compliance with applicable requirements, if any, of the Securities Act, the Securities Exchange Act of 1934, as amended (the "Exchange Act"), state securities laws ("Blue Sky Laws"), or (B) such other third party consents, approvals, authorization, licenses, waivers, qualifications, Orders or Permits set forth in Section 2.5(b) of the Company Disclosure Schedule.

2.6 **Material Agreements**. Section 2.6 of the Company Disclosure Schedule sets forth a true and complete list of all contracts, licenses, agreements, permits and instruments to which the Company is a party or by which any of them or any of their properties or assets may be bound, which is material to the Company, and each agreement pursuant to which the Company has granted exclusive rights or have terms of one year or longer or is related in any way to Intellectual Property Rights (collectively, the "Material Agreements"). Complete copies of all Material Agreements have been provided by the Company to Parent and no oral Material Agreements exist. Each such Material Agreement is in full force and effect, is a valid and binding obligation of the Company and is enforceable against the Company in accordance with its terms and the Company does not have Knowledge that any Material Agreement is not a valid and binding agreement of the other parties thereto. Except as set forth in Section 2.6 of the Company Disclosure Schedule, each Material Agreement is enforceable in each case except to the extent the enforcement thereof may be limited by (A) bankruptcy, insolvency, reorganization, moratorium or other similar law now or hereafter in effect relating to creditors' rights generally and (B) general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law and there has not occurred any material default by any party thereto which remains unremedied as of the date hereof). Except as set forth on Section 2.6 of the Company Disclosure Schedule, (i) no condition exists or, to the Company's Knowledge, event has occurred which (whether with or without notice or lapse of time or both, or the happening or occurrence of any other event) would result in a loss of rights or an acceleration of an obligation or result in the creation of any Lien thereunder or pursuant thereto, or would constitute a default by the Company or, to the Company's Knowledge, any other party thereto under, or result in a right in termination of, any Material Agreement. The Company is in compliance with the terms of the Company Approvals except where the failure to so comply would not, individually or in the aggregate, have a Material Adverse Effect. The continuation, validity, enforceability and effectiveness of each Material Agreement will not be affected by the consummation of the transactions contemplated by this Agreement, except as set forth on Section 2.5(a) of the Company Disclosure Schedule. Furthermore, no party to a Material Agreement has repudiated any provision thereof and communicated such repudiation to the Company, and there are no negotiations pending or in progress to revise any material terms of any Material Agreement.

2.7 **Compliance**. The Company is not in conflict with, or in default or violation of, any Law, Regulation or Order applicable to the Company or by which its or any of its properties is bound or affected, except for any such conflicts, defaults or violations which would not,

individually or in the aggregate, have a Material Adverse Effect. The Company has all requisite licenses, permits, certificates, authorizations and approvals including environmental, health and safety and employee health and safety permits, from foreign, federal, state and local authorities necessary to conduct the business as currently conducted (collectively, the "Permits"), all of which Permits are set forth in Section 2.7 of the Company Disclosure Schedule. All of the Permits identified in Section 2.7 of the Company Disclosure Schedule are in full force and effect, and to the Company's Knowledge, no party thereto is in default under any of such Permits and no event has occurred and no condition exists which, with the giving of notice, the passage of time, or both, would constitute a default thereunder. No action or claim is pending or, to the Company's Knowledge, threatened, to revoke or terminate any Permit identified in Section 2.7 of the Company Disclosure Schedule. Except as set forth in Section 2.7 of the Company Disclosure Schedule, the Company is not nor has it been in violation of any Law, rule, Regulation, ordinance or court or administrative order (including, without limitation, those relating to building, zoning, environmental, disposal or hazardous substances, land use, health and safety and employee health and safety matters). Except as set forth on Section 2.7 of the Company Disclosure Schedule, the Company has not received any notice or communication from any foreign, federal, state or local governmental or regulatory authority or otherwise of any such violation and, to the Company's Knowledge, no such notice or communication is threatened.

2.8 **Financial Statements**. The Company has delivered to the Parent: (a) an unaudited balance sheet of the Company as of February 28, 1999 and the related unaudited consolidated statements of income and cash flow for the fiscal year then ended, and (b) unaudited balance sheets of the Company as of October 31, 1999 (the most recent of which, the "Company Balance Sheet") and the related unaudited consolidated statements of income and cash flow for the eight months then ended. Such financial statements (collectively, the "Company Financial Statements"), are true, correct and complete and fairly present the financial condition, the results of operations and cash flow of the Company as at the respective dates of and for the periods referred to in such financial statements, all in accordance with GAAP, subject, in the case of interim financial statements, to normal recurring year-end adjustments and the absence of notes (the effect of which will not, individually or in the aggregate, be materially adverse). Except as disclosed therein, the Company Financial Statements reflect the consistent application of such accounting principles throughout the periods involved. No financial statements of any Person other than the Company are required by GAAP to be included in the Company Financial Statements.

2.9 **Books and Records**. The books of account, minute books, stock record books, and other records of the Company, all of which have been made available to Parent, are complete and correct in all material respects, and reflect the maintenance of an adequate system of internal controls. The minute book of the Company contains accurate and complete records of all meetings held of, and corporate action taken by, the stockholders, the Boards of Directors, and committees of the Board of Directors of the Company, and no meeting of any such stockholders, Board of Directors, or committee has been held for which minutes have not been prepared and are not contained in such minute books.

2.10 **Accounts and Notes Receivable** All accounts and notes receivable reflected in the Company Financial Statements and all accounts receivable insofar as it represents income

earned arising after October 31, 1999 (collectively, the "Company Accounts Receivable") have arisen in the ordinary course of business of the Company, represent valid and enforceable obligations due to the Company (except as set forth in Section 2.10 of the Company Disclosure Schedule), and are not subject to any discount, set-off or counter-claim (except as set forth in Section 2.10 of the Company Disclosure Schedule). All such Accounts Receivable have been collected or, to the Knowledge of the Company, are fully collectible in the ordinary course of business of the Company in the aggregate amounts hereof in accordance with their terms.

2.11 **Inventory**. All inventory of the Company, whether or not reflected in the Company Balance Sheet, consists of a quality and quantity usable and salable in the ordinary course of business in all material respects, except for obsolete items and items of below-standard quality, all of which have been written off or written down to net realizable value in the Company Balance Sheet. All inventories not written off have been priced at the lower of cost or market on a first in, first out basis. The quantities of each item of inventory (whether raw materials, work-in-process, or finished goods) are not excessive, but are reasonable in the present circumstances of the Company.

2.12 **Customers and Distributors.** Section 2.12 of the Company Disclosure Schedule sets forth all representatives and distributors of the Company's products (whether pursuant to commission, royalty or other arrangement) and a list of the Company's customers (collectively, the "Customers and Distributors"). To the best knowledge of the Company, the relationships of the Company with its Customers and Distributors and its suppliers are generally good commercial working relationships. Except as provided in Section 2.12 of the Company Disclosure Schedule, there is no plan or intention of any such Customer, Distributor, or supplier, and the Company has not received any written or oral threat from any Customer, Distributor, or supplier, to terminate, cancel or otherwise adversely modify its relationship with the Company or to decrease materially or limit its services, supplies or materials to the Company or its usage, purchase or distribution of the services or products of the Company.

2.13 **Absence of Certain Changes or Events**.

(a) Since October 31, 1999, the Company has conducted its business only in the ordinary and usual course and in a manner consistent with past practice and, since such date, there has not been any (i) purchase, redemption, retirement, or other acquisition by the Company Stockholder of any shares of any such capital stock; or declaration or payment of any dividend or other distribution or payment in respect of shares of capital stock; (ii) payment or increase by the Company of any bonuses, salaries, or other compensation to any stockholder, director, officer, or (except in the ordinary course of business) employee or entry into any employment, severance, or similar Contract with any director, officer, or employee; (iii) adoption of, or increase in the payments to or benefits under, any profit sharing, bonus, deferred compensation, savings, insurance, pension, retirement, or other employee benefit plan for or with any employees of the Company; (iv) damage to or destruction or loss of any asset or property of the Company, whether or not covered by insurance, that is reasonably likely to have a Material Adverse Effect; (v) entry into, termination of, or receipt of notice of termination of (A) any license, distributorship, dealer, sales representative, joint venture, credit, or similar agreement, or (B) any Material Agreement or transaction involving a total remaining commitment by or to the Company of at least $100,000;

(vii) sale (other than sales of inventory in the ordinary course of business), lease, or other disposition of any asset or property of the Company or mortgage, pledge, or imposition of any Lien on any material asset or property of the Company, including the sale, lease, or other disposition of any of the Intellectual Property Rights; (vii) cancellation or waiver of any claims or rights with a value to the Company in excess of $100,000; (viii) material change in the accounting methods used by the Company; (ix) incurrence of any indebtedness for borrowed money or capital lease obligations outside the ordinary course of business; (x) guaranty of any indebtedness of another Person; (xi) acquisition by merger or consolidation with, or by purchasing a substantial equity interest in, or by any other manner, any business or any Person; (xii) acceleration, termination (other than end-of-term expirations), modification, cancellation, declaration of a default under or indication of an intent to terminate any Material Agreement (or series of related Material Agreements) involving more than $100,000 to which the Company is a party or by which it is bound; (xiii) any capital expenditure (or series of related capital expenditures) either involving more than $100,000 or outside the ordinary course of business; (xiv) delay or postponement of the collection of accounts receivable or the payment of accounts payable and other liabilities outside the ordinary course of business; (xvi) loan to, or, except in ordinary course of business, entry into any other transaction with, any of its directors, officers and employees; (xvi) entry into any transaction other than in the ordinary course of business; (xvii) agreement, whether oral or written, by the Company to do any of the foregoing; and (xviii) any other change, event, development or circumstance affecting the Company which, individually or in the aggregate, has, or is reasonably likely to have, a Material Adverse Effect.

(b) Since October 31, 1999, there has not been any change by the Company in its accounting methods, principles or practices, any revaluation by the Company of any of its assets, including, writing down the value of inventory or writing off notes or accounts receivable other than in the ordinary course of business, and there has not been any other action or event, and neither the Company nor any of the Affiliated Entities has agreed in writing or otherwise to take any other action, that would have required the consent of Parent pursuant to Section 4.1 had such action or event occurred after the date hereof and prior to the Effective Time, or any condition, event or occurrence which could reasonably be expected to prevent, hinder or materially delay the ability of the Company to consummate the transactions contemplated by this Agreement.

2.14 **No Undisclosed Liabilities**. The Company has no liabilities or obligations of any nature (whether absolute, accrued, fixed, contingent or otherwise), except (a) liabilities or obligations reflected in the Company Balance Sheet, (b) liabilities or obligations incurred in the ordinary course of business consistent with past practice since October 31, 1999 which are not, and will not have, individually or in the aggregate, a Material Adverse Effect on the Company and (c) liabilities or obligations which are not and will not have, individually or in the aggregate, a Material Adverse Effect on the Company.

2.15 **Absence of Litigation**. Except as described in Section 2.15 of the Company Disclosure Schedule, there is no Litigation pending against the Company or, to the Company's Knowledge, against any licensors of Intellectual Property to the Company, or, to the Company's Knowledge, threatened against the Company or the Affiliated Entities that would be or have a Material Adverse Effect on the Company. Neither the Company nor any of the Affiliated

Entities is subject to any outstanding Claim or Order which, individually or in the aggregate, has, or in the future might have, a Material Adverse Effect or would prevent, hinder or delay the Company from consummating the transactions contemplated by this Agreement.

2.16 **Employee Benefit Plans**.

(a) Section 2.16(a) of the Company Disclosure Schedule contains a true and complete list of each deferred compensation, incentive compensation, stock purchase, restricted stock option and other equity compensation plan, "welfare" plan, fund or program (within the meaning of Section 3(1) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"); each "pension" plan, fund or program (within the meaning of Section 3(2) of ERISA); and each other material employee benefit plan, fund, program, agreement or arrangement, including but not limited to vacation plans, cafeteria plans, educational assistance or reimbursement plans, spending account plans (for medical expenses, dependent care expenses, or other expenses), severance, golden parachute, termination, supplemental unemployment, plant closing or similar benefits, active health or life or other post-employment welfare or insurance plans, bonus or performance based compensation plans or arrangements, supplemental executive retirement plans or other supplemental or excess benefit plans in each case, that is sponsored, maintained or contributed to or required to be contributed to by the Company or any entity, or any of its Subsidiaries, any trade or business (whether or not incorporated) which is a member of a controlled group or which is under common control with the Company within the meaning of Section 414 of the Code or which could be deemed a "single employer" within the meaning of Section 4001(b) of ERISA (an "ERISA Affiliate"), or to which the Company or an ERISA Affiliate is a party, whether written or oral, for the benefit of any officer, director, employee or former employee of the Company or any of its ERISA Affiliates, whether or not such plan has been terminated (the "Company Benefit Plans"). Except as set forth in Section 2.14(a) of the Company Disclosure Schedule, there are no restrictions on the ability of the Company, its Subsidiaries or Affiliated Entities or any of its ERISA Affiliates to amend, modify or terminate any Company Benefit Plan and each Company Benefit Plan is fully and readily assignable and transferable by its sponsor to either the Parent or the Merger Sub.

(b) With respect to each Company Benefit Plan, the Company has heretofore made available to Parent true and complete copies of the Company Benefit Plan and any amendments thereto (or if the Company Benefit Plan is not a written Company Benefit Plan, a description thereof), any related trust or other funding vehicle, the summary plan description and any summaries of material modifications, the three (3) most recent annual reports (with all schedules) or summaries required under ERISA or the Code, the most recent audited financial statements and most recent determination letter received from the Internal Revenue Service with respect to each Company Benefit Plan intended to qualify under Section 401 of the Code.

(c) No liability under Title IV or Section 302 of ERISA has been incurred by the Company or any ERISA Affiliate that has not been satisfied in full, and no condition exists that presents a risk to the Company or any ERISA Affiliate of incurring any such liability.

(d) No Company Benefit Plan is subject to Title IV of ERISA or Section 412 of the Code, nor is any Company Benefit Plan a "multiemployer pension plan", as defined in

Section 3(37) of ERISA, or subject to Section 302 of ERISA. No Company Benefit Plan is a "single-employer plan under multiple controlled groups" as described in Section 4063 of ERISA.

(e) Each Company Benefit Plan has been operated and administered in all respects in accordance with its terms and applicable law, including ERISA and the Code. There has been no "prohibited transaction," as such term is defined in Section 406 of ERISA or Section 4975 of the Code, with respect to any Company Benefit Plan; there are no claims pending (other than routine claims for benefits) or, to the Company's Knowledge, threatened against any Company Benefit Plan or against the assets of any Company Benefit Plan, nor are there any current or, to the Company's Knowledge, threatened Liens on the assets of any Company Benefit Plan or on the assets of the Company under any provision of ERISA. The Company and its ERISA Affiliates have performed all obligations required to be performed by them under, are not in default under or violation of, and have no Knowledge of any default or violation by any other party with respect to, any of the Company Benefit Plans. All contributions required to be made to any Company Benefit Plan under applicable law or the terms of the respective Company Benefit Plan have been made on or before their due dates and a reasonable amount has been accrued for contributions to each Company Benefit Plan for the current plan years. Except as disclosed on Section 2.16(e) of the Company Disclosure Schedule, the transaction contemplated herein will not directly or indirectly result in an increase of benefits, acceleration of vesting or acceleration of timing for payment of any benefit to any participant or beneficiary under any Company Benefit Plan.

(f) Each Company Benefit Plan intended to be "qualified" within the meaning of Section 401(a) of the Code and the trusts maintained thereunder that are intended to be exempt from taxation under Section 501(a) of the Code have received a favorable determination or opinion letter indicating that they are so qualified, and no event has occurred since the date of said letter(s) that will adversely affect the qualification of such Company Benefit Plan.

(g) Except as set forth in Section 2.16(g) of the Company Disclosure Schedule, no Company Benefit Plan or written or oral agreement provides medical, surgical, hospitalization, death or similar benefits (whether or not insured) for directors, employees or former employees of the Company or any of its Subsidiaries or Affiliated Entities or ERISA Affiliates for periods extending beyond their retirement or other termination of service, other than (i) coverage mandated by applicable Law, (ii) death benefits under any "pension plan" or (iii) benefits the full cost of which is borne by the current or former employee (or his beneficiary).

(h) No amounts payable under any Company Benefit Plan will fail to be deductible for federal income Tax purposes by virtue of Section 280G of the Code.

(i) Except as set forth in Section 2.16(i) of the Company Disclosure Schedule, the execution, delivery and performance of, and consummation of the transactions contemplated by, this Agreement will not (i) entitle any current or former employee or officer of the Company or any ERISA Affiliate to severance pay, unemployment compensation or any other payment, except as expressly provided in this Agreement, (ii) accelerate the time of payment or vesting, or

increase the amount of compensation due any such employee or officer, or (iii) accelerate the vesting of any stock option or of any shares of restricted stock.

(j) Except as would not be material in any respect to the Company, there are no pending or, to the Company's Knowledge, threatened or anticipated claims by or on behalf of any Company Benefit Plan, by any employee or beneficiary covered under any such Company Benefit Plan or otherwise involving any such Company Benefit Plan (other than routine claims for benefits).

(k) Except as set forth in Section 2.16(k) of the Company Disclosure Schedule, each Company Benefit Plan can be terminated within thirty days, without payment of any additional contribution or amount and, except with respect to Qualified Plans, without the vesting or acceleration of any benefits promised by such Plan.

2.17 **Employment and Labor Matters**.

(a) Section 2.17(a) of the Company Disclosure Schedule identifies all employees and consultants employed or engaged by the Company and sets forth each such individual's rate of pay or annual compensation (and the portions thereof attributable to salary and bonuses, respectively), job title and date of hire. Except as set forth in Section 2.17(a) of the Company Disclosure Schedule, there are no employment, consulting, severance pay, continuation pay, termination or indemnification agreement or other similar agreements of any nature (whether in writing or not) between the Company and any current or former stockholder, officer, director, employee, or any consultant. Except as set forth in Section 2.17(a) of the Company Disclosure Schedule, no individual will accrue or receive additional benefits, service or accelerated rights to payments under any Company Benefit Plan or any of the agreements set forth in Section 2.17(a) of the Company Disclosure Schedule, including the right to receive any parachute payment, as defined in Section 280G of the Code, or become entitled to severance, termination allowance or similar payments as a result of the transaction contemplated herein that could result in the payment of any such benefits or payments. The Company is not delinquent in payments to any of its employees or consultants for any wages, salaries, commissions, bonuses or other compensation for any services. None of the Company's employment policies or practices are currently being audited or investigated by any Governmental Authority. There are no pending, or to the Company's Knowledge, threatened, claims, charges, actions, lawsuits or proceedings alleging claims against the Company brought by or on behalf of any employee or other individual or any Governmental Authority with respect to employment practices, and to the Company's Knowledge, no facts or circumstances exist that could give rise to any such claims, charges, actions, lawsuits or proceedings.

(b) Except as set forth in Section 2.17(b) of the Company Disclosure Schedule, there are no controversies pending or, to the Company's Knowledge, threatened, between the Company and any of its employees and employee relations are, in general, considered to be good; the Company is not a party to any collective bargaining agreement or other labor union contract applicable to persons employed by the Company nor are there any activities or proceedings of any labor union or by any employees to organize any such employees of the Company; during the past five years there have been no strikes, slowdowns, work

stoppages, lockouts, or threats thereof, by or with respect to any employees of the Company. The Company does not have nor at the Closing will the Company have any obligation under the Worker Adjustment and Retraining Notification Act (the "WARN Act"). The Company is in material compliance with all applicable provisions of applicable state, local, federal and foreign employment, wage and hour, labor and other applicable laws.

2.18 **Absence of Restrictions on Business Activities**.

(a) Except as set forth in Section 2.18 of the Company Disclosure Schedule or as set forth in this Agreement, there is no Material Agreement or Order binding upon the Company or any of its properties which has had or could reasonably be expected to have the effect of prohibiting or materially impairing any business practice of the Company or the conduct of business by the Company as currently conducted or as proposed to be conducted by the Company. The Company is not subject to any non-competition or similar restriction on its business. The Company has not at any time entered into, or agreed to enter into, any interest rate swaps, caps, floors or option agreements or any other interest rate risk management arrangement or foreign exchange contracts.

(b) To the Company's Knowledge, no employee or director of the Company is a party to, or is otherwise bound by, any agreement or arrangement, including any confidentiality, non-competition, or proprietary rights agreement, between such employee or director and any other Person ("Proprietary Rights Agreement") that in any way adversely affects or will adversely affect (i) the performance of his or her duties as an employee or director of the Company, or (ii) the ability of the Company to conduct its business, including any Proprietary Rights Agreement with the Company by any such employee or director. To the Knowledge of the Company, no director, officer, or other key employee of the Company intends to terminate his or her employment with the Company.

(c) Section 2.18(c) of the Company Disclosure Schedule contains a complete and accurate list of the following information for each retired employee or director of the Company, or their dependents, receiving benefits or scheduled to receive benefits in the future: name, pension benefit, pension option election, retiree medical insurance coverage, retiree life insurance coverage, and other benefits.

2.19 **Title to Assets; Leases**.

(a) Except as described in Section 2.19 of the Company Disclosure Schedule, the Company owns no real property. Section 2.19 of the Company Disclosure Statement sets forth a true and complete list of all real property leased by the Company and the aggregate monthly rental or other fee payable under such lease. Except as described in Section 2.19 of the Company Disclosure Schedule, the Company has good and marketable title to all of their respective properties and assets, free and clear of all Liens, charges and encumbrances, except Liens for Taxes (as defined below) not yet due and payable and such Liens or other imperfections of title, if any, as do not materially detract from the value of or interfere with the present use of the property affected thereby. All leases pursuant to which the Company leases real or personal property from others are valid and effective in accordance with their respective terms, and there

is not, under any of such leases, any existing material default or event of material default (or event which with notice or lapse of time, or both, would constitute a material default and in respect of which the Company has not taken adequate steps to prevent such a default from occurring or to cure such default) by the Company or, to the Company's Knowledge, any third party.

(b) The Company has good and marketable title to or a valid leasehold interest in all of the properties and assets that are necessary to the conduct of the business of the Company as it is currently being conducted, including all of the properties and assets reflected in the Company Balance Sheet, other than any such properties or assets that have been sold or otherwise disposed of in the ordinary course of business since October 31, 1999.

(c) The buildings, plants, structures, and equipment of the Company are structurally sound, are in good operating condition and repair in all material respects, and are adequate for the uses to which they are being put, and none of such buildings, plants, structures, or equipment is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost. The building, plants, structures, and equipment of the Company are sufficient for the continued conduct of the Company's business after the Closing in substantially the same manner as conducted prior to the Closing.

2.20 **Taxes**. For purposes of this Agreement, "Tax" or "Taxes" shall mean taxes and governmental impositions of any kind in the nature of (or similar to) taxes, payable to any federal, state, local or foreign taxing authority, including but not limited to those on or measured by or referred to as income, franchise, profits, gross receipts, capital ad valorem, custom duties, alternative or add-on minimum taxes, estimated, environmental, disability, registration, value added, sales, use, service, real or personal property, capital stock, license, payroll, withholding, employment, social security, workers' compensation, unemployment compensation, utility, severance, production, excise, stamp, occupation, premiums, windfall profits, transfer and gains taxes, and interest, penalties and additions to tax imposed with respect thereto; and "Tax Returns" shall mean returns, reports and information statements, including any schedule or attachment thereto, with respect to Taxes required to be filed with the Internal Revenue Service or any other governmental or taxing authority or agency, domestic or foreign, including consolidated, combined and unitary tax returns. Except as set forth in Section 2.20 of the Company Disclosure Schedule:

(a) All federal, state, local and foreign Tax Returns required to be filed (taking into account extensions) by or on behalf of the Company, and each affiliated, combined, consolidated or unitary group of which the Company is or has been a member, have been timely filed, and all such Tax Returns are true, complete and correct, except to the extent that any failure to file or any inaccuracies in filed Tax Returns would not, individually or in the aggregate, have a Material Adverse Effect.

(b) All Taxes payable by or with respect to the have been timely paid, or are adequately reserved for (other than a reserve for deferred Taxes established to reflect timing differences between book and Tax treatment) in accordance with GAAP on the Company Balance Sheet, except to the extent that such amount would not, individually or in the aggregate,

have a Material Adverse Effect. No deficiencies for any Taxes have been proposed, asserted or assessed either orally or in writing against the Company that are not adequately reserved for in accordance with GAAP on the respective Company Balance Sheet. All assessments for Taxes due and owing by or with respect to the Company with respect to completed and settled examinations or concluded litigation have been paid. The Company has not incurred a Tax liability from the date of the latest Company Balance Sheet other than a Tax liability in the ordinary course of business.

(c) The Company has not requested, or been granted any waiver of any federal, state, local or foreign statute of limitations with respect to, or any extension of a period for the assessment of, any Tax. No extension or waiver of time within which to file any Tax Return of, or applicable to, the Company has been granted or requested, except as set forth in Section 2.20 of the Company Disclosure Schedule which has not since expired.

(d) Other than with respect to the Affiliated Entities, the Company is not and has never been (nor does the Company have any liability for unpaid Taxes because it once was) a member of an affiliated, consolidated, combined or unitary group, and the Company is not a party to any Tax allocation or sharing agreement or is liable for the Taxes of any other party, as transferee or successor, by contract, or otherwise.

(e) Prior to the date hereof, the Company has provided Parent with written schedules setting forth the taxable years of the Company for which the statutes of limitations with respect to foreign, federal and material state income Taxes have not expired and with respect to foreign, federal and material state income Taxes, those years for which examinations have been completed and those years for which examinations are presently being conducted.

(f) The Company is not presently and has not been a "foreign investment company" as such term is defined in Section 1246(b) of the Code.

(g) The Company is not presently and has not been a "passive foreign investment company" as such term is defined in Section 1297(a) of the Code.

(h) The Company is not presently and has not been at any time during the last five years a "controlled foreign corporation" as such term is defined in Section 957(a) of the Code.

(i) The Company has not made any payments, are not obligated to make any payments, and are not a party to any agreements that under any circumstances could obligate any of them to make any payments that will not be deductible under Section 280G of the Code.

(j) No unsatisfied deficiency, delinquency or default for any Tax has been claimed, proposed or assessed against or with respect to the Company, nor has the Company received notice of any such deficiency, delinquency or default which, in any such case, may have a Material Adverse Effect.

(k) The Company has not been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code.

(l) The Company has complied with all applicable Laws relating to the payment and withholding of Taxes (including, without limitation, withholding of Taxes pursuant to Sections 1441, 1442 and 3406 of the Code or similar provisions under any foreign Laws) and have, within the time and in the manner required by Law, withheld from employee wages and paid over to the proper Governmental Authorities all amounts required to be so withheld and paid over under all applicable Laws.

(m) Section 2.20(m) of the Company Disclosure Schedule sets forth: (i) the net operating loss ("NOL") and (ii) capital loss carry forwards for foreign, federal income Tax purposes of the Company through the taxable year ended December 31, 1998.

(n) Except as described in Section 2.20(n) of the Company Disclosure Schedule, the NOLs of the Company are not, as of the date hereof, subject to Section 382 or 269 of the Code, Treasury Regulation Section 1.1502-21T(c), or any similar provisions or regulations otherwise limiting the use of the NOLs of the Company.

(o) No property of the Company is "tax-exempt use property" as such term is defined in Section 168 of the Code.

(p) The Company has never made an election under Section 341(f) of the Code.

2.21 **Environmental Matters**. Except as described in Section 2.21 of the Company Disclosure Schedule:

(a) the Company is and has been in compliance with all applicable Environmental Laws;

(b) the Company has obtained all Permits relating to the business required by any applicable Environmental Law and all environmental permits relating to the business of the Company and all such permits are in full force and effect in all respects; the environmental Permits do not materially limit or affect the processes, methods, capacity or operating hours of the persons carrying on the business of the Company as it is currently carried on;

(c) neither the Company nor any of the Affiliated Entities has, and the Company has no Knowledge of any other Person who has, caused any unlawful or improper release, threatened release or disposal of any Hazardous Material at any properties or facilities previously or currently owned, leased or occupied by the Company;

(d) neither the Company nor any of the Affiliated Entities has any Knowledge that any of the Company's facilities are adversely affected by any release, threatened release or disposal of a Hazardous Material originating or emanating from any other property;

(e) the Company (i) has no liability for response or corrective action, natural resources damage, or any other harm pursuant to any Environmental Law, (ii) is not subject to, has notice or Knowledge of, or is required to give any notice of any Environmental Claim involving an allegation against the Company or any properties or facilities of the Company or (iii) has no Knowledge of any condition or occurrence which could reasonably be expected to form the basis of an Environmental Claim against the Company or any of its properties or facilities;

(f) the Company is not subject to any, and the Company and the Affiliated Entities have no Knowledge of any, imminent restriction on the ownership, occupancy, use or transferability of their properties and facilities arising from any (i) Environmental Law or (ii) release, threatened release or disposal of any Hazardous Material; and

(g) there is no Environmental Claim pending, or, to the Company's Knowledge, threatened, against the Company or, to the Company's Knowledge, against any Person whose liability for any Environmental Claim the Company has or may have retained or assumed either contractually or by operation of law. No material capital expenditure is currently required for the Company in relation to environmental matters in order to comply with, extend, renew or obtain any environmental permit or comply with Environmental Laws. Copies of all environmental audits and other assessments, reviews and reports have been previously provided to Parent.

2.22 **Intellectual Property**.

(a) Section 2.22(a) of the Company Disclosure Schedule sets forth a true, correct and complete list of all of the Company's United States and foreign (i) patents and patent applications (the "Company Patents"), (ii) registered and unregistered trademarks and trademark applications (including material Internet domain name registrations) (the "Company Trademarks"), (iii) service marks, service mark applications and trade names (the "Company Tradenames"), (iv) copyright registrations and copyright applications (the "Company Copyrights"), and (v) licenses presently used by the Company, indicating for each, the applicable jurisdiction, registration number (or applicable number), and date issued or filed, as applicable with respect to (i), (ii), (iii), and (iv) above and including the terms of such licenses (all of which, together with patent rights, trade secrets, confidential business information, formulas, processes, invention records, procedures, research and development activity reports, laboratory notebooks, copyrights, license rights and trademark rights which relate to or are used or held for use in connection with the business of the Company, are collectively referred to as, the "Intellectual Property Rights"). Copies of all licenses listed in (v) above have been previously provided or made available to Parent. The Intellectual Property Rights are sufficient for the conduct of the Company's business as presently conducted and as proposed and to be conducted.

(b) Section 2.22(b) of the Company Disclosure Schedule sets forth a true, correct and complete list, and where appropriate, a description of all Intellectual Property Rights set forth in Section 2.22(a) of the Company Disclosure Schedule to which neither the Company's rights are exclusive, excluding all Intellectual Property Rights which the Company has the right to use under a shrinkwrap or similar mass marketing license. Except as otherwise disclosed in

Section 2.22(b) of the Company Disclosure Schedule and excluding all Intellectual Property Rights subject to a shrinkwrap or similar mass marketing license, the Company exclusively owns or has the exclusive right to use all of the Intellectual Property Rights listed in Section 2.22(a) of the Company Disclosure Schedule. The Company does not believe it is or will be necessary to utilize any inventions of any of its employees or consultants (or individuals it currently intends to hire) made prior to their employment by the Company.

(c) All Company Trademarks, Company Patents, Company Tradenames and Company Copyrights are currently in compliance with all legal requirements (including the timely post-registration filing of affidavits of use and incontestability and renewal applications with respect to Company Trademarks, and the payment of filing, examination and maintenance fees and proof of working or use with respect to Company Patents), and are, to the Company's Knowledge, valid and enforceable. No Company Trademark has been or is now involved in any cancellation and, to the Company's Knowledge, and no such action is threatened with respect to any of the Company Trademarks. Except as disclosed on Section 2.22(c) of the Company Disclosure Schedule, no Company Patent has been or is now involved in any interference, reissue, re-examination or opposition proceeding. To the Company's Knowledge, there are no potentially conflicting trademarks or potentially interfering patents of any third party. The Company has discussed with Parent's counsel the content of all reviews, assessments or analyses (whether written or oral) pertaining to the Company's ability to use Company Patents (whether owned or licensed).

(d) Except as would not be materially adverse to the Company:

(i) The Company owns free and clear of all Liens, all owned Intellectual Property Rights used in the Company's business, and has a valid and enforceable right to use in accordance with the applicable license agreement, if any, all of the Intellectual Property Rights licensed to the Company and used in the Company's business;

(ii) The Company and each of the Affiliated Entities (as applicable) have taken reasonable steps to protect and preserve the Intellectual Property Rights which the Company owns or has licensed;

(iii) The conduct of the Company's businesses as currently conducted or contemplated does not, to the Company's Knowledge, infringe upon any intellectual property rights owned or controlled by any third party or by an Affiliated Entity;

(iv) There is no Litigation pending or, to the Company's Knowledge or to the Knowledge of the Affiliated Entities, threatened nor has Company received any written communication of, and the Company and the Affiliated Entities have no Knowledge of any basis for a claim against it (a) alleging that the Company's activities, products, publications or the conduct of its businesses infringes upon, violates, or constitutes the unauthorized use of the intellectual property rights of any third party or the Affiliated Entities, or (b) challenging the ownership, use, validity or enforceability of any Intellectual Property Rights of the Company;

(v) To the Company's Knowledge, no third party is misappropriating, infringing, diluting, or violating any Intellectual Property Rights owned by the Company, and no such claims have been brought against any third party by the Company, and the Company has not knowingly misappropriated the trade secrets of any third party; and

(vi) The execution, delivery and performance by the Company of this Agreement, and the consummation of the transactions contemplated hereby will not result in the loss or impairment of or give rise to any right of any third party to terminate any of the Company's right to own any of the Intellectual Property Rights owned by the Company or to use any Intellectual Property Rights licensed to the Company pursuant to the license agreements, nor require the consent of any Governmental Authority or third party in respect of any such Intellectual Property Rights.

(e) All Company Trademarks have been in continuous use by the Company. To the Company's Knowledge (i) there has been no prior use of such Company Trademarks by any third party which would confer upon said third party superior rights in such trademarks, and (ii) the registered Company Trademarks have been continuously used in the form appearing in, and in connection with the goods and services listed in, their respective registration certificates.

(f) The Company has taken all reasonable steps in accordance with normal industry practice to protect the Company's rights in confidential information and trade secrets of the Company. Without limiting the foregoing and except as would not be materially adverse to the Company, the Company has and enforces a policy of requiring each employee, consultant and contractor to execute proprietary information, confidentiality and assignment agreements substantially consistent with the Company's standard forms thereof. Except as set forth in Section 2.22 (f) of the Company Disclosure, all of the Company's employees, consultants and contractors have executed such a proprietary information, confidentiality and assignment agreement. Except under confidentiality obligations, to the Knowledge of the Company, there has been no material disclosure by the Company of the Company's material confidential information or trade secrets.

(g) The Company has undertaken the review and assessment of the business and operations of itself that could be adversely affected by its or their failure to be Year 2000 Compliant. Based on its review and assessment, the Company has no reason to believe any material liability or expense will result from or arise out of failure of its computer systems, hardware, software, databases, devices and/or equipment to be Year 2000 Compliant.

2.23 **Insurance**.

(a) Section 2.23 of the Company Disclosure Schedule sets forth a true and complete list of all insurance policies and fidelity bonds covering the assets, business, equipment, properties, operations, employees, officers and directors of the Company including: (i) a summary of the loss experience under each policy; (ii) a statement describing each claim under an insurance policy for an amount in excess of $5,000, which sets forth: (A) the name of the claimant; (B) a description of the policy by insurer, type of insurance, and period of coverage; and (C) the amount and a brief description of the claim; and (iii) a statement describing the loss

experience for all claims that were self-insured, including the number and aggregate cost of such claims. There is no claim by the Company pending under any of such policies or bonds as to which coverage has been questioned, denied or disputed by the underwriters of such policies or bonds. All premiums payable under all such policies and bonds have been paid and the Company, are otherwise in full compliance with the terms of such policies and bonds (or other policies and bonds providing substantially similar insurance coverage), and the Company shall maintain in full force and effect all such insurance during the period from the date hereof through the Closing Date. Such policies of insurance and bonds are of the type and in amounts customarily carried by Persons conducting businesses similar to those of the Company and reasonable in light of the assets of the Company. As of the date hereof, the Company has not received notice of any, and to Company's Knowledge there is no threatened, termination of or material premium increase with respect to any of such policies or bonds.

(b) Except as set forth on Section 2.23 of the Company Disclosure Schedule, (i) all policies to which the Company is a party or that provide coverage to either the Company, or any director or officer of the Company: (A) are valid, outstanding, and enforceable; (B) are issued by an insurer that is financially sound and reputable; (C) taken together, provide adequate insurance coverage for the assets and the operations of the Company for all risks normally insured against by a Person carrying on the same business as the Company; (D) are sufficient for compliance with all Laws and Material Agreements to which the Company is a party or by which it is bound; (E) will continue in full force and effect following the consummation of the transactions contemplated by this Agreement; and (F) do not provide for any retrospective premium adjustment or other experienced-based liability on the part of the Company.

(c) The Company has not received (A) any refusal of coverage from the issuer of any insurance policy of the Company or any notice that a defense will be afforded with reservation of rights, or (B) any notice of cancellation or any other indication that any insurance policy is no longer in full force or effect or will or will not be renewed or that the issuer of any policy is not willing or able to perform its obligations thereunder.

(d) The Company has paid all premiums due, and has otherwise performed all of its respective obligations, under each policy to which the Company is a party or that provides coverage to the Company or a director thereof.

(e) The Company has given notice to the insurer of all claims that may be insured thereby.

2.24 **Brokers**. No broker, financial advisor, finder or investment banker or other Person is entitled to any broker's, financial advisor's, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Company.

2.25 **Certain Business Practices**. As of the date hereof, neither the Company nor any director, officer, employee or agent of the Company has (i) used any funds for unlawful contributions, gifts, entertainment or other unlawful payments relating to political activity, (ii) made any unlawful payment to any foreign or domestic government official or employee or to

any foreign or domestic political party or campaign or violated any provision of the Foreign Corrupt Practices Act of 1977, as amended, (iii) consummated any transaction, made any payment, entered into any agreement or arrangement or taken any other action in violation of Section 1128B(b) of the Social Security Act, as amended, or (iv) made any other unlawful payment.

2.26 **Interested Party Transactions**. Except as set forth in Section 2.26 of the Company Disclosure Schedule, the Company is not indebted to any director, officer, employee or agent of the Company (except for amounts due as normal salaries and bonuses and in reimbursement of ordinary expenses), and no such Person is indebted to the Company.

2.27 **Disclosure.** The representations and warranties and statements of the Company contained in this Agreement (including the Company Disclosure Schedule) do not contain, and will not contain at the Closing Date, any untrue statement of a material fact, and do not omit, and will not omit at the Closing Date, to state any material fact necessary to make such representations, warranties and statements, in light of the circumstances under which they are made, not misleading. There is no fact known to the Company or any of the Affiliated Entities that has not been disclosed to the Parent in this Agreement (including in the Company Disclosure Schedule) that is reasonably likely to have a Material Adverse Effect on the Company.

2.28 **HSR Filing**. No filing under the HSR Act is required in connection with the Merger, because the Company does not have annual net sales or total assets greater than or equal to $10,000,000.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Parent and Merger Sub hereby, jointly and severally, represent and warrant to the Company that:

3.1 **Organization and Qualification**. Each of Parent and Merger Sub is a corporation duly organized, validly existing and in good standing under the laws of its respective jurisdiction of incorporation or organization and Parent has all the requisite corporate power and authority, and is in possession of all franchises, grants, authorizations, licenses, permits, easements, consents, certificates, approvals and Orders ("Parent Approvals") necessary to own, lease and operate its properties and to carry on its business as it is now being conducted, except where the failure to be so qualified, existing and in good standing or to have such power, authority and Parent Approvals would not individually or in the aggregate, have a Material Adverse Effect. Each of Parent and Merger Sub is duly qualified or licensed as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its activities makes such qualification or licensing necessary, except for such failures to be so duly qualified or licensed and in good standing that would not, either individually or in the aggregate, have a Material Adverse Effect. Merger Sub is a newly-formed single purpose entity which has been formed

solely for the purposes of the Merger, has carried on no business to date and will not carry on any business or engage in any activities other than those necessary to the Merger.

3.2 **Reports**.

(a) Parent has heretofore furnished the Company with (i) its Annual Report on Form 20-F for its fiscal year ended December 31, 1998 (the "Parent Annual Report"), and (ii) its unaudited periodic reports on Form 6-K filed since the date of the Parent Annual Report (all such documents included in (i) and (ii) above being collectively referred to herein as the "Parent SEC Documents"). As of their respective filing dates, the Parent SEC Documents did 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 therein, in light of the circumstances under which they were made, not misleading (except any such misstatement or omission which was expressly corrected in a subsequent filing). As of their respective filing dates, the descriptions of the business, operations and financial condition of Parent contained in the Parent SEC Documents complied in all material respects with the applicable requirements of the Securities Act and the Exchange Act and the rules and regulations promulgated under such statutes. The financial statements contained in the Parent SEC Documents, together with the notes thereto, have been prepared in accordance with generally accepted accounting principles consistently followed throughout the periods indicated (except as may be indicated in the notes thereto), present fairly the financial condition of Parent at the dates and during the periods indicated therein (subject, in the case of unaudited statements, to normal, necessary year-end adjustments). The audited balance sheet of the Parent as of December 31, 1998 included in the Parent Annual Report is herein referred to as the "Parent Balance Sheet."

(b) As of the date hereof, the authorized capital stock of Merger Sub consists of 3,000 shares of Merger Sub Common Stock, of which 100 shares of Merger Sub Common Stock are outstanding. All of the outstanding shares of Merger Sub Common Stock are owned by Parent.

3.3 **Authorization of Agreement**. Each of Parent and Merger Sub has all requisite corporate power and authority to execute and deliver this Agreement and each instrument required hereby to be executed and delivered by it at the Closing, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by each of Parent and Merger Sub of this Agreement and each instrument required hereby to be executed and delivered by it at the Closing, the performance of obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by the Board of Directors of each of Parent and Merger Sub and by Parent as the sole stockholder of Merger Sub and except for filing of the Certificates of Merger, no other corporate proceedings on the part of Parent or Merger Sub are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by each of Parent and Merger Sub and, assuming due authorization, execution and delivery hereof by the Company, constitutes a legal, valid and binding obligation of each of Parent and Merger Sub, enforceable against each of Parent and Merger Sub in accordance with its terms, in each case except to the extent that the enforcement hereof may be limited by (A) bankruptcy, insolvency, reorganization, moratorium or

other similar law now or hereafter in effect relating to creditors' rights generally and (B) general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law). The Convertible Note attached and made a part of this Agreement as Exhibit I has been duly executed and delivered as set forth in Section 7.3(e) by Parent and constitutes a legal, valid and binding obligation of Parent. No other corporate proceedings are required by Parent other than the approval of the Board of Directors of Parent and Merger Sub. Upon issuance of the Conversion Shares pursuant to the terms of the Convertible Note, the Conversion Shares will be validly issued, fully paid and non-assessable.

3.4 **Approvals**. The execution and delivery by Parent and Merger Sub of this Agreement or any instrument required by this Agreement to be executed and delivered by Parent or Merger Sub at the Closing do not, and the performance by each of Parent and Merger Sub of its respective obligations under this Agreement or any instrument required by this Agreement to be executed and delivered by Parent or Merger Sub at the Closing shall not, require Parent or Merger Sub to obtain any consent, approval, authorization, license, waiver, qualification, Order or permit of, observe any waiting period imposed by, or require Parent or Merger Sub to make any filing with or notification to, any Court or Governmental Authority, except for (A) compliance with applicable requirements, if any, of the Securities Act, the Exchange Act or Blue Sky Laws, (B) the filing of appropriate Merger or other documents as required by Delaware or California Law or (C) where the failure to obtain such consents, approvals, authorizations, licenses, waivers, qualifications, Orders or permits, or to make such filings or notifications, would not have, in the aggregate, a Material Adverse Effect.

3.5 **No Violation**. Assuming effectuation of all filings, notifications, and registrations with, termination or expiration of any applicable waiting periods imposed by and receipt of all permits or Orders of Courts and/or Governmental Authorities set forth in Section 3.4(A) or (B) above, the execution and delivery by Parent and Merger Sub of this Agreement or any instrument required by this Agreement to be executed and delivered by Parent or Merger Sub at the Closing do not, and the performance of this Agreement by each of Parent or Merger Sub of its respective obligations under this Agreement or any instrument required by this Agreement to be executed and delivered by Parent or Merger Sub at the Closing will not, (i) conflict with or violate the Certificate of Incorporation or By-laws of Parent or the Certificate of Incorporation or By-laws of Merger Sub, (ii) conflict with or violate any Law, Order or Regulation in each case applicable to Parent or Merger Sub or by which either of its respective properties is bound or affected, or (iii) result in any breach or violation of or constitute a default (or an event that with notice or lapse of time or both would become a default) under any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which the Parent or Merger Sub is a party or by which Parent or Merger Sub or any of their respective properties is bound or affected.

3.6 **Absence of Certain Changes or Events; Right to Use Intellectual Property**. Since October 31, 1999, Parent has conducted its business only in the ordinary and usual course and in a manner consistent with past practice and, since such date, there has not occurred any event, development or change which, individually or in the aggregate, has resulted in or is reasonably likely to result in a Material Adverse Effect. Except as disclosed in the Parent SEC Documents, Parent or its subsidiaries owns or possesses the adequate right to use all intellectual

property used in the conduct of its business as presently conducted, except for rights which, if not so owned or so possessed, would not, individually or in the aggregate, have a Material Adverse Effect.

3.7 **Brokers**. No broker, financial advisor, finder or investment banker or other Person is entitled to any broker's, financial advisor's, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Parent.

3.8 **Disclosure.** The representations and warranties and statements of Parent contained in this Agreement (including the Parent Disclosure Schedule) do not contain, and will not contain at the Closing Date, any untrue statement of a material fact, and do not omit, and will not omit at the Closing Date, to state any material fact necessary to make such representations, warranties and statements, in light of the circumstances under which they are made, not misleading. There is no fact known to Parent that has not been disclosed to the Company in this Agreement (including in the Parent Disclosure Schedule) that is reasonably likely to have a Material Adverse Effect on Parent.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE COMPANY STOCKHOLDER

The Company Stockholder represents and warrants to Parent as follows:

4.1 **Ownership of Company Shares**. The Company Stockholder is the record and beneficial owner of all of the outstanding Company Shares and such Company Shares are owned by the Company Stockholder free and clear of all Liens, claims, encumbrances, interests of, and rights in, others.

4.2 **Investment Representations**. The Company Stockholder has had the opportunity to obtain such information pertaining to Parent, its business, operations, and finances as has been requested, including but not limited to filings made by Parent with the SEC under the Exchange Act. The Company Stockholder is an "accredited investor" within the meaning of Regulation D promulgated under the Securities Act of 1933, as amended (the "Securities Act"). The Company Stockholder has such knowledge and experience in business or financial matters that it is capable of evaluating the merits and risks of an investment in Parent. The Company Stockholder (i) is acquiring the Parent Common Shares for its own account for purposes of investment and has no present intention to distribute such Parent Common Shares, (ii) it has no contract, undertaking, agreement or arrangement to sell or otherwise transfer or dispose of any Parent Common Shares or any portion thereof to any person or entity and (iii) it can bear the economic risk of losing its investment in the Parent Common Shares and has adequate means for providing for its current financial needs and contingencies.

ARTICLE V

CONDUCT OF BUSINESS PENDING THE MERGER

5.1 **Conduct of Business by the Company Pending the Merger**. The Company covenants and agrees that, between the Execution Date and the Effective Time, except as expressly required or permitted by this Agreement or unless Parent shall otherwise agree in writing, the Company shall conduct the business of the Company, and the Company shall not take any action except in, the ordinary course of business and in a manner consistent with past practice. The Company shall use its best efforts to preserve intact the business organization and assets of the Company, and to operate according to plans and budgets provided to Parent, to keep available the services of the present officers, employees and consultants of the Company, to maintain in effect Material Agreements and to preserve the present relationships of the Company with advertisers, sponsors, customers, licensees, suppliers and other Persons with which the Company has business relations. By way of amplification and not limitation, except as expressly permitted by this Agreement, the Company shall not, between the Execution Date and the Effective Time, directly or indirectly do, or propose to do, any of the following without the prior written consent of Parent:

(a) amend or otherwise change the Certificate of Incorporation or By-laws or equivalent organizational document of the Company, or alter through merger, liquidation, reorganization, restructuring or in any other fashion the corporate structure or ownership of the Company;

(b) issue, sell, transfer, pledge, dispose of or encumber, or authorize the issuance, sale, transfer, pledge, disposition or encumbrance of, any shares of capital stock of any class, or any options, warrants, convertible securities or other rights of any kind to acquire any shares of capital stock, or any other ownership interest of the Company; or sell, transfer, pledge, dispose of or encumber, or authorize the sale, transfer, pledge, disposition or encumbrance of any assets of the Company (except for sales of assets in the ordinary course of business and in a manner consistent with past practice) or redeem, purchase or otherwise acquire, directly or indirectly, any of the capital stock of the Company;

(c) declare, set aside or pay any dividend or other distribution (whether in cash, stock or property or any combination thereof) in respect of any of its capital stock, split, combine or reclassify any of its capital stock or issue or authorize or propose the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock or amend the terms of, repurchase, redeem or otherwise acquire, any of its securities or propose to do any of the foregoing;

(d) sell, transfer, lease, license, sublicense, mortgage, pledge, dispose of, encumber, grant or otherwise dispose of any Intellectual Property Rights, or amend or modify in any material way any existing agreements with respect to any Intellectual Property Rights;

(e) acquire (by merger, consolidation, acquisition of stock or assets or otherwise) any corporation, limited liability company, partnership, joint venture or other business

organization or division thereof; incur any indebtedness for borrowed money or issue any debt securities or assume, guarantee or endorse or otherwise as an accommodation become responsible for, the obligations of any Person, or make any loans, advances or enter into any financial commitments, except in the ordinary course of business consistent with past practice and as otherwise permitted under any loan or credit agreement to which the Company is a party; authorize any capital expenditures which are, in the aggregate, in excess of $100,000, or enter into or amend in any material respect any contract, agreement, commitment or arrangement with respect to any of the matters set forth in this Section 5.1(e);

(f) hire or terminate any employee or consultant, except in the ordinary course of business consistent with past practice; increase the compensation (including, without limitation, bonus) payable or to become payable to its officers or employees, except for increases in salary or wages of employees of the Company who are not officers of the Company in the ordinary course of business consistent with past practices, or grant any severance or termination pay or stock options to, or enter into any employment or severance agreement with any director, officer or other employee of the Company, or establish, adopt, enter into or amend any collective bargaining, bonus, profit sharing, thrift, compensation, stock option, restricted stock, pension, retirement, deferred compensation, employment, termination, severance or other plan, agreement, trust, fund, policy or arrangement for the benefit of any current or former directors, officers or employees;

(g) change, any accounting policies or procedures (including procedures with respect to reserves, revenue recognition, payments of accounts payable and collection of accounts receivable) unless required by statutory accounting principles or GAAP;

(h) create, incur, suffer to exist or assume any Lien on any of their material assets other than Liens outstanding on the date hereof;

(i) other than in the ordinary course of business consistent with past practice, (A) enter into any material agreement, (B) modify, amend or transfer in any material respect or terminate any material agreement to which the Company is a party or waive, release or assign any material rights or claims thereto or thereunder or (C) enter into or extend any lease with respect to real property with any third party;

(j) make any Tax election or settle or compromise any federal, state, local or foreign income tax liability or agree to an extension of a statute of limitations;

(k) settle any material Litigation or waive, assign or release any material rights or claims except, in the case of Litigation, any Litigation which settlement would not (A) impose either material restrictions on the conduct of the business of the Company, or (B) for any individual Litigation item settled, exceed $50,000 in cost or value to the Company. The Company shall not pay, discharge or satisfy any liabilities or obligations (absolute, accrued, asserted or unasserted, contingent or otherwise), except in the ordinary course of business consistent with past practice in an amount or value not exceeding $100,000 in any instance or series of related instances or $100,000 in the aggregate or in accordance with their terms as in effect as of the date hereof;

(l) engage in any transaction, or enter into any agreement, arrangement, or understanding with, directly or indirectly, any related party, other than those contemplated pursuant to the terms of this Agreement and those existing as of the date hereof which are listed in Section 5.1(l) of the Company Disclosure Schedule;

(m) fail to renew or maintain in full force and effect all insurance policies, as the case may be, currently in effect or fail to pay any insurance premiums thereon; and

(n) authorize, recommend, propose or announce an intention to do any of the foregoing, or agree or enter into any agreement, contract commitment or arrangement to do any of the foregoing.

5.2 **No Solicitation of Other Proposals**. From the Execution Date until the earlier of the Effective Time or the termination of this Agreement in accordance with its terms, the Company and each of the Affiliated Entities shall not, nor shall any of them permit any of their respective officers, directors, employees, representatives or agents (collectively, the "Company Representatives") to, (i) solicit, facilitate, initiate or encourage, or take any action to solicit, facilitate, initiate or encourage, any inquiries or the making of any proposal or offer that constitutes an Acquisition Proposal, or (ii) participate or engage in discussions or negotiations with, or provide any information to, any Person concerning an Acquisition Proposal or which might reasonably be expected to result in an Acquisition Proposal.

For purposes of this Agreement, the term "Acquisition Proposal" shall mean any inquiry, proposal or offer from any person (other than Parent, Merger Sub or any of their Affiliates) relating to:

> (1) any merger, consolidation, recapitalization, liquidation or other direct or indirect business combination, involving the Company, or the issuance or acquisition of shares of capital stock or other equity securities of the Company representing 10% or more of the outstanding capital stock of the Company or any tender or exchange offer that if consummated would result in any Person, together with all Affiliates thereof, beneficially owning shares of capital stock or other equity securities of the Company representing 10% or more of the outstanding capital stock of the Company; or
>
> (2) the sale, lease, exchange, license (whether exclusive or not), or any other disposition of any significant portion of any Intellectual Property Right, or any significant portion of the business or other assets of the Company, or any other transaction, the consummation of which could reasonably be expected to impede, interfere with, prevent or materially delay the consummation of the transactions contemplated hereby or which would reasonably be expected to diminish significantly the benefits to Parent or its Affiliates of the transactions contemplated hereby.

The Company shall immediately cease and cause to be terminated and shall cause all Company Representatives (and shall use its best efforts to cause its non-officer and non-director Affiliates) to terminate all existing discussions or negotiations with any Persons conducted heretofore with

respect to, or that could reasonably be expected to lead to, an Acquisition Proposal. The Company shall promptly notify all Company Representatives and non-officer and non-director Affiliates of its obligations under this Section 5.2.

ARTICLE VI

ADDITIONAL OBLIGATIONS

6.1 **Access to Information; Confidentiality**.

(a) Upon reasonable notice, the Company shall (and the Affiliated Entities shall cause the Company to) afford to the officers, employees, accountants, counsel and other representatives of Parent, reasonable access, during the period prior to the Effective Time, to all its properties, books, contracts, commitments and records and, during such period, the Company shall (and the Affiliated Entities shall cause the Company to) furnish promptly to the other all information concerning its business, properties, books, contracts, commitments, records and personnel as such other party may reasonably request, and each party shall make available to the other party the appropriate individuals for discussion of such party's business, properties and personnel as the other party may reasonably request. No investigation pursuant to this Section 6.2(a) shall affect any representations or warranties of the parties herein or the conditions to the obligations of the parties hereto.

(b) The Parent shall keep all information obtained pursuant to Section 6.2(a) confidential in accordance with the terms of the confidentiality agreement, dated October 6, 1999 (the "Confidentiality Agreement"), between Parent and the Company. Anything contained in the Confidentiality Agreement to the contrary notwithstanding, the Company and Parent hereby agree that each such party may issue press release(s) or make other public announcements in accordance with Section 6.7.

6.2 **All Reasonable Efforts; Further Assurances**.

(a) Upon the terms and subject to the conditions set forth in this Agreement, each party hereto shall use all reasonable efforts to take, or cause to be taken, all appropriate actions, and do, or cause to be done, and to assist and cooperate with the other party or parties in doing, all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the Merger and the other transactions contemplated hereby. The Company and Parent shall use all reasonable efforts to:

(i) obtain all licenses, permits, consents, waivers, approvals, authorizations, qualifications or Orders (including all United States and foreign governmental and regulatory rulings and approvals), required to be obtained by Parent or the Company, and the Company and Parent shall make all filings (including, without limitation, all filings with United States and foreign governmental or regulatory agencies) under applicable Law required in connection with the authorization, execution and delivery of this Agreement by the Company and Parent and the consummation by them of the transactions contemplated hereby and thereby, including the Merger (in connection

with which Parent and the Company will cooperate with each other in connection with the making of all such filings, including providing copies of all such documents to the non-filing party and its advisors prior to filings and, if requested, will accept all reasonable additions, deletions or changes suggested in connection therewith);

(ii) furnish all information required for any application or other filing to be made pursuant to any applicable law or any applicable Regulations of any Governmental Authority in connection with the transactions contemplated by this Agreement; and

(iii) lift, rescind or mitigate the effects of any injunction, restraining order or other order adversely affecting the ability of any party hereto to consummate the transactions contemplated hereby and thereby and to prevent, with respect to any threatened injunction, restraining order or other Order, the issuance or entry thereof;

provided, however, that neither Parent nor any of its Affiliates shall be under any obligation to (x) make proposals, execute or carry out agreements or submit to Orders providing for the sale or other disposition or holding separate (through the establishment of a trust or otherwise) of any assets or categories of assets material (in nature or amount) of Parent, any of its Affiliates, the Company or the holding separate of the Company Common Shares or imposing or seeking to impose any material limitation on the ability of Parent to conduct their business or own such assets or to acquire, hold or exercise full rights of ownership of the Company Common Shares or (y) otherwise take any step to avoid or eliminate any impediment which may be asserted under any Law governing competition, monopolies or restrictive trade practices which, in the reasonable judgment of Parent, might result in a limitation of the benefit expected to be derived by Parent as a result of the transactions contemplated hereby or might adversely affect the Company or Parent or any of Parent's Affiliates. Neither party hereto will take any action which results in any of the representations or warranties made by such party pursuant to Articles II, III or IV, as the case may be, becoming untrue or inaccurate in any material respect.

(b) Parent and the Company shall use all reasonable efforts to satisfy or cause to be satisfied all of the conditions precedent that are set forth in Article VII, as applicable to each of them, and to cause the transactions contemplated by this Agreement to be consummated. Each party hereto, at the reasonable request of another party hereto, shall execute and deliver such other instruments and do and perform such other reasonable acts and things as may be necessary or desirable for effecting completely the consummation of this Agreement and the transactions contemplated hereby.

6.3 **Notification of Certain Matters**.

(a) The Company shall give prompt notice to Parent, and Parent shall give prompt notice to the Company, of the occurrence or non-occurrence of any event, the occurrence or non-occurrence of which, results in any representation or warranty contained in this Agreement to be untrue or inaccurate in any material respect (or, in the case of any representation or warranty qualified by its terms by materiality or Material Adverse Effect, then untrue or inaccurate in any respect) and any failure of the Company, Parent or Merger Sub, as the case may be, to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by it hereunder; provided, however, that the delivery of any notice pursuant to this Section 6.3 shall not limit or otherwise affect the remedies available hereunder to the party receiving such notice.

(b) Each of the Company and Parent shall give prompt notice to the other of (i) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the Merger, (ii) any notice or other communication from any Governmental Authority in connection with the Merger, (iii) any Litigation, relating to or involving or otherwise affecting the Company the Affiliated Entities or the Parent that relates to the consummation of the Merger, (iv) the occurrence of a default or event that, with notice or lapse of time or both, will become a default under any contract which is material to Parent or any Material Agreement of the Company, and (v) any change that is reasonably likely to have a Material Adverse Effect on the Company or Parent or is likely to delay or impede the ability of either Parent or the Company to consummate the transactions contemplated by this Agreement or to fulfill their respective obligations set forth herein.

(c) Each of the Company and Parent shall give any notices to third Persons, and use all reasonable efforts to obtain any consents from third Persons (i) necessary, proper or advisable to consummate the transactions contemplated by this Agreement, (ii) otherwise required under any contracts, licenses, leases or other agreements in connection with the consummation of the transactions contemplated hereby, or (iii) required to prevent a Material Adverse Effect on the Company or Parent from occurring. If any party shall fail to obtain any such consent from a third Person, such party shall use all reasonable efforts, and will take any such actions reasonably requested by the other parties, to limit the adverse effect upon the Company and Parent and their respective businesses resulting, or which would result after the Effective Time, from the failure to obtain such consent.

6.4 **Public Announcements**. Parent and the Company shall consult with and obtain the approval of the other party before issuing any press release or other public announcement with respect to the Merger or this Agreement and shall not issue any such press release prior to such consultation and approval, except as may be required by applicable law or any listing agreement related to the trading of the shares of either party on any national securities exchange or national automated quotation system, in which case the party proposing to issue such press release or make such public announcement shall use reasonable efforts to consult in good faith with the other party before issuing any such press release or making any such public announcement.

6.5 **Takeover Laws**. If any form of anti-takeover statute, regulation or Certificate of Incorporation provision or contract is or shall become applicable to the Merger or the transactions contemplated hereby, the Company and the Board of Directors of the Company shall grant such approvals and take such actions as are necessary under such laws and provisions so that the transactions contemplated hereby and thereby may be consummated as promptly as practicable on the terms contemplated hereby and thereby and otherwise act to eliminate or minimize the effects of such statute, regulation, provision or contract on the transactions contemplated hereby or thereby.

6.6 **Release Agreements**. The Company shall use its best efforts, on behalf of Parent and pursuant to the request of Parent, to cause each Person identified in Section 6.6 of the Company Disclosure Schedule to execute and deliver to Parent a written release and waiver satisfactory in form and substance to Parent in its sole discretion and in substantially the form attached hereto as Exhibit B (the "Release Agreements"), dated as of the Effective Time, providing for, among other things, release of the Company, Parent and the Surviving Corporation and their respective Affiliates from any and all claims, known and unknown, that such Person has or may have against such Persons through the Effective Time.

6.7 **Maintenance, Prosecution and Filing Obligations**. Until the Effective Time, the Company shall pay the costs of preparation for filing, prosecution, and maintenance of all Intellectual Property Rights as required and shall not permit the lapse of any filings following the Execution Date.

6.8 **Employee Benefits**.

(a) Parent agrees that individuals who are employed by the Company immediately prior to the Effective Time shall become employees of the Surviving Corporation upon the Effective Time (each such employee, a "Company Employee"); provided, however, that this Section 6.8 shall not be construed to limit the ability of the Company or any of its Subsidiaries to terminate the employment of any Company Employee at any time.

(b) Parent will, or will cause the Surviving Corporation to, give Company Employees full credit for purposes of eligibility (including service and waiting period requirements), vesting, benefit accrual and determination of the level of benefits under any employee benefit plans or arrangements maintained by the Parent or the Surviving Corporation for such Company Employees' service with the Company to the same extent recognized by the Company immediately prior to the Effective Time.

(c) Parent will, or will cause the Surviving Corporation to, (i) waive all limitations as to preexisting conditions, exclusions and waiting periods and service requirements with respect to participation and coverage requirements applicable to the Company Employees under any welfare benefit plans of Parent or the Surviving Corporation that such Company Employees may be eligible to participate in after the Effective Time, other than limitations, waiting periods or service requirements that are already in effect with respect to such Company employees and that have not been satisfied under any welfare plan previously maintained for the Company Employees, and (ii) provide each Company Employee with credit for any co-payments

and deductibles paid in the year in which the Effective Time occurs under the welfare plans of the Company or the Surviving Corporation (as shown on the Company's or the Surviving Corporation's records) in satisfying any applicable deductible or out-of-pocket requirements under any welfare plans of Parent that such employees are eligible to participate in the year in which the Effective Time occurs.

6.9 **Listings**. Parent shall use its reasonable efforts to cause the Parent Common Stock to be issued in the Merger to be approved for listing on the Nasdaq National Market and the Neuer Markt/Frankfurt Stock Exchange, subject to official notice of issuance.

6.10 **Indemnification of Directors and Officers**.

(a) From and after the Effective Time, Parent will fulfill and honor and will cause the Surviving Corporation to fulfill and honor in all respects the obligations of the Company pursuant to any indemnification agreements between the Company and its directors and officers as of or prior to the date hereof (or indemnification agreements in the Company's customary form for directors joining the Company's Board of Directors prior to the Effective Time) and any indemnification provisions under the Company's Certificate of Incorporation or equivalent organizational document of the Company as in effect immediately prior to the Effective Time.

(b) For a period of six years after the Effective Time, Parent will maintain or cause the Surviving Corporation to maintain in effect, if available, directors' and officers' liability insurance covering those Persons who, as of immediately prior to the Effective Time, are covered by the Company's directors' and officers' liability insurance policy (the "Insured Parties") on terms no less favorable to the Insured Parties than those of the Parent's present directors' and officers' liability insurance policy.

(c) The provisions of this Section 6.10 are intended to be for the benefit of, and shall be enforceable by, each Person entitled to indemnification hereunder and the heirs and representatives of such Person. Parent shall not permit the Surviving Corporation to merge or consolidate with any other Person unless the Surviving Corporation ensures that the surviving or resulting entity will assume the obligations imposed by this Section 6.10.

6.11 **Registration of Shares Issued in the Merger**.

(a) Registrable Shares. For purposes of this Agreement, "Registrable Shares" shall mean the Conversion Shares issued to the Company Stockholder upon conversion of the Convertible Note, including any and all Escrow Shares.

(b) Required Registration. Within twenty (20) days after the Closing Date, Parent shall prepare and file with the SEC a Resale Registration Statement under the Securities Act with respect to the sale of the Registrable Shares by the Company Stockholder or their permitted distributees. Parent shall use its best efforts to cause the Resale Registration Statement and all registrations, qualifications and compliances (including, without limitation, obtaining

appropriate qualifications under applicable state securities or "blue sky" laws and compliance with any other applicable governmental requirements or regulations) as the Company Stockholder may reasonably request and that would permit or facilitate the sale of Registrable Shares to become effective as soon as practicable after filing; provided, however, that Parent shall not be required in connection therewith to qualify to do business or to file a general consent to service of process in any such state or jurisdiction. Parent will provide the Company Stockholder upon request with as many copies of the prospectus contained in the Registration Statement and such other documents as the Company Stockholder may reasonably request from Parent.

(c) Effectiveness; Suspension Right.

(i) From and after the effectiveness of the Resale Registration Statement as contemplated by Section 6.11(b), Parent will use its best efforts to maintain such effectiveness and other applicable registrations, qualifications and compliances until the earlier of (A) such time as the Company Stockholder may sell all of the Registrable Shares held by it without registration pursuant to the Rule 144 within a three-month period or (B) such time as all of the Registrable Shares have been sold by the Company Stockholder (the "Registration Effective Period"), and from time to time will amend or supplement the Resale Registration Statement and the prospectus contained therein as and to the extent necessary to comply with the Securities Act, the Exchange Act and any applicable state securities statute or regulation, subject to the following limitations and qualifications.

(ii) Following the Registration Statement Effective Date, the Company Stockholder will be permitted, subject to the Suspension Right (as defined in paragraph (iii) below), to offer and sell Registrable Shares during the Registration Effective Period in the manner described in the Resale Registration Statement provided that the Resale Registration Statement remains effective and has not been suspended.

(iii) Subject to the provisions of this Section 6.11, Parent shall have the right at any time to require that the Company Stockholder suspend further open market offers and sales of Registrable Shares whenever, and for so long as, in the reasonable judgment of Parent after consultation with counsel there is in existence material undisclosed information or events with respect to Parent (the "Suspension Right"). In the event Parent exercises the Suspension Right, such suspension will continue for the period of time reasonably necessary for disclosure to occur at a time that is not materially detrimental to Parent and its stockholders or until such time as the information or event is no longer material, each as determined in good faith by Parent after consultation with counsel. Parent will promptly give the Company Stockholder notice of any such suspension and will use its best efforts to limit the length of the suspension to ten (10) days. Notwithstanding any other provision of this Section 6.11, such suspension shall not exceed twenty (20) days or be exercised more than two (2) times during the period when the Resale Registration Statement is effective. In addition, during any period when a

suspension is in effect hereunder, Parent will suspend the use of, and not file, any other registration statements.

(d) Expenses. Parent shall bear all costs and expenses of registration under this Section 6.11, including, without limitation, printing expenses, legal fees and disbursements of counsel for Parent, "blue sky" expenses, accounting fees and filing fees, but excluding underwriting commissions or similar charges in connection with the resale of the Parent Common Stock, as well as legal fees and disbursements of counsel for the Company Stockholder.

(e) Indemnification.

(i) To the fullest extent permitted by law, Parent will indemnify and hold harmless the Company Stockholder, each underwriter of Parent Common Stock being sold by such Company Stockholder pursuant to this Section 6.11 and each person, if any, who controls the Company Stockholder or underwriter within the meaning of the Securities Act or the Exchange Act against all actions, claims, losses, damages, liabilities and expenses to which they or any of them become subject under the Securities Act, the Exchange Act or under any other Law and, except as hereinafter provided, will promptly reimburse as incurred the Company Stockholder, each such underwriter and each such controlling person, if any, for any legal or other expenses reasonably incurred by them or any of them in connection with investigating or defending any actions whether or not resulting in any liability, insofar as such losses, claims, damages, expenses, liabilities or actions arise out of or are based upon any untrue statement or alleged untrue statement of material fact in any registration statement and any prospectus filed pursuant to Section 6.11 or any post-effective amendment thereto or arise out of or are based upon any omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading or any violation by Parent of any rule or regulation promulgated under the Securities Act or the Exchange Act applicable to Parent and relating to action or inaction required of Parent in connection with such registration; provided, however, that Parent shall not be liable to any such Holder, or controlling person in respect of any claims, losses, damages, liabilities and expenses resulting from any untrue statement or alleged untrue statement, or omission or alleged omission made in reliance upon and in conformity with information furnished in writing to Parent by the Company Stockholder specifically for use in connection with such registration statement and prospectus or post-effective amendment.

(ii) To the fullest extent permitted by law, the Company Stockholder will, severally and not jointly, indemnify Parent, each person, if any, who controls Parent within the meaning of the Securities Act or the Exchange Act, each director of the Parent and each officer of Parent who signs the Resale Registration Statement and each underwriter of Parent Common Stock against any actions, claims, losses, damages, liabilities and expenses to which they or any of them may become subject under the Securities Act, the Exchange Act or under any other Law, and, except as hereinafter provided, will promptly reimburse the Parent and each such director, officer, or

controlling person for any legal or other expenses reasonably incurred by them or any of them in connection with investigating or defending any actions whether or not resulting in any liability, insofar as such losses, claims, damages, expenses, liabilities or actions arise out of or are based upon any untrue statement or alleged untrue statement of a material fact in any registration statement and any prospectus filed pursuant to Section 6.12 or any post-effective amendment thereto, or any omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, which untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with information furnished in writing to Parent by the Company Stockholder or any Affiliated Entity specifically for use in connection with such registration statement, prospectus or post-effective amendment; provided, however, that the obligations of each the Company Stockholder hereunder shall be limited to an amount equal to the proceeds actually received by such Company Stockholder from the sale of such Company Stockholder's Registrable Shares as contemplated herein.

(iii) Each person entitled to indemnification under this Section 6.11 (an "Indemnified Person") shall give notice to the party required to provide indemnification (the "Indemnifying Person") promptly after such Indemnified Person has actual knowledge of any claim as to which indemnity may be sought and shall permit the Indemnifying Person to assume the defense of any such claim and any litigation resulting therefrom, provided that counsel for the Indemnifying Person who conducts the defense of such claim or any litigation resulting therefrom shall be approved by the Indemnified Person (whose approval shall not unreasonably be withheld), and the Indemnified Person may participate in such defense at such party's expense (unless the Indemnified Person has reasonably concluded that there may be a conflict of interest between the Indemnifying Person and the Indemnified Person in such action, or unless the Indemnified Person has defenses not available to the Indemnifying Person, in which case the fees and expenses of counsel for the Indemnified Person shall be at the expense of the Indemnifying Person), and provided further that the failure of any Indemnified Person to give notice as provided herein shall not relieve the Indemnifying Person of its obligations under this Section 6.11 except to the extent the Indemnifying Person is materially prejudiced thereby. No Indemnifying Person, in the defense of any such claim or litigation, shall (except with the consent of each Indemnified Person) consent to entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified Person of a complete release from all liability in respect to such claim or litigation. Each Indemnified Person shall furnish such information regarding itself or the claim in question as an Indemnifying Person may reasonably request in writing and as shall be reasonably required in connection with the defense of such claim and litigation resulting therefrom.

(iv) To the extent that the indemnification provided for in this Section 6.11 is held by a court of competent jurisdiction to be unavailable to an Indemnified Person with respect to any loss, liability, claim, damage or expense referred to herein, then the Indemnifying Person, in lieu of indemnifying such Indemnified Person hereunder, shall

contribute to the amount paid or payable by such Indemnified Person as a result of such loss, liability, claim, damage or expense in such proportion as is appropriate to reflect the relative fault of the Indemnifying Person on the one hand and of the Indemnified Person on the other in connection with the statements or omissions which resulted in such loss, liability, claim, damage or expense, as well as any other relevant equitable considerations. The relative fault of the Indemnifying Person and of the Indemnified Person shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Indemnifying Person or by the Indemnified Person and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

ARTICLE VII

CONDITIONS OF MERGER

7.1 **Conditions to Obligation of Each Party to Effect the Merger**. The respective obligations of each party to effect the Merger shall be subject to the satisfaction at or prior to the Effective Time of the following conditions, any or all of which may be waived by the party entitled to the benefit thereof, in whole or in part, the extent permitted by applicable Law:

(a) **Regulatory Approvals**. All approvals and consents of applicable Courts and/or Governmental Authorities required to consummate the Merger shall have been received, except for such approvals and consents, the failure of which to have been so received, shall not have a Material Adverse Effect.

(b) **No Injunctions or Restraints; Illegality**. No temporary restraining order, preliminary or permanent injunction or other Order (whether temporary, preliminary or permanent) issued by any court of competent jurisdiction or other legal restraint or prohibition (an "Injunction") preventing the consummation of the Merger shall be in effect which is non-appealable, nor shall any proceeding brought by any administrative agency or commission or other Governmental Authority, domestic or foreign, seeking any of the foregoing be pending, and there shall not be any action taken, or any statute, rule, regulation or order enacted, entered, enforced or deemed applicable to the Merger, which makes the consummation of the Merger illegal.

(c) **No Order**. No Court or Governmental Authority having jurisdiction over the Company or Parent shall have enacted, issued, promulgated, enforced or entered any Law, Regulation or Order (whether temporary, preliminary or permanent) which is then in effect and which has the effect of making the Merger illegal or otherwise prohibiting consummation of the Merger substantially on the terms contemplated by this Agreement without an opportunity for appeal by either party.

(d) **License Agreement**. Parent shall have entered into a License Agreement with the Company Parent substantially in the form attached hereto as Exhibit F.

(e) **Services Agreement.** No later than January 31, 2000, the Surviving Corporation shall have entered into a Services Agreement with the Company Parent substantially in the form of Exhibit G attached hereto pursuant to which the Company Parent shall agree to provide certain administrative and corporate services described therein to the surviving Corporation from the Effective Time through June 30, 2000.

(f) **Facility Agreement.** No later than January 31, 2000, the Surviving Corporation shall have entered into a Facility Agreement with a subsidiary of Company Parent, Chiroscience R&D, Inc., substantive matters to be addressed thereunder as set forth in Exhibit H attached hereto pursuant to which the parties shall agree upon the shared use of the facility services described therein.

7.2 **Additional Conditions to Obligations of Parent and Merger Sub**. The obligations of Parent and Merger Sub to effect the Merger are also subject to the following conditions, any or all of which may be waived by Parent and Merger Sub, in whole or in part, to the extent permitted by applicable Law:

(a) **Representations and Warranties**. The representations and warranties of the Company and the Affiliated Entities contained in this Agreement and the Related Agreements shall be true and correct in all material respects on and as of the Effective Time, except for changes contemplated by this Agreement (together with the Company Disclosure Schedule) (except for those (x) representations and warranties that are qualified by materiality or Material Adverse Effect, in which case such representations and warranties shall be true and correct in all respects and (y) representations and warranties which address matters only as of a particular date (in which case such representations and warranties qualified as to materiality or Material Adverse Effect shall be true and correct in all respects, and those not so qualified shall be true and correct in all material respects, on and as of such particular date), with the same force and effect as if made on and as of the Effective Time, and Parent and Merger Sub shall have received a certificate to such effect signed by the Chief Executive Officer and/or Chief Financial Officer of Company Parent.

(b) **Agreements and Covenants**. The Company shall have performed or complied in all material respects with all agreements and covenants required by this Agreement and the Related Agreements to be performed or complied with by it on or prior to the Effective Time. Parent and Merger Sub shall have received a certificate to such effect signed by the President of the Company.

(c) **Third Party Consents**. Parent shall have received evidence, in form and substance reasonably satisfactory to it, that those licenses, Permits, consents, waivers, approvals, authorizations, qualifications or Orders (including all United States and foreign governmental and regulatory rulings and approvals) of Governmental Authorities and other third parties described in Section 2.5(a) of the Company Disclosure Schedule (or not described in Section 2.5(a) of the Company Disclosure Schedule but required as described in Section 2.5(a) and (b) of this Agreement) have been obtained, except where failure to have been so obtained, either individually or in the aggregate, shall not have a Material Adverse Effect.

(d) **No Material Adverse Effect**. From and including the date hereof, there shall not have occurred any event and no circumstance shall exist which, alone or together with any one or more other events or circumstances has had, is having or would reasonably be expected to have a Material Adverse Effect on the Company.

(e) **Merger Certificate**. The Company shall have executed and delivered the Merger Certificate.

(f) **Opinion of Counsel to the Company**. Parent shall have received the opinion of Heller, Ehrman, White and McAuliffe, dated as of the Effective Time, substantially in the form of Exhibit C.

(g) **Forgiveness of Intercompany Debt**. Parent shall have received evidence reasonably satisfactory to Parent that any and all indebtedness by and between the Company and any Affiliate of the Company as reflected in the Company Financial Statements shall have been forgiven.

7.3 **Additional Conditions to Obligations of the Company**. The obligation of the Company to effect the Merger is also subject to the following conditions, any or all of which may be waived by Company, in whole or in part, to the extent permitted by applicable Law:

(a) **Representations and Warranties.** The representations and warranties of Parent and Merger Sub contained in this Agreement and the Related Agreements shall be true and correct in all material respects on and as of the Effective Time, except for changes contemplated by this Agreement, (except for those (x) representations and warranties that are qualified by materiality or Material Adverse Effect, in which case such representations and warranties shall be true and correct in all respects and (y) representations and warranties which address matters only as of a particular date (in which case such representations and warranties qualified as to materiality or Material Adverse Effect shall be true and correct in all respects, and those not so qualified shall be true and correct in all material respects, on and as of such particular date), with the same force and effect as if made on and as of the Effective Time, and the Company shall have received a certificate to such effect signed by the Chief Financial Officer of Parent, with respect to Parent and the Chief Financial Officer of Merger Sub, with respect to Merger Sub.

(b) **Agreements and Covenants**. Parent and Merger Sub shall have performed or complied in all material respects with all agreements and covenants required by this Agreement to be performed or complied with by them on or prior to the Effective Time, and the Company shall have received a certificate to such effect signed by the Chief Financial Officer of Parent, with respect to Parent and the Chief Financial Officer of Merger Sub, with respect to the Merger Sub.

(c) **Merger Certificate**. Merger Sub shall have executed and delivered the Merger Certificate.

(d) **Opinion of Counsel to Parent**. Company shall have received the opinion of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. dated as of the Effective Time, substantially in the form of Exhibit D.

(e) **Convertible Note**. The Parent shall have executed and delivered as of the Closing Date to the Company Stockholder the Convertible Note substantially in the form of Exhibit I.

ARTICLE VIII

TERMINATION, AMENDMENT AND WAIVER

8.1 **Termination**. This Agreement may be terminated and the Merger contemplated hereby may be abandoned at any time prior to the Effective Time, notwithstanding approval thereof by the Company Stockholder:

(a) By mutual written consent duly authorized by the Boards of Directors of Parent and the Company; or

(b) By either Parent or the Company if the Merger shall not have been consummated on or before January 15, 2000; provided, that, the right to terminate this Agreement under this Section 8.1 shall not be available to any party whose willful failure to fulfill any material obligation under this Agreement has been the cause of, or resulted in, the failure of the Merger to have been consummated on or before such date; or

(c) By either Parent or the Company, if a court of competent jurisdiction or governmental, regulatory or administrative agency or commission shall have issued an order, decree or ruling or taken any other action, in each case which has become final and non-appealable which prohibits the Merger; or

(d) By Parent, if the Board of Directors of the Company or any committee thereof shall have (i) approved or recommended, or proposed to approve or recommend, any Acquisition Proposal other than the Merger, (ii) entered, or caused the Company or the Affiliated Entity to enter, into any letter of intent, agreement in principle, acquisition agreement or other similar agreement related to any Acquisition Proposal, (iii) taken any action prohibited by Section 5.2, or (iv) resolved by the Board or announced its intention to do any of the foregoing; or

(e) By Parent, if neither Parent nor Merger Sub is in material breach of its obligations under this Agreement, and if (i) there has been a breach at any time by the Company of any of its representations and warranties hereunder such that Section 7.2(a) would not be satisfied (treating such time as if it were the Effective Time for purposes of this Section 8.1(e)), or (ii) there has been the willful breach on the part of the Company of any of its covenants or agreements contained in this Agreement such that Section 7.2(b) will not be satisfied (treating such time as if it were the Effective Time for purposes of this Section 8.1(e)), and, in both case (i) and case (ii), such breach (if curable) has not been cured within 10 days after written notice to the Company; or

(f) By the Company, if it is not in material breach of its obligations under this Agreement, and if (i) there has been a breach at any time by Parent or Merger Sub of any of their respective representations and warranties hereunder such that Section 7.3(a) would not be satisfied (treating such time as if it were the Effective Time for purposes of this Section 8.1(f)), or (ii) there has been the willful breach on the part of Parent or Merger Sub of any of their respective covenants or agreements contained in this Agreement such that Section 7.3(b) would not be satisfied (treating such time as if it were the Effective Time for purposes of this Section 8.1(f)), and, in both case (i) and case (ii), such breach (if curable) has not been cured within 10 days after written notice to Parent and Merger Sub.

8.2 **Effect of Termination**. Except as provided in this Section 8.2, in the event of the termination of this Agreement pursuant to Section 8.1, this Agreement (other than Sections 8.2 and 8.3 , which shall survive such termination) will forthwith become void, and there will be no liability on the part of Parent, Merger Sub or the Company or any of their respective officers or directors to the other and all rights and obligations of any party hereto will cease, except that nothing herein will relieve any party from liability for any breach, prior to termination of this Agreement in accordance with its terms, of any representation, warranty, covenant or agreement contained in this Agreement.

8.3 **Fees and Expenses**.

(a) All fees and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such expenses, whether or not the Merger is consummated.

(b) Nothing in this Section 8.3 shall be deemed to be exclusive of any other rights or remedies Parent may have hereunder or under any Related Agreement or at law or in equity for any breach of this Agreement or any of the Related Agreements.

8.4 **Amendment**. This Agreement may be amended by an instrument in writing signed by all of the parties hereto at any time prior to the Effective Time.

8.5 **Waiver**. At any time prior to the Effective Time, any party hereto may extend the time for the performance of any of the obligations or other acts required hereunder, waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto and waive compliance with any of the agreements or conditions contained herein. Any such extension or waiver shall be valid if set forth in an instrument in writing signed by the party or parties to be bound thereby.

ARTICLE IX

INDEMNIFICATION; ESCROW

9.1 **Survival**. All representations and warranties of the parties in this Agreement, or in any agreement, instrument or document furnished in connection with this Agreement or the transactions contemplated hereby, shall survive the Closing and shall expire on January 10, 2001 (the “Expiration Date”), except that (a) claims, if any, asserted in writing prior to such Expiration

Date identified as a claim for indemnification pursuant to this Article IX shall survive until finally resolved and satisfied in full if the party entitled to indemnification prevails in establishing its right to indemnification, and (b) claims, if any, (i) which arise out of or relate to (A) Taxes, (B) Environmental Laws or (C) breach of representations and warranties as to the capitalization of the Company or title to or ownership of assets, or (ii) which are based upon fraud or intentional misrepresentation shall survive for the full period of the applicable statute of limitations, and until finally resolved and satisfied in full if asserted on or prior to such anniversary date if the party entitled to indemnification prevails in establishing its right to indemnification.

9.2 **Indemnification**. (a) Each of the Company Stockholder and the Affiliated Entities shall jointly and severally indemnify, defend and hold Parent and the Surviving Corporation and their respective officers, directors, employees and stockholders (other than the Company Stockholder and their successors in interest) and their successors and assigns, and (b) Parent shall indemnify, defend and hold the Company Stockholders, in each case from, against and with respect to any claim, liability, obligation, loss, damage, assessment, judgment, cost and expense (including, without limitation, reasonable attorneys' and accountants' fees and costs and expenses reasonably incurred in investigating, preparing, defending against or prosecuting any litigation or claim, action, suit, proceeding or demand) of any kind or character ("Damages") arising out of or in any manner incident, relating or attributable to:

(i) any material inaccuracy in any representation or material breach of warranty by an indemnifying party contained in this Agreement or in any certificate, instrument or transfer or other document or agreement executed in connection with this Agreement or otherwise made or given in connection with this Agreement;

(ii) any failure by an indemnifying party to perform or observe, or to have performed or observed, in full, any covenant, agreement or condition to be performed or observed by it under this Agreement or under any certificates or other documents or agreements executed in connection with this Agreement;

(iii) reliance by Parent on any books or records of the Company or reliance by Parent on any information furnished to Parent pursuant to this Agreement by or on behalf of the Company or the Company Stockholder;

(iv) in the case of clause (a) above, arising out of or relating to operation of the business of the Company on or prior to the Closing Date or facts and circumstances existing at or prior to the Closing Date, whether or not such liabilities or obligations were known on such date; and

(v) in the case of clause (b) above, arising out of or relating to the operation of the business of the Company after the Closing Date.

9.3 **Claims for Indemnification**. In the event of the occurrence of any event which any party asserts is an indemnifiable event pursuant to this Article IX, the party claiming indemnification (the "Indemnified Party") shall provide prompt notice to the party required to

provide indemnification (the "Indemnifying Party"), specifying in detail the facts and circumstances with respect to such claim and the basis for which indemnification is available hereunder. If such event involves the claim of any third party the Indemnifying Party shall have the right to control the defense or settlement of such claim; provided, however, that (i) the Indemnified Party shall be entitled to participate in the defense of such claim at its own expense, (ii) the Indemnifying Party shall obtain the prior written approval of the Indemnified party (which approval shall not be unreasonably withheld or delayed) before entering into any settlement of such claim if, pursuant to or as a result of such settlement, injunctive or other non-monetary relief would be imposed against the Indemnified Party, (iii) the Indemnifying Party shall not be entitled to control (but shall be entitled to participate at its own expense in the defense of), and the Indemnified Party shall be entitled to have sole control over, and shall assume all expense with respect to the defense or settlement of any claim to the extent such claim seeks an order, injunction or other equitable relief against the Indemnified Party which, if successful, could materially interfere with the business, operations, assets, condition (financial or otherwise) or prospects of the Indemnified Party; provided, that. the Indemnified Party shall provide written notice to the Indemnifying Party of its election to assume control over the defense of such claim pursuant to this clause (iii), and (iv) if the Indemnifying Party is entitled to but fails to assume control over the defense of a claim as provided in this Section 9.3, providing that Damages associated with such claim are covered by the indemnity provisions of Section 9.2, the Indemnified Party shall have the right to defend such claim, provided further that the Indemnified Party shall obtain the prior written approval of the Indemnifying party (which approval shall not be unreasonably withheld or delayed) before entering into any settlement of such claim if, pursuant to or as a result of such settlement, injunctive or other non-monetary relief would imposed against the Indemnifying Party.

In the event that the Indemnifying Party shall be obligated to indemnify the Indemnified Party pursuant to this Article IX, the Indemnifying Party shall, upon payment of such indemnity in full, be subrogated to all rights of the Indemnified Party with respect to the claim to which such indemnification relates.

9.4 **Threshold for Indemnification**. No claim by Parent against the Company Stockholders for indemnification pursuant to this Article IX with respect to any item of Damages arising out of, relating or attributable to any inaccuracy in any representation or breach of warranty by the Company shall be made, unless such item, together with the aggregate of all prior Damages of Parent, shall exceed $100,000 (the "Threshold Amount") in which event Parent shall be entitled, subject to the provisions of this Article IX to make a claim for indemnification hereunder to the extent or any and all of such Damages.

9.5 **Indemnification Priority**. Anything herein to the contrary notwithstanding, claims by Parent for indemnification of Damages shall be made, first, pursuant to the Escrow Agreement, and second, subject to Section 9.6, against the Company Stockholder and the Affiliated Entities.

9.6 **Limitations of Indemnification**. The indemnification obligations of the Company Stockholder shall be limited in any case to the Aggregate Merger Consideration.

9.7 **Escrow Arrangements**.

(a) On the Registration Statement Effective Date, the Company Stockholder will be deemed to have received and deposited with the Escrow Agent (as defined below) the Escrow Shares plus any additional shares as may be issued upon any stock split, stock dividend or recapitalization effected by Parent after the Effective Time, without any act of any Company Stockholder. As soon as practicable after the Effective Time, the Escrow Shares without any act of any Company Stockholder, will be deposited with **[State Street Bank]** (or another institution acceptable to Parent and the Company Stockholder) as Escrow Agent (the "Escrow Agent"), such deposit to constitute an escrow fund (the "Escrow Fund") to be governed by the terms of the Escrow Agreement substantially in the form attached hereto as Exhibit E. The Escrow Fund shall be available to indemnify compensate Parent and its Subsidiaries (including the Surviving Corporation) for claims or indemnification for Damages incurred by Parent and its Subsidiaries (including the Surviving Corporation) after the Effective Time.

(b) Subject to the terms of the Escrow Agreement, the Escrow Fund shall be in existence immediately following the Effective Time and shall terminate six (6) months after the Effective Time.

ARTICLE X

GENERAL PROVISIONS

10.1 **Agreement Not to Compete**.

(a) Each of the Company Stockholder and the Affiliated Entities agrees that for a period of three (3) years after the Closing Date that it will not, directly or indirectly, own, manage, control or participate in the ownership, management or control of, or be employed or engaged by or otherwise affiliated or associated as a consultant, independent contractor or otherwise with, any other corporation, partnership, proprietorship, firm, association or other business entity or otherwise engage in any business that is engaged in any manner in, or otherwise competes with, the service and Enabling Product business of the Company in any state in the United States or any foreign country in which the Company is then doing business and then only with respect to the service and Enabling Product business of the Company then being conducted in such states or countries; provided, however, that the ownership of not more than 3% of the stock of any publicly traded corporation shall not be deemed violation of this covenant.

A business will be deemed to "compete with the business" of the Company only to the extent that it sells, markets, brokers, manufactures or distributes Enabling Products or provides services in the area of genetic analysis.

(b) Each party hereto expressly agrees and understands that the remedy at law for any breach by it of this Agreement will be inadequate and that the damages flowing from such breach are not readily susceptible to being measured in monetary terms. Accordingly, it is acknowledged that Parent shall be entitled, among other remedies, to immediate injunctive relief for any such breach and to obtain a temporary order restraining any threatened or further breach.

Any covenant contained hereinabove shall nevertheless, if breached, give rise to monetary damages in accordance with the other provisions of this Agreement.

(c) In the event a party shall violate any legally enforceable provision of this Section 10.1 as to which there is a specific time period during which such party is prohibited from taking certain actions or from engaging in certain activities, as set forth in this Section 10.1, then, in such event, such violation shall toll the running of such time period from the date of such violation until such violation shall cease.

10.2 **Additional Covenants**. The parties hereto agree to use their respective best efforts, or to cause their Affiliates to use their respective best efforts, to negotiate, execute and deliver, as soon as practicable and in any event on or before thirty (30) days from the Closing Date (i) a services agreement by and between the Surviving Corporation and the Company Parent on substantially the form as set forth on Exhibit G attached hereto and (ii) a facility agreement by and between the Surviving Corporation and Chiroscience R&D, Inc. in a form to be agreed upon and covering substantially the terms set forth on Exhibit H attached hereto.

10.3 **Notices**. All notices or other communications which are required or permitted hereunder shall be in writing and sufficient if delivered personally or sent by nationally-recognized overnight courier or by registered or certified mail, postage prepaid, return receipt requested, or by electronic mail, with a copy thereof to be delivered by mail (as aforesaid) within 24 hours of such electronic mail, or by telecopier, with confirmation as provided above addressed as follows:

(a) If to Parent or Merger Sub:

QIAGEN, N.V.
Sportstraat 50 5911 KJ Venlo
The Netherlands
Telephone:
Telecopier:
Attention: Dr. Metin Colpan, Chief Executive Officer

With a copy to:

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center
Boston, Massachusetts 02111
Telephone: (617) 542-6000
Telecopier: (617) 542-2241
Attention: Jonathan L. Kravetz, Esq.

(b) If to the Company Parent:
Celltech Group, plc
216 Bath Road
Slough
Berkshire SL1 4EN
United Kingdom
Telephone: 44 (1753) 534655
Telecopier: 44 (1753) 551244
Attention: Director of Legal Services

With a copy to:

Heller, Ehrman, White & McAuliffe
6100 Bank of America Tower
701 Fifth Avenue
Seattle, Washington 98104
Telephone: (206) 389-4264
Telecopier No.: (206) 447-0849
Attention: David R. Wilson, Esq.

or to such other address as the party to whom notice is to be given may have furnished to the other party in writing in accordance herewith. All such notices or communications shall be deemed to be received (a) in the case of personal delivery, on the date of such delivery, (b) in the case of nationally-recognized overnight courier, on the next Business Day after the date when sent (c) in the case of facsimile transmission or telecopier or electronic mail, upon confirmed receipt, and (d) in the case of mailing, on the third Business Day following the date on which the piece of mail containing such communication was posted.

10.4 **Disclosure Schedules**. The Company Disclosure Schedule shall be divided into sections corresponding to the sections and subsections of this Agreement. Disclosure of any fact or item in any section of the Company Disclosure Schedule shall not, should the existence of the fact or item or its contents be relevant to any other section of the Company Disclosure Schedule, be deemed to be disclosed with respect to such sections.

10.5 **Certain Definitions**. For purposes of this Agreement, the term:

(a) "*Affiliated Entity*" shall have the definition set forth in the recitals to this Agreement.

(b) "*Affiliates*" means, with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the first mentioned Person; including, without limitation, any partnership or joint venture in which the Company (either alone, or through or together with any other Subsidiary) has, directly or indirectly, an interest of 20% or more of the issued and outstanding capital stock of such Person;

(c) “*Company Balance Sheet*” means the balance sheet of the Company for the period ended October 31, 1999.

(d) “*Business Day*” means any day other than a Saturday, Sunday or day on which banks are permitted to close in the State of California, the State of Washington or in the State of Delaware.

(e) “*Company Disclosure Schedule*” means a schedule of even date herewith delivered by the Company to the Parent concurrently with the execution of this Agreement, which, among other things, will identify exceptions to the Company’s representations and warranties contained in Article II by specific section and subsection references;

(f) “*Control*” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly or as trustee or executor, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of stock, as trustee or executor, by contract or credit arrangement or otherwise;

(g) “*Court*” means any court or arbitration tribunal of the United States, any domestic state, or any foreign country, and any political subdivision thereof.

(h) *"Enabling Products"* means the commercial business of reagents, reagent kits and other related materials and analytical tools whether in semi-finished or finished form to allow a customer to conduct scientific measurements or perform scientific studies in the area of genetic analysis.

(i) “*Environmental Claim*” means any claim, action, cause of action, investigation or notice by any Person alleging potential liability (including, without limitation, potential liability for investigatory costs, cleanup costs, governmental response costs, natural resources damages, property damages, personal injuries or penalties) arising out of, based on or resulting from (a) the presence, release or disposal of any Hazardous Materials at any location, whether or not owned or operated by the Company, or (b) circumstances forming the basis of any violation, or alleged violation, of any Environmental Law.

(j) “*Environmental Laws*” means any Law pertaining to: (i) the protection of health, safety and the indoor or outdoor environment; (ii) the conservation, management or use of natural resources and wildlife; (iii) the protection or use of surface water and ground water; (iv) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, release, threatened release, abatement, removal, remediation or handling of, or exposure to, any Hazardous Material; or (v) pollution (including any release to air, land, surface water and ground water); and includes, without limitation, the Comprehensive Environmental, Response, Compensation, and Liability Act of 1980, as amended, and the Regulations promulgated thereunder and the Solid Waste Disposal Act, as amended, 42 U.S.C. ss. 6901 et seq.

(k) “*Exchange Agent*” means Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. or any other entity appointed to act in the capacities required under Section 1.9(a).

(l) "*Governmental Authority*" means any governmental agency or authority (other than a Court) of the United States, any domestic state, or any foreign country, and any political subdivision or agency thereof, and includes any authority having governmental or quasi-governmental powers.

(m) "*Hazardous Material*" means any substance, chemical, compound, product, solid, gas, liquid, waste, by-product, pollutant, contaminant or material which is hazardous or toxic and is regulated under any Environmental Law, and includes without limitation, asbestos or any substance containing asbestos, polychlorinated biphenyls or petroleum (including crude oil or any fraction thereof).

(n) "*Intellectual Property Right*" has the meaning ascribed to such term in Section 2.19 of this Agreement.

(o) "*Knowledge*" means (i) in the case of an individual, knowledge of a particular fact or other matter deemed to be possessed by the individual if (a) such individual, after making due inquiry, is actually aware of such fact or other matter or (ii) in the case of an entity (other than an individual) such entity will be deemed to have "Knowledge" of a particular fact or other matter if any individual who is serving, or has at any time served, as a director, officer, partner, in-house counsel, patent counsel (with respect to Intellectual Property Rights only), executor, or trustee of such Person (or in any similar capacity) has, or at any time had, Knowledge of such fact or other matter.

(p) "*Law*" means all laws, statutes and ordinances of any Governmental Agency including all decisions of Courts having the effect of law in each such jurisdiction;

(q) "*Lien*" means any mortgage, pledge, security interest, attachment, encumbrance, lien (statutory or otherwise), option, conditional sale agreement, right of first refusal, first offer, termination, participation or purchase or charge of any kind (including any agreement to give any of the foregoing); provided, however, that the term "Lien" shall not include (i) statutory liens for Taxes, which are not yet due and payable or are being contested in good faith by appropriate proceedings, (ii) statutory or common law liens to secure landlords, lessors or renters under leases or rental agreements confined to the premises rented, (iii) deposits or pledges made in connection with, or to secure payment of, workers' compensation, unemployment insurance, old age pension or other social security programs mandated under applicable Laws, (iv) statutory or common law liens in favor of carriers, warehousemen, mechanics and materialsmen, to secure claims for labor, materials or supplies and other like liens, and (v) restrictions on transfer of securities imposed by applicable state and federal securities Laws;

(r) "*Litigation*" means any suit, action, arbitration, cause of action, claim, complaint, criminal prosecution, investigation, demand letter, governmental or other administrative proceeding, whether at law or at equity, before or by any Court or Governmental Authority, before any arbitrator or other tribunal;

(s) "*Material Adverse Effect*" means any fact, event, change, circumstance or effect that is materially adverse to the business, condition (financial or otherwise), operations, results of operations, assets, liabilities or prospects of the (i) Company when such term is used in relation to the Company or the context otherwise so requires, or (ii) Parent and its subsidiaries taken as a whole when such term is used in relation to Parent or the context otherwise so requires.

(t) "*Order*" means any judgment, order, writ, injunction or decree of any Court or Governmental Authority.

(u) "*Person*" means an individual, corporation, partnership, association, trust, unincorporated organization, limited liability company, other entity or group (as defined in Section 13(d)(3) of the Exchange Act);

(v) "*Regulation*" means any rule or regulation of any Governmental Authority having the effect of Law.

(w) "*Related Agreements*" means the Release Agreement, the Convertible Note, the Confidentiality Agreement.

(x) "*Subsidiary*" or "*Subsidiaries*" of the Company, the Surviving Corporation, Parent or any other Person means any corporation, partnership, joint venture, limited liability company or other legal entity of which the Company, the Surviving Corporation, Parent or such other Person, as the case may be, (either alone or through or together with any other Subsidiary) owns, directly or indirectly, 50% or more of the stock or other equity interests the holders of which are generally entitled to vote for the election of the board of directors or other governing body of such corporation or other legal entity.

(y) "*Year 2000 Compliant*" shall mean the design, writing and testing of software owned or licensed by a Person (including existing products and owned software and technology currently under development) used in the operation of such Person's business as presently conducted , such that such software will at all times (i) record, store, process, calculate, manage, manipulate and present calendar dates falling before, on and after (and if applicable, spans of time including) December 31, 1999, including, without limitation, single-century formulas and multi-century formulas and (ii) create, calculate, recognize, accept, display, store, retrieve, accent, compare, sort, manipulate, or process any information dependent on or relating to such dates or otherwise provide use of dates or date-dependent or date-related data, including, but not limited to, century recognition, day-of-the week recognition, leap years, date values and interfaces of date functionalities, without loss of accuracy, functionality, data integrity and performance and will provide that all date-related data and user interface functionalities and data fields include the indication of century.

10.6 **Interpretation**. When a reference is made in this Agreement to Sections, subsections, Schedules or Exhibits, such reference shall be to a Section, subsection, Schedule or Exhibit to this Agreement unless otherwise indicated. The words "include," "includes" and "including" when used herein shall be deemed in each case to be followed by the words "without

limitation." The word "herein" and similar references mean, except where a specific Section or Article reference is expressly indicated, the entire Agreement rather than any specific Section or Article. The table of contents and the headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

10.7 **Severability**. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the extent possible.

10.8 **Entire Agreement**. This Agreement (including all exhibits and schedules hereto) constitutes the entire agreement and supersedes all prior agreements and undertakings (other than the Confidentiality Agreement), both written and oral, among the parties, or any of them, with respect to the subject matter hereof and, except as otherwise expressly provided herein, are not intended to confer upon any other Person any rights or remedies hereunder.

10.9 **Assignment**. This Agreement shall not be assigned by operation of law or otherwise, except that Parent and Merger Sub may assign all or any of their rights hereunder to any Affiliate provided that no such assignment shall relieve the assigning party of its obligations hereunder.

10.10 **Parties in Interest**. This Agreement shall be binding upon and inure solely to the benefit of each party hereto, and other than with respect to Section 6.8 which the parties hereto intend to establish third party beneficiary rights, nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

10.11 **Failure or Indulgence Not Waiver; Remedies Cumulative**. No failure or delay on the part of any party hereto in the exercise of any right hereunder will impair such right or be construed to be a waiver of, or acquiescence in, any breach of any representation, warranty or agreement herein, nor will any single or partial exercise of any such right preclude other or further exercise thereof or of any other right. All rights and remedies existing under this Agreement are cumulative to, and not exclusive to, and not exclusive of, any rights or remedies otherwise available.

10.12 **Governing Law**. This agreement and the agreements, instruments and documents contemplated hereby will be governed by and construed in accordance with the Law of the State of Delaware (exclusive of conflicts of law principles) ("Delaware Law"). Delaware Courts within the State of Delaware and, more particularly to the fullest extent such Court shall have subject matter jurisdiction over the matter, the Court of Chancery of the State of Delaware, will have exclusive jurisdiction over any and all disputes between the parties hereto, whether in law

or equity, arising out of or relating to this Agreement and the agreements, instruments and documents contemplated hereby. The parties consent to and agree to submit to the jurisdiction of such Courts, provided, however, that such consent to jurisdiction is solely for the purpose referred to in this Section 10.12 and shall not be deemed to be a general submission to the jurisdiction of such Courts or in the State of Delaware other than for such purpose. Each of the parties hereby waives, and agrees not to assert in any such dispute, to the fullest extent permitted by applicable Delaware Law, any claim that (i) such party is not personally subject to the jurisdiction of such Courts, (ii) such party and such party's property is immune from any legal process issued by such Courts or (iii) any Litigation commenced in such Courts is brought in an inconvenient forum.

10.13 **Counterparts**. This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, Parent, Merger Sub and the Company have caused this Agreement and Plan of Merger to be executed as of the date first written above by their respective officers thereunto duly authorized.

QIAGEN, N.V.

By ___________________________________
Name:
Title: Managing Director

QIAGEN ACQUISITION CORP.

By ___________________________________
Name: Metin Colpan
Title: President

RAPIGENE, INC.

By ___________________________________
Name:
Title: President

CELLTECH GROUP, plc

By ___________________________________
Name:
Title: Chief Financial Officer

DARWIN MOLECULAR CORPORATION

By ___________________________________
Name:
Title: Director and Chief Financial Officer

EXHIBIT A

FORM OF

CERTIFICATE OF MERGER
of
QIAGEN ACQUISITION CORP.
(a Delaware Corporation)
with and into
RAPIGENE, INC.
(a Delaware Corporation)

It is hereby certified that:

FIRST: The constituent business corporations participating in the merger herein certified are:

(i) QIAGEN Acquisition Corp. ("Acquisition"), which is incorporated under the laws of the State of Delaware; and

(ii) Rapigene, Inc. ("Rapigene"), which is incorporated under the laws of the State of Delaware.

SECOND: An Agreement and Plan of Merger has been approved, adopted, certified, executed, and acknowledged by each of the aforesaid constituent corporations in accordance with the provisions of Section 251 of the General Corporation Law of the State of Delaware.

THIRD: The name of the surviving corporation in the merger herein certified is Rapigene, Inc., which will continue its existence as said surviving corporation under its present name upon the effective date of said merger pursuant to the provisions of the General Corporation Law of the State of Delaware.

FOURTH: The Certificate of Incorporation of Rapigene, as now in force and effect shall continue to be the Certificate of Incorporation of said surviving corporation until amended and changed pursuant to the provisions of the General Corporation Law of the State of Delaware.

FIFTH: The executed Agreement and Plan of Merger between the aforesaid constituent corporations is on file at the principal place of business of the aforesaid surviving corporation, the address of which is as follows:

Rapigene Inc.
1725 220th St. S.E., Suite 200
Bothell, WA 98021

SIXTH: A copy of the aforesaid Agreement and Plan of Merger will be furnished by the aforesaid surviving corporation, on request, and without cost, to any stockholder of each of the aforesaid constituent corporations.

SEVENTH: The authorized capital stock of Acquisition consists of 3,000 shares of Common Stock, $0.001 par value per share.

EIGHTH: The Agreement and Plan of Merger between the aforesaid constituent corporations provides the merger herein certified shall be effective upon filing.

Dated: December __, 1999

QIAGEN Acquisition Corp.
(a Delaware corporation)

By: ______________________________
Metin Colpan
President

Dated: December __, 1999

Rapigene, Inc.
(a Delaware corporation)

By: ______________________________
Name:
President

EXHIBIT B

FORM OF RELEASE AGREEMENT

Reference is made to the Agreement and Plan of Merger dated as of December ___, 1999 (the "Merger Agreement") by and among QIAGEN,. N.V., a Netherlands corporation ("Parent"), QIAGEN ACQUISITION CORP., a Delaware corporation and a wholly owned subsidiary of Parent ("Merger Sub"), Rapigene, Inc., a Delaware corporation (the "Company'), Darwin Molecular Corporation, a Delaware corporation and Celltech Group, plc, an English corporation. All capitalized terms used, but not defined herein shall have the meanings ascribed to such terms in the Merger Agreement.

As an inducement for Parent and Merger Sub to consummate the transactions contemplated by the Merger Agreement and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, effective as of the Effective Time, the undersigned (the "Releasor") on his, her or its behalf and on behalf of his, her or its (i) heirs, executors, administrators, agents, successors and assigns or (ii) predecessors, parents, subsidiaries, affiliates and other related entities, as well as any current or former benefit plan administrators, and their respective trustees, officers, directors, stockholders or members (whether their ownership interests are held directly or indirectly), partners, agents, attorneys, successors and assigns (the "Releasor Persons"), as applicable, hereby irrevocably and unconditionally releases, waives and discharges the Company, Parent and Merger Sub and their predecessors, parents, subsidiaries, affiliates and other related entities, and all of their respective, past, present and future officers, directors, stockholders, affiliates, agents, representatives, successors and assigns, other than the Releasor and any Releasor Person (collectively, the "Released Parties"), from any and all actions, causes of action, suits, debts, dues, sums of money, accounts, bonds, bills, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands of every type and nature whatsoever, known or unknown, in law or equity (each a "Claim" and collectively, the "Claims") relating to, arising out of or in connection with the Company, its business and/or assets, including any Claims relating to, arising out of or resulting from the Releasor's status, relationship, affiliation, rights, obligations and/or duties as a director, officer, or securityholder of the Company, for all periods through the time immediately prior to the Effective Time.

The undersigned hereby represents and warrants that in his, her or its capacity as a securityholder of the Company, he, she or it has no knowledge of any claims that he, she or it may have against the Released Parties.

This Release shall terminate upon the termination of the Merger Agreement pursuant to the terms thereof.

IN WITNESS WHEREOF, the undersigned has duly executed this Release and Waiver as of this ____ day of December, 1999.

____

<u>EXHIBIT C</u>

FORM OF OPINION OF COUNSEL TO THE COMPANY

1. The Company is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation, and has the corporate power and authority to enter into and perform the Agreement. The Company is duly qualified and in good standing as a foreign corporation authorized to transact business in the State of Washington. The Company has all requisite corporate power and authority to own or lease and to operate its properties and assets and to conduct its business as presently conducted.

2. The execution and delivery of the Agreement and the consummation of the transactions contemplated thereby have been duly authorized by all necessary corporate action on the part of the Company. The Company has duly executed and delivered the Agreement, and the Agreement constitutes the valid and binding obligation of the Company, enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws of general application affecting the rights and remedies of creditors and by general principles of equity.

3. As of **December 23, 1999**, the authorized capital stock of the Company consisted solely of: (i) 2,000 shares of Common Stock, $.001 par value per share, 1,000 shares of which are issued and outstanding. To our knowledge, except as set forth in the Agreement or the Company Disclosure Schedule, there are no (i) outstanding or authorized subscriptions, warrants, options or other rights granted by the Company to purchase or acquire, or preemptive rights with respect to the issuance or sale of, the capital stock of the Company or which obligate the Company to issue any additional shares of its capital stock or any securities convertible into or evidencing the right to subscribe for any shares of its capital stock, (ii) other securities of the Company directly or indirectly convertible into or exchangeable for shares of capital stock of the Company, (iii) restrictions on the transfer of the Company's capital stock (other than those imposed by relevant state and federal securities laws), (iv) special voting rights with respect to the capital stock of the Company, or (v) stock appreciation, phantom stock or similar rights granted by the Company. To our knowledge, except as set forth in the Agreement or the Company Disclosure Schedule, no holders of securities of the Company have rights to require the Company to register such securities for sale.

4. Except as set forth in the Agreement or the Company Disclosure Schedule, to the best of our knowledge, there are no claims, actions, suits, arbitrations, proceedings or investigations pending or threatened against or involving the Company.

5. Except for (i) the filing of the Certificate of Merger and other appropriate merger documents, if any, as required by the DGCL, and (ii) such filings, notices, permits, consents and approvals as have been made, given or obtained, the execution, delivery and performance of the Agreement by the Company will not: (a) violate any provision of the Certificate of Incorporation or by-laws of the Company; (b) violate, conflict with, result in modification of the effect of, or otherwise give any other contracting party the right to terminate, or constitute (or with notice or

lapse of time or both constitute) a default under, any agreement or instrument as set forth in Section 2.6 of the Company Disclosure Statement ; (c) violate any law or regulation or, to the best of our knowledge, any judgment, decree or order of any court, arbitrator or governmental or regulatory body applicable to the Company; or (d) require any filing with, notice to, or permit, consent or approval of, any governmental or regulatory body, excluding from the foregoing clauses (b), (c) and (d) any exceptions to the foregoing that, in the aggregate, would not have a Material Adverse Effect on the business of the Company or on the ability of the Company to consummate the transaction (as that term is defined in the Agreement) contemplated by the Agreement.

6. Assuming that Merger Sub has complied with all relevant provisions of the DGCL, upon the filing and acceptance of the Certificate of Merger with the Secretary of State of the State of Delaware, the Merger will become effective under the DGCL at the time specified in the Certificate of Merger.

[TO BE REVISED] **EXHIBIT D**

FORM OF OPINION OF MINTZ LEVIN

1. Parent is a corporation duly incorporated, validly existing and in good standing under the laws of the Netherlands, and has the corporate power and authority to enter into and perform the Agreement.

2. The execution and delivery of the Agreement and the consummation of the transactions contemplated thereby have been duly authorized by all necessary corporate action on the part of Parent. Parent has duly executed and delivered the Agreement, and the Agreement constitutes the valid and binding obligation of Parent, enforceable against each in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws of general application affecting the rights and remedies of creditors and by general principles of equity.

3. The shares of Parent Common Stock to be issued in the Merger have been duly authorized by all necessary corporate action on the part of Parent and, when issued in the Merger pursuant to the terms of the Agreement, such shares will be validly issued, fully paid and nonassessable and not subject to any preemptive rights or to any restriction on transfer imposed by the Certificate of Incorporation or by-laws of Parent.

4. To our knowledge, there are no claims, actions, suits, arbitrations, proceedings or investigations pending or threatened against or involving Parent that individually or in the aggregate which, if adversely determined, are reasonably likely to: (i) materially restrict or interfere with the Agreement or any transaction contemplated thereby or (ii) materially impair or preclude the ability of Parent to consummate the Merger or the transactions contemplated by the Agreement.

5. Except for (i) the filing of the Certificate of Merger and other appropriate merger documents, if any, as required by the DGCL, and (ii) such filings, notices, permits, consents and approvals as have been made, given or obtained, the execution, delivery and performance of the Agreement by Parent will not: (a) violate any provision of the Certificate of Incorporation or by-laws of Parent; (b) violate, conflict with, result in modification of the effect of, or otherwise give any other contracting party the right to terminate, or constitute (or with notice or lapse of time or both constitute) a default under, any agreement or instrument known to us to which Parent is a party or to which either of them may be subject; (c) violate any law or regulation or, to the best of our knowledge, any judgment, decree or order of any court, arbitrator or governmental or regulatory body applicable to Parent; or (d) require any filing with, notice to, or permit, consent or approval of, any governmental or regulatory body, excluding from the foregoing clauses (b), (c) and (d) any exceptions to the foregoing that, in the aggregate, would not have a Material Adverse Effect (as defined in the Agreement) on the ability of Parent to consummate the transactions contemplated by the Agreement.

6. Assuming that the Company has complied with all relevant provisions of the DGCL, upon the filing and acceptance of the Certificate of Merger with the Secretary of State of the State of Delaware, the Merger will become effective under the DGCL at the time specified in the Certificate of Merger.

EXHIBIT E

FORM OF ESCROW AGREEMENT

ESCROW AGREEMENT

This Escrow Agreement is made as of this ____ day of December, 1999, by and among ________ ______________________________ ("Escrow Agent") **QIAGEN N.V.,** a Netherlands corporation ("Parent"), **RAPIGENE, INC.**, a Delaware corporation (the "Company") and **DARWIN MOLECULAR CORPORATION,** a Delaware corporation and the sole stockholder of the Company (the "Company Stockholder"). Terms not otherwise defined herein shall have the meaning set forth in the Merger Agreement (as defined below).

WITNESSETH

WHEREAS, Parent, the Company, the Company Stockholder, **QIAGEN ACQUISITION CORP.,** a Delaware corporation and a wholly owned subsidiary of Parent ("Merger Sub"), and **CELLTECH GROUP, plc**, an English corporation (Registration No. 2159282), the parent corporation of the Company Stockholder ("Company Parent") have entered into an Agreement and Plan of Merger (the "Merger Agreement"), dated as of December 23, 1999, providing for the merger of Company with and into the Merger Sub (the "Merger"); and

WHEREAS, pursuant to ARTICLE IX of the Merger Agreement, a copy of which is attached hereto as Appendix A ("Article IX"), an escrow fund (the "Escrow Fund") will be established to compensate Parent for certain Damages (as defined in Article IX) arising out of any misrepresentation or breach or default in connection with any of the representations, warranties, covenants and agreements given or made by Company in the Merger Agreement, the Company Disclosure Schedule or any exhibit or schedule to the Merger Agreement; and

WHEREAS, Article IX provides for an Escrow Fund of ten percent (10%) of the shares of Parent Common Stock issued at the Closing of the Merger, such escrow to be held by the Escrow Agent; and

WHEREAS, the parties hereto desire to set forth further terms and conditions in addition to those set forth in the Merger Agreement relating to the operation of the Escrow Fund.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants contained herein, and intending to be legally bound, hereby agree as follows:

All terms used and not otherwise defined herein, shall have the meanings ascribed to them in the Merger Agreement.

1. Escrow and Escrow Shares. Pursuant to the Merger Agreement, Parent shall deposit in escrow with the Escrow Agent, as escrow agent, as soon as practicable after the Effective Time (as defined in the Merger Agreement) and in any event within five (5) business days of the Closing Date (as defined in the Merger Agreement) of the Merger, a stock certificate or certificates representing a value of 10% of the Merger Consideration in shares of Parent Common Stock (the "Escrow Shares") accompanied by an executed stock power. The Escrow Shares shall be held and distributed by the Escrow Agent in accordance with the terms and conditions of the Merger Agreement and this Agreement, provided, that in no event shall more than the Escrow Shares be distributed to Parent.

2. Rights and Obligations of the Parties. The Escrow Agent shall be entitled to such rights and shall perform such duties of the escrow agent as set forth herein and in Article IX (collectively, the "Duties"), in accordance with the terms and conditions of this Agreement and Article IX. Parent, Company and the Company Stockholder shall be entitled to their respective rights and shall perform their respective duties and obligations as set forth herein and in Article IX, in accordance with the terms hereof and thereof in the event that the terms of this Agreement conflict in any way with the provisions of Article IX, Article IX shall control.

3. Notification of Claim.

(a) At such time as Parent delivers to the Company Stockholder a notice of claim pursuant to Section 9.3 of the Merger Agreement, Parent shall deliver a copy of such notice, which shall include the amount of damages claimed, to the Escrow Agent ("Claim Notice"). Within three business days following receipt of the Claim Notice, the Escrow Agent shall deliver a copy of the Claim Notice to the Company Stockholder. If the Company Stockholder objects to the claims for indemnification set forth in the Claim Notice, it shall so notify Parent and the Escrow Agent in writing within 15 business days of receipt of the Claim Notice and shall reasonably specify the grounds for its objection.

(b) If the Escrow Agent has not received any objection from the Company Stockholder within such time period, Escrow Agent shall distribute to Parent a number of the Escrow Shares equal in market value to the amount of the damages set forth in the Claim Notice. For purposes hereof, "market value" shall mean the average of the closing price of the Escrow Shares on the Nasdaq Stock Market for the ten trading days immediately preceding delivery of the Claim Notice to the Escrow Agent.

(c) If the Company Stockholder objects to the basis for indemnification or the amount of damages set forth in the Claim Notice within the time period set forth in subsection (a) hereof, Parent and the Company Stockholder shall in good faith attempt to resolve the specified claims. If no resolution of the claims can be reached within 30 days of the date the Company Stockholder notifies Parent of its objections, then the parties shall arbitrate the matter as set forth in Section 11 hereof.

4. Escrow Period. The Escrow Period shall terminate six (6) months after the Effective Time; provided, however, that a portion of the Escrow Shares, which, in the reasonable

judgment of Parent, subject to the objection of the Company Stockholder and the subsequent resolution of the matter in the manner provided herein, are necessary to satisfy any unsatisfied claims specified in any Claims Notice theretofore delivered to the Escrow Agent prior to termination of the Escrow Period with respect to facts and circumstances existing prior to expiration of the Escrow Period, shall remain in the Escrow Fund until such claims have been resolved.

5. Duties of Escrow Agent. In addition to the Duties set forth in Article IX, the Duties of the Escrow Agent shall include the following:

(a) The Escrow Agent shall hold and safeguard the Escrow Shares during the Escrow Period, shall treat such Escrow Fund as a trust fund in accordance with the terms of this Agreement and Article IX and not as the property of Parent, and shall hold and dispose of the Escrow Shares only in accordance with the terms hereof.

(b) Promptly following termination of the Escrow Period as set forth in Section 4 hereof, the Escrow Agent shall deliver to the Company Stockholder the Escrow Shares and other property in the Escrow Fund in excess of any amount of such Escrow Shares or other property sufficient, in the reasonable judgment of Parent, subject to the objection of the Company Stockholder and the subsequent resolution of the matter in the manner provided herein, to satisfy any unsatisfied claims specified in any Claims Notice theretofore delivered to the Escrow Agent prior to termination of the Escrow Period with respect to facts and circumstances existing prior to expiration of the Escrow Period, and to pay expenses as provided in Section 12(b) hereof. As soon as all such claims have been resolved, the Escrow Agent shall requisition from the transfer agent, if necessary, and deliver to such Stockholders all of the Escrow Shares and other property remaining in the Escrow Fund and not required to satisfy such claims and expenses.

6. Distributions. Any cash dividends, dividends payable in securities or other distributions of any kind (but excluding any shares of Parent capital stock received upon a stock split or stock dividend) shall be promptly distributed by the Escrow Agent to, and for tax reporting purposes shall be allocable to, the Company Stockholder. Any shares of Parent Common Stock received by the Escrow Agent upon a stock split or stock dividend made in respect of any securities in the Escrow Fund shall be added to the Escrow Fund and become a part thereof. Any provision hereof or of Article IX shall be adjusted to appropriately reflect any stock split or reverse stock split. For tax reporting purposes, all other income received by the Escrow Agent and attributable to the Escrow Fund shall be allocable to Parent.

7. Exculpatory Provisions.

(a) The Escrow Agent shall be obligated only for the performance of such Duties as are specifically set forth herein and in Article IX of the Merger Agreement and may rely and shall be protected in relying or refraining from acting on any instrument reasonably believed to be genuine and to have been signed or presented by the proper party or parties. The Escrow Agent shall not be liable for forgeries or false personations.

The Escrow Agent shall not be liable for any act done or omitted hereunder by it in good faith as escrow agent except for any liability arising from its (i) own gross negligence, bad faith, or willful misconduct or (ii) failure to comply with the terms of this Agreement and Article IX. The Escrow Agent shall, in no case or event be liable for any representations or warranties of Company, Parent or Merger Sub. Any act done or omitted pursuant to the advice or opinion of counsel shall be conclusive evidence of the good faith of the Escrow Agent.

(b) The Escrow Agent is hereby expressly authorized to disregard any and all warnings given by any of the parties hereto or by any other person, excepting only orders or process of courts of law or arbitrations as provided in Section 11 of this Agreement, and is hereby expressly authorized to comply with and obey orders, judgments or decrees of any court or rulings of any arbitrators. In case the Escrow Agent obeys or complies with any such order, judgment or decree of any court or such ruling of any arbitrator, the Escrow Agent shall not be liable to any of the parties hereto or to any other person by reason of such compliance, notwithstanding any such order, judgment, decree or arbitrators' ruling being subsequently reversed, modified, annulled, set aside, vacated or found to have been entered without jurisdiction.

(c) The Escrow Agent shall not be liable in any respect on account of the identity, authority or rights of the parties executing or delivering or purporting to execute or deliver the Agreement or any documents or papers deposited or called for thereunder.

(d) The Escrow Agent shall not be liable for the outlawing of any rights under any statute of limitations with respect to the Agreement or any documents deposited with the Escrow Agent.

8. Alteration of Duties. The Duties may be altered, amended, modified or revoked only by a writing signed by all of the parties hereto.

9. Resignation and Removal of the Escrow Agent. The Escrow Agent or any Successor may resign as Escrow Agent at any time with or without cause by giving at least thirty (30) days' prior written notice to each of Parent and the Company Stockholder, such resignation to be effective thirty (30) days following the date such notice is given. In addition, Parent and the Company Stockholder may jointly remove the Escrow Agent as escrow agent at any time with or without cause, by an instrument (which may be executed in counterparts) given to the Escrow Agent, which instrument shall designate the effective date of such removal. In the event of any such resignation or removal, a successor escrow agent which shall be a bank or trust company organized under the laws of the United States of America or any state thereof having a combined capital and surplus of not less than $100,000,000, shall be appointed by the Company Stockholder with the approval of Parent, which approval shall not be unreasonably withheld. Any such successor escrow agent shall deliver to Parent and the Company Stockholder a written instrument accepting such appointment, and thereupon it shall succeed to all the rights and duties of the escrow agent hereunder and shall be entitled to receive the Escrow Fund. In the event no successor escrow agent is appointed by the effective date of such resignation or removal, the

Escrow Agent, the Company Stockholder or the Parent may apply to a court of competent jurisdiction (in which action the other parties shall be afforded a reasonable opportunity to participate) for such appointment.

10. Further Instruments. If the Escrow Agent reasonably requires other or further instruments in connection with performance of the Duties, the necessary parties hereto shall join in furnishing such instruments.

11. Disputes. It is understood and agreed that should any dispute arise with respect to the delivery and/or ownership or right of possession of the securities held by the Escrow Agent hereunder, the Escrow Agent is authorized and directed to act in accordance with, and in reliance upon, the terms hereof and of this Section 11. Any controversy, dispute or claim arising out of or in connection with this Agreement, or the breach, termination or validity hereof, shall be settled by final and binding arbitration to be conducted by an arbitration tribunal in New York, New York, pursuant to the rules of the American Arbitration Association. The arbitration tribunal shall consist of three arbitrators. The party initiating arbitration shall nominate one arbitrator in the request for arbitration and the other party shall nominate a second in the answer thereof within thirty (30) days of receipt of the request. The two arbitrators so named will then jointly appoint the third arbitrator. If the answering party fails to nominate its arbitrator within the thirty (30) day period, or if the arbitrators named by the parties fail to agree on the third arbitrator within sixty (60) days, the office of the American Arbitration Association in New York, New York shall make the necessary appointments of such arbitrators(s). Each party shall pay the costs of its respective arbitrator, and the parties shall share equally the costs of the third arbitrator. The arbitrators shall be empowered to make appropriate orders with respect to all discovery matters and to limit the time period for and the matters subject to discovery in their discretion. The decision or award of the arbitrator tribunal (by a majority determination, or if there is no majority, then by the determination of the third arbitrator, if any) shall be final, and judgment upon such decision or award may be entered in any competent court or application may be made to any competent court for judicial acceptance of such decision or award and an order of enforcement. In the event of any procedural matter not covered by the aforesaid rules, the procedural law of the State of Delaware shall govern.

12. Escrow Fees and Expenses. Parent shall pay the Escrow Agent such fees as are established by the Fee Schedule attached hereto as Appendix B.

13. Indemnification. In consideration of the Escrow Agent's acceptance of this appointment, the other parties hereto, jointly and severally, agree to indemnify and hold the Escrow Agent harmless as to any liability incurred by it to any person, firm or corporation by reason of its having accepted such appointment or in carrying out the terms hereof and Article IX of the Merger Agreement, and to reimburse the Escrow Agent for all its costs and expenses, including, among other things, counsel fees and expenses, reasonably incurred by reason of any matter as to which an indemnity is paid; provided, however, that no indemnity need be paid in case of the Escrow Agent's gross negligence, bad faith, willful misconduct or breach of this Agreement. In no event shall the Escrow Agent be liable for indirect, punitive, special or consequential damages.

14. General.

(a) Any notice given hereunder shall be in writing and shall be deemed effective upon the earlier of personal delivery or the third day after mailing by certified or registered mail, postage prepaid as follows:

To Parent: QIAGEN, N.V.
Sportstraat 50 5911 KJ Venlo
The Netherlands
Telephone:
Telecopier:
Attention:

With a copy to: Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center
Boston, MA 02111
Attention: Jonathan Kravetz, Esq.
Fax: (617) 542-6000
Tel: (617) 542-2241

To Company Stockholder: Darwin Molecular Corp.
1725 220th St. S.E., Suite 200
Bothell, WA 98021
Telephone: (425) 489-8000
Telecopier: (425) 489-8018
Attention: Legal Department

With a copy to: Heller, Ehrman, White & McAuliffe
6100 Bank of America Tower
701 Fifth Avenue
Seattle, Washington 98104
Telephone: (206) 389-4264
Telecopier No.: (206) 441-0849
Attention: David R. Wilson, Esq.

To the Escrow Agent:

____
____
____
Attention: ____________________

or to such other address as any party may have furnished in writing to the other parties in the manner provided above.

(b) The captions in this Escrow Agreement are for convenience only and shall not be considered a part of or affect the construction or interpretation of any provision of this Escrow Agreement.

(c) This Escrow Agreement may be executed in any number of counterparts, each of which when so executed shall constitute an original copy hereof, but all of which together shall constitute one agreement.

(d) No party may, without the prior express written consent of each other party, assign this Escrow Agreement in whole or in part. This Escrow Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.

(e) This Escrow Agreement shall be governed by and construed in accordance with the laws of the State of Delaware as applied to contracts made and to be performed entirely within the State of Delaware. The parties to this Escrow Agreement hereby agree to submit to personal jurisdiction in the State of Delaware.

IN WITNESS WHEREOF, each of the parties has executed this Agreement as of the date first above written.

ESCROW AGENT
as Escrow Agent

By:____________________________________
Name:
Title:

QIAGEN, N.V.

By ______________________________
Name: Metin Colpan
Title: President

RAPIGENE, INC.

By ______________________________
Name:
Title: President

DARWIN MOLECULAR CORPORATION

By ___________________________________

Name:

Title: Director and Chief Financial Officer

APPENDIX A

ARTICLE IX OF THE MERGER AGREEMENT

APPENDIX B

FEE SCHEDULE

EXHIBIT G

ADMINISTRATIVE SERVICES AGREEMENT

THIS ADMINISTRATIVE SERVICES AGREEMENT (this "Agreement") is entered into as of ____________, 1999 (the "Effective Date") by and between DARWIN MOLECULAR CORP., through its subsidiary CHIROSCIENCE R&D, INC., located at 1725 220th Street S.E., Suite 200, Bothell, WA 98021 ("collectively Chiroscience"), and RAPIGENE, INC., located at 1725 220th Street S.E., Suite 200, Bothell, WA 98021 ("Rapigene"), (each a "Party"; and together, the "Parties").

RECITALS

A. Rapigene has entered into an Agreement and Plan of Merger with Qiagen NV, a Netherlands Corporation dated December 23, 1999 (the "Merger Agreement"), in which Rapigene will merge with Qiagen Acquisition Corp. and become the surviving company and a wholly owned subsidiary of Qiagen NV;

B. Chiroscience has employees who currently provide legal, financial, human resources, information technology, and additional services (collectively, "Administrative Services") to Rapigene;

C. Rapigene desires Chiroscience to continue to provide the Administrative Services during the transition period immediately following the merger; and

D. Chiroscience agrees to provide the Administrative Services upon the terms and conditions herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below, the sufficiency of which is hereby acknowledged, the parties to this Agreement agree as follows:

1. **Provision of Administrative Services**. Chiroscience hereby agrees to provide the following Administrative Services to Rapigene as follows:

1.1 general legal services by Chiroscience's in house legal department ("Legal Services");

1.2 financial, accounting, and bookkeeping services, including without limitation, administration of accounts receivable and payable, and payroll, preparation and maintenance of financial records, and support by Chiroscience's Finance department ("Financial Services");

1.3 general human resources services by Chiroscience's human resources department ("Human Resource Services");

1.4 general information technology services and support, including desktop and network services by Chiroscience's information technology department ("IT Services"); and

1.5 such other services as later agreed upon in writing by authorized agents of the Parties ("Additional Services").

2. **Level of Services**. For the Term (defined herein) of this Agreement, any and all Administrative Services as described in Article 1 shall be provided at the quality and level of services, which are currently provided by Chiroscience to Rapigene prior to the Effective Date of this Agreement. Under no circumstances shall Chiroscience be required to hire additional employees to increase the level of services to Rapigene, or take any other steps to provide service beyond the level, which has been provided prior to the Effective Date of this Agreement.

3. **Access and Cooperation**. Rapigene must provide reasonable access to, including, but not limited to, facilities, necessary employees, books, and records, in order to facilitate the performance of Administrative Services. If Rapigene does not provide reasonable access, Chiroscience may terminate this Agreement as provided in Paragraph 8.1(i).

4. **Place of Services**. To the extent practicable, all Administrative Services shall be performed at the premises of Chiroscience.

5. **Payment; Fees for Service**. Rapigene shall pay Chiroscience for the Administrative Services rendered under this Agreement at the same cost Rapigene has been paying to Chiroscience for Administrative Services prior to the Effective Date of this Agreement.

6. **Time and Manner of Payments**. Chiroscience shall invoice Rapigene on a monthly basis. Rapigene shall pay the full amount due within thirty (30) days of receipt of such invoice. If payments are delinquent, then Chiroscience may terminate this Agreement as provided in Paragraph 8.1(i).

7. **Term**. The term of this Agreement shall be from the Effective Date herein until June 30, 2000, unless terminated earlier as provided in Article 8 ("Termination") or extended by the prior written agreement of the Parties.

8. **Termination**.

8.1 **Termination of Agreement**. Either Party may immediately terminate this Agreement: (i) for material breach of a Party's obligations under this Agreement after thirty (30) days' written notice to the breaching Party by the non-breaching Party; or (ii) for any reason upon thirty (30) days' written notice to the other Party. In the event of termination of this Agreement in either event, all outstanding amounts earned and unpaid to Chiroscience shall become immediately due and payable

8.2 **Termination of Category of Administrative Services**. Rapigene may terminate a category of Administrative Services upon thirty (30) written notice to Chiroscience, if any of the categories of Administrative Services are no longer necessary to Rapigene. Chiroscience may terminate a category of Administrative Services upon thirty (30) days' written notice to Rapigene,

if Chiroscience elects not to perform such category of Administrative Services. For a terminated category of Administrative Services, Rapigene shall be required to pay for all Administrative Services in that category rendered by Chiroscience until the Effective Date of the termination.

9. **Status of Employees**. At all times, employees providing Administrative Services pursuant to this Agreement shall be solely employees of Chiroscience, and not of Rapigene. Both Parties shall have sole control over the recruiting, hiring, evaluating, replacing, supervising, disciplining, and firing of their respective employees.

10. **Wages; Employee Benefits**. Chiroscience shall be responsible for all gross salary/wages (with the exception of the fees paid by Rapigene pursuant to this Agreement), and any and all employees benefits, including, without limitation, any and all health insurance plans, disability insurance, life insurance, and retirement plans.

11. **Employment Taxes**. For the Chiroscience employees providing Administrative Services pursuant to this Agreement, Chiroscience shall pay all applicable employment taxes and be responsible for the preparation and submittal of all employment related tax returns, including the Federal Insurance Contributions Act (FICA), Federal Unemployment Tax Act (FUTA), and State Unemployment Tax (SUTA). Chiroscience shall be responsible for reporting and paying the Department of Labor and Industries of the State of Washington for industrial insurance/worker's compensation.

12. **Coordinator**. Rapigene and Chiroscience shall each select an individual to serve as coordinators for the provision of the Administrative Services ("Coordinators). The Coordinators shall serve as an interface between Chiroscience and Rapigene for requesting or scheduling Administrative Services, or any issues arising from the provision thereof.

13. **Compliance with Laws**. Both Parties shall comply with all applicable labor laws and laws regarding equal employment opportunities, whether federal, state, and local. Neither Party shall discriminate on the basis of national origin, race, color, religion, age, disability, or sex. Both Parties shall keep their respective workplace in compliance with all applicable federal, state, and local health and safety standards. This article does not confer any rights or remedies for third parties.

14. **Employee Conduct & Waiver**. Chiroscience shall be solely responsible for the supervision of the Chiroscience employees providing the Administrative Services. Rapigene expressly acknowledges that Chiroscience shall not be liable for Rapigene's loss of business, goodwill, profits, or other special, consequential, or incidental damages due to Chiroscience's employees. Rapigene shall not sue, make any claim or demand, or otherwise seek any damages from Chiroscience for any injuries arising out of any and all acts or omissions of any employee in connection with the performance of Administrative Services rendered.

15. **Insurance**. Both Parties shall maintain, at all times, and at their own cost, appropriate general liability, automobile liability, and professional malpractice insurance. In addition, Rapigene shall have adequate insurance to cover any additional possible liability that Rapigene may incur due to its responsibilities hereunder.

16. **No Liability & Indemnity**. Chiroscience assumes no responsibility or liability, including, but not limited to, product, premises, vicarious, tort, or statutory liability, which may be imposed on Rapigene as a result of actions or inactions of Chiroscience employees while acting on behalf of Rapigene. Rapigene shall indemnify and hold Chiroscience harmless for any penalty, claim, liability, deficiency or damages arising as a result from action or inaction of Rapigene or any of its employees, or agents with respect to the Administrative Services provided pursuant to this Agreement. Rapigene further agrees to indemnify and hold Chiroscience harmless for any injuries to, or claims made by, Chiroscience employees as a result of the action or inaction of Rapigene employees while Chiroscience employees are performing the Administrative Services contemplated herein.

17. **Confidential Information**.

17.1 Confidential Information means information including all ideas, inventions, systems, formulae, discoveries, technical information, prototypes, patterns, compilations, programs, devices, methods, techniques, processes, designs, source codes, maskworks, business plans, business opportunities, customer or personnel lists or financial statements that: (i) derives independent economic value actual or potential, for not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Confidential Information includes, but is not limited to, information disclosed in connection with the Administrative Services. Confidential Information shall not include information that: (i) is now or subsequently becomes generally available to the public through no wrongful act or omission of the Party that possesses such Confidential Information; (ii) each Party can demonstrate to have had rightfully in its possession prior to disclosure to that Party by the other Party; (iii) is independently developed by a Party without use, directly or indirectly, of any Confidential Information; or (iv) a Party rightfully obtains from a third party who has the right to transfer or disclose it.

17.2 Except to the extent necessary to perform the Administrative Services, neither Party shall reproduce, use, distribute, disclose or otherwise disseminate the Confidential Information. Upon termination of the Administrative Services, each Party shall promptly deliver to the other Party or destroy all Confidential Information and all embodiments thereof then in its custody, control or possession and shall deliver within five (5) days after such termination.

17.3 All Confidential Information shall remain the property of the Party that first possesses it, and no license or other right to such information is granted or implied hereby.

18. **General Provisions**.

18.1 **Entire Agreement**. Except as set forth in the Merger Agreement, this Agreement sets forth the entire agreement and understanding of the Parties with respect to the subject matter contained herein and supersedes all prior agreements, arrangements, and understandings relating to the subject matter hereof. The Parties acknowledge and agree that the Facilities Agreement as provided in Exhibit H of the Merger Agreement sets forth the terms and conditions for services relating to the facility of Rapigene. Except as expressly set forth herein, no Party is entitled to

rely on any statement not contained herein or any writing not specifically furnished pursuant hereto.

18.2 **Successors and Assigns; Assignment**. The provisions shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns; provided, however, that Rapigene cannot assign, delegate, or otherwise transfer any of its rights or obligations under this Agreement.

18.3 **Third Party Beneficiaries**. This Agreement shall be effective only between Parties to this Agreement and shall not be construed to create any rights or remedies in any third parties.

18.4 No Partnership or Joint Venture Relationship. It is not the intention of the Parties to create any partnership or joint venture relationship between them and none is created by the execution of this Agreement.

18.5 **Modification or Amendment**. This Agreement may not be orally modified or amended, and no modification, amendment, or attempted waiver shall be valid unless in writing signed by the Parties.

18.6 **Counterparts**. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

18.7 Notices. Any notice required to be given under this Agreement may be given in person, by facsimile with answer-back confirmation, by overnight courier, or by U.S. Postal Service certified mail, postage prepaid. Notice given in person or by facsimile shall be deemed received when given. Notice given by overnight courier or U.S. certified mail shall be deemed received two (2) business days after it has been deposited in the mail. Notice shall be given to the address listed below (or such address as a Party notifies the other Party in writing):

To Chiroscience:

1725 220th SE - Suite 200
Bothell, WA 98021
Phone: (425) 489-8000
Fax: (425) 489-8018
Attn: Legal Department

To Rapigene:

1725 220th SE - Suite 200
Bothell, WA 98021
Phone: (425) 398-3100
Fax: (425) 398-3160
Attn: President

18.8 Governing Law. This Agreement shall be governed for all purposes by the laws of the State of Washington without regard to its conflict of law principles.

18.9 Surviving Provisions. The following provisions shall survive the expiration or termination of this Agreement: Articles 14, 16, and 17, and Paragraphs 18.7, 18.8, and 18.9.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day set forth above.

CHIROSCIENCE R&D, INC.	RAPIGENE, INC.,
By: ______________________	By: ______________________
Name: ____________________	Name: ____________________
Title: _____________________	Title: _____________________

3/30/00 4:49 PM (24662.0004)

EXHIBIT H
TERMS FOR THE FACILITIES AGREEMENT

This following sets forth the understanding of Darwin Molecular Corp., and its subsidiary Chiroscience R&D, Inc., ("collectively "Chiroscience"); and Rapigene, Inc. ("Rapigene") as follows:

1. Chiroscience currently provides certain facility services to Rapigene, including but not limited to the following: telephone systems and service related thereto, security, facility access control and monitoring, janitorial, signage, health and safety guidelines, waste disposal, shipping and receiving, mail delivery, postage services, access to common areas (kitchen, reception, bathrooms, boardrooms, conference rooms, and library materials and services (collectively "Facility Services").

2. Chiroscience agrees it will continue to provide the Facility Services to Rapigene at the quality and level it is presently providing until such time as a definitive agreement for the provision of facility services and addressing the outstanding facilities issues is reached between the parties (the "Facilities Agreement"); but no later than January 30, 2000. Under no circumstances shall Chiroscience be required to hire additional employees to increase the level of services to Rapigene, or take any other steps to provide service beyond the level, which has been previously provided. Rapigene agrees it will continue to pay the same amount Rapigene has been paying to Chiroscience for the Facility Services.

3. On or before January 31, 2000 Chiroscience and Rapigene agree they will work together in good faith to enter into a Facilities Agreement in which the parties will set forth terms and conditions for the Facilities Services to be provided by Chiroscience.

4. The Facilities Agreement shall set forth terms and conditions for the Facility Services as well and additional facility services identified and agreed to by the Parties including the following services and areas of interest:

4.1 Telephones - (carrier, video, videoconferencing, and single telephone switch connection);

4.2 Security - (computer and operating systems, shared access in mechanical room, response and monitoring alarms);

4.3 Utilities - (separate meters or billing system for electricity, water, gas, garbage, and sewer);

4.4 Janitorial - (janitorial services and closet space);

4.5 Signage - (building and front marker for the office complex);

4.6 Library - (library materials and staff support);

4.7 Health and Safety - (biological, hazardous and chemical waste removal);

4.8 Shipping and Receiving - (shipping and receiving services, including mail

delivery and postage related thereto).

EXHIBIT I

NEITHER THIS NOTE NOR THE SECURITIES INTO WHICH THIS NOTE IS CONVERTIBLE HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS.

$12,000,000 December 23, 1999
Boston, Massachusetts

QIAGEN, N.V.
CONVERTIBLE TERM NOTE

FOR VALUE RECEIVED, QIAGEN, N.V., a corporation organized and existing under the laws of the Netherlands having its principal place of business at Spoorstraat 50 5911 KJ Venlo (the "Company"), promises to pay to Darwin Molecular Corporation a Delaware corporation with its principal place of business at Bothell, Washington or its registered assigns (the "Holder"), the principal sum of Twelve Million ($12,000,000) Dollars no later than March 22, 2000 (the "Maturity Date"), and to pay interest to the Holder on the principal balance of this Note from time to time outstanding at a rate of interest equal to the Applicable Rate (as defined below). Interest shall accrue daily commencing on January 22, 2000 until payment in full of the principal sum, together with all accrued and unpaid interest and other amounts, which may become due hereunder, has been made. Interest shall be calculated on the basis of a 360-day year and for the actual number of days elapsed. As used herein, the term "Interest Rate" shall mean zero percent (0%) during the period commencing on the date hereof and continuing until January 22, 2000; one percent per annum (1%) during the period commencing on January 22, 2000 and continuing until February 22, 2000; and two percent per annum (2%) thereafter. Payments on this Note shall be applied to any accrued interest and thereafter to the outstanding principal balance hereof.

This Note is subject to the following additional provisions:

Section 1. Description of Note. This Note (this "Note") is issued pursuant to a certain Agreement and Plan of Merger dated as of the date hereof by and among the Company, the Holder and the other parties named therein (as the same may be amended from time to time, the "Merger Agreement"), and the Holder of this Note, by its acceptance hereof, shall be entitled to the benefits, and subject to the terms, of the Merger Agreement. Neither the foregoing reference to the Merger Agreement nor any provisions thereof shall affect or impair the absolute

and unconditional obligation of the Company to pay the principal and interest on this Note as provided herein.

Section 2. Conversion.

2.1 Mandatory Conversion. The entire outstanding principal amount of, and all accrued interest with respect to, this Note shall automatically be converted into fully-paid and non-assessable shares of Common Stock, Eur 0.01 par value (the "Company Common Stock"), at the Conversion Price (as defined below) on the Registration Statement Effective Date (as such term is defined in the Merger Agreement). The Company shall cause notice (the "Company Notice") of mandatory conversion to be mailed to the registered Holder of this Note, at such Holder's address, within five (5) Business Days of the Registration Statement Effective Date. Within five (5) Business Days of the date of the Company Notice, the Holder shall surrender this Note, together with a statement of the name or names (with addresses) in which the certificate or certificates for Company Common Stock which shall be issuable on such conversion shall be issued.

2.2 Conversion Price. As used herein, the term "Conversion Price" shall mean average closing price per share of Company Common Stock (rounded down to the nearest cent) on the Nasdaq National Market (as reported on the Nasdaq website) for the ten (10) consecutive trading days ending on the fifth trading day immediately prior to the Execution Date (as defined in the Merger Agreement).

2.3 Surrender of Note and Delivery of Certificates. When surrendered for conversion in accordance with Section 2.1, this Note shall, unless the shares of Company Common Stock issuable on conversion are to be issued in the same name as the name in which this Note is then registered, be duly endorsed by, or accompanied by instruments of transfer in form reasonably satisfactory to the Company duly executed by, the Holder or his or its duly authorized attorney. As promptly as practicable after the surrender of this Note for conversion, the Company shall deliver or cause to be delivered to the Holder, or on the Holder's written order, a certificate or certificates for the number of full shares of Company Common Stock issuable upon the conversion of this Note, or portion hereof, in accordance with the provisions hereof. Such conversion shall be deemed to have been made five (5) Business Days after the Conversion Notice shall have been given by the Company as provided in Section 2.1 above (the "Conversion Date"), and the Holder in whose name any certificate or certificates for shares of Company Common Stock shall be issuable upon such conversion shall be deemed to have become on the Conversion Date the holder of record of the shares represented thereby.

2.4 No Fractional Shares. Upon a conversion hereunder the Company shall not be required to issue stock certificates representing fractions of shares of Company Common Stock, but may if otherwise permitted, make a cash payment in respect of any final fraction of a share based on the Conversion Price at such time. If the Company elects not, or is unable, to make such a cash payment, the Holder shall be entitled to receive, in lieu of the final fraction of a share, one whole share of Company Common Stock.

2.5 Payment of Transfer Taxes, Etc. The issuance of certificates for shares of the Company Common Stock on conversion of this Note shall be made without charge to the Holder hereof for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such certificate; provided, that the Company shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such certificate upon conversion in a name other than that of the Holder of this Note so converted.

Section 3. Default.

3.1 Event of Default. As used herein, the term "Event of Default" means any one of the following events (whatever the reason and whether it shall be voluntary or involuntary or effected by operation of law or pursuant to any judgment, decree or order of any court, or any order, rule or regulation of any Federal, state, local or foreign administrative or governmental body):

(a) any default in the payment of the principal of, or interest on, this Note, as and when the same shall become due and payable on the Maturity Date, by acceleration or otherwise; or

(b) the Company shall commence, or there shall be commenced against the Company, a case under any applicable bankruptcy or insolvency laws as now or hereafter in effect or any successor thereto or a petition, action or proceeding is commenced against the Company; or the Company commences any petition, action or proceeding under any reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction whether now or hereafter in effect relating to the Company; or there is commenced against the Company any such bankruptcy, insolvency or other proceeding which remains undismissed for a period of sixty (60) days; or the Company is adjudicated insolvent or bankrupt; or any order of relief or other order approving any such case or proceeding is entered; or the Company suffers or seeks any appointment of any custodian, receiver, trustee, liquidator or the like for it or any substantial part of its property which continues undischarged or unstayed for a period of sixty (60) days; or the Company makes a general assignment for the benefit of creditors.

3.2. Effect of Event of Default. If during the time that any portion of this Note remains outstanding, any Event of Default occurs, then, the Holder may, by notice to the Company, declare the full principal amount of this Note, together with all accrued but unpaid interest hereon and other amounts owing hereunder to the date of acceleration, to be immediately due and payable in cash without presentment, demand, protest or other notice of any kind, all of which are waived by the Company, and the Holder may immediately and without expiration of any grace period enforce any and all of its rights and remedies hereunder and all other remedies available to it under applicable law; provided that the Holder may, in its sole discretion, waive an Event of Default; further provided that no such waiver shall affect any subsequent Event of Default or impair any right consequent thereon.

Section 4. Notices. Any and all notices or other communications or deliveries to be provided by the Holder of this Note hereunder shall be in delivered in accordance with Section 10.3 of the Merger Agreement.

Section 5. No Impairment. Except as expressly provided herein, no provision of this Note shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of, and interest on, this Note at the time, place, and rate, and in the coin or currency, herein prescribed. The Company may voluntarily prepay the outstanding principal amount on this Note and all accrued and unpaid interest thereon in accordance with Section 6 hereof.

Section 6. Prepayment. The principal indebtedness represented by this Note, and any accrued interest thereon, may be prepaid by the Company in whole or in part at any time prior to the Maturity Date without premium or penalty, upon five (5) Business Days' prior written notice to the Holder.

Section 7. No Right As Stockholder. This Note shall not entitle the Holder to any of the rights of a stockholder of the Company, including without limitation, the right to vote, to receive dividends and other distributions, or to receive any notice of, or to attend, meetings of stockholders or any other proceedings of the Company, unless and to the extent converted into Company Common Stock in accordance with the terms hereof.

Section 8. Lost Note. If this Note shall be mutilated, lost, stolen or destroyed, the Company shall at its expense execute and deliver, in exchange and substitution for and upon cancellation of a mutilated Note, or in lieu of or in substitution for a lost, stolen or destroyed Note, a new Note for the principal amount of this Note so mutilated, lost, stolen or destroyed but only upon receipt of evidence of such loss, theft or destruction of such Note, and of the ownership hereof, and indemnity, if requested, all reasonably satisfactory to the Company.

Section 9. Governing Law. This Note shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to conflicts of laws thereof.

Section 10. Amendments and Waivers. Any term of this Note may be amended or waived only with the written consent of the Company and the Holder. Any waiver by the Company or the Holder of a breach of any provision of this Note shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Note. The failure of the Company or the Holder to insist upon strict adherence to any term of this Note on one or more occasions shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Note. Any waiver must be in writing. By acceptance hereof, the Holder acknowledges that in the event the required consent is obtained, any term of this Note may be amended or waived with or without the consent of the Holder.

Section 11. Invalidity. If any provision of this Note is invalid, illegal or unenforceable, the balance of this Note shall remain in effect, and if any provision is inapplicable

to any person or circumstance, it shall nevertheless remain applicable to all other persons and circumstances. In such an event, the parties will in good faith attempt to effect the business agreement represented by such invalidated term to the fullest extent permitted by law.

Section 12. Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a day on which banking institutions in Wilmington, Delaware are open for business (a "Business Day"), such payment shall be made on the next succeeding Business Day (or, if such next succeeding Business Day falls in the next calendar month, the preceding Business Day in the appropriate calendar month).

Section 13. Waiver of Presentment and Demand. The Company waives presentment and demand for payment, notice of dishonor, protest and notice of protest, notice of nonpayment and notice of acceleration or intent of acceleration of this Note, and shall pay all costs of collection when incurred, including without limitation, reasonable attorneys' fees, costs and other expenses. The right to plead any and all statutes of limitations as a defense to any demands hereunder is hereby waived to the fullest extent permitted by law, regardless of and without any notice, diligence, act or omission as or with respect to the collection of any amount called for hereunder.

Section 14. Successors and Assigns. The provisions of this Note shall inure to the benefit of and be binding on any successor to the Company and shall extend to any holder or permitted assignee hereof. This Note shall not be assigned by the Company without the prior written consent of the Holder.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed by an officer thereunto duly authorized as of the date first above indicated.

QIAGEN, N.V.

By:_________________________________
Name:
Title:

Attest:

By:____________________________

TRADOCS:1276369.2(rc%p02!.DOC)

EXHIBIT 10.3(a)
QIAGEN N.V.
Max-Volmer-Strasse 4 Leasing Contract
Summary for Form 20-F

between:	Gisantus Grundstücksverwaltungsgesellschaft mbH Wilhelm-Theodor-Römheld-Str. 30 55130 Mainz, Germany (the "Lessor")
and:	QIAGEN GmbH Max-Volmer-Str. 4 40724 Hilden, Gemany (the "Lessee"- in following "QIAGEN")
attested by:	Dr. Norbert Zimmermann ("Notary") Schadow Arkaden Blumenstrasse 28 40212 Düsseldorf on December 06, 1996

1. The Property:
The property is a parcel of land 6,139 meters square (66,056 Sq. Ft.) plus building located at Max-Volmer-Str. in Hilden, Germany

2. The Term of the Lease starting at July 01, 1997 expires at December 31, 2018.

3. The Net-Investment amounts to 16,154,434.87 DM

thereof:

- land:	877,228.71 DM
- building	14,828,649,24 DM
- other costs	448,556.92 DM

4. The Residual Value after the first period of the lease (20 years) amounts to 4,009,998.56 DM

5. QIAGEN is entitled to exercise a Purchase Option at the end of the first period or at the expiration of the lease respectively

6. The Purchase Price at the end of the first period corresponds to the market fair value.

ARTHUR ANDERSEN

CONSENT OF INDEPENDENT PUBLIC ACCOUNTANTS

As independent public accountants, we hereby consent to the incorporation by reference of our reports dated February 18, 2000 included in this Form 20-F, into the Company's previously filed Registration Statement File No. 333-7166 pertaining to QIAGEN N.V. 1996 Employee, Director and Consultants Stock Option Plan. It should be noted that we have not audited any financial statements of the Company subsequent to December 31, 1999 or performed any audit procedures subsequent to the date of our report.

Arthur Andersen LLP

ARTHUR ANDERSEN LLP

Los Angeles, California
March 29, 2000