SANGSTAT MEDICAL CORP
Form 8-K
August 04, 2003

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

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FORM 8-K

CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(D) OF THE
SECURITIES EXCHANGE ACT OF 1934

AUGUST 4, 2003
(Date of earliest event reported)

SANGSTAT MEDICAL CORPORATION
(Exact name of Registrant as specified in its charter)

| Delaware | 0-22890 | 94-3076-069 |
|---|---|---|
| (State of incorporation or organization) | (Commission File No.) | (IRS Employer Identification No.) |

6300 Dumbarton Circle
Fremont, CA 94555
(Address of principal executive offices)

(510) 789-4300
(Registrant's telephone number, including area code)

ITEM 5. OTHER EVENTS.

On August 4, 2003, SangStat Medical Corporation, a Delaware corporation (the "Registrant"), executed an Agreement and Plan of Merger (the "Merger Agreement") with Genzyme Corporation ("Genzyme") and Swift Starboard Corporation, a wholly owned subsidiary of Genzyme ("Sub"). The agreement provides for Genzyme to engage in a tender offer for all of the issued and outstanding shares of Registrant at a price of $22.50 per share. At the conclusion of the tender offer, Sub would merge with and into Registrant, with Registrant remaining as the surviving corporation in the merger.

A copy of the Merger Agreement is filed herewith as Exhibit 2.1 and incorporated by reference herein. The description of certain terms of the Merger Agreement set forth herein does not purport to be complete and is qualified in its entirety by the provisions of the Merger Agreement. A copy of the related press release announcing the merger agreement is attached to this Current Report on Form 8-K as Exhibit 99.1.

ITEM 7. EXHIBITS.

| Exhibit No. | Description |
|---|---|
| 2.1 | Agreement and Plan of Merger By and Among |

| | |
|---|---|
| | Genzyme Corporation, Swift Starboard Corporation, and SangStat Medical Corporation, dated August 4, 2003 |
| 99.1 | Press release dated August 4, 2003 |

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

SANGSTAT MEDICAL CORPORATION

By: /s/ Stephen G. Dance

Stephen G. Dance
Senior Vice President, Finance

Date: August 4, 2003

EXHIBIT INDEX

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Ex. 2.1 Merger Agreement

EXECUTION COPY

AGREEMENT AND PLAN OF MERGER

BY AND AMONG

GENZYME CORPORATION

SWIFT STARBOARD CORPORATION

AND SANGSTAT MEDICAL CORPORATION

Dated as of August 4, 2003

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AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this "AGREEMENT"), is entered into as of August 4, 2003 by and among Genzyme Corporation, a Massachusetts corporation ("PARENT"), Swift Starboard Corporation, a Delaware corporation and a wholly-owned subsidiary of Parent ("PURCHASER"), and SangStat Medical Corporation, a Delaware corporation (the "COMPANY").

RECITALS

WHEREAS, the Board of Directors of each of Parent, Purchaser and the Company has approved, and deems it advisable and in the best interests of its respective stockholders to consummate, the acquisition of the Company by Parent upon the terms and subject to the conditions set forth herein;

WHEREAS, in furtherance thereof, it is proposed that (i) Purchaser commence a cash tender offer (as it may be amended from time to time as permitted by this Agreement, the "OFFER") to acquire all shares of the issued and outstanding common stock, par value $0.001 per share, of the Company, including the associated Company Rights (as defined in Section 3.2) (the "SHARES"), for $22.50 per Share, net to the seller in cash (such price, or any such higher price per Share as may be paid in the Offer, referred to herein as the "OFFER PRICE");

WHEREAS, the Board of Directors of each of Parent, Purchaser and the Company has approved this Agreement and the Transactions (as defined in Section 9.3(f)), including the Merger (as defined in Section 1.3) following the Offer in accordance with the Delaware General Corporation Law ("DGCL") and upon the terms and subject to the conditions set forth herein;

WHEREAS, the Board of Directors of the Company (the "COMPANY BOARD OF DIRECTORS") has determined that the consideration to be paid for each Share in the Offer and the Merger is fair to the holders of such Shares and has resolved to recommend that the holders of such Shares accept the Offer and adopt this Agreement and each of the Transactions upon the terms and subject to the conditions set forth herein; and

WHEREAS, the Company, Parent and Purchaser desire to make certain representations, warranties, covenants and agreements in connection with the Offer, the Merger and the other Transactions.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants, agreements, representations and warranties set forth herein, the parties agree as follows:



ARTICLE I

THE MERGER

1.1 THE OFFER.

(a) Provided that this Agreement shall not have been terminated in accordance with Section 8.1 and none of the events set forth in Annex I hereto shall have occurred, Purchaser shall commence (within the meaning of Rule 14d-2 under the Securities Exchange Act of 1934, as amended (together with the rules and regulations promulgated thereunder, the "EXCHANGE ACT")), the Offer as promptly as practicable following the date hereof (but in no case later than ten (10) business days from the date hereof). The obligations of Purchaser to accept for payment and to pay for any Shares validly tendered and not withdrawn prior to the expiration of the Offer (as it may be extended in accordance with requirements of this Section 1.1(a)) shall be subject only to the conditions set forth in Annex I hereto. Subject to the prior satisfaction or waiver by Parent or Purchaser of the conditions of the Offer set forth in Annex I hereto, Purchaser shall consummate the Offer in accordance with its terms and accept for payment and pay for all Shares tendered and not withdrawn promptly following the acceptance of Shares for payment pursuant to the Offer. The Offer shall be made by means of an offer to purchase (the "OFFER TO PURCHASE") that contains the terms set forth in this Agreement, and the conditions set forth in Annex I hereto. Parent expressly reserves the right to waive any of such conditions, to increase the Offer Price and to make any other changes in the terms of the Offer; provided, however, that Purchaser shall not, and Parent shall cause Purchaser not to, decrease the Offer Price, change the form of consideration payable in the Offer, decrease the number of Shares sought in the Offer, impose additional conditions to the Offer, extend the offer beyond the date that is twenty (20) business days after commencement of the Offer or the last extension (in accordance with this Section 1.1, if any, of the Offer, whichever is later (the "EXPIRATION DATE") except as set forth below, waive or change the Minimum Tender Condition (as defined in Annex I) or amend any other condition of the Offer in any manner adverse to the Company or the holders of the Shares, in each case without the prior written consent of the Company (such consent to be authorized by the Company Board of Directors or a duly authorized committee thereof). Notwithstanding the foregoing, Purchaser may, without the consent of the Company, (i) extend the Offer beyond the initial expiration date if, at any scheduled (or extended) expiration of the Offer, any of the conditions to Purchaser's obligation to accept Shares for payment, shall not be satisfied or waived, (ii) extend the Offer for any period required by any rule, regulation or interpretation of the United States Securities and Exchange Commission ("SEC"), or the staff thereof, applicable to the Offer, or (iii) extend (or re-extend) the Offer for an aggregate period of not more than twenty (20) business days (taking into account all such extensions and re extensions), beyond the latest applicable date that would otherwise be permitted under clause (i) or (ii) of this sentence, if, as of such date, all of the conditions to Purchaser's obligations to accept for payment Shares are satisfied or waived, but there shall not have been validly tendered and not withdrawn pursuant to the Offer that number of Shares necessary to permit the Merger to be effected without a meeting of the Company's stockholders in accordance with the DGCL. In addition, Purchaser may provide a "subsequent offering period" in accordance with Rule 14d-11 under the Exchange Act.



(b) On the date of commencement of the Offer, Parent and Purchaser shall file with the SEC, pursuant to Regulation M-A under the Exchange Act ("REGULATION M-A"), a Tender Offer Statement on Schedule TO with respect to the Offer (together with all amendments, supplements and exhibits thereto, the "SCHEDULE TO"). The Schedule TO shall include the summary term sheet required under Regulation M-A and, as exhibits, the Offer to Purchase and a form of letter of transmittal and summary advertisement (collectively, together with any

amendments and supplements thereto, the "OFFER DOCUMENTS"). The Company hereby consents to the inclusion in the Offer Documents of the recommendation referred to in clause (iii) of Section 3.19 and the approval of the Board of Directors referred to in Section 3.19. Parent and Purchaser agree to take all steps necessary to cause the Offer Documents to be filed with the SEC and disseminated to holders of Shares, in each case as and to the extent required by applicable federal securities laws. Parent and Purchaser, on the one hand, and the Company, on the other hand, agree to promptly correct any information provided by it for use in the Offer Documents if and to the extent that it shall have become false or misleading in any material respect or as otherwise required by law. Parent and Purchaser further agree to take all steps necessary to cause the Offer Documents as so corrected to be filed with the SEC and disseminated to holders of Shares, in each case as and to the extent required by applicable federal securities laws. The Company and its counsel shall be given a reasonable opportunity to review the Schedule TO before it is filed with the SEC. In addition, Parent and Purchaser agree to provide the Company and its counsel with any comments, whether written or oral, that Parent, Purchaser or their counsel may receive from time to time from the SEC or its staff with respect to the Offer Documents promptly upon receipt of such comments, and any written or oral responses thereto.

(c) Parent shall provide or cause to be provided to Purchaser upon expiration of the Offer or any subsequent extension thereof, as applicable, all funds necessary to accept for payment, and pay for, any shares of Company Common Stock that are validly tendered and not withdrawn pursuant to the Offer and that Purchaser is obligated to accept for payment pursuant to the Offer and permitted to accept for payment under applicable Law.

1.2 COMPANY ACTIONS.

(a) On the date the Offer is commenced, the Company shall, in a manner that complies with Rule 14d-9 under the Exchange Act, file with the SEC a Tender Offer Solicitation/Recommendation Statement on Schedule 14D-9 (together with all amendments, supplements and exhibits thereto, the "SCHEDULE 14D-9") which shall, subject to the provisions of Section 5.2, contain the recommendation referred to in clause (iii) of Section 3.19 and the approval of the Board of Directors referred to in Section 3.19. The Company further agrees to take all steps necessary to cause the Schedule 14D-9 to be filed with the SEC and disseminated to holders of Shares, in each case as and to the extent required by applicable federal securities laws. The Company, on the one hand, and Parent and Purchaser, on the other hand, agree to promptly correct any information provided by it for use in the Schedule 14D-9 if and to the extent that it shall have become false or misleading in any material respect or as otherwise required by law. The Company agrees to take all steps necessary to cause the Schedule 14D-9 as so corrected to be filed with the SEC and disseminated to holders of the Shares, in each case as and to the extent required by applicable federal securities laws. Parent, Purchaser and their counsel shall be given the opportunity to review and comment on the Schedule 14D-9 and any



amendment thereto before filing with the SEC. In addition, the Company agrees to provide Parent, Purchaser and their counsel in writing with any comments, whether written or oral, that the Company or its counsel may receive from time to time from the SEC or its staff with respect to the Schedule 14D-9 promptly after receipt of such comments, and to consult with Parent, Purchaser and their counsel prior to responding to any such comments, either in written or oral form.

(b) In connection with the Offer, the Company shall promptly

furnish or cause to be furnished to Parent or Purchaser mailing labels, security position listings and all available listings and computer files containing the names and addresses of the record holders of the Shares as of a recent date, and shall promptly furnish Parent or Purchaser with such information and assistance (including, but not limited to, lists of holders of the Shares, updated periodically, and their addresses, mailing labels and lists of security positions) as Parent or Purchaser or its agent(s) may reasonably request. Such information shall be held confidential by Parent and Purchaser under the terms of the Confidentiality Agreement.

1.3 THE MERGER.

(a) Subject to the terms and conditions of this Agreement, at the Effective Time (as defined in Section 1.4), the Company and Purchaser shall consummate a merger (the "MERGER") in accordance with the DGCL pursuant to which (i) Purchaser shall be merged with and into the Company and the separate corporate existence of Purchaser shall thereupon cease; (ii) the Company shall be the successor or surviving corporation in the Merger and shall continue to be governed by the laws of the State of Delaware; (iii) the separate corporate existence of the Company with all its rights, privileges, immunities, powers and franchises shall continue unaffected by the Merger; and (iv) the Company shall succeed to and assume all the rights and obligations of Purchaser. The corporation surviving the Merger is sometimes hereinafter referred to as the "SURVIVING CORPORATION." The Merger shall have the effects set forth in the DGCL.

(b) The Certificate of Incorporation of Purchaser, as in effect immediately prior to the Effective Time, shall be the Certificate of Incorporation of the Surviving Corporation, except as to the name of the Surviving Corporation, until thereafter amended as provided by law and such Certificate of Incorporation.

(c) The Bylaws of Purchaser, as in effect immediately prior to the Effective Time, shall be the Bylaws of the Surviving Corporation, except as to the name of the Surviving Corporation, until thereafter amended as provided by the DGCL, the Certificate of Incorporation of the Surviving Corporation and such Bylaws.

1.4 EFFECTIVE TIME. Parent, Purchaser and the Company shall cause an appropriate certificate of merger (the "CERTIFICATE OF MERGER") to be executed and filed on the Closing Date (as defined in Section 1.5) (or on such other date as Parent and the Company may agree) with the Secretary of State of the State of Delaware as provided in the DGCL (the "MERGER FILING"). The Merger shall become effective on the time and date on which the Certificate of Merger has been duly filed with the Secretary of State of the State of Delaware or such time and date as is agreed upon by the parties and specified in the Certificate of Merger, such time hereinafter referred to as the "EFFECTIVE TIME."



1.5 CLOSING. The closing of the Merger (the "CLOSING") will take place at 9:00 a.m. (Boston time) on a date to be specified by the parties, such date to be no later than the second business day after satisfaction or waiver of all of the conditions set forth in Article VII (the "CLOSING DATE"), at the offices of Ropes & Gray, LLP, One International Place, Boston, Massachusetts 02110, unless another date or place is agreed to in writing by the parties hereto.

1.6 DIRECTORS AND OFFICERS OF THE SURVIVING CORPORATION. The directors of Purchaser immediately prior to the Effective Time shall, from and after the Effective Time, be the directors of the Surviving Corporation, and the

officers of Purchaser immediately prior to the Effective Time shall, from and after the Effective Time, be the officers of the Surviving Corporation, in each case until their respective successors shall have been duly elected, designated or qualified, or until their earlier death, resignation or removal in accordance with the Surviving Corporation's Certificate of Incorporation and Bylaws.

1.7 SUBSEQUENT ACTIONS. If at any time after the Effective Time the Surviving Corporation shall determine, in its sole discretion, or shall be advised, that any deeds, bills of sale, assignments, assurances or any other actions or things are necessary or desirable 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, properties or assets of either of the Company or Purchaser acquired or to be acquired by the Surviving Corporation as a result of, or in connection with, the Merger or otherwise to carry out this Agreement, then the officers and directors of the Surviving Corporation shall be authorized to execute and deliver, in the name and on behalf of either the Company or Purchaser, all such deeds, bills of sale, instruments of conveyance, assignments and assurances and to take and do, in the name and on behalf of each such corporation or otherwise, all such other actions and things as may be necessary or desirable to vest, perfect or confirm any and all right, title or interest in, to and under such rights, properties or assets in the Surviving Corporation or otherwise to carry out this Agreement.

1.8 STOCKHOLDERS' MEETING.

(a) If required by applicable law in order to consummate the Merger, the Company, acting through the Company Board of Directors, shall, in accordance with applicable law and the Company's Certificate of Incorporation and Bylaws:

(i) duly call, give notice of, convene and hold a special meeting of its stockholders to consider the approval and adoption of this Agreement and the approval of the Merger (the "SPECIAL MEETING") as soon as reasonably practicable following the acceptance for payment and purchase of Shares by Purchaser pursuant to the Offer for the purpose of considering and taking action upon this Agreement;

(ii) prepare and file with the SEC under the Exchange Act a preliminary proxy or information statement relating to the Merger and this Agreement and use its reasonable efforts to obtain and furnish the information required to be included by the SEC in the Proxy Statement (as hereinafter defined) and, after Parent and its counsel shall have had a reasonable opportunity to review and comment on the Proxy Statement, respond promptly to any comments made by the SEC with respect to the preliminary proxy or information statement and cause a definitive proxy or information



statement (the "PROXY STATEMENT") to be mailed to its stockholders as promptly as practicable;

(iii) include in the Proxy Statement the recommendation of the Company Board of Directors that stockholders of the Company vote in favor of the approval of the Merger and the adoption of this Agreement; and

(iv) use its reasonable efforts to solicit from holders of Shares proxies in favor of the Merger and take all other action reasonably necessary or advisable to secure the approval of stockholders required by the DGCL and any other applicable law and the Company's Certificate of Incorporation and Bylaws (if applicable) to effect the Merger;

provided that the obligations set forth in clauses (iii) and (iv) of this Section 1.8(a) shall be subject to Section 5.2.

(b) Parent agrees to vote, or cause to be voted, all of the Shares then beneficially owned by it, Purchaser or any of its other subsidiaries in favor of the approval of the Merger and the adoption of this Agreement.

1.9 MERGER WITHOUT MEETING OF STOCKHOLDERS. Notwithstanding Section 1.8, in the event that Parent, Purchaser or any other subsidiary of Parent shall acquire at least ninety percent (90%) of the outstanding shares of each class of capital stock of the Company entitled to vote on the Merger, pursuant to the Offer or otherwise, the parties hereto agree, at the request of Parent and subject to Article VII, to take all necessary and appropriate action to cause the Merger to become effective as soon as practicable after such acquisition, without a meeting of stockholders of the Company, in accordance with and subject to the DGCL.

1.10 ISSUANCE OF COMPANY COMMON STOCK. Subject to compliance with applicable law and the rules and regulations of the Nasdaq Stock Market, Inc. ("NASDAQ"), in the event that the Parent, Purchaser or any other subsidiary of Parent shall acquire at least seventy-five percent (75%), but less than ninety percent (90%) of the outstanding shares of each class of capital stock of the Company entitled to vote on the Merger pursuant to the Offer, the Company shall, at the request of Parent, issue and sell to Purchaser up to the number of shares of Company Common Stock that represent nineteen and nine-tenths percent (19.9%) of the outstanding shares of Common Stock of the Company entitled to vote on the Merger at the greater of a purchase price of $22.50 per share and any higher price paid for any Share in the Offer.

ARTICLE II

CONVERSION OF SECURITIES

2.1 CONVERSION OF CAPITAL STOCK. As of the Effective Time, by virtue of the Merger and without any action on the part of the holders of any shares of Company Common Stock or any shares of common stock, par value $0.001 per share, of Purchaser ("PURCHASER COMMON STOCK"):



(a) Purchaser Common Stock. Each issued and outstanding share of Purchaser Common Stock shall be converted into and become one fully paid and nonassessable share of common stock of the Surviving Corporation.

(b) Cancellation of Treasury Stock and Parent-Owned Stock. All Shares that are owned by the Company as treasury stock and any Shares owned by Parent or Purchaser shall automatically be cancelled and retired and shall cease to exist, and no consideration shall be delivered in exchange therefor.

(c) Conversion of Shares. Each issued and outstanding Share (other than Shares to be cancelled in accordance with Section 2.1(b) and other than Dissenting Shares (as defined in Section 2.3(a))) shall be converted into the right to receive the Offer Price, payable to the holder thereof in cash, without interest (the "MERGER CONSIDERATION"). From and after the Effective Time, all such Shares shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist, and each holder of a certificate representing any such Shares shall cease to have any rights with respect thereto, except the right to receive the Merger Consideration therefor upon the surrender of such certificate in accordance with Section 2.2, without interest thereon.

2.2 EXCHANGE OF CERTIFICATES.

(a) Paying Agent. Parent shall designate a bank or trust company to act as agent for the holders of Shares in connection with the Merger (the "PAYING AGENT") and to receive the funds to which holders of Shares shall become entitled pursuant to Section 2.1(c). Prior to the Effective Time, Parent shall deposit, or cause to be deposited (by Purchaser or otherwise), with the Paying Agent the aggregate Merger Consideration. For purposes of determining the amount of Merger Consideration to be so deposited, Parent and Purchaser shall assume that no stockholder of the Company will perfect any right to appraisal of his, her or its Shares. Such funds shall be invested by the Paying Agent as directed by Parent or the Surviving Corporation, in its sole discretion (provided that Parent shall be responsible for replacing any losses of principal to such fund resulting from such investments), pending payment thereof by the Paying Agent to the holders of the Shares. Earnings from such investments shall be the sole and exclusive property of Parent and the Surviving Corporation, and no part of such earnings shall accrue to the benefit of holders of Shares.

(b) Exchange Procedures. Promptly after the Effective Time, the Paying Agent shall mail to each holder of record of a certificate or certificates, which immediately prior to the Effective Time represented outstanding Shares (the "CERTIFICATES"), whose shares were converted pursuant to Section 2.1(c) into the right to receive the Merger Consideration (i) a letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates to the Paying Agent and shall be in such form and have such other provisions as Parent may reasonably specify); and (ii) instructions for effecting the surrender of the Certificates in exchange for payment of the Merger Consideration. Upon surrender of a Certificate for cancellation to the Paying Agent or to such other agent or agents as may be appointed by Parent, together with such letter of transmittal, duly executed and properly completed, the holder of such Certificate shall be entitled to receive in exchange therefor the Merger Consideration for each Share formerly represented by such



Certificate and the Certificate so surrendered shall forthwith be cancelled. Until surrendered as contemplated by this Section 2.2, each Certificate shall be deemed at any time after the Effective Time to represent only the right to receive the Merger Consideration in cash as contemplated by this Section 2.2, without interest thereon, and shall not evidence any interest in, or any right to exercise the rights of a stockholder or other equity holder of, the Company or the Surviving Corporation. Notwithstanding the foregoing, any surrendered Certificate that represents Dissenting Shares shall be returned to the person surrendering such certificate.

(c) Transfer Books; No Further Ownership Rights in Shares. At the Effective Time, the stock transfer books of the Company shall be closed and thereafter there shall be no further registration of transfers of Shares on the records of the Company. From and after the Effective Time, the holders of Certificates evidencing ownership of Shares outstanding immediately prior to the Effective Time shall cease to have any rights with respect to such Shares, except as otherwise provided for herein or by applicable law. If, after the Effective Time, Certificates are presented to the Surviving Corporation for any reason, they shall be cancelled and exchanged as provided in this Article II.

(d) Termination of Fund; No Liability. At any time following six (6) months after the Effective Time, the Surviving Corporation shall be entitled to require the Paying Agent to deliver to it any funds (including any interest received with respect thereto) made available to the Paying Agent and not disbursed (or for which disbursement is pending subject only to the Paying

Agent's routine administrative procedures) to holders of Certificates, and thereafter such holders shall be entitled to look only to the Surviving Corporation (subject to abandoned property, escheat or other similar laws) only as general creditors thereof with respect to the Merger Consideration payable upon due surrender of their Certificates, without any interest thereon. Notwithstanding the foregoing, none of Parent, the Surviving Corporation nor the Paying Agent shall be liable to any holder of a Certificate for Merger Consideration delivered to a public official pursuant to any applicable abandoned property, escheat or similar law. If Certificates are not surrendered prior to two (2) years after the Effective Time, unclaimed Merger Consideration payable with respect to such Shares shall, to the extent permitted by applicable law, become the property of the Surviving Corporation, free and clear of all claims or interest of any person previously entitled thereto.

(e) Lost Certificates. If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming such Certificate to be lost, stolen or destroyed and, if required by Parent, the posting by such person of a bond in such amount as Parent may reasonably direct as indemnity against any claim that may be made against it or the Surviving Corporation with respect to such Certificate, the Paying Agent shall issue in exchange for such lost, stolen or destroyed Certificate the applicable Merger Consideration with respect thereto.

2.3 DISSENTING SHARES.

(a) Notwithstanding anything in this Agreement to the contrary, Shares outstanding immediately prior to the Effective Time and held by a holder who has not voted in favor of the Merger or consented thereto in writing and who has complied with Section 262 of the DGCL (the "DISSENTING SHARES") shall not be converted into a right to receive the Merger



Consideration, unless such holder fails to perfect or withdraws or otherwise loses his, her or its right to appraisal. From and after the Effective Time, a stockholder who has properly exercised such appraisal rights shall not have any rights of a stockholder of the Company or the Surviving Corporation with respect to such Shares, except those provided under Section 262 of the DGCL. A holder of Dissenting Shares shall be entitled to receive payment of the appraised value of such Shares held by him, her or it in accordance with Section 262 of the DGCL, unless, after the Effective Time, such holder fails to perfect or withdraws or loses his, her or its right to appraisal, in which case such Shares shall be converted into and represent only the right to receive the Merger Consideration, without interest thereon, upon surrender of the Certificate or Certificates representing such Shares, pursuant to Section 2.2.

(b) The Company shall give Parent (i) prompt notice of any written demands for appraisal of any Shares, attempted withdrawals of such demands and any other instruments served pursuant to the DGCL and received by the Company relating to rights of appraisal; and (ii) the opportunity to participate in the conduct of all negotiations and proceedings with respect to demands for appraisal under the DGCL. Except with the prior written consent of Parent, the Company shall not voluntarily make any payment with respect to any demands for appraisal or settle or offer to settle any such demands for appraisal.

2.4 THE COMPANY OPTION PLANS. Effective as of the Effective Time, each outstanding stock option, stock equivalent right or right to acquire Shares (a "COMPANY OPTION" or "COMPANY OPTIONS") granted under the Company's 1996 Non-Employee Director Stock Option Plan (including, but not limited to, options granted in lieu of a director's basic retainer payment ("FEE CONVERSION

OPTIONS"), and the 2002 Stock Option Plan (collectively, the "OPTION PLANS")), whether or not then exercisable or vested, shall be (i) deemed to be one hundred percent (100%) vested and exercisable immediately prior to the Effective Time; and (ii) immediately prior to the Effective Time, cancelled and, in consideration of such cancellation, Parent shall, or shall cause the Surviving Corporation to, promptly following the Effective Time, pay to such holders of Company Options, an amount in respect thereof equal to the product of (x) the excess, if any, of the Offer Price over the exercise price of each such Company Option and (y) the number of unexercised Shares subject thereto (such payment, if any, to be net of applicable Taxes withheld pursuant to Section 2.6). Effective as of the Effective Time, all repurchase rights in favor of the Company with respect to shares issued upon exercise of Company Options (including, but not limited to shares issued upon exercise of Fee Conversion Options) shall terminate automatically, and the unvested shares of Common Stock subject to those terminated rights shall immediately vest in full. As of the Effective Time, the Option Plans shall terminate and all rights under any provision of any other plan, program or arrangement providing for the issuance or grant of any other interest in respect of the capital stock of the Company or any Company Subsidiary shall be cancelled. The Company shall use all reasonable efforts to effectuate the foregoing, including, but not limited to, sending out the requisite notices and obtaining all consents necessary to cash out and cancel all Company Options necessary to ensure that, after the Effective Time, no person shall have any right under the Option Plans, except as set forth herein.

2.5 OTHER SECURITIES. (a) At the Effective Time, if the $10 million Convertible Promissory Note due March 29, 2004 by the Company in favor of Warburg Dillon Read LLC (the "COMPANY NOTE") shall not have been converted by the holder thereof, the Company Note



shall be assumed by Parent. The Company Note assumed by Parent shall have and be subject to, and convertible upon, the terms and conditions set forth in the Company Note, except that the Company Note shall be convertible only into such Merger Consideration receivable by a holder of that number of shares of Company Common Stock into which the holder would have received had such holder converted the Company Note in full immediately prior to the Effective Time, in accordance with Section 1(h) of the Company Note. Promptly after the commencement of the Offer, Parent shall execute and deliver to the holder of the Company Note a supplemental agreement regarding the conversion of the Company Note following the Effective Time in accordance with Sections 1(h) and 4(a)(1) of the Company Note and the Company shall deliver to the holder of the Company Note the officer's certificate and legal opinion contemplated by Section 4(a)(3) of the Company Note.

(b) COMPANY WARRANT. Promptly after the commencement of the Offer, the Company shall deliver to each holder of a warrant to purchase Company Common Stock (the "COMPANY WARRANTS") a notice regarding the Transactions, as contemplated by the second paragraph of the introduction to the Company Warrants.

2.6 SECTION 16. Parent, Surviving Corporation and the Company shall take such steps with respect to each Section 16 Affiliate (as defined below) as contemplated by the terms and conditions set forth in that certain No-Action Letter, dated January 12, 1999, issued by the SEC to Skadden, Arps, Slate, Meagher & Flom LLP. For purposes of this Agreement, "SECTION 16 AFFILIATE" shall mean each individual who (x) immediately prior to the Effective Time is a director or officer of the Company or (y) at the Effective Time will become a director or officer of Parent.

2.7 WITHHOLDING. Each of the Paying Agent, Parent, and Surviving Corporation shall be entitled to deduct and withhold, or cause the Paying Agent to deduct and withhold, from any amounts payable or otherwise deliverable pursuant to this Agreement to any holder or former holder of Shares or the Company Options such amounts as are required to be deducted or withheld therefrom under the Internal Revenue Code of 1986, as amended (the "CODE") or any provision of Tax law or under any other applicable legal requirement. To the extent such amounts are so deducted or withheld, such amounts shall be treated for all purposes under this Agreement as having been paid to the person to whom such amounts would otherwise have been paid.

2.8 TRANSFER TAXES. If payment of the Offer Price payable to a holder of Shares pursuant to the Offer or the Merger is to be made to a person other than the person in whose name the surrendered Certificate is registered, it shall be a condition of payment that the Certificate so surrendered shall be properly endorsed or shall be otherwise in proper form for transfer and that the person requesting such payment shall have paid all transfer and other Taxes required by reason of the issuance to a person other than the registered holder of the Certificate surrendered or shall have established to the satisfaction of Parent that such Tax either has been paid or is not applicable.



## ARTICLE III

## REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as disclosed in that section of the letter of even date herewith delivered by the Company to Parent prior to the execution and delivery of this Agreement (the "COMPANY DISCLOSURE LETTER") corresponding to the section of this Agreement to which any of the following representations or warranties pertain, the Company represents and warrants to Parent as set forth below. For purposes of the representations and warranties of the Company contained herein, disclosure in any section of the Company Disclosure Letter of any facts or circumstances shall be deemed to be adequate response and disclosure of such facts or circumstances with respect to all representations or warranties by the Company calling for disclosure of such information, whether or not such disclosure is specifically associated with or purports to respond to one or more or all of such representations or warranties if it is reasonably apparent on the face of the Company Disclosure Letter that such disclosure is applicable. The inclusion of any information in any section of the Company Disclosure Letter or other document delivered by the Company pursuant to this Agreement shall not be deemed to be an admission or evidence of the materiality of such item, nor shall it establish a standard of materiality for any purpose whatsoever.

3.1 ORGANIZATION, STANDING AND POWER. The Company and each of its Subsidiaries is a corporation or other legal entity duly organized, validly existing and in good standing under the laws of its jurisdiction of organization. Each of the Company and its Subsidiaries has the corporate power to own, lease and operate its properties and to carry on its business as now being conducted and is duly qualified to do business and is in good standing in each jurisdiction in which the nature of its business as conducted makes such qualification or licensing necessary, except where the failure to be so qualified and in good standing would not be reasonably likely to have a Material Adverse Effect on the Company and its Subsidiaries taken as a whole. The Company has made available a true and correct copy of the Certificate of Incorporation and Bylaws, or other equivalent charter documents, as applicable, of the Company and each of its Subsidiaries, each as amended to date, to Parent. Neither the Company nor any of its Subsidiaries is in violation of any of the provisions of its Certificate of Incorporation or Bylaws or equivalent charter documents, as applicable. Other than its interest in its wholly owned Subsidiaries, the

Company does not directly or indirectly own any equity or similar interest in, or any interest convertible or exchangeable or exercisable for, any equity or similar interest in, any corporation, partnership, joint venture or other business association or entity. Section 3.1 of the Company Disclosure Letter sets forth a true and complete list of the names, jurisdictions of organization of each of the Company's Subsidiaries. Section 3.1 of the Company Disclosure Letter also sets forth for each such Subsidiary the individuals who comprise the board of directors or comparable body for each such entity, except as otherwise noted on such Section of the Company Disclosure Letter. The Company agrees to take, or cause to be taken, the actions necessary so that the individuals who comprise the board of directors or comparable body for each such entity will resign and be replaced by individuals specified by Parent effective as of the Effective Time.



3.2 CAPITALIZATION.

(a) The authorized capital stock of the Company consists of (i) 40,000,000 shares of common stock, par value $.001 per share ("COMPANY COMMON STOCK"), of which 26,469,087 shares were issued and outstanding as of June 30, 2003, and (ii) 5,000,000 shares of preferred stock, par value $.001 per share ("COMPANY PREFERRED STOCK" and, together with Company Common Stock, "COMPANY CAPITAL STOCK"), of which no shares are issued and outstanding as of the date hereof. As of June 30, 2003, (i) no shares of Company Common Stock and no shares of Company Preferred Stock are issued and held in the treasury of the Company, (ii) 4,351,165 shares of Company Common Stock were reserved for issuance pursuant to outstanding Company Options pursuant to the Company Option Plans, (iii) there were warrants outstanding to purchase 50,000 shares of Company Common Stock pursuant to the Company Warrants, (iv) there was Voting Debt (as defined below) outstanding to purchase 500,773 shares of Company Common Stock pursuant to the Company Note and (v) 500,000 shares of Company Preferred Stock were designated as Series A Junior Participating Preferred Stock, all of which were reserved for issuance upon exercise of preferred stock purchase rights (the "COMPANY RIGHTS") issuable pursuant to the Rights Agreement, dated as of August 14, 1995, by and between the Company and Equiserve Trust Company, N.A., as rights agent (the "COMPANY RIGHTS AGREEMENT"). All of the outstanding shares of Company Capital Stock are, and all shares of Company Capital Stock which may be issued pursuant to the exercise or conversion of outstanding Company Options, Company Warrants or the Company Note will be, when issued in accordance with the respective terms thereof or instruments relating thereto, duly authorized, validly issued, fully paid and non-assessable. The rights, preferences and privileges of the Company Preferred Stock are as set forth in the Certificate of Incorporation of the Company.

(b) Except as set forth in Section 3.2(a) above (i) there are no shares of capital stock of the Company authorized, issued or outstanding; (ii) there are no existing options, warrants, calls, purchase rights, conversion rights, exchange rights, stock appreciation rights preemptive rights, indebtedness having general voting rights or debt convertible into securities having such rights ("VOTING DEBT") or subscriptions or other rights, agreements, arrangements or commitments of any character, relating to the issued or unissued capital stock or treasury shares of the capital stock of the Company or its Subsidiaries or obligating the Company or any of its Subsidiaries to issue, transfer or sell or cause to be issued, transferred or sold any shares of capital stock or Voting Debt of, or other equity interest in, the Company or any of its Subsidiaries or securities convertible into or exchangeable for such shares or equity interests, or obligating the Company or any of its Subsidiaries to grant, extend or enter into any such option, warrant, call, subscription or other right, agreement, arrangement or commitment; and (iii) there are no outstanding contractual obligations of the Company or any of its Subsidiaries to

repurchase, redeem or otherwise acquire any Company Capital Stock, or other capital stock of the Company or any of its Subsidiaries or to provide funds to make any investment (in the form of a loan, capital contribution or otherwise) in any other entity. There are no voting trusts or other agreements or understandings to which the Company or any of its Subsidiaries is a party with respect to the voting of the capital stock of the Company or any of its Subsidiaries.

(c) Each outstanding share of capital stock of each Subsidiary of the Company is duly authorized, validly issued, fully paid and nonassessable and each such share owned by the Company or any Subsidiary of the Company is owned free and clear of any mortgage, pledge,



assessment, security interest, lease, sublease, lien, adverse claim, levy, charge, option, right of others or restriction (whether on voting, sale, transfer, disposition or otherwise) or other encumbrance of any kind, whether imposed by agreement, understanding, law or equity, or any conditional sale contract, title retention contract or other contract to give or to refrain from giving any of the foregoing (collectively, "LIENS").

(d) Section 3.2(d) of the Company Disclosure Letter sets forth a listing of (i) all outstanding Company Options as of the date hereof, which schedule shows the underlying shares that have vested, the date such options were issued, and whether the option is an incentive stock option, and (ii) each outstanding Company Option that will accelerate, in whole or in part, pursuant to its terms as a result of the transactions contemplated hereby. Any such acceleration of Company Options is required under the terms of the Option Plans. No agreement or understanding requires a consent or approval from any holder of any Company Option or Company Warrant or the Company Note to effectuate the terms of this Agreement. The Company has previously provided true and complete copies of all the Company Warrants and the Company Note to Parent.

(e) Except for (i) shares indicated as issued and outstanding in Section 3.2(a) and (ii) shares issued pursuant to Section 1.10, there will not be, immediately prior to the Effective Time, any shares of Company Common Stock issued and outstanding.

3.3 AUTHORITY; NONCONTRAVENTION.

(a) The Company has the requisite power and authority to enter into this Agreement (subject to obtaining approval and adoption of this Agreement by the affirmative vote of the holders of a majority of the outstanding shares of Company Common Stock (the "COMPANY STOCKHOLDER APPROVAL")) to consummate the Transactions. The execution, delivery and performance by the Company of this Agreement and the consummation of the Transactions have been duly authorized by all necessary corporate action on the part of the Company, subject only to the Company Stockholder Approval. This Agreement has been duly executed and delivered by the Company and, assuming this Agreement constitutes the valid and binding obligation of the other parties hereto and thereto, constitutes the valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except to the extent that enforceability may be limited by the effect, if any, of (i) any applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally, and (ii) general principles of equity, regardless of whether such enforceability is considered in a proceeding at law or in equity.

(b) The execution, delivery and performance of this Agreement by the Company does not, and the consummation of the Transactions or compliance by

the Company with any of the provisions hereof or thereof will not, conflict with, or result in any violation of, or default under (with or without notice or lapse of time, or both), or give rise to a right of termination, cancellation, right of payment or acceleration of any obligation, modification of or loss of any benefit under (i) any provision of the Certificate of Incorporation or Bylaws, or other equivalent charter documents, as applicable, of the Company or any of its Subsidiaries, or (ii) any material note, bond, mortgage, indenture, guarantee, other evidence of indebtedness, lease, License Agreement, contract, agreement or other instrument or obligation to which the Company or any



of its Subsidiaries is a party or by which any of them or any of their properties or assets may be bound (a "MATERIAL CONTRACT") or any material permit, concession, franchise, license, judgment, order, decree, statute, law, ordinance, rule or regulation applicable to the Company or any of its Subsidiaries or any of their respective properties or assets, except in the case of clause (ii) where such violation, breach or default individually or in the aggregate would not be reasonably likely to have a Material Adverse Effect on the Company and its Subsidiaries taken as a whole or materially impair the ability of the Company to consummate the Transactions. Except for (i) compliance with any applicable requirements of the Exchange Act, or the Securities Act of 1933, as amended (the "SECURITIES ACT"), (ii) the Merger Filings, (iii) the Nasdaq and the State of Delaware, (iv) the Company Stockholder Approval, if required, (v) such filings and approvals as may be required by any applicable state securities, blue sky or takeover laws, (vi) filings, clearances, permits, authorizations, consents and approvals as may be required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR ACT"), and any comparable provisions under any applicable pre-merger notification laws or regulations of foreign jurisdictions, and (vii) such other consents, authorizations, filings, approvals and registrations which are obtained prior to the Closing or if not obtained or made would materially reduce the value of the Company or materially impair the ability of the Company to consummate the Transactions, no notice to, filing with, and no permit, authorization, consent or approval of, any arbitrator, court, nation, government, any state or other political subdivision thereof and any entity exercising executive, legislative, judicial regulatory or administrative functions of, or pertaining to, government (a "GOVERNMENTAL ENTITY"), or any private third party is necessary for the consummation by the Company of the Transactions. The execution, delivery and performance of this Agreement by the Company does not and the consummation of the Transactions or compliance by the Company with any of the provisions hereof or thereof will not result in the creation of any Lien on the assets or properties of the Company or any of its Subsidiaries. Neither the Company nor any of its Subsidiaries is or will be required to give any notice to or obtain any consent or waiver from any individual or entity in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby or thereby, except where failure to give such notice or obtain such consent would not be reasonably likely to have a Material Adverse Effect on the Company and its Subsidiaries taken as a whole.

3.4 SEC FILINGS; COMPANY FINANCIAL STATEMENTS.

(a) The Company has filed all forms, reports and documents required to be filed by the Company with the SEC since December 31, 2001 and has made available to Parent such forms, reports and documents in the form filed with the SEC. All such required forms, reports and documents are referred to herein as the "COMPANY SEC REPORTS." As of their respective dates or, if amended, as of the date of the last such amendment prior to the date of this Agreement, the Company SEC Reports (i) complied in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be,

the Sarbanes-Oxley Act of 2002 and the rules and regulations of the SEC thereunder applicable to such Company SEC Reports and (ii) did not at the time they were filed (or if amended or superseded by a filing prior to the date of this Agreement, then on the date of such filing) contain any untrue statement of a material fact or omit to state a material fact or disclose any matter or proceeding required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. Between the date of this Agreement



and the Closing Date will timely file, with the SEC all documents required to be filed by it under the Exchange Act.

(b) Each of the consolidated financial statements (including, in each case, any related notes thereto) contained in the Company SEC Reports (the "COMPANY FINANCIALS") (i) complied in all material respects with the published rules and regulations of the SEC with respect thereto, (ii) was prepared in accordance with United States generally accepted accounting principles ("GAAP") applied on a consistent basis throughout the periods involved (except as may be indicated in the notes thereto or, in the case of unaudited interim financial statements, as may be permitted by the SEC on Form 10-Q under the Exchange Act), (iii) fairly presented in all material respects the consolidated financial position of the Company and its Subsidiaries as at the respective dates thereof and the consolidated results of the Company's operations and cash flows for the periods indicated, except that the unaudited interim financial statements may not contain footnotes and were or are subject to normal and recurring year-end adjustments and (iv) was prepared from and in accordance with the Company's books and records. The balance sheet of the Company contained in the Company SEC Reports as of March 31, 2003 (the "COMPANY BALANCE SHEET DATE") as filed with the SEC before the date hereof is hereinafter referred to as the "COMPANY BALANCE SHEET."

(c) Within 10 business days of the date hereof, the Company will provide to the Purchaser a complete list of all effective registration statements filed on Form S-3 or Form S-8 or otherwise relying on Rule 415 under the Securities Act.

3.5 ABSENCE OF CERTAIN CHANGES. Except as and to the extent disclosed in the Company SEC Reports filed prior to the date of this Agreement, since the Company Balance Sheet Date and through the date of this Agreement: (i) the Company and its Subsidiaries have conducted their respective businesses and operations in all material respects in the ordinary and usual course, (ii) there has not been any declaration, setting aside or payment of any dividend on, or other distribution (whether in case, stock or property) in respect of, any of the Company's capital stock, or any purchase, redemption or other acquisition by the Company of any of its capital stock or any other securities of the Company on any options, warrants, calls or rights to acquire any such shares or other securities except for repurchases from employees following their termination pursuant to the terms of their pre-existing stock option on purchase agreements, (iii) the Company has not acquired or agreed to acquire any assets other than in the ordinary course of business consistent with past practice, (iv) there has not been any split, combination or reclassification of any of the Company's capital stock, and (v) there has not occurred any events, changes or effects (including the incurrence of any liabilities of any nature, whether or not accrued, contingent or otherwise) having, individually or in the aggregate, or, which, individually or in the aggregate, would be reasonably likely to have, a Material Adverse Effect on the Company and its Subsidiaries taken as a whole or (vi) any change by the Company in accounting principles or methods, except insofar as may be required by a change in GAAP. There has not been any action taken by the Company or any of its Subsidiaries since the Balance Sheet Date

through the date of this Agreement that, if taken during the period from the date of this Agreement through the Effective Time, would constitute a breach of Section 5.1.

3.6 NO UNDISCLOSED LIABILITIES. As of March 31, 2003, the Company and its Subsidiaries had no material liabilities of any nature, whether accrued, absolute, contingent or



otherwise (including without limitation, liabilities as guarantor or otherwise with respect to obligations of others or liabilities for taxes due or then accrued or to become due), required to be reflected or disclosed on the Company Balance Sheet that were not adequately reflected or reserved against on the Company Balance Sheet. The Company has no material liabilities of any nature, whether accrued, absolute, contingent or otherwise, that would be required to be reflected or disclosed in accordance with GAAP on a balance sheet, other than liabilities (i) adequately reflected or reserved against on the Company Balance Sheet, (ii) included in Section 3.6 of the Company Disclosure Letter, (iii) incurred since March 31, 2003 in the ordinary course of business consistent with past practice or (iv) litigation, as contemplated in Section 3.7 below, for any claims filed since March 31, 2003.

3.7 LITIGATION. Except as set forth in the Company SEC Reports filed prior to the date hereof, (a) there are no private or governmental actions, suits, proceedings, claims, arbitrations or investigations pending before any agency, court or tribunal, foreign or domestic, or to the Knowledge of the Company, threatened against the Company or its Subsidiaries or any of their properties, directors or officers, including without limitation medical malpractice or professional liability suits, claims, actions, proceedings, arbitrations or investigations related to activities of the Company or any of its Subsidiaries in connection with any web sites sponsored or operated, or formerly sponsored or operated, by the Company or any of its Subsidiaries and (b) there is no judgment, decree or order against the Company or any of its Subsidiaries, that, in the case of (a) or (b) individually or in the aggregate, would be reasonably likely to have a Material Adverse Effect on the Company and its Subsidiaries taken as a whole.

3.8 GOVERNMENTAL AUTHORIZATION. The Company and its Subsidiaries have each Federal, state, county, local or foreign governmental consent, license, permit, grant, or other authorization of a Governmental Entity (i) pursuant to which the Company or any of its Subsidiaries currently operates or holds any interest in any of its properties or (ii) that is required for the operation of the business of the Company or any of its Subsidiaries or the holding of any such interest ((i) and (ii) are herein collectively called "COMPANY AUTHORIZATIONS"), and all of such Company Authorizations are in full force and effect, except where the failure to obtain or have any such Company Authorizations would not reasonably be likely to have a Material Adverse Effect on the Company; and no proceeding is pending or, to the Knowledge of the Company, threatened to revoke or limit any Company Authorization, except where such proceedings would not reasonably be likely to have a Material Adverse Effect on the Company and its Subsidiaries taken as a whole.

(b) The Company and its Subsidiaries have complied in a timely manner and in all material respects, with all laws, statutes, regulations, rules, ordinances, and judgments, decrees, orders, writs and injunctions, of any court or Governmental Entity (collectively, "LAWS") relating to any of the property owned, leased or used by them, or applicable to their business, including, but not limited to, (i) the Foreign Corrupt Practices Act of 1977 and any other Laws regarding use of funds for political activity or commercial bribery and (ii) laws relating to equal employment opportunity, discrimination,

occupational safety and health, environmental, interstate commerce, anti-kickback, healthcare and antitrust, except where such failure to comply would not reasonably be likely to have a Material Adverse Effect on the Company and its Subsidiaries taken as a whole.



(c) The Company and its Subsidiaries are not in violation of any Federal, state, local or foreign law, ordinance or regulation, including without limitation the Sarbanes-Oxley Act of 2002 and any rules and regulations promulgated thereunder, or any order, judgment, injunction, decree or other requirement of any court, arbitrator or governmental or regulatory body, relating to the operation of clinical testing laboratories, labor and employment practices, health and safety, zoning, pollution or protection of the environment except for violations of or liabilities under any of the foregoing which would not reasonably be likely to have a Material Adverse Effect on the Company or its Subsidiaries taken as a whole.

(d) To the Knowledge of the Company, each product and product candidate subject to the United States Food and Drug Administration (the "FDA") jurisdiction under the Federal Food, Drug and Cosmetic Act ("FDCA"), the Public Health Service Act ("PHS") or similar foreign Governmental Entity or Law that is manufactured, tested, distributed, held, and/or marketed by the Company or any of its Subsidiaries is being manufactured, tested, distributed, held and marketed in compliance in all material respects with all applicable requirements under the FDCA or such similar Law of any foreign jurisdiction including, but not limited to, those relating to investigational use, premarket clearance, good manufacturing practices, labeling, advertising, promotional activities, record keeping, filing of reports and security.

(e) To the Knowledge of the Company, the Company has, prior to the execution of this Agreement, provided to Parent copies of all documents in their respective or any of its Subsidiaries' possession material to assessing compliance with the FDCA and its implementing regulations and the PHS, 483s and untitled letters, including, but not limited to, copies of (i) all warning letters, notices of adverse findings and similar correspondence received in the last two years, (ii) all audit reports performed during the last two years, and (iii) any document concerning any significant oral or written communication received from the FDA in the last two years.

(f) To the Knowledge of the Company, the Company and its Subsidiaries are not, and have not been, in violation of the Federal Anti-Kickback Act, any Federal conspiracy statutes, the Prescription Drug Marketing Act, Federal False Claims Act, Federal Stark Law or any other Federal or state statute related to sales and marketing practices of pharmaceutical manufacturers and others involved in the purchase and sale of pharmaceutical products.

(g) To the Knowledge of the Company, the Company and its Subsidiaries have at all times complied with their respective obligations to report accurate pricing information for its pharmaceutical products to the government and to pricing services relied upon by the government and other payors for pharmaceutical products, including without limitation its obligation to report accurate "Fees and Price" under the Medicaid Rebate Statute and accurate Average Wholesale Price.

(h) To the Knowledge of the Company, neither the Company nor any of its Subsidiaries has engaged in an unlawful or unauthorized practice of medicine or other professionally licensed activities through any web sites sponsored or operated, or formerly sponsored or operated, by the Company or any of its Subsidiaries.

3.9 TITLE TO PROPERTY. The Company and each of its Subsidiaries have all assets, properties, rights and contracts necessary to permit the Company and its Subsidiaries to conduct their business as it is currently being conducted, except where the failure to have such assets, properties, rights and contracts would not be reasonably likely to have a Material Adverse Effect on the Company and its Subsidiaries taken as a whole. The Company and each of its Subsidiaries has good and marketable title to all of its properties, interests in properties and assets, real and personal, reflected in the Company Balance Sheet (except properties, interests in properties and assets sold or otherwise disposed of since the Company Balance Sheet Date in the ordinary course of business consistent with past practice), or with respect to leased properties and assets, valid leasehold interests in, free and clear of all Liens, except (i) Liens for current taxes not yet due and payable, (ii) such imperfections of title, Liens and easements as do not and will not materially detract from or interfere with the use or value of the properties subject thereto or affected thereby, or otherwise materially impair business operations involving such properties and (iii) Liens securing debt which are reflected on the Company Balance Sheet; provided, however, that no representation is made in this section with respect to infringement of third party Intellectual Property Rights. The property and equipment of the Company and each of its Subsidiaries that are used in the operations of business are (taken as a whole) in good operating condition and repair, subject to normal wear and tear.

3.10 TECHNOLOGY AND INTELLECTUAL PROPERTY.

(a) DEFINITIONS. The following terms shall have the meanings set forth below.

"COMPANY INTELLECTUAL PROPERTY RIGHTS" means all rights in the Significant Company IP and the Company's Trade Secrets and all other material intellectual property rights in the Company Technology, Company Copyrights and Company Trademarks, other than third party Intellectual Property Rights.

"COMPANY TECHNOLOGY" means all Technology acquired by, or developed by or for, the Company, and used in the business of the Company as currently conducted.

"COMPANY TRADEMARKS" means all Trademarks owned by the Company and used in the business of the Company as currently conducted.

"COMPUTER SOFTWARE" means all computer programs (whether in source code or object code form), databases, compilations and documentation (including, without limitation, user, operator, and training manuals) related to the foregoing.

"COPYRIGHTS" means U.S. and foreign copyrights (whether registered or unregistered).

"INTELLECTUAL PROPERTY RIGHTS" means all rights under Copyrights, Patents, Trade Secrets, and Trademarks.

"LICENSE AGREEMENTS" means all agreements to which the Company is a party or otherwise bound, under which the Company is granting or is granted any Intellectual Property Right.

"PATENTS" means all U.S. and foreign patents and patent applications.

"SIGNIFICANT COMPANY IP" means all: (i) Patents, (ii) registered Copyrights and Copyright applications, and (iii) registered Trademarks and Trademark applications, in which the Company has an ownership interest.

"TECHNOLOGY" means all processes, formulae, algorithms, data, models, plans, methodologies, theories, ideas, techniques, discoveries, disclosures, inventions, Computer Software, information or know-how.

"TRADEMARKS" means all U.S. and foreign trademarks, service marks, trade names, designs, logos, slogans, internet domain names and general intangibles of like nature (whether registered or unregistered).

"TRADE SECRETS" means trade secrets as defined in the Uniform Trade Secrets Act.

(b) Section 3.10(b) of the Company Disclosure Letter is a list of the material Significant Company IP (including for each, the applicable jurisdiction, registration number (or application number) and date issued (or date filed)) and the Company or a Subsidiary thereof is listed in the records of the appropriate U.S. or foreign agency as the sole owner of record for each such item of Significant Company IP.

(c) To the Knowledge of the Company, the Company (i) owns all right, title and interest in and to the material Significant Company IP and (ii) owns all other material intellectual property rights in the Company Technology and the Company's Copyrights, in each case free and clear of all Liens. To the Knowledge of the Company, all employees or consultants who contributed to the conception, discovery or development of any of the Company's Intellectual Property Rights did so either (a) within the scope of his or her employment such that, in accordance with applicable law, all Intellectual Property Rights arising therefrom became the exclusive property of the Company, or (b) pursuant to written agreements assigning all such Intellectual Property Rights to the Company.

(d) The Significant Company IP is subsisting, in full force and effect, and has not been cancelled, expired or abandoned, except where any such cancellation, expiration or abandonment, or any other failure to maintain in force, resulted from the exercise of sound business judgment by the Company. To the Knowledge of the Company, the Company Intellectual Property Rights are valid and enforceable.

(e) Section 3.10(e) of the Company Disclosure Letter sets forth a true and complete list of all material License Agreements, other than end-user license agreements for software applications that are commercially available.

(f) Except as set forth in the Company SEC Reports, (i) to the Knowledge of the Company, the conduct of the business of the Company or its Subsidiaries as currently conducted or planned to be conducted does not infringe any third party Intellectual Property Rights and (ii) the Company has no Knowledge that any third party is infringing, diluting or violating any Company Intellectual Property Rights and the Company has not brought any claims, suits,



arbitrations or other adversarial proceedings related to the foregoing against any third party, except as set forth in the Company SEC Reports.

(g) Except as set forth in the Company SEC Reports, there is no

pending or, to the Knowledge of the Company, threatened claim, suit, arbitration or other adversarial proceeding before any court, agency, arbitral tribunal, or registration authority in any jurisdiction: (i) involving the Company Intellectual Property Rights; (ii) alleging that the conduct of the business of the Company or any of its Subsidiaries infringes any Intellectual Property Rights of a third party; or (iii) challenging the ownership, use, validity, enforceability or registrability of any Company Intellectual Property Rights.

(h) Except as set forth in the Company SEC Reports, there are no settlements, forbearances to sue, consents, judgments, or orders, other than the License Agreements, that: (i) restrict any Company Intellectual Property Rights in any material respect or; (ii) restrict the conduct of the business of the Company in any material respect; or (iii) grant third parties any material rights under Company Intellectual Property Rights.

(i) To the Knowledge of the Company, no material Trade Secret of the Company has been disclosed or authorized to be disclosed to any third party in violation of confidentiality obligations to the Company, or its Subsidiaries taken as a whole, and no party to a nondisclosure agreement with the Company is in breach or default thereof. The Company has taken reasonable measures, consistent with customary industry practice, to protect and preserve its Trade Secrets.

(j) No current or former director, officer, consultant or employee of the Company will, after giving effect to the Transactions, own any of the Company Intellectual Property Rights.

(k) The execution of, the delivery of, the consummation of the Transactions contemplated by, and the performance of the Company's obligations under this Agreement will not result in any material loss or material impairment of the Company Intellectual Property Rights or any material Intellectual Property Rights licensed to the Company.

3.11 ENVIRONMENTAL MATTERS. To the Knowledge of the Company, (a) the Company and its Subsidiaries are in compliance in all material respects with Federal, state, local and foreign laws and regulations governing pollution or protection of human health or the environment, including laws and regulations governing emissions, discharges, releases or threatened releases of toxic or hazardous substances, materials or wastes, petroleum and petroleum products, asbestos or asbestos-containing materials, radioactive materials, polychlorinated biphenyls, radon, or lead or lead-based paints or materials ("MATERIALS OF ENVIRONMENTAL CONCERN"), or otherwise governing the generation, storage, containment (whether above ground or underground), disposal, transport or handling of Materials of Environmental Concern (collectively, "ENVIRONMENTAL LAWS"), and including compliance with any permits or other governmental authorizations or the terms and conditions thereof; (b) neither the Company nor any of its Subsidiaries has received any written communication or notice, from a Governmental Authority, alleging any violation of or noncompliance with any Environmental Laws by the Company or any of its Subsidiaries and there is no pending or threatened written claim, action, investigation or notice (collectively, "ENVIRONMENTAL CLAIMS"), by any third party



alleging liability for investigatory, cleanup or governmental response costs, or natural resources or property damages, or personal injuries, attorney's fees or penalties arising from (i) the presence, or release into the environment, of any Materials of Environmental Concern at any location owned, leased or operated by the Company or its Subsidiaries, or (ii) any violation, or alleged violation, of any Environmental Law; and (c) neither the Company nor any of its Subsidiaries has caused any "release" of a Material of Environmental Concern, as that term is

defined in the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 ET SEQ., in a reportable quantity on any real property owned or leased by the Company or any of its Subsidiaries. To the Knowledge of the Company, the Company has made available to Parent all material environmental site assessments, reports, results of investigations or audits that are in the possession of the Company regarding environmental matters pertaining to the environmental condition of the business of the Company and its Subsidiaries, or the compliance (or noncompliance) by the Company or its Subsidiaries with any Environmental Laws.

3.12 TAXES.

(a) The Company and each of its Subsidiaries has timely filed (or has had timely filed on its behalf) with the appropriate Tax Authorities all material Tax Returns required to be filed by the Company and each of its Subsidiaries, and such Tax Returns are complete in all material respects.

(b) The Company and each of its Subsidiaries has paid, or where payment is not yet due, has established an adequate accrual in accordance with GAAP for the payment of, all material Taxes for all periods ending through the date hereof. The Company and each of its Subsidiaries has deducted, withheld or timely paid (or had deducted, withheld or timely paid on its behalf) to the appropriate governmental authority all material amounts required to be deducted, withheld or paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder or any other third party.

(c) There are no Liens for Taxes upon any property or assets of the Company or any of its Subsidiaries, except for Taxes not yet due or for which adequate reserves (excluding any "deferred taxes" or similar items that reflect timing differences between tax and financial accounting principals) have been established in accordance with GAAP.

(d) No Federal, state, local or foreign Audits are presently pending with regard to any Taxes or Tax Returns of the Company and its Subsidiaries and to the Knowledge of the Company, no such Audit is threatened.

(e) There are no outstanding requests, agreements, consents or waivers to extend the statutory period of limitations applicable to the assessment of any Taxes or deficiencies against the Company or any of its Subsidiaries, and no power of attorney granted by the Company or any of its Subsidiaries with respect to any Taxes is currently in force.

(f) Neither the Company nor any of its Subsidiaries is a party to any agreement providing for the allocation, indemnification, or sharing of Taxes that shall remain in force following the Effective Time.



(g) Neither the Company nor any of its Subsidiaries is or has been a U.S. real property holding company (as defined in Section 897(c)(2) of the Code) during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code.

(h) Neither the Company nor any of its Subsidiaries has been a member of any "affiliated group" (as defined in Section 1504(a) of the Code) (other than a group the common parent of which was the Company) and neither the Company nor any of its Subsidiaries is liable for the Taxes of another person (other than the Company or any of its Subsidiaries) under Treas. Reg. 1.1502-6, as a transferee or successor, by contract or otherwise, for any period.

(i) Neither the Company nor any of its Subsidiaries has

distributed stock of another corporation, or has had its stock distributed by another corporation, in a transaction that was governed, or purported or intended to be governed, in whole or in part, by Code Section 355 or 361.

(j) Neither the Company nor any of its Subsidiaries has undergone, or will undergo prior to the Closing Date a change in its method of accounting resulting in an adjustment to its taxable income or loss pursuant to Section 481 of the Code.

(k) The United States Federal and state "net operating loss" of the Company and its Subsidiaries through the date of the last filed applicable Tax Return is set forth on Section 3.12(k) of the Company Disclosure Letter.

(l) Within ten (10) business days of the date hereof, the Company will make available to Parent: (i) complete and correct copies of all United States Federal and state income Tax Returns, examination reports and statements of deficiencies assessed against or agreed to by the Company or any of its Subsidiaries with respect to the prior four (4) taxable years filed; and (ii) a written schedule of foreign countries in which the Company and its Subsidiaries has or has had since 1998 a permanent establishment, as defined in any applicable Tax treaty or convention between the United States and such foreign country.

(m) "AUDIT" means any audit, assessment, or other examination relating to Taxes by any Tax Authority or any judicial or administrative proceedings relating to Taxes. "TAX" or "TAXES" means all Federal, state, local, and foreign taxes (including without limitation any provincial income, gross receipts, property, sales, use, license, excise, franchise, employment, payroll, alternative or add-on minimum, ad valorem, transfer or excise tax, or any other tax, custom, duty or governmental fee), and other assessments of a similar nature (whether imposed directly or through withholding), including any interest, additions to tax, or penalties applicable thereto, imposed by any Tax Authority. "TAX AUTHORITY" means the IRS and any other domestic or foreign governmental authority responsible for the administration of any Taxes. "TAX RETURNS" mean all Federal, state, local, and foreign tax returns, declarations, statements, reports, schedules, forms, and information returns and any amendments thereto.

3.13 EMPLOYEE BENEFIT PLANS.

(a) Section 3.13(a) of the Company Disclosure Letter contains a list of the material employment, bonus, deferred compensation, incentive compensation, stock purchase, stock option, stock appreciation right or other stock-based incentive, severance,



change-in-control, or termination pay, hospitalization or other medical, disability, life or other insurance, supplemental unemployment benefits, profit-sharing, welfare, pension, or retirement plan, program, agreement or arrangement (whether or not reduced to writing) and each other employee benefit plan, program, agreement or arrangement which is maintained by the Company or any of its Subsidiaries, or by any trade or business, whether or not incorporated (an "ERISA AFFILIATE"), that together with the Company or any of its Subsidiaries would be deemed a "single employer" within the meaning of Section 4001(b)(1) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), for the benefit of any current or former employee of, or consultant or advisor to, the Company or any of its Subsidiaries (the "COMPANY EMPLOYEE PLANS").

(b) The Company has made available to Parent a copy of each of the Company Employee Plans that has been reduced to writing, and a completed and accurate summary of all material terms of each Company Employee Plan that has not been reduced to writing, and related plan documents, together with all amendments, (including trust documents, insurance policies or contracts, employee booklets, summary plan descriptions and other authorizing documents, and any material employee communications relating thereto) and has, with respect to each Company Employee Plan which is subject to ERISA reporting requirements, made available copies of the Form 5500 reports filed for the last three (3) plan years. Any Company Employee Plan intended to be qualified under Section 401(a) or 501(c)(9) of the Code has a currently valid favorable determination letter from the IRS as to its qualified status or is within the remedial amendment period for making any changes or has been established under a standardized prototype plan for which a currently valid IRS opinion letter has been obtained by the plan sponsor. The Company has also made available to Parent the most recent IRS determination, notification, advisory, or opinion letter issued with respect to each such Company Employee Plan. Each Company Employee Plan that is intended to be qualified under Section 401(a) of the Code is so qualified and each trust that is intended to be exempt under Section 501(a)(9) of the Code is so exempt. All Form 5500 reports required to be filed have been timely filed and to the Company's Knowledge, there are no unresolved disputes related thereto.

(c) There has been no "prohibited transaction," as such term is defined in Section 406 of ERISA and Section 4975 of the Code, with respect to any Company Employee Plan, except "prohibited transactions" that would not result in a material liability of the Company under the Code. Each Company Employee Plan has been administered in all material respects in accordance with its terms and in compliance with the requirements prescribed by any and all statutes, rules and regulations (including ERISA and the Code). The Company and each of its Subsidiaries or ERISA Affiliates have timely and properly performed all obligations required to be performed by them under, are not in any material respect in default under or violation of, and have no Knowledge of any material default or violation by any other party to, any of the Company Employee Plans. All contributions and premiums required to be made or paid by the Company or any of its Subsidiaries to any Company Employee Plan have been made or paid on or before their due dates. No suit, administrative proceeding, action or other litigation has been brought, or to the Knowledge of the Company is threatened, against or with respect to any such Company Employee Plan, including any audit or inquiry by the Internal Revenue Service (the "IRS") or United States Department of Labor other than requests for payments in the ordinary course or requests for qualified domestic relations orders. No Lien has been imposed under



Section 412(n) of the Code or Section 302(f) of ERISA on the assets of the Company or any of its Subsidiaries.

(d) No Company Employee Plan provides benefits, including without limitation death or medical benefits (whether or not insured), with respect to current or former employees of the Company, its Subsidiaries or any ERISA Affiliate after retirement or other termination of service (other than (i) coverage mandated by applicable laws, (ii) death benefits or retirement benefits under any "employee pension plan," as that term is defined in Section 3(2) of ERISA or (iii) deferred compensation benefits accrued as liabilities on the books of the Company, any of its Subsidiaries or an ERISA Affiliate).

(e) Neither the Company nor any of its Subsidiaries or any ERISA Affiliate currently maintains, sponsors, participates in or contributes to, or has ever maintained, sponsored, participated in or contributed to any pension plan (within the meaning of Section 3(2) of ERISA) which is subject to Part 3 of Subtitle B of Title I of ERISA, Title IV of ERISA or Section 412 of

the Code.

(f) Neither the Company nor any of its Subsidiaries or any ERISA Affiliate is, or has ever been, a party to or contributes to or has ever been required to contribute to any "multi-employer plan" as defined in Section 3(37) of ERISA or any plan that has two or more contributing sponsors at least two of whom are not under common control, within the meaning of Section 4063(a) of ERISA.

(g) Neither the Company nor any of its Subsidiaries or any ERISA Affiliate maintains, sponsors, participates in or contributes to any (i) Multiple Employer Welfare Arrangements, (ii) any Voluntary Employee Beneficiary Associations within the meaning of Section 501(c)(9) of the Code or (iii) any welfare benefit funds within the meaning of Section 419(e) of the Code.

(h) Except for restrictions imposed by applicable law and contractual undertakings set forth in the Company Employee Plan documents to the extent they mirror such restrictions, each United States Company Employee Plan and, to the Knowledge of the Company, each foreign Company Employee Plan may be terminated or amended at any time without the consent of any participant, former participant, or beneficiary. Neither the Company nor any of its Subsidiaries has made any payments, or has been or is a party to any agreement, contract, arrangement or plan that could result in it making payments, that have resulted or would result, separately or in the aggregate, in the payment of any "excess parachute payment" within the meaning of Code Section 280G or in the imposition of an excise Tax under Code Section 4999 (or any corresponding provisions of state, local or foreign Tax law) or that were not or would not be deductible under Code Sections 162 or 404.

(i) Except as provided in this Agreement, no employee of, consultant to, or other provider of services to the Company or any of its ERISA Affiliates will be entitled to any additional benefit or the acceleration of the payment or vesting of any benefit under any Company Employee Plan by reason of the transactions contemplated by this Agreement.

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(j) Neither the Company nor any of its Subsidiaries has any "leased employees" within the meaning of Section 414(m) of the Code or any independent contractors or other individuals who provide employee-type services but who are not recognized by the Company as employees of the Company.

3.14 LABOR MATTERS. Each of the Company and its Subsidiaries is in compliance in all material respects with all currently applicable laws and regulations respecting, terms and conditions of employment, wages, hours and occupational safety and health and employment practices, and, to the Knowledge of the Company, is not engaged in any unfair labor practice. As of the date hereof, neither the Company nor any of its Subsidiaries has received written notice of any charge or complaint against the Company or any of its Subsidiaries pending before the Equal Employment Opportunity Commission, the National Labor Relations Board, or any other Governmental Entity regarding an unlawful employment practice. To the Knowledge of the Company as of the date hereof, no Governmental Entity responsible for the enforcement of labor or employment laws intends to conduct an investigation with respect to or relating to the Company or any of its Subsidiaries and no such investigation is in progress. Each of the Company and its Subsidiaries has in all material respects withheld all amounts required by law or by agreement to be withheld from the wages, salaries, and other payments to employees and, to the Knowledge of the Company, is not liable for any material arrears of wages or any taxes or any penalty for failure to comply with any of the foregoing. To the Knowledge of the Company, as of the date hereof, there are no complaints, lawsuits, arbitrations or other actions

pending or threatened in writing between the Company or any of its Subsidiaries and any of their respective employees or former employees. Neither the Company nor any of its Subsidiaries is a party to any collective bargaining agreement or other labor union contract nor does the Company know of any activities or proceedings of any labor union to organize any such employees. There is no labor strike, slowdown or stoppage actually pending or, to the Knowledge of the Company, threatened against or affecting the Company or any of its Subsidiaries. The Company and each of its Subsidiaries are and have been in substantial compliance with all notice and other requirements of the Worker Adjustment and Retaining Notification Act (the "WARN ACT") and any similar state or local statute. No employee of the Company or any Subsidiary has suffered an "employment loss" (as defined in the WARN Act) during the ninety (90)-day period prior to the execution of this Agreement.

3.15 INSURANCE. Section 3.15 of the Company Disclosure Letter contains a complete list of the material policies and contracts of insurance maintained by the Company and each of its Subsidiaries. There is no material claim 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 due and payable to date under all such policies and bonds have been paid and the Company and each of its Subsidiaries is otherwise in compliance in all material respects with the terms of such policies and bonds. The Company has not been notified of any threatened termination of, or material premium increase with respect to, any of such policies.

3.16 COMPLIANCE WITH LAWS. Except as disclosed in the Company SEC Reports, each of the Company and its Subsidiaries has complied in all material respects with, is not in violation of, and has not received any notices of violation with respect to, any material federal, state, local or foreign statute, law or regulation with respect to the conduct of its business, or the ownership or operation of its business.

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3.17 BROKERS' AND FINDERS' FEES. No agent, broker, investment banker, financial advisor or other firm or person is or will be entitled to any brokers' or finders' fee or any other commission or similar fee from the Company in connection with any of the Transactions except for Merrill Lynch & Co. Inc., whose fees and expenses will be paid by the Company in accordance with its agreement with such firm. The Company has previously provided Parent with a copy of Merrill Lynch & Co. Inc.'s engagement letter.

3.18 STATE TAKEOVER STATUTES. The action taken by the Company Board of Directors constitutes approval of the Transactions by the Company Board of Directors under Section 203 of the DGCL, and, no "fair price," "control share acquisition," "business combination" or other similar state takeover statute is applicable to the Transactions or the execution, delivery or performance of this Agreement.

3.19 BOARD APPROVAL. The Company's Board of Directors, at a meeting duly called and held at which all directors were present, has (i) duly and validly approved and taken all corporate action required to be taken by the Company Board of Directors to authorize this Agreement and the consummation of the Transactions, (ii) resolved that the Transactions are advisable and in the best interests of the stockholders of the Company and that the consideration to be paid for each Share in the Offer and the Merger is fair to the holders of such Shares, (iii) subject to the other terms and conditions of this Agreement, resolved to recommend that the stockholders of the Company accept the Offer, tender their Shares to the Purchaser pursuant to the Offer, and approve and adopt this Agreement and each of the Transactions, and (iv) resolved that the foregoing resolutions are sufficient to prevent Section 11(a) of any Indemnity

Agreement (as defined in Section 3.19) from becoming applicable to the Agreement or the Transactions and that the creation of any trust upon the request of any Agent (as defined in the Indemnity Agreement) pursuant to Section 11(b) of any Indemnity Agreement would not be in the best interests of the Company and that no such trust has been created, and none of the aforesaid actions by the Company Board of Directors has been amended, rescinded or modified.

3.20 VOTE REQUIRED. The affirmative vote of the holders of a majority of the outstanding shares of Company Common Stock is the only vote of the holders of any of the Company Capital Stock necessary to approve this Agreement and the Transactions and is only necessary in the event that the number of shares of Company Common Stock tendered pursuant to the Offer represents less than ninety percent (90%) of the issued and outstanding shares of Company Common Stock.

3.21 MATERIAL CONTRACTS AND OTHER AGREEMENTS.

(a) Each of the Company and its Subsidiaries has in all material respects performed the obligations required to be performed by it (except for past breaches which have been cured or waived or for which the Company and its Subsidiaries have no continuing obligations) and is entitled to all benefits under, and to its Knowledge, is not alleged to be in default in respect of, any Material Contract except for such non-performance or default as would not reasonably be likely to have a Material Adverse Effect. Each of the Material Contracts is valid, subsisting in full force and effect, binding upon the Company or its applicable Subsidiary, and, to the Knowledge of the Company, binding upon the other parties thereto in accordance with their terms, and the Company and its Subsidiaries there exists no material default or event



of default or material event, occurrence, condition or act, with respect to the Company or any of its Subsidiaries or, to the Knowledge of the Company with respect to the other contracting party, which, with the giving of notice, the lapse of time or the happening of any other event or conditions, would reasonably be expected to become a default or event of default under the terms of any Material Contract except for such defects, defaults, events, occurrences, conditions or acts or other events as would not reasonably be likely to have a Material Adverse Effect. Section 3.21 of the Company Disclosure Letter contains a list of any person who is party to an Indemnity Agreement with the Company entered into during the two (2) years preceding the date hereof in substantially the form of Exhibit 10.2 of the Company's Form 10-K for the fiscal year ended December 31, 2002 (each an "INDEMNITY AGREEMENT") or similar agreement.

(b) Other than those contracts disclosed in the Company SEC Reports filed prior to the date of this Agreement, neither the Company nor any of its Subsidiaries is a party to any agreement that materially limits or restricts the Company, any of its Subsidiaries or any of their affiliates or successors in competing or engaging in any line of business, in any therapeutic area, in any geographic area or with any person.

(c) Other than those contracts disclosed in the Company SEC Reports filed prior to the date of this Agreement, neither the Company nor any of its Subsidiaries is a party to any agreement involving a personal loan to a director or officer;

(d) Neither the Company nor any of its Subsidiaries is a party to any agreement obligating the Company to file a registration statement under the Securities Act which filing has not yet been made.

(e) To the Knowledge of the Company, no executive officer or

director of the Company has (whether directly or indirectly through another entity in which such person has a material interest, other than as the holder of less than 2% of a class of securities of a publicly traded company) any material interest in any property or assets of the Company (except as a stockholder) or any of its Subsidiaries, any competitor, customer, supplier or agent of the Company or any of its Subsidiaries or any person that is currently a party to any Material Contract or agreement with the Company or any of its Subsidiaries.

(f) Neither the Company nor any of its Subsidiaries is a party to any interest rate, equity or other swap or derivative instrument.

3.22 INFORMATION IN THE PROXY STATEMENT. The Proxy Statement if any (and any amendment thereof and supplement thereto) at the date mailed to the Company's stockholders and at the time of any meeting of Company stockholders to be held in connection with the Merger, will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading, except that no representation is made by the Company with respect to statements made therein based on information supplied in writing by Parent or Purchaser expressly for inclusion in the Proxy Statement. The Proxy Statement, as to information supplied by the Company for inclusion therein, will comply in all material respects with the provisions of the Exchange Act and the rules and regulations thereunder.



3.23 INFORMATION IN THE OFFER DOCUMENTS AND THE SCHEDULE 14D-9. The information supplied by the Company expressly for inclusion or incorporation by reference in the Offer Documents or the Schedule 14D-9 will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. The Schedule 14D-9 will comply in all material respects with the provisions of applicable federal securities laws and, on the date filed with the SEC and on the date first published or sent or given to the Company's stockholders, will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading, except that the Company makes no representation or warranty with respect to statements made in the Schedule 14D-9 based on information furnished by Parent or Purchaser expressly for inclusion therein.

3.24 OPINION OF FINANCIAL ADVISOR. The Company has received the written opinion of Merrill Lynch & Co. Inc. dated the date hereof, to the effect that, as of such date, the consideration to be received in the Offer and the Merger by the Company's stockholders is fair to the Company's stockholders from a financial point of view, a signed copy of which has been delivered to the Company.

3.25 RIGHTS PLAN. The Company Board of Directors has taken such action as is necessary with respect to the Company Rights Agreement such that the execution and delivery of this Agreement and the consummation of the Transactions will not (i) result in Parent becoming an "Acquiring Person" under the Rights Agreement, or (ii) result in the grant of any rights to any person under the Rights Agreement or enable or require the preferred stock purchase rights under the Rights Agreement to be exercised, distributed or triggered.

3.26 NO DEFAULT. The business of the Company and each of its Subsidiaries has not been and is not being conducted in default or violation of any term, condition or provision of (i) its respective certificate of

incorporation or bylaws or similar organizational documents, or (ii) any Federal, state, local or foreign law, statute, regulation, rule, ordinance, judgment, decree, order, writ, injunction, concession, grant, franchise, permit or license or other governmental authorization or approval applicable to the Company or any of its Subsidiaries or relating to any of the property owned, leased or used by them, or applicable to their business, excluding, with respect to clause (ii), defaults or violations that, individually or in the aggregate, would not be reasonably likely to have a Material Adverse Effect on the Company and its Subsidiaries taken as a whole or materially impair the ability of the Company to consummate the Transactions. No investigation or review by any Governmental Entity or other entity with respect to the Company or any of its Subsidiaries is pending or, to the Knowledge of the Company, threatened, nor has any Governmental Entity or other entity indicated an intention to conduct such an investigation or review, other than those that individually or in the aggregate would not be reasonably likely to have a Material Adverse Effect on the Company and its Subsidiaries taken as a whole.

3.27 PRODUCT LIABILITY. There are not presently pending or, to the Knowledge of the Company, threatened any civil, criminal or administrative actions, suits, demands, claims, hearings, notices of violation, investigations, proceedings or demand letters relating to any alleged hazard or alleged defect in design, manufacture, materials or workmanship, including



any failure to warn or alleged breach of express or implied warranty or representation, relating to any product manufactured, distributed or sold by or on behalf of the Company and its Subsidiaries, which if adversely determined, would or would not be reasonably likely to have a Material Adverse Effect on the Company and its Subsidiaries taken as a whole.

3.28 COMMERCIAL RELATIONSHIPS. Since the Company Balance Sheet Date, none of the Company's or its Subsidiaries' material suppliers, collaborators, distributors, manufacturers, licensors and licensees has canceled or otherwise terminated its relationship with the Company or any of its Subsidiaries or altered its relationship with the Company or any of its Subsidiaries, except where such cancellation or termination or alteration would not be reasonably likely to have a Material Adverse Effect on the Company and its Subsidiaries taken as a whole. Since the Balance Sheet Date, to the Knowledge of the Company, the Company has not received any written threat or notice from any such entity, to terminate, cancel or otherwise materially modify its relationship with the Company or any of its Subsidiaries, except where such cancellation, termination or modification would not be reasonably likely to have a Material Adverse Effect on the Company and its Subsidiaries taken as a whole.

3.29 THERAPEUTIC HUMAN POLYCLONALS, INC.. To the Company's Knowledge, except as set forth in the disclosure schedule to the Therapeutic Human Polyclonals, Inc., Series A-2 and Series B Preferred Stock Purchase Agreement, dated November 8, 2002, by and among Therapeutic Human Polyclonals, Inc., SangStat Medical Corporation and Research Corporation Technologies, Inc. (the "THP AGREEMENT") as of the date hereof: (i) THP owns or possesses sufficient legal rights to all patents, trademarks, service marks, trade names, copyrights, trade secrets, licenses, information and other proprietary rights and processes necessary for its business as conducted; (ii) THP has all franchises, permits, licenses and any similar governmental or quasi-governmental authority necessary for the conduct of its business as conducted, the lack of which could materially and adversely affect the business properties, prospects or financial condition of THP; and (iii) THP is, and has at all times since its inception been, in compliance with all applicable laws, except where a failure to comply with such laws has not had and is not reasonably expected to have, a Material Adverse Effect on THP.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF PARENT AND PURCHASER

Each of Parent and Purchaser represents and warrants to the Company as follows:

4.1 ORGANIZATION, STANDING AND POWER. Each of Parent and Purchaser is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of organization. Each of Parent and Purchaser has the corporate power to own its properties and to carry on its business as now being conducted and is duly qualified to do business and is in good standing in each jurisdiction in which the failure to be so qualified and in good standing would have a Material Adverse Effect on such party. Neither Parent nor Purchaser is in violation of any of the provisions of its Articles of Organization or Bylaws.

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4.2 AUTHORITY; NONCONTRAVENTION. Each of Parent and Purchaser has all requisite corporate power and authority to enter into this Agreement and to consummate the Transactions. The execution and delivery of this Agreement and the consummation of the Transactions have been duly authorized by all necessary corporate action on the part of Parent and Purchaser. This Agreement has been duly executed and delivered by each of Parent and Purchaser and, assuming this Agreement constitutes the valid and binding obligation of the other parties hereto, constitutes the valid and binding obligation of each of Parent and Purchaser enforceable against each of them in accordance with its terms, except to the extent that enforceability may be limited by the effect, if any, of (i) any applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally, and (ii) general principles of equity, regardless of whether such enforceability is considered in a proceeding at law or in equity. The execution and delivery of this Agreement does not, and the consummation of the Transactions will not, conflict with, or result in any violation of, or default under (with or without notice or lapse of time, or both), or give rise to a right of termination, cancellation or acceleration of any obligation or loss of a benefit under any provision of the Articles of Organization or Bylaws of Parent or Purchaser. Except for (i) compliance with any applicable requirements of the Exchange Act, (ii) any filing pursuant to the DGCL, (iii) the filing or deemed filing with the SEC and/or Nasdaq of (A) the Schedule TO, (B) the Proxy Statement, if stockholder approval is required by law and (C) such reports under Section 13(a), 13(d) and Section 16 of the Exchange Act as may be required in connection with this Agreement and the Transactions, (iv) such filings and approvals as may be required by any applicable state securities, blue sky or takeover laws, (v) filings, clearances, permits, authorizations, consents and approvals as may be required under the HSR Act and any comparable provisions under any applicable pre-merger notification laws or regulations of foreign jurisdictions, and (vi) such other consents, authorizations, filings, approvals and registrations which are obtained prior to Closing or if not obtained or made would not be material to Parent or Purchaser or have a ma